

# CITY COUNCIL MINUTES

CITY OF WHEAT RIDGE, COLORADO  
7500 WEST 29<sup>TH</sup> AVENUE, MUNICIPAL BUILDING

October 27, 2014

Mayor Jay 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

Jerry DiTullio	Bud Starker	Zachary Urban	George Pond
Kristi Davis	Tim Fitzgerald	Genevieve Wooden	

Absent: Tracy Langworthy

Also present: City Clerk, Janelle Shaver; City Treasurer, Larry Schulz; City Attorney, Gerald Dahl; Division Chief, Joe Cassa; City Manager, Patrick Goff; Community Development Director, Ken Johnstone; other staff and interested citizens.

## APPROVAL OF MINUTES OF October 13, 2014

There being no additions or corrections, the Minutes of October 13, 2014 were declared approved as published.

## PROCLAMATIONS AND CEREMONIES

**Amanda Weaver** from Five Fridges Farm and **Carol Sue Frickel**, WR citizen, told about the farm-to-table project between Kullerstrand Elementary School, Five Fridges Farm, and CU Denver. Student volunteers and community groups helped with the garden to get fresh vegetables into the Backpacks that are donated to Title 1 families at Kullerstrand.

## CITIZENS' RIGHT TO SPEAK

**Jill Fellman**, Jeffco School Board, reported some news from the school district. ~ There were recent exterior upgrades at Kullerstrand. ~ Prospect Valley has a STEM program for 3<sup>rd</sup> and 4<sup>th</sup> grade girls. ~ Pennington and WRHS received grants from a credit union that will be used for enrichment classes (Pennington) and new practice football equipment (WRHS). ~ 30,000 high schools were rated by US News & World Report; Jeffco had 6 in the top fifty and WRHS is #29. ~ The first student town hall was held at Alameda HS recently.

**Jeff Gomez** from Everitt Middle School spoke about his school. With 70% of the students on free/reduced lunch and 50% being minorities they are trying to change the

perception of their school by focusing on critical thinking and academics. They have 14 clubs, a partnership with WRHS students who come in Mon-Thurs to help with homework club, and high expectations for their students.

**Kim Harr** (WR) thanked a long list of individuals, organizations, and businesses who helped with Trunk or Treat on Saturday.

**Mary Fedje** (WR) encouraged a yes vote on ballot issues 2A and 2B. She thinks 2A is needed to beautify our older city and 2B is a bargain for \$9.3 million.

**Monica Duran** (WR) thinks \$9.3M for 8 blocks on 38<sup>th</sup> Ave. is fiscally irresponsible and the road diet has been too few voices and too many questions. She encouraged a no vote on 2B.

**Robin Chalker** (WR), coach, introduced the Prospect Valley Destination Imagination team. This year's team has chosen education on the dangers of marijuana and edibles as their challenge. It's called Pot Stoppers. Team members **Jack Cudahy** (LW), **Emily Chalker** (WR), **Matthew Chalker** (WR), and **Sonja Morin** (WR) introduced themselves.

**John Clark** (WR) reported attending the study session on the budget and noted there was no mention of the \$9.3 M for 38<sup>th</sup> Avenue. Where will the money come from? Will it come from 2A? Why have all the Councils who've worked on this "vision" over the years never talked about how to pay for it? He thinks 38<sup>th</sup> is booming well without it.

**Guy Nahmiach** (WR) said 2B is not about sidewalks; it's about a life style. People move to WR so they can walk and not drive. He supports 2B. ~ As president of the Everitt PTA he challenged every PTA to invite people to their schools to discuss the dangers of marijuana/edibles. ~ As a realtor he wants our city to be friendlier to builders and investors. He asked that the Building Code Advisory Board be modified to be made up of builders, city officials, realtors, contractors, and investors who could address issues and make suggestions to City Council on how to better communicate and manage the growth we are experiencing.

## APPROVAL OF THE AGENDA

### PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

1. Council Bill 14-2014 -- Imposing a Temporary Moratorium on the submission, acceptance, processing, and approval of applications and requests for a permit, license, land use approval or other approval for any Medical Marijuana Establishment.

Councilmember Wooden introduced Item 1.

The current emergency moratorium on applications for marijuana businesses will expire November 17, 2014. This ordinance will add another 120 days to the moratorium thereby providing City Council more time to review, evaluate and possibly amend the City's marijuana regulations.

Mayor Jay opened the public hearing.

Clerk Shaver assigned Ordinance #1560.

Public Comment

**Cara Jakab** (WR) suggested the number of medical marijuana centers in WR be capped at 5 and manufacturers at 3. She doesn't think we need our marijuana stores to outnumber our libraries and grocery stores. She agrees that marijuana use is a parenting issue, but also feels it is the responsibility of the community and its leaders.

**Kevin Cheney** (Broomfield) works at the Boulder law firm that represents Babak Behzadzadeh, the owner of the property at 38<sup>th</sup> & Miller. He gave a character reference for Babak, who he said has followed every rule, regulation and request of the City to the letter. ~ Mr. Cheney outlined details of meetings with City staff who advised that if the gas tanks were removed a special use review could be avoided and they could grant an administrative approval for the marijuana facility. ~ He testified that Babak spent over \$650,000 for the property and doing everything the City asked. Now Council has changed the rules and stopped Babak from having his dream of owning a dispensary. ~ He advised Council that Babak has been and remains willing to compromise to address the issues of the neighbors.

**Elaine Morin** (WR) spoke of the realities she has learned since marijuana has come to WR. She listed a number of current and future negatives effects including declining property values in neighborhoods near pot shops, community friendly businesses that won't locate here, a decline in being a family friendly city, an impact on community safety, a reputation for being a pot city, and the Wheat Ridge Farmers becoming the butt of jokes. She urged Council to support a ban on all new marijuana stores and no expansion of existing ones.

**Becky Grant** (WR) noted the reason given for not allowing Mr. Ketelsen to have an electric fence to protect his business was that it's near a school and children could be harmed by it. She compared the temporary pain of touching an electric fence to the numerous long-lasting negative effects marijuana can have on children. She encouraged Council to quit grandstanding about wanting to protect children and actually do something about it by making the moratorium on marijuana establishments permanent.

**Roger Morin** (WR) questioned the proposal to limit grow operations to 5,000 sq ft for each of the five stores. This would be 25,000 sq ft. (at least 200% more than we need). He used math, data from the Dept of Revenue, information from the Rand Corporation, and census data to illustrate that WR only needs about 8,500 sq ft. of growing space to serve its residents. He urged Council to be concerned about the health and welfare of all its citizens as marijuana is not without significant side effects and health concerns -- especially for heavy users. He also urged Council to consider ordinances to help with all substance abuse addictions.

**Denise Klinger** (WR) asked for clarification on some items that were posted. Regarding adding 1,000 feet separation from WR parks and recreation facilities, she

asked if retail marijuana stores are separate from a grow operation? She also asked why the WR Recreation Center was exempted as a day care center in the separation calculations? ~ Mayor Jay informed her that her questions were not appropriate for this hearing on a moratorium, but that those issues would be discussed at a later date. ~ Mrs. Klinger said she would like to see WR stay a family place and not have people coming in to buy the excess marijuana.

**Babak Behzadzadeh** (Englewood), owner of the property at 38<sup>th</sup> & Miller, is a registered pharmacist who wants to open a marijuana store. He said he met with City staff in June several times. He was told the property was zoned C-1 and if he removed the gas tanks he could put in a marijuana shop by administrative decision. He reported asking what an administrative decision was, and was told it meant there would be no public meeting. He subsequently purchased the land, removed the gas tanks and about when he was ready to turn in his application the moratorium was passed. ~ He told Council he is happy to meet with the neighbors to address any issues, such as noise, smell, building size, and building orientation. He is planning a professional looking building.

**Ronna Burrows** (WR), WRHS Class of 1974 and former teacher said she wants the image of Wheat Ridge to be a wholesome place to raise kids not a mecca for adult businesses. ~ The 1000 foot buffer zone does not protect the children whose bedroom is 20 feet from a marijuana shop property or the many children who live nearby. ~ The gas station that was there does not make this an industrial area. ~ Grow operations vent the air twice a day. The ongoing smell of skunkweed will permeate the area, Cambridge Park and the Recreation Center. ~ She reminded Council that retail stores haven't stopped the black market and listed other negative impacts of marijuana on the community.

**Patti Lazzari** (WR) thanked Council for extending the moratorium because there is so much information to study. She presented the councilmembers with copies of a brief handout from SAM – Smart Approaches to Marijuana for reference during their study.

**Fran Langdon** (WR) reminded Council to do their due diligence when deciding the future of marijuana in WR. Amendment 64 did not say every city has to have marijuana shops and she listed remarks she has heard from Council that are disappointing to her. She said sign spinners didn't stop because they are good neighbors; they stopped because the state said it was illegal. She's concerned that a pharmacist is promoting this business and cited a recent news article about marijuana dealers buying bulk candy from Costco and spraying hash oil on it. She doesn't want WR to be known as the best place to get drugs

**Steve Miller** (WR) lives four houses from 38<sup>th</sup> & Miller and supports the moratorium.

**Jennifer Shepherd** (WR) said the City is setting up the perfect recipe for drug use – increased availability, increased social acceptance, and decreased perception of harm. She told of Facebook posts by the businesses that welcome stoners and contradict information from the health department.

**Jennifer Yates** (WR) would like to see a ban on all future marijuana facilities, but appreciates the willingness to limit the size and number of future facilities. She favors the 1,000 foot separation measured in a straight line. She related seeing people across from Paramount Park near Chronic Therapy taking hits off a bong. ~ She favors leaving in-home day cares left on the map for a year after they close to prevent marijuana businesses from buying them out. ~ She thinks state signage restrictions are adequate; enforcement is the problem. If they aren't following the signage rules, what other rules are they not following?

There was no staff presentation.

Mayor Jay closed the public hearing.

**Motion** by Councilmember Wooden to approve Council Bill 14-2014, an ordinance imposing a temporary moratorium on the submission, acceptance, processing, and approval of applications and requests for a permit, license, land use approval or other approval for any medical marijuana establishment or retail marijuana establishment on second reading, and that it take effect 15 days after final publication; seconded by Councilmember DiTullio; carried 7-0.

2. Resolution No. 55-2014 – Determining that the parcel commonly referred to as a strip of land adjacent to 12525 W. 32<sup>nd</sup> Ave. is blighted as that term is defined at C.R.S. § 31-25-105.5(5)(a), and authorizing the Wheat Ridge Urban Renewal Authority to use Eminent Domain to acquire the parcel and to subsequently transfer it to a private party

This involves a five-foot strip of property totaling 775 sq ft adjacent to the Applewood Shopping Center for which no owner can be found. The land is not buildable due to size constraints and has been tax delinquent for over 20 years. With City Council approval Colorado Revised Statutes authorize the Urban Renewal Authority to obtain the property through eminent domain. All required steps have been followed to allow condemnation proceedings to begin. Following acquisition of the property Urban Renewal will transfer ownership to U.S. Retailers for development with the larger shopping center.

Councilmember Davis introduced Item 2.

Mayor Jay opened the public hearing.

Councilmember Davis noted the property is five feet wide.

Councilmember Urban asked what steps have been taken by the City, apart from efforts by the developer, to find the owners of the property. ~ Mr. Dahl said title work has been done. He speculated that it's likely two previous surveys didn't touch each other resulting in a survey error that was repeated over time. This is not uncommon in inner-ring suburbs where development and redevelopment has taken place over time. He believes the use of eminent domain is the best way to clear up the title. No owners can

even be identified, so this is one of the few times when it's recommended that Council give permission for Urban Renewal to exercise its power.

Councilmember Starker asked if there is any reason to believe there is environmental contamination on or under this piece of property. Mr. Goff doesn't believe there is. U.S. Retailers (aka Regency) would be responsible for that. He believes a Phase 1 was done and nothing was identified.

**Motion** by Councilmember Davis to approve Resolution No. 55-2014 – Determining that the parcel commonly referred to as a strip of land adjacent to 12525 W. 32nd Ave. is blighted as that term is defined at C.R.S. § 31-25-105.5(5)(a), and authorizing the Wheat Ridge Urban Renewal Authority to use Eminent Domain to acquire the parcel and to subsequently transfer it to a private party; seconded by Councilmember Fitzgerald.

Mayor Jay closed the public hearing.

Mr. Dahl clarified that this was not a quasi-judicial matter and speakers didn't need to be sworn in.

Motion carried 7-0.

### **ORDINANCES ON FIRST READING**

3. Council Bill No. 15-2014- approving the rezoning of property located at 6904-6940 W. 48<sup>th</sup> Avenue from Residential-Three (R-3) to Planned Residential Development (PRD) (Case No. WZ-14-05/Somerset)

Councilmember Urban introduced Item 3.

The applicant is requesting this zone change to allow the existing condominiums to be converted to townhomes. This would provide new options for affordable ownership and may promote owner occupancy. No new development is being proposed – only a change in the type of ownership. The Planning Commission heard the request in October 16, 2014 and recommends approval. Fees totaling \$2,094 were collected for the review and processing of this case.

**Motion** by Councilmember Urban to approve Council Bill 15-2014 - approving the rezoning of property located at 6904-6940 W. 48th Avenue from Residential-Three (R-3) to Planned Residential Development (PRD) (Case No. WZ-14-05/Somerset); seconded by Councilmember Starker; carried 7-0.

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

4. Resolution 56-2014 – concerning the acquisition of private property for the purpose of constructing, installing, maintaining and using Public Improvements

for the Tabor Street Multi-Modal Improvements by either negotiation and voluntary purchase or, if necessary, through the utilization of the City's power of Eminent Domain, and authorizing such action as necessary to accomplish said purposes

Councilmember Wooden introduced Item 4.

Since federal funds for the Gold Line station are also being used to widen Tabor Street and build sidewalks and bike paths (\$740,228), one of the requirements is for City Council to approve a resolution authorizing the acquisition of public rights-of-way. This resolution authorizes the City Manager or his designee to acquire the necessary properties through good faith negotiations based on fair market value or begin condemnation proceedings if necessary. In this case the City has hired the right-of-way consultant H.C. Peck & Associates to perform that work. Construction is expected to begin in early summer 2015.

There was no staff presentation, no public comment, and no questions from Council.

**Motion** by Councilmember Wooden to approve Resolution 56-2014 a resolution concerning the acquisition of private property for the purpose of constructing, installing, maintaining and using public improvements for the Tabor Street multi-modal improvements by either negotiation and voluntary purchase or, if necessary, through the utilization of the City's power of eminent domain, and authorizing such action as necessary to accomplish said purposes; seconded by Councilmember DiTullio; carried 7-0.

5. Motion to approve payment of the Sales Tax Increment for September of Fiscal Year 2014 from the Town Center Project in the amount of \$75,170.52 to Renewal Wheat Ridge

Councilmember Davis introduced Item 5.

The Town Center Urban Renewal Plan includes the commercial area east of Wadsworth between 38<sup>th</sup> and 44<sup>th</sup>. The 25 year plan started in December, 1981. It has been extended twice and was amended in 2011 to increase the payment from 50% to 100% of the sales tax increment share back. It expires December 31, 2014.

Mr. Goff noted that at next Monday's study session there will be a discussion about a new arrangement with Urban Renewal and extending this IGA.

**Motion** by Councilmember Davis to approve payment of the sales tax increment for September of fiscal year 2014 from the Town Center Project in the amount of \$75,170.52 to Renewal Wheat Ridge; seconded by Councilmember Wooden; carried 7-0.

6. Motion to cancel the Regular Meetings of the Wheat Ridge City Council on November 24 and December 22, 2014, due to the Thanksgiving and Christmas Holidays

Councilmember Fitzgerald introduced the item.

**Motion** by Councilmember Fitzgerald to cancel the regular meetings of the City Council on November 24 and December 22, 2014, due to the Thanksgiving and Christmas Holidays; seconded by Councilmember Davis; carried 7-0.

### CITY MANAGER'S MATTERS

### CITY ATTORNEY'S MATTERS

### ELECTED OFFICIALS MATTERS

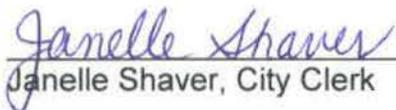
**Jerry DiTullio** explained that speakers are only sworn in on quasi-judicial land use matters.

**Zach Urban** encouraged everyone to get out and vote.

**Genevieve Wooden** thanked everyone who came out to speak tonight and thanked everyone who participated and supported Trunk or Treat.

### ADJOURNMENT

The City Council Meeting adjourned at 8:28 pm.

  
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Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON December 8, 2014

  
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Kristi Davis, 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.