

# **CITY COUNCIL MINUTES**

## **CITY OF WHEAT RIDGE, COLORADO**

**August 24, 2009**

Mayor DiTullio called the Regular City Council Meeting to order at 7:00 p.m. Councilmembers present: Karen Adams, Karen Berry, Dean Gokey, Tracy Langworthy, Lena Rotola, Wanda Sang, Mike Stites, and Terry Womble. Also present: City Clerk, Michael Snow; City Manager, Randy Young; Deputy City Manager, Patrick Goff; City Attorney, Gerald Dahl; City Treasurer, Larry Schulz;; Police Chief, Dan Brennan; Director of Community Development, Kenneth Johnstone; Director of Public Works, Tim Paranto; Senior Planner, Meredith Reckert; staff; and interested citizens.

### **APPROVAL OF MINUTES OF August 10, 2009**

Motion by Mr. Gokey for approval of the Minutes of August 10, 2009; seconded by Mrs. Sang; carried 8-0.

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

**Dempsey Andrews**, spoke on behalf of many residents in the area of 29<sup>th</sup> Avenue & Chase St. who are experiencing ever more frequent flooding of their home due to the poor storm drainage conditions in the area. Mr. Andrews expressed his dismay at the City's neglect to address the situation at all since the failure of the tax increase initiative in last year's election. His point was that citizens aren't required to provide their own police services, so why are they being forced to provide their own flood mitigation.

**Jeff McCorey**, also a Chase Street resident, reported that the flooding of his home continues regularly and that it has caused concrete damage to the point he can't open his door any more.

**Rob Davis** of Chase Street has experienced flooding of his garage 3-5 times per year now for three years. He asked the Council to please do something soon to mitigate the situation.

**Chuck Perrotti**, owner of a business property on 38<sup>th</sup> Avenue just east of Wadsworth, expressed his frustration with the lack of parking space available near this property. He contends that he has not been able to lease the property for over five years due to this and what he believes is overly restrictive interpretation by the City of Fire, Building and Planning Codes. He's been unsuccessful in purchasing from Wheat Ridge 2020 the empty lot next to him for this purpose and asked the Council to consider opening that lot to the general public for parking. Mr. Perrotti also believes he was wrongly fined for a weed control citation after the Code Enforcement Officer who cited him admitted she was mistaken for parts of the citation.

**Cheryl Brungardt**, representing Enterprise Wheat Ridge, thanked the Wheat Ridge Police Department, specifically Police Chief Dan Brennan, Commander Joe Cassa, Lieutenant Mark Cooney, Lieutenant Wade Hammond, Sergeant Kevin Armstrong and also the Wheat Ridge Recreation Staff, especially Rick Swanson for helping to welcome our Congressman Ed Perlmutter at a recent public meeting.

Enterprise Wheat Ridge is partnering with the City of Wheat Ridge for the 2009 Candidate Forum, to be held on September 8<sup>th</sup>, 2009 from 7am-8am at the Wheat Ridge Recreation Center. Candidates who wish to attend must RSVP and pay \$12 to register at [www.ewheatridge.com](http://www.ewheatridge.com) by September 3<sup>rd</sup>, 2009.

**John McMillin** highlighted the travesty of the 38<sup>th</sup> & Johnson St. property in which the City ordered the property owners to cut down the forestation claiming they were all dead. The owner was cited three times despite the their apparent progress to clean it up. Mr. McMillin contended that Citizens deserve a more conciliatory, problem-solving approach to code enforcement. Also, he pointed out that the NRS recognizes the City's tree canopy as an asset and believe the Council and City Staff should exercise patience, reasonableness, common sense when enforcing City Code.

## **APPROVAL OF AGENDA**

### **1. CONSENT AGENDA**

- A. Resolution 42-2009 – authorizing the appropriate City Officials to execute an Intergovernmental Agreement by and between the County of Jefferson, State of Colorado, and the City of Wheat Ridge, Colorado, regarding the administration of their respective duties concerning the conduct of the Coordinated Election to be held on November 3, 2009.
- B. Resolution 43-2009 – amending the 2009 Fiscal Year General Fund Budget to reflect the approval of a reduction in appropriations in the amount of \$2,481,264.00.
- C. Motion to approve the July 31, 2009 invoice for legal services for Murray Dahl Kuechenmeister & Renaud LLP in the amount of \$21,406.51.
- D. Resolution 35-2009 – amending the Fiscal Year 2009 General Fund Budget to reflect the approval of a supplemental budget appropriation in the amount of \$6,170.70 for the annual monthly managed services payment for videostreaming.
- E. Motion to award RFP-09-08 Citywide Custodial Services to American Facility Services Group for the annual not-to-exceed amount of \$40,344.00.

- F. Resolution 44-2009 – amending the Fiscal Year 2009 General Fund Budget to reflect the approval of a supplemental budget appropriation for additional contract building inspections related to damage from the July 20, 2009 storm to Code Consultants International in the amount of \$120,000.00.

Consent Agenda was introduced and read by Mr. Stites.

Mr. Gokey requested to pull Item 1.B. from the Consent Agenda.

Ms. Berry requested to pull Item 1.F. from the Consent Agenda.

Motion by Mr. Stites for approval of Consent Agenda Items A & C through E; seconded by Mrs. Sang; carried 7-1 with Mr. Womble voting No.

Mr. Gokey introduced Item 1.B. and read the Executive Summary.

Motion by Mr. Gokey to approve Item 1.B., Resolution 43-2009; seconded by Mrs. Sang;

Substitute Motion by Mrs. Adams to eliminate the Legislative Budget and the Community Outreach Budget for 2009 and consider re-instating after review for 2010. I further move we discuss the \$6,000.00 plus dollars budgeted for the Boards and Commissions Celebration to a Study Session; seconded by Mrs. Rotola; failed 5-3 with Council Members Berry, Adams and Rotola voting No.

Original Motion by Mr. Gokey carried 7-1 with Mrs. Adams voting No.

Ms. Berry introduced Item 1.F. and read the Executive Summary.

Motion by Ms. Berry to approve Item 1.F., Resolution 44-2009; seconded by Council Members Rotola and Gokey; carried 7-1 with Mr. Womble voting No.

**PUBLIC HEARINGS AND ORDINANCES ON SECOND READING**

2. Council Bill 16-2009 – An Ordinance providing for a zone change from C-1, Commercial-One, and C-1, Commercial-One with use restrictions, to Planned Commercial Development and for approval of an Outline Development Plan on property located at 11808 West 44<sup>th</sup> Avenue, Wheat Ridge, Colorado.  
(Case No. WZ-09-03 - RV America)

Mayor DiTullio opened the public hearing.

Council Bill 16-2009 was introduced on second reading by Council Member Langworthy. City Clerk Michael Snow assigned Ordinance No. 1447.

Mrs. Reckert presented the staff report.

Mrs. Reckert entered into record three letters of protest submitted by owners of plots adjacent to the property in question (amended to this packet) and declared that these letters do provide for sufficient Legal Protest of the requested rezoning. Thus, this rezoning will require a  $\frac{3}{4}$  vote of approval by the Council.

**Mike Pharoah**, representing the owner and applicant, RV America, believes the planned CDOT changes to the area and the potential economic impacts to the marketability of the property are a critical consideration in the benefits of this proposed rezoning. To this point, he emphasized that the Recreation Vehicle market has been hit hard by economy and if the RV America Company fails in this location, the current zoning of the property is not conducive to any other uses.

**Diane Tippon** lives South and adjacent to this property and is opposed to the proposed rezoning. She doesn't believe the area has the potential or means to be a strong future retail section of the City, but would be better planned for future residential and recreational development that utilizes the open space and Clear Creek Trail system behind the property. Mrs. Tippon also believes this rezoning and potential for expanded retail and commercial development will only decrease the value of the residential properties already there.

**Ron Markow** is opposed to this rezoning and would rather it be rezoned back to A-1 as it once was. He believes the proposed rezoning threatens the prized rural atmosphere of the community.

**Janice Thompson** believes the rezoning to C-1 years ago was a mistake in that it interferes with a significant residential area and the planned uses in the Comprehensive Plan. Because of this, she believes all consideration should go to the impacts of the residential neighborhood. Issues of traffic, trash, noise, mountain views, landscaping appearance and particular commercial uses such as Restaurants or Hotels should be considered for their impact to the residential area. The Council needs to show that it cares as much for its existing residents as it does for its current and potential business owners. She requested that the Council show they respect home values, the owners' quality of life and the worth of the Clear Creek Open Space in the community by voting No on this proposal.

**Margie Brown** lives on Tabor Street and recognizes the benefit of a rezoning to the commercial property owner, but all the residential properties adjoining it would lose value.

Mayor DiTullio closed the public hearing.

Mayor called for a five-minute recess at 9:00; resuming at 9:08pm.

Motion by Mrs. Langworthy to approve Council Bill 16-2009 (Ordinance 1447) for the following reasons:

1. The rear portion of the property is currently underutilized.
2. The relocation of the I-70 on and off ramps dramatically changes the commercial development potential of this property.
3. The evaluation criteria support approval of the request.

With the following condition:

Use number 34 (hotels and motels) be eliminated from the list of permitted land uses;

Seconded by Mrs. Rotola; failed 6-2 with Council Members Berry and Adams voting Yes.

Motion by Mr. Gokey to hear Agenda Item 6 next; seconded by Mrs. Sang; carried 8-0.

6. Council Bill 23-2009 – An Ordinance approving a Gas and Electric Utility Franchise with Public Service Company of Colorado, such Franchise conditioned on Voter approval of the same.

Mayor DiTullio opened the public hearing.

Council Bill 23-2009 was introduced on second reading by Council Member Sang. City Clerk Michael Snow assigned Ordinance No. 1451.

Mr. Dahl presented the staff report.

Mr. Snow pointed out that though the Franchise is with PSCo, this is not different from the Utility Services from Xcel Energy. With respect to this Franchise with the City of Wheat Ridge, PSCo and Xcel Energy are essentially the same.

**Rob Osborn** of Xcel Energy was present to speak on behalf of the Public Service Company of Colorado and encouraged the Council to approve the proposed Franchise. Mr. Osborn highlighted that the City will benefit from a 3% Franchise fee with this Franchise in place.

**Mr. Bever** has received the numerous notifications and read the proposed Franchise. However, he does not believe it explains exactly what it means.

Mr. Dahl explained that such a Franchise is required for a public utility company such as Xcel Energy (PSCo) to provide those services to the City. Our existing utility services today are all operated under the similar Franchise that was put in place by the voters in 1989. This Ordinance refers to the Voters of Wheat Ridge the approval to renew the

Franchise for another 20 years with some changes proposed by and accepted with the City of Wheat Ridge.

**Craig Graham** expressed concern that with a 20-year franchise in place residents may be stuck with whatever future energy sources are used by PSCo.

Mr. Dahl explained that the Franchise does not in any way limit or mandate how alternative energy sources may be employed by property owners.

Mayor DiTullio closed the public hearing.

Motion by Mrs. Sang to adopt Council Bill 23-2009 (Ordinance 1451) on second reading, and that it take effect upon approval by a vote of the registered electors of the City at the November 3, 2009 Regular Municipal Election; seconded by Mr. Stites; carried 7-1 with Ms. Berry voting No.

3. Council Bill 19-2009 – An Ordinance amending the Wheat Ridge Code of Laws concerning Residential Development Standards.  
(Case No. ZOA-09-02)

Mayor DiTullio opened the public hearing.

Council Bill 19-2009 was introduced on second reading by Council Member Berry. City Clerk Michael Snow assigned Ordinance No. 1448.

Mr. Reckert presented the staff report.

**Louise Turner** highlighted how the current setbacks of 30 feet has resulted in Wheat Ridge being a city with beautiful, pleasant looking neighborhoods. She believes it will be disruptive to suddenly allow houses to be built on a 25 foot setback right next to existing ones of 30 feet. Variances given to the current setbacks have invariably resulted in degradation in the quality of a neighborhood. Variances are no longer heard by the volunteer citizen Board of Adjustments, but instead are granted by the City Staff, who should be upholding the City's code, not circumventing it. Many of the powers that citizens once had to control the quality of their neighborhoods is no longer available. She encouraged the Council to remove the Main Structure provisions of this Code change.

Mayor DiTullio closed the public hearing.

Motion by Ms. Berry to adopt Council Bill 19-2009 (Ordinance 1448) on second reading, and that it take effect 15 days after final publication; seconded by Mrs. Sang; carried 6-2 with Council Members Gokey and Womble voting No.

Council gave unanimous consent to hear Agenda Item 7 next.

Item 7. Council Bill No. 24-2009

Council Bill 24-2009 was introduced on second reading by Council Member Gokey. City Clerk Michael Snow assigned Ordinance No. 1452.

Mayor DiTullio opened the Public Hearing.

Mr. Dahl provided the Staff Report.

**John McMillin** believes the City's Height & Density limits in the Charter are appropriate and not inherently restrictive to Commercial Development. He does not oppose lifting these restrictions from the Wadsworth Corridor however, but he does oppose exempting the Northwest region of the City. He believes this area is the key sight corridor from the greater portion of the City and any increases to the building heights here will very negatively affect the quality of our City.

**Terry Amalfitano** is a property and business owner on the 38<sup>th</sup> Avenue corridor east of Wadsworth and believes it is a mistake to leave the 38<sup>th</sup> Avenue retail corridor from the areas exempt from Height & Density restrictions.

**John Marriott** is owner of Larson Ski and Sport on Kipling Street. He believes that exempting the Kipling corridor from the Height & Density restrictions is a move in the right direction. He also believes 38<sup>th</sup> Avenue should be added to those areas for exemption.

**Craig Graham** is concerned that his views to the mountains and the northwest will be lost to taller buildings in the NW area if the Height & Density restrictions are lifted.

**Louise Turner** commended Council for at least being straight forward on this Ballot referral, in contrast to last year's similar Ballot question which was intentionally misleading to the voters. She asked Council to consider whether there have even been any interests in the past numerous year for commercial buildings to be taller than 55 feet, and if not, why do we need to lift these restrictions.

Mayor DiTullio closed the Public Hearing.

Motion by Mr. Gokey to approve Council Bill 24-2009 (Ordinance 1452); seconded by Mrs. Sang and Mr. Stites.

Substitute Motion by Ms. Berry to approve Ordinance 1452 with the following amendments:

Amend the title of the ordinance to read:

TITLE: AN ORDINANCE SUBMITTING ~~Strike TWO~~ *Insert* THREE BALLOT QUESTIONS TO THE VOTERS OF THE CITY AT THE NOVEMBER 3, 2009 REGULAR MUNICIPAL ELECTION, TO AMEND THE WHEAT RIDGE HOME RULE CHARTER TO EXEMPT CERTAIN AREAS OF THE CITY FROM THE HEIGHT AND RESIDENTIAL DENSITY LIMITATIONS OF CHARTER SECTION 5.10.1

Amend the second "Whereas" clause of the ordinance to read:

WHEREAS, the Council wishes to refer ~~Strike two (2)~~ *Insert* three (3) ballot questions amending the Charter to exempt ~~Strike two (2)~~ *Insert* three (3) areas of the City from the Charter limitations upon building height and residential density; and

Add a new Section Three to the ordinance, to read:

**Section 3 Ballot question referred and ballot title set.**

The following ballot question is hereby referred to the electorate of the City at the November 3, 2009 regular municipal election:

SHALL SECTION 5.10.1 OF THE HOME RULE CHARTER OF THE CITY OF WHEAT RIDGE, COLORADO, BE AMENDED BY THE ADDITION OF A NEW SUBSECTION H, EXEMPTING THE FOLLOWING AREAS OF THE CITY FROM THE LIMITATIONS OF THAT SECTION UPON BUILDING HEIGHT AND RESIDENTIAL DENSITY: THAT AREA DESCRIBED IN THE WEST 38<sup>th</sup> AVENUE CORRIDOR REDEVELOPMENT PLAN, ADOPTED OCTOBER 22, 2001, WITHOUT MODIFYING ANY CURRENT ZONING ON ANY PROPERTY AND PRESERVING EXISTING HEIGHT AND DENSITY LIMITATIONS IN THE WHEAT RIDGE CODE OF LAWS UNLESS AND UNTIL MODIFIED THROUGH FUTURE ORDINANCES APPROVED BY CITY COUNCIL AFTER PUBLIC HEARINGS?

Yes: \_\_\_\_ No: \_\_\_\_

Full text of Amendment:

**Amend Section 5.10.1 of the Charter to add a new subsection f to read as follows:**



**Sec. 5.10.1 Building height and density limitations.**

f. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION 5.10.1, THE LIMITATIONS UPON BUILDING HEIGHT AND RESIDENTIAL DENSITY CONTAINED HEREIN SHALL NOT APPLY WITHIN THE FOLLOWING AREAS OF THE CITY: THAT AREA DESCRIBED IN THE WEST 38<sup>TH</sup> AVENUE CORRIDOR REDEVELOPMENT PLAN, ADOPTED OCTOBER 22, 2001, WITHOUT MODIFYING ANY CURRENT ZONING ON ANY PROPERTY AND PRESERVING EXISTING HEIGHT AND DENSITY LIMITATIONS IN THE WHEAT RIDGE CODE OF LAWS UNLESS AND UNTIL MODIFIED THROUGH FUTURE ORDINANCES APPROVED BY CITY COUNCIL AFTER PUBLIC HEARINGS.

**Ballot Title:**

AMEND SECTION 5.10.1 OF THE WHEAT RIDGE HOME RULE CHARTER TO EXEMPT CERTAIN AREAS OF THE CITY FROM THE LIMITATIONS UPON BUILDING HEIGHT AND RESIDENTIAL DENSITY CONTAINED IN CHARTER SECTION 5.10.1, WITHOUT MODIFYING ANY CURRENT ZONING ON ANY PROPERTY AND PRESERVING EXISTING HEIGHT AND DENSITY LIMITATIONS IN THE WHEAT RIDGE CODE OF LAWS UNLESS AND UNTIL MODIFIED THROUGH FUTURE ORDINANCES APPROVED BY CITY COUNCIL AFTER PUBLIC HEARINGS.

Renumber remaining sections of the ordinance

Motion seconded by Mrs. Langworthy;

Mr. Womble Called for the Question; seconded by Mrs. Sang; Call for the Question carried 7-1 with Mr. Gokey voting No.

Substitute Motion by Ms. Berry to approve the Amended Ordinance tied 4-4 with Council Members Gokey, Womble, Sang and Stites voting No and Council Members Berry, Adams, Rotola and Langworthy voting Yes; Motion failed 5-4 with Mayor DiTullio voting No.

Motion by Ms. Berry to amend Ordinance 1452 to omit from the Section 2 Ballot question the 44<sup>th</sup> & Wads intersection; seconded by Mrs. Adams; failed 6-2 with Council Members Berry and Adams voting Yes.

Original Motion by Mr. Gokey to approve Council Bill 24-2009 (Ordinance 1452) as proposed carried 8-0.

4. Council Bill 21-2009 – An Ordinance amending Section 26-501 of the Wheat Ridge Code of Laws concerning Off-Street Parking Surface Requirements.

Mayor DiTullio opened the public hearing.

Council Bill 21-2009 was introduced on second reading by Council Member Sang. City Clerk Michael Snow assigned Ordinance No. 1449.

Mr. Johnstone presented the staff report.

**Louise Turner** believes this Ordinance needs to have some accommodations for temporary off-street parking for those situations when an event requires the need to park on something other than a driveway. She also believes it's a mistake to encourage more area to be permanently made into hard surface, which can no longer be landscaped in the future. Mrs. Turner asked for clarification as to whether the requirement for the first 25 feet of a driveway be improved on existing non-improved driveways.

Mayor DiTullio closed the public hearing.

Motion by Mrs. Sang to adopt Council Bill 21-2009 (Ordinance 1449) on second reading and that it take effect August 31, 2009; seconded by Mr. Womble; carried 7-1 with Ms. Berry voting No.

5. Council Bill 20-2009 – An Ordinance adopting Amendments to the 2003 International Building Code and the 2003 International Residential Code, both as previously adopted by Reference, concerning Building Permit Fees and certain referenced standards.

Mayor DiTullio opened the public hearing.

Council Bill 20-2009 was introduced on second reading by Council Member Stites. City Clerk Michael Snow assigned Ordinance No. 1450.

No Staff Presentation was made.

**Joyce Jay** commended the proposal to decrease the building permit fees on smaller projects. Mrs. Jay suggested the building department also consider something of a "fast-track" procedure where plans and permits can be obtained in a short time. She also suggested they offer a means for citizens to get plan guidance and over-the-counter building permitting.

Mayor DiTullio closed the public hearing.

Motion by Mr. Stites to adopt Council Bill 20-2009 (Ordinance 1450) on second reading and that it take effect 15 days after final publication; seconded by Mrs. Sang; carried 8-0.

**ELECTED OFFICIALS' MATTERS**

City Clerk Michael Snow spoke of the alarming number of citizens he's talked with having difficulty understanding their home insurance coverage or that have been led to believe from their insurance adjusters they are not covered for certain storm damages or that their homes aren't damaged when in fact they are. He urged home and business owners in Wheat Ridge to carefully review their insurance policies or to seek help in interpreting them. Home Owners are entitled to ask for a re-inspection if they believe they may have damages that were originally not identified and to arrange for contractors to give professional assessments of home damage and estimates for repairs that may be submitted to their insurance companies for claims.


Motion by Mr. Stites to direct the City Attorney to prepare correspondence addressed to Wheat Ridge 2020 for signature by the Mayor, the City Manager and City Attorney, requesting that the WR2020 Organization execute a Quit Claim Deed reconveying the property at 7150 West 38<sup>th</sup> Avenue to the City, based upon the failure of Wheat Ridge 2020 to satisfy the original condition of the conveyance that a building permit for development of all or substantially all of the property be issued on or before July 1, 2009; seconded by Mrs. Sang;

Substitute Motion by Mrs. Adams to move this issue to next Study Session for further discussion; seconded by Mrs. Rotola; tied 4-4 with Council Members Berry, Adams, Rotola, and Langworthy voting Yes and Council Members Sang, Stites, Womble and Gokey voting No; Motion failed with Mayor DiTullio voting No.

Original Motion by Mr. Stites tied 4-4 with Council Members Berry, Adams, Rotola, and Langworthy voting No and Council Members Sang, Stites, Womble and Gokey voting Yes; Motion carried with Mayor DiTullio voting Yes.

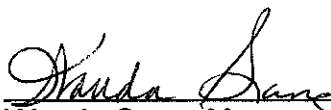
Motion by Mrs. Adams to continue the Regular Meeting past 11:00pm; seconded by Mrs. Rotola; failed 6-2 with Council Members Stites and Adams voting Yes.

Meeting adjourned at 11:01p.m.



Michael Snow, City Clerk

APPROVED BY CITY COUNCIL ON SEPTEMBER 14, 2009 BY A VOTE OF 8 to 0



Wanda Sang, 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.