

STUDY SESSION NOTES
CITY OF WHEAT RIDGE, COLORADO
City Council Chambers 7500 W. 29th Avenue
August 19, 2019

Mayor Bud Starker called the Study Session to order at 6:29 p.m.

Council members present: George Pond, Janeece Hoppe, David Kueter, Amanda Weaver, Kristi Davis, Zachary Urban, Larry Mathews, and Leah Dozeman

Absent: Kristi Davis (excused) and George Pond (excused)

Also present: City Clerk, Janelle Shaver; City Manager, Patrick Goff; other staff, guests and interested citizens.

Citizen Comment on Agenda Items

Barbara St. John (WR) is concerned about the young folks growing up. They are treading on water they don't know how to navigate. Tobacco was on the decline, and now vaping is appealing to the young people. There are consequences physical, morally, financially and mentally. Other states are considering age 21 and licensing the dealers. She urged Council to do the same.

Rhonda Valdez (Lakewood) is the school nurse at WRHS. Her work is to support students who are vaping. They have the Breathe Easy team. She showed the Council one of the posters that appears in bathrooms at school. She shared a story of a student she helped quit smoking who later testified to the legislature. She supports local control over smoking and vaping.

Michelle Michtener (WR) spoke about setbacks for sheds. She favors allowing sheds less than 15 ft from the property line. It unnecessarily wastes space that can be used for other things.

Lynette Namba (WR) spoke for Citizen for Healthy Wheat Ridge. She supports raising the legal age to buy tobacco products to 21 and requiring licenses to sell tobacco.

Lorrie Odom (WR) made several points

- Despite increased reports on the short and long term health risks of vaping, use of e-cigarettes continues to rise among teens in WR.
- Colorado has the highest rate of vaping in 37 states surveyed.
- A year ago the Jeffco Board of Health adopted a resolution declaring youth vaping a public health crisis in Jefferson County.
- This June the CO PTA board adopted a position statement against e-cigarettes and other tobacco products. They support raising the legal age to purchase all tobacco products to 21, taxing the products, eliminating the advertising of same to youth, and encouraging all to take an active roll in prevention of use.
- Youth are attracted by the flavors, discreetness of vaping, the hip paraphernalia that is marketed, the easy availability and popularity, and social pressure.

- Efforts to prevent youth e-cigarette use must be comprehensive and include legislation.
- She encouraged licensing all retail tobacco businesses and increasing the age to purchase these products to 21.

Carol Mathews (WR) thinks legislation against vaping is a no brainer.

- She spoke against giving City staff the right to proceed with eminent domain on properties on Wadsworth. Many property owners on Wadsworth are either losing their property/businesses or access to it – rendering it pretty valueless. They should at least have the right to a public hearing. City staff should not have that power; Council should face the people they are taking property from.
- Storage sheds are common in WR and are generally close to the property line. A 10'x10'x10' storage shed is not a problem. No one cares. A giant 15 foot tall garage of 1,000sf is a something else. These issues should be separated and resolved one at a time.

Jennifer Yates (WR) read some disturbing numbers on youth vaping and smoking.

- 44% of CO youth have used e-cigarettes at least once.
- 33% of CO youth use nicotine regularly.
- 27% of CO youth use e-cigarettes; this is twice the national average.
- Use of e-cigs by high school youth increased 38% from 2017 to 2018.
- 50% of CO youth think vaping is risky; 87% think smoking is risky.
- 350 teens become regular smokers each day in the US.
- 95% of adult smokers start before they are 18.
- In 2018 4.9M youth were tobacco users nationwide.
- 99% of e-cigarettes sold in the US contain nicotine.
- 90% of underage users are supplied by their 18-20 peers.

With the money to be made in this youth market, the industry will counter any legislation with more deceitful products and marketing. It is important that any vaping ordinances you pass include alternative products we may not have thought of yet.

Guy Namiach (WR) addressed zoning changes and ADUs. Unlike other areas, in Wheat Ridge realtors cannot reassure buyers what will happen to neighboring houses. These issues are important to people who are investing in a home. They want the future of the area to be predictable. In the NRS study that was adopted, one of the major things people wanted was letting neighborhoods decide what's going to happen. People have told us what they want. We adopted it. We should listen to them.

Laura Secard (WR) has a daughter at WRHS and thinks we need to ban together and raise the age to buy cigarettes to 21.

Councilmember Mathews responded to the vaping issue. He admitted voting in favor of allowing vaping in the past. He now thinks that was a mistake

1. Youth Vaping/Tobacco Use Overview - Marianne Schilling

At the request of Councilmembers Weaver, Hoppe and Mayor Starker, Jefferson County Public Health (JCPH) provided an overview of youth vaping and tobacco use in Wheat Ridge.

Tobacco Prevention specialist, **Khanh Nguyen** gave a power point presentation on youth tobacco use data and trends, why youth vaping is a problem, and what can be done to reduce youth tobacco use.

- Jefferson County Board of Health has classified youth vaping as a public health crisis.
- Colorado has the highest rate of youth vaping in the nation – over twice the national average
- Jeffco's rate is higher than the state average.
- They are discreet, accessible and tasty.
- Social media is used for advertising.

Environmental concerns

- Cigarettes butts are the most littered item
- Cigarettes and Electric Smoking Devices ESD's are fire hazards
- Hazardous substances may end up in the water and soil
- ESDs are both e-waste and hazardous waste (lithium batteries and nicotine), plus the plastic waste.

Addiction

- One JUUL pod contains as much nicotine as an entire pack of cigarettes.
- Youth who vape regularly are 4x more likely to smoke regular cigarettes a year later, 9.5x more likely to use marijuana, 8.8x more likely to binge drink and 8.6x more likely to abuse prescription drugs. It helps rewire the brain.
- Vape devices are used to vape other products (marijuana or illicit drugs)
- Vaping results in carcinogen exposure and pulmonary risk

She highlighted the many efforts in place for youth education and prevention.

Municipal policies and youth access policies.

- Edgewater had licensing and age 21
- LW and Arvada have some regulations
- Youth access to tobacco in the retail setting is easy.

She went through gaps in the FDA and State laws.

Colorado is one of the few states that does not have a tobacco license.

Penalties are not meaningful. Fines are low compared to the profit of the product.

Recommendations for retail licensing should include

- No license near schools or youth populated areas
- Keep tobacco out of sight
- Flavor ban
- No self-service

- No coupons or discounting
- Raise minimum age to buy and/or sell
- Advertising restrictions indoors and/or outdoors
- Suspension/revocation for repeat offenders

Why have a license?

- Prevents illegal sales to minors
- Small annual fee
- Allows for local enforcement
- 12 Colorado towns have tobacco retail licensing laws including Edgewater, Lakewood and Golden in the area.

Why raise the age?

- Reduces the social source for HS students
- Minimal impact to retailers. Only 2% of all tobacco sales are by people under 21
- 18 states have raised it to 21.
- 7 communities in CO have passed T21
- It will decrease the initiation to smoking.

Tobacco Policy Strategy recommended

- Local policy is one of the most effective ways to reduce youth tobacco use
- Require all tobacco/vaping retailers to have a license
- Require products to be behind the counter
- Clerks have to be 21
- No sales within 1000 feet of schools
- Raise age to 21
- Use fees to fund local enforcements with meaningful penalties.

Questions and discussion followed.

- A pack of cigarettes costs about \$5
- Starter packs for vaping used to cost \$50, with 4 pods \$15-20 dollars. Now starter packs are \$30 and 4 pods are sometimes under \$15
- There should be no warnings. Penalties can vary.

Councilmember Urban received unanimous consent to move forward and have staff bring a menu of options to the Council for an ordinance.

2. Delegation of Private Activity Bond Cap to Jefferson County Housing Authority – Patrick Goff

The City of Wheat Ridge has received an allocation of \$1,667,715 for the purpose of issuing Private Activity Bonds (PABs) in 2019.

Mr. Goff explained that typically our City allotment for PABs is too small to do anything with. We can pool our funds with Jefferson County towards improving an older Wheat Ridge property.

Staff recommends assigning the City's allocation to Metro West Housing Solutions which has agreed to issue PABs for the renovation of the Caesar Square Apartments owned and operated by the Jefferson County Housing Authority.

Jeffco Housing Authority representatives **Lori Rosendahl** and **Julie Stern** explained what upgrades and repairs would be done.

Councilmembers had a few questions and comments.

Councilmember Urban received unanimous consent to proceed as recommended.

It was noted that no one should lose their housing because of this.

3. Right-of-Way Acquisition and Eminent Domain 101 – Mark Westberg

On January 14, 2019, Council authorized staff to acquire right-of-way (ROW) for both the Wadsworth Boulevard widening and the Ridge Road TOD projects.

Ridge Road negotiations are complete.

Wadsworth: Initial offers for 2 full acquisitions will happen next week.

Over 60 partial acquisitions Notice of Intent (NOI) will be sent in October, with initial offers in January 2020

Ward TOD still needs ROW

- 52nd/ Ward intersection
- Ridge/Ward intersection
- Ped Bridge/Plazas/trails

Mr. Westberg went through the several steps of the ROW acquisition process

Greg Jamieson, senior ROW manager for HDR, gave a detailed walk through the steps of the ROW acquisition process. He educated the Council about:

- Notice of Intent (officially informs the landowner)
- Determining Just Compensation (takes 3-4 months); determines the value of property, improvements, and damages. If federal funds are being used, a 2nd certified appraiser is required to determine Fair Market Value (typically CDOT staff)
- Initial Offer Packet is sent after FMV is determined (Memorandum of Agreement)
- Incentives include accepting the offer within 30 days; scaled based on FMV.
- Valid Counteroffers for additional compensation are always considered
- Initial Negotiations - 8 weeks
 - Real Estate Specialists meet and talk with owners
 - The goal is always good faith negotiations to reach a cooperative agreement and avoid eminent domain
- Final Offer – 2 weeks Informs owner negotiations will continue for 23 weeks

- Last and Final Offer - 2 weeks informs owner of potential legal action (eminent domain)

Councilmember Mathews asked about how we would compensate businesses that are essentially put out of business due to access.

Mr. Jamieson said there are only 2 complete buy-outs. The intention is to reach agreements with owners of partial acquisitions. Mark Westberg noted that all businesses that have access to Wadsworth will still have access to Wadsworth. It may change to right in/right out due to the medians. Some access will be improved due to more lights. Others may change and left in's will be removed. Access points for some businesses will relocate.

Eminent Domain 101 (also known as condemnation)

- It is a judicial process whereby a neutral 3rd party determines just compensation
- It is in the 5 Amendment of the constitution.
- Is not a "taking"; City must "acquire" the property.
- It doesn't decide if property will be acquired. That decision was made during project development when the ROW was determined.

When is Eminent Domain used?

- Uncooperative owner. <1% of cases go to trial
- Unresponsive Owner. Sometimes a multi-national corporation; can't get a response
- Absentee Owner. Owner can't be found, has no heirs, or may no longer exist.
- Other Interested Parties (OIP). Often a major business tenant or mortgage holder

Process

City attorney prepares and files a petition for Immediate Possession

A hearing is held. Good faith negotiations have to be proved

Hopefully the Judge will issue an Order of Possession.

The Judge sets a Valuation Trial with a jury or a 3 person Commission

Who pays for what?

- City pays for ROW consultant, City Attorney's fees, exhibits and other documents, court costs, and reimburse owner's attorney's fees if final compensation is >30% of last an final offer
- If the last and final offer is NOT accepted and eminent domain has NOT been authorized, Council Action will take 2-4 weeks. The goal is to keep Council Action concerning eminent domain impersonal.

What happens if we don't use eminent domain?

- Overpay the uncooperative owner (Cooperative owners may see as unfair to them.)
- Redesign the project around outstanding properties. (May also be seen as unfair.)
- Redesign increases consultant costs and causes delays that could impact federal funding.
- Abandon the project and don't build it.
- We have spent \$4M in taxpayer money in four years to get where we are today.

Discussion

- Councilmember Mathews doesn't think Council should abdicate its responsibility by letting staff make the decision to use eminent domain.
- Councilmember Hoppe supports giving staff the authority to exercise eminent domain.
- Councilmember Kueter inquired about pre-authorization. Mr. Westberg responded and discussion followed.
- Mr. Westberg explained the need for authorizing eminent domain for the Wadsworth and three Ward TOD projects.
- Councilmember Dozeman thinks the decision should be made by an elected body.

Councilmember Hoppe's consensus to allow staff to execute eminent domain failed 3-3

Mr. Westberg said staff will proceed as directed.

4. Residential-One (R-1) Zone District Accessory Structure Setbacks – Lauren Mikulak

Ms. Mikulak explained that several requests have been received from property owners for City Council to consider the option of a code amendment to reduce setbacks for accessory structures in the R-1 zone district. The 15 foot minimum side and rear setback requirement seems too restrictive.

Questions and discussion followed.

Accessory structures less than 120sf do not require a permit.

Councilmember Hoppe received consensus to change the minimum setback for minor accessory structures in R-1 to 5 feet and to increase the allowable size to 200sf or less.

5. Staff Report(s)

Mr. Goff reported meeting with Rocky Mountain Bottling regarding the noise issue. They have brought in an engineering firm to analyze the noise. The Executive Board of Miller Coors has given the green light to continue to move forward with the oxygen unit that is more environmentally friendly and will address the noise problem. Timelines and proposals are being prepared and a letter will be sent to the neighbors.

6. Elected Officials' Report(s)

Clerk Shaver reported on the referendum hearing that took place Friday. A decision will be coming on Wednesday. ~ The deadline for petitions for running for office is next Monday at 5pm. ~ New security measures at City Hall started today. All visitors will now be required to stop at the front desk and get a visitors badge. The glass doors into the Clerk's Office and Admin area will now be locked to anyone without a badge and access to the departments upstairs will require a visitor's badge as well. She complimented Mr. Goff and reported that employees feel safer.

David Kueter reported attending the TCL clean-up day at Sts. Peter & Paul last Saturday. The next one will be September 21 at WR Congregational Church on 29th.

Larry Mathews reported there was work on the G Line today involved horns. ~ He reported attending the referendum protest hearing. If anyone would like to know about it they can contact him. ~ For those councilmembers who are if-fy about increasing storage area for accessory structures in residential neighborhoods he showed a door flyer he received at this house. It is about Airbnb's new business for storage. The flyer encourages people to rent out their garages for storage through Airbnb. This is another commercial enterprise in residential neighborhoods that the City will need to address.

ADJOURNMENT

The Study Session adjourned at 9:50 pm.

APPROVED BY CITY COUNCIL ON October 28, 2019



Janelle Shaver, City Clerk



Janece Hoppe, Mayor Pro Tem