

CITY COUNCIL MINUTES
CITY OF WHEAT RIDGE, COLORADO
7500 WEST 29TH AVENUE, MUNICIPAL BUILDING

September 23, 2019

Mayor Starker called the Regular City Council Meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

ROLL CALL OF MEMBERS

Zachary Urban	David Kueter	Amanda Weaver	Leah Dozeman
Kristi Davis	George Pond	Larry Mathews	Janeece Hoppe

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Manager, Patrick Goff; Community Development Director, Ken Johnstone; City Treasurer, Chris Miller; other staff, guests and interested citizens.

PROCLAMATIONS AND CEREMONIES

Domestic Violence Awareness Month

Mayor Starker proclaimed the month of October 2019 as Domestic Violence Awareness Month and stated the City of Wheat Ridge is committed to the reduction of domestic violence and the health, safety and welfare of its residents by providing assistance to victims and witnesses of crime and other traumatic events through victim assistance partnerships and awareness-related efforts and events.

Scott Shields and **Deb Bittner** from Family Tree were present to receive the proclamation. Mr. Shields thanked the City for its continued stance against domestic violence. Ms. Bittner shared numbers and explanation about how many people have been helped - women, youth and families, with shelter, legal services, help with protection orders, education on prevention and parenting, guidance, and other services.

APPROVAL OF AGENDA

CITIZENS RIGHT TO SPEAK

Mayor Starker announced that comments on study session items would be taken at this time.

LynnAnn Huizingh (Littleton), executive director for Severe Shelter Network. They provides overnite shelter for homeless people/families at 25 local churches in Jefferson County. She asked for help to ensure that churches can continue to provide safe shelter during severe weather. This practice is being threatened due to legal arguments

regarding fire and building code issues. Motels are not funded this year, and are no place for children. She urged Wheat Ridge to offer local code amendments to allow churches and buildings to be used for shelter.

Allie Card (Denver), executive director for Family Promise of Greater Denver. Two of the 24 churches they use to provide temporary shelter for families are in Wheat Ridge. She highlighted their year-round services which are for families. If changes aren't made to existing code they will lose all their emergency shelter beds.

Bruce Carl from West Metro Fire confirmed that the codes in Wheat Ridge do not allow churches to be used as shelter. He asked Council to direct building staff to consider changing codes to allow for sheltering.

Stacy Mintken (WR) spoke about the house in their neighborhood that has been refurbished and is now a sober living home run by Monarch Sober Living Strategy (MSLS). She commends people for trying to change their lives, but MSLS has standards that are not being followed at this house - including enforcement of curfew, restriction to one sex, and checking for alcohol. This project is being conducted in secrecy; there is no open dialog about what is happening. The people who bought the home do not live there. There is something mischievous about the way it was presented to the neighbors. There are 12 people living there with 10-11 cars. People and cars come and go at all hours. She asked for Council's help to fix this situation and/or prevent it from happening in the future.

Dale Squillace (WR) spoke about the terrible noise coming from the Rocky Mountain Bottle plant. For 15 years the noise has been tolerable, but changes last winter have resulted in an intolerable situation. They can't use their patio and they can hear it through their bathroom fan. It never stops. He hopes the City can work with RMB to find a solution.

Ashley Holland (WR) from Local Works highlighted the recent, successful Ridgefest celebration. She thanked the City for all the help. There will be a public reception Oct 23 to meet the new executive director, Kate Cook, who joined them today.

Charles Parnell (WR) spoke about the noise at the Rocky Mountain Bottle plant. The noise was never a problem until changes were made last year. Now it's hard to get a decent night's sleep. Yes, they knew that RMB was there when they moved in, but now that they are there, RMB should not be allowed to increase the noise so drastically. Some nights are much worse than in the day. It can be heard all the time. A solution needs to be found.

Edward Fleegeler (WR), a retired geriatrician, referenced a white paper from the American College of Physicians that addresses the health effects of climate change and global warming. He spoke about algae in the Greenbelt and that the City is monitoring it. He asked for the community to demand something be done about climate change and

sustainability – like the students who struck last week. He hopes any future rulings or changes to the laws by the City include climate change and sustainability.

Deborah Young (WR) spoke about the Monarch sober living group home. Word from the City is that the number of residents is unregulated. This Saturday at 6am they began installing another basement egress window – presumably to add another bedroom. Our code specifies R-1 zoning prohibits “any activities that are incompatible with low density residential character”. Children can’t ride their bikes on the edge of the street, and are forced into the middle of the street because there are so many cars. Residents of the group home also make U-turns, coming and going; it is a safety concern. She wishes the ladies full recovery, but believes all residents need to be considered so that it’s fair to everyone.

Colette Beneski (WR) spoke about the sober living home. Her concern is who is protecting property values and character of her neighborhood. The owners are making money at the expense of the neighborhood. Local government does have a role. This is important. Council should look at ordinances that were passed in Prescott, Arizona that provide regulatory oversight for sober living homes with breaching the Americans with Disabilities Act or the FHA.

Kim James (WR) lives near the sober living house. She has a sister that lived in a similar home, so she has sympathy for them. Her concern is lack of transparency. The owner said he and his wife would be living in the house and he would be bringing cookies around to everyone to introduce themselves. Now there are 9-11 cars and multiple people coming at all hours. Her children can no longer ride their bikes in the area due to the cars and there is also insidious drainage coming from the house that’s a concern. The inability of neighbors to offer input is another concern. She spoke with ladies who live there and found out the owners are getting \$900/month from 12 women. When the owner was contacted, he was defensive and wouldn’t discuss it. We all want these ladies to do well, but this situation is tough to accept.

Abby Biegler (WR) lives in the neighborhood of the sober living house. She agreed with her neighbors that have spoken and had nothing else to add.

Jerry DiTullio (WR) announced a local candidate forum tomorrow night in Council Chambers from 6-9pm sponsored by the WR Chamber. He didn’t want this confused with a private event next Monday night at 5:30 at Pietra’s that is a fundraiser for candidates Kueter, Hultin, Stites, Nosler, Kirkpatrick and Miller. If people want to meet those candidates they can come. He wanted Mr. Dahl to know this is a private event and three or more councilmembers may be present - if he thinks it should be posted.

Study session public comment

Greg Dunkelberger (WR) urged Council to pass a noise ordinance. He applauded RMB’s efforts to reduce emissions, but they took no input from the neighbors. The noise is so bad they cannot enjoy their back yards or decks, or visit without coming in the house. They can’t have windows open at night. A letter from RMB says they want

to be good neighbors; then they should fix the problem. Council should enact a noise ordinance that will let them enjoy their back yards again and have their windows open. Tax revenue from RMB should not influence you to favor them over the citizens. While mitigation may be expensive, it should have been done at the beginning.

Ray Gilligan (WR) agrees with all the complaints about the noise. He agrees the noise had been tolerable until last winter, but now it is unbearable. He played a recording of the noise he wakes up to in the morning. He added that no notice of construction was received by the neighbors.

Kris Bradley (WR) also owns a business in WR. She said the noise was not loud until this last winter. Her husband, a physics teacher, brought a decibel meter home this summer. They are 250-300 ft from the fence. During the day it is 70 decibels; at night it's 75-78. At the end of the street it is higher than 75. Her family has to wear earplugs at night; they can't have windows open. They went over to the Red Rocks campus to watch the Carnation Festival fireworks; they could hear RMB there. Homes in Arvada and apartments are affected too. She noted the excitement of the light rail has subsided due to the noise issue.

Councilmember Mathews thanked the people for coming tonight. Baffled at having one set of people advocating for emergency shelter for the homeless in churches that have large areas and parking lots, and another set of people who have been told there is nothing that can be done about an influx of people in one house in their neighborhood.

Councilmember Weaver said she will be asking for Council support for regulations on group homes. There was consensus to bring the group home issue to a study session

Councilmember Davis asked for consensus to bring the codes for church/shelter issue to a study session. Mr. Goff said that's already coming up when the building codes are adopted. Staff has already worked with the Fire Department on wording.

1. CONSENT AGENDA

- a. Resolution No. 55-2019 - a resolution approving the PIF Collecting Agent Agreement between the City of Wheat Ridge, the Longs Peak Metropolitan District and Evergreen-Clear Creek Crossing, LLC [*estimated receipt to City estimated at least \$20K annually*]
- b. Resolution No. 54-2019 – a resolution supporting the City's application for a Non-Motorized Trails Grant from the Colorado Parks and Wildlife State Trails Program for the planned multiuse trail associated with the Wheat Ridge Ward Station area [*if awarded at \$250K would cover 1/3 of cost of trail*]

Councilmember Dozeman introduced the Consent Agenda.

Motion by Councilmember Dozeman to approve Consent Agenda Items a.) and b); seconded by Councilmember Kueter; motion carried 8 -0.

PUBLIC HEARING AND ORDINANCES ON SECOND READING

2. Council Bill 13-2019 – An Ordinance amending the Wheat Ridge Code of Laws concerning procedures for protests under Section 5.10 of the Home Rule Charter (Case No. ZOA-19-03)

The City Charter includes a provision allowing for a protest to be filed against a zone change request. If a protest is received, the rezoning ordinance must be approved by a $\frac{3}{4}$ vote of the entire Council (6 votes). The purpose of this code amendment is to specify the protest procedure for rezoning decisions and to require a continuance of the public hearing if a protest is received.

Councilmember Hoppe introduced Council Bill 13-2019.

City Clerk Shaver had previously assigned Ordinance 1673.

Mayor Starker re-opened the public hearing [continued from September 9, 2019].

Staff Presentation - Jerry Dahl

Mr. Dahl explained the changes in red in the Council packet are changes Council already approved by motion.

Properties adjacent at the corners have been added.

Purpose of ordinance is to detail how the charter provision is to be implemented.

He prepared additional amendments for Councilmember Hoppe; they have been distributed to you tonight.

Public Comment

Meghan Schleicher (WR) doesn't think the proposed wording addresses the two areas of concern she brought before Council.

1. The current wording says if the protest is insufficient there is no opportunity to remedy it, and the protest is automatically dismissed. This does not provide transparency for the citizens or encourage participation. Wording should be added to allow for the protest to be remedied.
2. We would like the Planning/Development staff to provide, upon request, the addresses of those within 100 feet. Citizens probably can't figure that out on their own, or don't have the technology to figure it out.

Rachel Hultin (WR) appreciates that this has not been hurried. Posting the packet online so people can see it is good. More time is good.

Council Questions

Councilmember Kueter asked if the protest is ruled inadequate and Council acts, can that decision be appealed in Court? Mr. Dahl said it could.

Councilmember Mathews received confirmation that multiple protests can be handled with the wording that is being proposed. Rescission of a protest is accounted for.

Councilmember Urban noted there is no explanation of how early a protest can be filed. How late can you file? Answers: This ordinance as amended requires all protests to be filed before the hearing starts. Protest can be submitted any time after an application is made. The first notice would be 15 days before the Planning Commission public hearing. There was discussion about what to do if a protest is filed before first reading by City Council.

Councilmember Weaver asked about the scenario of one person signing two protests. Mr. Johnstone explained how protests are submitted; it's not a petition that is passed around. Only property owners can protest and each property owner submits a protest. There was discussion about when and how the 20% is calculated.

Councilmember Davis thinks we should be able to provide the addresses in that area.

Councilmember Hoppe asked if wording could be added to indicate that if a legal protest is filed after First Reading, the publication could indicate that the hearing will be continued. Mr. Dahl said that would be possible.

Clerk Shaver asked if the automatic continuation would require republishing. Mr. Dahl said no, but it could be noticed on the website.

Councilmember Mathews asked about extending the 100foot limit. Mr. Dahl advised that would require a Charter change. Extending the 100 foot line would remove protections afforded the applicant.

Mayor Starker closed the public hearing.

Motion by Councilmember Hoppe to approve Council Bill 13-2019, an ordinance amending the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions, with amendments on second reading with the following amendments [to Section 1.7]:

- a. [Retained as published. No change in wording.] All protests must be submitted prior to the commencement of the public hearing.]
- b. In the event a letter of protest is submitted prior to the first reading and has been determined to be sufficient by community development staff and the Charter requirements 5.10, the hearing shall continue on the originally scheduled date. If a protest is submitted after first reading before the commencement of the public hearing, the hearing shall be continued to the next regular business meeting of Council.
- c. Prior to 5:00 pm on the next regular business day following the day upon which the protest was submitted, the community development staff shall review the protest to confirm the signers thereof as owners of the required property ownership and area requirements of Charter 5.10 and shall promptly inform the signers of that determination.

- d. If the community development staff determines the protest does not meet the required property ownership and area requirements of Charter 5.10, the signers of the protest may amend the protest at any time prior to the commencement of the continued public hearing.
- e. At the continued public hearing, only the original protest, or the original protest, amended as permitted by this section (the “amended protest”) will be considered for purposes of determining the proper Council voting requirements on the matter.
- f. If the amended protest is timely submitted before the commencement of the continued public hearing, the community development staff shall review the amended protest to confirm the signers thereof as owners of the required property and its compliance with the area requirements of charter 5.10.
- g. If necessary, the mayor shall declare a recess to enable the community development staff to perform their review.
- h. If the community development staff determines the protest does not meet the owner or area requirements of Charter 5.10, the hearing may be conducted and closed, and the Council may act without the $\frac{3}{4}$ majority voting requirement.
- i. If the community development staff determines the protest meets the owner and area requirements of Charter 5.10, the hearing shall be conducted and closed and the Council may act, subject to the $\frac{3}{4}$ majority requirement of Charter 5.10.
- j. [Published Section ‘i’ renumbered as ‘j’. No change in wording.]
The protest area and owner requirements of Charter 5.10, which provide, in pertinent part:
In the event of a protest against such changes signed by the owners of twenty (20) percent or more of the area:
 - (1) *Of the property included within the proposed change; or,*
 - (2) *Of those immediately adjacent to the rear or any side of the property, extending one hundred (100) feet from the property; or,*
 - (3) *Of those directly opposite across the street from the property, extending one hundred (100) feet from the street frontage of such opposite property,*
 Shall extend to those property owners within 100 feet of the subject property, including those located diagonally adjacent to the corners of the subject property, as illustrated in Figure 26-112.1.
- k. A protest, once filed and determined by the community development staff to comply with the owner and area requirements of Charter 5.10, may be rescinded only in a written instrument, signed by the same person(s) as the protest, and presented to the City Clerk prior to closing of the public hearing
- l. The community development department shall provide written guidelines to the public on procedures for protest.

And further, to add language to the first reading notice, noticing if a protest is filed before the commencement of the public hearing and is found sufficient, the hearing will be continued to the next business meeting; seconded by Councilmember Kueter.

Councilmember Kueter stressed that if a protest is submitted and found to be inadequate, if there is time before the start of the public hearing it can be amended.

The motion carried 8-0.

3. Council Bill 15-2019 – An Ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws to add floodplains in the Sloan’s Lake watershed to the City’s Floodplain maps as a Local Flood Hazard Area

The Sloan’s Lake Flood Hazard Area Delineation (FHAD) has been adopted by both the Colorado Water Conservation Board and the Mile High Flood District. The FHAD is now ready to be adopted as a Local Flood Hazard Area (LFHA). This requires an amendment to Chapter 26, Article VIII, pertaining to floodplain control.

Councilmember Kueter introduced Council Bill 15-2019.

City Clerk Shaver assigned Ordinance 1674.

Mayor Starker opened the public hearing.

Staff Presentation

This subject had been presented and discussed at length at a recent study session. Mr. Westberg was available for questions. There were none.

No one from the public spoke.

Mayor Starker closed the public hearing.

Motion by Councilmember Kueter to approve Council Bill 15-2019, an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws to add floodplains in the Sloan’s Lake watershed to the City’s Floodplain maps as a Local Flood Hazard Area on second reading and that it take effect 15 days after final publication, seconded by Councilmember Urban; carried 8-0.

DECISIONS, RESOLUTIONS AND MOTIONS

4. Resolution 53-2019 – A Resolution in support of Jefferson County Ballot Issue 1A

Ballot measure 1A asks Jefferson County voters to approve a 7-year exemption from all TABOR revenue and spending limitations to avoid potential budget cuts. No tax would be created or increased; the County would be allowed to collect the allowed amount, and retain and spend or reserve all revenues collected between 2020 and 2026.

Councilmember Davis introduced Item 4.

There was no Staff Presentation as this was discussed recently at a study session.

Public Comment

Jerry DiTullio, Jefferson County Treasurer, spoke in favor of the ballot measure

- The County Commissioners had a 7 hour public hearing on this on July 23. About 300 people came and spoke.
- This will sunset in 7 years. It's a 7-year time-out on the TABOR revenue cap, after which the Commissioners will have to return to the voters for permission to keep excess revenue.
- Commissioners lowered the mill levy before collecting it, so now they have to borrow from reserves to pay the bills.
- In the last 5 years about \$110M that could have been collected from taxpayers, was not.
- The county would still have to go to the voters to increase the mill levy or create a new tax.
- Budget cuts notwithstanding, without this, public safety will be affected.
- The County Treasurer and Clerk & Recorder have already cut their budgets
- Roads/bridges, facilities maintenance, and public health will all be affected,
- 80% of counties have de-Bruiced. Property tax is the main source of revenue.
- It has bipartisan support.

Council Questions

Councilmember Mathews had questions of Mr. DiTullio about the budget shortfall of \$15M (3%) that is coming primarily from public safety and roads. Mr. DiTullio reported:

- The Sheriff's budget is 67% of the total county budget. Most reduction is coming from the jail.
- Attrition of FTE's will not be replaced.
- The number of jail beds will be decreased - including "WR beds".
- The 1st year (2020) the mill levy will go back to the allowed level, up to \$16M. Generally, when the mill levy is at max it could be \$30M/year, but the commissioners will be phasing it in.
- Yes, the commissioners haven't been charging the mill levy they could. When they lowered the mill levy, they underestimated the revenue cap and didn't collect enough revenue. As a result they had to start borrowing from the reserves.
- He suggested they should have collected the full mill levy all along for the last five years, and asked voters annually if they could keep it.

Councilmember Hoppe asked about the impact.

- Mr. DiTullio said it would average \$9/month for a \$400K home (about \$100/year).
- Mr. Goff stated for the average homeowner it will be \$4.50/mo or \$54/yr.; for businesses, every \$100K of business property value will be \$9/month.

Motion by Councilmember Davis to approve Resolution No. 53-2019, a resolution in support of Jefferson County Ballot Issue 1A; seconded by Councilmember Urban; carried 8-0.

CITY MANAGER'S MATTERS

Patrick Goff had exciting news. After 2 years of planning and Environmental Linkage Study and 3 years of Environmental Assessment, the FONSI (Finding Of No Significant Impact) and all federal approvals for the Wadsworth project have been received. He thanked Mark Westberg and the whole team for their patience with that.

CITY ATTORNEY'S MATTERS

Mr. Dahl asked for an Executive Session after the Special study session for purposes of a litigation report.

On the Clark and Sorrentino case he reported that the plaintiffs have agreed to dismiss their claims with prejudice. Attorneys for the developers settled with them.

- The City, as a defendant of the suit and represented by CIRSA, consented to the dismissal based on Council's request that the material elements of the settlement be disclosed and made public.
 - Clark and Sorrentino have agreed to dismiss the suit and any future claims.
 - The amount they received was less than the cost of their attorney's fees.
 - Clark received \$8K; Sorrentino received \$5K. Both agreed to not challenge the developments.
- The City paid no money. Insurance covered attorney fees and some minor costs.

ELECTED OFFICIALS' MATTERS

Zachary Urban noted he would be excusing himself for the study session.

Janece Hoppe thanked Family Tree for coming for the proclamation of Domestic Violence Awareness Month. She shared that Family Tree currently has needs for shelf stable foods and toiletries. A large fundraiser will be held on Wednesday, October 16 at 6:30pm at the Red Lion Contemporary Art Center. Tickets are available at www.thefamilytree.org

Kristi Davis announced the Candidate Forum will be here in Council Chambers tomorrow at 6pm. It will be televised.

Mayor Starker stated he will be on a panel with other mayors tomorrow night at 5:30 at the Denver Press Club to discuss sustainability issues and decrease of carbon footprint.

At 9:05 the Mayor declared a 10 minute break – to be followed by a recess to a Special Study Session. Following the Special Study Session, the Council will reconvene the Regular Meeting for the purpose of going into Executive Session.

RECESS TO SPECIAL STUDY SESSION at 9:19pm

Clerk's note: Notes for the Special Study Session are under separate cover.

Audio for the Special Study session is under separate cover. That recording also contains the balance of this Regular Meeting – the minutes of which follow here.

RECONVENE TO REGULAR MEETING at 9:54

The Mayor recognized Councilmember Hoppe for the purpose of a motion.

Motion by Councilmember Hoppe to go into Executive Session for a conference with the City attorney, City Manager and appropriate staff under Charter Section 5.7(b)(1) and CRS 24-6-402(4)(b), to receive legal advice concerning pending litigation on McLeod; a further to return to the open meeting at the close³ of the executive session for the purpose of taking any formal action deemed necessary; seconded by Councilmember Davis; carried 7-0.

RECESS TO EXECUTIVE SESSION at 9:55pm.

The Executive Session ended at 10:12pm.

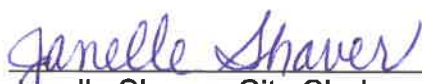
RECONVENEN TO REGULAR MEETING AT 10:12PM.

CITY ATTORNEY'S MATTERS

Mr. Dahl advised the Council that campaign events are allowed to be private because they are not about public business before the Council. However, when three or more incumbents are present care must be taken not to have discussion of matters pending before Council. If there is a questions about public perception of the event he advised that it be posted.

ADJOURNMENT

The meeting adjourned at 10:18 pm.



Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON October 28, 2019



Jancee Hoppe, Mayor Pro tem

The preceding Minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Recordings and DVD's of the meetings are available for listening or viewing in the City Clerk's Office, as well as copies of Ordinances and Resolutions.