

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, October 20, 2015 at 6:30 p.m.
At the Village Center

Mayor Laura Christman called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Laura Christman, Councilors Mark Griffin, Earl Hoellen, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on silent roll call. Also present were Interim 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 Ducharme, and City Clerk Laura Smith.

Absent: Mayor Pro Tem Alex Brown

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

Senator Linda Newell presented regarding Conflict Resolution Month. She explained that she had initiated Conflict Resolution Month at the State Legislature in 2009 and at that time Colorado was the only state to designate an entire month for conflict resolution. Since then many other municipalities had joined the state in establishing October as their conflict resolution month each year and thanked Cherry Hills Village for joining in that movement. She noted that her experiences with the City had been peaceful. She indicated that this would be her last session in the state senate and invited the Council members to visit her at the capital for a tour.

CONSENT AGENDA

Councilor Griffin moved, seconded by Councilor VanderWerf to approve the following items on the Consent Agenda:

- a. Approval of Minutes – October 6, 2015

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Council Bill 6, Series 2015; Authorizing a Supplemental Appropriation for City Manager Search Firm Expenses in Fiscal Year 2015 (second and final reading)

Director Proctor presented Council Bill 6, Series 2015 on second and final reading. She explained that the supplemental appropriation was for \$24,000 in the 2015 budget for executive search firm expenses to assist in hiring a new city manager. She indicated that no changes had been made since first reading.

Councilor VanderWerf moved, seconded by Councilor K. Brown to approve Council Bill 6, Series 2015; A Bill for an Ordinance of the City of Cherry Hills Village Authorizing a Supplemental Appropriation for Executive Search Firm expenses in the amount of \$24,000 for Fiscal Year 2015 on final reading.

The following votes were recorded:

Gallagher	yes
Griffin	yes
VanderWerf	yes
K. Brown	yes
Hoellen	yes

Vote on the Council Bill 6-2015: 5 ayes. 0 nays. The motion carried.

NEW BUSINESS

Discussion of Terms of Deborah Butterfield Sculpture Loan Agreement and Authorization to Proceed

Interim City Manager/Director Goldie explained that the Public Art Commission (PAC) was seeking authorization from Council to enter into a loan/sale agreement with Greg Kucera Gallery for the loan and possible sale of a Deborah Butterfield horse sculpture. The PAC has raised closed to \$310,500 and the purchase price had been lowered from \$425,000 to \$395,000. The proposed agreement would allow the sculpture to be on loan to the City until December 31, 2015, at which point the PAC hopes to have raised funds in the amount of the full purchase price. If the PAC was unable to raise the full amount by that time then either party could terminate the agreement or extend it upon mutually agreeable terms. The City's contribution would be limited to covering the delivery and installation costs of the sculpture, estimated to be approximately \$1,000-\$3,000, along with procurement of insurance and any storage fees. Staff hoped to avoid storage fees by having the sculpture delivered to the City this Friday directly from the Denver Botanic Gardens, to be displayed in front of the Joint Public Safety Facility for the term of the loan. There was some question as to who would be required to pay the transportation costs for the sculpture to be returned to the gallery in Seattle if the PAC was not able to raise the total funds by the end of the year and the loan agreement was not extended.

Mayor Christman replied that she was unsure who would be responsible for transportation costs back to Seattle if the sale did not occur and that the purpose of tonight's discussion was to determine under what terms Council would authorize herself and City Attorney Michow to execute this agreement.

Councilor Hoellen indicated he supported use of the PAC budget for this project but wanted to understand what other taxpayer monies would ever possibly be spent on this loan and potential ownership.

Mayor Christman noted that the PAC was also seeking approval from Council to spend the remainder of their 2015 budget on the purchase of the sculpture if needed.

Councilor VanderWerf indicated that the PAC's budget was \$15,000 for 2015 and they had spent a small portion so far.

Councilor Hoellen agreed that the PAC could use their remaining budget for this purpose. He asked about the change from commissioning a new Deborah Butterfield sculpture to now purchasing one from a gallery.

Councilor VanderWerf explained that since the PAC had first approached Council with this proposal they had learned that Deborah Butterfield sculptures can only be purchased through one of two galleries, rather than directly from the artist. They were valuable pieces and increase in price every year and because of that there was no secondary market and only a few pieces that could be found for sale.

Mayor Christman noted that if the City could approve this loan/sale agreement and have the sculpture in question delivered from the Denver Botanic Gardens they would save the cost of shipping a sculpture from the gallery.

Councilor Hoellen indicated that the agreement should be clear that the price could not be increased after December 31st.

Mayor Christman noted that she was in contact with the gallery owner and had advised him that it would take some time for the City to collect the pledged funds once the sale price was reached and so the payment might be delayed 30-60 days.

Councilor Hoellen asked about the insurance for the sculpture.

Councilor Griffin asked if the sculpture under discussion was the same as in the poster in front of the Joint Public Safety Facility.

Councilor VanderWerf confirmed that it was.

Councilor K. Brown noted that in the past the PAC budget had been used for installation and preparation of other public art pieces. She suggested that the installation costs for this piece would come from the PAC budget or from the funds raised for the sculpture, but questioned how the additional insurance would be paid since that would have to be paid in perpetuity.

HR Analyst Ducharme noted that it was in the City's best interest to have the piece appraised for insurance purposes.

Councilor Gallagher asked if the City or the gallery would carry the insurance during the loan period.

HR Analyst Ducharme replied that the City would carry the coverage.

Councilor Gallagher asked if there was a separate process for insuring this piece.

HR Analyst Ducharme replied that there was due to the high value of the piece.

Councilor Griffin asked about the insurance costs for the *Sundown* piece.

HR Analyst Ducharme replied that *Sundown* was valued at \$96,000 but she was not certain of the cost of the premium since it was lumped together with the City's other insurance costs.

Interim City Manager/Director Goldie added that based on the horse sculpture's value of \$425,000 the insurance was estimated to cost the City \$630 per year.

HR Analyst Ducharme noted that included a \$1,000 deductible.

Councilor K. Brown indicated that the PAC should pay the delivery and installation costs from their budget, insurance would be paid by the City, and the agreement should clarify who was responsible for transportation costs back to the gallery if the sale did not occur.

Mayor Christman stated that the City should not be responsible for paying transportation costs back to the gallery if the sale did not occur.

Councilor Griffin expressed frustration with the speculative nature of Council's discussion.

Mayor Christman replied that based on Council's discussion and direction she and City Attorney Michow would negotiate the agreement with the gallery owner. She noted that the piece would be installed at the City and would be insured by Friday and hoped to have a final agreement by then as well. She added that if the City could not settle on terms with the gallery owner then the loan would not proceed.

Councilor Hoellen indicated that use of the PAC budget for this project was acceptable but no funds beyond the PAC budget should be used.

Mayor Christman clarified that the insurance costs would not come from the PAC budget, unless the sale did not occur in which case further discussion regarding the insurance costs during the loan period may be warranted.

Councilor Gallagher added that the balance of the PAC's 2015 budget could be used towards the purchase of the piece.

Councilor Griffin asked what had been done in the past with other pieces of public art.

Councilor VanderWerf replied that funds had come from the PAC's budget but she was not certain about staff time and materials.

Interim City Manager/Director Goldie replied that no charges were made across departments so staff time was paid out of the Parks or Public Works Department budgets, but materials such as the concrete pad for the horse sculpture were charged to the PAC budget.

Councilor Griffin indicated that a contingent of City residents did not support spending public funds on public art. He stated that he did not support spending City funds to ship the piece back to the gallery in Seattle if the sale did not occur.

Mayor Christman agreed that point would need to be clarified.

Councilor Griffin indicated he supported the Council empowering the Mayor to negotiate the agreement and that the City would pay for the installation and insurance of the piece but not for any costs of shipping back to the gallery if the sale did not occur.

Councilor Hoellen agreed that cost of installation should come from the PAC budget and the cost of insurance from City funds.

Councilor Griffin added that he supported the PAC using the balance of their budgeted funds for the piece if they wished to do so.

Councilor VanderWerf noted that the PAC would hopefully not need to do so.

Councilor K. Brown asked if City funds had ever been used to acquire a piece of art before.

Mayor Christman replied that City funds had been paid to artists to create pieces before.

Councilor Gallagher asked what would happen to the funds that had been raised if the total purchase price was not reached and the sale did not occur.

Councilor VanderWerf replied that the donations would be returned to the donors unless they wanted their donations to stay in the Art Donation Fund.

Councilor Hoellen asked if the donors were aware that their donations might be returned to them.

Councilor VanderWerf replied that information was clearly stated on the donation form.

Councilor Griffin asked if the City would install spot lights to illuminate the sculpture at night and that doing so might be an added deterrent to vandalism.

Interim City Manager/Director Goldie replied that it was under discussion.

Councilor VanderWerf moved, seconded by Councilor Griffin to authorize the Mayor to execute an agreement with Greg Kucera Gallery, Inc. for the loan and possible purchase of a Deborah Butterfield horse sculpture based on terms outlined in the City Attorney's memorandum dated October 20, 2015 and as instructed by Council at the October 20, 2015 Council meeting.

The motion passed 5 to 0.

Councilor K. Brown asked how soon the sculpture might be installed.

Mayor Christman replied it might be installed as early as Friday. She indicated her appreciation for staff's work on this project and their flexibility with its last-minute nature.

Councilor Griffin asked how the sculpture would be affixed.

Interim City Manager/Director Goldie replied that it would be drilled and bolted to the concrete pad in multiple places.

REPORTS

Mayor's Report

Mayor Christman reported that Congresswoman Diana DeGette had asked the mayors of municipalities surrounding the City if they support the City having its own zip code and they had indicated their support.

Councilor Griffin noted that having a unique zip code would allow residents to qualify for jumbo loans which they were not able to do currently.

Members of City Council

Councilor Hoellen reported that he had participated in a webinar with Director Proctor and Accounting Clerk Sager for another financial software named EZTransparency but had not been impressed.

Councilor K. Brown reported that she had attended her first meeting of the CML (Colorado Municipal League) Policy Committee last Friday to represent the City. She

explained that each municipality had a vote regarding CML's stance on the various issues being considered. She noted that everyone had generally been in agreement and many of the issues would not affect the City, but she explained several that might have an impact. The City of Durango proposed that CML sponsor legislation to remove the exemption for charter schools from local planning and zoning regulations because many schools were located in inappropriate places that required above average public funds to provide necessary services.

Councilor Griffin asked why the legislation would focus on charter schools.

Councilor K. Brown replied that there was support in removing the exemption for all schools. Another issue was CML's endeavor to simplify and standardize municipal tax definitions and arrange a single point licensing system. The third issue was the ACLU's proposed legislation that would allow them to take action against municipalities if they believed the courts treated defendants too harshly. She noted that CML was not supportive of that legislation. Another issue was that CML expected red light/speed camera legislation to be brought back. The next issue was that there were 30 municipalities who would ask their voters this November to reinstate broadband rights removed by Senate Bill 05-152 and a group was interested in repealing that bill altogether. There was also a debate about road and bridge mill levies, which Counties assess and then remit a portion to municipalities, but some Counties had severely reduced that mill levy in order to redirect funds to other County needs. She noted that Arapahoe County had not been given as an example.

Councilor VanderWerf reported that the next issue of the Village Crier would include a list of donors for the Deborah Butterfield sculpture. She asked Council to let her know if they had any suggestions for other donors.

Councilor Griffin reported that the Board of Adjustment and Appeals had met last month and approved the variance application.

Councilor Gallagher reported that the study session between the Planning and Zoning Commission (P&Z) and the Parks, Trails and Recreation Commission (PTRC) to discuss the draft fence ordinance had been postponed until Thursday. He noted that Bill Lucas had chaired his final PTRC meeting and was now on the P&Z. Robert Eber was now chair of PTRC and John Kokish was vice chair.

Members of City Boards and Commissions

None

City Manager & Staff

Interim City Manager/Director Goldie noted that monthly departmental reports and unaudited financial statements were available in Council packets.

Traffic Study Discussion

Interim City Manager/Director Goldie reported that in July the City had accepted proposals for qualifications (RFQ) from traffic consultants to perform a comprehensive traffic analysis within the City. Mayor Pro Tem Alex Brown and staff interviewed three firms and eventually chose FHU to submit a scope of work and cost proposal for the project. The scope of work reflected the requirements outlined in the original RFQ document as well as the information requested as part of the interview process. The cost for the study came in much higher than was budgeted. Staff has worked with FHU to modify the scope of work to reduce the cost of the study, while still providing enough

information to the City to consider future planning and design of its roadways. Because of the significance of this issue staff was seeking input from Council on how they would like to proceed prior to staff bringing forward a contract for these services. During the modification process all the cameras on the west side of the City had been removed and staff would work with FHU to balance the camera locations between the two sides of the City to ensure proper data collection.

Mayor Christman asked about the costs of the cameras.

Interim City Manager/Director Goldie replied that the cost was \$8,750 per camera location and that staff was considering moving camera location #7 from the east to the west side since data at that location on the east side could be obtained through other methods.

Councilor Hoellen asked what was originally budgeted for the traffic study.

Interim City Manager/Director Goldie replied that \$70,000 had been budgeted.

Councilor Hoellen noted that the proposed cost was double that amount. He indicated that the bulk of the cost for FHU were fixed amounts so to reduce the cost of the study would require a reduction in data collection. He indicated that he did not want to skimp on data collection. He asked what policy or infrastructure changes might result from the data and what the purpose of the study was.

Mayor Christman indicated that there was a perception among residents that the majority of traffic was cut-through, but in actuality it was unknown how much traffic in the City was cut-through and how much traffic was speeding. She added that speeding could be addressed but not necessarily cut-through traffic. She noted that she received about one call or email per week about cut-through traffic, and it would be helpful to have data to relay to concerned citizens about this issue.

Councilor Hoellen suggested that the reason Mayor Christman received so many calls about this issue was that residents believed that the City could take measures to reduce cut-through traffic, but he noted that in reality there was very little the City could do.

Mayor Christman noted that some of the cut-through traffic could be City residents. She indicated that it would be helpful to have the information, and without the information Council could not determine the issue.

Councilor Gallagher asked when the City's last traffic study had been conducted.

Interim City Manager/Director Goldie replied that in 2000 the Planning and Zoning Commission had conducted an in-house study at intersections, and staff had done hand studies in the past, but the City had never conducted a traffic study with data collection before.

Councilor Griffin asked when the curve in the road at the Quincy/Clarkson entrance had been added.

Interim City Manager/Director Goldie replied about 25 years ago along with the curve in the road at the Quincy/Happy Canyon entrance.

Councilor VanderWerf indicated she was interested in how neighboring development affected City traffic and noted that it was increasingly difficult for residents to turn left onto Belleview Avenue.

Interim City Manager/Director Goldie noted that City staff had the data from the traffic studies done as part of the Belleview Station development and the Kent Place development.

Councilor Griffin indicated he agreed with Councilor Hoellen and would support the study if there was a productive result but was not in favor of spending money to collect information that would not be useful.

Councilor Hoellen stated that he did not envision Council supporting the addition of traffic lights within the Village, and the perimeters required coordination with CDOT and other municipalities which would be difficult to obtain. He noted that the curves at the Quincy entrances were the type of mitigation measure that he could envision supporting.

Interim City Manager/Director Goldie indicated that he could not give Council a clear picture of the outcomes of the study without data to base them on and that part of the study would be providing recommendations.

Councilor K. Brown agreed with Councilor Hoellen but indicated that many suggestions for traffic calming had been discussed in the past, such as a traffic circle at Colorado and Quincy, but hard data was needed in order to evaluate those suggestions. She also noted that with the increased development in neighboring areas it might be advantageous for the City to have baseline data to which they could compare future traffic numbers. She questioned the value of such data compared to the cost, but agreed that if the City was going to proceed with this study the proper amount of funds should be invested to ensure that the result was useful.

Mayor Christman noted that the study should not exclude data collection on the west side of the City.

Todd Frisbie of FHU explained that he would be the project manager on the traffic study and agreed that he did not support collecting data without a purpose. He noted that a baseline of data was important in order to answer questions from citizens and to determine what strategies might be possible for mitigation. He noted that in some cases the mitigation would be for congestion at nearby intersections rather than at the point where the issue was found. He indicated that data collection was not done after Thanksgiving because the holiday season resulted in skewed data.

Mayor Christman noted that there were several schools in the City and asked how FHU distinguished between cut-through traffic versus destination traffic.

Mr. Frisbie replied that FHU would collect data near the schools and could work with the school districts.

Councilor Griffin asked about FHU's use of blue tooth technology.

Mr Frisbie replied that new vehicles included blue tooth technology with a unique signal and code and FHU had the equipment to pick up these signals at various locations. They could then evaluate the time it took vehicles to travel between locations and infer information.

Councilor Griffin asked if FHU could determine which vehicles were residents.

Mr. Frisbie replied that only 10-15% of vehicles have blue tooth technology. He noted that FHU had license plate recognition software and in one municipality the police

department had been willing to look up a sample of the registrations to determine which were resident vehicles.

Councilor Gallagher noted that some residents might be using City streets to cut-through as well as non-residents.

Mr. Frisbie noted that data collected from license plates and cameras could be used to infer vehicle destinations and therefore infer residency.

Mayor Christman noted that timing of entry could also be useful data to determine residency. She asked if FHU had algorithms to help analyze the data.

Mr. Frisbie replied that they could. He explained that data collected from cameras was recorded in software and the data could then be queried. He noted that data was only collected at peak hours.

Councilor Griffin asked for an example of a solution for cut-through traffic.

Mr. Frisbie replied that the City could discourage travel on the road with stop signs, speed bumps and traffic circles, as well as address congestion at nearby intersections to address the reason drivers take the cut-through route.

Mayor Christman noted that some areas in California have made it painful for drivers to cut-through with reduced speed limits and increased citations. She noted that those solutions also impact residents negatively.

Councilor Hoellen stated that cut-through traffic often results because drivers think they are reaching their destination more quickly if they are at least moving, regardless of the actual travel time.

Councilor Griffin noted that Greenwood Village had implemented many mitigation measures on Holly including speed humps and stop signs.

Mr. Frisbie added that other mitigation measures could be used for speeding such as the speed signs that display the speed of oncoming traffic. He indicated FHU was willing to work with staff and Council on the scope of the project.

Interim City Manager/Director Goldie suggested he would meet with Mayor Pro Tem A. Brown, Chief Tovrea, Director Zuccaro, and Mr. Frisbie to put together a new scope of service based on Council's direction tonight based on data collection that would provide facts to provide to residents and a baseline that would be comparable to future studies.

Councilor Hoellen agreed with Councilor K. Brown that a baseline would be valuable but how valuable was unknown. He indicated that he wanted to know FHU's recommendations because that would impact how much he was willing to pay for the study.

Councilor Griffin noted that he would like to hear Mayor Pro Tem A. Brown's input on the study.

Councilor K. Brown indicated that the City needed data in order to make an informed decision about any mitigation efforts and to explain to residents the basis for those decisions.

Mayor Christman agreed with Councilor Hoellen that the City had minimal leverage with CDOT and could not expect any meaningful mitigation measures would be taken on the

state highways, but agreed with Councilor K. Brown that the City needed a baseline in order to inform current and future discussions and perhaps assist the City with future neighboring development. She expressed concern with the price but noted that the lack of data to inform current discussions with residents was a cost to the City.

Councilor Hoellen questioned what difference the data would make and noted that the City's Police Department was the best in the area.

Mayor Christman replied that some residents wanted certain roads cut off and that data would help inform those discussions. She indicated that the exercise was valuable but questioned the price.

Councilor Hoellen replied that it was not worth spending any money if the study did not result in good data.

Councilor Gallagher agreed that the study had to be relevant. He indicated that the Master Plan identified cut-through traffic as an issue. He noted that the City had cut-through traffic from the beginning and that it was only getting worse and a benchmark was needed. He indicated an important question to ask was if residents' quality of life was changing because of traffic issues.

Councilor Hoellen indicated that the City sought to remain an open community.

Councilor Griffin noted that a discussion of spending this amount of money would not have been possible in 2008-2011.

Mayor Christman directed Interim City Manager/Director Goldie to work with Mayor Pro Tem A. Brown and report back to Council.

Trail Easement Encroachment Discussion

Director Zuccaro reported that over the last few months staff had discovered several instances of historic encroachments into trail easements. He noted that these encroachments were decades old. He noted that the City had recently entered into an agreement with Stanley Construction for a trail inventory and mapping project and as part of that project Stanley would research this issue thoroughly to determine the full extent of the encroachments. Using that information staff would propose a comprehensive plan to address the issue in order to ensure that all of the encroachments were addressed fairly and consistently. He noted that staff had been and would continue to not permit any new encroachments. Staff expected to return to Council with a comprehensive plan in six to nine months.

Councilor VanderWerf noted that the Parks and Trails Committee had done some research on this topic and had found some interesting issues. She added that the accuracy of that research might be questionable. She indicated that some encroachments made those trails difficult to reclaim and that possibly some agreement could be made with the property owner to remove the incumbrance for a contribution to the City's trail fund.

Mayor Christman indicated that property owners should be aware of easements when they purchase their property, but if the City approved permits for structures built in the trail easement that was a different situation than a property owner planting trees in a trail easement without the City's knowledge.

Director Zuccaro stated that even if the City had issued a permit for a structure in an easement it was unknown what information that permit had been based on. He

explained that currently the City required plans based on an accurate survey including easements but that may not have always been the case. He indicated that staff would try to research the circumstances surrounding any permits that had been issued for encroachments.

Councilor Griffin asked about the legal issues surrounding encroachments.

Mayor Christman explained that it was called "adverse possession" and the City could adversely possess an individual's property, an individual could adversely possess another individual's property, but an individual could not adversely possess the City's property. She noted that it became an interesting discussion when considering that the City had a budget for acquiring open space and trails but there were existing trails that the public could not use. She agreed with Director Zuccaro that the extent and circumstances of the encroachments needed to be determined first. She added that public meetings and discussions might be needed as well.

City Attorney

City Attorney Michow reported that she and the Mayor were moving forward with proposed drone regulations and planned to bring a draft ordinance to the next Council meeting for consideration.

Mayor Christman indicated her hope to include an article about the new regulations in the December issue of the Village Crier in order to notify residents before the holidays.

City Attorney Michow reported that the City had requested a continuance of the Cooper trial because the City had a pending motion for summary judgement from Arapahoe District Court. Until the judge ruled it would be a waste of taxpayer monies to prepare for the trial when one or more of those issues may be resolved in the summary judgement ruling.

ADJOURNMENT

The meeting adjourned at 8:17 p.m.





Laura Christman, Mayor



Laura Smith, City Clerk

THE STATE OF COLORADO

