

## Minutes

Audio Tape No. 662

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:15 P.M., on Monday, May 15, 2006. Mayor Peggy Dunn presided.

**Councilmembers present:** Lou Rasmussen, Gary Bussing, Scott Gullede, Mike Gill, Gregory Peppes, Debra Filla, and James Azeltine.

**Councilmembers absent:** Jim Rawlings.

**Staff present:** Scott Lambers, City Administrator  
Shannon Marcano, Assistant City Attorney  
Chris Claxton, Parks & Recreation Director  
Joe Johnson, Public Works Director  
Christy Wise, Deputy City Clerk

### **1. Opening Remarks**

Mayor Dunn called the Work Session to order at 6:20 P.M. Introductions were made by those present.

City Administrator Scott Lambers stated the purpose of the Work Session is to receive guidance for the development of a draft smoking ordinance with definitive decisions occurring at a later date. The draft ordinance will be considered by Council at a future Work Session at which time revisions will take place. Upon completion of the draft ordinance, a public hearing will be scheduled for a date that does not conflict with a regular Governing Body meeting. Another Work Session will be scheduled to discuss modifications to the draft following citizen input. Finally, the ordinance will be placed upon the Governing Body agenda for action. Mr. Lambers estimated the entire process will extend through the summer months due to the already scheduled Budget and Finance meetings in June.

**2. Discussion of Proposed Smoking Ordinance, amending Code § 11-901, et seq.**

Mr. Lambers discussed the outline of policy issues distributed in Council packets. The first item deals with the following issues:

1. Actual Implementation Date
  - A. Immediately and unilaterally; or
  - B. Triggered
    - a. Identical to Kansas City ordinance (85% of the population of the metro area); or
    - b. All of Johnson County; or
    - c. a and b combined

Council must decide between implementing a unilateral trigger on a specific date or allowing the ordinance to be contingent upon other entities passing a similar ordinance. If the latter is chosen, the next step would be to establish if the ordinance should be identical to that of Kansas City, if the entire Johnson County area is to be included in the trigger, or a combination of both.

Mr. Lambers stated this is a decision that needs to be made by the City Council since this does not involve any managerial issues.

Councilmember Gill stated he felt the MARC [Mid-America Regional Council] no smoking model ordinance would be a good starting point. He voiced preference to have a trigger with an absolute date certain of between the 12-18 months suggested by MARC. He is not, however, in favor of a pure trigger only as it is Council's obligation to make a decision regarding the timeframe rather than rely upon other entities.

Councilmember Rasmussen agreed with using the MARC model ordinance as a basis for discussion and suggested January 1, 2007, as the effective date. He also suggested placing a moratorium on design characteristics of the present ordinance so that architects and engineers building new structures will be aware of Council's intent to ban smoking by a certain date. Mr. Lambers stated new restaurant applicants are advised of the pending issue.

Councilmember Azeltine quoted a section of the May 1, 2006, Governing Body meeting minutes as, "Councilmember Gulledge requested to have background information prior to the Work Session such as studies from other cities/states regarding the impact smoking bans have had on businesses and the effectiveness of partial bans vs. full bans," and "Mr. Lambers stated an abundance of information will be provided at the public hearing," and "Mayor Dunn noted Leawood Chamber of Commerce President Kevin Jeffries has become involved with the issue and plans to hold discussions with all of the restaurateurs in order to gather their opinions." He reported information included in the Work Session packets as primarily from organizations advocating total smoking bans and stated it is important to start the debate on even footing in terms of having information from both sides. Councilmember Azeltine encouraged the distribution of information representing both sides of the debate at the next Work Session.

In fairness to Mr. Lambers, Councilmember Gill stated he requested inclusion of the information in the packets. He invited others with empirical data, scientific studies, and economic studies to submit material as well.

Mayor Dunn distributed copies of a survey received today via e-mail from the Kansas Restaurant Hospitality Association. The report revealed 70% of restaurateurs were not aware of tonight's meetings and 85% felt it should be the business owners' right to make the decision whether to ban smoking in their establishments.

Councilmember Azeltine stressed the importance of treating both sides of the debate fairly. He stated he is in favor of the trigger mechanism with his views being anti-smoking yet pro-business.

Councilmember Bussing arrived at 6:35 P.M.

Mr. Lambers stated the objective for tonight's Work Session is to assess whether there is a majority consensus for a date certain or a triggering mechanism.

Councilmember Rasmussen pointed out the ban may take years to enforce if a triggering mechanism is used. The January 1, 2007, date was chosen in recognition of the timeframe necessary to complete the ordinance process.

Councilmember Peppes stated he is in favor of a date certain, however not particularly January 1, 2007.

Councilmember Filla agreed with Councilmember Gill's suggestion to have a time-dated trigger. She confirmed favor with a total ban for Leawood without the participation of other cities.

Mr. Lambers reviewed for Councilmember Azeltine that the current smoking ordinance requires significant ventilation for areas in which smoking is allowed. There have been no complaints to date regarding nonsmoking areas being intruded upon by second-hand smoke. Two establishments were grandfathered from the ordinance until upgrades or HVAC improvements are made, at which time full compliance must be met.

Mr. Lambers verified for Councilmember Filla that if any complaints regarding smoking were made to the Public Health Department, they would have been brought to the City's attention as it is our ordinance being violated.

Councilmember Gulledge stated it will be difficult to make a rational decision until more information is received. He is in favor of a date certain but will keep an open mind to the facts on both sides of the issue.

Councilmember Bussing noted it is an individual decision both to smoke and to frequent a restaurant where smoking is allowed. The same consideration should be given to the business owner. Rather than forcing a smoking ban, he would prefer a course of action that encourages businesses to provide smoke-free environments by way of positive reinforcement and likewise discourages those establishments who allow smoking.

As the majority of the Governing Body supports a date certain, Mr. Lambers advised it will be incorporated into the draft. More decisions will be made following the public hearing where points of interests from both sides of the debate will be raised.

Mr. Lambers informed the trigger for the Kansas City smoking ordinance, which is 85% of the metro area population, is approximately at the 30% level. Councilmember Azeltine suggested consideration be given for a trigger with a very low population threshold. Mayor Dunn stated Prairie Village has a trigger related to passage of a no smoking ordinance in six contiguous cities.

Councilmember Azeltine reemphasized the need for more information representing both sides of the argument in order to avoid placing either side at a disadvantage.

Councilmember Filla restated favor for an external trigger with a date certain, however expressed interest in Councilmember Bussing's idea of providing incentives for business owners who provide smoke-free environments.

In terms of healthcare, Councilmember Rasmussen stated members of the Council are aware of the consequences smoking has on our society. The collective knowledge of the Council is such that an informed decision can be made and direction can be given to Mr. Lambers whether or not to implement a trigger.

Regarding the submission of material for Council distribution, Councilmember Gill encouraged fellow councilmembers to research issues and share educational information. He noted the report from the Kansas Restaurant Hospitality Association reveals 77% of Overland Park food establishments are smoke-free with smoking restaurants providing 87% nonsmoking seats. These statistics raise the question of whom, if anyone, are the restaurant owners seeking protection from. He stated the economic impact on businesses is the major issue on the other side of the health equation.

Councilmember Gill added partnering with businesses would be a positive approach and would like to know what types of measures could be taken. He suggested the City promote a banner campaign targeting individuals who wish to eat in a smoke-free environment.

Councilmember Azeltine stated there are not many restaurants, bars, or bowling alleys advertising smoke-free environments because it is not something that drives the market. From a competitive standpoint, Leawood represents only 1.7% of the greater metropolitan population. In a perfect world, the sale of tobacco would be outlawed at the federal level. The reality of the issue is that of fairness to those who desire a smoking ban and to the potentially effected business owners.

Councilmember Azeltine shared that his family has never had a problem dining in Leawood restaurants even though his wife is highly allergic to cigarette smoke, which is undoubtedly due to the expensive ventilation systems required by the City. He further stated the process has gotten off to a troubling start due to the fact that information requested by a member of the Governing Body was not included in the packet.

Councilmember Gulledge stated he is highly aware of the effects of smoking after being in the healthcare industry for 25 years, however agrees the ban is strictly an economic issue. He stated there are other cities with cutting edge policies on the issue which would be beneficial information to Leawood in deciding upon directives. Councilmember Gulledge requested that such information be brought forward before an ordinance is mandated. There are still many unanswered questions. Citizens could be given the opportunity to vote on whether they want Leawood to become a smoke-free city.

Mr. Lambers reminded the decision to implement a smoking ban ordinance was made by Council at the Goals & Objectives Work Session. The question is how extensive the ban should be. The suggestion of having an incentive program implies there will not be a ban even though prior direction was given to begin the ordinance process. He reviewed the following proposed exceptions from the outline of policy issues:

2. Exceptions
  - A. None
  - B. Outdoor seating areas attached to enclosed public or private areas
  - C. Directly-related smoking businesses
  - D. Hotels
  - E. Others

Councilmember Gulledge stated his position on a smoking ban ordinance has not changed; however, he would like to see literature regarding bans in other cities in order to make informed decisions.

Mr. Lambers stated a public hearing on the general concept of proposing a ban could be scheduled prior to further work sessions if Council so desires.

Councilmember Azeltine reviewed with Mr. Lambers the impression from the Goals & Objectives Work Session was that a decision was made to draft an ordinance to ban smoking in public places. The following approved motion was to draft an ordinance for consideration. There has not been any discussion regarding a referendum. The Governing Body can hold a referendum after the ordinance has been drafted; however, as it will be an administrative ordinance, citizens cannot initiate a petition.

Councilmember Filla asked if there could be exceptions related to an establishment's hours of operation such as lifting the smoking ban after 9:00 P.M. for night activity. Mr. Lambers stated this is something that could be presented by the Kansas Restaurant Hospitality Association; however, if smoking is available throughout the entire facility after a certain hour, there will be ventilation issues.

Councilmember Peppes commented the process is on track according to the direction given to Mr. Lambers, but more information is needed.

In terms of the listed exceptions, Councilmember Gill stated he agrees with (B) and possibly (C) and (D). Mr. Lambers stated (C) and (D) do not apply to Leawood at this time and can be omitted with an ordinance amendment occurring when a hotel or smoking related business opens in the City.

Mayor Dunn verified with councilmembers there is no opposition to having exceptions. She asked if it would be more helpful to hear from the public prior to having the ordinance drafted. Mr. Lambers stated his intention is to incorporate the MARC model ordinance and the Kansas City, Missouri ordinance into what is applicable for Leawood. Drafting the ordinance first will enable the public to provide a more direct response.

Regarding enforcement issues, Mr. Lambers stated complaints will probably be routed through the Code Enforcement Department rather than the Police Department or in conjunction with Johnson County if they desire participation.

Councilmember Azeltine suggested having a public hearing before and after drafting of the ordinance.

Having experience with Council-drafted ordinances, Councilmember Rasmussen responded the public should be supplied with a document listing the options of date certain or trigger as well as the exceptions. He restated there should be a moratorium placed upon new construction in conjunction with voting on the ordinance.

Councilmember Bussing endorsed the creation of a first draft by Mr. Lambers. He agreed the public comments should be based upon more than a blank sheet of paper.

By show of hands, it was decided to schedule another Work Session for drafting of the ordinance prior to holding a public hearing.

Mayor Dunn noted there will probably be several drafts and more than one opportunity for public comments before final action is taken.

Mr. Lambers stated neither the Work Session nor the public hearing will be scheduled on the same night as a regular Governing Body meeting in order to avoid time restraints. The first available date for the Work Session will be in July.

Councilmember Bussing stated he is interested in further discussion regarding allowing an exception for outdoor seating areas.

There being no further business, Mayor Dunn adjourned the Work Session at 7:28 P.M.

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Christy Wise, Recording Deputy City Clerk