

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 7, 2018 at 6:30 p.m.
At the Joint Public Safety Facility

The City Council held a study session at 5:30 p.m.

Mayor Laura Christman called the meeting to order at 6:31 p.m.

ROLL CALL

Mayor Laura Christman, Councilors Randy Weil, Earl Hoellen, Al Blum, Mike Gallagher, Dan Sheldon, and Katy Brown were present on roll call. Also present were City Manager Jim Thorsen, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Police Chief Michelle Tovrea, Community Development Director Rachel Granrath, Finance Director Jessica Sager and City Clerk Laura Gillespie.

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

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

- a. Approval of Minutes – July 17, 2018

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Council Bill 5, Series 2018: Amending Article IV of Chapter 4 of the Municipal Code Regarding Retail Sales Tax Definitions (second and final reading)

Director Sager presented Council Bill 5, Series 2018 for Council's consideration on second and final reading. She explained that the bill would amend select definitions under the City's current Sales Tax Code to coincide with a standardized definition list prepared by the Colorado Municipal League (CML). The amendments would be to definitions only and would have minimal impact to the City's sales tax collection procedures. No changes had been made since first reading.

Mayor Christman asked if the definition of commercial business in the Sales Tax Code would affect the definition in the Zoning Code.

City Attorney Michow replied that it would not because the definitions of Chapter 4 only applied to Chapter 4.

Councilor Brown moved, seconded by Councilor Weil to approve Council Bill 5, Series 2018; amending Article IV of Chapter 4 of the Cherry Hills Village Municipal Code concerning sales tax definitions on second and final reading.

The following votes were recorded:

Weil	yes
Gallagher	yes
Hoellen	yes
Brown	yes
Sheldon	yes
Blum	yes

Vote on the Council Bill 5-2018: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS

Public Hearing - Request by Kent Denver School for Expanded Use for a New Seasonal Outdoor Restroom and Patio Area

Director Granrath explained that Kent Denver had applied for an expanded use permit for a new seasonal outdoor restroom and patio area adjacent to the existing tennis courts. She noted that the application was coming to Council because of the proposed changes to the expanded use Code. She indicated that the application had been approved by the Planning and Zoning Commission with two conditions. Staff had received no public comments on the application and recommended approval with the conditions.

Mayor Christman asked about the designation of seasonal.

Mayor Pro Tem Hoellen agreed that there was no reason to designate the restroom as seasonal unless Kent Denver wanted it to be seasonal in particular. He asked what the applicant's intention was.

KC Jones, representing the applicant, indicated that he was unaware of why the restroom had been specified as seasonal.

Councilor Sheldon noted that the designation was on the original land use application.

Mayor Christman suggested that removing that designation would help to avoid confusion in the future.

City Manager Thorsen noted that the Building Code would not differentiate between a seasonal and non-seasonal restroom.

Councilor Gallagher asked if the restroom would be used by pedestrians.

Mr. Jones replied that the restroom would have a coded lock. He added that Kent Denver and Glenmoor would have the key code.

Councilor Sheldon asked if the application conformed to the proposed Code Modernization project.

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Director Granrath replied that it did.

Mayor Christman opened the public hearing at 6:47 p.m. Hearing no comments the public hearing was closed at 6:48 p.m.

Councilor Brown moved, seconded by Councilor Sheldon to approve the Kent Denver School Expanded Use Permit to construct a 322-square foot seasonal restroom and 187 square foot patio adjacent to the existing Tennis Courts with the following conditions:

1. Prior to Building Permit issuance, the applicant is to provide documentation for an accessible path of travel from the existing accessible route to the proposed restroom structure.
2. Prior to Building Permit issuance, the applicant is to provide a drainage compliance letter showing that the existing drainage facilities have adequate capacity for the proposed restroom structure. If any modifications are necessary to the drainage infrastructure for the proposed restroom building, they shall be designed and submitted for review and approval prior to permit issuance.
3. That all references to "seasonal" in the application are removed.

Councilor Blum indicated that he was a member of Glenmoor Country Club but could vote on this matter without recusing himself.

The motion passed unanimously.

Resolution 17, Series 2018; Accepting a Bargain and Sale Deed from Kent Denver School for Right-of-Way Purposes

City Manager Thorsen presented Resolution 17, Series 2018 for Council's consideration. He explained that the Development Agreement for Kent Denver's Upper School building included the transfer of an easement section of the Quincy trail from Kent Denver to the City. Resolution 17, 2018 finalized and formalized that deed.

Councilor Sheldon asked for clarification regarding the easement of the Quincy trail versus the roundabout.

City Manager Thorsen replied that they were two distinct parts of the Development Agreement.

Councilor Blum asked about maintenance of that portion of the Quincy trail.

City Manager Thorsen replied that the City already maintained that portion of the Quincy trail, including the split rail fence.

Councilor Gallagher asked if this easement would have been deeded regardless of the discussion surrounding the roundabout.

City Manager Thorsen confirmed that was correct and explained that the easement being considered tonight should have been dedicated to the City a long time ago but never was. He noted that the expanded use process had provided the opportunity to correct that oversight. He added that the City had been maintaining the trail and fence for many years.

Mayor Pro Tem Hoellen questioned if the City would be receiving this easement irrespective of the roundabout.

City Manager Thorsen agreed that this would have been a condition of the Development Agreement irrespective of the roundabout.

Councilor Weil asked if the easement was ongoing or time limited.

City Manager Thorsen replied that this easement was permanent.

Councilor Brown noted that Resolution 17, 2018 satisfied part a) on page 13 of the Development Agreement and the roundabout was part b).

Mayor Pro Tem Hoellen noted that part b) was still a condition of the Development Agreement that had to be satisfied before the certificate of occupancy could be issued for the Upper School.

Councilor Sheldon asked when the Upper School was scheduled to be completed.

City Manager Thorsen replied it was scheduled for completion in the spring. He explained that Kent Denver could convey the easement to the City, and the City would have the option of accepting it or not; or Kent Denver could request that Council amend the Development Agreement to remove that condition.

Councilor Sheldon indicated that he believed there were additional options.

Mayor Christman noted that it was to Kent Denver's benefit to convey the Quincy trail easement to the City because of liability issues. She asked about preventing wireless facilities from being located on the trail.

Councilor Sheldon suggested calling the trail a tract instead of the right-of-way.

City Attorney Michow replied that the deed had already been conveyed and recorded.

City Manager Thorsen noted that the entire trail on Quincy was public right-of-way.

City Attorney Michow added that the City had excluded trails from the definition of right-of-way for the purposes of wireless facilities.

City Manager Thorsen noted that a bicyclist had recently crashed on the Quincy trail for unknown reasons.

Councilor Gallagher moved, seconded by Councilor Weil to approve Resolution 17, Series 2018; accepting a Bargain and Sale Deed from Kent Denver School for right-of-way purposes.

The motion passed unanimously.

Council Bill 6, Series 2018; Making Findings and Determinations with Respect to a Petition Concerning the Organization of the Proposed "Cherry Hills Village Charlou Park 3rd Filing General Improvement District" Pursuant to 31-25-601, et seq., C.R.S., and Providing for the Question of the Organization of Such District to be Referred to the Electors Thereof Along with Additional Ballot Issues Authorizing the Issuance of Bonded Indebtedness and Imposition of General Property Taxes to Accomplish the Purposes of Said District (first reading)

City Clerk Gillespie presented Council Bill 6, Series 2018 on first reading. She noted that based on Council's discussion at the July 17, 2018 meeting the proposed district had been renamed to "Cherry Hills Village Charlou Park 3rd Filing General Improvement

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District". She explained that due to the short timeframe for the November 6, 2018 election, staff was presenting Council Bill 6, Series 2018 on first reading, prior to the August 21, 2018 public hearing. She noted that the council bill contained determinations that were somewhat based on the public hearing, and therefore second reading would occur after the public hearing on August 21, 2018 to allow Council the opportunity to amend the bill if needed. She explained that the council bill set out Council's findings regarding the total number of electors in the proposed district, the total valuation for assessment of property in the proposed district, and the sufficiency of the petition; ordered an election to be held for the organization of the district, appointed the City Clerk as the Designated Election Official, and referred the specific ballot measures to the electors of the district. She noted that the City would coordinate with Arapahoe County on the GID election and the small cost would be paid from the GID's cash bond. She added that the ballot language was written by the City's bond counsel. She indicated that only the electors of the district would receive the TABOR notice and the ballot measures related to the GID formation.

Councilor Sheldon asked about the number of electors.

City Clerk Gillespie explained that the state statute defined electors as eligible electors who either owned property in the proposed district, was a spouse of a property owner, or was a resident of the proposed district.

Councilor Blum asked how much the bond counsel would cost and if the \$10,000 cash bond would cover the cost.

City Manager Thorsen replied that the cost of the bond counsel would be paid by the residents of the district through the GID taxes.

Councilor Sheldon asked about the timeframe of the public hearing and the council bill.

City Clerk Gillespie replied that the public hearing had to be set for August 21, 2018 because of the timeframe restrictions set out in state statute, and the council bill had to be finalized so that the City could meet the September 7, 2018 deadline to send ballot content to the County. She noted that second reading of the council bill could have been scheduled for the September 4, 2018 Council meeting but staff preferred to have it finalized before then.

Mayor Christman asked who determined who the electors of the district were.

City Clerk Gillespie replied that she had worked with the City Attorney's office and the County to determine the electors of the district. She added that properties that were not owned by natural persons had the option of designating an elector, which one such property had done so far.

Councilor Brown moved, seconded by Councilor Sheldon to approve Council Bill 6, Series 2018; making findings and determinations with respect to a petition concerning the organization of the proposed "Cherry Hills Village Charlou Park 3rd Filing General Improvement District" pursuant to § 31-25-601, et seq., C.R.S., and providing for the question of the organization of such district to be referred to the electors thereof along with additional ballot issues authorizing the issuance of bonded indebtedness and imposition of general property taxes to accomplish the purposes of said district, on first reading.

The following votes were recorded:

Gallagher	yes	5
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Hoellen	yes
Brown	yes
Sheldon	yes
Blum	yes
Weil	yes

Vote on the Council Bill 6-2018: 6 ayes. 0 nays. The motion carried.

Council Bill 7, Series 2018; Authorizing a Supplemental Appropriation for Fiscal Year 2018 for the High Line Canal Underpass Project at Hampden Avenue and Colorado Boulevard (first reading)

Deputy City Manager/Director Goldie presented Council Bill 7, Series 2018 on first reading. He explained that in 2015, the Denver Regional Council of Governments (DRCOG) and the Colorado Department of Transportation (CDOT) awarded \$4,050,000 to the City of Cherry Hills Village, City and County of Denver, and Arapahoe County to install two underpasses at Hampden Avenue and Colorado Boulevard to improve pedestrian and cyclist access along the High Line Canal. The grant required an agency match of \$1,350,000 to be split evenly between the three agencies. In 2016 Council approved Resolution 10, Series 2016, an Intergovernmental Agreement (IGA) regarding the cost sharing for the project. At that time Council directed staff not to release the City's funds for the project until the Maintenance IGA had been finalized. The Maintenance IGA had not yet been approved but the City had seen positive progress on the IGA recently. The City and County of Denver was requesting that the Cherry Hills Village release \$333,000 as soon as possible. The remainder of \$117,000 could be disbursed at the time the Maintenance IGA was complete. The \$450,000 expenditure had been anticipated in the City's long term budget, but the 2018 budget contained only \$175,000 for this project, necessitating a supplemental appropriation of \$275,000 for 2018. No funds had been spent to date. Staff was seeking direction from Council regarding how and when to disburse funds for this project.

Councilor Brown asked Mayor Pro Tem Hoellen to reiterate his comments made during the study session.

Mayor Pro Tem Hoellen explained that the Cost Sharing Intergovernmental Agreement (IGA) signed by the City obligated the City to make the \$450,000 payment, but the City had held back those funds because the Maintenance IGA had not been finalized. He explained that under the IGA, the City would be responsible for "routine" maintenance and CDOT would be responsible for "capital" maintenance, but what constituted routine and capital needed to be defined in that Maintenance IGA, so until that was done the City's future obligations were undefined and we wanted to clear this up before releasing those funds. He added that recently, CDOT had advised the parties that it was unwilling to move ahead with the underpass project because of an unrelated issue they had with Denver concerning storm water. He indicated that due in large part to the City's holding back its payment, the distinction between routine and capital maintenance activities in the Maintenance IGA had now been agreed upon and the issue between Denver and CDOT regarding stormwater unrelated to the underpass project had been resolved to the point that it no longer impacted this project. He noted that there were still several steps before the new design would be finalized, but that he was comfortable releasing some of the funds at this time. He suggested that any funds released now be accompanied by a letter outlining the agreed upon terms of the Maintenance IGA and the resolution of the stormwater dispute.

Councilor Brown indicated that the supplemental appropriation was needed because of the City's budget process but only appropriated funds that had been agreed to in the Cost Sharing IGA in 2015.

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Mayor Pro Tem Hoellen agreed and asked if subsequent Councils could have refused to pay the amount agreed to in the Cost Sharing IGA.

City Attorney Michow replied that all future obligations were subject to annual appropriation.

Mayor Christman added that the DRCOG TIP application and funding amount had been considered and approved by a prior Council composed of entirely different members than the current Council. She noted that TIP applications should not be made if the funding was not intended to be appropriated in good faith. She indicated that it had been a long and difficult road to arrive at the current Maintenance IGA that the City could afford long term, and City Manager Thorsen had worked very hard.

Councilor Blum asked about the Maintenance IGA.

Mayor Christman replied that the City would not be responsible for any structural maintenance of the underpass, but would replace light bulbs and perform similar maintenance.

Mayor Pro Tem Hoellen replied that this was a multi-jurisdictional project that would benefit the entire Denver Metro Area. He noted that the City had been blamed for the project not going forward, but it was not the fault of the City, and due to the City's work the project would now be completed.

Mayor Christman noted that the full \$450,000 had been due in March.

City Manager Thorsen added that the \$450,000 was originally divided into payments in 2016, 2017 and 2018, but the \$175,000 in 2016 had not been paid and was rolled over in each year's budget.

Deputy City Manager/Director Goldie noted that Denver was requesting \$333,000 be paid now.

Councilor Sheldon asked if it was logical to assume that Denver had spent \$1 million in design costs and was asking for a third of that from each partner jurisdiction.

City Manager Thorsen replied that Denver had likely spent close to \$1 million in design costs.

Councilor Sheldon indicated his support of disbursing \$333,000 to Denver now, under the condition that Denver provided accounting of what has been spent on the project so far.

Councilor Brown noted that the agreed upon deadline for the full \$450,000 had been March 2018.

Councilor Sheldon stated that it would be disingenuous for the City to hold back the requested \$333,000 if Mayor Pro Tem Hoellen believed the project would move forward regardless of the steps yet to be taken with the new design.

Deputy City Manager/Director Goldie noted that the original agreement allowed the City to request accounting from Denver.

Mayor Pro Tem Hoellen agreed that the City owed the full \$450,000 but indicated he would prefer to keep some funds back as leverage for the City to keep driving the

project forward. He stated that Denver had the right to demand the entire \$450,000, so their request for \$333,000 was acceptable to him. He suggested that the condition for the next payment of funds could be full execution of the Maintenance IGA, at which point the City should also have resolution on the open issues he discussed during the Study Session and for which the City would be accountable, which were the cost of the new bridge and license from Denver Water, the cost of securing the new easement from Denver First Church, and securing the grant from Arapahoe County Open Space.

Councilor Weil asked about the rationale behind the \$333,000 amount.

City Manager Thorsen replied that it was the first and third years' worth of payments.

Councilor Weil asked why the City should not pay the full \$450,000.

Councilor Brown indicated her support of disbursing the \$333,000 and agreed with Mayor Pro Tem Hoellen that leaving some leverage was desirable.

City Manager Thorsen summarized that the City would pay \$333,000 now and the balance when the Maintenance IGA had been fully executed.

Councilor Brown moved, seconded by Councilor Weil to approve on first reading Council Bill 7, Series 2018, a bill for an ordinance authorizing a supplemental appropriation for fiscal year 2018 in the amount of \$275,000 for the City's share of the High Line Canal Underpass at Hampden Avenue and Colorado Boulevard. This appropriation will bring the City's total commitment to the underpass portion of the project to \$450,000 as outlined in the Funding Agreement. Further to provide direction to City staff to disburse the \$450,000 in accordance with the following: \$333,000 payable on the effective date of the ordinance and the remainder provided upon full execution of the Maintenance IGA.

The following votes were recorded:

Hoellen	yes
Brown	yes
Sheldon	yes
Blum	yes
Weil	yes
Gallagher	yes

Vote on the Council Bill 7-2018: 6 ayes. 0 nays. The motion carried.

REPORTS

Mayor's Report

Mayor Christman reported that a lawsuit of Adams County, the City of Aurora, and Brighton against DIA regarding noise violations might have an impact on noise measurement related to the FAA's Denver NextGen plan. She reported that she, Mayor Pro Tem Hoellen, and staff had met with the City of Greenwood Village regarding the medians along Belleview Avenue. She explained that an old agreement stated that the City would help to maintain the landscaping on the medians and the medians would be irrigated with well water that was now dry. She suggested that the medians might be eligible for a pilot program through the Denver Botanic Gardens for no-water medians with grant funds from Arapahoe County.

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Mayor Pro Tem Hoellen noted that while the medians themselves were not a high budget priority in his opinion, maintaining a positive relationship with Greenwood Village was important.

Members of City Council

Councilor Weil had no report.

Councilor Gallagher had no report.

Mayor Pro Tem Hoellen had no report.

Councilor Brown reported that an issue had arisen regarding a recently relocated Cherry Creek School District bus stop and she noted that this type of situation was important to keep in mind during the City's discussions on traffic because things like bus stops could be moved and those changes were not under the City's control.

Councilor Sheldon thanked the Public Works Department for their work on the chip seal project.

Councilor Blum reported that the meeting last week with the Glenmoor HOA regarding the proposed traffic light at Belleview Avenue had gone well. He explained that the final vote would occur tomorrow and then another vote would be conducted to change the HOA's declarations. He added that the morning following the meeting a serious accident had occurred at that intersection.

Councilor Brown reported that the City was moving forward on reducing the speed limit on Mansfield Avenue from 30 mph to 25 mph. She noted that this was logical considering the speed limits on neighboring streets and similar streets throughout the City, the high community consensus, and the City's history of reducing speed limits. She indicated that the Police Department would install temporary signage and increase enforcement on the street while drivers became aware of the reduced limit, and the City would continue to monitor traffic on the street to see if the reduced limit had the desired impact.

Members of City Boards and Commissions

None

City Manager & Staff

City Manager Thorsen reported that staff would meet with representatives of the Cherryridge neighborhood and St. Mary's Academy about upcoming traffic counts.

City Attorney

City Attorney Michow had no report.

EXECUTIVE SESSIONS AND ADJOURNMENT

Mayor Pro Tem Hoellen moved, seconded by Councilor Brown to go into Executive Sessions pursuant to CRS 24-6-402(4)(b) for purposes of receiving legal advice regarding sales tax collection in light of recent court decisions; and pursuant to CRS 24-6-402(4)(b) for purposes of receiving legal advice and pursuant to CRS 24-6-402(4)(e) for purposes of determining positions relative to matters that may be subject to

negotiations; developing strategy for negotiations; and instructing negotiators regarding Maven Properties v. Cherry Hills Village, and to adjourn immediately thereafter.

The following votes were recorded:

Brown	yes
Sheldon	yes
Blum	yes
Weil	yes
Gallagher	yes
Hoellen	yes

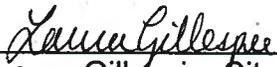
Vote on the Executive Session: 6 ayes. 0 nays. The motion carried.

The Executive Session began at 7:43 p.m.

The meeting adjourned at 9:00 p.m.



Laura Christman, Mayor



Laura Gillespie, City Clerk