



TOWN BOARD REGULAR MEETING

February 25, 2013 - 7:00 P.M.

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

MINUTES

A. CALL TO ORDER

Mayor Vazquez called the regular meeting to order at 7:05 p.m.

1. Roll Call

Mayor John Vazquez
Mayor Pro-Tem Kristie Melendez
Myles Baker
Don Thompson
Jeremy Rose
Robert Bishop-Cotner
Ivan Adams

Also present:	Town Manager	Kelly Arnold
	Town Attorney	Ian McCargar
	Town Clerk	Patti Garcia
	Director of Finance	Dean Moyer
	Director of Planning	Joe Plummer
	Director of Human Resources	Mary Robins
	Director of Engineering	Dennis Wagner
	Director of Public Works	Terry Walker
	Director of Parks, Recreation & Culture	Melissa Chew
	Economic Development Manager	Stacy Johnson
	Chief of Police	John Michaels

2. Pledge of Allegiance

Town Board Member Rose led the Pledge of Allegiance.

3. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board

Town Board Member Baker motioned to table Item C.1., Short Form Grant Application – Northern Colorado Energy Star Homes, to a date to be determined; Town Board Member Thompson seconded the motion.

Town Board Member Bishop-Cotner requested to move forward with keeping the item on the agenda as the application was included in the Town Board packet; Town Board Member Adams advised that the applicant was ill and had requested the presentation be postponed they could address the Town Board.

Roll call on the vote resulted as follows:

Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez
Nays – None. Motion passed.

4. Board Liaison Reports

- Town Board Member Baker – Parks, Recreation, and Culture Advisory Board (PReCAB); Cache La Poudre Trail Board Alternate
Town Board Member Baker stated that PReCAB had met on February 5, 2013 at which the Poudre Trail initiative grant and MPO bike plan was reviewed and the potential CRC expansion was discussed.

- Town Board Member Thompson – Planning Commission; Tree Board; Great Western Trail Authority
Town Board Member Thompson reported that the Planning Commission reviewed the proposed building code update at their last meeting. The Great Western Trail met last week and reviewed estimates for upgrading the trails; the budget is over the grant amount and they are working on options. There was no report from the Tree Board.
- Mayor Pro-Tem Melendez – Downtown Development Authority; Chamber of Commerce; North Front Range/MPO Alternate
Mayor Pro-Tem Melendez had nothing new to report but reminded everyone that the Windsor Chamber Annual Dinner would be held on March 6 from 5-8 pm at the Readiness Center.
- Town Board Member Rose – Water & Sewer Board; Windsor Housing Authority, Planning Commission Alternate
Town Board Member Rose stated the Windsor Housing Authority had met last week and they finalized plans on the Windshire Meadows groundbreaking which will be held on March 18; invitations have been sent to the Town Board members. The Windsor Housing Authority voiced appreciation of the Town Board's help and consideration of the project. The next meeting will be held on March 19 at 3 p.m.
- Town Board Member Bishop-Cotner – Historic Preservation Commission; Clearview Library Board
Town Board Member Bishop-Cotner stated that the Clearview Library Board has changed their meetings from Tuesday to the last Thursday of each month.
- Town Board Member Adams – Cache La Poudre Trail Board; Student Advisory Leadership Team (SALT)
Town Board Member Adams reported the Cache La Poudre Trail Board would meet the first Thursday of March. Members of SALT were present and provided an update regarding their events include the teen flashlight easter egg hunt, teen night on February 8 and the various volunteer activities they are participating in such as the Poudre Trail clean up and 2nd grade tutoring program. They also thanked the Town Board members for attending the dinner that they hosted.
- Mayor Vazquez – North Front Range/MPO
Mayor Vazquez reported the next meeting of the MPO would be next Thursday.

5. Public Invited to be Heard

Individuals wishing to participate in Public Invited to be Heard (non-agenda item) are requested to sign up on the form provided in the foyer of the Town Board Chambers. When you are recognized, step to the podium, state your name and address then speak to the Town Board.

*Individuals wishing to speak during the Public Invited to be Heard or during Public Hearing proceedings are encouraged to be prepared and individuals will be limited to three **(3) minutes**. Written comments are welcome and should be given to the Town Clerk prior to the start of the meeting.*

Mayor Vazquez opened the meeting to public comment to which there was none.

Mayor Vazquez noted that public comment is generally only taken on second reading of ordinances and that it appeared there were many in audience who may want the opportunity to comment on ordinances that were scheduled for first reading. The Town Board discussed the option of allowing public comment on Ordinance 2013-1448, Ordinance 2013-1449, and Ordinance 2013-1550 as there were members of the community in attendance who may want to be heard. There was consensus that comments would be taken on first reading of the three ordinances.

B. CONSENT CALENDAR

1. Minutes of the February 11, 2013 Regular Town Board Meeting – P. Garcia
2. Liquor License Renewal – American Legion Club, Tavern – P. Garcia
3. Liquor License Renewal – Hunan Taste Cuisine dba Asian Pearl Bistro, Hotel & Restaurant – P. Garcia
**Town Board Member Thompson motioned to approve the Consent Calendar as presented; Town Board Member Adams seconded the motion. Roll call on the vote resulted as follows:
Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez
Nays – None. Motion passed.**

C. BOARD ACTION

1. Short Form Grant Application – Northern Colorado Energy Star Homes
 - Applicant presentation: Vicki WagnerPostponed.
2. Ordinance No. 2013-1446 - An Ordinance Amending The Windsor Municipal Code To Establish New Policy And To Clarify Existing Policy With Respect To The Use Of Mobility Devices Within The Town Of Windsor, Colorado
 - Second reading
 - Legislative action
 - Staff presentation: Melissa M. Chew, CPRP, Director of Parks, Recreation & Culture**Mayor Pro-Tem Melendez motioned to approve Ordinance No. 2013-1446, Ordinance No. 2013-1446 - An Ordinance Amending The Windsor Municipal Code To Establish New Policy And To Clarify Existing Policy With Respect To The Use Of Mobility Devices Within The Town Of Windsor, Colorado on Second Reading; Town Board Member Adams seconded the motion.**

Director of Parks, Recreation & Culture Chew reported on the ordinance stating that first reading was held on February 11, 2013. The ordinance clearly defines what an Electric Personal Assistance Mobility Device (EPAMD) is for ADA purposes, where they can be used and provides general definition of what types of devices are allowed. The ordinance additionally cleans up previous definitions of segways which are now referred to as Self Balancing Mobility Device (SBMD). The same definitions apply to all Windsor trails and parallel those definitions and restrictions adopted by the Poudre River Trail Authority for the Poudre River Trail.

Mayor Vazquez opened the meeting for public comment, to which there was none.

Roll call on the vote resulted as follows:

**Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez
Nays – None. Motion passed.**

3. Ordinance No. 2013-1447 - An Ordinance Approving an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange
 - First reading
 - Legislative action
 - Staff presentation: Ian McCargar/John Frey, Town Attorney**Mayor Pro-Tem Melendez motioned to approve Ordinance No. 2013-1447, An Ordinance Approving an Intergovernmental Agreement Amending Certain Provisions of the First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange on First Reading; Town Board Member Thompson seconded the motion.**

Town Attorney McCargar reported on the ordinance stating that the ordinance approves an Intergovernmental Agreement (IGA) with Fort Collins further amending the First Amended IGA approved by the Town Board in November, 2012. Under the terms of the former agreement, the base for property tax

and sales tax increment that would be shared with Fort Collins going forward was set in years when the corridor activity center were reduced due to construction in 2011 and 2012. The ordinance sets the base at 2010 which provide a more accurate reflection of tax revenues.

Town Attorney McCargar noted that the amendment would not negatively impact any business or property owners in the corridor activity center.

Roll call on the vote resulted as follows:

Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez

Nayes – None. Motion passed.

4. Ordinance No. 2013-1448 - An Ordinance Prohibiting the Operation of any Marijuana Business Enterprise Within the Meaning of Article XVIII, Section 16 of the Colorado Constitution Within the Town of Windsor, Colorado

- First reading
- Legislative action
- Staff presentation: Ian McCargar, Town Attorney

Town Board Member Adams motioned to approve Ordinance No. 2013-1448, An Ordinance Prohibiting the Operation of any Marijuana Business Enterprise Within the Meaning of Article XVIII, Section 16 of the Colorado Constitution Within the Town of Windsor, Colorado on First Reading; Town Board Member Thompson seconded the motion.

Town Attorney McCargar stated that he would speak to Ordinance No.'s 2013-1448, 2013-1449, and 2013-1550 at one time. Amendment 64 gives local government the opportunity to prohibit the operation of business enterprises that were authorized under Amendment; retail stores, grow operations, cultivation facilities, processing facilities and testing facilities all can be prohibited at the local level.

Mr. McCargar reported that Ordinance No. 2013-1448 is a prohibition ordinance within the Town of Windsor for the four types of business entities and is under the authority given to local governments granted under Amendment 64.

Ordinance No. 2013-1449 prohibits the establishment and operation of private marijuana clubs. Mr. McCargar stated it is not clearly granted under the authority of Amendment 64 but does speak to sensibilities of community as requested by the Town Board. The ordinance does not reach into residential uses. Mr. McCargar indicated that he is unsure how defensible the ordinance is but is presented as an exercise of the Town's land use and police powers.

Ordinance No. 2013-1450 closes the loophole that was developed after the Town Code was amended prohibiting marijuana grows. The existing Code is specific to medical marijuana cultivation sites. The ordinance provides that all marijuana cultivation facilities exceeding the stated size or numerical limitations are prohibited within the Town's corporate limits.

Mayor Vazquez requested assurance that the Town was not creating anything that would infringe on the rights of an individual in the privacy of their own home. Mr. McCargar confirmed that the ordinances as written to not reach into the privacy of someone's home.

Town Board Member Thompson voiced support of the Ordinance No. 2013-1448.

Town Board Member Baker stated that in looking at past medical marijuana election results along with the Amendment 64 election results from Weld and Larimer County make him believe that Windsor residents are not ready for retail establishments and supports the opportunity for the in home option.

Town Board Member Rose stated he wants to make sure that the Town Board does not over-step their bounds on the rights of citizens.

Mayor Pro-Tem Melendez voiced support of the ordinances just as she had supported the medical marijuana ordinances.

Mayor Vazquez stated he supports the ordinances as it appears to be the wishes of the community.

Mayor Vazquez opened the meeting for public comment and noted the input at the meeting would be part of the public record.

David Ellingson, 621 Blue Mountain Court, 30 year resident of Windsor, voiced support on the passage of the ordinances stating it would make the community a safer place. Mr. Ellingson has been active as a soccer coach, in boy scouts and local schools and is interested in the safety of the children and the community.

Town Board Member Rose addressed a concern regarding a "Whereas" in the ordinance which states "The Town is aware that the use, possession, transportation, cultivation and distribution . . . permit regulated marijuana business enterprises is in question . . ." Mr. Rose inquired why it was included in the ordinances for consideration. Town Attorney McCargar stated is an expression for the concern for an unregulated business environment. Mr. McCargar understands the state intends to regulate this environment but no one knows what might happen. Concerns regarding abuse and financial mismanagement are due to the banking industry not being confident that it can support this type of business. Most of the transactions at these businesses may take form as cash and may be difficult to monitor.

Mayor Vazquez inquired if removal of the specific preamble being referenced would weaken the ordinance. Mr. McCargar stated contains a recital of fact on which the Town Board is relying. If the Town Board is comfortable with not relying on that particular recital a motion could be made to amend the ordinance. Mr. McCargar noted the ordinance will not stand or fall based on this particular preamble.

Roll call on the vote resulted as follows:

Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez

Nays – None. Motion passed.

5. Ordinance No. 2013-1449 - An Ordinance Prohibiting the Establishment and Operation of Private Marijuana Clubs Within the Town of Windsor, Colorado

- First reading
- Legislative action
- Staff presentation: Ian McCargar, Town Attorney

Town Board Member Thompson motioned to approve Ordinance No. 2013-1449; An Ordinance Prohibiting the Establishment and Operation of Private Marijuana Clubs within the Town of Windsor, Colorado; Town Board Member Melendez seconded the motion.

Town Attorney McCargar had no additional information to add; it is not squarely within the authority given to local governments under Amendment 64 and is not sure how entirely defensible it is. Mr. McCargar is uncertain that the ordinance does not step on some of the privileges guaranteed under the Amendment but has understood from the Town Board that this is what was asked to be presented.

Mayor Vazquez stated the community is willing to back the effort; he does not believe that it is frivolous, arbitrary, or capricious. Mayor Pro-Tem Melendez noted that she had attended the Colorado Municipal League's Legislative Workshop last week and after hearing discussion in that venue feels confident that the Town Board has the right to exercise this option.

Town Board Member Baker voiced that he was not comfortable with regulating the peaceful assembly of persons in a private setting.

The Town Board discussed concerns regarding the private setting to which Mr. McCargar reported the ordinance language recommendation for Section 10-4-210 that it is unlawful for anyone to operate a

marijuana club which has the purpose of “the consumption of marijuana by persons assembled within a commercial or industrial structure, . . . or an intended purpose incidental to other reasons for assembly therein.” The concern is that it is no different than having a group in their private home.

Town Board Member Rose voiced concern with definitions for example infringing on personal business owners rights during business after hours.

The Town Board discussed the ordinance at length including the specific language that was used and the intent of the issue. Discussions included the definition of a business, concern with overstepping the constitutional rights of residents along with the possibility for loopholes in the ordinance.

Lara Holt, Windsor resident, recommended passage of all three ordinances on first and second reading and believes that would be the wishes of the community.

Francine Henderson voiced support of the ordinances particularly where youth are concerned.

Sean Murray, Windsor resident, stated he had researched where to open his orthodontic business and landed in Windsor due to its perceived healthy environment. He stated that his personal rights would be infringed upon if marijuana clubs are allowed; he would not be given the opportunity to raise his children in a wholesome environment. He supported passage of all three ordinances.

Ty Chadwick, Windsor resident, also addressed the board and stated he moved from Fort Collins to Windsor for safety reasons. He noted concerns regarding how the marijuana will affect business owners and their employees. He supported passage of all three ordinances.

Aaron Lore, Windsor resident, recommended strengthening the ban by zoning it out of town.

Roll call on the vote resulted as follows:

Yeas – Bishop-Cotner, Melendez, Thompson, Adams, Vazquez

Nays – Baker, Rose. Motion passed.

6. Ordinance No. 2013-1450 - An Ordinance Prohibiting the Establishment and Operation of Certain Marijuana Cultivation Facilities Within the Town of Windsor, Colorado

- First reading
- Legislative action
- Staff presentation: Ian McCargar, Town Attorney

Mayor Pro-Tem Melendez motioned to approve Ordinance No. 2013-1450, An Ordinance Prohibiting the Establishment and Operation of Certain Marijuana Cultivation Facilities Within the Town of Windsor, Colorado; Town Board Member Adams seconded the motion.

Town Attorney McCargar stated the ordinance would establish the same limitations that are in effect on medical marijuana grows.

The Town Board discussed the ordinance and consensus was passage of it would keep the requirements consistent.

Roll call on the vote resulted as follows:

Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez

Nays – None. Motion passed.

7. Resolution 2013-13 - Introducing an ordinance calling for the adoption by reference of the International Building Code, 2012 Edition, the International Residential Code, 2012 Edition, the International Fuel Gas Code, 2012 Edition, the International Plumbing Code, 2012 Edition, the International Mechanical Code, 2012 Edition, the International Existing Building Code, 2012 Edition, the International Property Maintenance Code, 2012 Edition, and the International Energy Conservation Code, 2009 Edition

promulgated by the International Code Council, Inc., as amended; and introducing an ordinance calling for the adoption by reference of the National Electrical Code, 2011 Edition, promulgated by the National Fire Protection Association, and setting a public hearing thereon

- Legislative Action
- Staff presentation: Joe Plummer, Director of Planning/Ian McCargar, Town Attorney

Town Board Member Thompson motioned to approve Resolution No. 2013-13; Town Board member Adams seconded the motion.

Director of Planning Plummer provided an overview of the building code adoption process; the building codes will be adopted by reference. The Town must first adopt a resolution that both introduces the ordinance calling for the adoption of the codes by reference and also establishes a public hearing date at which the Town Board has opportunity to hear testimony on the adoption of the codes. The public hearing has been set for March 25. A work session will be held on March 18 at which the updated building codes will be reviewed. It was noted that, as allowed, the Town is exempting out of items that would create hardships to builders.

Roll call on the vote resulted as follows:

Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez

Nays – None. Motion passed.

8. January Financial Report

- Staff presentation: Dean Moyer

Director of Finance Moyer provided an overview of the financial report and noted that a record was set in January for the collection of sales tax with an increase of 12.93% over January 2012. January also held the record for the number of building permits issued at 35; 18 were issued in January 2012. Mr. Moyer noted that the next two months are generally the lowest months.

D. COMMUNICATIONS

1. Communications from the Town Attorney
None.
2. Communications from Town Staff
Director of Planning Plummer reported he had been invited to speak to the Rangeview Elementary School third grade class.
3. Communications from the Town Manager
Town Manager Arnold reported the next work session topics included a discussion regarding residential speed limits and summer operations at Boardwalk Park.
4. Communications from Town Board Members
Mayor Vazquez stated he has been approached by oil and gas operations asking if the Town would be interested in pipeline infrastructure as opposed to tanks. Mr. Vazquez will coordinate any discussions with Town Manager Arnold and will advise Town Board members of any meetings.

Town Board Member Bishop-Cotner congratulated the Windsor wrestling team on their success as the state wrestling tournament.

Town Board Member Rose inquired about the fracking fluid leak that had been reported and requested opportunity to have a conversation so he could understand the response, affects., etc. Mayor Vazquez stated that he had access to all the reports and provided an overview of the process that is required when there is a leak.

E. EXECUTIVE SESSION

An executive session pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators; water storage acquisition (Kelly Arnold)

Town Board Member Rose motioned to go into Executive Session at 9:27 p.m. pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators; water storage acquisition; Mayor Pro-Tem Melendez seconded the motion. Roll call on the vote resulted as follows:

**Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez
Nays – None. Motion passed.**

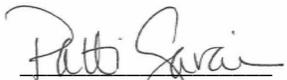
The meeting moved to Executive Session at 9:27 p.m.

Upon returning to the regular meeting, Mayor Vazquez advised that if any participants in the Executive Session believed the session contained any substantial discussion of any matters not included in the motion to convene the Executive Session, or believed any improper action occurred during the Session in violation of the Open Meetings Law, such concerns should now be stated. Hearing none, the Regular Meeting resumed.

F. ADJOURN

Mayor Pro-Tem Melendez motioned to adjourn at 10:13 p.m.; Town Board Member Thompson seconded the motion. Roll call on the vote resulted as follows:

**Yeas – Baker, Bishop-Cotner, Rose, Melendez, Thompson, Adams, Vazquez
Nays – None. Motion passed.**


Patti Garcia, Town Clerk