

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, January 15, 2013 at 6:30 p.m.  
At the Village Center

Council held a study session with staff from Denver Water regarding water rates at 6:00 p.m.

Mayor Doug Tisdale called the meeting to order at 6:35 p.m.

**ROLL CALL**

Mayor Doug Tisdale, Councilors Mark Griffin, Russell Stewart, Alex Brown, Scott Roswell, Klasina VanderWerf, and Katy Brown were present on silent roll call. Also present were Deputy City Manager and Public Works Director Jay Goldie, City Attorney Ken Fellman, 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**

Gabrielle Jones, Lara Fitch, Annabelle Crouch, Erin Mahoney, Farrah Bendell, Rachel Kaufman, Lindsay Smith, Presley Powers, Alex Byrne, Maisy Meissner, Payton Howey, Campbell Kreider and Alyssa Watkins of the Cherry Hills Elementary School Second Grade Brownies 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 – January 2, 2013
- b. Approval of Minutes – January 4, 2013

The motion carried unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

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 (second and final reading)

City Attorney Fellman presented Council Bill 1, Series 2013 on second and final reading. He noted that no changes had been made since first reading.

Councilor Roswell noted that the council bill used the term "Village" instead of "City".

City Attorney Fellman explained that the use of these two terms varied throughout the Code and that it did not make a legal difference which one was used.

Mayor Tisdale thanked City Attorney Fellman for his work on this bill and noted that the Council would be considering several more bills related to recreational marijuana in the near future.

Mayor Pro Tem Stewart moved, seconded by Councilor A. 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.

The following votes were recorded:

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

Vote on the Council Bill 1-2013: 6 ayes. 0 nays. The motion carried.

## **NEW BUSINESS**

### **Resolution 2, Series 2013**

Mayor Tisdale noted that the interview panel had recommended two appointments to the Parks, Trails and Recreation Commission (PTRC), but presented a blank resolution to Council for their consideration.

Councilor Roswell indicated that he appreciated the opportunity to recruit applicants from the western portion of the City, which he noted was under-represented on PTRC. He stated that he had no issues with the recommended appointments and would continue to encourage District 4 residents to participate on City boards and commissions.

Mayor Pro Tem Stewart indicated that he was impressed with the quality of all the applicants and wanted to publically thank them for their interest.

Councilor K. Brown noted that the Quincy Farm Visioning Committee (QFVC) was not full yet and encouraged the PTRC Chair to consider these applicants for the QFVC.

Mayor Tisdale commented that the City had an embarrassment of riches in the talent of the applicants. He indicated that he would contact Ms. Dougherty and Mr. Eber to confirm their appointments and would contact the other applicants to thank them and encourage them to apply for the QFVC.

Councilor VanderWerf moved, seconded by Councilor A. Brown to approve Resolution 2, Series 2013; appointing Colleen Dougherty and Robert Eber to the Parks, Trails and Recreation Commission for three-year terms expiring in May 2016.

The motion carried unanimously.

City Attorney Appointment

Mayor Tisdale explained that the City had sent out requests for proposal for city attorney services in September 2012 and had interviewed four firms on November 15, 2012. The Council had seriously considered two firms and had ultimately decided that a new opportunity with Widner, Michow & Cox was in the best interest of the City.

Councilor VanderWerf thanked City Attorney Fellman for his services to the City over the past five years.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to approve the appointment of Linda C. Michow, Esq. of the law firm of Widner, Michow & Cox as City Attorney and Robert C. Widner, Esq. of that firm as Deputy City Attorney for the City of Cherry Hills Village.

The motion carried unanimously.

Council Bill 2, Series 2013; Amending Chapter 7 of the Municipal Code Concerning Nuisance Dogs (first reading)

Chief Tovrea presented Council Bill 2, Series 2013 on first reading. She explained that the proposed bill would accomplish four things. First, it would require dog barking to continue for 30 minutes in order to qualify as a nuisance. Second, it would require that the two reporting parties live within 1000 feet of the nuisance dog in order to keep the issue at a neighborhood level. Third, it would remove the current exception that allows a single complainant to present corroborative evidence, such as an audiotape or videotape, of the barking to satisfy the requirement of a second complaining witness. Fourth, it would remove the subsection related to noxious odors. She noted that staff was asking for Council's direction on one additional issue – that of allowing an individual officer witnessing the violation to issue a summons without the need for a complaining witness.

Mayor Tisdale noted that the memo and bill were well crafted and thanked Officer Newhouse, Chief Tovrea, City Attorney Fellman, and Mayor Pro Tem Stewart for their work on the bill. He suggested that the bill could be amended so that a summons could be issued if either there are two complaining witnesses or an officer that witnesses the violation.

Councilor Griffin indicated that he supported the change, that the bill had been well vetted by Mayor Pro Tem Stewart and that he endorsed the proposed bill.

Councilor VanderWerf asked if the officer would give a warning prior to a citation.

Chief Tovrea replied that the officer always had discretion to issue a warning rather than a citation, and that normally any officer responding to a nuisance complaint will ask for an explanation from the resident who would receive the citation before issuing it in order to evaluate the situation. She noted that Officer Newhouse was very good at mediating between neighbors.

Officer Newhouse explained his usual procedure when dealing with complaints. If the complaint is related to a first time violation then he would issue a verbal warning and get information about the circumstances that may have contributed to the violation. He noted that this first warning usually worked very well and that City residents were on the

whole very responsible and compliant with City Code. If the violation continues then the next step would be to issue a written warning with a time limit to correct the violation. The time limit is discretionary and based on each particular situation. The third step would be a citation.

Councilor K. Brown indicated her support of an officer's judgment, but expressed concern that the language could be interpreted as compelling the officer to issue a citation when they would not normally do so.

Officer Newhouse explained that in order for an officer to be compelled to issue a citation they would have to observe the violation for the required 30 minutes and that this was very unlikely for an officer to do. He added that the officer's continual presence for that length of time may actually agitate the animal and cause the violation.

Councilor K. Brown asked how staff would handle a situation where a resident claimed that an officer was not enforcing the Code because the officer did not write a citation. She noted that she wanted officers to be empowered and not restricted.

Chief Tovrea commented that it was often difficult to explain discretion. She noted that Officer Newhouse was very good at de-escalating issues where one resident may want a citation issued right away.

Councilor Griffin noted that he believed the proposed bill successfully addressed the fact that dogs provide protection and that a typical dog may bark when someone is passing the property, but should stop barking after the person has passed.

City Attorney Fellman asked for clarification from Council on how they would like the proposed bill amended for second reading.

Chief Tovrea and Officer Newhouse asked for clarification if the person in control of the dog and the person making the complaint had to be residents or if they could be dog sitters or house sitters.

Mayor Tisdale suggested amending the language in the proposed bill so that both parties had to be presently staying in the neighborhood, such as, for example, a house-sitter or babysitter, but not necessarily full-time residents in the neighborhood. He asked for public comments on the proposed bill.

Former Mayor and PTRC Commissioner Jeff Welborn indicated that he was generally in support of the proposed bill, but noted that dogs provide a tremendous service to residents by warning them of the presence of people or coyotes near their property. He explained he was concerned about a non-resident filing a complaint when none of the neighbors were bothered by a barking dog. He also noted that dogs on properties bordering trails often barked more because of the traffic on the trails and for a city that was promoting trails it was counter-productive to have harsh regulations against barking dogs that may discourage residents with dogs from wanting trails by their properties. He stated that he saw the value of the amendment, but did not see a circumstance where an officer should be the only one involved in issuing a citation. He indicated that the proposed bill was a good start to bringing definition to a vague ordinance.

Councilor K. Brown agreed that on a Saturday morning the High Line Canal had a steady stream of people and a dog on an adjacent property could bark for up to a half hour as a result.

Mayor Tisdale noted that the requirement that two separate neighbors file a complaint would help somewhat with that situation.

Mayor Pro Tem Stewart agreed that a citation shouldn't be issued unless neighbors were complaining.

Councilor Roswell agreed, but expressed concern about giving officers proper latitude and authority.

Chief Tovrea noted that Officer Newhouse had never issued an on-site citation and that every other instance in the Code gave officers discretion. She gave the example that if two residents were struggling with a problem for which an officer could not find a resolution, issuing a citation may be a final solution.

Mayor Tisdale noted that it would be unusual for this ordinance not to allow officer discretion.

Mayor Pro Tem Stewart suggested that the proposed bill be passed on first reading as written with no amendments and that any amendments could be further considered on second reading.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to approve Council Bill 2, Series 2013 on first reading; a bill for an ordinance amending Chapter 7 of the Municipal Code, concerning nuisance dogs, as outlined in Exhibit A to the January 15, 2013 staff memorandum.

The following votes were recorded:

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

Vote on the Council Bill 2-2013: 6 ayes. 0 nays. The motion carried.

Council Bill 3-2013; Authorizing a Supplemental Appropriation to Pay Additional Principal on the Special Improvement District Number Seven Bonds (first reading)

Director Proctor presented Council Bill 3, Series 2013 on first reading. She explained that the supplemental appropriation was necessary because the \$243,000 from the Special Improvement District #7 (SID #7) used to decrease the principal due on the SID #7 bonds approved by Council as part of Council Bill 12, Series 2012 was not included in the 2012 budget.

Councilor A. Brown noted that the supplemental appropriation would keep the City's auditors happy.

Councilor Griffin moved, seconded by Councilor VanderWerf to approve Council Bill 3, Series 2013 on first reading; a bill for an ordinance of the City of Cherry Hills Village authorizing a supplemental appropriation to pay additional principal on the Special Improvement District number seven bonds.

The following votes were recorded:

Russell Stewart	yes
Scott Roswell	yes

Klasina VanderWerf	yes
Alex Brown	yes
Katy Brown	yes
Mark Griffin	yes

Vote on the Council Bill 3-2013: 6 ayes. 0 nays. The motion carried.

## **REPORTS**

### **Mayor's Report**

Mayor Tisdale reported that Council would discuss the City Manager Contract in Executive Session tonight and in open session at the next meeting. He reported that the City was applying for an Arapahoe County Open Space grant for \$25,000 to fund a consultant to work with the Quincy Farm Visioning Committee. He asked for a motion approving the letter of commitment that he would sign on behalf of the City Council.

Councilor Roswell so moved, seconded by Councilor VanderWerf. The motion carried unanimously.

Mayor Tisdale reported that there had been some confusion among staff as to the direction from Council to PTRC regarding a temporary portable restroom for the High Line Canal at Three Pond Park. He directed staff to work with PTRC to move forward with placement of the portable restroom. He noted that PTRC would review the issue six months after the restroom was installed and determine how to proceed once the one year trial was complete. He stated that the Three Pond Park location had been approved by Council, but that if PTRC wished to propose a new location for the restroom that it would have to be presented to and approved by Council separately. He suggested that the PTRC contact a representative of the equestrian community to explore installing a hitching post next to the portable restroom.

Mayor Tisdale reported that the grand opening of the Joint Public Safety Facility on Saturday had been a success. He noted that over 100 people had attended and thanked all the participants. He commented that it was the first new public facility in the City in 40 years.

Mayor Tisdale reported that he was proud to host Congresswoman Dianna DeGette for a meeting with Council on Wednesday January 30<sup>th</sup> at 2pm. He noted that any questions from residents should be directed to himself and Council members. He added that the meeting would be in the new building in either the community room or the conference room depending on how many people attended.

Mayor Tisdale reported that a bill to increase the fine limit for municipal courts that he had presented with Mayor Rakowsky of Greenwood Village to the Colorado Municipal League would be going to the General Assembly and that they would be testifying at a hearing on Thursday. He reported that he would be joining the Executive Committee of the Metro Mayors Caucus and the Administrative Committee of DRCOG. He congratulated the Broncos on their AFC Western Division Championship.

Mayor Tisdale expressed his appreciation for City Attorney Fellman's service to the City for the past five years.

### **Members of City Council**

Councilor A. Brown requested that staff present information on the major event permit process in light of the upcoming professional golf tournament at Cherry Hills Country Club.

Councilor VanderWerf noted that she had been unable to attend the last Council meeting and reported that since the December meeting the Public Art Commission had dedicated its second piece of public art, the tree sculpture by Anthony Heinz May at Three Pond Park. She reported that Director Zuccaro had presented at the last PTRC meeting regarding the process for installing public recreation facilities, such as playground equipment, on public parks and the possibility of changing that process to be less bureaucratic. She added that first QFVC meeting would be held just prior to the next PTRC meeting on February 13<sup>th</sup>, rescheduled from February 14<sup>th</sup> because of Valentine's Day.

Councilor Roswell indicated his surprise that the process for installing playground equipment in public parks would be so bureaucratic.

Director Zuccaro noted that no equipment had been installed since the ordinance was changed in 2000.

Councilor K. Brown agreed that the process was overly bureaucratic.

Mayor Tisdale noted that the City had to comply with City laws just as anyone did and that the City was well-served by holding sufficient public hearings. He suggested that the issue be brought back to Council for a more complete discussion to determine if a simplification of the process would be appropriate.

Mayor Pro Tem Stewart thanked City Attorney Fellman for his service to the City. He noted that building permits seemed to be increasing. He commented that today was the last day to submit 2012 receipts for the recreation reimbursement program, and asked staff for an update on the total refunded amount for 2012 recreation activities at the next meeting. He indicated that the grand opening of the joint public safety facility had gone very well and that the fire authority's traditions had been very interesting to observe.

Councilor Griffin reported that the January Board of Adjustment and Appeals meeting had been cancelled. He noted that he had met with Director Zuccaro as his new Council liaison. He reminded Council that he would miss the next Council meeting.

Councilor K. Brown had no report.

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

Commissioner Welborn reported that members of the PTRC would strive to attend more Council meetings. He supplemented Councilor VanderWerf's report by adding that the PTRC did not yet know what changes they wished to make regarding the process to approve recreational equipment on public parks, and would work with Director Zuccaro to evaluate all of the options. He added that the PTRC was working to define its role in City processes.

Mayor Tisdale noted that the High Line Canal restroom issue was now resolved. He indicated that the QFVC was perhaps the single biggest undertaking of the PTRC and very important to the City.

Commissioner Welborn agreed that the QFVC was a large and important undertaking and emphasized the PTRC's dedication to its success.

**City Manager & Staff**

Deputy City Manager Goldie noted that department monthly reports and unaudited financial statements were included in Council packets and staff was available to answer any questions.

Mayor Tisdale noted that in the Police Department report home break-ins seemed to be clustered in a few areas in the City. He asked if this indicated a single individual.

Chief Tovrea replied that those crimes were being investigated and while the pattern suggested a single individual staff was not prepared to draw any conclusions until further investigations were completed. She noted that the majority of these incidents were crimes of opportunity where doors were left unlocked.

**City Attorney**

City Attorney Fellman indicated that it had been a privilege to serve as the City Attorney and that he appreciated the opportunity. He added that he appreciated and valued the personal relationships he had developed with many of the Council members and staff. He thanked Council for their complements during the meeting and hoped that Council would continue to conclude that his services had added value to the Cherry Hills Village community.

**EXECUTIVE SESSION AND ADJOURNMENT**

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

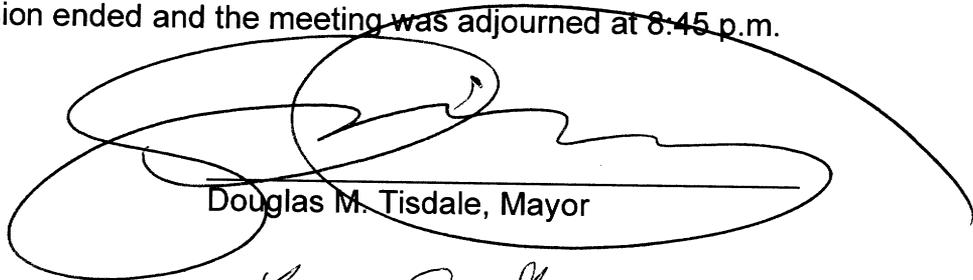
The following votes were recorded:

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

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

The executive session began at 8:00 p.m.

The executive session ended and the meeting was adjourned at 8:45 p.m.



Douglas M. Tisdale, Mayor



Laura Smith, City Clerk