

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, February 19, 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, 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 Linda Michow, 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

Juliana Diecidue, Julia Donovan, Belle Ebner, Eva Maxey, Janet McDermott, Will Seifert, and Aydan Solomon of the Cherry Hills Elementary School 4th Grade Destination Imagination Team led the Council in the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

Mayor Tisdale announced that Police Clerk Sarah Henderson had a serious skydiving accident in California. She was in the hospital and had surgery last night. He asked everyone to keep her in their thoughts and prayers and hoped for a full and speedy recovery.

Sharlynn Lebsack, 91 Glenmoor Drive, defended the coyotes. She noted that coyotes helped to keep the populations of rabbits, mice and other vermin low. She encouraged residents to keep all pet food inside, to keep pets indoors at night and under supervision outside, and to keep garbage secured in order to not attract coyotes.

Chris Zobolas, 17 Cherry Hills Farm Drive, explained that his neighbor's dog had been attacked by coyotes and that he was afraid for his three dogs despite the six foot high fence he had constructed on his property.

Barbara Fitzpatrick, 4682 S. Elizabeth Court, noted that she was the current Cherry Hills Farm HOA President. She explained that her dog had been mauled by coyotes through their fence, and that coyotes had become more than a nuisance, that they were a threat despite being indigenous.

Kelley Digby, 21 Cherry Hills Farm Drive, noted that coyotes had become more brazen and were no longer nocturnal. She explained that one coyote watched the children at the bus stop near her house.

CONSENT AGENDA

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

- a. Approval of Minutes – February 5, 2013

- b. First Amendment to and Assignment of the Consulting Agreement with the Technical Advisory Committee (TAC)
- c. Agreement for Legal Services of City Attorney – Linda C. Michow, Widner Michow & Cox LLP

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Council Bill 4, Series 2013; Amending Article VII of the Municipal Code Concerning Personal Use and Regulation of Marijuana and Marijuana Accessories (first reading)

City Attorney Michow presented Council Bill 4, Series 2013 on first reading. She explained that there were three parts to Amendment 64. The first was retail sales, which the Council addressed by passing Ordinance 2, Series 2013. The second was growing plants in homes, and safety concerns with this aspect would be addressed in the near future. The third was personal possession and was addressed by the proposed Council Bill 4, Series 2013. She explained that the proposed bill defines “marijuana” and “marijuana accessories” as well as “openly and publicly”. It allows persons 21 years or older to possess one ounce or less of marijuana but prohibits consumption of marijuana “openly and publicly or in a manner that endangers others.” She noted that while consumption, use and sale of marijuana are prohibited in public areas and buildings, transportation on public streets is not prohibited. She indicated that “openly and publicly” was not defined by Amendment 64 and that the proposed definition could be amended at Council’s discretion.

Councilor A. Brown asked if the state legislature was likely to pass any legislation that would affect the definition of “openly and publicly”.

City Attorney Michow replied that she had not heard of any pending legislation that would clarify the definition. Rather the state legislature was focusing on the retail sale aspects of Amendment 64.

Mayor Pro Tem Stewart asked if the definition in the proposed bill had been adjusted to take into account industrial hemp.

City Attorney Michow replied that the definition used in the proposed bill was the same as that used in Ordinance 2, Series 2013 and in Amendment 64.

Councilor K. Brown asked why in Section 10-7-80(a) is the amount of marijuana specified.

City Attorney Michow explained that the distinction was due to the fact that illegal possession of an ounce or less would be prosecuted in municipal court while larger amounts would go to the County for prosecution. She noted that it was advisable to limit the Code to matters of municipal jurisdiction. She added that currently the state defined two ounces of marijuana as a petty offence, but in light of Amendment 64 the state may opt to change that and so she recommended waiting for any state change before increasing the amount in the City Code.

Councilor Griffin asked if the definition of “public area” was the same in the proposed bill as it was in relation to alcohol use in the Code.

Chief Tovrea replied that the proposed bill was more restrictive for marijuana use than the current Code was for alcohol use because while a resident could have an alcoholic beverage on their front porch in view of the public, this was not permitted in the case of marijuana in the proposed bill. She added that in the case of the proposed bill an officer would be called on to approach a resident on their private property if they were consuming marijuana in view of the public. She asked if this was the desire of Council.

Mayor Tisdale noted that the City of Greenwood Village had defined "open and public" as accessible to or perceptible by the public. He suggested that the definition in the proposed bill could be amended to reflect Section 10-5-130(a) of the current Code regarding indecent exposure which used the term "open to the public view". He asked for City Attorney Michow's thoughts on addressing the issue of private clubs with marijuana rooms.

City Attorney Michow replied that because it was such a new issue she preferred to wait and see how communities with a more vested interest and immediate concern chose to address this issue. She added that wording could be added to the proposed bill for second reading that addressed this issue if Council wished.

Mayor Tisdale noted that he had heard of medical marijuana retail facilities that would give free marijuana to customers who bought marijuana accessories. He asked if City Attorney Michow had heard of this being done at any other businesses.

City Attorney Michow replied that she was not aware of that practice occurring outside of medical marijuana retail establishments.

Councilor K. Brown indicated that she would be supportive of allowing marijuana consumption on patios and porches. She noted that the City did not have high-density housing.

Councilor Roswell indicated that residents had voted 60% against Amendment 64 and that gave Council the latitude to heavily regulate recreational marijuana. He added that Council did not have to do so, but that it seemed most residents did not want recreational marijuana use in the City.

Mayor Tisdale noted that marijuana was still illegal according to Federal law. He asked that City Attorney Michow provide alternate language for "open and public" for consideration at second reading.

Mayor Pro Tem Stewart indicated his support of the language in the proposed bill.

Mayor Pro Tem Stewart moved, seconded by Councilor Roswell to approve Council Bill 4, Series 2013 on first reading; amending Article VII of Chapter 10 of the Municipal Code to recognize the adoption and effect of new Article XVIII, Section 16, of the Colorado Constitution concerning personal use and regulation of marijuana and marijuana accessories by persons twenty-one years and older and to make use by persons under twenty-one and use or display in public places unlawful.

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 4-2013: 6 ayes. 0 nays. The motion carried.

Coyote Management Plan Recommendations

Chief Tovrea explained that at the January 2, 2013 Council meeting, Council had directed staff to amend the Coyote Management Plan to reflect that lethal force would potentially be taken against coyotes who threatened livestock and pets, as well as humans. She noted that a few other changes had been made to make the plan more concise. Finally a draft authorization form for lethal action was included in the Council packet for Council's consideration. She explained the process: a resident would lodge a complaint with the Police Department about a threatening coyote; Officer Newhouse would investigate the situation; if Officer Newhouse determined that the situation justified lethal action, the situation would be reviewed by command staff; finally well-documented lethal action would occur.

Mayor Tisdale asked if the Chief was aware of any residents taking lethal action against coyotes on their own property as permitted by state statute.

Chief Tovrea replied that the Police Department had received some inquiries regarding lethal action against coyotes but that she was not aware of any resident taking action on their property.

Officer Newhouse added that Jay Stewart of Animal Damage Control had success with live trapping of coyotes. He explained that Mr. Stewart transported the animals to his property in Elbert County where he euthanized them. He noted that he had referred several residents to Mr. Stewart but was not aware of any recent trappings.

Mayor Pro Tem Stewart noted that Mr. Jay Stewart had trapped coyotes in the City a few years ago.

Councilor A. Brown indicated that he had heard of aggressing hazing practices in Boulder County open space against coyotes and asked if staff had any further information.

Officer Newhouse replied that he had spoken with a Boulder County Animal Control supervisor about the incident. He noted that Boulder had not used their police department for the shooting, but that a representative from the Department of Wildlife was contacted to pursue individual animals. He explained that the cause of the threats from the coyotes was linked to a burrito truck that fed its leftovers to the coyotes.

Councilor K. Brown asked if it was legal for the property owner to transfer the right of lethal force on their private property to the Police Department.

Mayor Tisdale replied that it was.

Councilor VanderWerf asked if lethal force would result in an increase in the coyote population.

Chief Tovrea replied that it was difficult to determine since the City did not have the resources to keep track of individual coyotes.

Councilor VanderWerf suggested that extra signage could be placed in open space areas indicating locations of known coyote dens.

Officer Newhouse noted that the Department of Wildlife placed billboards in the City during mating season when coyotes were more active.

Councilor VanderWerf suggested that open space areas where coyotes were densely located or especially threatening could be closed to the public during mating season.

Mayor Tisdale noted that coyotes were habituated in the City and were permanent residents. He reminded residents that they could report issues through the City's Coyote Hotline or Officer Newhouse's cell phone. He encouraged residents "if you see something, say something". He noted that Council was addressing the public's concerns by approving the amended plan language and forming a procedure for carrying out lethal force.

Councilor K. Brown agreed that the proposed changes to the Coyote Management Plan were in line with public sentiment. She noted that coyotes were very territorial and that they often attacked pets to defend their territory rather than for food.

Councilor Griffin indicated that in his five years on Council this was the most charged issue he had dealt with. He noted that the proposed policy change was not to exterminate all coyotes, but rather to allow the Police Department staff to take effective measures against particular coyotes who were threatening people, pets or livestock and to hopefully reduce the number of pets attacked and killed by coyotes in the City.

Mayor Tisdale complimented the Council and citizens for having a very civil, balanced and calm, though vigorous discussion on this difficult issue.

Mayor Pro Tem Stewart indicated his support for the language. He noted that this was not a new issue in the City and was identified as an important issue by the Council in 1964.

Councilor Roswell indicated that he supported public participation in any policy change on this issue and had trouble supporting the proposed changes without having more public participation.

Councilor VanderWerf stated that she supported giving the Police Department the authority to use lethal force on private property with property owners' permission. She noted that the City would always have coyotes and that it would be an ongoing issue. She supported continued efforts to educate residents along with active hazing. She noted that she walked in open space every day and often saw coyotes but never felt threatened by them.

Councilor A. Brown indicated that the proposed changes were improvements to the current plan, but asked that communication with the public and public education be a more explicit part of the process. He noted that the current plan outsourced much of the coyote management to residents and that the proposed changes were a step toward correcting this. He suggested that the Police Department could be more proactive in carrying out aggressive hazing against coyotes who posed potential threats, such as the one who watched children at the bus stop, in order to teach coyotes that certain areas are hazardous to them and modify their behavior.

Mayor Tisdale suggested that Officer Newhouse could provide regular updates to the Council on this issue and that the coyote incident map included in Council packets could be put on the website to encourage residents to report incidents to the City.

Councilor Griffin suggested that information could be transmitted to residents via Home Owners Associations (HOAs).

Councilor K. Brown noted that on page 1 of the plan it said there were four key strategies but only three were listed.

Mayor Tisdale emphasized that the proposed changes did not promote indiscriminate destruction of wildlife but rather addressed focused and specific areas of need.

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to approve the changes to the City of Cherry Hills Village Coyote Management Plan and the Authorization Form.

The motion carried 5 to 1.

NEW BUSINESS

Public Hearing – Request by Denver First Church of the Nazarene to Allow and Expansion; an Off-Street Parking Reduction; and Variances to Minimum Yard Requirements, Floor Area Ratio Requirements, and Fence Height Requirements

Director Zuccaro explained that the applicant had not yet been able to provide drainage data that staff required in order to recommend approval of the request, and therefore staff and the applicant were requesting that the public hearing be continued to the March 5th meeting. He noted that City Attorney Michow advised that the time of the public hearing, 6:30 pm, be added to the motion. He added that letters had been mailed to all adjacent property owners advising them of the continuance.

Councilor Roswell asked if public notice of the new date and time would be posted.

Director Zuccaro confirmed that notice would be re-posted at the Village Center, on the website, in the Villager Newspaper, and at the applicant's property if Council approved the continuance.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to continue the public hearing for consideration of the Expanded Use Permit application and associated approvals submitted by Denver First Church of the Nazarene to the March 5, 2013 City Council meeting commencing at 6:30 p.m.

The motion carried unanimously.

Public Hearing – Council Bill 5, Series 2013; Rezoning Lots 1 Through 5, Block 1, Highline Meadows in Cherry Hills, From R-3A, Variable Lot Residential District to R-1, 2 ½-Acre Residential District and Amending the Zoning Map (first reading)

Director Zuccaro explained that the Church had owned five residential lots since 1997. These lots were currently zoned R-3A. The Church was requesting rezoning of these lots to R-1. He noted that this first reading was simply for housekeeping purposes and that more detailed information and discussion would occur at second reading on March 5th. This was so that both public hearings could occur at the same meeting and would allow the Church to minimize the number of meetings needed for their requests. Director Zuccaro added that Council was under no obligation to pass this proposed bill on second reading.

Mayor Tisdale noted the revocation clause in Section 4 of the proposed bill.

Council expressed concerns with passing the proposed bill on first reading without being able to discuss the bill.

City Attorney Michow noted that approving the bill on first reading would not indicate Council's approval of the bill, but rather would simply keep the process moving.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to continue the public hearing for consideration of Council Bill 5, Series 2013, rezoning Lots 1 through 5, Block 1, Highline Meadows in Cherry Hills Subdivision from R-3A, Variable Lot Residential District to R-1, 2 ½-Acre Residential District and amending the zoning map to the March 5th, 2013 City Council meeting commencing at 6:30 p.m.

The motion carried unanimously.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to approve Council Bill 5, Series 2013 on first reading, rezoning Lots 1 through 5, Block 1, Highline Meadows in Cherry Hills Subdivision from R-3A, Variable Lot Residential District to R-1, 2 ½-Acre Residential District and amending the zoning map.

The following votes were recorded:

Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	no
Alex Brown	yes
Katy Brown	yes

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

REPORTS

Mayor's Report

Mayor Tisdale reported that the last Metro Mayors Caucus (MMC) meeting had included discussion with CDOT about a gas tax versus a sales tax for transit expansion. He indicated that he would send the information to Council for their consideration. He reported that the MMC Executive Committee was in support of the internet sales tax bill currently in Congress. He noted that Representative Daniel Kagan had held an open house on healthcare in the Joint Public Safety Facility community room. He reported that the City Council mini-retreat would be held in the community room on Saturday June 1st from 7:30am to noon. He noted that the prize money for the Mayor's High Line Canal Student Video Contest was now at \$2,750.

Members of City Council

Councilor A. Brown had no report.

Councilor VanderWerf reported that the February 13th Quincy Farm Visioning Committee meeting had gone very well and a member of Colorado Open Lands had provided detailed and helpful information on the conservation easement. She also reported that she had to replace her hot water heater recently and the building inspector had looked at her smoke and CO2 detectors when he was there to inspect the new water heater. She expressed concern that the inspector used one inspection to do another. She indicated that residents should be informed that this might happen.

Director Zuccaro explained that he believed state law required compliance with smoke and CO2 detector regulations regardless of the type of permit. He indicated he would research the issue and provide more information.

Councilor Roswell apologized for not attending the last meeting.

Mayor Pro Tem Stewart had no report.

Councilor Griffin apologized for missing the last meeting. He reported that the Board of Adjustment and Appeals had met and passed a request for variance to the rear setback at 7 Cherry Hills Drive, despite staff recommending disapproval.

Councilor K. Brown reported that the February 13th Quincy Farm Visioning Committee meeting had been very productive and informative. She noted that she would not be able to attend the April 2nd Council meeting.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Deputy City Manager Goldie noted that department monthly reports and unaudited financial statements were included in Council packets, as well as an update of priorities from last year's mini-retreat. He reported that the Request for Proposals (RFP) for the Public Works Facility Study had been posted and proposals were due in about a month. He noted that the City would again coordinate a tree planting program and that information would be put on CIVIC. He reported that the RFP for the Quincy Farm Visioning Committee facilitator would be posted tomorrow. He noted that this was not a consultant position but that the facilitator may have the option to become a consultant in the future. He reported that the City's annual Spring Clean Up was scheduled for May 11th – 19th, with Shred Day, electronics and paint accepted on Saturday May 18th.

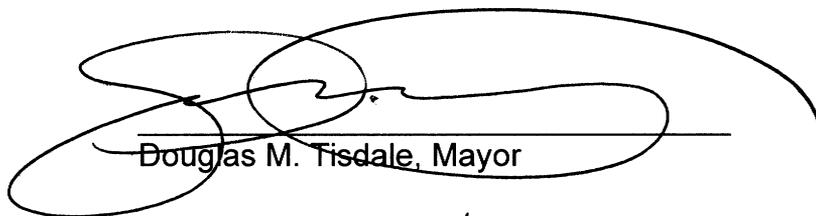
Mayor Tisdale congratulated Chief Tovrea on being asked to serve on the Arapahoe County Justice Coordinating Committee.

City Attorney

City Attorney Michow had no report.

ADJOURNMENT

The meeting adjourned at 8:32 p.m.



Douglas M. Tisdale, Mayor



Laura Smith, City Clerk