

CITY COUNCIL  
REGULAR MEETING  
TUESDAY, JULY 14, 2020

1. The meeting was called to order at 7:30 p.m., by virtual contact through ZOOM, and was opened with the Pledge of Allegiance. Councilmembers present were Mayor Mike Lavey, Mayor Pro-tem Rachel Medina, Sue Betts, Amy Huckins, Orly Lucero, David Rainey, and Arlina Yazzie. Staff members present were Police Chief Vernon Knuckles, City Planner Tracie Hughes, Associate Planner Neva Connolly, Director of Public Works Phil Johnson, IT Support Technician Bill Kuhn, City Clerk Linda Smith, City Manager John Dougherty, and City Attorney Mike Green. There were 43 people signed up as participants. Mayor Lavey noted that the public hearing for the NuVue Pharma, LLC Retail Marijuana Store License would be held at the end of the meeting following the other agenda items.
2. The Consent Agenda items acted upon by Council were as follows:
  - a. Approval of the Worksession and Regular Meeting Minutes of June 9, 2020.
  - b. Approval of the payment of the Expenditure Vouchers of June 23 and July 14, 2020.
  - c. Approval of a renewal Liquor Store License for Seven Eighteen Cortez Inc., DBA Liquid Assets, located at 718 East Main Street, Cortez.
  - d. Approval of a renewal Hotel and Restaurant Liquor License for Ocean Pearl Cortez LLC, DBA Ocean Pearl Chinese Restaurant, located at 300 East Main Street, Cortez.
  - e. Approval of a renewal Fermented Malt Beverage Off Premises Liquor License from Western Refining Retail LLC, DBA Speedway #9499, located at 921 East Main Street, Cortez.

Councilmember Lucero moved that the Consent Agenda be approved as presented. Councilmember Huckins seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

3. PRESENTATIONS – None.
4. CITIZEN PARTICIPATION
  - a. Comments on Wearing Masks. Tiffany Ghre commented that she has severe asthma and cannot wear a mask. She stated that the decision to require masks should be left up to the individual businesses which are located on private property. Lynnette Ward stated that people should have respect for others and commented that she cannot wear a mask because it causes her to have a panic attack. She stated that there are a lot of people that cannot wear masks for different reasons. Theresa Oakes stated that everyone should shop locally and she encourages Council to allow the

businesses owners to make their own decision on whether masks are required or not. Jason Baskett stated that he works in Durango every day and he doesn't wear a mask and won't wear a mask. He commented that if you are afraid of the Coronavirus, don't go out or wear a mask yourself. He stated that individual businesses should decide for themselves whether masks should be worn or not in their businesses. He stated that he had the Coronavirus and it is just like the flu.

## 5. PUBLIC HEARINGS

a. QUASI-JUDICIAL ITEM – NuVue Pharma, LLC Retail Marijuana Store License. Councilmember Betts recused herself due to a possible conflict-of-interest. City Attorney Green commented that NuVue Pharma LLC, originally submitted its application for a retail marijuana store on July 19, 2018. He stated a public hearing was held on September 11, 2018, before City Council at which time Council denied the application. He stated that the applicant appealed Council's decision to the Montezuma County District Court and the Court issued its decision on November 7, 2019, requiring Council to hold another public hearing on the application. He stated that since the first application was reviewed, it has been determined that the GOAL Academy is a school and has been issued a Conditional Use Permit by the City. He reviewed the items that staff have determined to have been met during the first review held in 2018 including that the application is complete and signed by the applicant; the applicant has paid the application fee; the application complies with the Retail Marijuana Code (except to be determined is the distance from the proposed location of NuVue Pharma to the GOAL Academy); the application contains no material misrepresentations; the retail marijuana establishment complies with applicable zoning regulations; the applicant's background has been complete and Mr. Whitehair, Counsel for NuVue Pharma, noted that the applicant has not had any felony convictions since his original submittal; there are not any other facts pertinent to the type of license for which the application has been made including the number, type, and availability of retail marijuana outlets located in or near the premises under consideration; no previous denials have been issued for this location; and the applicant hasn't had any taxes, fees, or sales tax assessments that are not paid. City Attorney Green stated that topics for Council to consider during this public hearing are the distance from a school and if that distance has been met as well as testimony from the neighborhood. He stated that following the presentations, Council would need to review the findings for approval or denial of the retail marijuana store and make a motion accordingly.

Greg Whitehair, Counsel for NuVue Pharma LLC, spoke about information contained in his packet (white notebook) which was prepared for Council. He stated that he objects to any change in situation, such as the school issue, as the original hearing held in 2018 did not have issue with the GOAL Academy being recognized as a school. He stated that if everything had been done correctly, NuVue would have been granted a hearing based on the facts and feel that it is improper to the intervention. He also stated that he objects to the neighborhood being defined as the entire City noting that the City has gone with their liquor law protocol for the neighborhood and he feels that the City should have defined a smaller area for dispensary purposes. He stated that when citizens make comment, they need to only comment on distances from a school and safety of the path but nothing on whether marijuana is allowed or not.

City Attorney Green commented that the City's distance regulations for a retail marijuana store are noted in City Code Section 4-212. Associate Planner Neva Connolly was sworn in and gave her

testimony regarding the designation of the GOAL Academy as a school. Discussion was held on Ms. Connolly’s measurement from the GOAL Academy to the proposed location for the NuVue Pharma application during the first hearing held in 2018. Alan Klein, resident of the City of Cortez, 206 Lakeside Drive, was sworn in and asked about Ms. Connolly observing the activity at GOAL Academy, with which Ms. Connolly stated she has not observed the activity at the GOAL Academy. Fire/Building Inspector Sean Canada was sworn in and testified as to his recent measurement from the GOAL Academy to the proposed location of NuVue Pharma. Patrol Lieutenant Andy Brock was sworn in and gave his testimony as to his opinion of the safest route to cross Main Street from the GOAL Academy to the proposed location of NuVue Pharma.

Mr. Whitehair spoke about the need to determine if the GOAL Academy is a school and if that is determined, the Council would need to decide on a distance measurement. Exhibits from the book provided by the applicant were referenced throughout the testimony. Ernie Maness (Exhibit B) was sworn in and testified regarding his assessment of the distance measurement from the proposed NuVue Pharma location to the GOAL Academy. Other witnesses Dan Rutherford (Exhibit F), Jim Horn (Exhibit I), and Dan Corsentino (Exhibit E) also were sworn in giving their testimony regarding their opinion on the measurement from GOAL Academy to the proposal NuVue Pharma. Also, testimony was received from Mr. Corsentino regarding his opinion on the GOAL Academy not being recognized as a school.

Dr. Malik Hasan, applicant for NuVue Pharma LLC, thanked Council for the opportunity to become a part of the Cortez community.

Citizen Duane Cook, Lot 1, Block 10, of Brandon’s Gate, spoke regarding his concerns of the distance measurement and noted that he crosses the street at Lakeside Drive many times.

Council reviewed the findings from Cortez City Code Section 4-215, (a) 1-10. Council agreed that the findings were met and no restrictions would be necessary.

Mayor Pro-tem Medina stated that based on the findings from the hearing, Council approves a retail marijuana store license for NuVue Pharma, LLC. Councilmember Rainey seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
*	Yes	Yes	Yes	Yes	Yes	Yes

\*Councilmember Betts recused herself due to a possible conflict-of-interest.

City Attorney Green stated that the findings from the hearing would be presented to Council at the next Council meeting on July 28, 2020.

b. QUASI-JUDICIAL ITEM – The Cellar Retail Liquor Store License. City Attorney Green stated that Marjana Lloyd, owner of The Cellar, has applied for a retail liquor store license. He stated that Ms. Lloyd had previously applied for the license under a different entity; however, she was part-owner in another Retail Liquor Store License (Hilltop Liquor) which would not allow for approval of The Cellar liquor store license. He stated the background check for Ms. Lloyd was complete

during the original review by City Council. City Attorney Green reviewed the Results of the Investigation from C.R.S. 44-3-312 (1-6) noting that the findings would need to be considered for review of the application. Mayor Lavey opened the public hearing; however, no one spoke and the hearing was closed.

Mayor Pro-tem Medina moved that after considering the facts and evidence adduced as a result of the City’s investigation; any other facts; reasonable requirements of the neighborhood for the type of license applied for; the desires of the adult inhabitants; number, type and availability of alcohol beverage outlets located in or near the neighborhood under consideration; and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed, that a new Retail Liquor Store License be approved for Marjana Lloyd, DBA The Cellar, located at 2410 Fairway Drive, Suite B. Councilmember Huckins seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

6. UNFINISHED BUSINESS – None.

7. NEW BUSINESS

a. Request for Proposal (RFP) for Historic Property Survey Second Street. City Planner Hughes stated that the Cortez Historic Preservation Board has received six grants from the Colorado Historical Society for inventorying historic properties in Cortez and this grant would be the seventh. She stated that this RFP is to conduct a historic property inventory of 23 properties on Second Street (Downtown Area). She noted that three proposals were received and after review by the Historic Preservation Board and staff, Woods Canyon, who completed the last survey, is being recommended as the best qualified and best all-around proposal. She stated that 100% of the cost for the project is paid by the SHPO grant and the Historic Preservation Board and other locals would provide additional volunteer time.

Councilmember Lucero moved that Woods Canyon be awarded the Historic Property Survey to complete the survey of 23 properties on Second Street Cortez (downtown area) in the amount of \$17,513.37. Councilmember Huckins seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

b. 2020 Concrete Cost-Share Bid. Director of Public Works Johnson stated that the City of Cortez annually provides help to residents and business owners to either install new sidewalk or replace deteriorated sidewalks on their property. He stated that the program encourages and promotes improvement of City public walkways by offering 50% cost-share agreement with local residents and in addition, the City utilizes the program for maintenance on City sidewalks, ADA accessible ramps, and miscellaneous curb and gutter work. He stated that this year’s program includes removal and replacement of approximately 4,000 SF of damaged concrete sidewalks and gutter pans; 950 LF of curb and gutter, 950 SF of ADA curb ramps, and miscellaneous concrete work throughout the

City. He stated that three bids were received and noted that a few minor addition errors were made; however, after further review of the bids, staff is recommending that the bid be awarded to Biard Brothers DBA Four States Aggregates at an amount of \$141,451.08. He stated that the Street Capital Fund has \$210,000 budgeted for concrete and storm drain projects this year; and the cost-share participants will reimburse the City about \$5,000.00. In answer to a question from Mayor Lavey, Director of Public Works Johnson stated that Four States Aggregates completed the work last year and did a good job. In answer to a question from Mayor Pro-tem Medina, Director of Public Works Johnson stated that he could provide a list of previously completed projects through the cost-share program at a future worksession. Councilmember Lucero asked if the City has the manpower to oversee the project, and Director of Public Works Johnson stated that staff will be able to oversee the project.

Councilmember Huckins moved that Council award the 2020 Concrete Cost-Share Bid to Four States Aggregates in the amount of \$141,451.08. Councilmember Rainey seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

c. Resolution No. 6, Series 2020. Director of Public Works Johnson stated that as of the meeting date, he had not received the Intergovernmental Agreement from the Colorado Department of Transportation (CDOT) regarding the traffic signal installation at the intersection of US Highway 160 and Hawkins Street. He asked that the resolution be tabled until a future Council meeting.

Councilmember Lucero moved that Council table approval of the Intergovernmental Agreement with CDOT until a future Council meeting. Councilmember Yazzie seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

d. CARES (Coronavirus Aid, Relief and Economic Security) Act Intergovernmental Agreement. City Manager Dougherty stated that at the June 9, 2020, Council approved an opt-in letter for the City to participate in the CARES Act funding. He stated that Montezuma County has received the funding and the Town of Mancos, Town of Dolores, City of Cortez, and Montezuma County managers have meet and agreed on how to distribute the funding to each of the communities. He stated that the City of Cortez would receive \$735,814.78. He stated that the IGA was going to be presented for approval at the Council meeting on June 23, 2020; however, that meeting was canceled. He stated that the IGA has been signed to allow the process to move forward, but needs a vote from Council for finalization. In answer to a question from Mayor Pro-tem Medina, City Manager Dougherty stated that he would present a list of COVID expenditures that are needed for the City and recommendations for how the remaining amount could be spent will be presented to Council at the next meeting for approval. He noted that sanitizing the playground (item 7f) would be COVID related and the first expense for Council to approve from the funding.

Councilmember Rainey moved that the Mayor be authorized to sign the Intergovernmental

Agreement between Montezuma County and the three incorporated areas of the County on apportionment of the CARES Act funds accepting the Cortez portion of the disbursement of \$735,814.78. Councilmember Betts seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

e. Resolution No. 8, Series 2020. Associate Planner Connolly stated that Resolution No. 8, Series 2020, approves the Amended Plat of Choice Building Supply Minor Subdivision. She stated that the plat amendment would be for Lot 1 of the Choice Building Supply Minor Subdivision and would adjust the size of Lot 1 from 0.85 acres to 1.67 acres. She stated that the property line for Lot 1 would move to the south and west, encompassing a portion of the unplatted property owned by Choice Building Supply, Inc. She stated that the unplatted property would be reduced from 5.16 acres to 4.34 acres. She stated that there are no new easements proposed, nor will the plat amendment affect existing easements. She reviewed Land Use Code Section 6.09 regarding approval of an amended plat noting that the application meets criteria 9, which states that relocating one or more lot lines between one or more adjacent lots where the owner or owners of all such properties join in the application for the plat amendment. She noted that there were no conflicts with the proposal from the utility providers or other agencies and noted there will be no new ingress or egress points proposed for the plat amendment. She reviewed the options regarding the approval or denial of the proposal and the two standard conditions if approved.

Councilmember Lucero moved that Council approve Resolution No. 8, Series 2020, approving the Amended Plat of Choice Building Supply Minor Subdivision, as submitted by Chris Wolf. Councilmember Betts seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

f. 2020 Park Playground and Park Shelter Picnic Table Disinfecting Services. Director of Parks and Recreation Palmquist stated that the Parks and Recreation Department solicited cost estimates from three different local businesses to provide disinfecting services twice per week for the City of Cortez playgrounds and park shelter picnic tables from the date of a signed contract through October 30, 2020. The disinfecting services would be paid from the CARES funds allocated to the City of Cortez. He reviewed the bids received to clean the five parks which would include Parque de Vida, Centennial Park, Veterans Park, Denny Lake Park, and the Cortez Softball Complex. He stated that staff is recommending that the second lowest bid submitted by Certified Cleaning and Restoration Inc., DBA CARE, be accepted due to the time that they are allocating for cleaning and the recommendation of an organic based disinfectant. He stated that the bid would be for \$556 per time (twice a week) with an amount not to exceed \$16,680. Discussion was held on the difference in the three bids. Councilmember Huckins stated that she appreciates that an organic based disinfectant is being recommended for the cleaning. In answer to a question from Mayor Lavey, Director of Parks and Recreation Palmquist stated that CARE has been used in the past by the City. Councilmember Huckins read information from a constituent regarding recommendations by the CDC on disinfectant play structures. Director of Parks and Recreation Palmquist stated that the organic disinfectant should comply with the requirements and keep the public safe.

Councilmember Betts moved that the 2020 Park Playground and Park Shelter Picnic Table Disinfecting Services be awarded to Certified Cleaning and Restoration Inc., DBA CARE, at a cost estimate of \$556 per time for providing the labor, materials, and equipment to disinfect the five park playgrounds and park shelter picnic tables at Parque de Vida, Centennial Park, Veterans Park, Denny Lake Park, and the Cortez Softball Complex twice per week through October 30, 2020, and not to exceed \$16,680. Mayor Pro-tem Medina seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

g. Request for Additional Funding for Detox Services. City Manager Dougherty stated that he had participated in a web conference regarding funding for Axis Health. He stated that Haley Leonard-Sanders and Police Chief Knuckles are available to make comment on the funding for the various programs offered by Axis. Haley Leonard-Sanders, representing Axis Health and Southwest Memorial Hospital, spoke to Council about the detox facility that is located in Durango and serves Montezuma County, Dolores County, and LaPlata County. She stated that the local area has helped support the program for over 14 years and additional funding is received from Behavior Health, Medicaid, and some self-pay. She stated that the hospital has paid on the behalf of the whole community for many years; however, the cost has gone up due to the usage and the hospital is looking to partner with the communities to help pay for the cost. She asked if the City could contribute \$5,300 towards the detox program. Ms. Leonard-Sanders also commented that the City has paid \$12,000 in the past for the Acute Treatment Unit and she requested that the support for that program also continue. In answer to a question from Police Chief Knuckles, Ms. Leonard-Sanders stated that \$4,200 is also contributed from the City for crisis services at the jail. Discussion was held on the numbers for the area that are received at the detox center and in answer to a question from Mayor Pro-tem Medina, Ms. Leonard-Sanders spoke about the effectiveness of the detox center and what programs are offered following a person’s stay at the center. Discussion was also held on how people are transported to the facility in Durango. In answer to a comment from Councilmember Betts, Ms. Leonard-Sanders spoke about the difference of the acute unit and the detox unit. Ms. Haley-Sanders explained that the \$12,000 was budgeted in the past through the Police Department for the acute unit and Police Chief Knuckles stated that the \$12,000 is in the 2020 Budget; however, cuts have been made and that has not been expended yet this year. Ms. Leonard-Sanders stated that the \$5,300 is requested for 2021 along with the \$12,000 for the Acute Unit expenditure. Councilmember Yazzie asked if she should recuse herself as she was recently employed by Axis Health. City Attorney Green noted that Councilmember Yazzie could participate in the discussion and vote since she is not being paid by Axis any longer. Councilmember Yazzie complimented Ms. Leonard-Sanders on her work for Axis Health noting that she has streamlined a lot of the programs and there seems to be a better connection for people needing services. Ms. Leonard-Sanders spoke about the other communities that will be contributing and commented that the hospital will still be contributing \$27,000. In answer to a question from Councilmember Lucero, Police Chief Knuckles commented that the Police Department doesn’t feel that they get as much support as they would like and he would not support the additional expense. Ms. Leonard-Sanders stated that Axis is working with the Sheriff and the City Police Department to work through past issues and offer better response. In answer to a question from Councilmember Yazzie, Ms. Leonard-Sanders stated that if funding is not received from all the communities, other parties would probably pitch in more to be sure the program is sustainable. City Manager Dougherty stated that

the 2021 Budget would not be approved until October and more discussion could be held on the expenditure during the budget review. Discussion was held on why Mancos does not contribute to the detox unit.

Councilmember Yazzie moved that more information be sent to Council for consider on the request of \$5,300 from Axis Health and that Council discuss the item further at the August 11, 2020, Council worksession. Councilmember Huckins seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	No	Yes	Yes	Yes

g. Settlement Offer from CNA Surety. City Manager Dougherty asked that discussion on the item be tabled until the next Council meeting.

Councilmember Yazzie moved that Council table the settlement offer from CNA until the next Council meeting. Councilmember Lucero seconded the motion, and the vote was as follows:

Betts	Huckins	Lavey	Lucero	Medina	Rainey	Yazzie
Yes	Yes	Yes	Yes	Yes	Yes	Yes

8. DRAFT RESOLUTION/ORDINANCES – None.

9. OTHER ITEMS OF BUSINESS – None.

10. ADDITIONAL CITIZEN PARTICIPATION – None.

11. CITY ATTORNEY’S REPORT – None.

12. CITY MANAGER’S REPORT – None.

13. CITY COUNCIL COMMITTEE REPORTS

a. Mayor’s Report on Workshop. Mayor Lavey stated that discussion at the worksession included an update by the Public Arts Committee and review of the June Financial Report and budget impacts by COVID-19. Also, a report was given on the latest Police Department training. Discussion was held on Council holding meetings in-person or by ZOOM. Mayor Lavey stated that discussion was also held on whether face masks should be required in public places. He stated that Council adjourned to Executive Session with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) regarding legal advice concerning City of Cortez audits and financial matters.

b. Mesa Verde Country Board Meeting. Councilmember Huckins stated that discussion at the Mesa Verde Country Board Meeting included placing a question on a future ballot regarding an increase in Lodger’s Tax and the open seat on the board was filled.

c. Parks, Recreation, and Forestry Advisory Board. Councilmember Yazzie stated that discussion



included the South Park Project which has been put on hold and discussion was held on the relationship with the BMX participants which continues to grow. She stated that discussion was also held on changing the old tennis court area to pickleball courts. A report was given on the attendance at the recreation center since it has reopened.

d. Golf Advisory Board. Councilmember Yazzie stated that the youth camps have better attendance this year and golf tournaments have begun. She stated that a stone project has begun at the Golf Course similar to the one that is at the recreation center.

The regular meeting was adjourned at 1:05 a.m.

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Michael J. Lavey, Mayor

ATTEST:

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Linda L. Smith, City Clerk