

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, June 7, 2022 at 6:30 p.m.
City Hall

The City Council held a study session at 6:00 p.m.

Mayor Russell Stewart called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Russell Stewart, Mayor Pro Tem Katy Brown, Councilors Randy Weil, Al Blum, Mike Gallagher, and Dan Sheldon were present on roll call. Also present were City Manager Chris Cramer, Deputy City Manager and Public Works Director Jay Goldie, Assistant City Attorney Evin King, Police Chief Jason Lyons, Finance Director Doug Farmen, Planning Manager Paul Workman, Human Resources Manager Kathryn Ducharme, and City Clerk Laura Gillespie.

Mayor Pro Tem Katy Brown arrived at 6:31 p.m.

Absent: Councilor Afshin Safavi

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

Tory Leviton, 3901 E. Quincy Avenue, announced he was on Jeopardy on June 20th and would have a watch party at the Wild Corgi.

Kelly Duke, attorney for Lyn Mirage, stated she was in attendance because for years Ms. Mirage had been in a fight to save her property and what she perceived to be property for all of Cherry Hills Village; Arapahoe County District Court, that was later affirmed by the Colorado Court of Appeals, ruled a 1906 plat for the neighborhood of Union, Holly, Belleview, and Dahlia streets conveyed private easement rights over streets in that neighborhood rather than a public right-of-way; the Court of Appeals ruling was contrary to over a century's worth of history; the City constructed and had always maintained and controlled the streets within those neighborhoods; including vacating undeveloped portions of South Fairfax to Union, and other streets like Chenango; the City did that pursuant to 11-5-20 and 11-5-30 under City Council authority; before the Court of Appeals decision no other court had held any dedication of streets by plat or otherwise conveyed private easement rights as opposed to a public right-of-way; Cherry Hills Village knew this because it was consistent with how Cherry Hills Village had used, developed, and controlled the streets in Cherry Hills Village since the City was first formed; with these rulings the Court of Appeals decision had called into question the validity of the City's vacation ordinances in Cherry Hills Village and of any past or future vacation if this decision was left to stand; Ms. Mirage and other neighbors had been concerned about development throughout Cherry Hills Village for decades; this loss at the Court of Appeals opened the doors enough to give residents concern about the validity of their vacation ordinances; property owners who believed they held their property in fee simple ownership based on these vacations might find out that the time, money, and investment was wasted because now others had rights to the property they thought they solely owned; the Court of Appeals decision would fundamentally change the character of Cherry Hills Village over time from semi-rural to urban; this is what would happen to Ms. Mirage's property if and when the neighboring property owner chose to extend South Fairfax to build a thoroughfare through and across her property; it would rip down 20-30 year old trees, grass, sprinkler lines, drip lines; Ms. Mirage's neighbor told the Court that he needed the additional access in order

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to subdivide, which is what this was all about; there was nothing stopping others, particularly developers, from evaluating this option for other streets to be able to subdivide larger lots; Ms. Mirage had been fighting this fight for years but could not continue to be the warrior protecting the neighborhood; she asked Ms. Duke to inform the City and City Council that there were others, not just her, who were very concerned; in her final effort Ms. Mirage intended to challenge the ruling in front of the Colorado Supreme Court; they respectfully requested that the City prepare and file an amicus brief in support of Ms. Mirage's position; the amicus filing was due on June 16th; Ms. Mirage had the support of many neighbors who had signed a petition demanding that the Council take action; they were in the process of compiling those names and would make them available to the City; this was the last opportunity to protect the status quo and the special nature of Cherry Hills Village.

REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES

None

CONSENT AGENDA

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

- a. Approval of Minutes – May 17, 2022
- b. Appointment of the City Treasurer

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Public Hearing – Council Bill 7, Series 2022; Vacating the City's Interest in a Portion of the Crest Road Right-of-Way (second and final reading, Public Hearing, continued from May 17, 2022)

Deputy City Manager/Director Goldie presented the vacation request from the owners of 3 Crest Road, Jordan and Kimberly Lacob, on second and final reading and public hearing; the proposal had not changed since the April 19, 2022 hearing; at that meeting a number of questions were raised that Council directed staff to report back on; first was notification of the property owners of 10 Cherry Lane Drive, the property to the south of the subject property; the current property owners of 10 Cherry Lane Drive received a minimum of four separate notifications during the process; in response to Council's concerns Mr. Laycob directly contacted the neighbor at 10 Cherry Lane Drive and received written verification that the property owner had no interest in any portion of the proposed area of the vacation request; the correspondence was included in Council packets; second, the configuration of the requested vacation leaving a five-foot strip of right-of-way between 3 Crest Road and 10 Cherry Lane Drive; staff again reviewed the configuration with the City Attorney and although unconventional, the requested configuration did not pose a problem from either a legal or maintenance standpoint; third, the placement of the fence on 10 Cherry Lane Drive was found to have been installed pursuant to a 1995 building permit, which made the fence legally nonconforming; finally, Council questioned the landscaping encroachments on 2 and 10 Cherry Lane Drive; the landscaping did not appear to have been placed recently as it was mature and established, did not interfere with the public's ability to utilize the improved portion of the roadway, and did not interfere with drainage or maintenance; staff found no encroachment issues for these two properties.

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Councilor Blum asked for clarification for the location of the five-foot strip of right-of-way.

Deputy City Manager/Director Goldie indicated on the map.

Mayor Stewart asked for any public comments. Hearing none the Public Hearing was closed at 6:45 p.m.

Councilor Sheldon moved, seconded by Mayor Pro Tem Brown, to approve on second and final reading Council Bill 7, Series 2022; vacating the City's interest in a portion of the Crest Road right-of-way located within the City of Cherry Hills Village, Arapahoe County, State of Colorado on second and final reading for consideration of \$50,028.00. Additionally, I move to approve the Agreement and License for Maintenance of City-owned right-of-way and require the applicant to enter into the agreement as a condition of approval.

The following votes were recorded:

Weil	yes
Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

Vote on the Council Bill 7-2022: 5 ayes. 0 nays. The motion carried.

Council Bill 11, Series 2022; Amending Section 16-3-20 of Article III of Chapter 16 of the Municipal Code Concerning Recreational Structure Setbacks in the O-1, Open Space, Park and Recreation Area Zone District (second and final reading, continued from May 17, 2022)

Planning Manager Workman presented Council Bill 11, Series 2022 on second and final reading; no changes had been made since first reading; Option 5 in the staff memo had been approved at first reading; potential pros of this option included creating clarity for setback requirements for recreational structures in the O-1 Zone District, customized so that no existing structures are made legally nonconforming, responded to the different size, nature, and needs of the clubs based on their different size constraints, and provided predictability for nearby property owners as it relates to potential impacts from recreational structures; potential cons included that future applicants and staff would have to determine the contiguous acreage of the club to determine the appropriate setback requirements for proposed recreational structures; staff was aware there might be concern on Council about the 10-foot setback from the street and the externalities that might be created by that.

Mayor Pro Tem Brown asked if recreational structures for the schools and churches did not apply to this discussion because those properties were zoned R-1.

Planning Manager Workman replied that was correct.

Councilor Weil asked if the recreational structure setback for the R-1 Zone District was 25 feet.

Planning Manager Workman replied that was correct.

Councilor Weil noted there were three clubs in the smaller acre category and only one had a structure closer than 25 feet to a side property line; it seemed that the proposed changes were to accommodate one tennis court; he noted the structure would be legal nonconforming if a 25-foot setback were established and asked what complication would result.

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Planning Manager Workman replied there might be no complication but the reason the proposed changes accommodated that tennis court was that if the court needed to be reconstructed and was required to meet a 25-foot setback it might impact the operations of the site.

Councilor Weil expressed concern with the impact of a smaller setback on the semi-rural character of the Village and allowing more structures closer to property lines for the smaller acre clubs.

Planning Manager Workman offered that the 10-foot side setback would not apply to the Buell club as it did not have street side but would apply to the Arapahoe Tennis Club on their Tenaya property line.

Councilor Gallagher moved, seconded by Councilor Blum, I move to approve, on second and final reading, Council Bill 11, Series 2022, a bill for an ordinance to amend Chapter 16 of the Cherry Hills Village Municipal Code to add specific setbacks for recreational structures in the O-1, Open Space, Park and Recreation Area Zone District as identified as Option 5 in the Proposed Amendments section of the June 7, 2022, staff memo.

The following votes were recorded:

Weil	no
Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

Vote on the Council Bill 11-2022: 4 ayes. 1 nays. The motion carried.

NEW BUSINESS

Opportunity for Comment and Consideration of Resolution 12, Series 2022; Opting Out of the State Paid Family and Medical Leave Insurance Program

HR Manager Ducharme presented Resolution 12, Series 2022; she explained in November 2020 Colorado voters passed Proposition 118, allowing for implementation of a state-run program for paid family and medical leave insurance (FAMLI); the state gives local governments the option to opt out of the program; the vote to opt out needed to take place 180 days before the premiums would begin in order for the local government to not pay premiums; the FAMLI program was intended to ensure all employers in the state provided twelve weeks of protected paid leave for caring for a new child, an employee's serious health condition, a family member's serious health condition, arrangements for a family member's military deployment, and immediate safety needs and impacts of domestic violence and/or sexual assault; the benefit was partial wage continuation of 37% to 90% depending on the employee's annual base salary amount; the program would require contributions from the City and employees of 0.45% of employee's wages beginning on January 1, 2023, with benefits starting on January 1, 2024; the contribution rate was set until 2025; if the City opted in at this time it would be for three years; if the City opted out at this time Council had the option of opting in during the normal budget process; if the City opted out, individuals could still opt in at the 0.45% rate and the program benefits for those employees would remain the same; the City currently paid approximately \$8,000 per year for short-term disability coverage; the cost to the City to participate in the FAMLI program would be between \$20,000 and \$23,000 per year for the City portion of benefits as well as administrative costs; opting in would also impact employees' net pay; the City currently participated in the Family and Medical Leave Act (FMLA) and provided short-term disability coverage to its employees; the state rules for administration of the FAMLI program were largely unknown at this time; she provided additional information about FMLA and short-term

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disability benefits; City employees were notified on May 31, 2022 of tonight's meeting and the opportunity to comment; a majority of municipalities responding to CML's poll indicated their intent to opt out of the FAMLI program; three employees provided comments:

1. I am writing you to ask you to please vote to opt out of CRS 8-13.3-5 (FAMLI) as allowed through CRS 8-13.3-522. As a father of three boys who already struggles to pay on the bills on a single income family, I have serious concerns about additional withholdings being taken from my pay checks each month, and whether or not I would be able to afford to continue working here if this were forced upon me. I also believe that it is in the best interest of the city to opt out, as it will also bring additional expenses to the city budget. Additionally, as the City of Cherry Hills already offers a FMLA plan that is comparable to that being offered from the state, this expense for both the employees as well as the city would be unnecessary and therefore a waste of valuable resources. I also believe that this is the right choice as any employees who see value in the state's FAMLI plan can opt in as an individual and still have the same coverage without it being forced upon them. Therefore, I am asking you to please vote to opt out of the State of Colorado's FAMLI plan. Please allow us, the employees of Cherry Hills Village, the opportunity to choose what we each feel is best for ourselves, for our families.
2. To whom it may concern, with the limited information from the State and the fact that the City already has a similar program in place I believe the City should opt out of this program. It also sounds like individuals can opt in even with the City opting out, this makes more sense to me then requiring all employees to pay into a program that they may not want.
3. It seems to me that we have people who already use up their time and cause issues. This will now allow those people to have a safety net on my dime. I am not ok paying for people who already abuse the system.

Jenn Diffendal, 5701 E. Stanford Drive, indicated this was an important piece of legislation for City employees; she understood the City could opt out; she asked if the City could pay both the employee and employer portions of the program using ARPA funds; police officers would use the benefit the most; a lot of officers had to use their PTO for COVID instead of vacations; the FAMLI program would benefit them if they were shot in the line of duty; it offered an umbrella for parents with sick kids; the FAMLI program benefits would have helped Cory Sack with financial difficulties; the City owed this to officers because they incurred so much risk.

Councilor Blum asked about other municipalities.

HR Manager Ducharme replied Greenwood Village had opted out in May and Centennial would be opting out in August.

Assistant City Attorney King added Golden would create its own plan or would opt out in September; Central City and Leadville were considering opting out tonight.

Councilor Sheldon asked how employees who opted in would still receive the same benefits if the City opted out.

Assistant City Attorney King replied that was stated in the FAMLI plan, but it was not yet clear how the benefits would be paid for if the City opted out.

Councilor Sheldon indicated he could not support paying for something if the benefit to employees would not be impacted.

Mayor Pro Tem Brown added that opting in would require all employees to pay into the program, but if the City opted out then employees who did not want to participate would not pay into the program.

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Mayor Pro Tem Brown moved, seconded by Councilor Weil, to approve Resolution 12, Series 2022; opting the City out of the State Paid Family and Medical Leave Insurance Program.

The motion passed unanimously with 5 ayes and 0 nays.

City Council Liaison Assignments

City Clerk Gillespie asked for Council direction on adding the Arapahoe County Regional Opioid Abatement Council to the liaison assignments list, appointing a primary representative and an alternate, and changing the Arapahoe County Transportation Forum liaisons to be Councilor Weil as the primary liaison to coordinate with DRCOG, and Mayor Stewart as the alternate.

Mayor Pro Tem Brown moved, seconded by Councilor Weil, to approve the City Council Liaison Assignments as attached to the June 7, 2022, staff memorandum by adding the Arapahoe County Regional Opioid Abatement Council and appointing Mayor Stewart as the primary representative and Councilor Gallagher as the secondary representative for Cherry Hills Village; and also changing the assignments for Arapahoe County Transportation Forum, designating Councilor Weil as the liaison and Mayor Stewart as the alternate.

The motion passed unanimously.

REPORTS

Mayor's Report

Mayor Stewart reported he attended the Arapahoe County Transportation Forum meeting; the May OSTAB meetings.

Councilor Sheldon asked if the City had any grant requests pending.

Mayor Stewart replied they did not.

City Manager Cramer added the updated Master Plan would be instrumental in determining priorities for grant projects.

Mayor Stewart noted there had been an expansion in what OSTAB grant funds could cover that might be applicable to City projects; he attended the June 1st Metro Mayors Caucus (MMC), which focused on affordable housing and rebuilding homes after the Marshall Fire; the June 2nd MMC housing committee; the June 6th MMC transportation committee; August would be a free RTD fare month; he would attend the Mayors Munch on June 15th; they had received notice from Arapahoe County that Denver would oppose the split diamond option for the Belleview/I-25 Interchange project.

Members of City Council

Councilor Blum had no report.

Councilor Sheldon suggested Council consider changing the policy that homeowners were responsible for tree limbs in their adjacent right-of-way in cases of large snowstorms such as the one the City recently experienced.

City Manager Cramer replied a significant budget change would be needed to enact such a policy change as the impact to City staff and normal City operations would be significant; it had been the City's policy for many years that the adjacent homeowner was responsible for maintenance of trees in their adjacent right-of-way including clean

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up of branches in events such as this; that policy was clarified in the updated right-of-way standards recently adopted by Council and would need to be amended again if Council wanted to change that policy.

Councilor Blum suggested Council consider it a contingency as part of the 2023 budget.

City Manager Cramer replied they could, but additional steps would also be needed to make the policy change.

Councilor Gallagher indicated he had no problem with the current policy, and if homeowners received the benefit of the landscaping in the adjacent right-of-way, then the other side of the coin was the responsibility to maintain it.

Councilor Sheldon asked if it was then an enforcement issue to have homeowners take care of the tree limbs.

Mayor Pro Tem Brown suggested a program similar to the holiday tree drop off program, and the limbs could sit there until staff had time to chip them; if there was an abandoned piece of patio furniture in the right-of-way the homeowner would be expected to clean it up.

Councilor Weil noted it was a grey area and many residents had dragged tree limbs from their private property into the street hoping the City would pick them up.

Deputy City Manager/Director Goldie indicated that the branches in the street were normally pushed back into the right-of-way by snowplows.

Councilor Sheldon noted there did not seem to be consensus so asked Council and staff to continue thinking of possible solutions.

City Manager Cramer replied staff had already started those discussions; he noted any enforcement efforts would have to be postponed due to the high demand of companies that residents might hire to help take care of branches.

Councilor Sheldon indicated he would like the City to explore selling 90 Meade Lane, he did not believe the property would appreciate any further, he agreed with former councilor Earl Hoellen it was time to take action and asked that the issue be added to a future agenda. He thanked the other Council members and staff for being professional, courteous, and responsible in the way they handled City business; a lot of other municipalities did not operate as a professional organization that tried to solve problems.

Councilor Gallagher welcomed Chief Lyons and Director Farmen to their first Council meeting.

Mayor Pro Tem Brown had no report.

Councilor Weil reported he attended the last DRCOG meeting; bike to work day was June 22nd; he would attend tomorrow's DRCOG board meeting; regarding the potential sales tax ballot measure, he met weekly with City Manager Cramer and consultant Kyle Blakely, the campaign committee was being built, presentations at HOA meetings were continuing, he thanked Council for their work, the presentations seemed to be going well.

City Manager & Staff

Deputy City Manager/Director Goldie reported Zayo was working on getting the last lines off the poles for the Quincy undergrounding project; the Southmoor Hudson undergrounding project had begun and was proceeding very well; the High Line Canal

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Conservancy had released their five year work plan for each jurisdictions; the plan for Cherry Hills Village included signage and wayfinding, tree planting, Russian Olive removal, tree risk assessment, adopt a bench program, and the stormwater plan; the City was the only one who had truly begun to examine their section of the Canal regarding stormwater; Denver Water had announced they wanted each jurisdiction to take over stormwater by 2026.

Councilor Sheldon asked for more detail on the progress of the City's stormwater plan.

Deputy City Manager/Director Goldie provided more detail and indicated drafts would be brought to Council over the coming months prior to the final plan.

Councilor Sheldon asked about the capital cost.

Deputy City Manager/Director Goldie replied the HLCC estimated \$1.2 million for the stormwater infrastructure for the City's portion of the Canal, with an additional \$30-\$60,000 annually for maintenance.

City Manager Cramer noted the \$1.2 million in infrastructure would have to be done within three years; staff would identify which items would be needed first.

Mayor Stewart discussed about the technical aspects.

Planning Manager Workman reported Community Development Clerk Ethen Westbrook would be leaving the City for a great opportunity; next week a rough draft of language for the master plan update would be discussed at the Planning and Zoning Commission study session; similar information would come to Council at a later study session.

Mayor Stewart indicated Mr. Westbrook at done great work.

City Manager Cramer welcomed Chief Lyons and Director Farmen. He reported at the next Council meeting there would be a Town Hall instead of a study session; likely there would be a presentation at 5pm and another at 6pm; he asked Council members to volunteer to reach out to potential committee members; he and Mayor Stewart would attend the CML annual conference.

City Attorney

Assistant City Attorney King had no report.

ADJOURNMENT

Hearing no objection Mayor Stewart adjourned the meeting at 8:03 p.m.

(SEAL)



Russell O. Stewart, Mayor



Laura Gillespie, City Clerk