

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, October 1, 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, and Scott Roswell were present on silent roll call. Also present were City Manager John Patterson, City Attorney Linda Michow, 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, and City Clerk Laura Smith.

Absent: Councilors Klasina VanderWerf and Katy Brown

**PLEDGE OF ALLEGIANCE**

Jack Wheeler of Scout Troup 140 led the Council in the pledge of allegiance.

**AUDIENCE PARTICIPATION PERIOD**

None

**PROCLAMATION 3, SERIES 2013; DESIGNATING THE MONTH OF OCTOBER 2013 AS CONFLICT RESOLUTION MONTH**

Mayor Tisdale welcomed Senator Linda Newell to talk about Conflict Resolution Month.

Senator Newell indicated she was grateful to the City Council for again agreeing to participate in Conflict Resolution Month. She explained that Conflict Resolution Day had existed in other parts of the country for many years but that Colorado has chosen to establish Conflict Resolution Month in order to focus an entire month on better ways to manage and resolve conflict. She noted that Colorado had a history of bipartisan solutions. She noted her background in conflict resolution, facilitation and conflict coaching. She indicated that conflict was the biggest cause of productivity loss, process loss, employee absenteeism and attrition in the workplace. She explained that Conflict Resolution Month in Colorado provided resources such as power hours, brown bag lunches, and facilitators for organizations and companies. She also invited Council to join her monthly town hall meetings in Aurora and Littleton. She noted that conflicts, hard conversations, and arguments could be dealt with more effectively with the right tools.

Mayor Tisdale noted that the Council had adopted the same proclamation in 2011 and 2012, and was being asked to renew their support for 2013. He thanked Senator Newell for taking time out of her busy schedule to share her vision with the Council.

Councilor Griffin moved, seconded by Councilor A. Brown to approve Proclamation 1, Series 2013; a proclamation of the City Council of the City of Cherry Hills Village designating the month of October 2013 as Conflict Resolution Month.

The motion passed unanimously.

**CONSENT AGENDA**

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

- a. Approval of Minutes – September 17, 2013
- b. Zach Frisch Bench Donation at Three Pond Park

The motion carried unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

**Council Bill 15, Series 2013; Amending Chapter 11 of the Municipal Code and Updating the Construction and Excavation Standards for Work within all City Rights-of-Way (first reading)**

Deputy City Manager/Director Goldie explained that the purpose of Chapter 11 Article II, Public Right-of-Way Permits is to establish rules and guidelines governing occupation, excavations and restorations within the public rights-of-way of the City of Cherry Hills Village. Over the past decade the City has expended great effort and capital to improve and enhance the entire roadway system. These investments need to be protected to insure that they are continuing to remain in an acceptable condition for their intended lifespan. These proposed changes to the City Code will enable the City to be more proactive in its effort to maintain its infrastructure investment. The City acknowledges the need and obligation to accommodate utilities in the public rights-of-way. It is expected that utilities and private contractors understand the primary purpose of public roadways and trails is to provide for the safe and efficient travel of the public.

Deputy City Manager/Director Goldie reviewed the changes that the bill proposed to the Code. The fee schedule would be removed from the Code and established as a separate document so that it could be adjusted with a resolution rather than an ordinance. Major installations would be redefined as 50 feet instead of 300 feet in order to increase protection of City streets. The application would be pulled by the contractor instead of the owner because the bond and insurance are in the contractor's name. Blanket maintenance permits would be required to have a bond. Restoration fees would be required for all projects, not just major projects. Performance bonds would be increased from \$5,000 to \$10,000 for work on trails, because trails were harder to restore and easier to damage.

Deputy City Manager/Director Goldie explained that if Council approved Council Bill 15, Series 2013 on first reading tonight, resolutions for the fee schedule, excavation and construction standards would be presented for Council's consideration at the same meeting that the council bill was presented for second reading and public hearing. He noted that staff had sent the proposed changes to both Xcel Energy and Denver Water and had incorporated Xcel Energy's comments but had not received a response from Denver Water.

Councilor A. Brown asked about a homeowner rebuilding a driveway.

Deputy City Manager/Director Goldie replied that staff was working on an adjusted fee schedule for driveway permits with a reduced cost and no restoration fee.

Mayor Pro Tem Stewart asked how the new fee schedule would be made public.

Deputy City Manager/Director Goldie replied that the fee schedule would be available at the front desk and on the city website.

Mayor Pro Tem Stewart indicated that in Section 11-1-120(a), "at the applicant's choice" should be removed in favor of "in a form approved by the City".

Councilor Griffin noted his continued interest in paving the remaining gravel roads in the City due to the increased maintenance cost of gravel roads.

Mayor Tisdale asked City Attorney Michow if the proposed amendments would limit the City's ability to seek additional funds from the owner if an issue required more than the amount of the contractor's bond.

City Attorney Michow replied that the City could demand additional costs of remediation from the contractor if an issue went beyond the amount of the bond.

Deputy City Manager/Director Goldie added that staff had discussed requiring the homeowner's signature on the permit in addition to the contractor's information.

Mayor Tisdale asked about the proposed reduction in the minimum permit fee for gravel streets.

Deputy City Manager/Director Goldie replied that staff had analyzed the fee schedule and determined that the minimum permit fee for gravel streets was too high and the proposed reduction would more accurately cover actual costs.

Mayor Tisdale noted that the heading for Exhibit B should be changed.

Mayor Pro Tem Stewart moved, seconded by Councilor A. Brown to approve Council Bill 15, Series 2013 updating Chapter 11 Article II of the Cherry Hills Village Municipal Code on first reading, ensuring that the health, safety and welfare of the community are protected while keeping the City's Rights-of-Way a safe and efficient means of travel for vehicles and pedestrians.

The following votes were recorded:

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

Vote on the Council Bill 15-2013: 6 ayes. 0 nays. The motion carried.

## **REPORTS**

### **Mayor's Report**

Mayor Tisdale reported that Deputy City Manager/Director Goldie had joined him at the last Arapahoe County Mayor/Manager/Commissioner breakfast. He noted that he had met Mayor Hancock's new Director of Regional Affairs last week and that they had

discussed increased cooperation and collaboration on issues of common concern. He reported that he had attended the Cancer League of Colorado's meeting in Glenmoor. He indicated that he had met with Denver Councilor Peggy Lehmann regarding the issue Councilor K. Brown had brought to Council's attention concerning the left-turn from Hampden onto Dahlia and Happy Canyon. He noted that Denver controlled that intersection, rather than CDOT, and that Councilor Lehmann was supportive of adding a left-turn arrow. He reported that he had served as MC and auctioneer for St. Gabriel Church's gala, and that the church had offered its assistance to the City should the need ever arise. He noted that he had attended the last Public Art Commission meeting and had encouraged the commission to apply for a National Endowment for the Arts grant to host a travelling exhibit. He reported that the City was hosting several events this weekend – on Friday the dedication of a new piece of art by resident Duke Beardsley at the Joint Public Safety Facility; on Saturday the reception for the Inca Street Artists art show and the Cherry Hills Land Preserve Barn Party; and on Sunday the Cherry Hills Land Preserve Barn Tour. He thanked Deputy City Manager/Director Goldie and Police Chief Tovrea for their assistance in setting up the Community Room of the Joint Public Safety Facility for the artwork. He noted that the Cherry Creek North Business Improvement District had advertised the Barn Tour to its members.

### **Members of City Council**

Councilor A. Brown had no report.

Councilor Roswell had no report.

Mayor Pro Tem Stewart indicated that the Council would hold an executive session to discuss pending litigation.

Councilor Griffin reported that there would be a Board of Adjustment and Appeals meeting on Thursday.

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

Parks, Trails and Recreation Commission (PTRC) Chair Bill Lucas noted that the PTRC was happy to have its newest member, Mike Gallagher. He reported that the PTRC was reviewing the Master Plan and learning a lot about how their work relates to the Master Plan and making adjustments and changes accordingly. He explained that the PTRC was working on their priority list for the 2014 budget, including a Quincy Farm Visioning Plan; integrating the Alan Hutto Memorial Commons and John Meade Park; the High Line Canal; and an open space inventory. He noted that the Barn Tour was this weekend and thanked staff and residents for the success of the Car Show despite the weather.

### **City Manager & Staff**

City Manager Patterson reported that Norris Design would give Council an update on the Public Works Facility Review during a study session at the October 15<sup>th</sup> meeting. He added that they would be holding a community meeting at St. Mary's Academy. He reported that installation of irrigation along the High Line Canal had begun. He indicated that a farmer's market would be set up at the Alan Hutto Memorial Commons on Sunday from 11-2 to correspond with the Barn Tour, and that the three snow plows decorated by the school children would be on display. He reported that Officer Pat Wilson had been selected as the Police Department's new Sergeant. He noted that the Xcel gas line project along Quincy was nearing completion. He commented that he had seen an advertisement on television for the 2014 BMW Golf Tournament at Cherry Hills Country Club.

### National Green Building Standards

Director Zuccaro explained that Council had last discussed this issue at the August 20<sup>th</sup> meeting, when Council had directed staff to create an incentive based program rather than a mandatory program for green building standards. He noted that Rich Beckman from Colorado Code Consulting was present. He noted that staff had outlined an incentive based program with rebates for building permit fees and for permit extension fees. He explained that the National Association of Home Builders Research Center (NAHB) oversees certification of new homes under the National Green Building Standards (NGBS), and that the cost to certify under the NGBS program was basically the cost of hiring a "verifier". He indicated that the cost to certify under the NGBS for a typical home in the City, not including any additional costs for construction administration, design fees, building or site development upgrades, ranges from \$3,700 to \$4,500. He noted that staff proposed to limit the program to new homes only in order to limit the financial liability of refunds for the City. He explained that staff had outlined a program that would provide rebates on permit fees and permit extensions at an escalating level as the certification level increased. He noted that all permit fees would be paid up front and that homeowners would need to show their NAHB certificate before the City would issue any rebates. He indicated that Exhibit B to the staff memo contained a draft council bill, which would be refined prior to first reading. He explained that the staff memo showed several options for different levels of rebates, and asked for Council's direction.

Mayor Tisdale clarified that approximately half of the Building Division's revenue came from new homes.

Director Zuccaro replied that was correct. He indicated that he had discussed the possible fiscal constraints of an incentive based program with the City Manager, Financial Director, and Councilor Griffin. He noted that given the fiscal constraints of the City's budget it may make more sense to begin the program on the lower tier and re-evaluate the effectiveness of that rebate level after a year or two. He noted that staff would consider participation in the program by six to eight new homes a year to be successful.

Councilor Griffin noted that the County's projections for property tax assessments in 2016 were higher than 2014, and so the City might have more revenue available to offer as rebates at that time. He indicated that he believed in the program and wanted to encourage green building by establishing significant rebates, but stated that Council needed to be realistic about the impact rebates would have on the City budget. He suggested the City start with the lower tier of rebates and increase the rebate levels in the future if necessary.

Mayor Pro Tem Stewart noted that at the lowest tier the total rebates for the Gold standard would essentially cover the cost of the "verifier".

Director Zuccaro noted that staff had reviewed new homes that had been built in the City recently and found that for the most part they were already being built to the Bronze level of green building certification, even if they were not being officially certified. Therefore staff believed a tiered system would be important to encourage home owners to build to the higher levels of green building standards.

Councilor Roswell indicated that he appreciated staff's analysis and was supportive of implementing this last recommendation from the Residential Standards Development Committee. He indicated that he struggled with the permit extension rebates because he did not want to support longer construction timeframes. He noted that he did support

the permit fee rebates. He stated that he hoped the certification would be sufficient incentive in itself and that residents would build to green standards without applying for the rebates.

Councilor A. Brown indicated that he was comfortable starting at the lower level of rebates. He noted that the permit extension rebates were working against the Council's previously expressed concerns regarding construction timelines. He asked if staff assumed that homes being built to the Silver, Gold and Emerald levels would need both permit extension periods in order to complete their construction.

Director Zuccaro replied that staff did not assume that building to higher green standards would necessarily mean that a project would need more extensions. He explained that staff had structured the permit extension rebate tiers simply as another way to provide incentives for certification. He noted that currently about 25% of new home permits needed extensions.

Councilor A. Brown suggested that a higher rebate be offered for the first permit extension and no rebate be offered for the second permit extension in order to prevent an incentive for construction to last longer than necessary.

Mayor Pro Tem Stewart indicated that the cost of the "verifier" should be covered for the Silver, Gold and Emerald certification levels.

Mayor Tisdale asked why staff had chosen to tier the rebates for permit extensions.

Director Zuccaro replied that staff's intention was to provide a larger rebate for higher levels of certification.

Mayor Tisdale indicated he supported establishing the program with the lower tier of rebates and noted that more discussion might be required regarding the permit extension rebates.

Director Zuccaro suggested that the total amount of the rebate presented in the staff memo could be maintained while moving a greater portion of the rebate into the permit fee and first extension categories.

Councilor Roswell asked about the opinions of the contractors that Director Zuccaro had consulted regarding the rebates.

Director Zuccaro replied that at the time of staff's meeting with contractors, staff had presented the program as mandatory, and so there had been no discussion about rebates. He noted that the contractors had not been supportive of a mandatory program. He added that certified homes were listed by the NAHB and the certification could be used as a marketing item when homes were sold.

Councilor Roswell stated that he hoped residents would recognize the value of certification independent of the rebate program.

Councilor Griffin suggested that staff solicit contractors' opinions about the rebate program.

Councilor Roswell suggested the contractors be invited to first reading of the bill to express their opinions to Council.

Director Zuccaro indicated he would circulate the first reading draft of the bill to the contractors and also invite them to the Council meeting for first reading.

### Board and Commission Term Limits

City Clerk Smith asked for direction from Council regarding board and commission term limits and reappointments. She explained that it had been staff's recent policy to reappoint members who wished to continue serving without a recruitment process, but recent experience led staff to seek clarification from Council on their preference. She asked if Council preferred a recruitment process occur after a member had served a particular number of terms; if partial terms would count towards this number; and if the same procedure would be applied to PTRC which was the only commission for which the Code specified that each District should be represented if possible. She noted that partial terms were not counted for City Council.

Councilor Roswell indicated that board and commission members served at the pleasure of Council, and suggested that Council liaisons communicate with the chairs of their respective boards and commissions when a member's term was ending to determine if that member was a contributing member. If so the member could be reappointed to a second term without a recruitment process. After a member had served two terms a recruitment process would occur, and the member would be considered along with any new applicants. The representation of Districts would be considered at the end of each term for the PTRC.

Councilor A. Brown agreed.

Mayor Pro Tem Stewart agreed.

Councilor Griffin agreed.

Mayor Tisdale asked if partial terms would be counted.

Mayor Pro Tem Stewart indicated that partial terms should not be counted in order to be consistent with Council.

Mayor Tisdale asked staff to pass along this discussion to Councilors VanderWerf and K. Brown to see if they had anything to add.

### Update on Sales Tax Collection

City Clerk Smith explained that staff was continued to work deliberately on the bill regarding sales tax and was carefully considering the issues associated with the bill. She noted that staff would bring the bill to Council for consideration at a meeting in the near future.

### **City Attorney**

Mayor Tisdale noted that the Municipal Judge had issued a Court Order regarding a case and asked when the appeal period would end.

City Attorney Michow replied that she was not certain but would consult with Court Clerk Jessica Sager and pass along the information.

City Attorney Michow reported that the Court of Appeals had made a recent decision involving the Colorado Open Records Act (CORA). The court had determined that records maintained by third party contractors of a municipality were not subject to disclosure pursuant to CORA. The court also determined that local governments may charge reasonable fees for the retrieval of documents requested pursuant to CORA and

the fees may include time spent in reviewing the documents to find privileged or confidential documents that are not subject to disclosure. City Clerk Michow indicated that she would prepare a memo on these decisions for City Clerk Smith.

**ADJOURNMENT**

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to proceed into Executive Session for the purpose of receiving legal advice from the City Attorney in connection with pending litigation in the Sansing, Edwardson and Rogers matter pursuant to CRS § 24-6-402(4)(b) 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
Mark Griffin	yes

Vote on Executive Session: 4 ayes. 0 nays. The motion carried.

The regular meeting adjourned at 7:50 p.m.

The executive session adjourned at 8:10 p.m.



Douglas M. Tisdale, Mayor

Laura Smith, City Clerk