

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Wednesday, December 9, 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 Earl Hoellen, Alex Brown, Mike Gallagher, Klasina VanderWerf, and Katy Brown were present on 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, Parks, Trails & Recreation Administrator Ryan Berninzoni, Public Works Project and Right-of-Way Manager Ralph Mason, and City Clerk Laura Smith.

Absent: Councilor Mark Griffin

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

Parks, Trails and Recreation Commission (PTRC) member Nina Itin, 4685 S. Ogden Street, explained her personal concerns with the version of the proposed fence ordinance from PTRC. She indicated that the R1 Zone District properties were the backbone of the City and solid fences along their perimeters would reduce the sense of open space and inhibit view corridors by creating a mouse-maze sensibility. She noted that privacy could be achieved through landscape buffers and suggested that fences be allowed within the building envelope only, rather than up to the property line.

CONSENT AGENDA

Councilor K. Brown removed Item 5a.

Mayor Christman removed Item 5c.

Mayor Pro Tem A. Brown moved, seconded by Councilor VanderWerf to approve the following items on the Consent Agenda:

- b. Resolution 45, Series 2015; Appointing Members to the Parks, Trails and Recreation Commission

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

Item 5a. Approval of Minutes – November 17, 2015

Councilor K. Brown reviewed her revisions to the draft minutes that were presented on the dais.

City Clerk Smith noted that the version on the dais included revisions from Councilor Hoellen and Councilor K. Brown.

Mayor Christman added revisions to the minutes.

Item 5c. Extension of Agreement with the Humane Society of the South Platte Valley

Mayor Christman asked that Section 1.3 of the agreement be amended to include microchips as part of the reasonable efforts the Humane Society would make to contact dog owners.

Councilor Hoellen asked how many stray dogs were transported to the Humane Society by the Police Department.

Chief Tovrea replied that approximately nine dogs had been transported to the Humane Society so far in 2015.

Councilor Hoellen questioned the value of the Humane Society's services to the City.

Chief Tovrea replied that the Humane Society's services covered disposal of roadkill as well as handling of stray dogs and was well worth the cost to the City. She noted that the Humane Society was available 24/7 which was unique, and that contracting per stray dog would be a much higher cost to the City.

Councilor K. Brown asked if the agreement covered stray cats.

Chief Tovrea replied that there was not a leash law for cats but she would check if the agreement covered cats.

Mayor Pro Tem A. Brown moved, seconded by Councilor VanderWerf to approved Items 5a, as amended, and Item 5c, subject to a revision incorporating microchips in Section 1.3.

The motion passed unanimously.

UNFINISHED BUSINESS

Proposed 2016 Budget

Director Proctor reviewed the changes to the proposed budget since first reading. The final property tax assessment was received from Arapahoe County and decreased by \$2,167,966. This resulted in a \$16,532 decrease to Property Tax Revenue in the General Fund, \$11,283 decrease to Property Tax Revenue in the Parks Fund and a \$2,168 decrease in Property Tax Revenue in the Capital Fund. \$10,000 in expense was added to the General Fund Public Safety training account 01-421-6063 for twice a year in-service training for all officers by the City Attorney's office. \$26,532 was added to the General Fund Use Tax Motor Vehicles Revenue account 01-310-3312 to offset the \$10,000 expense for police training and the decrease in Property Tax Revenue. \$6,387 expense was added to the Parks Fund Interest Expense account 30-432-7072 based on the receipt of the actual interest rate increasing to 0.853% (from 0.51%). \$10,000 of Specific Ownership Tax was moved from the Capital Fund to the Parks Fund to offset the decrease in Property Tax Revenue. The Parks Fund account 30-432-7073, Principal Expense, was decreased by \$1,414 based on receipt of actual payment expense. \$6,256 was decreased from the Parks Fund expense account 30-432-6069, Recreation Reimbursements, to offset the change in the Principal and Interest payments and the reduction in Property Tax Revenue. Overall, the 2016 General Fund budget was balanced with revenues equal to expenditures in the amount of \$7,004,867 and an ending fund balance of approximately \$3.7 million. In the Capital Fund expenditures

exceed revenues by (\$765,348). Bond proceeds in amount of \$3.5 million were added for the financing of the new Public Works Facility. \$1 million for construction costs was budgeted for 2016 along with a COP interest only payment of \$96,263. The Capital Fund was expected to have an ending balance in 2016 of approximately \$6.8 million dollars. The Parks and Recreation Fund budget was balanced with revenue equal to expenditures in the amount of \$1,787,749 and an ending fund balance of approximately \$2.3 million.

Mayor Christman asked about the \$26,532 added to the General Fund Use Tax Motor Vehicles Revenue account.

Interim City Manager/Director Goldie explained that there was flexibility in the estimated revenue for use tax.

Councilor VanderWerf thanked staff for their hard work on the budget.

Councilor Gallagher moved, seconded by Councilor VanderWerf to approve Council Bill 7, Series 2015; A Bill for an Ordinance Adopting a Budget and Levying Property Taxes for the City of Cherry Hills Village, Colorado for Fiscal Year 2016 on final reading.

The following votes were recorded:

| | |
|------------|-----|
| Gallagher | yes |
| A. Brown | yes |
| VanderWerf | yes |
| K. Brown | yes |
| Hoellen | yes |

Vote on the Council Bill 7-2015: 5 ayes. 0 nays. The motion carried.

Councilor Gallagher moved, seconded by Councilor VanderWerf to approve Council Bill 8, Series 2015; A Bill for an Ordinance of the City Council of the City of Cherry Hills Village, Colorado Authorizing Appropriations for Fiscal Year 2016 on final reading.

The following votes were recorded:

| | |
|------------|-----|
| A. Brown | yes |
| VanderWerf | yes |
| K. Brown | yes |
| Hoellen | yes |
| Gallagher | yes |

Vote on the Council Bill 8-2015: 5 ayes. 0 nays. The motion carried.

Public Hearing - Council Bill 9, Series 2015; Amending Chapter 7, Article 1, Concerning Regulations Applicable to the Operation of Unmanned Aircraft Systems (second and final reading)

City Attorney Michow presented Council Bill 9, Series 2015 on second and final reading. She noted that Council had a lively debate and discussion during first reading as to what extent Council wished to regulate the operation of drones in the City and the regulation of drones in the City. Council had directed staff to modify and simplify the proposed ordinance for second reading. She explained that the revised council bill relocated the prohibited acts to the general operating requirements section and maintained the registration program. After review of the City of Chicago's drone ordinance, which was included with staff's memo, she suggested further revisions

including allowance of a waiver of the local registration requirement if the drone is registered at the federal level. She indicated that she was not recommending inclusion of a provision prohibiting drone operation "under the influence" after discussions with Chief Tovrea because the lack of express consent laws related to drone operation might make enforcement difficult. They had agreed that the provision prohibiting operation in a "reckless or careless manner" would cover those types of situations.

Mayor Christman asked about express consent.

City Attorney Michow explained that under state law when someone obtained a driver's license they expressly consented to undergoing alcohol blood testing if they are operating a motor vehicle within the state and if they refuse their license is revoked.

Councilor VanderWerf asked about the age limit for drone operation.

City Attorney Michow replied that staff had removed the age limit from the proposed ordinance so as not to duplicate the proposed federal regulations.

Councilor K. Brown asked if City Attorney Michow had any further information on the Town of Parker's drone ordinance.

City Attorney Michow replied that the Town of Parker's regulations mainly adopted the federal regulations with the additional provision of no operation on town property.

Councilor K. Brown asked what regulations the City already had in place which would address the concerns about drones regarding safety, nuisance and privacy.

City Attorney Michow replied that the City did not have any local regulations regarding surveillance.

Chief Tovrea added that there were state laws regarding surveillance and privacy and those issues could be covered under stalking, trespassing and harassment laws depending on the scenario.

Councilor Hoellen asked how property damage would be handled.

Chief Tovrea replied that the charge would likely be criminal mischief.

Councilor Hoellen questioned the application of the City's noise ordinance to drones.

Chief Tovrea replied that the City's noise ordinance utilized decibel levels.

Councilor K. Brown noted that the noise ordinance also included a time threshold.

Mayor Christman indicated that the City's current ordinances did not prohibit surveillance of private property if it was being done from public property. She suggested that the City may want to pass its own surveillance ordinance apart from the drone issue.

Chief Tovrea noted that Google and private investigators conducted surveillance of properties from the street all the time. She added that staff would have to discuss the issue with City Attorney Michow, the Municipal Judge and Prosecuting Attorney to determine how violations would be prosecuted. She noted that misdemeanor cases were usually heard in County Court rather than Municipal Court. She suggested that she and City Attorney Michow could first review the state law and work from there to ensure that these issues were addressed at some level.

Councilor K. Brown asked if harassment of dogs or horses was currently covered in the City Code.

Mayor Christman replied that she didn't believe there were any ordinances prohibiting harassment of horses.

Councilor K. Brown asked about the enforcement section of the drone ordinance.

City Attorney Michow replied that enforcement would fall under general violations of the Municipal Code, Section 1-4-20, which allowed for a fine up to \$2,650 per day per offence.

Councilor K. Brown asked about the impounding process for drones believed to be in violation of the proposed ordinance.

City Attorney Michow replied that staff would create a procedure for that process.

Chief Tovrea added that the drone would be kept in Property and Evidence, be presented as evidence in Municipal Court and, if allowed by the Municipal Judge, be released through Police Department procedures.

Councilor K. Brown expressed concern that the proposed ordinance did not specify how a drone owner would get their drone back if it were impounded.

Chief Tovrea noted that the decision to impound a drone would be at the discretion of the officer.

Councilor K. Brown suggested the proposed ordinance include general information for drone owners about what they can expect from the City related to impound.

City Attorney Michow replied that staff would rely on procedures currently in place at the Police Department or a provision could be added to the proposed ordinance stating that the procedures would be adopted by Council and posted on the City's website.

Councilor K. Brown noted that Chicago's ordinance included information on impounded drones.

Mayor Christman asked if Chicago's ordinance included commercial drones.

City Attorney Michow confirmed that the Chicago ordinance applied to any small unmanned aircraft.

Councilor K. Brown suggested that operator information not be required on the City's registration form as there could be multiple operators of any given drone.

City Attorney Michow explained that the intent was to have multiple points of contact in the case of an issue with a drone.

Councilor K. Brown questioned the need for information on the speed, weight and load of the drone.

City Attorney Michow replied that the intent was to help in the identification of drones.

Councilor K. Brown suggested that the type and model should be sufficient and indicated that drones have a serial number that could be added to the registration form.

City Attorney Michow noted that speed, weight and load of the drone were information easily found in the operation manual.

Councilor K. Brown asked what the \$25 fee would cover.

City Attorney Michow replied that it was a one-time fee to cover administration costs.

Councilor K. Brown asked if the registration forms would be subject to Freedom of Information Act requests.

City Attorney Michow confirmed that they would.

Councilor Hoellen questioned if the proposed ordinance would be automatically adjusted or revised if the FAA pre-empted any portion of the ordinance.

City Attorney Michow replied that the ordinance would not automatically be amended but that staff would not enforce pre-empted regulations and would bring forward revisions for Council's consideration. She noted that an emergency ordinance could also be passed if necessary in accordance with the Charter.

Mayor Christman opened the public hearing at 7:17 p.m.

Dale Honning, 2185 Crabtree Drive, Greenwood Village, explained that he used drones for his business and was certified in location and national laws. He noted that he had flown over several Cherry Hills Village properties. He indicated that he flew drones as a hobby as well and believed the proposed ordinance was an unnecessary burden for hobby operators. He noted that there was unlikely to be an accident or issue with flying a hobby drone in a park during the day.

Lucinda Greene, 2855 Cherry Ridge Road, speaking on behalf of the Cherry Hills Land Preserve, indicated that according to the Master Plan the City seeks to maintain a historically semi-rural pastoral open character, and the goals identified in the Plan were to preserve open lands, trails, wildlife habitats and view corridors without adversely impacting private property rights. She added that the Blue Ribbon Panel report also supported these goals. She explained that the Cherry Hills Land Preserve supported a ban on all drones in public lands and open space.

Hearing no further comments the public hearing was closed at 7:24 p.m.

Mayor Christman noted that public comment had been received by email from a resident who had been a victim of drones invading their privacy. The email stated that drones were a threat to animals and would have no good outcome.

Mayor Christman indicated that Councilor Griffin was unable to attend tonight's meeting but had told her that he would vote in favor of the proposed ordinance, the more restrictive the better.

Councilor Hoellen commended City Attorney Michow on making the revisions to the proposed ordinance after Council's discussion during first reading. He questioned the timeliness of the ordinance given the FAA's proposed regulations in the next six months. He noted that the language in the proposed ordinance dealing with local registration may be confusing for citizens given the federal registration program and the potential waiver of local registration. He questioned how the ordinance and local regulations would work if and when the FAA passed regulations. He expressed his concern with passing an ordinance that would only be enforced on a complaint basis.

Councilor VanderWerf indicated she supported adoption of the proposed ordinance now in order to be proactive about this issue. She noted that it would be better to pass regulations now before the holiday gift giving rather than after people are used to flying their drones without regulations.

Councilor K. Brown replied that there were already many operators flying their drones. She cautioned that passing an ordinance was different than educating the public. She noted that the federal registration process would include an educational element to ensure people are aware of safe operating guidelines. She noted she had asked staff to place copies on the dais of testimony given to the City of Chicago regarding their drone ordinance. She explained that an expert in the field had testified that the risk from drone use came from two places: unlicensed commercial users operating in defiance of FAA regulations, and casual users flying recklessly over crowds of people at excessive heights or near airports. She indicated that the risk came from operators not knowing how to fly safely, which was not addressed by passing an ordinance. She reiterated that she was uncomfortable with registration at the municipal level and noted that the FAA's proposed registration process was superior to the City's proposed process. She stated that a dual registration requirement was a burden on the City, drone operators and residents. She indicated that the objective of the registration was to identify the owner of a drone to ensure accountability and responsibility and duplicate systems were not needed. She noted that the proposed FAA registration had a minimum size for drones that were required to be registered. She indicated that the proposed FAA registration was free in order to encourage participation. She noted that some drones did not cost \$25 which was the City's proposed cost of registration. She expressed concerns about registration forms being subject to the Freedom of Information Act; that the City's proposed registration asked for operators to be listed as well as the owner when the owner has the ultimate responsibility; the lack of an educational component; the lack of testimony from experts in the field; the lack of feedback from the FAA. She remembered a recent experience Council had with moving too quickly on an issue without having all the facts. She noted that the discussion at the last meeting contained misinformation regarding how drones behaved when they lost battery power or a motor. She cautioned that Council did not have a thorough understanding of the issues. She indicated that the City's proposed ordinance had a whereas clause that stated people had been injured by drone accidents but the statement was unsupported. She expressed concern that the proposed regulations were based on personal preferences for types of recreation rather than on facts. She questioned the restriction of individual rights by prohibition of drone operation in public areas. She concluded that there were too many outstanding unanswered questions and not enough information for proper consideration of the proposed bill, and the FAA was likely to pass regulations in the near future, so at minimum it should be tabled for further consideration until January.

Councilor Gallagher indicated that following the Master Plan was essential to maintaining the City's semi-rural character and the proposed ordinance supported that goal. He noted that issues with drones were often caused by operator error and the proposed ordinance addresses reckless use. He noted that the holiday season would result in more drones being operated and Council should be proactive. He agreed that regulations should be coupled with education through the Crier, but that it was ultimately the owner's responsibility to operate in a responsible manner. He indicated his support of the proposed ordinance with the revisions since first reading.

Councilor K. Brown reiterated her concern about dual registration with both local and federal processes.

Mayor Christman noted that there were no current federal regulations.

Mayor Pro Tem A. Brown indicated his support of the proposed ordinance and noted that it was much improved since first reading. He noted that he viewed this as a land use issue to protect private property rights. He added that the FAA was not involved in land use issues. He suggested that enforcement of the drone regulations could be similar to the photo red light at University and Belleview where only warnings were issued for the first six months instead of citations until people became more aware of the new regulations. He noted that the FAA regulated commercial drones but not hobby drones, which is what the proposed ordinance dealt with. He indicated that it was appropriate for the Council to act on this issue and that the City should not automatically default to a federal agency. He added that there would not be a dual registration since the proposed ordinance allowed the City to accept the federal registration in lieu of registering with the City. He indicated that the issue was less about aviation and more about land use, privacy and the peaceful enjoyment of property. He noted that as a local government the Council should make that statement to the FAA for their consideration.

Councilor VanderWerf added that drones negatively affected animals, both domestic and wildlife. She emphasized the importance of protecting wildlife habitat. She noted that wildlife was a part of the enjoyment of open space and natural areas, and that the presence of drones in public space at any time would reduce that enjoyment. She indicated her support of the proposed ordinance.

Mayor Christman noted that drones could be compared to motorized vehicles which were prohibited in City trails and parks.

Councilor K. Brown reiterated that the City's proposed registration fee was \$25 and the FAA's was free. She noted that the proposed ordinance did not protect wildlife.

Mayor Pro Tem A. Brown replied that the prohibition of drone operation in public areas was a protection of wildlife areas. He suggested that the City's registration fee be reduced to \$10.

Councilor Gallagher indicated that the important thing was to have drones be registered.

Councilor K. Brown replied that the proposed FAA registration was free in order to encourage registration.

Councilor Hoellen agreed with Mayor Pro Tem A. Brown that the FAA needed to clarify their regulations and that the City's ordinance would send that message. He noted that the FAA needed to specifically and expressly pre-empt the City's regulations or say that they would not pre-empt, and suggested adding a whereas clause to that effect. He questioned if the City was prepared to defend the proposed ordinance if it was challenged.

Mayor Christman asked who would have standing to challenge the City's ordinance.

City Attorney Michow replied that it depended on the nature of the challenge.

Councilor Hoellen suggested that the challenge may come from an operator who receives a citation for violating the ordinance but argues that the City is pre-empted by the FAA. He questioned again if the City was prepared to defend this ordinance.

Mayor Pro Tem A. Brown indicated he was prepared to defend the proposed ordinance on the basis of private property rights.

Councilor VanderWerf noted that residents were good at reporting violations of the Code to the City and indicated she was not worried about the ordinance being enforced.

Councilor Hoellen indicated that Councilor K. Brown had made several good points. He agreed with Mayor Pro Tem A. Brown's statement about property rights and Councilor Gallagher's statement about the Master Plan. He noted that the City allowed many different types of recreation in its parks and open spaces but that this ordinance would specifically prohibit one type of recreation.

Mayor Christman reiterated that the City did not allow motorized vehicles in its open spaces.

Mayor Pro Tem A. Brown added that toy cars were not allowed in the street.

Councilor K. Brown acknowledged that she was in the minority in her opposition to the proposed ordinance. She itemized her concerns about the proposed ordinance: the whereas clause regarding injuries without support; the terms "model aircraft" and "navigable airspace" were defined but not used in the ordinance; she questioned the purpose and intent in Section 7-7-10; Section 7-7-40(2) asked for more information than necessary on the City registration form; the City registration form would unnecessarily expose citizens and other owners to privacy issues; she suggested removing the local registration requirement in lieu of the FAA registration; the registration fee should be lowered to be reasonable and to encourage registration; education should not be on the content of the ordinance but on safe operation of hobby drones.

Councilor Gallagher indicated that the drone owner should be responsible for educating themselves and any operators on safe operation of their drone.

Councilor K. Brown replied that if the City was concerned with safe operation then it should promote education.

Mayor Christman asked what Councilor K. Brown would suggest.

Councilor K. Brown suggested that owners should be required to acknowledge receipt of the Know Before You Fly brochure when they register their drones. She noted that while the City could not guarantee that the owner would read the brochure they could at least help to be part of the solution.

Mayor Christman suggested that acknowledgement of receipt of the ordinance could be added as well.

Councilor Hoellen agreed that it was important for citizens to understand the regulations. He noted that it was the impacts rather than the drones that were the issue. He agreed that education about the possible impact of drones was important but questioned the City's responsibility for how operators fly their drones. He agreed with Councilor K. Brown that the FAA's registration program was superior to the City's and suggested registration that the City's be made consistent with the FAA's.

Councilor K. Brown suggested that the City's proposed ordinance be amended to include information about impounded drones similar to the Chicago ordinance.

Mayor Christman asked about the procedure if a drone violated the ordinance.

Councilor Hoellen indicated that the registration was the most important part of the ordinance because it put owners on notice to follow the rules.

City Attorney Michow indicated that the Police Department would respond to and investigate a complaint or issue involving a drone the same way they would any other

violation of the Code. They would use their discretion, skills and established procedures to determine probable cause.

Mayor Pro Tem A. Brown compared the enforcement of this ordinance to enforcement of the City's construction hours regulations. He noted that officers were not posted at construction sites but rather responded to calls.

Mayor Pro Tem A. Brown moved to approve Council Bill 9, Series 2015; Amending Chapter 7 of the Municipal Code to Add a New Article VII, Concerning Regulations Applicable to the Operation of Unmanned Aircraft Systems on second reading with the following amendments: deleting the sixth whereas clause; deleting subsections (b), (d) and (f) of Section 7-7-40(a)(2); and changing the registration fee in Section 7-7-40(a)(3) from \$25 to \$10.

Councilor VanderWerf asked if a \$10 registration fee would cover staff time.

City Clerk Smith indicated that registration would include entry of the information into the City's database and the cost of a registration sticker for each drone.

Mayor Christman asked about impoundment procedures and future adjustment of the registration fee.

City Attorney Michow replied the registration fee was subject to modification by Council resolution. She added that dog registration was \$10 per dog on an annual basis.

Mayor Pro Tem A. Brown indicated that he believed impoundment and return of property was already addressed in the normal judicial procedures at the judge's discretion and was not specific to different types of property.

Councilor K. Brown noted that the proposed FAA registration was per person rather than per aircraft.

Mayor Pro Tem A. Brown reiterated that the proposed FAA registration was not official and it was unknown what the final registration would involve.

Councilor Hoellen questioned the need for the model of the drone on the registration.

Councilor K. Brown suggested that the City's registration include drone serial numbers and asked how change of ownership would be dealt with.

City Attorney Michow noted that the wording could be changed to include more flexibility in the registration process.

Mayor Pro Tem A. Brown suggested adding wording to Section 7-7-40(a)(3) stating that the City Council may establish other registration requirements by resolution.

Councilor K. Brown suggested changing the wording in Section 7-7-40(a)(1) from "may" to "shall" accept a federal registration in lieu of City registration.

Mayor Christman asked how the City would obtain contact information from the federal registration.

Councilor K. Brown agreed that was not clear and suggested that the City participate in the final rule making and provide that feedback to the FAA.

Mayor Christman indicated that if the FAA pre-empted local registration than the City would have to accept the federal registration in lieu of City registration, but if they did not and the City did not have access to federal registration data then the City would still need its local registration.

Mayor Pro Tem A. Brown reiterated his amendment to his motion to add wording to Section 7-7-40(a)(3) stating that the City Council may establish other registration requirements by resolution.

Councilor K. Brown suggested adding that wording to Section 7-7-40(a)(1).

City Attorney Michow agreed that the new wording was more appropriate in Section 7-7-40(a)(1).

Councilor Gallagher seconded the motion.

City Clerk Smith reiterated the amendments to the proposed ordinance: deleting the sixth whereas clause about drone accidents; adding wording to Section 7-7-40(a)(1) stating that the City Council may establish other registration requirements by resolution; deleting subsections (b), (d) and (f) of Section 7-7-40(a)(2); and changing the registration fee in Section 7-7-40(a)(3) from \$25 to \$10.

The following votes were recorded:

| | |
|------------|-----|
| VanderWerf | yes |
| K. Brown | no |
| Hoellen | yes |
| Gallagher | yes |
| A. Brown | yes |

Vote on the Council Bill 9-2015: 4 ayes. 1 nay. The motion carried.

NEW BUSINESS

Public Works Facility Preliminary Design Review from Maintenance Design Group

Interim City Manager/Director Goldie presented the preliminary report on the Public Works Facility. He explained that Maintenance Design Group (MDG) had conducted a space-needs analysis and had determined that the site at Englewood and the site on Hampden referred to as "the pie" were not sufficient for the needs of the Public Works Department. An additional 1,500 square feet were needed at another location, possibly the Village Center. He noted that MDG's space analysis closely aligned with that of Norris Design Group from 2013, and he was confident that this analysis was accurate.

Councilor Hoellen indicated that the Public Works and Parks Department had done a tremendous job providing exceptional service in the current space and questioned the need to increase from 8,000 square feet to 12,000 square feet.

Interim City Manager/Director Goldie replied that additional space would increase safety and efficiency. He noted that currently many pieces of equipment had to be moved in order to get to the item needed. He noted that there would likely be different inefficiencies to deal with if the Public Works Department moved from its current site to a combination of the Englewood site, the pie, and the Village Center sites.

Mayor Christman noted that the original estimate for a new Public Works facility, including the land cost for the Englewood site, was \$3.5 million, but the MDG study estimated \$7.5 million excluding land costs and cleaning up the current site.

Councilor Hoellen indicated that the new estimate had been lowered to \$6.4 million. He noted that \$3.5 million had been in the budget for 2015 and \$7.5 was in the long range financial plan.

Mayor Christman noted that the City was still working with Englewood to determine the land price.

Interim City Manager/Director Goldie noted that moving the department to Englewood would require an adjustment in operations with additional time lost and additional fuel costs because of the increased commute.

Mayor Pro Tem A. Brown asked what areas were counted as part of the current 8,000 square footage.

Interim City Manager/Director Goldie replied that the current 8,000 square footage consisted of the old Public Works building, the old fire station, and current offices in the Village Center.

Mayor Pro Tem A. Brown asked about the demand and costs of public works versus parks employees, vehicles and shop needs.

Interim City Manager/Director Goldie replied that the two divisions were nearly equal.

Mayor Pro Tem A. Brown suggested that one division could be moved first and the second later in order to phase the transition. He asked about constructing the new building in two phases.

Ken Booth of MDG replied that constructing a building in two phases would be more costly than constructing it in one phase.

Mayor Christman asked about the need for heated storage.

Interim City Manager/Director Goldie explained that only vehicles used for snow operations would be housed in heated storage in order to eliminate the need to run them for 30 minutes to heat them up before they were operational.

Mayor Christman expressed concern with spending so much on a new Public Works facility without having purchased any open space.

Councilor Hoellen noted that no one had agreed to the proposed price yet.

Mayor Pro Tem A. Brown indicated that implementing the John Meade Park Master Plan involved moving Public Works.

Councilor Hoellen questioned the need to move Public Works because of the John Meade Master Plan versus needing to move or remediate it because of other issues.

Interim City Manager/Director Goldie noted that the MDG report was the industry standard and gave the City somewhere to begin the planning process, but was not the final plan for Public Works.

Mayor Christman suggested that the Council conduct a study session on this issue, and asked staff for information on what other municipalities did. She questioned what in the new plan was a safety issue versus what would be nice to have.

Councilor K. Brown indicated that she did not want to spend any amount on something that was not an improvement and would not serve the City for years to come. She agreed she was sensitive to the cost.

Councilor Hoellen stated that he would like to review the report line by line with Interim City Manager/Director Goldie in order to understand all the issues and variables thoroughly.

Mayor Christman asked Council if they should delay this process in order to involve the new City Manager once the hiring process was completed.

Council agreed to not delay the Public Works Facility process.

Council Bill 10, Series 2015; Repealing and Reenacting Municipal Code Section 16-16-40 Concerning Fences (first reading)

Director Zuccaro presented Council Bill 10, Series 2015 on first reading. He explained that the intent of the bill was to address concerns with the negative impact of certain types of fences on view corridors, the semi-rural character of the City, and safety related to shading causing icy conditions. The Planning and Zoning Commission (P&Z) and Parks, Trails and Recreation Commission (PTRC) had discussed the proposed bill on several occasions both separately and during joint meetings. The two commissions were not able to come to a final recommendation so staff was presenting two versions of the council bill for Council's consideration. Table 3 from the staff memo summarized the two recommendations compared to the current City Code.

| Fence Location | Current Code (Exhibit C) | Proposal - Version 1 P&Z (Exhibit A) | Proposal - Version 2 PTRC (Exhibit B) |
|---|--|---|---|
| Parallel to public trails, parks, or open space • All Residential Zone Districts | 6 ft. max. height and up to 100% solid | 6 ft. max. height and less than 25% solid | 6 ft. max. height and less than 25% solid |
| Front yards • R-1, R-2, R-3, and R-3A districts • R-4 and R-5 districts | 6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards* 6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards* | 4 ft. max. height and less than 50% solid (between front property line and front façade line) No fence allowed (between front property line and front façade line) | 4 ft. max. height and less than 50% solid (between front property line and front façade line) No fence allowed (between front property line and front façade line) |
| Rear or side yards • All Residential | 6 ft. max. height and up to 100% | 6 ft. max. height and up to 100% | 6 ft. max. height and up to 100% |

| Zone Districts | solid | solid | solid |
|---|---|---|---|
| Rear and side yards adjacent to public road • All Residential Zone Districts | 6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards* | 6 ft. max. height if less than 50% solid; or 4 ft. max. height if more than 50% solid; or 6 ft. max. height and more than 50% solid subject to setback/landscape standards* | 6 ft. max. height and less than 25% solid or Up to 4 ft. maximum height and more than 25% solid subject to setback/landscape standards* |
| Any fence adjacent to State Highway | 8 ft. max. height and up to 100% solid subject to setback/landscape standards* | 8 ft. max. height and up to 100% solid subject to setback/landscape standards* | 8 ft. max. height and up to 100% solid subject to setback/landscape standards* |
| Any fence adjacent to other select arterial roads | N/A | Adjacent to S. Clarkson St., E. Happy Canyon Rd., S. Colorado Boulevard, & E. Quincy Avenue: • 6 ft. max. height and up to 100% solid subject to setback/landscape standards* | Adjacent to S. Clarkson St., E. Happy Canyon Rd: • 6 ft. max. height and up to 100% solid subject to setback/landscape standards* |

*Setback and Landscape Buffer Requirements (choice of A or B):

- A. Pick any two of the following three:
1. Setback 25 ft. from edge of paved road or 40 ft. from centerline of unpaved road.
 2. Landscape with minimum of 1 tree every 20-30 ft.
 3. Landscape with planting to cover 25% of fence surface
- B. Indent every 15-25 ft. and plant indents with 2 trees or evergreen shrubs

In addition to the items addressed in Table 3, the proposed codes included the following provisions and clarifications:

- Any fence that that is replaced be brought into compliance with the new code, and any repair that exceeds 25% of the fence area within a 24-month period would constitute a replacement and need to be brought into full compliance. This provision is intended to bring non-conforming fences into compliance.
- Clarification that sport court fences could be up to 10 feet in height. The current code does not have a maximum height and only states "except where reasonably required for tennis courts or other uses reasonably requiring higher fences." The Village has historically allowed 10-foot tall fences under this code provision.
- Fencing in the C-2, commercial zone district would require approval under a Conditional Use Permit.
- Fencing for a nonprofit institution, private club or private recreation facility would require approval under an Expanded Use Permit.
- The proposed definition of Public Trail references on-street trails designated by the Cherry Hills Village Parks and Trails Map. This map will need to be adopted by resolution of the City Council concurrent with second reading of the proposed ordinance.

Director Zuccaro showed photos of various fences throughout the City with differing percentages of openness.

Councilor K. Brown asked how height of a fence was calculated.

Director Zuccaro replied that fences were measured from natural historic grade.

Councilor Hoellen asked about the definition of open space in relation to the proposed regulations.

Director Zuccaro replied that open space had to be public in order to trigger the proposed regulations.

Councilor K. Brown asked what percentage of existing fences would not comply with the new regulations.

Director Zuccaro replied that nonconformance would be high and noted that along some sections of trails in the City over half of the adjacent fences would be nonconforming to the proposed regulations.

Councilor K. Brown expressed concern with pet safety with open fences.

Director Zuccaro replied that wire mesh was allowed. He added that staff had asked members of the equestrian community if four feet was tall enough to safely contain a horse and the feedback received was that it was tall enough.

Councilor Gallagher asked about walls versus fences.

Director Zuccaro replied that the Code encompassed walls in the definition of fences.

Councilor Hoellen indicated that based on the photos he believed 30-40% open was sufficient and asked if P&Z or PTRC had considered other percentage thresholds besides 25% and 50%.

Director Zuccaro replied that they had not and added that neither commission had the benefit of the photos during their discussions.

Councilor K. Brown expressed concern that the wrought iron fence would be the only option for six foot fences at 25% open but that it was expensive. She asked about chain link fencing.

Director Zuccaro replied that both commissions had discussed chain link fencing but both had recommended not including any design principles.

Mayor Christman noted that a solid wood fence was more expensive than a wrought iron fence.

Councilor Hoellen asked if chain link fence was allowed in front yards.

Director Zuccaro replied that it was.

Councilor K. Brown indicated her overall support of the new regulations but expressed concern regarding the financial impact on residents who would have to replace existing fences to come into compliance. She asked if the 25% repair threshold was of a lot line segment or of the entire fence.

Director Zuccaro replied it was of the lot line segment.

Councilor VanderWerf noted that residents could replace less than 25% of their fence every two years in order to avoid bringing their entire fence into compliance.

Councilor Hoellen compared it to undergrounding utilities whereby the City had a goal and changes would occur slowly over time as different properties were brought into compliance.

Councilor Gallagher expressed his support of the proposed regulations and warned about the effect six foot solid fences would have on the view corridor down Quincy Avenue.

Councilor K. Brown expressed concern with the difference in noise protection a solid fence would have versus a more open fence. She noted that backyard fences served a different purpose than front yard fences.

PTRC Chair Robert Eber explained PTRC's thought process behind their recommendations. He noted that noise could be addressed with other methods besides fences and privacy could be addressed with landscaping. He warned against the maze-like feel that could result along City streets and trails if the current Code was not amended.

Councilor K. Brown expressed concern with the expense to install landscaping for privacy.

Councilor Hoellen noted that landscaping was not necessarily expensive.

Councilor K. Brown asked how the two sides of Quincy would be regulated under the proposed ordinance.

Chair Eber explained that the south side of Quincy was parallel to an adjacent trail and therefore both versions of the bill would require fences to be no more than 6 feet maximum height and less than 25% solid. The north side of Quincy would have the same regulation with the additional option of a 4 foot 100% solid fence with setback/landscape requirements in the PTRC version, and a 6 foot 100% solid fence with setback/landscape requirements in the P&Z version.

Councilor Gallagher suggested addressing the issue by different zone districts, especially R1 versus R4 and R5.

Chair Eber replied that the PTRC had contemplated Quincy Avenue as a whole rather than by zone district. The intent of the proposed regulations was to drive the community into a uniform feeling of openness.

Mayor Pro Tem A. Brown indicated he wanted to look at the various fences throughout the City in person before making a decision on the proposed regulations.

Chair Eber noted that fences in backyards between properties not adjacent to a road or trail was discussed but was not adopted for recommendation by PTRC.

Councilor Hoellen indicated his support of version 2 of the council bill with the one amendment to not allow chain link fences in front yards.

Chair Eber explained that the reluctance to prohibit chain link was because it was less expensive than other materials.

Director Zuccaro reminded Council that the City was currently enforcing a moratorium on applications for fences that would be impacted by the new regulations.

Councilor Hoellen questioned how the new regulations might impact variance applications to the Board of Adjustment and Appeals.

Council determined to table consideration of the council bill until the January 5th meeting.

REPORTS

Mayor's Report

Mayor Christman reported that she continued to work on the zip code issue and was submitting the application for the application this week. She reported that she had joined several other mayors with municipalities in Arapahoe County in questioning how County Commissioners are determined.

Members of City Council

Councilor Gallagher had no report.

Mayor Pro Tem A. Brown reported that he had attended the Colorado Municipal League's open house.

Councilor VanderWerf reported that the Public Art Commission (PAC) was nearly complete with its fundraising for *Charlo*.

Councilor Hoellen asked about the \$25,000 donation from the PAC towards the purchase.

Councilor VanderWerf explained that the PAC had raised over \$50,000 from fundraising events such as dinners and art shows since its inception with the purpose of purchasing a piece of art for the City. She clarified that these were private donations and not City funds.

Councilor K. Brown reported on the CML Policy Committee Meeting last Friday. She explained that there had been some controversy at this meeting about road and bridge mill levies which were collected by counties and distributed to cities. The current process was being questioned and alternatives were being discussed.

Mayor Christman noted that the City's roads would not suffer but the roads in poorer communities might.

Councilor K. Brown reported that another issue being discussed was increasing the number of signatures required to place a constitutional amendment on the ballot.

Councilor Hoellen asked if staff had trainings or procedures in place in case of an attack.

Chief Tovrea replied that it was a goal for 2016 to establish procedures and trainings.

Members of City Boards and Commissions

PTRC Chair Robert Eber reported that he was honored to be the new chair of PTRC. He reported that the City would hold the annual Tree Lighting party on Friday. He indicated that PTRC's projects for 2016 included implementation of the John Meade Park and Alan Hutto Memorial Commons Master Plan; defining the various qualities of open space; and working on new farmers markets with the Mayor.

City Manager & Staff

Interim City Manager/Director Goldie noted that monthly reports were included in Council packets and financial statements had not been available for inclusion in the

packet but were on the dais. He noted that staff would be bringing several issues for Council's consideration at the January 5th meeting including amended Rules of Procedure, a Council retreat, and the 2016 November election.

City Attorney

City Attorney Michow had no report.

ADJOURNMENT

Mayor Pro Tem A. Brown moved, seconded by Councilor K. Brown to enter into Executive Session pursuant to CRS 24-6-402(4)(b) for the purpose of seeking legal advice concerning the Cooper v. Cherry Hills Village litigation, and further pursuant to C.R.S. Sec. 24-6-402(4)(a) for the purpose of discussing matters related to the acquisition of real property and pursuant to C.R.S. Sec. 24-6-402(4)(e) to develop strategy for negotiations and to instruct negotiators relating to possible acquisition of real property, and upon conclusion of the Executive Session the Council will be adjourned.

The following votes were recorded:

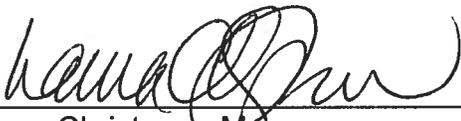
| | |
|------------|-----|
| K. Brown | yes |
| Hoellen | yes |
| Gallagher | yes |
| A. Brown | yes |
| VanderWerf | yes |

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

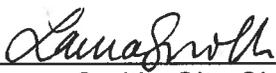
The executive session began at 10:19 p.m.

The meeting adjourned at 11:50 p.m.





Laura Christman, Mayor



Laura Smith, City Clerk