

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Wednesday, October 2, 2019 at 6:30 p.m.
At the Village Center

The City Council held a study session at 5:30 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 and Dan Sheldon were present on roll call. Also present were City Manager Jim Thorsen, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Finance Director Jessica Sager, Community Development Director Chris Cramer, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

Absent: Mayor Pro Tem Katy Brown

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

None

REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES

Cherry Hills Village Art Commission (CHVAC) Chair Ann Polumbus reported that the CHVAC would be interviewing three artists for consideration for the sculpture in front of City Hall and showed the Council a piece of art from each artist. She noted that this was just one step in the selection process which was still ongoing. She added that residents could sign up on the City website to receive notification of CHVAC meetings and were welcome to attend and express their opinions.

CHVAC Vice Chair Dave Schmidt added that members of the CHVAC had attended the Loveland Art Show and had seen hundreds of artists. He explained that the three artists being interviewed had been at that show. He noted that all three created contemporary pieces and added that the CHVAC had not ruled out more representative artwork. He indicated that he had met with one of the artists, Tyler Stinson, at City Hall and discussed the best size and material for a piece to contrast and work with the building.

CHVAC Chair Polumbus asked for Council's vision for the sculpture.

Councilor Sheldon noted that he liked the stainless steel piece and asked if the City could commission a similar piece that incorporated the letters "CHV".

Councilor Safavi indicated that he liked the bronze and stainless steel pieces and suggested incorporating cherries into the sculpture.

Councilor Weil agreed that the stainless steel would contrast against the building and indicated that a durable material was ideal.

Councilor Gallagher stated that it would be good to select an artist from Colorado and even from the City if possible.

Mayor Stewart agreed that a local artist would be ideal.

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CONSENT AGENDA

Councilor Gallagher moved, seconded by Councilor Sheldon to approve the following items on the Consent Agenda:

- a. Approval of Minutes – September 17, 2019
- b. Resolution 27, Series 2019; Accepting a Bench Donation in Memory of John Kokish
- c. Resolution 28, Series 2019; Appointing a New Member to the Quincy Farm Committee

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Public Hearing - Council Bills 6, 7, 8 and 9 of Series 2019; Amending Chapters 1, 16, 17, and 19, and Creating Chapter 20 of the Municipal Code (*public hearing and first reading*)

Todd Messenger, Fairfield and Woods, presented Council Bills 6, 7, 8 and 9 of Series 2019, amending Chapters 1, 16, 17, and 19 and creating Chapter 20 of the Municipal Code, on first reading. He explained that in 2018, the City retained Fairfield and Woods, P.C. to work with the City and the Code Modernization Steering Committee to streamline and modernize the City's key development codes. Specifically, the effort focused on Chapters 16 (Zoning), 17 (Subdivision), 18 (Building Regulations), and 19 (Stormwater Quality and Control) of the Cherry Hills Village Municipal Code. Modernization of Chapter 18 was postponed pending the adoption of the 2018 International Building Codes. Key project objectives were to: reorganize each of the Chapters so that they had an intuitive order; clarify standards, update references, and utilize consistent vocabulary; conform to current applicable laws; address and resolve internal inconsistencies; create or refine definitions as appropriate and delete unused definitions; incorporate lessons learned; and clarify and, as appropriate, streamline procedures. The proposed new organization of Chapter 16 offered a high degree of structural durability for future amendments by ensuring that particular topics were both compartmentalized and contextualized. Integration of Chapter 17 into Chapter 16 had been considered but it was determined that the time and cost involved was not worth the effort. Most of the suggested changes to Chapter 17 and Chapter 19 were minor points to improve clarity and update references to external standards. It was determined that it would be most helpful to remove wireless communications facilities provisions from Chapter 16 into a new Chapter 20 to address that most of these facilities were in the public right-of-way, whereas most regulations in Chapter 16 dealt with private property. Collecting all wireless communication facility provisions into a separate chapter would also assist the City in meeting the restrictive timelines established by the FAA for decision making.

Director Cramer explained that since Council had last reviewed the Code Modernization changes, the proposed council bills had been presented to the Planning and Zoning Commission (P&Z) at their September 10, 2019 meeting. P&Z had four additional recommended changes which were subsequently reviewed by the Code Modernization Steering Committee on September 19, 2019. Staff has included the amendments from those two bodies as Exhibit G to the staff memorandum for Council's consideration. The amendments included allowing administrative approval if an alteration reduced the

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overall extent of nonconformity; modifying the parking space standard dimension from 9' wide to 8'6" wide; changing the minimum parking number requirements to be one space per four occupants at maximum capacity; adding a section related to reasonable accommodations for individuals with disabilities; and reversion of the RV screening requirement to the current standard. He indicated that the Steering Committee understood and acknowledged P&Z's recommended amendments but believed several of them needed further evaluation and should be added to the list of items for future consideration. He added that tonight's public hearing had been duly noticed and staff had received one comment letter from a representative of several churches. He noted that Steve Ferris was in attendance tonight and could speak more to those concerns during the public hearing.

Councilor Sheldon thanked Mr. Messenger, Director Cramer and the other City staff involved in the process. He indicated that he was happy with the proposed chapters and that they were more understandable and concise. He asked why the table in the staff memo indicated that Article IX of Chapter 16 was reserved.

Mr. Messenger indicated that was an error from a previous iteration and that Article IX was the definitions in the council bill.

Councilor Sheldon asked if the reconfigured setbacks for nonresidential buildings were sufficient for existing buildings.

Mr. Messenger replied that it was as close as staff could get without a survey and should not be an issue going forward.

Councilor Sheldon asked for confirmation that Amendment #5 in Exhibit G reverted the RV screening to "reasonably screened" but did not revert screening for trash containers, which would be required to be fully screened under the new Code.

Mr. Messenger confirmed that was correct.

Councilor Gallagher thanked everyone involved in the project including Mr. Messenger, staff, P&Z and the Steering Committee.

Councilor Weil added his thanks. He asked if "reasonable accommodations" in Amendment #4 was defined by the ADA. He noted that if it was not then it seemed to be adding vague language to the Code.

Mr. Messenger replied that the purpose of the amendment was to allow administrative approval in order to afford a disabled person equal opportunity to use and enjoy a dwelling. He indicated that the determination would be at the Director's discretion. He noted that staff had tried to tailor the language to the latest court cases.

City Attorney Guckenberger added that one of the merits of this amendment discussed at P&Z was that some citizens may not know about their ADA rights and including this information in the Code might help to inform them. She agreed that the determination of reasonableness would be made on a case by case basis by the Director.

Councilor Safavi congratulated staff on a job well done and indicated that the tables made the Code much easier to understand.

Mayor Stewart agreed that this was a large improvement.

Mayor Stewart opened the Public Hearing at 7:18 p.m.

Steve Ferris, 820 S. Fillmore Court, Denver CO 80209, explained that he had been working with Denver First Church for the past year to rethink the property. He indicated that one of the issues being discussed between Denver First Church, Brave Church and

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Plymouth Church was parking. He introduced several other representatives from the churches. He stated that their discussion at the P&Z meeting had been very productive.

John Oglesby, 2101 Dansmer Avenue, Oklahoma City OK, indicated that he had been hired by the churches and that he had been a professional parking consultant for 35 years. He explained that they had brought forward the two amendments regarding parking to P&Z, who had approved them unanimously. He stated that the first was to change the standard width of parking spaces from 9' to 8'6". He indicated that a width of nine feet would render almost all parking lots in the City out of compliance, including the new parking lot at City Hall, and bringing them into compliance would result in a reduction of 20-25% of parking spaces. He explained that he had been conducting a study of parking at the churches for the past nine months and the available parking had never been exceeded, except for events such as large funerals. He noted that the churches had agreed amongst themselves to stagger their events to assist with parking and traffic issues.

Councilor Sheldon thanked Mr. Oglesby for his presentation. He noted that Council was hearing this information for the first time tonight. He asked staff about the parking space width in the City Hall parking lot.

City Manager Thorsen replied that the City Hall parking lot spaces were 9' wide as measured from centerline to centerline, which was the standard measuring method, and therefore were in compliance with the Code.

Mr. Oglesby indicated that the usable parking area was only 8'6".

Councilor Sheldon noted that the other parking related amendment proposed to change the method of determining the required number of parking spaces to be one space per four persons at maximum occupancy. He asked which rooms would be used to determine maximum occupancy.

Mr. Oglesby replied that they proposed that the certificate of occupancy issued by the City be used in order to maintain consistency.

Councilor Sheldon indicated that he had not had enough time to process the information for the two parking relating amendments and was not prepared to make a decision on them tonight.

Councilor Weil asked how Mr. Oglesby calculated a parking space loss amount of 20-25%.

Mr. Oglesby replied that increasing the width of spaces would affect the arrangement of spaces in the lot which would result in a significant loss of spaces.

Councilor Safavi noted that clarification on the measuring method was needed. He indicated that although he was in favor of less asphalt in general, he agreed with Councilor Sheldon that this was new information and he needed time to consider it.

Mayor Stewart added that Council had discussed reduced asphalt in the City in the past and that new methods of transportation would hopefully help reduce the amount of parking needed in the future.

Councilor Sheldon asked staff if the City Engineer had an opinion on the width of parking spaces.

City Manager Thorsen replied that Kimley-Horn did not have a preference. He noted that 9' spaces were generally recommended for high turnover areas such as shopping malls, and that 8'6" spaces were acceptable for areas of lower turnover.

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Mr. Oglesby stated that the Code referred to “places of assembly” which included the churches and Kent Denver, and it could be interpreted that the Code had a different standard for churches even if that was inadvertent. He noted that the Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibited governments from treating churches differently. He offered his services to the City at no cost for the next two weeks.

Robert Eber, 3 Middle Road, explained that he was a member of the Steering Committee and that one of the reasons the group had differed in its recommendations for amendments from P&Z was that the Code Modernization project had proposed to modernize and streamline the Code but not make any substantive changes. He indicated that the proposed amendments could be considered substantive changes and he was uncomfortable changing the Code in that way without more public notice and opportunity for public comment. He noted that citizens that were interested in parking issues might not be aware that these proposed amendments were part of tonight’s discussion. He suggested that the reasonable accommodations amendment raised questions of whether the accommodation would run with the particular owner or with the property, and if with the owner how would the structure be returned to be conforming after the need was over, and furthermore expressed concern that if there were enough approved nonconforming structures it would defeat the purpose of the regulations. He indicated that the question of screening should be evaluated with differences in zone districts in mind.

Valisa Tsoucarrs, 3000 S. Holly Street, spoke about RLUIPA and explained that the standard was strict scrutiny. She noted that they had not been permitted to speak to the Steering Committee but had a good discussion at the P&Z meeting.

Hearing no further comments Mayor Stewart closed the Public Hearing at 7:53 p.m.

Councilor Sheldon moved, seconded by Councilor Gallagher to approve Council Bill 6, Series 2019; repealing Chapter 16, Zoning, of the Cherry Hills Village Municipal Code and replacing such chapter with an updated Chapter 16, Zoning; amending Section 1-1-80 of the Cherry Hills Municipal Code regarding fees.

Councilor Sheldon moved, seconded by Councilor Blum to amend the main motion with Amendment #1 from Exhibit G to the October 2, 2019 staff memorandum.

The following votes were recorded:

Safavi	yes
Weil	yes
Gallagher	yes
Sheldon	yes
Blum	yes

Vote on Amendment #1 to Council Bill 6-19: 5 ayes. 0 nays. The motion carried.

Councilor Sheldon moved, seconded by Councilor Blum to amend the main motion with Amendment #4 from Exhibit G to the October 2, 2019 staff memorandum, with the change that permitting for a reasonable accommodation be subject to the owner returning the structure to conformance with the Code in the event that the owner sells the property if the reasonable accommodation is no longer needed.

Mr. Messenger noted that many of the structural changes that would fall in this category would be easy to install but difficult to remove and having such a requirement put the regulation at risk of being unreasonable and creating a danger of litigation. He noted that something like an elevator would be difficult and expensive to remove.

Councilor Safavi questioned the practicality of returning the structure to conformance and if the requirement would fall on to the new buyer of the property.

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Councilor Weil noted that some discretion could be used to differentiate between requiring removal of something like a ramp versus something like an elevator.

Mr. Messenger indicated that in that case new language was not needed and the current proposed amended language allowed for the Director to evaluate each situation and require returning the structure to conformance if appropriate.

City Attorney Guckenberger agreed.

Councilor Sheldon moved, seconded by Councilor Blum to withdraw his motion.

The motion passed unanimously.

Councilor Sheldon moved, seconded by Councilor Blum to amend the main motion with Amendment #4 from Exhibit G to the October 2, 2019 staff memorandum as written.

The following votes were recorded:

Weil	yes
Gallagher	yes
Sheldon	yes
Blum	yes
Safavi	yes

Vote on Amendment #4 to Council Bill 6-19: 5 ayes. 0 nays. The motion carried.

Councilor Sheldon moved, seconded by Councilor Blum to amend the main motion with Amendment #5 from Exhibit G to the October 2, 2019 staff memorandum.

Councilor Gallagher expressed concern with requiring full screening for RVs despite differences in lot size.

Councilor Sheldon asked for clarification on Amendment #5.

Mr. Messenger explained that the current code required “reasonably screened” for both RVs and trash containers, the proposed Code required “completely screened” for both RVs and trash containers, and Amendment #5 reverted screening for RVs back to “reasonably” and kept “completely screened” for trash containers.

Councilor Gallagher withdrew his comments.

Councilor Sheldon indicated that RV screening was an appropriate topic for the Master Plan process in 2020 in order to get public input on the various options. He added that the Amendments regarding parking would also be better examined as part of the Master Plan process.

The following votes were recorded:

Gallagher	yes
Sheldon	yes
Blum	yes
Safavi	yes
Weil	yes

Vote on Amendment #5 to Council Bill 6-19: 5 ayes. 0 nays. The motion carried.

Vote on the main motion

The following votes were recorded:

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Sheldon	yes
Blum	yes
Safavi	yes
Weil	yes
Gallagher	yes

Vote on the Council Bill 6-2019: 5 ayes. 0 nays. The motion carried.

Councilor Blum moved, seconded by Councilor Weil to approve Council Bill 7, Series 2019, repealing Chapter 17, Subdivisions, of the Cherry Hills Village Municipal Code and replacing such chapter with an updated Chapter 17, Subdivisions.

The following votes were recorded:

Sheldon	yes
Blum	yes
Safavi	yes
Weil	yes
Gallagher	yes

Vote on the Council Bill 7-2019: 5 ayes. 0 nays. The motion carried.

Councilor Sheldon moved, seconded by Councilor Blum to approve Council Bill 8, Series 2019, repealing Chapter 19, Stormwater Quality and Control, of the Cherry Hills Village Municipal Code and replacing such chapter with an updated Chapter 19, Stormwater Quality and Control.

The following votes were recorded:

Safavi	yes
Weil	yes
Gallagher	yes
Sheldon	yes
Blum	yes

Vote on the Council Bill 8-2019: 5 ayes. 0 nays. The motion carried.

Councilor Blum moved, seconded by Councilor Gallagher to approve Council Bill 9, Series 2019, creating Cherry Hills Village Municipal Code Chapter 20, Wireless Telecommunications Facilities.

The following votes were recorded:

Weil	yes
Gallagher	yes
Sheldon	yes
Blum	yes
Safavi	yes

Vote on the Council Bill 9-2019: 5 ayes. 0 nays. The motion carried.

Resolution 29, Series 2019; Entering Into an Intergovernmental Agreement for Irrigation and Maintenance of the Belleview Medians with the City of Greenwood Village

Deputy City Manager/Director Goldie presented Resolution 29, Series 2019 for Council's consideration. He explained that at the May 19, 2019 Cherry Hills Village City Council meeting it was discussed that funding half of this project was not feasible within the current and future projected budgets. Instead staff recommended that Council consider funding the maintenance and irrigation of the medians for the first five years.

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The estimated annual cost for irrigation and maintenance was \$42,000.00. Council had directed staff to move forward and prepare an intergovernmental agreement (IGA) with Greenwood Village for a five year period committing Cherry Hills Village to pay for the maintenance and irrigation costs associated with ten medians in an amount not to exceed \$60,000 annually and for 50% of the annual maintenance and irrigation costs thereafter.

Councilor Blum asked about the water supply for the medians.

Deputy City Manager/Director Goldie replied that the water was accounted for in the costs and that water would come from one Cherry Hills Village tap and two Greenwood Village taps.

Councilor Sheldon asked for confirmation that the amount of \$42,000 discussed in May did not include contingencies and that was why the current proposal was for \$60,000.

Deputy City Manager/Director Goldie confirmed that was correct.

Councilor Gallagher expressed concern with being obligated to pay costs in the future if water became very expensive.

City Attorney Guckenberger clarified that the IGA term was for an initial five years with additional five year extension periods.

Councilor Blum moved, seconded by Councilor Weil to approve Resolution 29, Series 2019; entering into an Intergovernmental Agreement for the Irrigation and Maintenance of the Belleview Medians with the City of Greenwood Village, and authorize the City Manager and City Attorney to make any non-financial changes to the IGA form if necessary and authorize the Mayor to sign the agreement.

The motion passed unanimously.

REPORTS

Mayor's Report

Mayor Stewart congratulated the Police Department on being named the safest city in Colorado. He indicated that interviews for the Planning and Zoning Commission would be conducted on Friday and that Councilor Weil could no longer conduct interviews so he could join Councilor Blum unless another Councilor was available. He reported that he had attended the CML Executive Board Meeting, a meeting with Councilor Sheldon and High Line Canal Conservancy Executive Director Harriet LaMair, the CML Annual Law Conference, and the Metro Mayors Caucus. He noted several issues that had been discussed at these meetings including the Fair Campaign Practices Act, campaign contributions limiting participation in quasi-judicial matters, a topless law in Fort Collins, a law about standing in medians in Utah, the curfew in Castle Rock, the Colorado Ethics Board, the Red Flag law, a statewide ballot issue to limit growth along the Front Range, and the possible creation of a regional authority to address transportation issues.

Members of City Council

Councilor Blum had no report.

Councilor Sheldon reported that he and Mayor Stewart had met with High Line Canal Conservancy Executive Director Harriet LaMair and it appeared that the City was now guaranteed a seat on the new governance board, which would be larger than originally thought in order to provide a position for each of the 13 entities along the Canal.

Councilor Gallagher had no report.

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Councilor Weil reported that DRCOG had voted to take a position in favor of Amendment CC to DeBruce the state. He added that the DRCOG meeting had also included an update from Longmont on municipal high speed internet and Lakewood on their growth restriction.

Councilor Safavi had no report.

City Manager & Staff

City Manager Thorsen recognized staff for receiving the Government Finance Officers Association budget award for the fifth year in a row. He reported that staff had received three applications for alternative municipal judge and asked for two Council volunteers to conduct interviews along with City staff and Judge Welborn.

Mayor Stewart and Councilor Blum volunteered.

Councilor Sheldon volunteered to conduct P&Z interviews instead of Mayor Stewart.

City Manager Thorsen reported that the High Line Canal Governance Committee continued to meet to discuss the best format and funding plan going forward. He noted that the Mayor would join the Belleview Interchange Executive Committee which was comprised of local mayors and CDOT representatives.

Director Cramer thanked Mr. Messenger and former Director Granrath for all their work on the Code Modernization project.

Director Sager reported that Councilor Blum had joined her and City Manager Thorsen to interview three audit firms and staff would bring a contract to Council in the near future.

City Attorney

City Attorney Guckenberger indicated that she would continue discussions with the City's prosecuting attorney and municipal judge to ensure that the City stayed up to date with current legislation and higher court decisions.

ADJOURNMENT

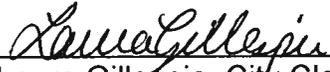
Councilor Sheldon moved, seconded by Councilor Blum to adjourn the meeting.

The motion passed unanimously.

The meeting adjourned at 8:48 p.m.



Russell O. Stewart, Mayor



Laura Gillespie, City Clerk