

## RECORD OF PROCEEDINGS

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Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, March 21, 2023 at 6:30 p.m.  
City Hall, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113

### **CALL TO ORDER**

Mayor Pro Tem called the meeting to order at 6:30 p.m.

### **ROLL CALL**

Mayor Pro Tem Randy Weil, Councilors Earl Hoellen, Al Blum, Susan Maguire, and Robert Eber were present on roll call. Also present were City Manager Chris Cramer, City Attorney Kathie Guckenberger, Deputy City Manager/Public Works Director Jay Goldie, Community Development Director Paul Workman, Police Commander Brennan Leininger, Human Resources Manager Kathryn Ducharme, Parks Project & Operations Manager Emily Black, and City Clerk Laura Gillespie.

Absent: Mayor Katy Brown and Councilor Dan Sheldon

### **PLEDGE OF ALLEGIANCE**

The Council conducted the pledge of allegiance.

### **AUDIENCE PARTICIPATION PERIOD**

None

### **REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES**

None

### **CONSENT AGENDA**

Councilor Blum removed Item 6a from the consent agenda.

Councilor Hoellen removed Item 6d from the consent agenda.

Councilor Hoellen moved, seconded by Councilor Eber, to approve the following items on the Consent Agenda:

- b. Agreement for Professional Services for Pond Maintenance in John Meade Park and Quincy Farm
- c. Construction Contract with Vance Brothers Inc. for the 2023 Chipseal Capital Improvement Program

The motion passed unanimously.

### **ITEMS REMOVED FROM CONSENT AGENDA**

#### **Item 6a. Approval of Minutes – March 7, 2023**

Councilor Blum indicated he was not present at the last meeting and would abstain from voting on the minutes.

Councilor Eber suggested edits to the minutes on pages 2, 4, and 7.

Councilor Eber moved, seconded by Councilor Hoellen, to approve the minutes as amended.

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The motion passed with 3 yes and 1 abstention.

### Item 6d. Interim City Manager Employment Agreement

Councilor Hoellen explained he felt it was significant enough not to go through on the consent agenda; he was pleased Council was able to offer their current excellent City Manager the leave of absence to take advantage of a special opportunity for his family, and to do so by having the good fortune of hiring their previous City Manager to be interim, he did an excellent job previously.

Mayor Pro Tem Weil agreed and added the negotiations had been very reasonable.

Councilor Blum agreed it was a great situation for the City.

Councilor Hoellen moved, seconded by Councilor Blum, to approve Item 6d.

The motion passed unanimously.

### UNFINISHED BUSINESS

None

### NEW BUSINESS

#### Resolution 11, Series 2023; Accepting an Anonymous Donation for the Great Horned Owl Sculpture in the 'Resilience' Series on Behalf of the Cherry Hills Village Art Commission

Manager Black provided background for agenda items 9a and 9b; last summer the Art Commission (CHVAC) selected artist Joe Norman to design custom art to be placed in John Meade Park; the proposal was for a series of three sculptures; the pieces appeared to be local wildlife when viewed from one direction and children playing when viewed from another direction; last year the Parks, Trails and Recreation Commission (PTRC) and City Council provided approval in concept for the 'Resilience' sculpture series subject to fundraising and contract approval; since then the CHVAC had been publicizing and fundraising for the sculptures; the public response had been overwhelmingly positive; she presented Resolution 11, Series 2023 for Council consideration.

Councilor Hoellen suggested that the words "with gratitude" be added to all donation resolutions.

Mayor Pro Tem Weil asked if the City would thank the anonymous donor.

Manager Black suggested the Council could sign a letter and staff could deliver it to the donor's representative. She explained Resolution 11, Series 2023 would accept an anonymous donation of \$40,000 for the purchase of the owl sculpture; on behalf of the CHVAC she thanked the donor.

Mayor Pro Tem Weil asked if a plaque would list the major donors.

Manager Black confirmed that was planned and would likely be placed indoors similar to the plaque in the City Hall lobby for the Charlo sculpture.

Councilor Eber indicated he appreciated the donation; he asked for a legal opinion if the donor's desired anonymity was shielded from an open records request.

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City Attorney Guckenberger replied she normally provided a legal opinion in response to a particular open records request.

Manager Black noted this donor had not been concerned with remaining completely anonymous, rather they wanted to avoid being very publicly thanked for the donation; based on past experience, donors who wished to remain completely anonymous knew how to do that by only using intermediaries and representatives in order to have no records trail that could be subject to an open records request. She did not believe this donor desired that level of anonymity.

Councilor Hoellen moved, seconded by Councilor Blum, to approve Resolution 11, Series 2023; accepting an anonymous donation for the Great Horned Owl sculpture in the 'Resilience' series on behalf of the Cherry Hills Village Art Commission with the amendment to insert "with gratitude" in Section 1 of the resolution.

The motion passed unanimously.

### Contract for the 'Resilience' Sculpture Series for John Meade Park

Manager Black explained the contract was for the design, fabrication, engineering, and installation of the entire three sculpture series by Joe Norman; the contract immediately commissioned the creation of two of the sculptures at a cost of \$80,000; because the CHVAC was still fundraising and had about \$10,000 left to raise the contract was structured so that the third sculpture, which would be the hummingbird, would not be started until the fundraising was complete and written direction was provided by staff to the artist; if the fundraising goals were not met the City would not proceed with purchasing the third sculpture; the full cost of the three sculpture series was \$120,000; the CHVAC had also included \$680 in the project cost to account for plaques and a possible video of the sculptures, and that amount was outside of the contract cost; of the contract cost \$14,000 would be spent from the CHVAC budget and the remainder from fundraising; the CHVAC would hold a final fundraiser for the project next month; approximate locations for the sculptures in John Meade Park and Alan Hutto Memorial Commons were shown on the map in Council packets; the exact locations would be determined in coordination with the artist, CHVAC, and City staff; the locations were selected to be outside the floodway and floodplain; the artist planned the sculptures to be ready for installation this fall.

Councilor Blum asked what would happen if fundraising for the third piece was not achieved until the end of the year.

Manager Black replied in that case the City would do a separate written extension of the contract; the CHVAC's fundraiser was on April 26<sup>th</sup>.

Councilor Hoellen noted the contract was not very clear on the option. He asked what the CHVAC would do the rest of the year if they spent all their budget on this project.

Manager Black explained the CHVAC had additional funds in their 2023 budget separate from this project; they planned to have another art show later in the year.

Councilor Hoellen questioned Section 9 and suggested future contracts include the right for the City to use two-dimensional reproductions for commercial use as well as non-commercial use.

Councilor Maguire noted the sculptures were painted stainless steel and asked if they would be hot to the touch.

Manager Black explained that the artist has other sculptures in the area and visitors are able to interact with and touch them; she stated she could reach out to the artist to find out.

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Councilor Maguire referred to paragraph 12 of the contract, which specifies the City can maintain, relocate, and remove the art. She stated she thought the City should also be able to sell the art and that she would like to see it specifically mentioned in the contract.

City Attorney Guckenberger stated she thought it was inherent in ownership, and there is not a limitation on selling the art within the contract. She asked Manager Black if the artist had agreed in principle to the contract.

Manager Black affirmed.

City Attorney Guckenberger continued that the City could confirm with the artist; the suggested motion allowed the City Attorney to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the agreement as may be appropriate and do not substantially increase the obligations of the City.

Councilor Maguire agreed she did not think Council had to change the motion.

Mayor Pro Tem Weil asked about maintenance of the sculptures.

Manager Black replied the sculptures were reportedly very low maintenance and the artist used automotive paint; the City contracted with a company to clean the City's sculptures each year at an average cost of \$150 per year per sculpture.

Councilor Eber asked about a warranty.

Councilor Blum noted the proposal included long term maintenance.

Manager Black replied the proposal was instructions for the City to maintain the sculptures; the contract did not include a warranty.

City Clerk Gillespie did not recall a warranty for other art owned by the City.

Councilor Hoellen asked what would happen if the City found out the pieces were not original.

City Attorney Guckenberger replied if the City received any notification staff would comply with any requirements of the copyright act; Section 11 of the contract contained a warranty.

Councilor Maguire added Section 3 of the contract stated the work "must be of high quality, in compliance with generally accepted standards of workmanship".

Councilor Blum moved, seconded by Councilor Maguire, to approve the Art Purchase Agreement with Joe Norman in the amount of \$120,000.00; \$80,000.00 is fully authorized immediately upon signature of the contract, and \$40,000.00 is authorized upon written notice to the artist by city staff once sufficient funds are raised by the Cherry Hills Village Art Commission. I further move to authorize the City Attorney to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the agreement as may be appropriate and do not substantially increase the obligations of the City and to authorize the Mayor to sign such agreement when in final form.

The motion passed unanimously.

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### Board and Commission Terms and Duties

City Clerk Gillespie explained two Board of Adjustment and Appeals (BOAA) terms and two Art Commission (CHVAC) terms were ending in May; three members wished to be reappointed and staff was seeking Council direction on their reappointment.

Councilor Maguire asked if staff had consulted the chair of each board about reappointing the members.

City Clerk Gillespie replied they had not; staff could ask the other co-chair of the Art Commission; there had not been a meeting since the BOAA member had been appointed.

Council had no objection to reappointing the members.

City Clerk Gillespie explained one BOAA member did not wish to be reappointed; Councilor Blum and Councilor Eber had recently interviewed many applicants for other positions; three applicants remained from that process; Councilor Blum and Councilor Eber recommended appointment of one of the applicants to serve on the BOAA instead of soliciting new applications; the applicant had indicated to staff their willingness to serve on BOAA.

Councilor Blum added he and Councilor Eber believed the applicant to be qualified to serve on the BOAA.

Councilor Hoellen questioned if the applicant understood the variance requirements.

Councilor Eber replied although they had only discussed the other positions with the applicant every board and commission required a certain amount of standing ground and delivering tough news, and the applicant was willing to do that work; the applicant's background was applicable to BOAA; a new solicitation might result in no new applications given the recent solicitation.

Council had no objection to the process.

Councilor Hoellen stated the Board and Commission Policy needed to be updated and suggested Council direct staff to bring amendments back for Council's consideration.

City Clerk Gillespie presented draft duties and responsibilities for each board and commission for Council's input.

Councilor Eber noted the staff memo said Katie Agron but it should be Kate Murphy.

Mayor Pro Tem Weil suggested Council remit revisions to the documents to staff within a week.

Councilor Hoellen offered to work directly with staff on the policy amendments.

### Village Crier Report Guidelines

City Clerk noted Councilor Maguire was the Crier liaison; it was traditional for the Mayor to write a report for each issue; Mayor Brown wanted to alternate with Council members to write the report; Councilor Hoellen had asked for clarification of expectations on the reports; staff was seeking direction from Council on the draft guidelines.

Councilor Hoellen asked why the Mayor would review Council report topics instead of just the Crier liaison; he asked if there was a list of possible topics.

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Councilor Maguire agreed that requirement could be removed and she could help come up with topics.

Mayor Pro Tem Weil asked how the Council member would know they were writing their report from the view of the entire Council.

Councilor Maguire replied there were topics where the Council was not all of the same opinion; the Crier should not be used by anyone as their personal forum; they could address those issues as they came up.

City Manager Cramer indicated the Crier liaison and City staff could help guide reports.

Councilor Hoellen stated the reason the Mayor had a report in the Crier was because Council allowed it, and Council could take the report back from the Mayor anytime they wanted to do so.

### **REPORTS**

#### **Mayor Pro Tem's Report**

Mayor Pro Tem Weil reported the BOAA had not met in over two years; he had discussed the issue with City Manager Cramer and Director Workman about holding a training session. He noted the only feedback he had received so far about his report in the Crier was regarding electric vehicles and noise; at least one resident was concerned about leaf blowers in their neighborhood. He reported DRCOG had a new chair whose stance on local control in relation to the anticipated state legislation mirrored the City's; RTD was working on updating and simplifying their rate structure.

#### **Members of City Council**

Councilor Eber reminded everyone about safety in the Village; he came upon and reported to the Police a stolen and abandoned vehicle in their neighborhood over the weekend. He requested a legal opinion so that Council and staff could accurately communicate the City's ability to maintain a donor's desired anonymity to future potential donors.

City Manager Cramer replied staff could provide a legal opinion.

Councilor Eber asked about a broader discussion on the definition of hardships when considering variances.

City Manager Cramer replied a discussion was scheduled for the May 16<sup>th</sup> Council meeting, not attached to a specific project.

Councilor Eber reported the Hampden Mobility & Safety Study had generated a lot of interest and concern among his neighbors.

Councilor Hoellen asked if the higher concern was access for residents or cut through traffic.

Councilor Eber replied historically cut through traffic was a higher concern, but with a potential closing of left turns from Hampden residents seemed more concerned about access.

City Manager Cramer clarified there had been no recommendation from the committee on eliminating the left turn at Dahlia, but there was a proposal for a protected left turn at Dahlia.



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Councilor Eber indicated he was only communicating that there were alternatives discussing left turns on Hampden in general; one resident commented the real problem at the Dahlia/Hampden intersection was the Happy Canyon light cycle.

City Manager Cramer replied five pointed intersections were a universal problem and the study's traffic engineers were well versed in all the variables and possible solutions.

Mayor Pro Tem Weil asked about the study website and public input.

Deputy City Manager/Director Goldie replied the study website was still up but public input through the website was closed; Council could submit comments to him and he would pass them onto the study representatives; there would be one more public input meeting in May and staff would communicate that to Council when details were known.

Councilor Blum asked about the Parkway issue.

Deputy City Manager/Director Goldie replied the residents were working with the Church on that issue and it was not scheduled to come to Council at this time.

Councilor Hoellen thanked HR Manager Ducharme, City Attorney Guckenberger, and City Clerk Gillespie for their work on the Interim City Manager process.

Mayor Pro Tem Weil indicated he was impressed with the amount of funds the CHVAC had raised.

Councilor Blum welcomed Commander Leininger as the new Police Commander. He asked staff about the status of the 90 Meade Lane process.

Deputy City Manager/Director Goldie stated staff was working on the RFP for a real estate broker.

Councilor Blum asked staff to check on the Belleview speed sign.

Deputy City Manager/Director Goldie confirmed they would.

Councilor Maguire asked about the increase shown in the Police Department monthly statistics year to date.

Councilor Hoellen asked about the different format of the Police Department monthly reports.

City Manager Cramer indicated the Police Chief would report on that at the next meeting.

### **City Manager & Staff**

Commander Leininger echoed Councilor Eber's comment to encourage residents to lock their vehicles, homes, taking valuables inside, and collecting their mail to combat criminal activity; he was happy to report Cherry Hills Village was number six on Safewise's report of the 20 safest cities in Colorado, and the only Denver Metro Area municipality in the top 10.

Councilor Hoellen noted the top five cities were all in Weld County; he added 90% of the break ins and burglaries in Cherry Hills Village were crimes of opportunities; they had to figure out how to communicate with the residents who were not normally engaged.

Councilor Maguire indicated she was pleased the City ranked so high in the Safewise report, she felt safe in the City and took a lot of pride in how safe the City was; when

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numbers changed she wanted to make sure that was being analyzed to make sure they stayed safe.

Director Workman indicated staff was planning a BOAA training for the summer.

City Manager Cramer reported on the anticipated state land use legislation; staff was in continuous communication with the City's lobbyist who reported this issue was the top issue being discussed at Capital Hill; staff was working with Arapahoe County; elected officials of Arapahoe County would attend a legislative lunch near the Capital on Friday; messages would emphasize everything Arapahoe County was already doing to help with affordable housing and would likely not be an aggressive counter to any legislation; next Thursday March 30<sup>th</sup> the County would hold a telephone town hall; staff expected the draft bill to be released this week; they expected the legislation to include pre-emption of local land use and zoning regulations; land use and zoning had traditionally been the domain of local jurisdictions who go through a very public process usually based on a comprehensive or master plan to help align the long term vision with current policies; the pre-emption by the state would dissolve that entire process; obviously City Council was extremely concerned; it was a threat to the very essence of Cherry Hills Village and there were a lot of other communities who felt the same way; there might be some communities who supported giving away their local land use authority; staff would spend a lot of time of analysis of the bill once it came out; the sponsors of the bill had indicated they were open to input; he asked Council to confirm their unanimous opposition to any infringement of the Home Rule authority in Article XX of the Colorado Constitution, even if the infringement was not directly applicable to Cherry Hills Village.

Councilor Maguire and Councilor Blum confirmed.

Mayor Pro Tem Weil confirmed and added he was not convinced the anticipated legislation would solve the stated problems, and was convinced it would create new problems.

Councilor Hoellen confirmed and added that if the legislature wanted to limit the applicability of Home Rule they should propose amending Article XX of the state constitution, not try to dismantle it through legislation.

Councilor Eber confirmed and added he did not believe this issue qualified as an issue of statewide concern; 95% of the state did not have a problem of high impact housing prices; the anticipated legislation would solve the issues.

City Manager Cramer explained he was asking so that staff and Council could have a consistent message once the draft legislation was made public; having a unanimous message from Council allowed staff to speak more authoritatively during the upcoming weeks.

### **City Attorney**


City Attorney Guckenberger had no report.

### **ADJOURNMENT**

The meeting was adjourned at 8:06 p.m.

(SEAL)

  
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Katy Brown, Mayor

  
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Laura Gillespie, City Clerk