

## RECORD OF PROCEEDINGS

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

The City Council held a study session at 5:30 p.m.

Mayor Russell Stewart called the meeting to order at 6:33 p.m.

### **ROLL CALL**

Mayor Russell Stewart, Mayor Pro Tem Katy Brown, Councilors Randy Weil, Afshin Safavi, 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, City Attorney Kathie Guckenberger, Police Chief Jason Lyons, Finance Director Doug Farmen, Planning Manager Paul Workman, Parks and Recreation Coordinator Emily Black, and City Clerk Laura Gillespie.

Absent: none

### **PLEDGE OF ALLEGIANCE**

The Council conducted the pledge of allegiance.

### **PRESENTATIONS**

#### **Candidate Lot Draw**

City Clerk Gillespie explained that the City had four contested positions for the November 8, 2022 election – Mayor, District 2, District 4, and District 6 – and per state statute a lot draw was used to determine the order of names on the ballot.

City Clerk Gillespie conducted the Candidate Lot Draw resulting in the following order of names: for Mayor, Russell Stewart was drawn first, Katy Brown was drawn second, Jenn Diffendal was drawn third; for District 2, Earl Hoellen was drawn first and Tory Leviton was drawn second; for District 4, Susan Maguire was drawn first and Mark Williams was drawn second; for District 6, Tom Conroy was drawn first and Robert Eber was drawn second.

#### **Kent Denver and St. Mary's Public Safety Update**

Police Chief Lyons explained the Police Department had been working collaboratively to identify the Department's shared vision as they moved forward and also evaluating how best to serve the community, something they intended to do frequently; they were always looking at ways to increase levels of service or to be more productive in the roles and responsibilities they already had; there were several exciting initiatives underway which staff would report on at a later date; tonight's presentation was specifically related to school safety and was a meaningful step toward offering a higher level of both to the community and the most vulnerable population, youth; he invited representatives from Kent Denver and St. Mary's Academy to speak.

Jerry Walker, Associate Head of School for Kent Denver School; David Braemer, Head of School for Kent Denver School; Art Keown, Chief Financial Officer of St. Mary's Academy; and Matt Hopper, Chairman of the Board for St. Mary's Academy, introduced themselves.

Mr. Walker explained they had met with Chief Lyons earlier in the summer; school safety was a huge issue; the schools had a long partnership with the City; the City had provided a school resource officer (SRO) for many years who split their time between

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Cherry Hills Elementary School, Kent Denver, and St. Mary's; the thought was for Kent Denver and St. Mary's to fund an additional SRO; with one SRO Kent Denver got one third of an officer, with two they would get about five-sixths of an officer; the parents and families would greatly appreciate it.

Mr. Braemer agreed the issue of school safety was of great concern; he was excited to partner with Chief Lyons and the City in a private-public partnership; best practice would be to close the Kent Denver's campus, but he valued the fact that Kent Denver's campus had a public purpose, a shared responsibility for the land and also for the safety and well-being of the students; they wanted to partner more actively, increase presence of police on campus, and provide financial support toward that end; it was important that Kent Denver had a good partnership with St. Mary's; he wanted to keep the campus a safe space with the level of police presence that made them feel safe and avoid having to close the campus.

Mr. Keown stated working with Chief Lyons over the past several months to find a solution that benefited the City, Kent Denver, and St. Mary's had been great; few things the school did to mitigate risk and violence were as effective and efficient as having an SRO on campus; he thanked Council for their support and consideration.

Mr. Hopper thanked Council and Chief Lyons; before they could educate their children they had to be able to keep them safe; the partnership with the Police Department and Kent Denver did that; they looked forward to continued partnership and financially supporting the additional SRO; they were excited to find other opportunities for partnership.

Mayor Stewart thanked them for coming tonight and for their partnership.

Councilor Sheldon asked for clarification on who would pay for the new SRO.

Chief Lyons replied the new SRO would be entirely funded by Kent Denver and St. Mary's; as a result the Police Department would get to increase presence, visibility, and security at all three schools; the exact cost and contract language would need to be worked out.

Councilor Sheldon thanked the group and noted the safety of their children was of the utmost importance.

Mayor Pro Tem Brown indicated her appreciation for the schools' cooperation and working with Chief Lyons to bring this issue forward; school safety was about more than just the schools, it was a priority for the entire community; she thanked the schools for helping the City achieve that.

Councilor Safavi indicated his support for the program; he asked if the Police Department planned to do anything differently or if it was just additional resources.

Chief Lyons replied the additional presence of law enforcement on campus was a good first step; it would be most efficient with an increase in training, equipment, response plans, and furthering their partnership with both schools around methodologies of school safety; the Police Department would do its part operationally to ensure that should they ever have to respond to a critical incident they would be equipped and trained to do so at the highest level.

Councilor Safavi asked if they were planning any practice drills.

Chief Lyons replied absolutely; in his previous position he served on the school district's safety and security committee; he had evaluated best practices around those specific type of operational issues; the Police Department would work with the schools to make

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sure there was a consistent and uniform response to both drills and real-life critical incidents.

Mr. Walker added the schools had not done regular table-top trainings with the Police Department during COVID-19 but they intended to start that again and an additional SRO would help with that training; he agreed training was a huge part of the overall strategy.

Mr. Hopper indicated they were working with Chief Lyons to improve overall campus security and preparation in the case of a critical incident.

Councilor Gallagher noted the Police Department would benefit from having an additional officer during times when school was not in session.

Chief Lyons agreed; the schools had well-attended summer programs that the SROs would cover; during school breaks the Police Department would realize an operational benefit when the SROs would be assigned to other duties that would benefit the City at large; this was one of the points brought up by the schools as a way of cementing the partnership. He explained in August all of the police officers had received the most up to date active shooter response training specifically at a school; it was important for every officer to be involved in the lock-down drills to be aware of the nomenclature of the drill and how the children were impacted; he had been a first responder at the STEM school shooting and it was perhaps the most impactful moment of his career; every officer needed to understand their role and how important it was that they be as equipped and trained as was possible should they ever have to respond to a critical incident.

Councilor Weil asked about Cherry Hills Elementary School's absence from the new SRO partnership.

Chief Lyons replied the City would continue to provide the SRO service to the Elementary School as a publicly funded entity; the Elementary School would see a benefit from the new SRO although they were not part of the financial partnership.

City Manager Cramer noted throughout the state the public school district participation in the SRO program did not extend to elementary school level facilities.

Chief Lyons indicated elementary schools did not typically have an assigned SRO, although they were visited on occasion by SROs; the City's current SRO was technically a patrol officer reassigned to provide school presence and security; the Police Department would continue to provide that service at the elementary school; they would double their presence and visibility at all three schools as a result of this agreement.

### Police Foundation Update

Mark Griffin, Board Chairman of the Cherry Hills Village Police Foundation, introduced the other board members, Jan Harrison and Jeremy Abelson; he explained they had recently been working with Chief Lyons on how best the Foundation could serve the Police Department; given their top priority of safety for their community, police officers, and school safety, Chief Lyons suggested and the Board concurred that first responder kits would be an important first step toward their goal; the first responder kits were custom-fit to each officer and cost nearly \$1,000 each; with 20 line-duty officers that was nearly \$20,000; he was pleased to announce that the Cherry Hills Village Police Foundation had voted unanimously and approved the donation to the Cherry Hills Village Police Department, subject to Council approval, of approximately \$20,000 to cover the costs of these first responder kits for each duty officer.

Mayor Stewart thanked the Police Foundation.

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Chief Lyons replied the entire Police Department was grateful for the Foundation's initiatives and grateful for the work the Board members did on behalf of the Foundation for the community; he explained the first responder kit was a higher level ballistic vest and helmet that were rifle-rated and would protect officers against the highest caliber rifle rounds; currently, the Police Department did not have that equipment as a generally issued uniform item, and the ones they did have were not fitted for individual personnel that may use it on any given day should they have to; this would advance the goal of equipping and training the Police Department to respond to the unthinkable; he quoted the Fire Services playbook "we train and equip not for the things that we do everyday but for the things we may have to do someday"; that was the Department's overarching philosophy as they advanced education, training, and equipment.

Mr. Griffin noted the Police Foundation was hosting the Exotic Car Show on Sunday the 11<sup>th</sup> from 10am to 1pm in the City Hall parking lot.

### Arapahoe County Update

Arapahoe County Commissioner Carrie Warren-Gully provided background on the County and its services; Arapahoe County was currently the third-largest county in the state and was projected to be the largest by 2040; counties were a subdivision of the state; the Board of Commissioners served as the administrative and policy-making body; the sheriff, the clerk and recorder, the assessor, the treasurer, and the coroner were separate elected offices; the budget came from property tax, specific ownership tax, the open space sales tax, state and federal funding, and was restricted by TABOR; the County offered a variety of programs and services; 2022 initiatives included pandemic recovery, forming the Arapahoe County Public Health Department, establishing the Regional Homelessness Coordinating Committee, creating the Opioid Regional Council, transitioning to a single-county judicial district, redistricting of commissioner districts, and formalizing relationships with the Arapaho tribe; she reviewed how the County had used its ARPA funds.

Michelle Halstead, Arapahoe County Director of Communication and Administrative Services, explained the work involved in transitioning from being a member of Tri-County Health Department to establishing the Arapahoe County Health Department; a lot of public input and subject matter expert input had been sought and used; the process was on schedule lead by the Foundational Board of Health; the primary leadership of the health department had been secured; the health department would provide both consumer protection and community health services; more than half of the needed employees had been secured; programs and services were based on mandatory services and services needed by the community; the budget was estimated at \$21 million, \$6 million of which would come from Arapahoe County, a slight increase from the County's \$5.3 million share of Tri-County Health, but still at the 30% level that was typical; she reviewed regional opioid settlement fund coordination; she reviewed the judicial district transition; this was the first time in over 60 years a new judicial district was being created in the state.

Commissioner Warren-Gully shared ways to be involved and stay informed about the County.

Councilor Safavi recalled visiting the County jail along with other Council members several years ago and asked about the status of the jail as well as allocation of funds towards mental rehabilitation for people in jail.

Commissioner Warren-Gully replied due to new legislation and management during COVID-19 the numbers were currently lower but still too high for the facility; ARPA funds were planned to expand health care services at the jail; it was one of several infrastructure needs that the County would have to address with the community; Arapahoe County was one of the strongest counties in terms of having a variety of courts, treatments, and alternative structures such as work release, mental health

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support, and substance abuse support; and reintegration services to help people exiting the jail.

Mayor Stewart offered the City's support on grant applications for the new health department.

### **AUDIENCE PARTICIPATION PERIOD**

Cory Sack, former Cherry Hills Village Police Officer, stated the collaboration with the schools and the Police Foundation for the new equipment was the first thing the City had done since the shooting in 2018; he was forced to medically retire from his injuries at 7 Sedgwick Drive in 2018; he felt the need to speak on behalf of the citizens of Cherry Hills Village, and current and former employees; to the members of Council with whom he had the opportunity to speak with and have meaningful conversations with, some of his comments were not for them, and he appreciated them; the City of Cherry Hills Village had a history of wanting to be status quo and not wanting to make change; the August 2018 officer-involved shooting on Sedgwick was the first time an officer had been involved in a shooting in the City's history; unfortunately, that would not be the only officer-involved shooting in the City's history; what he observed from Council and leadership was a lack of understanding, a lack of compassion, for any kind of injury and being gone from work; he was hired in 2011 and immediately observed how City employees and leadership silenced employees; at the time City Manager John Patterson and Chief Tovrea were great at keeping the employees silent; after his shooting in 2018 any and all human resource meetings were conducted and controlled by Chief Michelle Tovrea; human resources was there just to witness; this made him feel like he could not speak about his situation, his family, and what they were going through; he noted the only elected City officials to make the effort to show support and get him back to work were Earl Hoellen and Laura Christman, who paid a visit to the hospital where he was for a month, and he thanked them; during his 18 months of physical recovery City officials showed little to no empathy for his actions; his 24-hour security was pulled while he was in the hospital due to budgetary issues; to his knowledge no other officer shot in the Denver area had their security pulled early; it left him and his wife alone in a hospital while there were gang members out there responsible for his shooting, and it was not appreciated; as his recovery continued no current Council members reached out; he was forced back to work prior to his maximum recovery or he was put at risk of losing his career with the City; it was his family, his brothers and sisters in blue, and the citizens of Cherry Hills Village, who provided visits, phone calls, donations, and conversations that allowed him and his family to keep going; in December 2021 his medical care team advised he would not be able to continue his career as a police officer and he turned in a 60-day resignation letter to Chief Tovrea; the letter was taken by Chief Tovrea and he was not allowed to turn it into human resources; this was an example of him being silenced; in January 2022 he emailed a resignation letter to Chris Cramer describing a few examples of leadership behavior that was causing a toxic work environment; at no time did he receive a response except a couple of Council members and he thanked them; no one had reached out to him to see what ideas or comments could help keep the moral going and the officers happy; during his recovery and the COVID-19 pandemic he had the opportunity to have tea and dinner and was invited into many citizens' homes in Cherry Hills Village; the citizens of Cherry Hills Village were done living in a status quo community; he hoped they could start by getting the ballistic equipment approved.

Jenn Diffendal, 5701 E. Stanford Drive, stated she was there tonight as a resident who was deeply concerned about the misleading language in Resolution 19, Series 2022; the resolution stated without changing the City's existing 3.5% sales tax rate; that statement seemed misleading; the current Code had a physical presence clause; the February 2, 2015 letter from former finance director Karen Proctor was available on the City's website currently, that stated residents are exempt from remote vendor sales tax; this could only mean that this resolution was extending the physical presence sales tax rate, which was 3.5%, to remote vendor sales tax, which meant the Council desired a

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3.5% increase in remote vendor sales tax, yet the language said the sales tax rate would not change; she wanted to point out how the City was most likely legally pushing this misleading language; the Supreme Court *Wayfair* decision of 2018 invalidated the physical presence clause in the City Code, so in legal technicalities lawyers could argue that there is no difference in the current Code between remote sellers and physical presence sellers, it was a simple update of the Code; all of this was a distraction from the real story; what was bothersome to her as a resident was until the 2022 annual budget the City had failed to disclose for years that the City had already been voluntarily receiving remote vendor sales tax when the City Code had not authorized it; the City currently received roughly \$1.2 million a year in remote vendor sales tax, about 71% of the City's total sales tax revenue in a given year; concealing this information, or what felt like concealing, for years was not fiscally responsible; her question was if it was illegal for the City to voluntarily receive remote vendor sales tax when the Code did not authorize it; she had no idea; she was a mom; but was it morally right; if her children were receiving money that did not belong to them even if her children were spending it on items that promoted world peace, she would still tell her children accepting money that did not belong to you was stealing and not telling the people you took the money from would be hiding it, or worse, concealing it; she asked what year the City started receiving the community's remote vendor sales tax from Amazon and Xcel Energy; she reached out to Director Farmen on June 24<sup>th</sup> and he had not responded; she reached out City Manager Cramer on June 30<sup>th</sup> and received a long convoluted response which basically came down to many years; the reason the years was important was because if the City was taking money for five years that would be about \$6 million; at 10 years it would be \$12 million; at 20 years, when Amazon started the marketplace around 2000, that would be \$24 million; that was what she wanted to ask was when did it start, because transparency mattered and accountability mattered.

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

None

### **CONSENT AGENDA**

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

- a. Approval of Minutes – August 16, 2022
- b. Resolution 20, Series 2022; Accepting a Bench Donation in Memory of Joleen Schovee Patterson
- c. Resolution 21, Series 2022; Accepting a Bench Donation in Memory of Ruth E. Benjamin-Wardle
- d. Resolution 22, Series 2022; Accepting a Donation from the Cherry Hills Village Police Foundation on Behalf of the Cherry Hills Police Department
- e. Resolution 23, Series 2022; Approving Non-Budgeted Transactions in Accordance with the City's Purchasing Policy

The motion passed unanimously.

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

None

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### **UNFINISHED BUSINESS**

#### **Council Bill 13, Series 2022; Amending Articles II, IV, and IX of Chapter 16 of the Municipal Code Concerning Zoning Regulations Pertaining to Horses and Other Agricultural Activities (first reading)**

Planning Manager Workman presented Council Bill 13, Series 2022 on first reading. He reminded Council they had reviewed a series of housekeeping amendments earlier in the year; in total there had been 14 amendments in Chapter 2, 16, 17, 18, and 20; Council approved all but one amendment on first reading; Council approved all but two of the remaining 13 amendments on second reading; the two amendments not approved related to horses, agricultural activities, and stabling horses; Council directed staff to work with former mayor Christman to conduct an in-depth Code analysis comparing the pre-Code modernization language related to those items to the current language in the Code, and return with comprehensive amendments; it was inevitable that a code modernization would result in some information inadvertently omitted, or cross-references missed, or new definitions added that needed further refinement; the uses that were allowed in individual residential zone districts were built on the allowed uses in the R-1 zone district; this was a typical practice in old zoning ordinances called nesting; the industry trend over the last 15-20 years had been to move away from this approach to a more graphic approach that was usually in table format; the table approach allowed communicates to target specific uses for each zone district and change uses in specific zone districts without impacting other zone districts; it was generally believed that the table approach allowed for the implementation of the stated purpose of a specific zone district more effectively; "agriculture" and "livestock" were not defined in the pre-modernized code but were allowed in the R-1, R-2, and R-3 zone districts, and not allowed in the R-3A, R-4, or R-5 zone districts; "agriculture (crops)" and "agriculture (livestock)" were defined terms in the current Code and were allowed in the R-1, R-2, and R-3 zone districts; the overall intent of the proposed amendments was to create clarity regarding horses and other agricultural activities and align regulations associated with horses and other agricultural activities more closely with the pre-modernized code; there was no intent to make any significant policy changes; the proposed amendments in Council Bill 13, Series 2022 included amending Table 16-2-120 to delete "equestrian facilities and stables" since it is an undefined term in the Code and unnecessary, and simplifying the terms "crops" and "livestock"; amending Section 16-2-250(b) to allow some ability to sell agricultural products such as the occasional sale of eggs, honey, or flowers; amending Section 16-2-730 to clarify and codify allowance of a stable on an adjacent but separate lot, and to more closely align language with the pre-modernized Code; amending Table 16-4-10 to require all parking be provided on the property where the "crop" or "livestock" activity is being conducted; amending Section 16-9-130 definitions for "agricultural land", "crops", "livestock", "commercial land uses", "intensive agriculture", and "personal garden" to align with the pre-modernized Code and historical practices in the City, to enhance clarification and remove redundancies; the Planning and Zoning Commission recommended approval of the proposed amendments; he recognized former mayor Christman's work in reviewing the Code language with staff.

Councilor Blum expressed appreciation for staff's presentation of the issues; he asked what silviculture and viticulture were.

Planning Manager Workman replied silviculture was growing trees and viticulture was growing grapes for wine.

Councilor Gallagher thanked former mayor Christman and Planning Manager Workman.

Mayor Pro Tem Brown indicated there was never an intention to outlaw horses in the City.

Councilor Weil noted a typo in the staff memo.

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Former mayor Laura Christman thanked Council for the opportunity to work with staff on this project and complimented staff on their work.

Mayor Pro Tem Brown moved, seconded by Councilor Gallagher, to approve, on first reading, Council Bill 13, Series 2022, a bill for an ordinance amending Articles II, IV, and IX of Chapter 16 of the Cherry Hills Village Municipal Code concerning horses and other agricultural activities.

The following votes were recorded:

Safavi	yes
Weil	yes
Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

Vote on the Council Bill 13-2022: 6 ayes. 0 nays. The motion carried.

### **NEW BUSINESS**

None

### **REPORTS**

#### **Mayor's Report**

Mayor Stewart reported he attended the Aug 19<sup>th</sup> CML housing committee meeting addressing regional housing shortages; he spoke at the Aug 23<sup>rd</sup> south metro retailers gathering, discussion focused on water supply, homelessness, and crime; he attended the Aug 23<sup>rd</sup> reopening of Harmony Park; on Aug 25<sup>th</sup> he met with Denver Water Chief Operations and Maintenance Officer Tom Roode regarding the High Line Canal management; on Aug 26<sup>th</sup> he met with the High Line Canal Conservancy, Harriet LaMair made the point that the Canal was 150 feet wide and included much more than just the trail, and the Conservancy wanted to plant more trees; he attended the Aug 30<sup>th</sup> Hampden Avenue Mobility and Safety Study open house, they were well aware of Cherry Hills Village's concern with cut-through traffic; he attended the Sep 1<sup>st</sup> Opioid Regional Council meeting, the City's contribution was small but opted-out and given the money to the committee to use the money more effectively; the Arapahoe County Shareback event was on Friday and the Car Show was on Sunday.

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

Councilor Blum noted several council members would meet on Thursday regarding cell coverage in the City. He indicated Director Farmen had stepped into major shoes as the new finance director and had done a great job on the draft 2023 budget.

Councilor Sheldon had no report.

Councilor Gallagher recognized the Schovee and Wardle families and indicated his appreciated for the bench donation program which provided recognition and comfort to those people and families.

Mayor Pro Tem Brown reported she had been contacted by a resident about speeding bicycles; the resident had some suggestions and the City Manager was in receipt; she wanted to make sure the issue was still at the forefront of everyone's mind; she asked Chief Lyons to put some thought into controlling speed on the trails.

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Councilor Weil had no report.

Councilor Safavi thanked Chief Lyons and Commander Weathers for a productive budget meeting; he was excited for them to present to Council regarding modernizing the Police Department's equipment; he met with Colorado Bioscience Association President Elyse Blazeovich; it was an exciting time for Colorado; last year there were 750 biotech companies in Colorado and this year there were 900; last year \$2.4 billion in biotech money came to Colorado; he met with the CU Boulder Chancellor, CU Denver, and CU Metro; he thought Colorado could be number five in the nation in biotechnology in about 10 years.

### **City Manager & Staff**

Police Chief Lyons reported he had promoted John-Normal Flaum to sergeant, and hired as a new sergeant a candidate from Anaheim California with an impressive background.

Parks Coordinator Black noted the Parks Department was aware of the ongoing issue of speeding on the trails and reported staff continued to work with the Parks, Trails and Recreation Commission to add more signs to bridle trails related to rules, speeding, and speed limits; more signs were also on the way for the High Line Canal related to rules, speed limits, and announcing when passing.

Deputy City Manager/Director Goldie reported Cherry Hills Village was the smallest jurisdiction involved in the Hampden Avenue Mobility and Safety Study but had the most representatives at the August 30<sup>th</sup> open house.

Director Farmen reported the City had received a preliminary assessed valuation for 2023 from the County which was an approximate \$55,000 decrease from 2022; that number was subject to change in the next several months; the City received the 2023 Highway User Tax Fund estimate from CML which was approximately the same as 2022; CML predicted taxes and fees would increase over the next several years.

City Clerk Gillespie noted one of the permitted activities under the Fair Campaign Practices Act was for Council to pass a resolution in support or in opposition to a ballot measure; such resolution could only be reported or distributed through customary means, which would be posting on the City website on the City resolutions page; she asked if Council wanted staff to prepare a resolution for consideration at the next meeting.

Council indicated they would consider a resolution supporting the TABOR issue regarding remote sales tax.

Planning Manager Workman reported staff had interviewed four engineering firms in response to the engineering services RFP; staff would keep Council updated on the process.

City Manager Cramer had no further report.

### **City Attorney**

City Attorney Guckenberger had no report.

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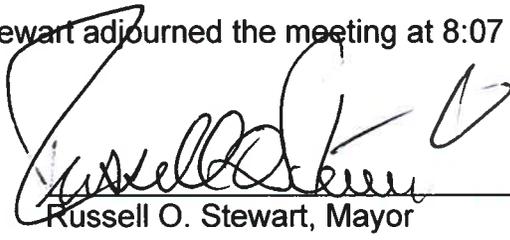
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**ADJOURNMENT**

Hearing no objection Mayor Stewart adjourned the meeting at 8:07 p.m.

(SEAL)

  
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Russell O. Stewart, Mayor

  
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Laura Gillespie, City Clerk