

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, August 17, 2010 at 6:30 p.m.  
At the Village Center

Council held a Study Session starting at 6:02 p.m.

Mayor Pro Tem Stewart called the meeting to order at 6:40 p.m.

**ROLL CALL**

Councilors Mark Griffin, Russell Stewart, Alex Brown, Scott Roswell, Klasina VanderWerf, and Harriet LaMair were present on silent roll call. Also present were Interim City Manager and Police Chief John Patterson, City Attorney Ken Fellman, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Public Works Director Jay Goldie, Deputy Chief Jody Sansing, Parks, Trails & Recreation Administrator Ryan Berninzoni, and City Clerk Laura Smith.

Absent: Mayor Mike Wozniak

**AUDIENCE PARTICIPATION PERIOD**

None

**CONSENT AGENDA**

Both items were removed from Consent Agenda.

**ITEMS REMOVED FROM CONSENT AGENDA**

**Item 4a – Approval of Minutes-August 3, 2010**

City Attorney Fellman indicated that the minutes should be amended so that the second paragraph on the first page would read "Councilor Brown moved, seconded by Councilor VanderWerf, given that Mayor Wozniak and Mayor Pro Tem Stewart were both absent, at the advisement of City Attorney Fellman of the need to appoint an Acting Mayor, to appoint Councilor Roswell as Acting Mayor for the meeting".

Councilor LaMair moved, seconded by Councilor Griffin to approve August 3, 2010 Minutes with the City Attorney's amendment.

The motion carried unanimously.

**Item 4b – Resolution 15, Series 2010; Approving a Change in Control of NewPath Networks, LLC**

City Attorney Fellman explained that amendments to Resolution 15, Series 2010 had been emailed to Council and were on the dais for Council's review. The majority of the changes were unsubstantial but one change was to give NewPath Networks until Thursday August 26<sup>th</sup> to resolve the outstanding landscaping issue on Node 12. Community Development Director Rob Zuccaro also approved this change. He indicated that the City received a line of credit from NewPath Networks that could be used to complete the landscaping of the site if NewPath failed to do so.

Councilor LaMair moved, seconded by Councilor Griffin to approve Resolution 15, Series 2010; Approving a Change in Control of NewPath Networks, LLC, with the City Attorney's amendments.

The motion carried unanimously.

**UNFINISHED BUSINESS**

Council Bill 20, Series 2010; A bill for an ordinance repealing and re-enacting Articles I through VIII of Chapter 18 of the Cherry Hills Village Municipal Code, concerning building regulations; adopting by reference, with certain amendments, the 2009 International Building Code, the 2009 International Residential Code, the 2009 International Mechanical Code, the 2009 International Plumbing Code, the 2009 International Fuel Gas Code, the 2009 International Energy Conservation Code, the 2008 National Electrical Code, and the 2009 International Fire Code; repealing all ordinances in conflict therewith; and providing penalties for violation thereof (Public Hearing and final reading).

Mr. Zuccaro presented Council Bill 20, Series 2010 on second and final reading. He indicated that there had been one change to the proposed bill since first reading on July 20, 2010. Section 18-2-30(8) was amended to include a requirement that lighting plans and light fixture schedules be included with all building permit construction plans submitted for new residences and major additions in order to be consistent with the City's recently adopted exterior lighting standards. He stated that notice of the public hearing had been published twice, once at least 15 days prior and once at least 8 days prior to the public hearing, in accordance with state statute.

Councilor Roswell asked if staff had received any public comments.

Mr. Zuccaro replied that no written comments had been received, but that he had received a phone call from a resident who was not in favor of the fire sprinkler requirement and removal of the fire hydrant exemption in the new code. The gentleman had indicated he would attend the public hearing but Mr. Zuccaro did not see him in attendance.

Mayor Pro Tem Stewart opened the public hearing and asked for public comment. Hearing none, the public hearing was closed.

Councilor LaMair moved, seconded by Councilor Griffin to approve Council Bill 20, Series 2010; a bill for an ordinance repealing and re-enacting Articles I through VIII of Chapter 18 of the Cherry Hills Village Municipal Code, concerning Building Regulations; adopting by reference, with certain amendments, the 2009 International Building Code, the 2009 International Residential Code, the 2009 International Mechanical Code, the 2009 International Plumbing Code, the 2009 International Fuel Gas Code, the 2009 International Energy Conservation Code, the 2008 National Electrical Code, and the 2009 International Fire Code; repealing all ordinances in conflict therewith; and providing penalties for violation thereof, on second and final reading.

The following votes were recorded:

Mark Griffin	yes
Harriet LaMair	yes
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes

Vote on the Council Bill 20-2010: 6 ayes. 0 nays. The motion carried.

### **NEW BUSINESS**

#### **Council Bill 23-2010; A Bill for an Ordinance Amending Chapter 6 of the Municipal Code by Amending Section 6-2-190, Concerning Annual Occupation Tax**

City Clerk Laura Smith presented Council Bill 23, Series 2010 on first reading. She explained that the current occupation tax was passed in 1985 and has until this year only applied to Cherry Hills Country Club and Glenmoor Country Club. This year the City granted a Hotel & Restaurant liquor license to Pulcinella Pizzeria, a smaller operation than either country club, for whom the \$2,000 annual occupation tax is prohibitive to their business. Another issue is that the current occupation tax applies only to Hotel & Restaurant and Club liquor licenses. Staff has received an application for a retail liquor store license, which under the current Code would not be charged an annual occupation tax. Staff brought this issue before Council at the August 3, 2010 meeting and was directed by Council to propose amendments to the occupation tax.

Councilor Griffin noted that the agenda read Council Bill 22 while the staff memo proposed bill read Council Bill 23.

Ms. Smith confirmed that it was Council Bill 23.

Councilor Roswell asked if staff had spoken to the owner of the pizzeria for any reaction to the proposed bill.

Ms. Smith replied that she had not but that she would speak to the owner of the pizzeria and update Council on his reaction.

City Attorney Fellman asked for clarification from staff regarding the staff memo, asking if the proposed bill would increase the net amount of taxes collected by the City because to do so would fall under TABOR and would require a ballot measure.

Ms. Smith replied that the memo was poorly worded and that the proposed bill would not increase taxes.

Mayor Pro Tem Stewart asked if, after reducing the occupation tax, Council ever wanted to increase it again, such an action would require a ballot measure.

City Attorney Fellman confirmed that it would if the amount of tax collected by the City was increased.

Councilor Brown asked for clarification on the proposed tax structure.

Ms. Smith replied that she had chosen a tiered structure based on the majority of other metro area municipalities.

Councilor VanderWerf commented that the racetrack liquor license class wasn't necessary.

Ms. Smith explained that she had included all possible classes of liquor licenses.

Mayor Pro Tem Stewart asked if there was an annual license fee in addition to the occupation tax and how the City's license fee compared to other municipalities.

Ms. Smith replied that there was a separate license fee set by the state which was the same for all municipalities.

Mayor Pro Tem Stewart asked Council if they felt there was a need for the proposed bill.

Councilor Roswell explained that the discussion leading to the proposed bill had mainly addressed being receptive to the businesses in the City, and realizing that the City's occupation taxes were out of proportion to what other municipalities charge. The question came up as to whether there are additional resources that the City has to spend to enforce or police the area and the testimony from Chief Patterson was that there was no additional burden.

Mayor Pro Tem Stewart indicated that if other categories of liquor licenses were added to the occupation tax, the amount of the tax would have to be reduced in order to avoid a TABOR issue.

City Attorney Fellman confirmed that was correct.

Councilor Roswell indicated he agreed with Councilor VanderWerf that the class of racetrack liquor license was unnecessary.

Ms. Smith asked for Council's direction on the tiered tax system.

Councilor Roswell indicated that he was in favor of the tiered system.

Councilor Roswell moved, seconded by Councilor Brown to approve Council Bill 23, Series 2010; a bill for an ordinance of the City of Cherry Hills Village amending Chapter 6 of the Cherry Hills Village Municipal Code, concerning business licenses and regulations, by amending Section 6-2-190, concerning annual occupation tax, with the correction of the removal of item 6-2-190(b)(6), on first reading.

The following votes were recorded:

Harriet LaMair	yes
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes
Mark Griffin	yes

Vote on the Council Bill 23-2010: 6 ayes. 0 nays. The motion carried.

#### Discussion Regarding Medical Marijuana

Interim City Manager John Patterson presented a report to Council on medical marijuana. He reviewed the state legislation and the options available to local municipalities. He recommended that Council pass an ordinance banning commercial dispensaries as well as grow operations, and limit primary caregivers to 12 plants per residence. He also recommended that the ordinance require primary caregivers to register with the Police Department.

Councilor LaMair asked how the Police Department would implement a registration requirement.

Interim City Manager Patterson replied that the Police Department had access to the Colorado Department of Public Health and Safety (CDPHE)'s database with whom all primary caregivers were currently required to register.

Councilor Brown asked if primary caregivers could also be required to have a City business license.

Interim City Manager Patterson replied that the City Code currently did not require business licenses for home occupation businesses, and that it would be difficult to single out primary caregivers.

Councilor Griffin asked if having primary caregivers registered with the City would leave the City legally vulnerable given that marijuana was still illegal at the federal level.

City Attorney Fellman replied that a federal officer could still cite an individual for possession or sale of marijuana but the City would not be subject to any exposure or liability. The state constitutional amendments direct Colorado law enforcement officials not to enforce the federal law. He stated that the state statutes focus on commercial dispensaries and not on individual users or caregivers, and that is where the laws are more subject to legal interpretation and challenge.

Councilor Griffin asked if the City could require that residences used by primary caregivers be more than 10,000 square feet or obtain \$10 million in liability insurance or a similar restriction to discourage this type of activity.

City Attorney Fellman replied that, while the state law does give cities the right to prohibit grow operations, it also protects primary caregivers and patients from being overly regulated. The City could not pass any ordinance that would effectively prohibit primary caregivers or patients from growing medical marijuana in their homes.

Councilor LaMair referenced the City Attorney memo to Council which indicated that passing legislation that is more restrictive than the state laws would put the City out in front on the issue.

City Attorney Fellman replied that there were currently no known operations in the City and that Council most likely has some time before this becomes an issue in the City. He explained that many municipalities have already adopted restrictions and that he and Chief Patterson had drafted a proposed ordinance using strong language based on other communities that would be defensible if attacked. There were already pending lawsuits against both the state laws, the issue questioned whether the state laws go too far in allowing municipalities to opt out, as well as against municipalities who had already passed ordinances to opt-out.

Councilor Brown indicated he was fine with the idea of banning grow operations and restricting primary caregivers to a reasonable number of plants, but he was worried about an outright ban on dispensaries. He commented that Westminster had banned dispensaries and was now being sued. He asked if the City passed a ban on dispensaries if they could potentially be named in a lawsuit.

City Attorney Fellman replied that Cherry Hills Village was different from Westminster in that Westminster had operational dispensaries in existence when they passed their ban, whereas there were no dispensaries in Cherry Hills Village and thus a ban would not harm any current business.

Councilor Roswell asked if City Attorney Fellman knew of any possible new state bills regarding medical marijuana. He also commented that the election in November may

result in some interesting laws being passed. He asked if Council should consider tabling the issue until some of these questions were resolved. He noted that the City did not have any current vacancies in its commercial units, so it may not hurt to wait awhile before passing a ban. He also questioned whether clarifying the shortcomings of the state laws was best done by the state legislature instead of local municipalities.

City Attorney Fellman replied that he had not heard of any proposed legislation related to medical marijuana, but that the state legislature may be waiting to see the outcome of pending litigation.

Councilor Griffin agreed with Councilor Roswell and commented that the City doesn't want to be out front on this issue and that it may be prudent to wait to pass a ban. He asked for staff's opinion.

Interim City Manager Patterson commented that the state laws gave municipalities until July 2011 to pass their own regulations or bans. He indicated that if primary caregivers had moved into the City by the time Council chose to pass regulations, some legal issues with passing restrictions may arise.

Councilor LaMair asked if staff would still have access to information on primary caregivers in the City from CDPHE without passing a City ordinance.

Interim City Manager Patterson confirmed that they would.

Councilor Griffin indicated it would be interesting to see if there were any present in the City.

Councilor Roswell asked if staff was aware of how the public responded to Denver's first reading of their bill to limit the number of plants per residents that a primary caregiver can possess.

Interim City Manager Patterson replied that he was sure that there had been public comment opposed to the bill due to all the medical marijuana activity in Denver. He commented that despite any opposition, the bill did pass on first reading.

Councilor Roswell asked when Denver would hear the second reading of the bill.

Interim City Manager Patterson replied he was not sure of the date.

Mayor Pro Tem Stewart asked if the Police Department would have an annual registration with inspections for primary caregivers.

Interim City Manager Patterson confirmed they would, and that police officers would inspect the operations for compliance with state statute.

Mayor Pro Tem Stewart indicated his opinion that Council should pass a conservative bill sooner rather than later.

Councilor Griffin indicated he would defer to Interim City Manager Patterson's recommendation.

Councilor Brown indicated he was agreeable to banning grow operations and to restricting primary caregivers, but was still wary of banning commercial dispensaries. He commented that in many cases primary caregivers were happy to register with local municipalities because they want to legitimize their operation.

## **REPORTS**

### **Members of City Council**

Councilor Brown reported that he was pleased to see the concrete work on Oxford, Mansfield, and Dahlia. He had received a letter from the City along with the rest of the neighborhood regarding the street improvement process.

Councilor VanderWerf reported that there was an interesting article regarding open space in Colorado Municipalities. She also reported that the Parks, Trails and Recreation Commission would be hosting a Movie Night this Saturday with the Disney film "UP". They had also set the date of December 4<sup>th</sup> for the annual Tree Lighting and they were re-visiting the possibility of installing natural-looking playground equipment at Dahlia Hollow, specifically a climbing structure that looks like a rock. She also reported receiving a call from a resident regarding a new development in the Goldsmith fence case.

Public Works Director Jay Goldie replied that he was unsure of the resolution of that case. He indicated he would investigate and update Councilor VanderWerf on the status.

Mayor Pro Tem Stewart reported that he had received several calls regarding the Kent Place development on the Englewood side of University and Hampden. Some had been from Englewood residents, whom he had directed to call their city council members with their comments.

Councilor LaMair had no report.

Councilor Griffin reported that he was excited to receive his letter notifying his neighborhood that paving would begin on August 31<sup>st</sup>. He also reported that there was some concern about speeding in Cherryridge and that Deputy Chief Jody Sansing was working with the residents to evaluate the need for a speed bump. He also commented on the traffic sign in the median on University at Quincy, which seemed to often be knocked over. He asked if the City could put some concrete around the sign.

Mr. Goldie explained that the sign was in a Colorado Department of Transportation (CDOT) right-of-way and only they could fix or change the sign. When it is knocked down, staff calls CDOT and they come to fix it. He indicated that CDOT had standardized all of its signs and would be unlikely to put concrete at this particular location.

Councilor Griffin asked if the drivers who knock down the sign have to pay a fine.

Mr. Goldie explained that CDOT could seek restitution if they chose to.

Councilor Roswell reported that he had discussed the consolidation of bus stops with Chief Patterson and concerns from residents regarding large groups of children at bus stops.

### **Members of City Boards and Commissions**

There were no reports.

### **City Manager & Staff**

Interim City Manager Patterson reported that the schools in the City would be opening next week. He also reported that Mr. Goldie and Crew Chief Ralph Mason were working hard on the corrective chipseal on Quincy, Holly, and Colorado Blvd. He reported that Movie Night would be this Saturday starting at 6:30 pm at John Meade Park. He also reported that Police Officer Amanda Ramirez had resigned to pursue a career in culinary arts.

Councilor VanderWerf asked staff to comment on the reduction in photo red light fines collected versus budgeted.

Deputy Chief Sansing replied that a reduction in fines due to an increase in compliance was common with photo red light systems, and that Greenwood Village had seen a 40% reduction in their fines. He also reported that accidents were down 60% at the University and Belleview intersection, showing that the photo red light system was improving safety.

Councilor VanderWerf asked if there were any plans to pay back the money owed to the General Fund by the Parks, Trails and Recreation Fund.

Finance Director Karen Proctor replied that it was up to Council and would be discussed when Council discussed the budget.

#### Alternative Bulk Plane Models

Mr. Zuccaro explained that Council had held a study session regarding bulk plane alternatives with Winter & Co. Because there had been some members absent, staff had been asked to present this information to Council again tonight. He summarized the report by Winter & Co.

Mayor Pro Tem Stewart indicated that Council appreciated Mr. Zuccaro's work on this report.

Councilor Roswell commented that the B proposal, which would allow homes to have two stories at the front setback, might work better for the City as it was a more traditional architecture style that is commonly seen in the City.

Mr. Zuccaro asked for Council to readdress the green building code issues presented in the study session tonight and provide direction to staff on whether Council would like more information or if they would like staff to begin drafting an ordinance.

Councilor Roswell indicated that he would like to see the Residential Standards Development Committee (RDSC) members' opinions on the bulk plane models and green building code options.

Councilor LaMair indicated she agreed with Councilor Roswell that it would be helpful to get feedback from the RDSC. She indicated that she leaned toward the option with the least staff time, because even if fees were changed to compensate for staff time, other RDSC recommendations would also require staff time and she was concerned about over-burdening staff. She also commented that there may be other ways to involve the Village in greening, for example with the Public Works staff and any new public buildings. She suggested that, if possible, the proposed bill should be broader than just residences and be more inclusive of what the City can do to be greener.

Councilor Brown suggested that the City could focus on those areas where green standards would do the most good and not deal with the areas where people do well already in order to simplify the administration of a green building program..

**City Attorney**

City Attorney Fellman reported that Nancy Rodgers was still in contact with T-Mobile about improving coverage in the City. She was in contact with a regional vice president in Chicago that stated T-Mobile was in the final stages of NewPath Networks, and that their progress had been delayed due to internal management changes. Nancy would follow up with the vice president in four weeks if he did not contact her sooner.

**ADJOURNMENT**

Councilor Brown moved, seconded by Councilor Roswell, to move into Executive Session for the purpose of discussing the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest as authorized by C.R.S. § 24-6-402(4)(a); and for determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators as authorized by C.R.S. § 24-6-402(4)(e), regarding the possible development or redevelopment of a new Village Center, and upon conclusion to immediately adjourn.

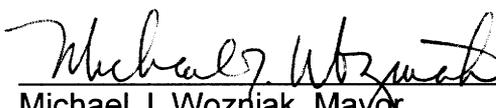
The following votes were recorded:

Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes
Mark Griffin	yes
Harriet LaMair	yes

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

The meeting moved into Executive Session at 7:48 p.m.

The meeting adjourned at 8:39 p.m.

  
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 Michael J. Wozniak, Mayor

  
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 Laura Smith, City Clerk