

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, June 4, 2019 at 6:30 p.m.
At the Village Center

The City Council held a study session at 6:01 p.m.

Mayor Russell Stewart called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Russell Stewart, Councilors Randy Weil, Afshin Safavi, Al Blum, Mike Gallagher, Dan Sheldon, and Mayor Pro Tem Katy Brown were present on roll call. Also present were Deputy City Manager and Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Police Chief Michelle Tovrea, Finance Director Jessica Sager, and Deputy City Clerk Terri Littleford.

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

APPROVAL OF AGENDA

Mayor Pro Tem Brown moved, seconded by Councilor Blum to amend the agenda and remove Item 10a, Community Security Shelter Code Amendment.

Mayor Stewart stated that Article IV of the City Council Rules of Procedure allowed Councilor Weil to present. He said the Article stated that the person preparing the ordinance may present a written or oral explanation of the purpose and content of the ordinance. He said the issue on tonight's agenda was not intended as first reading of a council bill, but simply a time for Councilor Weil to present the idea and concept under Article IV. He asked if the 2016 version of the Rules of Procedure was the most recent.

City Attorney Guckenberger confirmed 2016 was the most current version of the Rules of Procedure.

Mayor Stewart said the Rules of Procedure set forth the order of business at a regular meeting and did not include the approval of the agenda.

City Attorney Guckenberger stated the approval of the agenda was part of the *Robert's Rules of Order*.

Mayor Pro Tem Brown said the Rules of Procedure state that City Council follows *Robert's Rules of Order*.

Mayor Stewart asked City Attorney Guckenberger if the Rules of Procedure provided for an approval of the agenda.

City Attorney Guckenberger explained the Council's current Rules of Procedure did not and as to *Robert's Rules of Order*, the Council's Rules of Procedure say that *Robert's Rules* apply to the extent that they are helpful, relevant and not inconsistent with the Rules of Procedure.

Mayor Stewart asked Councilor Weil if he was prepared to present.

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Councilor Weil responded that there was some desire for a security shelter, but the issue was not just about Cherry Hills Farm because there was a plan for Cherry Hills Farm to move forward that would not require a code amendment.

Mayor Pro Tem Brown asked if the discussion about a motion should pertain to the motion, which was the approval of the agenda and not the specific item on the agenda.

Mayor Stewart ruled that the agenda item which covers security shelters was part of the agenda and was fully within the debate.

Mayor Pro Tem Brown stated the motion on the floor was to amend the agenda.

Mayor Stewart said everything pertaining to the agenda item was open for debate.

Councilor Weil stated he believed it was hard to decide whether to remove the item from the agenda without some context. He said there was a difference between getting neighborhood support and funding and therefore it was not something that would happen in the immediate future. He said he desired the City Council's opinion on the subject and the agenda item was intended to be a quasi-study session, not the first reading of a council bill.

Councilor Safavi said there were pros and cons to the shelter and he could convince himself either way on the issue, but he wanted to vote for what residents want.

Councilor Gallagher said the appropriate way to handle the shelter would be to defer it to the Planning and Zoning Commission (P&Z) so they could study it and give a recommendation to City Council.

Councilor Sheldon stated approval of the agenda was an item added to the agenda recently in order to rearrange items on the agenda to accommodate speakers or to remove items from the agenda. He did not feel that it was appropriate to continue to discuss the topic after a motion was made to remove it from the agenda.

Councilor Blum agreed that the proper procedure would be to have P&Z review the security shelter and that there should be a vote on Mayor Pro Tem Brown's motion to amend the agenda.

Mayor Stewart said the policy regarding amending the agenda may not have been formally changed, as it takes two readings.

City Attorney Guckenberger stated the Rules of Procedure had not been amended formally since 2016, however they do state that the order of business sets forth the order except as adjusted by the mayor. Therefore it included an informal adjustment of the agenda by the Mayor. She stated the statute says the posting of the meeting notice should include specific agenda information when possible. She said typically it is known what will be on the agenda, but occasionally an item will come up at the last minute. She continued that best practice was not to put a surprise item on the agenda. She also stated there were items in the statute regarding who could propose an ordinance, and that any council member could submit items to the City Clerk for the agenda.

Mayor Stewart expressed his concern that council members should be able to bring forth concerns and issues. He stated the best option for Cherry Hills Farm would be to move forward with the agreed upon approach.

City Attorney Guckenberger confirmed under the current structure of the Municipal Code that approach would not violate the Code.

Mayor Stewart said the right of Councilors to voice their opinions must be preserved. He stated that more detailed discussions regarding changing the agenda need to take

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place. He said he was troubled by the idea that the majority could take items off the agenda and stressed the importance of free and open debate.

Councilor Sheldon asked who drafted the ordinance included in Council packets.

Mayor Stewart stated that Todd Messenger drafted the original ordinance, but he and the City Attorney made corrections to Mr. Messenger's version.

City Attorney Guckenberger confirmed it was in fact drafted by Mr. Messenger as part of the larger Code Modernization project.

Councilor Weil asked if P&Z were to study the issue, if Council could give them guidance and background on what the issues had been. He said the City Council had not liked the original plans, and as a result the issue had lingered for several years. He stated the Code provides guidance and direction on the process, but if the request was turned down, the only recourse would be to go to court. He stated he was surprised by the level of support for the shelter and reported that out of 116 households, they received 64 responses only one of which was adverse, which suggested there was support for the shelter.

Councilor Blum agreed that the proper procedure was to allow P&Z to study the issue, hold public hearings and make a recommendation to Council.

Councilor Weil stated the problem needed to be defined.

Mayor Pro Tem Brown said P&Z and the community, not Council, should define the problem, brainstorm solutions and make recommendations to Council who would then act. She added that if there was an issue that was brought forward to Council, they could refer them to P&Z, but Council would not define the problem and ask them to fix it.

Mayor Stewart said that an amendment was made to the P&Z procedures that allows Council to refer items to P&Z.

Councilor Safavi stated he hoped that they would not be having the same conversation four years from now. He said it is the Council's responsibility to look at the pros and cons of an issue and make a decision based on what the citizens want. He stated the residents of Cherry Hills Village are smart and thoughtful about what they ask for and asked Council to create a timeline in order to wrap up the issue.

Mayor Pro Tem Brown said the issue had been discussed four years ago and a decision had been made at that time. She stated that solutions were made previously for the Cherry Hills Farm, Charlou and Devonshire neighborhoods. She explained there was a policy level decision that indicated guard houses on public roads were inappropriate, but she realized there were neighborhoods with specific needs which could be addressed. She said her motion to remove Item 10a from the agenda stands. She recommended referring the issue to P&Z.

Mayor Stewart stated that a motion referring to a committee took precedence over the main motion.

Mayor Pro Tem Brown said that was the case when considering an item, not when considering amending the agenda.

Councilor Sheldon stated an important distinction was that there had not been a formal application made.

Councilor Blum stated it would be a waste of time under the current Code.

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Councilor Sheldon said he gave the residents of Cherry Hills Farm his opinion about security shelters which resulted in a clear path of how they could obtain what they wanted without a variance or Code amendment. He said their intention was to amend their plans based on that meeting and apply for the shelter. He stated the request for a Code amendment at this point seemed disingenuous.

Councilor Weil said a solution was in place and the hindrance during the last four years was that there had not been a clear path forward.

Councilor Blum stated the path forward was clear and agreed that discussing the topic again seemed disingenuous.

City Attorney Guckenberger stated that the general rule was the main motion was the last one to be voted on. She said there were two different topics and a vote was needed on the main motion regarding removing the item from the agenda. If that motion failed then discussion could happen on whether Council should refer the topic to P&Z or not during that agenda item.

The motion to remove Item 10a, Community Security Shelter Code Amendment passed by a vote of 4 ayes to 2 nays.

Mayor Pro Tem Brown moved, seconded by Councilor Blum to approve the agenda as amended.

The motion passed unanimously.

AUDIENCE PARTICIPATION PERIOD

None

REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES

None

CONSENT AGENDA

Mayor Pro Tem Brown moved, seconded by Councilor Blum to approve the following items on the Consent Agenda:

- a. Approval of Minutes – May 21, 2019
- b. Resolution 20, Series 2019; Approving a License and Services Agreement with Tyler Technologies for Electronic Ticketing

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

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REPORTS

Mayor's Report

Mayor Stewart said on May 22nd he attended an event hosted by the Global Chair of Congress to honor Councilors at Buell Mansion where Cherry Hills Village was highlighted. He stated on May 29th he, along with Councilor Sheldon, attended the High Line Canal Working Group meeting. He mentioned he also attended a study session regarding the intergovernmental agreement (IGA) Greenwood Village had with Denver Water. He said Cherry Hills Village is considering creating an IGA similar to theirs which would allow Cherry Hills Village to drain stormwater into the High Line Canal. He stated the timeline for this project would be a year. He advised that the Metro Mayors Meeting was the following Wednesday, he would meet with mayors from surrounding communities on Friday and the Mayors Munch was in Littleton next week. He said he and City Attorney Guckenberger would attend the Annual CML Conference on June 18th. He explained Senate Bill 19-103, Legalizing Minors' Businesses, had passed, and therefore the City could not require minors to obtain a permit or business license for a business located a distance to be determined by the City from other local businesses. He asked the City Attorney to provide an update on the Wayfair sales tax ruling.

City Attorney Guckenberger stated it was status quo for home ruled cities but she and City staff would continue monitoring the issue.

Mayor Stewart stated House Bill 19-1221 had passed which removed electric scooters from the definition of toy vehicles and therefore they can be ridden on roadways with the same rules that apply to electric assist bicycles. He said it preserved the authority of cities to determine whether they would allow them on their sidewalks and trails. He thanked the Police Department for ticketing individuals for driving golf carts on trails. He explained that House Bill 19-1212 required community managers to be licensed. He said the Bill was originally vetoed by the Governor, but it was good news for HOAs.

Members of City Council

Councilor Blum stated that resident Maureen Welch inquired about leasing a room above her garage and asked if would be permissible.

City Attorney Guckenberger said the Code prevents short term rentals but sets forth permitted uses which were single family dwellings. She stated Ms. Welch was specifically asking for a change in the Code that prohibits short term rentals, referencing regulations that had been adopted in many communities in the state, which require owner residency and licensing.

Councilor Weil said Ms. Welch should make a presentation to Council.

Councilor Gallagher asked if long term rentals were allowed, such as a student on an annual basis.

City Attorney Guckenberger said the code states all residential zones were for single family dwellings. She explained that short term rentals were defined as detached residential dwelling units occupied by one family on a stable and permanent basis. She said a dwelling unit was defined as inhabited by one or more persons meeting the definition of family. She stated family was defined by blood, marriage or adoption, and that no more than three unrelated persons could occupy a single family dwelling. She

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said long term rental was most likely prohibited because it was commercial, but she would confirm. She explained that domestic servants were allowed.

Mayor Pro Tem Brown asked the Council to consider the previous discussions regarding short term rentals and the overwhelming objection before allowing one person's suggestion to reopen this discussion.

City Attorney Guckenberger explained that a short term rental is considered 90 days or less. She further stated that Ms. Welch had mentioned increased revenue which therefore would qualify it as commercial use.

Councilor Blum noted there were several farmer's markets in the City and asked if they were allowed and, if so, if they were required to remit sales tax.

Deputy City Manager Goldie stated farmer's markets were not allowed in the City.

Finance Director Sager stated the City was not currently receiving sales tax from these markets.

Councilor Sheldon said he attended the High Line Canal Working Group meeting and that a representative from Cherry Hills Village would be appointed to a group of six people. He explained the importance of having a representative from the City on the subcommittee. He said the group would recommend a governance model for managing the High Line Canal. He stated they were working on a sign package which included new mile markers that would be placed from one end of the High Line Canal to the other. He reminded the Council that letters of objection to the FAA were due by close of business on June 6th.

Councilor Gallagher commended the Cherry Hills Land Preserve for funding the dinner during this year's Lakota Ride which would be in the City on July 14th.

Councilor Blum recommended the Council hold a study session to discuss possible mill levy changes in order to plan for 2020.

Mayor Pro Tem Brown reiterated that the deadline for objections to the FAA were due June 6th. She said she obtained a 43 page rough draft of the complaint Centennial Airport intended to submit. She stated the environmental assessment did not comply with the FAA's own requirement of what was required in the assessment. She explained that the FAA was required to conduct a cumulative analysis and they provided current and five year projections. She stated their analysis did not include the FAA's own stated data that indicated by the year 2030 there would be an additional 188,000 flights a year into DIA and their noise study did not consider this. She explained the requirements of the FAA re-authorization, passed in 2018, violated congressional intent and that there were no urgency or safety issues.

Councilor Weil stated his support for security shelters and explained the HOA had drawings and the positioning of such a shelter. He said he would like a nod of approval on the aesthetics of the shelter before they spend the time and money to continue with electrical and plumbing drawings.

Mayor Pro Tem Brown asked if City staff would be better suited to provide approval.

Councilor Weil said because of scheduling issues, a month of work would be lost, and he was looking for Council's and then City Manager Thorsen's approval before moving forward.

Mayor Stewart said City Manager Thorsen would be advised of the discussion that took place and devise a plan for moving forward.

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City Attorney Guckenberger said the issue would have to come before Council as it was a policy decision.

Councilor Weil said he was not trying to preempt the process, just pass a milestone.

City Attorney Guckenberger stated there would be a draft based on the provisions that were worked out to be presented in permit form for the Council to consider.

Mayor Pro Tem Brown stated that everyone was aware of the solution presented to Cherry Hills Farm.

Councilor Safavi noted that open and frank discussions were healthy and it was fair to challenge decisions that were made several years ago.

City Manager & Staff

None

City Attorney

None

ADJOURNMENT

The meeting adjourned at 7:23 p.m.



Russell O. Stewart, Mayor



Terri Littleford, Deputy City Clerk

