

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Wednesday, January 2, 2013 at 6:30 p.m.
At the Village Center

Mayor Doug Tisdale called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Doug Tisdale, Councilors Mark Griffin, Russell Stewart, Alex Brown, Scott Roswell and Katy Brown were present on silent roll call. Also present were City Manager John Patterson, City Attorney Ken Fellman, Deputy City Manager and Public Works Director Jay Goldie, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Barlow, Parks, Trails & Recreation Administrator Ryan Berninzoni, Street Superintendent Ralph Mason, Animal Control Officer John Newhouse and City Clerk Laura Smith.

Absent: none

PLEDGE OF ALLEGIANCE

Triplet fourth graders from Cherry Hills Village Elementary School Jake, Levi, and Sam Levin led the Council in the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

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

- a. Approval of Minutes – December 11, 2012
- b. Resolution 1, Series 2013; Designating a Public Place for Posting Notices of Regular and Special Meetings
- c. Winwood Drive Paving Agreement
- d. Highway User Tax Funds (HUTF) Mileage Certification

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Coyote Management Plan Discussion

Chief Tovrea explained that this item was brought back to continue the discussion begun in October of 2012. She noted that the current coyote management plan was adopted in 2011 and that it was currently under staff review for updates. She added that Animal Control Officer John Newhouse was present to answer any questions. She indicated that staff was seeking Council's direction on updating the plan and if they would like a citizen committee to review the plan.

Mayor Tisdale indicated that the Council had discussed this issue several times before. He indicated that the City had to deal with the phenomenon of urban coyotes which had become habituated to developed areas over the years, causing increased concern for the safety of humans and pets. He noted that a US Fish and Wildlife (USFW) Project Leader Pamela Sponholtz had visited the City and had evaluated the coyote issue. She determined that targeted removal of problem coyotes would be an effective solution to ameliorate the problem, rather than a general removal of the local coyote population, and that a population study to determine how the number of animals in Cherry Hills Village compares to other urban populations would be extremely difficult. He emphasized "if you see something, say something".

Chief Tovrea clarified that in 2012 there were a total of 46 contacts between pets and coyotes and 23 of those resulted in death of the pet. She noted that she was happy to provide copies of the Ms. Sponholtz's report mentioned by the Mayor and noted that the Police Department was very appreciative of the report.

Mayor Pro Tem Stewart asked if the number of reports of coyote incidents were declining.

Officer Newhouse indicated that coyote incidents were seasonal, with an increase during the breeding and mating period in spring and another in the winter when food is scarce and they are defending their territory. Alternatively the incidents typically decrease during the summer and fall. He noted that two recent attacks had been reported.

Councilor Roswell noted he knew of another incident that had not been reported.

Councilor K. Brown added that she had seen coyotes near her house as well.

Mayor Tisdale reiterated "if you see something, say something."

Councilor Roswell indicated that this was one of the most controversial issues in the City and while he did not have any problem with the City's current management plan, residents obviously did. He noted that a citizen committee would allow residents to come together to discuss the issue, learn more about it, spur new ideas, and report back to Council.

Mayor Pro Tem Stewart agreed with Councilor Roswell and indicated that it would be valuable for the issue to be considered by citizens. He noted that he believed the current management plan was a good one but that it was not the only option. He agreed that it was a contentious and emotional issue and that could benefit from citizen involvement. He indicated that he would be happy to take the lead to organize a citizen committee.

Councilor Griffin indicated that he felt strongly and had tried to keep a balanced approach. He stated that the current management plan was not strong enough. He noted that the numbers of pet attacks and deaths for 2012 was likely low due to lack of reporting. He commented that he had experienced coyotes in his neighborhood that were unfazed by humans and that had attacked and killed dogs for territorial reasons. He indicated that coyotes were wild predators, and should not be treated any differently than bears or mountain lions. He noted that this was a highly polarized issue and that the community meetings the City had hosted in the past had been very confrontational and not at all productive. He respectfully disagreed with forming a citizen committee. He stated that the City Council was elected and charged to deal with the affairs of the City. He noted and that the Council could have a reasonable and balanced discussion. He

indicated that the City's policy needed to be re-evaluated and revised so that lethal force was used against coyotes that attacked humans, pets, and/or livestock.

Mayor Tisdale noted that state statute allows, and the City does not prohibit, property owners to hunt, trap, and eliminate coyotes when the animal is causing damage to crops, real or personal property, or livestock. He added that use of firearms is not allowed without written permission from the Chief of Police. He indicated that the City's policy identified coyotes as dangerous when they threatened a human, and it was up to the human to determine if they felt threatened.

Councilor Griffin indicated that he did not support allowing firearms, but that he would support contracting with a wildlife hunter or training Police Department officers to safely use lethal force when a coyote or group of coyotes is identified as dangerous to humans or pets.

Councilor A. Brown noted that he had received a survey request regarding coyotes. He stated that this was a challenging and frustrating issue, and that finding a solution to please everyone was unlikely. He indicated that he was not particularly for or against forming a citizen committee, but was concerned with the potential conflict that may arise between residents on a committee. He recommended gathering outside expert advice on what management techniques were worth trying and what was a waste of time. He indicated that in any case the City needed to be more proactive in dealing with threatening coyotes.

Councilor K. Brown agreed with Councilor A. Brown. She noted that increasing community buy-in to the City's management plan would help breed confidence in the City's decisions, but that a committee might not be the best way to achieve that because it could be very contentious. She commented that if a committee was formed it would be frustrating for the members if Council did not act on their recommendations. She suggested that property owners could be made more aware of the statute allowing them to eliminate coyotes on their property and the City could provide education on how to safely eliminate problem coyotes. She noted that it was a complex issue and while she knew the City can't act on what might happen, she was concerned that lethal action would not be taken until a person is harmed. She indicated that residents' opinions about this issue had been made very clear. She expressed concern about the position the City would be put in if and when a human attack occurred.

Mayor Tisdale indicated that he shared Councilor K. Brown concerns. He summarized that two Council members were in favor of forming a citizen committee, two were not in favor, and one was neutral. He stated that he shared the concern that a citizen committee could be a very polarized and unproductive group.

Councilor Roswell indicated that he did not believe the members of a citizen committee would behave unreasonably.

Mayor Pro Tem Stewart added that the Council had a history of adopting recommendations from its committees.

Councilor Griffin asked how residents could eliminate coyotes without use of firearms.

Mayor Pro Tem Stewart replied that wildlife contractors could trap coyotes.

Mayor Tisdale clarified that leg traps were not allowed, and that firearms were allowed with permission from the Chief of Police. He asked if Chief Tovrea had received any requests for use of firearms against coyotes.

Chief Tovrea replied that she had not.

Officer Newhouse noted that he had worked in the urban wildlife trapping field for several years about 20 years ago but had never caught anything as large as a coyote. He explained that in a city setting poison, snares, and leg-hold traps were not permitted so live trapping was one of the only options, but that it was very difficult to trap a coyote using a live trap. He noted that leg-hold traps had been allowed previously but that the law was changed several years ago and were now permitted only in certain situations, such as when a human had been bitten.

Councilor Griffin indicated that there were several reports of coyotes biting in 2012.

Mayor Tisdale added that the Denver Post had reported four bites in 2010.

Officer Newhouse explained that the four cases he was aware of were cases of curiosity from a single animal rather than hunting by a pack, and at least one involved feeding the animal. He clarified that he believed any coyote that approached a human that closely was dangerous and should be eliminated.

Councilor Griffin suggested that the City's policy should be changed so that any coyote who threatens a human, pet or livestock will be eliminated by the City.

Mayor Tisdale noted that the current policy could be interpreted that way as it was, but that clarification may be a good change to make. He indicated that he looked forward to the results of the public opinion survey that he and Councilor A. Brown received from Colorado State University entitled "People and Coyotes in the Denver Metropolitan Area". He suggested that CSU may have pertinent information to help inform management decisions.

Councilor Griffin referred to the last point under Strategic Plan on the first page of the plan and indicated that it would be difficult to interpret the current plan as allowing elimination in the case of pet attacks.

Mayor Tisdale agreed that it could be more explicitly and broadly stated. He noted that Councilor A. Brown had suggested that the Council get information from an outside consultant first. He emphasized that if a resident felt threatened then the coyote could be eliminated under the current plan.

Councilor K. Brown asked if the City had any way of tracking individual coyotes.

Officer Newhouse replied that they did not, but that staff asked for a good description of any coyote with which there had been an incident so that if elimination was necessary staff would be able to target the problem coyote.

Councilor A. Brown agreed with Councilor Griffin's suggested clarification in the current plan.

Councilor Griffin noted that the changes to the current plan did not need to be made immediately and could wait until the Council had received input from a consultant or citizen committee, but he did feel strongly about the language changes.

Councilor K. Brown suggested that the Council could host a community meeting to discuss several available options in order to help build buy-in with the community.

Mayor Pro Tem Stewart indicated that ~~having an open meetings had proven to be counter-productive~~ been unproductive in the past, but that he agreed with Councilor

Griffin's proposed clarification to the policy about coyotes that threaten humans, pets and livestock.

Councilor Griffin added that hazing did not affect coyotes.

Mayor Pro Tem Stewart asked about Greenwood Village's policy.

City Manager Patterson replied that when there is a threat against a person or pet the homeowner is asked to sign a waiver articulating the threat before a trained officer or private contractor hunts and eliminates the coyote on their property if it deemed safe to do so. He added that Englewood also used lethal force against coyotes but that their process was not as formalized as in Greenwood Village.

Councilor K. Brown asked what Greenwood Village's policy was for public areas.

City Manager Patterson replied that he did not know.

Councilor Griffin asked if Greenwood Village allowed homeowners to discharge firearms as long as the projectile doesn't leave the property.

City Manager Patterson replied that he did not believe that to be in the policy.

Mayor Pro Tem Stewart indicated that wording was in the state statute.

Councilor Griffin indicated that he had confidence in staff to change the wording in the City policy and implement the necessary procedures to carry out that policy.

Mayor Tisdale agreed as long as a specific problem animal could be targeted. He asked Chief Tovrea to distribute a draft of the proposed changes as soon as possible and directed staff to bring the issue back for Council discussion at the February 19th meeting.

Council Bill 16, Series 2012; Repealing Article VII, Chapter 2 of the Municipal Code Concerning the Establishment of a Rehabilitation Authority (second and final reading)

Director Zuccaro presented Council Bill 16, Series 2012 on second and final reading. He noted that there were no changes to the bill since first reading on December 11, 2012.

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to approve Council Bill 16, Series 2012 on second and final reading; a bill for an ordinance repealing Article VII, Chapter 2 of the Municipal Code concerning the establishment of a Rehabilitation Authority, as outlined in Exhibit A to the January 2, 2013 staff memorandum.

The following votes were recorded:

Katy Brown	yes
Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Alex Brown	yes

Vote on the Council Bill 16-2012: 5 ayes. 0 nays. The motion carried.

NEW BUSINESS

Discussion on City Council Liaisons to City Departments

Mayor Tisdale explained that Councilor A. Brown had requested this discussion, but that in his view the liaison program functioned well and suggested no change.

Councilor A. Brown thanked Mayor Tisdale for the memo and agreed with his conclusions. He explained that after more consideration he had determined that it was not the liaison activity that was troubling him but rather the larger framework of the Council-Manager relationship. He indicated that he would like to see more structured interactions such as the City Manager's goals that were presented after the City Council retreat last year, and the structure of the City Manager review this year. He suggested regularly scheduled presentations from department heads to discuss strengths, weaknesses, challenges, and to allow for Council inquiries in a more organized format.

Mayor Tisdale indicated that he had been working with the HR Analyst and City Attorney on a draft City Manager contract that would be presented to Council at the next meeting.

Council Bill 1, Series 2013; Amending Chapter 10 of the Municipal Code by the Addition of a New Article XII to Prohibit the Operation of Marijuana Cultivation Facilities and Sales, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities and Retail Marijuana Stores in the City of Cherry Hills Village (first reading)

City Attorney Fellman explained to Council that staff was working to address recreational marijuana in three ways. First was the council bill being presented on first reading at tonight's meeting, which would prohibit the operation of marijuana cultivation facilities and sales, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores. City Attorney Fellman noted that Jefferson County, Weld County, and Greenwood Village had passed similar ordinances that staff had relied upon when composing the proposed council bill. The second council bill was presented in draft format for Council's feedback prior to first reading, and would address legal possession of marijuana in the City. Finally, staff was working on composing a council bill that would address the safety issues associated with growing marijuana, or any plant, in a home from a building and zoning perspective.

Councilor A. Brown asked if there was any potential issue with passing the proposed council bill prior to the state developing regulating for retail establishments.

City Attorney Fellman replied that it was highly unlikely that any regulations passed by the state would impact the City's prohibition of marijuana facilities, but staff would follow developments closely and propose any necessary amendments to the Code should they arise.

Mayor Tisdale noted that Amendment 64 expressly allowed for prohibition by municipalities, and that 60% of voters in Cherry Hills Village had opposed the amendment. He agreed that the Code could be amended if necessary.

Councilor Alex Brown moved, seconded by Councilor Katy Brown to approve Council Bill 1, Series 2013; A Bill for an Ordinance of the City of Cherry Hills Village amending Chapter 10 of the Cherry Hills Village Municipal Code concerning General Offenses, by the addition of a new Article XII to prohibit the operation of marijuana cultivation facilities and sales, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores in the City of Cherry Hills Village.

Mayor Pro Tem Stewart asked if the definition used in the council bill was from the state.

City Attorney Fellman confirmed that it was. He added that repeating the definition verbatim was more effective than referring to the state statute so that an interested party did not have to refer to more than one set of laws.

The following votes were recorded:

Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Alex Brown	yes
Katy Brown	yes

Vote on the Council Bill 1-2013: 5 ayes. 0 nays. The motion carried.

Discussion of Draft Ordinance Amending Sections 10-7-10 and 10-7-80 of the Municipal Code Regarding Possession of Marijuana in the City of Cherry Hills Village

Mayor Tisdale noted that in subsection (f) on page 3 “cannabis” should be changed to “marijuana” to be consistent with the rest of the ordinance.

Mayor Pro Tem Stewart and Councilor K. Brown indicated that the wording in subsections (a) and (b) should be changed. They also questioned subsection (e) which prohibited the transfer of legally obtained marijuana.

Councilor A. Brown asked if public parks were included in the definition of public area from subsection (e).

Mayor Tisdale asked if Chief Tovrea was comfortable with the language and with communicating it to her department.

City Attorney Fellman replied that Chief Tovrea had been extremely involved in the process of developing this council bill, and while it was more time sensitive than Council Bill 1, Series 2013, it was much more complex and colleagues who had gone through the process recommended not rushing passage of this amendment. He addressed Councilor A. Brown’s question and confirmed that the definition of public area included parks, trails and open space.

Councilor K. Brown asked if schools should be included, but noted that many of them were private.

Mayor Tisdale noted that private clubs had the same concerns.

REPORTS

Mayor’s Report

Mayor Tisdale noted that he had presented the Council and staff with bottles of wine for the holidays. He reported that the Grand Opening of the Joint Public Safety Facility would be January 12th and congratulated Deputy City Manager and Public Works Director Jay Goldie for his careful and conscientious stewardship of the project. He reported that Anthony Heinz May had completed his installation of art commissioned by the Public Art Commission (PAC) in Three Pond Park. He encouraged the PAC to consider placing public art in the new facility. He noted that Council would consider

appointments to the Parks, Trails and Recreation Commission at the next meeting. He added that Angela Bricmont of Denver Water would attend the study session prior to the regular meeting on January 15th to discuss water rates. He reported that \$2000 in prize money for the Mayor's High Line Canal video competition had been secured from benefactors Arapahoe County Open Space, Kevin & Mary McNicholas, and Kentwood Realty. He noted this meant that each winner would receive at least \$500, and that he was still working to secure more prize money. He presented two checks to Director Proctor. He noted that judges were being selected and that the deadline had been extended to February 14th. He added that Denver Water CEO Jim Lochhead was making available all of Denver Water's archives on the High Line Canal.

Members of City Council

Councilor K. Brown had no report.

Councilor Griffin noted that Director Proctor's report showed that 2012 had begun with a Capital Fund deficit of \$3.6 million and was projected to end with a \$900,000 surplus in the General Fund.

Mayor Tisdale noted Council's appreciation for Director Proctor's work on the budget.

Mayor Pro Tem Stewart asked staff to re-send the presentation regarding Denver Water rates from the City's Technical Advisory Committee from September 2012. He noted that department liaisons were helpful and agreed with Councilor A. Brown that regular presentations from department heads would be useful.

Councilor Roswell congratulated South Metro Fire Rescue Chief Qualman for receiving the Chief of the Year award.

Councilor A. Brown reported that he had been pleased over the holidays to see police officers checking properties as part of the housewatch program and appreciated this special service that the Police Department provided to City residents.

Mayor Tisdale noted that former Mayor Welborn had sent a complementary email thanking Deputy City Manager/Director Goldie and Administrator Berninzoni for their winter maintenance of the High Line Canal.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

City Manger Patterson reported that 2012 General Fund revenues were projected to exceeded expenditures by \$900,000. He noted that a memo from HR Analyst Barlow was on the dais explaining that upon review of the CIRSA renewal, the worker's compensation insurance for the City was bid out to other providers/companies and staff was recommending switching providers to Pinnacol Assurance which would result in a \$20,000 savings.

Councilor Roswell asked if this change would affect the City's other pools within CIRSA.

City Manager Patterson replied that it would not.

City Manager Patterson reported that the Public Work staff had performed snow removal on Christmas Day and that the Police Department had evacuated a family due

RECORD OF PROCEEDINGS

to a homicide last week. He recognized Mayor Tisdale and Deputy City Manager/Director Goldie for completion of the Joint Public Safety Facility. He noted that it was a great project and would ensure fire services for the City for the foreseeable future. He added that South Metro was a great partner.

Councilor Roswell extended the same recognition to City Manager Patterson.

Mayor Pro Tem Stewart recognized Councilor Roswell for developing the City's relationship with South Metro.

Councilor Griffin agreed.

Councilor Roswell added recognition for former Mayor Wozniak.

Chief Tovrea presented Challenge Coins to the Council members.

City Attorney

City Attorney Fellman notified Council of two cases being heard by the US Supreme Court that impact local government. One related to FCC rules on wireless facilities and the other to "takings" related to land development.

EXECUTIVE SESSION AND ADJOURNMENT

Mayor Pro Tem Stewart, seconded by Councilor Griffin moved to proceed into Executive Session pursuant to CRS Section 24-6-402(4)(b) for purposes of discussion with the city attorney to receive legal advice on specific legal questions related to potential litigation, and immediately upon conclusion of the Executive Session to stand adjourned.

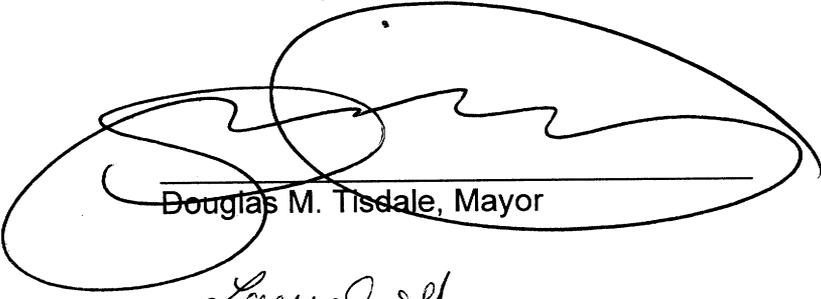
The following votes were recorded:

Russell Stewart	yes
Scott Roswell	yes
Alex Brown	yes
Katy Brown	yes
Mark Griffin	yes

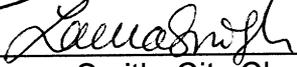
Vote on the Executive Session: 5 ayes. 0 nays. The motion carried.

The executive session began at 8:21 p.m.

The executive session ended and the meeting was adjourned at 8:31 p.m.



Douglas M. Tisdale, Mayor



Laura Smith, City Clerk