

City of Black Hawk
City Council Minutes
May 14, 2014

Alderman Hal Midcap rang the bell.

1. CALL TO ORDER: The regular meeting of the City Council was called to order by Mayor Spellman Wednesday, May 14th, 2014 at 3:00 p.m.

ROLL CALL: Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

2. ROLL CALL: Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Staff present: City Attorney Hoffmann, City Manager Lewis, Deputy City Clerk Stevens, Assistant to City Manager for Administration Greiner, Community Planning and Development Administrator Linker, IT Director Young, Fire Chief Taylor, Police Chief Cole, and Public Works Director Isbester.

PLEDGE OF ALLEGIANCE:

Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.

3. AGENDA CHANGES: Deputy City Clerk Stevens explained there were three changes to the Agenda. Item 7A has changed and items 7B and 7C have been added.

4. CONFLICTS OF INTEREST:

City Attorney Hoffmann asked Council to declare any Conflicts of Interest on any issue appearing on the agenda this afternoon other than those previous disclosures and conflicts that have already been disclosed and are on file with the City Clerk and Secretary of State.

City Attorney Hoffmann asked the audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. The audience had no objections.

5. .PUBLIC COMMENTS:

6. APPROVAL OF
MINUTES for
April 23, 2014
**MOTION TO
APPROVE**

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Torres to approve the Minutes of the April 23, 2014 meeting as presented.

MOTION PASSED There was no discussion and the motion **PASSED**.

7. PUBLIC HEARINGS:

- A. CB 9, An Ordinance
Repealing and
Reenacting Article XV
to Chapter 6 of the
Black Hawk Muni-
cipal Code Regarding
Medical Marijuana

Mayor Spellman read the title.

City Attorney Hoffmann explained he would give an overview of Council Bills 7A and 7B together. Although they are separate ordinances, there is significant overlap in the two ordinances.

City Attorney Hoffmann stated there are a number of folks interested in opening marijuana businesses in town. The City has considered long and hard whether to allow this. Originally, the City had a medical marijuana ordinance in place and then imposed a moratorium to look at how this fit in with the City of Black Hawk comprehensive plan and whether it fit at all.

Currently, under Colorado law, in order to get a retail marijuana license, the first in line are those that have a current medical marijuana license. If the City has vendors that desire to go in imminently, the only way to allow this to happen is to have a medical marijuana licensing scheme in place. Applicants will apply concurrently for the medical marijuana license and the retail marijuana license.

CB 9 puts back into place medical marijuana ordinance City previously had with one major revision – location. Previously, the ordinance contained locational limitations based upon distance from other places. Now, ordinance identifies block on Gregory Street where such a business could be located.

CB 10 would follow with allowing retail marijuana establishments with the same distance limitations and the regulatory scheme for things like hours of operation, security, etc. in many respects

modeled upon what the State does for this type of business plus a little bit more. Qualification for applicants are more stringent than State because Black Hawk's ordinance requires successful previous operation of a medical marijuana business.

City Attorney Hoffmann also addressed specific questions he has gotten from Council. First, many communities across Colorado have struggled with the question "is it a violation of Federal law?" Yes, it is still contrary to Federal law. However, it is part of Colorado constitution in two respects: both the medical marijuana and the retail marijuana have been adopted as Colorado constitutional amendments. The Federal government has adopted a plan where they will not enforce federal law where state law allows this. The state of Colorado and municipalities in Colorado are taking significant steps in reliance on this plan.

Specific language built into ordinance that places the liability, if any, for violations of federal law on the vendors themselves. Council is acting under scope of Colorado constitutional authority when looking at this type of regulatory scheme. Issue cuts across many issues in relation to how to regulate this.

Other question City Attorney Hoffmann has had is not addressed in these ordinances, but will be addressed in an ordinance that is coming to council soon. The issue is in regards to injuries from hash oil production. This ordinance does not authorize this. First, this ordinance is in regards to commercial marijuana in retail store fronts. It does not allow industrial use in residences. There will be another ordinance coming soon that relies on state and federal law to make sure that residents and businesses understand that this type of use is a violation of Black Hawk Municipal Code.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB 9, An Ordinance Repealing and Reenacting Article XV to Chapter 6 of the Black Hawk Municipal Code Regarding Medical Marijuana open and invited anyone wanting to address the Board either "for" or "against" the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

Alderman Torres asked about disposal of remnants from marijuana. What about disposal of expired products, etc.? Can trash from this be secure? He believes City should leave it to negotiate with people opening this type of business.

City Attorney Hoffmann stated there is specific language in both CB9 and CB 10, to give the City authority issue administrative

regulations regarding these ordinances to regulate help regulate items like the disposal of remnants and expired products.

Alderman Midcap stated there should be some language in ordinance to regulate concentrated marijuana like hash oil. He feels the language is too broad and people could take advantage of this. Maybe the vendors won't call it hash oil, but still could be strong.

City Attorney Hoffmann stated the danger lies with labeling and whether it is accurate. The Black Hawk ordinance can't be looked at in a vacuum. There are many state regulations that Black Hawk vendors will still be subject to, including the concentration of the products. City can certainly look at strength and manufacture of marijuana products as well as the hash oil issue in the new ordinance.

City Attorney Hoffmann stated the fundamental difference between this ordinance over earlier version is the new version of the ordinance only allows sales of marijuana— no manufacture or cultivation. When researching information for the forthcoming ordinance, he will look at the concentrate issue, the hash oil issue and the state law piece as well. He feels the City is fairly well covered by state law on this matter, but will look into it further

Alderman Midcap asked if City staff will be trained to recognize people intoxicated by marijuana.

Police Chief Cole stated police staff has been trained on detecting marijuana intoxicated people. However, a firm positive result requires blood test. There are several members of the Police Department that are DRE (Drug Recognition Experts). Other training is ongoing. This is uncharted waters and we will learn as we go

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Armbright to approve CB 9, An Ordinance Repealing and Reenacting Article XV to Chapter 6 of the Black Hawk Municipal Code Regarding Medical Marijuana

MOTION PASSED

There was no discussion and the motion **PASSED**.

- B. CB 10, An Ordinance Adopting a New Article XVIII to Chapter 6 of the Black Hawk Municipal Code Regarding Retail

Marijuana Establishments,
And Revoking in Part the
City's Temporary
Moratorium on
Marijuana Businesses
And Marijuana Social
Clubs

Mayor Spellman read the title.

City Attorney Hoffmann explained the only thing he would add in addition to what he stated under CB 9, is in Section 3, page 23 of 24 of the ordinance. If adopted, there will still be a temporary moratorium on marijuana social clubs. This is only thing left from the original moratorium. The City is still studying this type of use.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB 10, An Ordinance Adopting a New Article XVIII to Chapter 6 of the Black Hawk Municipal Code Regarding Retail Marijuana Establishments, And Revoking in Part the City's Temporary Moratorium on Marijuana Businesses And Marijuana Social Clubs open and invited anyone wanting to address the Board either "for" or "against" the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to approve CB 10, An Ordinance Adopting a New Article XVIII to Chapter 6 of the Black Hawk Municipal Code Regarding Retail Marijuana Establishments, And Revoking in Part the City's Temporary Moratorium on Marijuana Businesses And Marijuana Social Clubs

C. Resolution 30-2014,
A Resolution Imposing
License Fees for Medical
Marijuana and Operating
Fees for Retail Marijuana
Pursuant to the Black
Hawk Municipal Code

Mayor Spellman read the title.

City Attorney Hoffmann explained this resolution is self-explanatory. It sets up fees for medical and retail marijuana businesses. Resolution establishes license fees for medical marijuana businesses as well as operating fees for retail marijuana

businesses. The difference in terminology is based upon the state statutes for each one.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on Resolution 30-2014, A Resolution Imposing License Fees for Medical Marijuana and Operating Fees for Retail Marijuana Pursuant to the Black Hawk Municipal Code open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 30-2014, A Resolution Imposing License Fees for Medical Marijuana and Operating Fees for Retail Marijuana Pursuant to the Black Hawk Municipal Code

MOTION PASSED There was no discussion and the motion **PASSED** unanimously.

D. Resolution 29-2014,
A Resolution Approving
a Certificate of Appropriateness for the Exterior
Paint, Stain and Siding
Repair for the Historic
Residence Located at
151 Marchant Street Mayor Spellman read the title.

Community Planning and Development Administrator Linker explained this application is from Sean & Rebecca Conway. The application was taken before HPC and evaluated along with testimony from staff, consultants, and the applicants. HPC decided the Certificate of Appropriateness met intent of the City of Black Hawk Historic Restoration and Community Preservation Fund Guide to Programs as well as Section 16-368 of the Black Hawk Municipal Code and Sections 3 and 4 of the City of Black Hawk Residential Design Guidelines. HPC evaluated effect of proposed alterations on building’s eligibility for contributing status. HPC recommends approval of the Certificate of Appropriateness. Staff comments that building is highly visible and would improve character and appearance of immediate area as well as historic character of property itself. Staff recommends approval of the Certificate of Appropriateness

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on Resolution 29-2014, A Resolution Approving a Certificate of Appropriateness for the Exterior Paint, Stain and Siding Repair for the Historic Residence Located at 151 Marchant Street open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Johnson to approve Resolution 29-2014, A Resolution Approving a Certificate of Appropriateness for the Exterior Paint, Stain and Siding Repair for the Historic Residence Located at 151 Marchant Street

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

8. ACTION ITEMS:

- E. Resolution 26-2014,
A Resolution Approving
the Service Agreement
for Vehicle Towing
Services Between the
City of Black Hawk and
D & J Towing and Recovery

Mayor Spellman requested that Resolutions 26, 27, and 28 be handled together.

Police Chief Cole explained Resolutions 26, 27, & 28 together. Police Department usually uses three towing companies on a rotating basis to handle vehicle impounds, etc. City has entered into service agreements with all three companies to ensure reasonable fees and consistent quality of service.

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 26-2014, A Resolution Approving the Service Agreement for Vehicle Towing Services Between the City of Black Hawk and D & J Towing and Recovery, Resolution 27-2014, A Resolution Approving the Service Agreement for Vehicle Towing Services Between the City of Black Hawk and Help Towing, and Resolution 28-2014, A Resolution Approving the Service Agreement for Vehicle Towing Services Between the City of Black Hawk and Black Hawk Towing.

MOTION PASSED There was no discussion and the motion **PASSED** unanimously.

F. Resolution 27-2014,
A Resolution Approving
the Service Agreement
for Vehicle Towing
Services Between the
City of Black Hawk
and Help Towing Combined with Resolution 26-2014.

G. Resolution 28-2014,
A Resolution Approving
the Service Agreement
for Vehicle Towing
Services Between the
City of Black Hawk
and Black Hawk
Towing Combined with Resolution 26-2014.

H. 101 Marchant Street –
Roadway Easement Mayor Spellman read the title.

Community Planning and Development Administrator Linker explained main purpose for roadway easement is to remove stairs from front doorway into the City right-of way.

Alderman Armbright commented that it will be nice to have stairs removed.

**MOTION TO
APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to approve 101 Marchant Street – Roadway Easement.

Alderman Torres asked how stairs were approved in their present location in the first place.

Mayor Spellman stated the stairs were placed at the location before there was any approval process.

MOTION PASSED The motion **PASSED**.

I. Ratification of Phone
Poll – Change Order
For Removal of Certain

Retaining Walls on the
Winners Haven
Demolition Site

Mayor Spellman read the title.

City Manager Lewis stated the demolition of Winners Haven ended up with a couple of large retaining, not structural walls. There will be an additional charge to the contract for these walls to be taken down.

**MOTION TO
APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Moates to approve Ratification of Phone Poll – Change Order for Removal of Certain Retaining Walls on the Winners Haven Demolition Site

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

9. CITY MANAGER REPORTS:

J. 271 Church Street –
Boundary Line
Agreement Letter
With Adjacent
Property Owners

City Manager Lewis gave an update from last meeting. City has received brief letter from both property owners. The letter is in Council packet. Both parties are truly working on boundary line adjustment. The City has received information from both parties to resolve this issue. However, the issue may not be resolved by end of month, but it is still in progress. If issue is not resolved, it will not delay bidding of project. If not resolved, City will pull this section out of bid packet and move ahead with the rest of the project.

K. 271 Church Street –

Clay Masonry Wall

City Manager Lewis stated the City has received information from original engineer that gave opinion on wall. Engineer gave detailed explanation on how to repair this wall. Said wall is fine if we follow his repair recommendations. It will be okay if we want to remove other white materials off wall. City Manager Lewis stated the City is well covered and ready to move ahead with this project.

10. CITY ATTORNEY:

City Attorney Hoffmann stated the M & D property acquisition has closed. City owns this property now. Also Colorado Supreme Court has accepted the filing and our amicus brief regarding challenging some of titles of ballot questions based upon Black Hawk's unique experience related to the impacts of gaming on a community.

City Attorney Hoffmann requested an Executive Session regarding specific legal and personnel matters.

11. EXECUTIVE SESSION:

**MOTION TO
ADJOURN**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to adjourn into Executive Session 3:40 p.m. to hold a conference with the City's attorney to receive legal advice on specific legal questions pursuant to C.R.S. § 24-6-402(b) and personnel matters pursuant to CRS 24-6-402(g).

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

**MOTION TO
RECONVENE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson at 4:10 p.m.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

12. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council closed at 4:11 p.m.



Kelly K. Stevens, CMC
Deputy City Clerk



David D. Spellman
Mayor