

## **City Council Meeting, March 3, 2014**

Notes taken by Susan Shirley

After the call to order, a moment of reflection and the pledge of allegiance, members of the All State Choir performed the National Anthem.

Roll call revealed that six of seven councilmembers were present: Mayor Marc Williams, Mayor Pro-Tem Mark McGoff, Don Allard, Bob Fifer, Jerry Marks, and John Marriott, with an excused absence for Bob Dyer.

Minutes were approved, with one amendment, of the February 3 regular City Council business meeting and the February 7 noon meeting which was convened for an Executive Session to discuss obtaining legal advice. The change was to reflect a "yes" vote by Jerry Marks on an item.

Following approval of minutes were a number of recognitions, as well as the presentation of checks to Arvada area high schools to help with after prom. The recognitions were to the city by the Colorado Advisory Council for Persons with Disabilities, and from the city to the All State Choir Students, the All State Orchestra Students, and the All State Band Students, by Councilmembers Bob Fifer, Jerry Marks and John Marriott.

Jeannie Robinson and Rick Ellsmore spoke on behalf of the council for persons with disabilities, thanking the city for implementing and enforcing a parking program which results in more available parking for people with mobility impairments, which amounts to 186,000 people in Colorado, with only 4% of parking spaces set aside statewide, and approximately one quarter of those being illegally used at any given time, by non-impaired people.

Mayor Pro-Tem Mark McGoff presented checks and certificates of recognition to parent volunteers from Arvada High School, Ralston Valley, Pomona, and Standley Lake. There will be a check given to Arvada West as well, but they were not represented at tonight's meeting. McGoff thanked the parents for putting a great deal of time, work, creativity and support into setting up a safe, drug-and-alcohol-free environment for students after prom.

Public Comment:

Cindi Kreutzer said she was concerned because no members of the council were present at the hearing where CORA was discussed, and in her opinion the notes from Mr. Deven were inaccurate, which could lead to the council's votes being based on inexactly represented information.

Mayor Williams said that he would allow public input during the discussion of the CORA changes in tonight's meeting.

Greg Thomas spoke in opposition to PPOT, asking, "Why is the one hundred and forty year legacy of Olde Town Arvada being abandoned, yet the pleas of the citizens of Westwoods being embraced?" He said that PPOT will detract rather than add to the character of Olde Town, and that in fact there is no rational context for moving forward with the project.

Nancy Young began her comments with the observation that, although the city frequently solicits citizen participation, to date they have never acted upon our concern about PPOT. She went on to say that she is appalled at the city's lack of transparency, which she said is reminiscent of totalitarian tactics, and told the council they will receive a formal complaint covering the following (see Harriet's post from this evening):

1. Violation of state law governing eminent domain, in that land taken through eminent domain must remain in use for public purposes; yet in this case such land was given to the developer of PPOT for a parking lot for the use of that structure's occupants;
2. The public meeting in regard to PPOT was advertised specifically as NOT being a public hearing; yet in the middle of the meeting it was stated that it was, in fact, a public hearing;
3. The revocable permit allowing encroachment on McIlvoy Park makes a portion of the park unusable and, as such, violates the deed conveying the park to the city.

Nancy said there is a "pattern of arrogant disregard for citizens' concerns."

Mayor Williams commented, "We will respond as appropriate, when appropriate."

A Mr. Bodner congratulated Jerry Marks on his appointment and also said that today is Mark McGoff and Don Allard's birthdays, and wished them happy birthday.

There was a long consent agenda:

R14-018 rescinds R13-169, which was for the purchase of police uniforms and equipment, and authorizes in its place a purchase order to Arvada's Precinct Police Products, Inc. for uniforms and equipment, for up to \$175,000.

R14-019 authorizes financial transactions and facsimile signatures on behalf of the city, by designated officials.

R14-020 allows an agreement between the City and Denver-based Colorado Total Maintenance (B2B Contractors) for work on playground areas at several parks.

R14-021 authorizes submission of a mini-grant application to Great Outdoors Colorado (GOCO) for Phase II of the Little Elementary School Playground Project, at 8448 Otis Drive.

R14-022 is for a contract with Phoenix, Arizona's Ricor, Inc., for water sampling station installations.

R14-023 allows a contract with Denver-based Chato's Concrete in the amount of \$964,610 for concrete replacement, project no. 14-ST-10, which is a fair-sized job involving concrete replacement in about nine separate areas throughout Arvada: "5300 LF Remove and Replace 5'3" width combination curb gutter and sidewalk 900 LF Remove and Replace 6'6" width combination curb gutter and sidewalk 9000 LF Remove and Replace 30" width vertical curb & gutter 2750 SY Remove and Replace 6" thickness sidewalk 1000 SY Remove and Replace 8" thickness crossspan 100 EA Remove concrete and install ADA Handicap Ramp Miscellaneous items such as asphalt removal and patching, stormwater BMP's, traffic control, etc."

R14-024 is for an agreement between the city and Denver-based Kumar and Associates, a firm specializing in environmental sciences, for professional testing services.

R14-025, -026, and -027 are for increases to existing purchase orders for road salt and sand. The sellers are Lyons, Kansas-based North American Salt Company, for \$250,000 to \$450,000; Kanopolis, Kansas-based Independent Salt Company for \$200,000 to \$400,000; and L. G. Everist of Sioux Falls, SD, for \$125,000 to \$225,000.

R14-028 and -029 amend an agreement between the City and Greenwood Village's Great West Life and Annuity Insurance Co.

The consent agenda passed, 6 to 0.

Resolutions:

1. R14-030 is to restructure the membership of the Design Review Advisory Committee. Mark Deven noted that this was discussed in a workshop in September of 2013. Mike Elms went on to explain the changes: an increase from five members to seven, with representatives from the area of Olde Town going up to four members, and from other parts of the city going up to three members. Staff recommends that members be drawn from the Arvada Historic Society, Historic Olde Town Arvada (HOTA,) Olde Town businesses, and Olde Town residents/property owners (presumably BEFORE they lose their properties to eminent domain.) Staff recommends weight be given to individuals with expertise in local history, architecture, and historical architecture.

Councilmember McGoff asked for clarification as to whether the AURA member on the committee will step down once the new members are appointed. Elms said that is true.

Councilmember Marriott asked if the council is required to appoint someone from the Historic Society, and if so, does the Historic Society put forth someone? Councilmember McGoff said that there were recent interviews and someone has been proposed as a representative of the Historic Society. A member of the audience asked, "Who?" and said he was part of the Historic Society and had no knowledge of what McGoff said. McGoff replied that only those who made an application were considered.

Resolution 14-030 passed, 6 to 0.

R14-031 is to adopt the administrative rules governing the City of Arvada compliance with CORA, or the Colorado Open Records Act. See the Facebook pages of Citizens for a Better Arvada, and Stop Arvada Walmart, posts over the last four weeks or so, for more background on these changes.

One change was made earlier today, prior to the meeting: the portion which stated that the decision of the custodian is final, has now been changed to say that it is final for purposes of appeal; in other words, once the custodian makes their decision that is the city's last word on the subject and appeal will need to be made to the court.

Chris Daly spoke briefly about the reason for the resolution, which is that Arvada has not had a formal written policy and that putting policies into writing should help citizens to find them online; that the

policy is "harmonious and consistent" with the Colorado Open Records Act. Further explanations were given by attorney William Barber, a member of the city attorney's office.

Cindi Kreutzer asked why we need to have this resolution if we're just going to follow CORA? Daly replied that there are two reasons; one, so that the public can understand what the rules are, and also that the rules are not subject to interpretation, as happens with unwritten policies. Two, if the city ever needs to take court action they can show the court exactly what the rules are.

Mayor Williams added that the city is working in many areas to adopt more written policies and get away from informal rules.

Nancy Young asked if any of the councilmembers had listened to the taped comments from the CORA meeting in February. None appeared to have done so. Young went on to say that she found the procedures very vague. In addition, she wondered about the section which deals with needing to know the applicant's identity, and wondered if there might not be potential for abuse of citizens' rights because of that policy. In addition, Young said that the portion dealing with requests not deemed to be in the public's interest "strikes me as totally inappropriate," and asked who decides what is in the public interest. She said that, with such vague rules, the entire burden can be on the citizen; as lawsuits are very expensive the burden should be shared; furthermore, we as taxpayers are already paying for city staff's time.

Young then focused on a particular point dealing with a limit of three "items." She asked that "item" be defined so as not to leave that up to the whim of whomever is the city clerk at some future date. After some discussion, Barber explained that the "limit" refers only to the 72-hour window; that more than three items can be requested but they're not subject to the same time constraints as the first three items. However, despite several minutes of discussion on this point, a definition of "item" was never forthcoming.

Young went on to tell about a CORA request she and others had made in which emails were intended to remain in their "native format," that is, kept as emails in electronic form. Instead, she said, eight reams of paper were printed out.

Barber addressed Young's questions as follows: Section 1-30, dealing with the identity of the applicant; Barber said this is in line with the policies of other cities, and is the most liberal policy he's seen on that. Section 1-32, dealing with the request being in the public interest, is language directly lifted from the state open records act. He said that the case *Denver Post v. University of Colorado* addresses that part of the law.

Barber then talked about Section 1-22, limiting requests to three items, as a way to deal with truly excessive requests, and said that the court has ruled that is acceptable.

Finally, the "native format" referred to by Young: Barber said he actually remembered that exact request and that, in the estimation of staff, it would be extraordinarily difficult to review 4,000 pages onscreen; that printing it out for review was far easier on staff, who needed to look over each page for "privileged information and personally identifying information."

Councilmember Marriott said that he had had questions, but that the revised copy answered them. He said that administrative rules serve as guidelines for citizens or entities making requests, and that they

need to be accurate and helpful to someone contemplating making an open records request.

Councilmember Allard added that, if there are six people there will be six different ways to interpret rules, and that the city is not being careless or cavalier.

Resolution 14-031 passed, 6 to 0.

Ordinances, First Reading: There will be a public hearing for each item on March 17, 2014 at 6:30 p.m.

CB14-009 amends the existing cable television agreement between the city and Comcast.

CB14-010 amends the existing cable television agreement between the city and Baja Broadband.

CB14-011 is to permit blending of water rates within Parcel 2 of the Candelas Outline Development Plan.

CB14-012 amends part of the city code pertaining to water fees.

CB14-013 is to rezone land at 10625 W. 58th Avenue from Residential Low Density to One and Two Family Residence.

CB14-014 is to amend Chapter 53 of the Arvada City Code (Medical and Non-Medical Marijuana) and Article III (Nuisances) of Chapter 38 (Environment.)

The ordinances passed, 6 to 0.

Public Hearings:

CB14-002 authorizes an agreement between the City and Berkeley Water and Sanitation District for access to a sewer main. This is in regard to the Wanco/Hyland Hills work being done in the northeast area of Arvada. If Wanco and Hyland Hills were to need to build new infrastructure it would cost in the neighborhood of \$700,000; by being allowed to have access to about 1,000 feet of Arvada's already existing sewer line it will save the parties a great deal of money. There were limits drawn to keep the boundaries of the agreement between Sheridan and Lowell, and from 1-76 to the Union Pacific Line.

There was no public comment. This ordinance passed, 6 to 0.

CB14-003 regards parking penalties. Bill Ray explained that there will be a \$25 penalty for parking violations and a \$25 additional late fee after ten days. Councilmember Marriott noted that this seems to be one of the higher penalties, statewide, as well as one of the shortest time frames for payment. Councilmember Fifer pointed to Denver as being comparable. Ray said that the object is compliance, not revenue generation, and that if it looks like too many people are having to pay the late fee the city will revisit making it a longer grace period. He also said that the ordinance includes a provision for a first offense to be disputed online at no cost; then, if a person loses the dispute they can appeal to the city manager at a cost of \$50.

Councilmember Fifer said that he recently read that the 1943 Arvada City Council asked for parking enforcement and that now, 71 years later, history is being made and that Fifer supports the ordinance.

The ordinance passed, 6 to 0.

R14-032, plus CB14-004 through -008 and two additional items, are in regard to the rezoning and annexation at Sunset Mesa, 8075 Simms Street. Joe Jehn of Jehn Engineering briefly addressed the Council and gave a visual presentation showing the boundaries of the Sunset Mesa development. There was no public comment. There were several questions from councilmembers about the scope of the improvements, footprint of house on the size of the lots, stormwater detention, and coordination with APEX. Councilmember Marriott wondered why the plans call for a communal large mailbox area. Jehn said that the post office prefers it that way in new projects and that "door to door is becoming a thing of the past."

The ordinances were passed, subject to various conditions of approval.

There was no further public comment.

Reports from City Council: Bob Fifer talked about last week's DRCOG retreat, during which members reviewed restructuring the operations of DRCOG. He also mentioned the upcoming NLC Spring conference, which he, Mark Deven, and Mayor Williams expect to attend.

John Marriott said that he and Jerry Marks attended the Colorado Municipal League's training for newly elected officials, and that it was time well spent. He also said that councilmembers' assignments to various committees have happened, and remarked about how lucky we are to have citizens who will volunteer their time in this way.

Bob McGoff mentioned the awards of Red Rocks scholarships to area students identified as deserving by Red Rocks and the Rotary, Kiwanis and Sertoma clubs.

Mayor Williams said that we have an exciting week coming up, with the opening of two police substations. There will be open houses from 5 to 7 p.m.: Tuesday, March 4 at Lake Arbor, Wednesday the 5th at Westwoods, Thursday the 6th at the Baker (central area) Station, and an event Friday recognizing police officers. At the open houses, citizens will be able to see the facilities, which include public meeting rooms.

Bob Fifer wanted people to know that the Kite Festival has been moved from its previous location at Robby Ferrufino Park to the Stenger complex; it will be Saturday, April 5 at 10 a.m. For more information, visit [Arvada.org](http://Arvada.org).

Reports from City Manager and City Attorney:

Adams County Board of Commissioners will be meeting next Monday about the agreement between Arvada, Wanco, and Hyland Hills. Mark Deven asked if any councilmembers planned to attend, and Mayor Pro Tem McGoff said he is planning to.

Deven said that the police pension board needs a citizen board representative and that can be taken up at the next meeting. Mayor Williams asked if any councilmembers want to serve. Councilmember Allard said he served for three or four years but that the decision was made to go away from that and toward a citizen instead who is professionally involved with pensions; however, Allard said if they

can't find anyone else he will do it.

There was a short but cryptic discussion between City Attorney Chris Daly and Councilmember Marriott. Marriott had been concerned on behalf of a citizen, and had brought the concerns to Daly. It was resolved and Daly will send Marriott a draft of what was decided, and one or both will convey the information to the citizen.

The city attorney's office requested permission to retain services from Ken Fellman, at \$225/hour, and his partner at \$200/hour, on a matter in which the city attorney's office has a conflict of interest. It is a series of CORA requests about a pending matter in municipal court. The request was voted on and passed, 6 to 0.

The meeting was adjourned at 8:15.