

STUDY SESSION NOTES
CITY OF WHEAT RIDGE, COLORADO
City Council Chambers 7500 W. 29th Avenue
May 7, 2018

Mayor Starker called the Study Session to order at 6:30 p.m.

Councilmembers present: Monica Duran, Janeece Hoppe, Kristi Davis, Tim Fitzgerald, Zachary Urban, Larry Mathews, Leah Dozeman, and George Pond (arrived late)

Also present: City Clerk, Janelle Shaver; City Manager, Patrick Goff; City Attorney, Jerry Dahl; Parks and Recreation Director, Joyce Manwaring; Public Works Director, Scott Brink; Community Development Director, Ken Johnstone; Police Chief, Daniel Brennan; interested citizens.

CITIZEN COMMENT ON AGENDA ITEMS

Michael Pate (Columbia, South Carolina) represents the electric fence company involved with Agenda Item 4. He spoke about battery powered electric fences. He explained how they work and that they would be charged to 7,000 volts. They would be set up behind a secondary perimeter fence. Signs are in English and Spanish. It is a safe device. The devices are tested for safety by a firm in Germany. Camping World has purchased Ketelsen Campers. They have recently sustained very costly damage from break-ins. Thieves have caused shut-downs of Pennington Elementary due to robbers escaping through school property.

Questions were asked of Mr. Pate:

- The power can be on a timer. It is a very sophisticated system.
- A human, on-sight security guard cannot cover the area. /the area is too big and there are too many potential places of entry.
- Cameras are in place, but that doesn't stop burglars.
- The electricity can be turned off during school hours.

Charlie Myers (WR) is with Bike Jeffco and the Wheat Ridge ATAT. They reached out to People for Bikes from Boulder and E-bike Outfitters. He told the Council that e-bikes are not a fad; it is a growing market. Riders include 60% retired seniors, 30% commuters, and 10% people who are disabled in some way. E-bikes are getting more people out onto the trails. They don't want to see a patchwork of ordinances. They would like to connect with other communities so there is consistency. Reckless e-bike riders have not been seen in any surveys. Bike Jeffco and ATAT would like to help.

Mike Raber (Evergreen) has testified to the legislature that the majority of e-bike users are seniors. They are fun to ride. They appeal to seniors for the ability to climb hills. It is a mobility choice for people with disabilities. In the state bill e-bikes are subject to the same rules as regular bikes.

Art Gallo (WR) is an e-bike rider. He said the Clear Creek Trail is great. He knows there are bad actors out there because he commutes to Aurora by bike. The concept of an e-bike is a pedal assist. Class 1 can go 20. Class 2 has a throttle. Class 3 can go faster. He believes Classes 1 and 2 would be appropriate on the Clear Creek Trail.

1. Staff Report(s)

a) Code change to allow electric bikes on Clear Creek Trail – Joyce Manwaring

Joyce Manwaring had some opening remarks about the first draft of the ordinance that has been prepared to allow e-bikes on the trail. They have started with definitions and posted speeds. The goal is consistency.

Discussion followed. Points included:

- Ms. Manwaring will be meeting with other trails directors on Wednesday.
- Exact numbers for demand are unknown, but it is clear they are becoming more popular.
- Our section of Clear Creek Trail has signage that is consistent with that of Golden.
- Clear Creek Trail is part of the regional trail system which will ultimately be the Peaks to Plain Trail. The goal is a consistent experience.
- We have only a few medians in the trail.
- Recharging station are not considered at this time.
- Current enforcement is soft. CSO's do visit the trail.
- Mr. Dahl's office authored the ordinance.
- The Colorado Model Traffic Code is referenced for consistency.
- Motorized vehicles are not allowed on the trail. We will be addressing scooters and electric wheelchairs in the coming weeks..
- Mr. Dahl advised that it will be a simple matter of a clear definition so there is no confusion with motorized vehicles.
- There were comments about the definition of vehicles.
- Bikes must conform to the same rules as cars regarding movement. They do not need the same equipment as other motorized vehicles (licenses, lights, turn signals, etc.).

Councilmember Hoppe received consensus to direct staff to move forward with an amendment to Chapter 17 Code of Laws concerning motorized bicycles, and that points of tonight's discussion and some wordsmithing be included.

2. Harlan Street Streetscape Maintenance – Scott Brink

Mr. Brink highlighted the concerns about the streetscape on Harlan Street from 38th northward to I-70. It was installed in the early 2000's -- with no irrigation system. It was understood the City would maintain the hardscape features, and that property owners would maintain the turf areas. Over time staff has done some restoration to the hardscape, but in general the maintenance of the softscape space between the sidewalks and curbs has become a mish-mash of disrepair. Some areas are well tended; others are not. There is no consistency. Staff wants to know if Council wants to address the issue, and if so, how.

Discussion focused on the various issues and options:

- Would like to encourage property owners to take responsibility.
- There is no IGA with Lakeside for the median. They are not interested in contributing to its maintenance.
- Property owners have not been contacted yet. Mr. Brink said there are written agreements with the property owners, but they have not been located yet.
- Does Council want the City to enforce the agreements, or take over the responsibility, or something in between.
- Would like to have the City work with property owners.
- Who should be responsible for maintaining the vegetation? When Wadsworth is done it will present with the same issues, and there are other places around town that have this issue of responsibility for maintenance.
- Xeriscape is preferred when there is no irrigation.
- Generally property owners maintain the tree lawns in front of their property.
- Irrigation would help.
- Get it up to par and then enforce the agreements with property owners.
- If property owners have to maintain it, they should be allowed to choose what they are maintaining.
- It's not too much to ask property owners to maintain these spaces.
- The City does contract out some maintenance of ROW areas. Harlan /street is not on that list, but it could be.
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- Any maintenance agreements that may exist with property owners.
- How to handle the shared median between Lakeside and Wheat Ridge
- Contracting the maintenance work out
- Working with individual property owners and business owners
- It was also pointed out that we have this issue on some other streets around town and Wadsworth will present with the same issue.
- A policy that is fair citywide is desired.

Councilmember Pond received consensus to direct staff to conduct analysis of the streetscape agreements and conditions and return to a future study session with some fair and balanced solutions and options and possible programs for the future.

Clerk Shaver shared that the issue of how to handle the median between Wheat Ridge and Lakeside was debated 20 years ago; it is still the same issue.

3. Special Use Permit Review Criteria – Ken Johnstone

Councilmembers Hoppe and Duran had requested a discussion about adding another criterion to the Special Use Permit (SUP) review process.

Mr. Johnstone explained that SUP's are typically reviewed and approved administratively by the Community Development Director (Mr. Johnstone) in all but three cases:

- If the CDD finds that one or more of the criteria for review are not met,
- If a written objection is received during the public noticing period,
- If the CDD recommends a condition of approval, to which the applicant objects.

In those instances, SUPs are forwarded to City Council to be heard at a public hearing.

To protect the public interest it may be wise to consider if a particular use is in compliance with the Comprehensive plan or any subarea plan.

The City Attorney's office has drafted an additional, ninth criterion which would read as follows: *"The proposed special use is in substantial conformance with applicable portions of the City's Comprehensive Plan and any sub area plan applicable to the subject property."* It's a fairly straightforward ordinance change that can come to Council quickly.

Discussion followed.

- There have been two SUP's granted recently in the Fruitdale District that were not in conformance with the Fruitdale subarea plan.
- If we have subarea plans we should follow them. Citizens contributed to them.
- SUP's are, by definition, for special uses, so the extra criterion is not necessary. A special use does not meet criteria because it is special. Council should decide if the use is appropriate.
- It is hard to define what an "Orchard District" is.
- "Substantial conformance" is not specific enough.
- Better to ask, "Does it promote the goals and outcomes of the subarea plan?"
- Comprehensive Plans and subarea plans should be guiding documents, but not set in stone. We shouldn't be too restrictive.
- SUP's are discretionary uses. They need not meet all the criteria to be approved.
- Having Item 9 will remind the Council to be mindful of the goals of a subarea plan. It would just be another thing to consider. Staff/Council can still grant the SUP.
- This doesn't go far enough to prevent certain uses.
- There are still property rights to consider.
- Don't want this to stop the process before it comes to Council.

Councilmember Hoppe asked for consensus to direct staff to add the 9th criteria and

take it to the Planning Commission. The vote was 6-2.

4. Amendment to Code to allow electric fences under certain conditions – Ken Johnstone

Mr. Johnstone explained that our code is silent on electric fences, but historically has been interpreted to prohibit electric fences.

He went through the process that took place in 2014 when Ketelsen Campers asked to erect a 10 foot electric fence one foot inside their chain link fence, to stem the large amount of criminal activity on their property. The adjacent school, Pennington Elementary, had input; and an administrative variance was granted. The Board of Adjustments ruled that Ketelsen's could have a 9 foot electric fence placed 3 feet inside their regular chain-link fence, and the fence could not be erected adjacent to the school. Ultimately Ketelsen's did not erect the fence because the portion adjacent to the school was not allowed to be electrified.

Ketelsen Campers continues to be owned by the Ketelsen's, but is operated with a long term lease by Camping World and retains the name Ketelsen Campers. Criminal activity has increased recently and the new owners would like to erect an electric fence. District IV councilmembers arranged a meeting between staff, the owners and the fence company, Electric Guard Dog. A legislative solution is recommended to solve the issue of electric fences.

Discussion followed. Areas of concerns and comments included:

- Let the BOA handle it on a case by case basis.
- Mr. Dahl advised that the BOA interpretations are reasonable and would be hard to overturn. A Special Use Permit is an option.
- Electric fences are allowed in Aurora and are called electric alarms.
- The 3 foot area is a no-man's land which not only needs to be mowed, but also provides more room that is helpful for an intruder,
- Live dog guards are deemed not to be a safe solution due to liability issues.
- Security cameras are on sight, but they are not preventive.
- They aren't really fences – just horizontal wires. The voltage is not as strong as cattle fences.
- We should support all our businesses that choose to operate here and generate sales tax.
- Mr. Dahl advised that an SUP would take care of this one property (adjacent to a school), but since all circumstances are different, a legislative answer may not be the best solution.
- Would like more information on the different approaches taken by other cities.
- Cities label these fences with different names.

- Having the fence off during school hours satisfies the school.
- Conditions of qa
- An SUP could regulate the zone districts where they are allowed, hours of operation, the distance from the outer fence, and the height.
- A timeline for getting this enacted as soon as possible was discussed.

Chief Brennan reported on the location from a police perspective.

- This location has had 10 significant break-ins since the first of the year. Crime at the Camping World at 4100 Youngfield is not as severe.
- There has only been one lockdown at Pennington and it was not related to anything at Ketelsen Campers.
- The I-70/Kipling corridor is a hot spot for crime and there is an increase in transient population.

Mr. Goff stressed again that the school is agreeable to an electric fence now -- if it is shut off during school hours.

Councilmember Dozeman received consensus to direct staff to create an ordinance to allow electric fences with a Special Use Permit. The vote was 7-1.

5. Free Standing Emergency Rooms – Ken Johnstone

Mr. Johnstone explained that the City has had a series of temporary moratoria on free standing emergency rooms as we wait for the state legislature to act. Very recently two bills were passed and signed into law that apply to freestanding ER's, but they will not really help with regulatory decisions we need to make.

Carol Salzman from Lutheran Hospital reported that unfortunately the most recent bill, the one that would have affected cities and licensure, did not pass out of committee.

Mr. Johnstone explained that freestanding ER's are deemed to be more like a hospital than a medical office. He provided the nuances of what zones they can be located in. We can probably do some things regarding licensing.

Options for location include:

- #1 Do nothing. When the moratorium expires freestanding ER's would be allowed in Mixed Use-Commercial zone districts, which are prevalent on Wadsworth.
- #2 Begin a process to adopt local regulations for freestanding ER's. There is time to take this to the Planning Commission for a public hearing before it comes to City Council and do it all before the current moratorium expires in August.
- #3 Extend the moratorium. This is possible, but not recommended since the legislature has failed to act on this for the last three sessions.

One appropriate requirement would be a demonstration of need.

The current moratorium expires in August 27, 2018.

Discussion followed.

- Adding a freestanding ER does not contribute to the vision for our city.
- This is not how we should “spend” our available land.
- We should differentiate between freestanding ER’s and urgent care for our citizens.
- Freestanding ER’s are most like hospitals in use, and are considered accordingly.
- Would like to get feedback from the public.
- Request including requirements similar to what a hospital ER would have:
 - Licensing and statement of need
 - Operating requirements (hours of operation)
 - Compliance with the Emergency Medical Treatment and Labor Act,
 - Equipment requirements (x-ray, defibulator, ultra-sound, pediatric equipment, etc.)
 - Staffing requirements (having a doctor on sight 24 hours a day.
- Concern about expectations of the public for what a freestanding ER is able to provide.

Councilmember Urban received unanimous consent to proceed with Option 2.

6. Elected Officials’ Report(s)

Leah Dozeman announced three upcoming events this weekend:

1. Saturday, May 12 is the 44th Avenue Rumble from 8am – 2pm at Anderson Park.
2. The Everitt Resource Fair is this Saturday from 10-2 at Everitt Middle School.
3. The May Festival is also this Saturday at the Wheat Ridge Historical Society at 44th & Robb from 10-2.

Larry Mathews suggested that Council consider the crime problem in the area of I-70 & Kipling and look at being proactive.

Clerk Shaver noted that the crime situation at I-70 & Kipling is another 20 year old issue. The 10% Lodger’s Tax was enacted to provide revenue for crime prevention, code enforcement, and some aesthetic improvements in that area. Mr. Goff clarified that only half of the Lodger’s Tax is for that purpose.

Mr. Goff alerted Council that CDOT’s emergency work on the Highway 58 flyover and Denver Water’s shut down of 44th Avenue will likely keep 44th and I-70 shut down through tomorrow morning’s rush hour.

He reported that a law firm from Ohio has contacted the City to see if we would like to participate in the law suits that are being conducted in Colorado related to opiate litigation.

- There are around 200 lawsuits filed in federal court, with over 50 defendants and

hundreds of government claimants.


- Six lawsuits in Colorado involve mostly southern Colorado jurisdictions.
- Jefferson County and Lakewood are considering joining.
- This is not a class action lawsuit; it is a multi-jurisdictional litigation.
- If we are interested, we need to join soon, maybe by May 10, or we may be left out.
- There would be no cost to the City.
- Any recovery would be based on the amount of the settlement and what the data determines our damages are. Regardless of the amount of the settlement, the first 25% will go to the lawyers, 75% will go to the City (depending what our share is).

Councilmembers had questions and comments:

- The defendants are numerous pharmaceutical companies and distributors – not the doctors.
- The biggest drug problem in Wheat Ridge is heroine.
- It was generally agreed that not enough information was available and a hurried decision on such short notice was not wise.

Larry Mathews received unanimous consent to pass on this issue at this time.

ADJOURNMENT: The Study Session adjourned at 9:14 p.m.



Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON May 14, 2018



Tim Fitzgerald, Mayor pro tem