

# CITY COUNCIL MINUTES

## CITY OF WHEAT RIDGE, COLORADO

June 25, 2012

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

### **ROLL CALL OF MEMBERS**

Davis Reinhart  
Bud Starker  
Joyce Jay  
Mike Stites  
George Pond  
Joseph DeMott  
Tracy Langworthy - absent  
Kristi Davis

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Treasurer, Larry Schulz; City Manager, Patrick Goff; Police Chief, Dan Brennan; Community Development Director, Ken Johnstone; interested parties and interested citizens.

### **APPROVAL OF MINUTES OF JUNE 11, 2012**

**Motion** by Mr. Stites for approval of the minutes of June 11, 2012; seconded by Mr. Starker; carried 8-0.

### **PROCLAMATIONS AND CEREMONIES**

Mayor DiTullio began by asking for a moment of silence in honor of two police officers who made the ultimate sacrifice. Englewood Officer Jeremy Bitner and Denver Officer Celena Hollis recently died in the line of duty serving to keep their communities safe.

#### **Ann Lazzeri – Recognition**

Mayor DiTullio honored Ann Lazzeri, our Minutes Specialist, who is retiring after nearly 15 years with the City. She has recorded over 4,000 hours and taken minutes for several boards and commissions, a number of ad hoc committees, and occasionally for the City Clerk. The Mayor gave her flowers from the City. Ann thanked everyone. She said it has been fun to see all the changes in the last 15 years and, as she told the Planning Commission members, she admires those who serve on the various boards and committees as volunteers.

#### **Proclamation – David Herman, 2012 Summer Olympic Games**

Mayor DiTullio read a proclamation in support of Wheat Ridge resident David Herman. David, a native of Wheat Ridge, is a BMX rider and has already won a

number of impressive races and honors. He will be competing in the 2012 Olympic Games in London and we wish him well. David thanked the community for this honor and recognition. He is proud to have grown up in Wheat Ridge. The Olympics [ BMX events ] are on August 7, 8, 9. Maybe he can make it back here with a gold medal.

### **CITIZENS' RIGHT TO SPEAK**

**Moe Keller** thanked Council for allowing more time for input to the draft ordinance for amplified sound. The issue is about volume. She offered to work with businesses to craft wording that will not be contested.

**Laura Jenkins** supports a special sound ordinance but wants protection as a homeowner. She pointed out that some businesses and their customers, in strip malls for example, may not be amenable to loud sound on a regular basis. The folks on Iris Street south of 44<sup>th</sup> Avenue feel like a guinea pig neighborhood so they think their input should be heard, and that it's important for people to hear about their experience.

**Steven Gillespie** of the Wheat Ridge Fire District related that the 2011 annual report has been released. The online version is available at [www.WRFire.org](http://www.WRFire.org). He mentioned the July 4<sup>th</sup> holiday and reminded everyone that all fireworks are illegal.

**Kelley Brookes**, Assistant Fire Chief, spoke about the fire ban issued by the governor. We have significant areas in our city that are rural – such as the greenbelt, that are vulnerable to fire. The Governor's ban covers us, Jefferson County has a ban on open fires, and we have a ban of our own. If you have fire that you can turn on and off, such as a propane grill, it is permissible. Permanent fire places are OK; portable ones are not.

**John Marriott** said he is dismayed about a recent ad from Jefferson County Health Department putting the screws to our City Council for not having stronger anti-smoking laws. It is a waste of taxpayer dollars. We have other health care needs that are more important. The money for the ad came from the tobacco settlement, i.e. paid for by smokers. That money was supposed to be used to help pay for the medical costs of smokers. We have better things to spend our money on. We may not agree with their choices, but it comes down to a freedom issue. It's absurd to use tax dollars to dictate to people what they can and can't do. The anti-smoker people have the initiative process available. And he thinks that Jeffco should be using tax money wisely – not for public relations.

**Mrs. Jay** thanked the citizens who spoke on the noise ordinance. Mr. DiTullio mentioned that the ordinance he sent to Moe Keller has new sections. The reason they moved away from the decibel level approach is because it doesn't stand up in court.



### **APPROVAL OF AGENDA**

By unanimous consent, Item 9, cancellation of the June 2 study session, was pulled from the agenda. Mayor DiTullio also reported that Items 5 & 6 were misplaced in the agenda and will be done after Item 2 so there can be a public hearing.

### **PUBLIC HEARINGS AND ORDINANCES ON SECOND READING**

1. Council Bill 09-2012 - An Ordinance amending various sections of Chapter 26 of the Wheat Ridge Code of Laws, concerning zoning, to regulate group homes for the handicapped and to bring uniformity to certain residential group home zoning requirements and substance abuse clinic zoning requirements.

Mayor DiTullio opened the public hearing.

Council Bill 09-2012 was introduced by Mr. Starker. The Clerk assigned Ordinance # 1512.

At issue is how the City treats group homes. Not all group homes are treated the same.

Staff Report: Ken Johnston

Currently residential group homes for the elderly and children are a permitted use for 8 or fewer residents. 9 or more requires a special permit. Residential group homes for handicapped persons are a permitted use and have no restrictions on the number of residents.

While handicapped persons are a protected class it is permissible, but not required, to regulate group homes through zoning and impose a limit on the number of residents. The threshold is 8 in other front range cities. The ordinance would define group homes for handicapped so they will be treated the same as other group homes. 9 or more would require a special use permit. This also provides for uniform parking regulations, eliminates the cap on caregivers, and clarifies residential substance abuse clinics.

The Planning Commission recommended denial of this ordinance. Staff recommends approval.

Public Comment:

**Nancy Snow**, former Councilmember, Planning Commission member and over 24-year employee of the Colorado Civil Rights Division, is an expert on group homes. She is surprised by the urgency of this. She believes unrelated handicapped people can be a family. She gave the history of where the number of 8 residents came from. She says Lakewood's ordinance is a nightmare and the neighborhood meetings are very nasty. She doesn't want that here. Since no one knows where our group homes are and that there have been no complaints over the years, why is it a problem? She pointed out that no group homes were contacted by the City about this. They don't even know this is happening and they will become non-conforming. Parking should not be an issue

because these people don't even drive. She encouraged Council not to pass this, or if they do to make it a large number.

Mr. Dahl affirmed that any existing homes with more than 8 residents would become a legal non-conforming use.

Ken Johnstone confirmed that there have been no code problems with existing group homes.

Mayor DiTullio closed the public hearing.

Motion by Mr. Starker to approve Council Bill 09-2012 - an ordinance amending various sections of Chapter 26 of the Wheat Ridge Code of Laws, concerning zoning, to regulate group homes for the handicapped and to bring uniformity to certain residential group home zoning requirements and substance abuse clinic zoning requirements, on second reading, and that it take effect 15 days after final publication, with the following condition: In Section 6 of the ordinance, in the column for uses, the word "outpatient" be added in front of "counseling"; seconded by Mr. Stites.

Councilmember Reinhart doesn't care for this ordinance and doesn't want to create non-conforming uses. Since group homes have not been a problem, he wishes we would follow the planning commission recommendation. Mr. Stites thinks we need to take the neighborhoods into consideration. Ms. Davis had staff confirm that group homes must be licensed. Mr. Pond is opposed to setting a specific number because every situation is different, but he does favor a public process. Mr. DeMott relies on the state licensing process to take care of the numbers. Mayor DiTullio noted that any time there is a public hearing people will come in and fight -- if it's 8 or 20. If this passes he will probably veto it.

The vote was 4-3 with Councilmembers DeMott, Davis and Reinhart voting no.  
**[Due to the lack of 5 affirmative votes the motion failed. For details see City Attorney's Matters.]**

2. Resolution 34-2012 – denying a Special Use Permit application for a JP Morgan Chase Bank Drive-up ATM located at 3817 Sheridan Boulevard (Sup-12-04)

Mayor DiTullio opened the public hearing.

Resolution 09-2012 was introduced by Mrs. Jay.

Quasi-judicial status was discussed. Ms. Davis reported having a discussion about 10 days ago with one of the co-owners before she knew this was quasi-judicial. Mrs. Jay reported that over 1 ½ years ago the property owner approached former Councilmember Sang and her and discussed this for 20 minutes. This application was submitted 2 years ago.



After some discussion Mrs. Jay and Ms. Davis both chose to recuse themselves and left the room.

Mayor DiTullio swore in the speakers for this item.

**Staff Report:**

Ken Johnstone showed slides of where the ATM would be located and gave a history of the current shopping center. All agencies can serve the property and Public Works and Police have no concerns. Only one person attended the neighborhood meeting, and a letter of protest from a citizen was passed out. Staff's evaluation of the SUP Criteria shows that it would contribute to blight, lacks pedestrian orientation, and that the vehicular circulation will negatively impact the internal site circulation of the center. Renewal WR does not support this due to the lack of pedestrian orientation and staff recommends denial.

**Applicant:**

Applicant **Joshua Higgins**, feels they have done due diligence. They see most of the concerns as being cosmetic or placement related (hindering interior traffic flow), so they have relocated the kiosk, lowered the number of stacking vehicles to three, and are modifying the designs/columns to grasp the design feel of nearby streetscape features.

**Public Comment:**

**Mike Scheckel** of King Soopers said they are in favor of this project and don't have any problems with it. He thanked the staff for their hard work on this project over the years it took to put this together.

**Robert Perry** and **Jeff Bailey**, co-owners of the shopping center since 1992, spoke. They want to upgrade the façade on the building, and they need the income from this ATM to accomplish that.

Following questions from Council, Mayor DiTullio closed the public hearing.

**Motion** by Mr. DeMott to approve a special use permit for a JP Morgan Chase Bank drive-up ATM on property at 3817 Sheridan Boulevard (SUP-12-04) for the following reasons: 1)The applicant has provided an amended proposal that blends in more with the brick of nearby streetscape amenities; 2) The centering of the ATM will aid traffic circulation; 3) Walkability is not an issue; and 4) The landscaping won't affect the signage, with the condition they adhere to the brick pattern of nearby streetscape structures; seconded by Mr. Stites; carried 4-1 with Mr. Pond voting no.

**The Mayor called a break at 9:12. Council reconvened at 9:20 with Mrs. Jay and Ms. Davis present.**

**Note: The public hearings for Items 5 and Item 6 were held as one hearing.**

5. Resolution No. 32-2012 – Authorizing the execution of an agreement allowing King Soopers, Inc. to participate in the Wheat Ridge Business Development Zone Program for the rebate of Building Use Tax in an amount not to exceed \$100,000 in association with the remodel of their facility at 38<sup>th</sup> and Sheridan Boulevard
6. Resolution No. 33-2012 – A Resolution authorizing the execution of an agreement with King Soopers, Inc. for participation in the Enhanced Sales Tax Incentive Program (ESTIP) in an amount not to exceed \$300,000 for the remodel of their store located at 3817 Sheridan Boulevard.

Mayor DiTullio opened the public hearing.

Ms. Davis introduced Items #5 and #6.

Patrick Goff gave a short staff report on the business incentive package being offered to King Soopers through the Business District Zone (BDZ) program. King Soopers plans to remodel and is requesting a total financial contribution of \$400,000 to demonstrate the City's desire to retain Kings at this site. The City's goals are to retain jobs, spur reinvestment and remodeling of the entire center, and keep King Soopers at that location. The negotiated agreement (provided in Resolution 32 in agenda item #5) provides that a rebate of 100% of the building use tax created by the remodeling project, not to exceed \$100,000, be given to King Soopers.

The ESTIP (provided in Resolution 33 in agenda item #6) would give King Soopers monthly rebates of future sales tax collected by the City over and beyond the base amount of actual sales tax. Staff recommends approval as this will create new revenues for the City and extend King's commitment to the property until 2033.

Mayor DiTullio closed the public hearing.

**Motion** by Ms. Davis to approve Resolution No. 32-2012, a resolution authorizing the execution of an agreement allowing King Soopers, Inc. to participate in the Wheat Ridge Business Development Zone Program for the rebate of building use tax in an amount not to exceed \$100,000 in association with the remodel of their facility at 38<sup>th</sup> and Sheridan; seconded by Mr. DeMott;

Discussion revealed that King Soopers will be required to document that the rebate money is spent properly throughout the center, and that this project will fall into the art category.

Motion carried 7-0

**Motion** by Ms. Davis to approve the adoption of Resolution No. 33-2012 – a resolution authorizing the execution of an agreement with King Soopers, Inc. for participation in



the Enhanced Sales Tax Incentive Program (ESTIP) in an amount not to exceed \$300,000 for the remodel of their store located at 3817 Sheridan Boulevard.; seconded by Mr. Starker; carried 7-0.

### **ORDINANCES ON FIRST READING**

3. Council Bill No. 11-2012 – An Ordinance amending the Wheat Ridge Code of Laws, Chapter 22, Sections 22-67 and 22-68 (a) to clarify those entities which are exempt from use tax on building materials and supplies

Council Bill 11-2012 was introduced by Mr. DeMott.

This ordinance will clean up inconsistencies that have occurred over the years on how we apply our use tax code with city projects. The wording in our code is written in such a way as to not allow exemption from use tax on construction materials and supplies/equipment for city, quasi-city and public school projects. We have been allowing this exemption for many years, but it is against current code and very confusing for diligent tax managers. Passage of this ordinance will change the code to reflect what the City is already doing.

**Motion** by Mr. DeMott to approve Council Bill No. 11-2012 – An ordinance amending the Wheat Ridge Code of Laws, Chapter 22, Sections 22-67 and 22-68 (a) to clarify those entities which are exempt from use tax on building materials and supplies on first reading, order it published, public hearing set for Monday, July 9th at 7:00 p.m. in the City Council Chambers, and that it take effect 15 days after final publication; seconded by Mr. Stites; carried 7-0

4. Council Bill 10-2012 – An ordinance amending Chapter 26 concerning the planned development district regulations and private zone changes and making certain amendments to Chapter 2 in association herewith (Case No. ZOA-12-01)

Council Bill 10-2012 was introduced by Mr. Stites.

This ordinance will separate approval of site specific design from the zone change criteria and procedure. This will be more efficient by establishing the Planning Commission as the final authority for the specific development plan. This will allow a developer to proceed directly to the building permit stage (after approval of a specific design plan) thereby saving an additional two months and redundant reviews.

**Motion** by Mr. Stites to approve Council Bill No. 10-2012, an ordinance amending Chapter 26 concerning the planned development district regulations and private zone changes and making certain amendments to Chapter 2 in association herewith on first reading, order it published, public hearing set for Monday, July 9, 2012 at 7:00 p.m. in

City Council Chambers, and that it take effect 15 days after final publication; seconded by Mr. Pond; carried 7-0.

### **DECISIONS, RESOLUTIONS AND MOTIONS**

7. Resolution No. 31-2012 – A Resolution approving an Intergovernmental Joint Cooperation Agreement between Jefferson County and the City of Wheat Ridge regarding the formation of a HOME Consortium between Jefferson County and the City of Lakewood.

Resolution No. 31-2012 was introduced by Mr. Pond.

By executing an Intergovernmental Agreement (IGA) with the County and Lakewood we can all access federal money for affordable housing projects. The amount of pooled funds available in 2013 would be approximately \$700,000 - \$800,000.

**Motion** by Mr. Pond to approve Resolution No. 31-2012 – a resolution authorizing approval of the Intergovernmental Joint Cooperation Agreement between Jefferson County and the City of Wheat Ridge regarding the formation of a HOME Consortium between Jefferson County and the City of Lakewood; seconded by Mr. Stites; carried 7-0.

8. Motion to approve RFP-12-07 insurance broker services to Insurance Management Associates, Inc. (IMA) of Colorado on a commission-based agreement in the total amount of \$72,000.

Proposals from 8 companies were received and evaluated. Staff recommends retaining IMA of Colorado because they have been very innovative and provided state-of-the-art services and customized technologies that are not offered by other brokers in the insurance industry.

**Motion** by Mr. Reinhart to award RFP-12-07 insurance broker services to Insurance Management Associates, Inc. (IMA) of Colorado on a commission-based agreement in the total amount of \$72,000; seconded by Mrs. Jay; carried 7-0.

9. Motion to cancel the Study Session of July 2, 2012  
**[Item #9 was removed from the agenda at the beginning of the meeting.]**

### **CITY MANAGER'S MATTERS**

**Mr. Goff** repeated that all fireworks are illegal in WR and that the police have strict enforcement standards. He also was proud to announce that Wheat Ridge received a 2012 Program of Excellence award from ICMA for our Action Mission Rollout. Wheat Ridge also received an award from CIRSA for our loss prevention program. This saves us money on insurance coverage.



**CITY ATTORNEY'S MATTERS**

Mr. Dahl reported that all ordinances require affirmative votes from a majority of the entire council to pass (i.e. 5 votes). In the case of the vote earlier in the meeting on Agenda Item 1, only 4 councilmembers voted yes. While 4 is a majority of those present, it is not a majority of the entire council. Additionally, the mayor is only able to vote to break a tie, so in the case of a 4-3 vote he is not eligible to vote – possibly providing a 5<sup>th</sup> affirmative vote. Therefore Item #1, the group home ordinance, is deemed to have failed.

**CITY CLERK'S MATTERS**

Clerk Shaver reminded everyone that tomorrow is the last day to turn in primary election ballots. City Hall will be open until 7PM for those who still need to vote.

**ELECTED OFFICIALS' MATTERS**

**Mr. Starker** expressed gratitude to citizens who provided input tonight.

**Mr. Stites** reported that the skate board park dedication at Discovery Park this past Saturday was fun and well-attended. With this and the water features up and running Discovery Park is finished.

**Ms. Davis** said many of the items tonight had similar themes in that they require people to respect other people's views. She appreciated the input from neighbors on the noise ordinance. We do want to support our businesses, but also respect the neighbors. She said we need to be respectful of handicapped people who live in our community, and she agreed with Mr. Marriott that the City has more important issues to address than outlawing smoking. We need to respect the lifestyles that people choose. Overall we need to look at both sides of the coin and be respectful of others' viewpoints.

**Mrs. Jay** said that she welcomes citizen input and hopes people feel their viewpoints are respected.

**Mr. Reinhart** reported that RTD is taking action tomorrow night and still plans to cut service to western Wheat Ridge. He offered, and Council agreed that he should go to the RTD meeting tomorrow night and ask RTD to live up to their commitment of not cutting services to western Wheat Ridge.

**Mr. DeMott** mentioned the Zoppe Italian Circus is coming soon with 14 performances in August. Circus Bucks, which are a \$5 off coupon, are available at City Hall, the Rec Center, businesses around town, and the Carnation Festival website.

**Mayor DiTullio** told Council that in the future it would be helpful to him if they would raise their hands so he can see that they want to speak. He also explained his actions at the study session prior to this meeting. When there are lots of people to speak on an issue he suggests that citizens appoint a spokesperson or two to address Council. This

was a 30 minute study session scheduled and 10 people, using 3 minutes each, wanted to speak on the ordinance before they heard the Council discussion with staff. Asking for spokespersons is an effort to use some common sense to allow for an efficient, fair and informative process during the study session and the regular business meeting. Citizens who did not speak under the study session public comment still had an opportunity to speak under public comment during the regular business meeting that followed. In the end Council was not able to fully discuss the amplified music ordinance and now the process has been delayed.

Meeting adjourned at 9:50 pm.

  
Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON July 9, 2012 BY A VOTE OF 6 to 0 -1

  
Mike Stites, 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.