

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

August 12, 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
George Pond	Kristi Davis	Larry Mathews	Janeece Hoppe

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Manager, Patrick Goff; Interim Police Chief, Dave Pickett; Administrative Services Director, Allison Scheck; Acting Public Works Director, Steve Nguyen; other staff, guests and interested citizens.

PROCLAMATIONS AND CEREMONIES

50th Anniversary – Recognition of Official Incorporation of the City of Wheat Ridge
Mayor Starker read a proclamation celebrating the 50th anniversary of the incorporation of the city and declaring August 15, 2019 as City of Wheat Ridge Day to honor the courageous settlers who came to this area in the 1800's as well as those who farmed in the area over the years and made Wheat Ridge the Carnation Capital of the world, and to recognize those who had vision in 1969 to mobilize the residents to create a new city.

Leah Dozeman presented the Mayor with a traditional ceremonial plate for this year's Carnation Festival. This year's festival celebrated the 50th Anniversary of the City's incorporation. The winner of this year's Carnation Festival plate design competition was Carly Picollo. Ms. Dozeman thanked the City of Wheat Ridge, the City Council, and the staff for their unwavering support over the years. She noted how every year the Police and Parks Departments do a tremendous amount of hard work that helps make the festival run smoothly and be safe and successful.

APPROVAL OF Council Minutes of June 10, 2019 and Study Session Notes of June 17, 2019 and July 1, 2019

There being no objections, the City Council minutes of June 10, 2019 and Study Session Notes of June 17, 2019 and July 1, 2019 were approved as published.

APPROVAL OF AGENDA

CITIZENS' RIGHT TO SPEAK

Stan Koniz (WR) reported receiving notice of a proposed 60-unit development behind his house. While it is premature at this time to comment in opposition to this proposal, he informed Council that the community has rallied around this issue, and Council will be hearing from them in the future.

Rachel Hultin (WR) recognized everyone who contributed to the spectacular Carnation Festival. Being a judge for the parade this year she delighted to see students, community organizations and businesses show their creativity and spirit. While helping to serve beer she heard comments by people from around the metro area about how spectacular the festival is and that they come every year. She thanked everyone for their hard work and thinks it's great to see the community show up.

John Mackey (Edgewater), the Police Chief of Edgewater, thanked the City for coming to their aid during a recent SWAT call in Edgewater. A letter providing details is provided for council. Collaborative efforts are common, but the aid Wheat Ridge provided allowed their city to endure a 17 hour incident with no one getting hurt. That is almost impossible for small cities. The letter from him and the Mayor of Edgewater thanks Wheat Ridge for their excellent collaboration and support.

Judy Capra (WR) gave an update on the petition drive. She and Lynne Martinelli, along with 33 other circulators, collected over 2,000 signatures from residents who oppose Ordinance 1667 rezoning four lots on Upham St from R-3 to PRD. Enough signatures were validated to reach the 1,642 required. They informed the City Clerk of 37 signatures they felt should have been counted, but then they also were made aware of a protest against the sufficiency of the petition. The Charter explicitly states that once there is sufficiency it goes directly to the Council for consideration. Council can either reverse their decision or send it to the ballot. There is no timeline or provision for a protest nor any direction to see state laws regarding protests. It appears this will be ignored and a hearing will take place. State law says the hearing officer is to be our City Clerk. The McLeod's, who have filed the protest, say our Clerk should be disqualified because she has an interest in the outcome and/or is prejudiced. This is pretty general mudslinging – hoping something will stick. While the bigger question is 'should we be having a hearing in the first place?', if there is to be a hearing they believe the City Clerk should be the hearing officer.

Lynne Martinelli (WR) lives on the block of the Upham Street development. She thanked Clerk Janelle Shaver for her help with the petition process. They are all volunteers, all citizens, and all novices and it was extremely time consuming for everyone. It took a lot of time away from her other duties at work and home, and she wanted to thank her and Robin [Deputy Clerk Robin Eaton] for giving so much time. She did an excellent job.

Odarka Figlus (WR) As a petition circulator, she shared that getting 2,000 signatures in a short time is not easy, but they were bolstered by the fact that so many people supported this. She explained to those watching that home rule cities have the greatest authority; they adopt a charter and can have laws that supersede conflicting state law. Example: State law limits what ordinances are subject to referendum, while our Charter allows ALL ordinances to be subject to referendum. The state constitution provides for the right to referendum by citizens. She suggested the proper way to challenge a referendum is to campaign against it and vote against it at the ballot. State regulations indicate the most important part of a referendum is to not abridge the people's right to get to the ballot box.

Ihor Figlus (WR) offered some suggestions related to notification on rezonings. 1) The signs that are posted should be 4 times the size they are now (double the dimensions), and 2) Legal protest distance should be doubled and notification should be extended to 1,000 feet.

Second public input opportunity for 2020 Budget

Rachel Hultin (WR) spoke in support of 1) Implementing the NRS recommendation to hire 2 neighborhood specialists for the community engagement tour, and 2) Hiring 0.5 FTE for a Sustainability Coordinator. To adopt the Sustainable Neighborhoods Program it will take dedicated staff.

PUBLIC HEARING AND ORDINANCES ON SECOND READING

1. Resolution No. 34-2019 – A Resolution approving a major subdivision plat for property zoned Residential-Three (R-3) and located at 11661 W. 44th Avenue (Case No. WS-19-01 / Riverside Terrace)

The major subdivision will establish lot lines, tracts, easement, and ROW dedications for 18 town homes to be built on the approximately 1.52-acre property that is zoned R-3.

Councilmember Mathews introduced Resolution 34-2019.

Mayor Starker announced that the matter was quasi-judicial and swore in the speakers.

Staff Presentation - Planner **Scott Cutler**

Mr. Cutler entered into the record the case file, the subdivision regulations, and the contents of the digital presentation.

Mayor Starker opened the public hearing.

Mr. Cutler continued.

- Aerial photos of the property were shown.
- The 1.52 acre vacant lot formerly contained a single family house. It is zoned R-3 and there are a mixture of zoning uses in the area.

- R-3 allows single family, duplexes and up to 12 units per acre.
- The request is for
 - 18 units spread over 3 buildings
 - 4 tracts that will be commonly maintained
 - Alley loaded units (alleys to have access easements)
 - Utility and drainage easements
- A major subdivision is necessary to sell the units a townhomes.
- Each lots has a building, driveway and private front patio.
- The two alleys, entrance drive, drainage strip and landscaping strips will be maintained by the HOA. A tiny ROW dedication in the SE corner is for sidewalk.
- All outside agencies can serve the property and have no concerns
- Staff has found the plat, site plan, and civil documents to be approvable.
- Planning Commission heard the case and continued it for more traffic information. Subsequent analysis by staff reported to the Planning Commission concluded that the trip generation did not warrant any additional improvements on 44th Avenue.
- He testified that all posting and notification requirements had been met.
- The 15-day public hearing notice generated no phone calls or letters.
- Staff and the Planning Commission recommend approval with conditions.

Public Comment No one came forward to speak.

Council Questions

Councilmember Dozeman asked about the traffic analysis. Based on the traffic report Public Works determined no accel/decel lane or added turning lanes were warranted.

Councilmember Urban inquired about the fire truck turn-around. Staff is requiring that prior to recordation the offsite fire truck turnaround easement must be platted.

Mayor Starker closed the public hearing.

Motion by Councilmember Mathews to approve Resolution No. 34-2019, a resolution approving a major subdivision plat for property zoned Residential-Three (R-3) and located at 11661 W. 44th Avenue (Case No. WS-19-01 / Riverside Terrace) for the following reasons:

1. City Council has conducted a proper public hearing that meets all public notice requirements as required by Section 26-109 and 26-407 of the Code of Laws.
2. The subdivision plat has been found in compliance with Article IV of Chapter 26 of the Code of Laws.
3. All agencies can provide services to the property with improvements installed at the developer's expense.

and with the following conditions:

1. Prior to recordation, the applicant shall pay the required fees-in-lieu of parkland dedication.
2. The developer shall enter into a subdivision improvement agreement and a lot sale restriction covenant agreement prior to recordation of the subdivision plat.

3. Prior to issuance of building permits, the developer shall provide homeowner's association covenants for review and approval by staff.
4. An emergency access easement to allow the subdivision to function independently in the event that the adjacent parcel is not developed shall be recorded by separate instrument prior to the recordation of the subdivision plat.

Seconded by Councilmember Dozeman.

Councilmember Mathews said people have asked for no more high density developments – yet this is all we see. Corners was to be 38 town homes; now it is several hundred apartments. As long as we keep doing this citizens will continued to be dissatisfied. People don't want high density.

Councilmember Davis noted that this meets the requirements for R-3 zoning.

Councilmember Dozeman said 18 units is a use by right and it is in a major corridor

The motion carried 7-1, with Councilmember Mathews voting no.

2. Council Bill No. 10-2019 – An Ordinance amending Chapter 2 of the Wheat Ridge Code of Laws regarding a Code of Ethics for City officers and employees

This ordinance would amend and update the Code of Ethics to implement a gift ban, a provision on use of confidential information, and a procedure for enforcement.

Councilmember Kueter introduced Council Bill 10-2019

City Clerk Shaver assigned Ordinance 1671.

Mayor Starker opened the public hearing.

Staff Presentation ~ Jerry Dahl

Mr. Dahl reviewed what had been discussed at a recent study session.

- The City does have a few ethics obligations in the Charter, but it is minor.
- In 2006 an amendment to the Colorado Constitution created a series of ethics rules for government and created an independent ethics commission to enforce the rules.
- Home Rule cities can have their own system, but our system is very incomplete and could be challenged.
- This ordinance fills in the gaps. The areas covered include
 - 1) Gifts of a substantial nature, what is included and what is not
 - 2) Enforcement – Council having exclusive enforcement authority over all elected officials; the City Manager having enforcement authority over employees
 - 3) A process for distinguishing between frivolous and non-frivolous complaints
- He asked that section 2-102 (i), boilerplate language deferring to the Independent Ethics Commission, be deleted when the motion is made. The point of having our own ethics code is to keep enforcement at home.

- Council would have the ability to pose penalties and public sanction, but not remove from office. Council determined that is what recall is for.

Public Comment

Carol Mathews (WR) expressed concern that this Ethics Code is designed to protect the Council from the state Ethics Commission and will not address ethics issues that really affect citizens' civil and property rights – such as massive campaign contributions from organizations who will later benefit from votes on rezonings and land use?

It also leaves the Council to decide the validity of complaints against itself; there is no oversight by an objective, uninvolved third party. Will there be no recourse for citizens other than law suits and referendums? She thinks the Upham petition is an example of what will result from adopting this ethics program.

Ihor Figlus (WR) expressed disappointment at the ordinance because it would allow for a corrupt City Council to judge itself. One of the basic values of our American system is checks and balances. He believes removing the authority of the state to judge the actions of the City Council is inappropriate. He urged this not be passed.

Odarka Figlus (WR) asked Council to postpone this for further consideration. There are too many issues that need to be resolved.

- In the event of a worst case scenario....
 - A corrupt city council would be the final authority on itself and it appears the matter could not even be taken to district court.
 - Council should be able to have final oversight on employees.
 - Who has oversight on the City Manager?
- She is disappointed the packet is lacking in information. She knows it's for the Council, but it provides good information for citizens too. Lately they have been very stripped down.
- She would like someone to go through each section of the state rules and these rules, step by step, and explain to citizens how this will provide extra protection for them – better than what the state constitution provides.

Council Questions

Councilmember Dozeman asked how many ethics complaints there have been. Mr. Dahl can't remember any.

Councilmember Urban had a question about judges being allowed gratuities for certain services. Mr. Dahl recommended substituting the words "in addition to" with "other than". The issue is primarily for marriage ceremonies. Councilmember Urban would like to see the words specifically reference marriage services.

Councilmember Urban inquired about the liability to the City on an ethics violation by a police officer. Mr. Dahl doesn't envision there being a sanction on the city as a whole. Regarding structure, use of the state's Independent Ethics Commission will not be an option. Council will handle charges about all elected officials; the City Manager will

handle charges about employees. Per the Charter Council does not discipline employees.

Councilmember Urban believes this ethics code lacks third party objectivity. He doesn't want to sit in judgement of another councilmember. He will vote no on this – not because he is against ethics, but because he feels the state has the best ability to investigate and judge impartially.

Councilmember Mathews opined that Council having oversight on itself is not right. He believes checks and balances is the answer.

Mayor Starker closed the public hearing.

Motion by Councilmember Kueter to approve Council Bill 10-2019, an ordinance amending Chapter 2 of the Wheat Ridge Code of Laws regarding a Code of Ethics for City officers and employees, with the deletion of Section 2-102 (i) as recommended by the City Attorney, on second reading, and that it take effect 15 days after final publication.

Mr. Dahl asked if Mr. Kueter would include the addition of a change in Sec 2-100 (10) to identify the allowance for municipal judges regarding marriage services. Mr. Kueter declined.

The motion was seconded by Councilmember Hoppe.

Councilmember Mathews asked what a “public sanction” would look like. Mr. Dahl advised the only consequence allowed is a reprimand or public sanction – likely a written or oral letter of reprimand. There are no fines, etc.

Councilmember Hoppe expressed not being opposed to continuing this for further discussion and improvement.

Councilmember Dozeman is ok being governed by the IEC, she thinks it is good to strengthen our Code.

Motion by Councilmember Hoppe to continue for action Council Bill 10-2019 to a future study session followed by Council action after that; second by Councilmember Urban; carried 8-0.

ORDINANCES ON FIRST READING

3. Council Bill 11-2019 – An Ordinance amending Sections 11-51, 11-53, and 11-63 of the Wheat Ridge Code of Laws concerning the licensing and regulation of alcoholic beverages

This ordinance provides the final set of revisions to the City's liquor code which have been necessitated by the legislature's adoption of significant changes to the CO Liquor and Beer Codes in 2016 and 2018, which went into effect on January 1, 2019.

Councilmember Weaver introduced Council Bill 11-2019.

Motion by Councilmember Weaver to approve Council Bill 11-2019 - an ordinance amending Sections 11-51, 11-53, and 11-63 of the Wheat Ridge Code of Laws concerning the licensing and regulation of alcoholic beverages, on first reading, order it published, public hearing set for Monday, August 26, 2019, at 7 p.m. in City Council Chambers, and that it take effect 15 days after final publication; seconded by Councilmember Dozeman; carried 8-0.

4. Council Bill No. 12-2019 – An Ordinance prescribing compensation for the office of City Treasurer

This ordinance would establish two salary levels for the City Treasurer, depending on education and work experience.

Councilmember Davis introduced Council Bill 12-2019.

Motion by Councilmember Davis to postpone indefinitely Council Bill 12-2019; seconded by Council member Weaver.

Councilmember Davis said based on discussion at the study session further qualifications are not needed. She believes it should be done by a charter commission.

Councilmember Hoppe doesn't support adding criteria to an elected position. It is not in the Charter.

Councilmember Urban also thinks no requirements should be added. Trust the voters.

Motion carried 8-0.

DECISIONS, RESOLUTIONS AND MOTIONS

5. Resolution No. 43-2019 - A Resolution amending the fiscal year 2019 General Fund budget to reflect the approval of a supplemental budget appropriation in the amount of \$25,000 for the purpose of funding the Wheat Ridge Business District grant program.

This supplement for the Wheat Ridge Business District (WRBD) Grant Program were discussed at the June 5 study session.

Councilmember Hoppe introduced Item 5.

Motion by Councilmember Hoppe to approve Resolution 43-2019, a resolution amending the fiscal year 2019 General Fund budget to reflect the approval of a supplemental budget appropriation in the amount of \$25,000 for the purpose of funding the Wheat Ridge Business District grant program; seconded by Councilmember Urban;

Councilmember Mathews had several concerns.

- This will come from reserves.
- The 2019 appropriation for \$90K was already doubled from 2018.
- If we're adding \$25,000 to WRBD we should take \$25K from something else.
- We are 2 month away from budget; this should be asked then

Councilmember Dozeman thinks this is a good program

Councilmember Hoppe noted some of this year's funds were used for ADA compliance. She believes Investing in the businesses helps the City. She listed some of the grant awards for this year.

Councilmember Pond noted this is the procedure for supplemental budget appropriations.

Motion carried 7-1, with Councilmember Mathews voting no.

6. Motion approving the appointment of a hearing officer to hear and decide upon protests in connection with the referendum petition regarding Ordinance 1667, Series 2019

The City Clerk and the City Attorney request that this appointment be made, consistent with the state statute governing procedures for handling initiative and referendum protests.

Councilmember Urban introduced Item 6.

Staff presentation

Mr. Dahl referenced the memo for the task at hand. After the petition was certified as sufficient a protest was filed. Since the Charter does not provide for a protest, state statutes govern and the City Clerk is the hearing officer. In this case Clerk Shaver has asked not to be the hearing officer, so Council is charged with appointing one. The names of the choices are experienced and capable.

- Pam Anderson – former WR City Clerk and former County Clerk
- Paul Basso – occasional administrative hearing officer for WR
- Karen Goldman – former city clerk and deputy clerk; expert on election law
- Michael Snow – former WR City Clerk

Public comment

Tom Slattery (WR) protested the entire procedure and suggested City Council should recuse itself. He feels it's improper for Council to approve a hearing officer for a protest against a challenge on a rezoning the Council has approved. He believes it's a conflict of interest and would like to know where in the Charter this is prescribed.

Odarka Figlus (WR) No matter how you feel about the referendum, we should all be appalled by the attacks of the protesters against our City Clerk. Protesters claim the City Clerk is so tainted by impropriety that she must not serve as the hearing officer. Their charges included:

- An adult relative of the Clerk carried a petition. Relatives of elected officials don't lose their constitutional rights. What elected official can control the actions of their adult relatives?
- She performed her duties without oversight. We have an elected clerk for a reason and the only people who can do that oversight are the voters.

Protesters should not be making unfounded accusations.

Judy Capra (WR) wanted to be clear she saw no evidence of bias or prejudice by Clerk Shaver. She didn't know her before this process. She always answered questions fairly and gave explanations. She believes the claims of the protestors are invalid and thinks Clerk Shaver should be the hearing officer.

Rollie Sorrentino (WR) made the case there are no provision in the Charter for protest. Preemption applies. It's a City issue so the home rule Charter should apply. There is no provision for protest. The referendum has been certified and should move forward.

Carol Mathews (WR) wanted citizens to know that when Clerk Shaver certified the petitions as sufficient, over 2,000 people had signed them. She was not prejudiced; she used software available from the Secretary of State to all City Clerks in the state. It is not biased; it is a technical tool. Now these protesters didn't get their way, so they have protested against the people and made accusation against innocent people. The number of verified signatures is well over the 1,600 required. The people are speaking. And the Charter says we have a process; she thinks it's bad to change the process when you don't get your own way.

Council questions

Councilmember Mathews had several question about what is being protested, and the process. Mr. Dahl responded:

- Council does not rule on the protest.
- The protest challenges individual signatures for various reasons; entire sections for alleged disassembly; and one section because the circulator is a relative of the Clerk.
- The hearing officer will hear testimony, take evidence and make a judgement.
- The hearing is noticed and open to the public. It is like a trial, but the public can't testify.

Councilmember Urban also had questions about what Council is appointing and the process. Mr. Dahl advised Council is appointing a hearing officer under the elections statutes governing initiative and referendum. This is not a trial and the administrative hearing officer does not have to be an attorney. Our charter is silent about protests. He explained the hearing process. Regarding what is the complaint against the Clerk and who will defend her, Mr. Dahl advised that if Council doesn't appoint, the Clerk will be the hearing officer.

Clerk Shaver explained her thoughts on the issue. She said she would be glad to serve as the hearing officer but for the fact that the protest contains attacks against her capabilities and integrity, and the competency of her and the Deputy Clerk. She feels it looks improper to be the judge if she is the accused.

Councilmember Pond had questions about standing. Mr. Dahl explained why he believes that state statutes prevail regarding protests because the Charter is silent.

Motion by Councilmember Urban to approve the appointment Michel Snow as hearing officer, pursuant to CRS 31-11-110(3), for the purpose of hearing and deciding upon protests to the referendum petition regarding Ordinance 1667; seconded by Councilmember Mathews.

Motion by Councilmember Dozeman for a substitute motion to appoint Pam Anderson as hearing officer, pursuant to CRS 31-11-110(3), for the purpose of hearing and deciding upon protests to the referendum petition regarding Ordinance 1667; seconded by Councilmember Hoppe.

In response to Councilmember Urban's protest, Mr. Dahl advised about the murky distinction between amendments and substitute motions. Mayor Starker ruled that Councilmember Dozeman's motion would be voted on. In response to Councilmember Mathews' question, Mr. Dahl advised that no super majority is needed.

Councilmember Dozeman clarified her motion as a motion to amend. Comments followed.

The motion to amend carried 7-1, with Councilmember Mathews voting no.

The main motion, as amended, carried 8-0.

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 and City Manager and appropriate staff under Charter Section 5.7(b)1 CRS 24-6-402(4)(b) to receive legal advice concerning pending Clark Sorrentino litigation, and to return to the open meeting at the close of the Executive Session for the

purpose of taking any final action deemed necessary; seconded by Councilmember Kueter; carried 8-0.

ADJOURNMENT to Executive Session

Mayor Starker declared a 10-minute recess at 9:10pm, with the Executive Session to reconvene in the Lobby Conference room.

The Executive Session began at 9:21pm and adjourned at 10:10pm.

RECONVENE to Regular Session

The Regular City Council Meeting reconvened in Council Chambers at 10:14pm.

Motion by Councilmember Weaver direct the City Attorney to work with the City's defense council in the Clark Sorrentino case to further negotiations with the Plaintiff's attorney and to report the results to the Council at its next available meeting; seconded by Councilmember Urban; carried 8-0.

CITY MANAGER'S MATTERS

Mr. Goff gave dates for the openings of new businesses: Hobby Lobby and Home Goods Sept 8; Ulta around Sept 25; Sierra Trading Post sometime in October; Hacienda Colorado has no confirmed date, but is shooting for some time in October.

CITY ATTORNEY'S MATTERS

Mr. Dahl advised that due to recent legislation that will go into effect in August, there is a need for an ordinance to change the amount of jail time a municipal judge may impose. Currently municipal judges can impose 1 year, but the state legislature has decided that should be 364 days. It likely has something to do with immigration status. There was consensus to proceed with that.

ELECTED OFFICIALS' MATTERS

Clerk Shaver inquired if the protest hearing could/would be audio or video taped. Mr. Dahl advised it should at least be audio taped, videotaped if possible. We can work with the city Manager on this. If there is an appeal we'll want to have a good record.

Larry Mathews said the Carnation Festival was great!

Zachary Urban thanked the police department for a safe and fun Festival.

Leah Dozeman thanked the City staff, the various departments, and the West Metro and Arvada Fire Departments for their help with the festival. She gave a huge shout out

to Chairman Joe DeMott and the Festival board; the volunteers provide 1000's of combined hours of work. We had a great turnout and a great event.

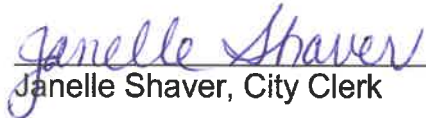
Amanda Weaver thanked those who came out to the Festival and Parade, and the Festival organization. It was so fun. She met travelers from Texas who came for the festival.

Kristi Davis thanked everyone for the Festival.


Mayor Starker thanked all the City staff, organizers and citizens. It was a tremendous success.

ADJOURNMENT

The meeting adjourned at 10:18pm.


Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON October 28, 2019


Janece 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.