

## RECORD OF PROCEEDINGS

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Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, October 5, 2021 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 6:30 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 Michelle Tovrea, Finance Director Jessica Sager, Parks and Recreation Coordinator Emily Black, Senior Planner Paul Workman, and City Clerk Laura Gillespie.

Absent: none

### **PLEDGE OF ALLEGIANCE**

The Council conducted the pledge of allegiance.

### **AUDIENCE PARTICIPATION PERIOD**

Laura Christman, 18 Cherry Lane Drive, invited Council to attend the Arapahoe County Mounted Patrol presentation at the Village Club. She cautioned Council not to tell the community that the City was broke and could not fund projects because residents were very aware of what would happen to their assessments in two years, and in all likelihood the City would receive funds that exceeded the cost of living, so to speak. She spoke about the Denver First Church issue and noted the parking agreement with BRAVE Church was at issue because of the potential real estate transaction; she expressed concern that the Village may have inadvertently given one property owner tremendous leverage over the other, and might be hindering the negotiations; she did not think that was the role of the Village and she knew it was not the intent; she did not know in fact that they were being leveraged, she did not want to misrepresent the negotiations, she did not know anything about the negotiations; she thought having residential there was probably good for the Village and having multiple churches there may also be good for the churches; the only concern was parking; she asked Council to think a little bit out of the box to take the leverage away so that the parties could negotiate in good faith with each other without the Village being in the middle of that decision making process.

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

None

### **CONSENT AGENDA**

Councilor Sheldon removed Items 6a, 6d, and 6f from the Consent Agenda.

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

- b. Approval of Minutes – September 21, 2021
- c. Professional Services Agreement for Public Affairs Consultant Services with Blakely + Company LLC
- e. Change Order to Construction Contract for the 2021 Asphalt Capital Improvement Project with RME Ltd., LLC, DBA-Elite Surface Infrastructure

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- g. Resolution 27, Series 2021; Accepting a Tree Donation in Memory of Alan and Jo Ann Middaugh

The motion passed unanimously.

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

#### **Item 6a. Approval of Minutes – August 31, 2021**

Councilor Sheldon stated he did not believe he should vote to approve minutes for a meeting he did not attend, and as a good policy moving forward Council members should not vote on minutes for meetings they did not attend.

Mayor Stewart indicated it was appropriate for Council members to abstain from votes on minutes for meetings they did not attend.

Mayor Pro Tem Brown moved, seconded by Councilor Weil, to approve Item 6a, the minutes from August 31, 2021.

The motion passed with 5 ayes and 1 abstention.

#### **Item 6d. Manor Drive Paving Agreement**

Councilor Sheldon noted the exhibits to the memo were out of order.

City Clerk Gillespie explained the Manor Drive Paving Agreement identified as Exhibit A in the memo was labelled as Exhibit C; the Street Paving Policy identified as Exhibit B in the memo was labelled as Exhibit A; and the Manor Drive Paving Map identified as Exhibit C in the memo was labelled as Exhibit B.

Councilor Sheldon asked about Exhibit A to the Manor Drive Paving Agreement.

Deputy City Manager/Director Goldie explained that attachment was not included with Item 6d, but it was included as Exhibit C to Item 6e.

Mayor Pro Tem Brown moved to approve Item 6d, Manor Drive Paving Agreement.

Councilor Weil asked if the homeowners would pay for any overrun on the cost of paving.

Deputy City Manager/Director Goldie replied that was correct, and that the City would collect a 5% overage for the escrow account, and per the agreement any additional overage was also the homeowners' responsibility.

Councilor Weil seconded the motion.

The motion passed unanimously.

#### **Item 6f. Construction Contract for the 2021 Slurry Seal Project with A-1 Chipseal Company**

Councilor Sheldon noted the memo had not explained exactly where the slurry seal would be placed and Deputy City Manager/Director Goldie had provided a map on the dais.

Mayor Pro Tem Brown moved, seconded by Councilor Weil, to approve Item 6f, Construction Contract for the 2021 Slurry Seal Project with A-1 Chipseal Company.

The motion passed unanimously.

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### **UNFINISHED BUSINESS**

Council Bill 9, Series 2021; Amending Chapter 11, Article I Concerning Streets and Sidewalks and Chapter 11, Article II Concerning Public Right-of-Way Permits (second and final reading)

Deputy City Manager/Director Goldie presented Council Bill 9, Series 2021 on second and final reading. He indicated there had been one change since first reading based on direction from Council, concerning the placement of landscaping that would interfere with use, maintenance, and on-street parking; the change had been made to Section 11-2-40(e); since this could also affect CDOT rights-of-way the term "City's right-of-way" was changed to "public right-of-way"; wording was added stating "Installation of any private improvements or landscaping that impairs or interferes with the use or maintenance of the public right-of-way, including on-street parking where permitted, is prohibited."

Councilor Weil asked if the new regulation would be retroactive.

Deputy City Manager/Director Goldie replied enforcing this regulation retroactively would be very difficult.

Mayor Pro Tem Brown asked about a situation where the City received a complaint.

Councilor Weil added another situation would be if the improvements were not permitted.

Deputy City Manager/Director Goldie replied a lot of the City's Code issues were complaint-driven and the City could enforce this issue on a complaint-driven basis.

City Manager Cramer added it would be case-by-case and suggested the City might not require a resident to remove established trees even if they were planted in the right-of-way.

Deputy City Manager/Director Goldie provided an example at Franklin and Fairfax where the edge of the road was the edge of the right-of-way, so the vegetation planted on the edge of the road was on private property. He noted the right-of-way lines on the aerial were not perfect but they were close.

Mayor Pro Tem Brown stated people knew where their property lines were, particularly when they built fences they got a survey

Councilor Gallagher asked how the City handled short-term construction traffic parking in the right-of-way.

Deputy City Manager/Director Goldie replied the Code required construction vehicles be parked on the property for lots of an acre or larger. He noted the City's Code Enforcement Officers spent a lot of time enforcing that regulation.

Mayor Stewart noted construction parking was included in the construction staging plan filed with the City as part of the building permit, and issues about parking could be addressed during the permitting process.

Mayor Pro Tem Brown asked how that related to the residents who had attended a previous Council meeting about construction parking issues on their street.

City Manager Cramer explained that issue had been complicated from an enforcement standpoint because the contractors were not always parking inappropriately; sometimes the vehicles were there for regular landscaping maintenance versus construction; and the location of the right-of-way was not always clear.

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Councilor Weil asked if the City could issue tickets in the case where there were construction vehicles parked illegally.

City Manager Cramer confirmed the City had the legal authority to issue tickets for illegal parking.

Deputy City Manager/Director Goldie noted sometimes the contractors would rather tickets be written than change where they were parking.

Mayor Stewart indicated normally ordinances were prospective and it would be rare to have it be retroactive unless specified by Council.

City Attorney Guckenberger agreed and would not advise an ordinance to be retroactive because it did not provide notice about what constituted a violation before it was enforced.

Councilor Weil replied he was satisfied with it being complaint-driven and case-by-case.

City Attorney Guckenberger added for context Article II of Chapter 11 the purpose and objectives section indicated although the primary purpose of the public right-of-way was public use, there was a balance between public and private use; that was what staff was explaining that they tried to strike that balance every day in a means that provided adequate notice to people and enforcement options as necessary.

Councilor Safavi asked about the scale of the issue and asked how often staff received calls.

Chief Tovrea did not have exact numbers but noted there were more issues during spring and summer when there were more construction projects. She added smaller projects were much less likely than larger projects to have these issues. She noted there were a lot of permits open at the same time and lately multiple permits on the same street which further exacerbated parking issues. She indicated the Code Enforcement Officers warned and educated the first time, and wrote tickets the second time.

Councilor Safavi noted it was probably difficult to get the information to all the subcontractors.

Mayor Pro Tem Brown moved, seconded by Councilor Weil, to approve on second and final reading Council Bill 9, Series 2021; a Bill for an Ordinance of the City of Cherry Hills Village, amending Chapter 11, Article I concerning streets and sidewalks and Chapter 11, Article 2 concerning public right-of-way permits.

The following votes were recorded:

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

Vote on the Council Bill 9-2021: 6 ayes. 0 nays. The motion carried.

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**NEW BUSINESS**

**Council Bill 10, Series 2021; To Rezone a Parcel of Land Owned by the Lynn Welch Puana Living Trust, Located at 8 Cherry Hills Drive, from R-2 to R-3, and Amending the Official Zoning Map Consistent Therewith (first reading)**

Senior Planner Workman presented Council Bill 10, Series 2021 on first reading. He explained the proposed ordinance would rezone 8 Cherry Hills Drive from R-2 or R-3, to correct an obvious error in the rezoning of the subject property that occurred in 1981. He noted approval of the council bill on first reading did not approve or indicate approval of the requested rezoning at second reading; the approval on first reading would simply set the date for the future public hearing and second reading, consistent with allowing an applicant the requisite process and hearing opportunity provided for in the Code.

Mayor Pro Tem Brown moved, seconded by Councilor Weil, to approve Council Bill 10, Series 2021, a bill for an ordinance of the City of Cherry Hills Village to rezone a parcel of land owned by the Lynn Welch Puana Living Trust, located at 8 Cherry Hills Drive, from R-2 (1.25-Acre Residential) to R-3 (1-Acre Residential), and amending the Official Zoning Map consistent therewith on first reading and set the public hearing and second reading for the November 2, 2021, City Council meeting.

The following votes were recorded:

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

Vote on the Council Bill 10-2021: 6 ayes. 0 nays. The motion carried.

**Resolution 28, Series 2021; Adopting Amended Construction and Excavation Standards for Work in Public Rights-of-Way**

Deputy City Manager/Director Goldie presented Resolution 28, Series 2021. He explained in accordance with and supplemental to Chapter 11, Article II of the Municipal Code, the construction and excavation standards established the minimum design and technical criteria for all work in the public right-of-way; it was the principal document used for permitting and managing all work that took place within the City's rights-of-way, including streets and trails; the document was intended to give permit holders all the necessary information needed to lawfully work within the right-of-way; it ensured that the travelling public remained safe while work was occurring in the rights-of-way; it ensured that each permittee is responsible for the full cost of returning the disturbed area to an equal or better condition than existed prior to the work being performed; the Standards and permit costs proposed by Resolution 28, Series 2021 were consistent with the intent of Chapter 11 of the Municipal Code; staff was requesting changes to the Standards to meet the changing technologies and practices utilized by utilities, contractors, and residents working within the rights-of-way; the recommended fees had been set to offset the direct costs incurred by the City to manage and oversee work taking place in the rights-of-way. He indicated the full recommended changes were included in Council packets and reviewed the major changes: amending the Permit Fees section of the Standards to clarify that the City would only perform restoration if an asphalt project was planned within the City budget, otherwise the permittee would be required to perform the restoration as part of the permit requirements; he noted this was for larger projects and if the City had an upcoming paving project they gave the contractor the option of putting the money into escrow and included the restoration as part of the City's project; staff was supportive of this policy as it allowed the City to oversee the restoration and often resulted in a better outcome. He explained as the City

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moved through its right-of-way and street maintenance program the City was doing more maintenance with chip seal and less paving. He continued to explain the proposed changes: amending the Work in Gravel Streets section to clarify that the restoration fee included the staff time needed to blend the new materials together to bring the street back to its previous condition; amending the Bond and Certificate of Liability section to clarify that occupancy permits and driveway permits would only require a \$5,000 one-year bond which staff believed was sufficient and would also be easier for homeowners who got bonds through their homeowners insurance; amending the Landscape Permits section to agree with the amendments just approved with Council Bill 9, Series 2021, and also clarifying that the City would not maintain allowed private improvements within the right-of-way.

Mayor Pro Tem Brown noted there could be some confusion with the wording of that section and suggested an edit to help clarify.

Deputy City Manager/Director Goldie agreed.

City Attorney Guckenberger noted the recommended motion allowed staff to make those types of changes after approval.

Deputy City Manager/Director Goldie continued to explain the proposed changes: amending the Location of Facilities section to require utilities to provide the City with information about their existing and new construction, in order to help the City build an accurate database of the location of all facilities in the rights-of-way; amending the Underground Access Structures section to ensure the utilities would be responsible for raising or lowering the elevation of manhole and hand-holes as needed to conform to the street elevation; adding paragraph D to that section which would require all private facilities such as HOAs to register their improvements with 811 and respond to 811 locate requests in accordance with state statute, and if they failed to comply they would be responsible for any damage to their facilities. He noted this was a significant change and there could be considerable cost to the HOAs for this effort, but staff wanted to ensure that these costs were borne by the private facility owners rather than the City. He indicated staff would communicate with all known HOAs whether they had improvements or not to notify them of this change.

Councilor Blum asked about the word "presumably" in the amended language of the Standards.

City Attorney Guckenberger replied the language was taken directly from state statute.

Mayor Stewart asked if this would affect older or newer HOAs. He expressed concern that the HOAs would not know what to do with this information.

Deputy City Manager/Director Goldie replied it would affect both but the older HOAs were more likely to have improvements that were not mapped.

Councilor Sheldon asked for confirmation that if an HOA did not locate their improvements, and the improvements were damaged during a construction project, it would be the HOA's responsibility to make repairs.

Deputy City Manager/Director Goldie confirmed that was correct and added the HOAs were also responsible for responding to all 811 locate requests of those improvements. He explained they would have to send a map of their improvements to 811, and whenever a contractor was doing work in the area 811 would send a locate request, and the HOA would be responsible for having someone go to the site to mark the improvements.

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Councilor Sheldon agreed with Mayor Stewart's concern about the HOAs' reaction to this requirement. He suggested staff communicate in layman's terms the results if the HOAs did not follow the requirements.

Deputy City Manager/Director Goldie agreed and indicated he had planned to provide his contact information in the notification and would be happy to meet with any of the HOAs to help explain the requirements.

City Manager Cramer added the state had produced some user-friendly information about the 811 system and requirements that would be helpful.

Councilor Sheldon noted many HOAs in the City had very low interest and involvement by residents.

Mayor Pro Tem Brown added it would be a difficult for the HOAs to comply with these regulations.

Deputy City Manager/Director Goldie continued to explain the proposed changes: amending the Construction Standards section to clarify compaction testing will not be required for minor installations as flash or flow-fill was already required; to specify that it was the permittees' responsibility to document the pre-construction condition of the construction area and immediate surrounding vicinity.

Councilor Sheldon noted it seemed like a lot to ask of contractors to document the condition of the area.

Deputy City Manager/Director Goldie explained staff already asked contractors to do this now and the change to the Standards was to require that documentation. He added most contractors had no problem with the requirement and it was common practice for most municipalities. He continued to explain the proposed changes: require the permittee to remove paint markings for utilities on road surfaces or use flags instead of paint when possible; clarify the specifications of how tracking mats are to be installed; specify that the City did not allow micro-trenching on paved streets; and raising fees for the minimum permit fee for gravel roads and the inspection fee for major installations in order to cover the City's actual costs.

Councilor Safavi asked what the fee increases were based on.

Deputy City Manager/Director Goldie replied the fee increased was based on the salary cost for the staff member that did the work on the permits and inspections.

Mayor Stewart asked about bonds versus cash deposits, noting that bonds were expensive for contractors. He asked who in the City tracks the bonds and if the City had ever had to call on a bond.

Deputy City Manager/Director Goldie replied Public Works Clerk Pamela Broyles tracked all the bonds; the City had luckily never had to call on a bond; bonds were the easiest for City staff to track; the fees were about 0.5% to 1%; contractors usually got bonds through their insurance or a bond company; bonds had to be active for two years for most right-of-way permits.

Councilor Gallagher added letters of credit were another option.

Mayor Stewart agreed letters of credit were much more flexible and they were cheap.

City Manager Cramer indicated some municipalities allowed letters of credit for larger bonds but they were more difficult administratively, so for the project sizes the City dealt with limiting to bonds made sense.

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Mayor Pro Tem Brown moved, seconded by Councilor Weil, to approve Resolution 28, Series 2021; adopting amended Construction and Excavation Standards for work in public rights-of-way; and further moved to authorize the City Attorney to make such changes as may be needed to correct any nonmaterial errors or language.

The motion passed unanimously.

### **DISCUSSION**

#### **Discussion Regarding Quincy Farm**

City Manager Cramer explained this was a place-holder item following from the last meeting; staff had nothing to present at this time but would welcome any feedback, questions, or comments from Council; staff would have information to present on how to move forward with a Memorandum of Understanding at the November 2, 2021 meeting.

### **REPORTS**

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

Mayor Stewart reported he had attended the CML Annual Conference; the CML district meeting in Victor; the Master Plan Open House and reported it had gone well; the CML audit committee meeting and reported CML fees would be reduced; he would attend the Metro Mayors Caucus; the CML district meeting in Trinidad; and the CML policy committee meeting.

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

Councilor Blum agreed with Mayor Stewart's comments on the Master Plan Open House; he thanked staff for their work on the Exotic Car Show.

Councilor Sheldon asked about the little stubs along Mansfield on the paving map in the packet.

Deputy City Manager/Director Goldie replied those were the drain pans, they were color-coded for concrete, they would be put in to deal with the existing drainage issues at Mansfield and Colorado and to replace broken pans.

Councilor Sheldon asked for an update on the Quincy undergrounding project.

Deputy City Manager/Director Goldie replied he contacted Xcel again yesterday and was told they would be starting today, but the only vehicle that was out there today was the locate company; he would make another call tomorrow if they were not out there.

City Manager Cramer indicated staff was doing what they could to address the issue from multiple angles.

Councilor Gallagher reported the Cherry Hills Land Preserve Trail Walk at Quincy Farm was a great event and it was good to see people at Quincy Farm. He indicated the property at Quincy and Franklin where many large trees had been cut down went against the character of the City. He understood the landowner was allowed to do what they did but stated the timing should be addressed by Council.

Senior Planner Workman stated they had not submitted a building permit application for review.

Deputy City Manager/Director Goldie noted the Municipal Code did not have any requirements around tree removal unless a building permit application was submitted within a year.

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Councilor Sheldon asked for more information on the tree preservation ordinance.

Senior Planner Workman explained the tree preservation ordinance was only in effect within year of the building permit, and a tree survey and replacement plan were required. He added staff was in contact with the contractor who intended to submit a permit before the end of the year period; they were aware of the tree preservation ordinance; they had done a tree survey before removing the trees.

Councilor Sheldon noted it was common to clear a property before developing it.

Councilor Gallagher suggested the Code be revisited to strengthen the ordinance.

Mayor Pro Tem Brown expressed support for private property rights.

Councilor Sheldon asked how the City's ordinance compared to other municipalities.

City Manager Cramer replied the City's ordinance was one of the more robust in the Denver Metro Area.

Councilor Sheldon noted he saw both sides and suggested this be added to the list of Code sections for Council to discuss updating.

Mayor Stewart indicated it was probably easier for the contractor to clear the trees, but the new homeowners would probably want the trees; he thought the ordinance struck a good balance, but Council could certainly revisit it.

Mayor Pro Tem Brown thanked staff for the Car Show event. She referenced the letter from Cherry Hills Land Preserve on the dais and was delighted Dr. Skramstad had agreed to work with CHLP in a meaningful way.

Councilor Weil had no report.

Councilor Safavi had no report.

### **City Manager & Staff**

Senior Planner Paul Workman reported staff was very pleased with the attendance and feedback at the September 29<sup>th</sup> Master Plan Open House; the community survey was available on the City website and the project website.

Parks Coordinator Black stated she would pass on the kind words about the Car Show to Public Works Clerk Pamela Broyles. She reported staff was discussing public health guidance issues with the Winter Celebration which was held partially indoors.

Councilor Safavi expressed concern since children could not be vaccinated, and noted if any of the children sitting on Santa's lap for pictures had COVID-19 then it could be a dangerous situation from a public health perspective. He recommended a more cautious approach and possibly not holding the event this year as pictures with Santa was such a big part of the event.

Director Sager reported the next packet would include a memorandum of understanding with the State of Colorado for the national opioid settlement; Cherry Hills Village would receive approximately \$47,000 over an 18-year period; expenditure of the funds was very restricted, mainly prevention and treatment programs and facilities; staff would likely be recommending allocating the City's portion to Arapahoe County since the County has those types of programs in place and the City did not.

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Police Chief Tovrea reported on Monday October 11<sup>th</sup> Angelo Alston would be sentenced for the incident on Sedgewick in which there was a home invasion robbery and Officer Cory Sack was shot; she would attend the sentencing along with other members of the Police Department.

City Clerk Gillespie reported the October 19<sup>th</sup> City Council meeting was cancelled due to lack of quorum; the next meeting would be November 2<sup>nd</sup>; a list of the 2022 meeting dates was included in the Council packet and staff was recommending a Council retreat during the day on February 1<sup>st</sup>; the Flu Shot Clinic and Drug Take Back Event would be held on October 23<sup>rd</sup>; the reception for the new art show would be held November 3<sup>rd</sup>.

City Manager Cramer reported he would attend the executive committee meeting for the Belleview/I-25 Interchange project. He thanked staff for all the work they were doing from the Master Plan to the Car Show to the draft budget.

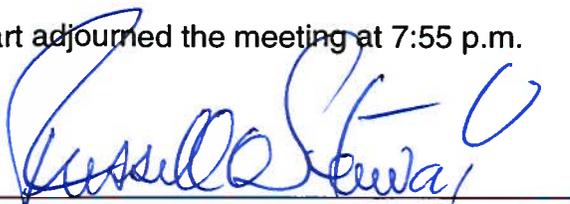
**City Attorney**

City Attorney reported she would attend the CML attorney conference in Pueblo.

**ADJOURNMENT**

Hearing no objection Mayor Stewart adjourned the meeting at 7:55 p.m.

(SEAL)



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Russell O. Stewart, Mayor



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Laura Gillespie, City Clerk