

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, September 19, 2023 at 6:30 p.m.
City Hall, 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113

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

CALL TO ORDER

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

ROLL CALL

Mayor Katy Brown, Mayor Pro Tem Randy Weil, Councilors Earl Hoellen, Susan Maguire, Dan Sheldon, and Robert Eber were present on roll call. Also present were Interim City Manager Jim Thorsen, Deputy City Manager/Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Police Chief Jason Lyons, Finance Director Doug Farnen, Community Development Director Paul Workman, Human Resources Manager Kathryn Ducharme, and City Clerk Laura Gillespie.

Absent: Councilor Al Blum

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

Tory Leviton, 3901 E. Quincy Avenue, apologized for not reading the Charter amendment ballot measure closely enough regarding 90 Meade Lane; he expressed support for leaving City parks and open spaces more natural; he thanked Council for appointing the new members to the Parks, Trails, and Recreation Commission; he invited everyone to his concert in Allan Hutto Memorial Commons on October 1st.

REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES

None

CONSENT AGENDA

Mayor Pro Tem Weil moved, seconded by Councilor Maguire, to approve the Consent Agenda:

- a. Approval of Minutes – September 5, 2023

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Resolution 29, Series 2023; Amending the City's Traffic Calming Policy

Deputy City Manager/Director Goldie presented Resolution 29, Series 2023; based on Council direction at the July 18, 2023 meeting staff had reorganized the policy.

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Councilor Maguire asked about the communication with the resident if the warrants were not met.

Deputy City Manager/Director Goldie replied staff would have a conversation and go through the information with the resident.

Councilor Maguire asked about the Impact Area meeting.

Deputy City Manager/Director Goldie explained the meeting would gather input from the neighbors to take into consideration when the traffic engineers designed the traffic calming measures.

Councilor Hoellen applauded the rewrite and stated the outline was very helpful.

Councilor Eber expressed concern with the narrowness of the definition of Impact Area; he often asked drivers to slow down and was often treated very rudely; he was nervous about putting the onus for outreach on residents for a speeding problem on City streets; although it was a good idea he was nervous that in this age when violence erupted seemingly randomly the City could be putting individuals at risk; speed was a City problem.

Mayor Brown replied she agreed with the concern that the Impact Area was too narrow with the old policy where traffic calming measures could be installed regardless of a defined speed problem, she was not concerned with the Impact Area with the new policy where a defined speed problem needed to be identified first; she thought engaging the community and the neighborhood awareness campaign were important but she questioned placing all the responsibility for outreach on the applicant once the City had evidence of a speeding problem.

Councilor Hoellen indicated the policy did not state the City would not take steps to address the speeding problem separate from the policy once the City had evidence of a speeding problem.

Deputy City Manager/Director Goldie stated the City took over the process if the second speed study, following the neighborhood awareness campaign, showed there was still a speeding problem.

Mayor Brown replied it was a big step to get 80% of the signatures of a large HOA.

Deputy City Manager/Director Goldie noted it was the same threshold as the old policy.

Mayor Brown replied that was in the case of no speeding problem; once the City knew there was an issue the City should be actively engaged in proposing a solution; community input was still very important; she suggested the City should take on more of the burden of conducting the public outreach.

Councilor Maguire suggested letters be sent to the impact area and if more than 20% objected to the proposed traffic calming measures by a certain date then the process would not move forward.

City Manager Thorsen suggested the threshold could be lower for HOAs; the residents that abut the street would be most impacted by traffic calming measures.

Councilor Hoellen stated the policy had nothing to do with what City Council could do regarding traffic calming measures; the purpose of the policy was to outline the mechanism for residents desiring traffic calming measures; if the City identified issues that were dangerous to the public the City would take action regardless of what the residents preferred.

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Mayor Pro Tem Weil agreed the policy applied to resident-initiated problems, but he would hope the City would have the same standards of meeting warrants and engagement with the community for a Council initiated issue.

Councilor Hoellen indicated the policy was based on the premise that the City did not want physical changes to roadways and the policy set up hurdles for citizens to clear if they really wanted traffic calming measures.

Mayor Brown disagreed and noted the policy stated "The following procedures have been developed to identify and address traffic speed and safety concerns on residential streets in Cherry Hills Village."; the policy was not trying to discourage traffic calming; the City was most likely to hear about speeding problems from residents; if the City became aware of a speeding problem through another mechanism she thought the City should still go through a procedure similar to the one outlined in the policy.

Councilor Eber suggested adding language to the policy clarifying that the policy was to address citizen-initiated items and the City retained all rights and authority.

Mayor Pro Tem Weil stated he supported the objectivity of the policy for both resident-initiated issues and Council-initiated issues; he expressed concern with Council-initiated issues not being held to the same standards as the resident-initiated issues.

Mayor Brown agreed; she corrected a sentence in step 3 to read "only the owner(s) on the property title may sign the document"; she expressed concern with the applicant being responsible for reviewing the preliminary design and coordinating the impact area meeting.

Councilor Eber suggested the City organize the meeting.

Mayor Brown agreed; she proposed revising the language in Step 4 to state "Upon completion of certified petition in Step 3, City staff will prepare a Preliminary Traffic Calming Plan. The Preliminary Plan will provide approximate locations for the speed humps, curb extensions, landscaped medians, and all associated signage. Once the plan has been prepared: City staff will coordinate a public Impact Area Meeting that will include an invitation to the District Councilmember and everyone who signed the petition."; the last bullet point would stay the same.

Councilor Hoellen stated he agreed with those changes and noted everyone that signed the petition would be the impact area.

Councilor Maguire asked about 80% support versus 20% oppose for the petition.

Councilor Eber replied he knew it was a heavy lift, but he was a believer in gathering support rather than depending on opposition.

Councilor Sheldon noted some HOAs required a simple majority and asked if the City's threshold should be higher.

Mayor Brown agreed but noted an HOA vote dealt with private property while this process dealt with public streets.

Councilor Earl stated it needed to be a heavy lift because this was not a preferred solution.

Councilor Maguire replied at that point in the process a speeding problem had been identified and established and the prior steps taken had not solved the problem; she questioned the heavy lift for a speeding problem that had been established and that hadn't been solved by other steps.

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Mayor Brown noted she could be supportive of a lower threshold; she posed the situation where the people on the street with the speeding problem were very frustrated and supported traffic calming measures, but the other people in the HOA who were the ones speeding refused to sign the petition.

Councilor Eber posed the situation where speed humps were added to a street so cars just moved to the adjacent street.

Mayor Brown replied that was a slightly different scenario than many areas in the City.

Councilor Hoellen suggested removing HOAs from the impact area.

Mayor Brown agreed; the impact area should be broad enough to encompass those that were truly impacted, but not necessarily the entire HOA.

Mayor Pro Tem Weil stated there was some benefit to having an HOA if there was one as the applicant because they had mechanisms to communicate with all the residents.

Mayor Brown replied that a resident could still utilize those tools during the process, but the impact area would no longer necessarily encompass an entire HOA.

Councilor Sheldon asked for clarification that under the proposed policy an applicant or neighborhood could not request traffic calming measures unless there was a demonstrated speeding problem.

Deputy City Manager/Director Goldie confirmed that was correct.

Mayor Brown indicated the public impact area meeting should include an invitation to the district councilmember and any relevant HOA.

Councilor Maguire clarified that notification would not be sent to everyone in the HOA but just to the HOA contact person, and it was strictly informational.

City Manager Thorsen confirmed that was correct.

Mayor Brown noted the specific streets that were not eligible for traffic calming measures listed in the warrants table and asked Council to be sure they had given thought to and were comfortable with that list. She indicated the wording of the traffic volume description was confusing. She suggested rewording the description to read "Streets that have more than 100 but less than 200 ADT can be eligible if they meet the requirements outlined below in Accident Data."

Councilor Maguire asked if the policy stated all the warrants needed to be met.

Deputy City Manager/Director Goldie confirmed it did but noted there was a caveat that either speed or accident data was needed, not both.

Mayor Brown suggested anywhere the policy referred to all warrants be changed to just warrants.

Councilor Maguire expressed concern that if the policy did not state all warrants applicants would argue they did not have to meet all the warrants required.

Mayor Brown suggested adding a footnote explaining where the 85th percentile came from.

Councilor Eber supported clarifying that the policy was only for citizen-initiated process and while the procedures were not a bad idea to apply to Council-initiated processes he did not want to limit the City's rights with respect to its roads; he also wanted the

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policy to be specific to traffic calming and not limit the City's rights to made physical changes to its roadways for other purposes.

Mayor Brown agreed but noted the policy specifically stated it was developed to address traffic speed and safety concerns.

Councilor Maguire agreed language could be added to clarify the policy only applied to a citizen-initiated process.

City Manager Thorsen stated the City always retained its rights to put in traffic improvements as it deemed appropriate.

Councilor Hoellen agreed language should be added to the policy to clarify.

Mayor Pro Tem Weil indicated he did not have an issue with adding that language, but that Council should hold themselves to a similar standard for Council initiated processes.

Mayor Brown added the road length section in the warrants table should read "... 1000 feet in length for traffic calming measures to properly be installed..."

Councilor Sheldon asked if there were any consultant fees being paid for the traffic counts and if a refundable escrow account or application fee should be considered.

Deputy City Manager/Director Goldie replied all the traffic counts were done in-house by City staff.

City Manager Thorsen noted the consultant would probably come in after the warrants were met, when the traffic calming was being designed.

Deputy City Manager/Director Goldie added staff did not want any impediment for residents to start the process by bringing forward possible speeding problems on City streets.

Councilor Sheldon agreed.

Councilor Hoellen moved, seconded by Mayor Pro Tem Weil, to postpone the consideration of Resolution 29, Series 2023 to the October 10th Council meeting.

The motion passed unanimously.

NEW BUSINESS

Council Bill 7, Series 2023; Repealing and Replacing Section 4-1-50 of the Municipal Code Concerning the City's Capital Fund (first reading)

Director Farnen presented Council Bill 7, Series 2023 on first reading; the proposed ordinance would update the Code pertaining to the City's Capital Fund; currently the Capital Fund was blended with the General Fund for financial reporting and auditing purposes; the proposed bill would accomplish three main objectives: the Capital Fund would be a tool for long term financial forecasting, it would be separately reported and audited, and it would be part of the financial planning and reporting to the community; the Capital Fund would be the major source for the capital improvement program; revenue would come from the General Fund and Parks Fund; revenues could also include grants and legally restricted revenues such as the Highway User Tax Fund (HUTF); the proposed ordinance stipulated that any unexpended interfund transfers could be returned to the originating fund at Council's direction; in practice staff would transfer expended funds into the Capital Fund at the end of the year so there would be no unexpended funds in the Capital Fund; the proposed bill redefined that the revenues

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would be spent on capital asset acquisition, construction, and improvements in accordance with the City's Capital Improvement Program Policy; Councilor Hoellen had suggested adding the Parks and Recreation Fund to the third whereas clause, Section 4-1-50(b)(1), and Section 4-1-50(c).

Mayor Pro Tem Weil asked how the expenditures from the Capital Fund would be tracked if the revenues were coming from several sources, some of which were restricted and some of which were not.

Director Farmen replied there would be no accumulation of revenues from the Parks Fund in the Capital Fund because the transfer of revenues would occur as a reimbursement from the Parks Fund to the Capital Fund after the expenditures occurred.

Councilor Hoellen added he believed there should be no transfers from the Parks Fund or the General Fund into the Capital Funds until those monies were needed for specific expenditures; he asked about the 1% Xcel Fund.

Deputy City Manager/Director Goldie replied the 1% Fund was held by Xcel; the City did not keep those revenues.

Councilor Hoellen moved, seconded by Mayor Pro Tem Weil, to approve Council Bill 7, Series 2023; A Bill for an Ordinance of the City of Cherry Hills Village Amending Chapter 4, Article I Concerning the City's Capital Fund, on first reading.

The following votes were recorded:

Eber	yes
Hoellen	yes
Weil	yes
Sheldon	yes
Maguire	yes

Vote on Council Bill 7-23: 5 ayes. 0 nays. The motion carried.

Resolution 35, Series 2023; Adopting a Capital Improvement Program Policy

Director Farmen presented Resolution 35, Series 2023 for Council consideration, approving a Capital Improvement Program Policy; the policy would achieve four main objectives: it provided the guiding principles in developing the annual capital improvement program (CIP) by protecting and developing the City's infrastructure facilities and other capital assets, it defined capital assets that might be part of the CIP, it identified capital planning objectives, and it stipulated that the annual CIP would be submitted to Council at or before the draft budget; Councilor Hoellen had suggested the following changes: change "grow" to "develop" in the purpose section, add "during the relevant fiscal year" to the definition of budget, and add "and a long-range financial forecast" to the program development and reporting section.

Councilor Maguire suggested adding "acquisition of" to the capital improvement program definition and changing "as" to "is" to the capital planning objectives section. She asked about the timeframe of the multi-year CIP.

Director Farmen replied it was currently a ten-year timeframe.

Mayor Brown noted one way to do capital planning would be to develop a plan, determine the funds needed over the next ten years, divide it by year and budget it, and fund it each year, equalize the impact, in big capital years there would be funding; the City would not do it this way because of the co-mingling of funds issue, so instead the

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City would transfer each year to the Capital Fund; how would Council make sure they were saving City funds to prepare for a year with a huge capital need.

Councilor Hoellen replied that planning was done through the long-range financial forecast; Council also needed to review the City's reserve policy.

Mayor Brown noted the annual budget did not include a line item for saving funds for a future purpose.

Councilor Maguire agreed that was an important issue but was not part of this policy.

Director Farmen added that concern could be addressed with a committed fund balance which Council could adjust each year.

Councilor Hoellen stated Council should not commit any fund balance without taking into account the long-range financial forecast.

Councilor Maguire moved, seconded by Councilor Eber, to approve Resolution 35, Series 2023, adopting a Capital Improvement Program Policy, with the recommended changes and the amendments that Councilor Maguire made.

The motion passed unanimously.

Tree Preservation and Replacement Discussion

Director Workman explained the information presented in the Council packet and at tonight's meeting was intended to facilitate a discussion about the current tree mitigation requirements and possible new language to strengthen the requirements, which was the desire of Council expressed at the end of last year; the language presented tonight was not proposed for adoption; if Council was supportive of the language there were some legal questions that would require further legal analysis; the proposed language would expand the applicability of mitigation to any addition to a home regardless of size; the proposed language added a definition of heritage tree for trees 20 caliper inches or more in diameter at breast height and prohibited removal of heritage trees regardless of their location on a property and regardless of any building permit, except in particular circumstances as approved by the Director; if removal of a heritage tree were approved by the Director then the applicant would be required to notify adjacent property owners prior to removal of the tree; the new language added exceptions to the replacement requirement for trees located in a site distance triangle, diseased or dying trees, or trees interfering with utility services; the new language required stump removal within 30 days of a tree's removal; the new language added a diversification requirement to the tree replacement schedule.

Councilor Maguire asked how the City would enforce the regulations.

Director Workman replied Chapter 16 had a section on enforcement.

Councilor Maguire suggested property owners should be able to remove a heritage tree if it were inside the building envelope; she asked for confirmation that the neighbors did not have to agree to a tree removal.

Director Workman confirmed the neighbor notification was for informational purposes only.

Councilor Hoellen questioned the timing of the notification.

Mayor Brown replied the notification was after City approval but before tree removal and was intended to keep people informed.

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Councilor Maguire noted her property backed up to Englewood and asked if the notification requirement stopped at the City borders.

Director Workman replied staff would take direction from Council on that point but for land use applications the notification requirement did not stop at the City borders.

Councilor Maguire stated she believed the regulation was overstepping.

Councilor Sheldon questioned how residents would be notified of the new regulations; he expressed concern with who would determine if a tree met the requirement of being diseased or dying.

Director Workman indicated Council's comments echoed the previous discussion trying to balance private property rights and community character and staff welcomed any feedback on the proposed language.

Councilor Eber questioned the legality and practicality of enforcement of the new language; he asked about trees being private property and the City's legal authority to prohibit their removal; he expressed concern with regulating intentional poisoning or not watering a tree so that it became diseased and dying and qualify for removal; he questioned the practicality of City staff monitoring survival of relocated or replaced trees; he questioned why a 20 caliper tree could be replaced with a 10 caliper tree.

Councilor Hoellen noted municipalities across the country had tree preservation ordinances and as long as there was a valid environmental or community reason it balanced the private property rights; he was not sure if Colorado had any relevant regulations; typically, heritage trees were historic trees; he asked how the City knew if their current regulations were being followed and if people asked about tree removal permits.

Director Workman replied that the City did occasionally get calls about asking if City permission was needed to remove a tree, and since the current code only regulated tree removal within 12 months of a new home permit or major addition permit staff was able to track those tree removals through the building permit process; he noted Council had removed the limit to the caliper size for replacement trees.

Mayor Brown added the reason Council had not required replacement of a 20 caliper tree with a new 20 caliper tree was that trees grow, and it was not feasible to buy a 20 caliper tree.

Councilor Hoellen questioned the neighbor notification occurring after City approval of a tree removal; he noted there was no location part of the replacement requirement.

Mayor Brown replied that was intentional and the City could not require the tree be replaced in the same location because the location might be why the property owner was removing it in the first place.

Councilor Hoellen questioned the title of the tree replacement species table; he asked what "beyond the reasonable control of the applicant" meant.

Mayor Brown replied that it could be Xcel cutting down a tree.

Director Workman added a winter storm.

Councilor Hoellen asked who decided what the "undesirable change in the character of the neighborhood" entailed.

Director Workman replied the current Code identified the Director.

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Mayor Pro Tem Weil agreed with Councilor Eber's concern about the legal authority question; he wondered if changing the Code to address one property issue was overreacting.

Mayor Brown suggested removing the notification requirement from the heritage tree section for situations beyond the reasonable control of the applicant; the stump removal requirement might be going too far; the City was not an HOA and did not regulate aesthetics; this issue was an extremely delicate balance; she liked a lot of the ideas proposed; she thought there might be a compromise to be struck around the heritage tree provision in some form, but staying within City rights-of-way or between the property line and the setback line; she understood Councilor Hoellen's concern with the notification requirement but agreed with the requirements; she suggested notification be limited to immediately adjacent neighbors and not across a street.

Councilor Eber asked for legal information about what made tree preservation regulations in other jurisdictions legal and if the term heritage tree had any legal definitions or consequences.

REPORTS

Mayor's Report

Mayor Brown reported she attended the Cherry Hills Land Preserve (CHLP) Barn Party, it was a great event and Quincy Farm looked beautiful; she would attend Dine for the High Line this week; she had met with the City's lobbyist about potential zoning reform efforts; Arapahoe County was organizing a bus tour for state legislators and would like local elected officials to attend.

Councilor Hoellen asked if the lobbyist had any specifics yet.

Mayor Brown replied they did not but they were not waiting to see the bill before acting this time; there were a few things that were generally expected; it would not come back as one large bill; accessory dwelling units would likely return; transit oriented development would likely return; she had not heard anything about middle housing returning yet; former CML lobbyist Meghan MacKillop was leaving CML and joining the lobbying firm the City had contracted with.

Members of City Council

Mayor Pro Tem Weil reported DRCOG met that morning and received reports from the Front Range Passenger Rail Special District, RTD, and the Regional Air Quality Council; the RAQC was issuing grants for electrification of equipment.

Councilor Sheldon reported he planned to ask Council and staff at the October 10th budget study session to add a line item to the 2024 budget for a cell phone infrastructure program; he envisioned a plan for fiber running to a select number of future locations for antennas throughout the City.

Councilor Hoellen reported he attended the CHLP event at Quincy Farm; it was extraordinary how good the property looked; it was a terrific evening; he thanked Manager Ducharme and everyone who had worked on the compensation study; it was important work; Council felt the City had the best staff and they deserved to be compensated.

Councilor Maguire sent well wishes to Officer Smith for his recovery from his motorcycle training accident.

Councilor Eber reported he had met with Director Workman and the Code Enforcement Officers about abatement of nuisances in the City, especially weeds; he encouraged

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abatement be done more quickly than it was currently; he had met with Deputy City Manager/Director Goldie and Manager Black to review the 2024 Parks budget; he had been notified of several building projects that had not gotten permits; he suggested implementing a nuisance fine to discourage the violation; the City of Englewood would go through a recall election in a couple of weeks and encouraged everyone to be aware of the issues; he suggested tree preservation might be a good topic for a community forum.

Mayor Brown reported CML was opposing Proposition HH and had provided a sample resolution, she asked if Council wanted to adopt a resolution opposing Proposition HH.

Council indicated they did.

City Manager

Interim City Manager Thorsen reported he had talked to resident Alice Abrams; the October 3rd meeting had been rescheduled to October 10th; the 2024 budget study session would be on October 10th; first reading of the 2024 budget would be November 7th and second reading would be December 6th; staff would look into the electrification grants.

City Attorney

City Attorney Guckenberger reported the City had responded to Colorado Open Land's impact memo regarding the West Side of Quincy Farm; City staff was working with legal counsel to provide a follow-up communication and a longer term plan.

City Staff

Deputy City Manager/Director Goldie reported the new Public Works Clerk Ginny Joseph had started.

Chief Lyons expressed thanks to Council, staff, and the Department for their support of Officer Smith; the Department had a swearing in and promotional ceremony yesterday; two officers were hired in January and went to the police academy and then to training; Officer Smith was hired in May; Officer Tony Garcia was promoted to Sergeant; the new Crimewatch platform was active, and a new blotter would be published soon.

Mayor Brown asked about the difference between a robbery and a burglary.

Chief Lyons explained a burglary was when one entered a structure without permission with the intent to commit another offence therein, typically theft, and was a crime against property; a robbery was a crime against a person, the unlawful taking of property from another against their will using threat, coercion, or force.

Mayor Brown asked about a car.

Chief Lyons replied in Colorado it was called a first-degree criminal trespass, in other states it was called a car burglary.

Mayor Brown noted crashes were up pretty significantly.

Director Workman reported he would attend the American Planning Association Conference and would report back on discussions related to state land use preemption.

Councilor Sheldon suggested using ARPA funds to retrofit the dais to extend the staff tables so that Council could see staff more easily.

Mayor Pro Tem Weil suggested moving the staff tables rather than extending them.

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City Manager Thorsen replied staff would bring a cost estimate to Council.

ADJOURNMENT

The meeting was adjourned at 9:08 p.m.

(SEAL)



Kathleen Brown, Mayor



Laura Gillespie, City Clerk