

Minutes

DVD No. 268

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, November 21, 2011. Mayor Peggy Dunn presided.

Councilmembers present: Debra Filla, Carrie Rezac, Gary Bussing, Jim Rawlings, Julie Cain, Lou Rasmussen, and James Azeltine

Mayor/Councilmembers absent: Councilmember Andrew Osman

Staff present: Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief John Meier, Police Department	Chris Claxton, P&R Director
Chief Ben Florance, Fire Department	Brian Anderson, P&R Superintendent
Mark Andrasik, Info. Services Director	Dawn Long, Interim Finance Director
Karl Weinfurter, Info. Services Specialist	Joe Johnson, PW Director
Richard Coleman, Comm. Dev. Director	Deb Harper, City Clerk
Mark Klein, Planning Official	Pam Gregory, Assistant City Clerk
Lovina Freeman, HR Director	

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following amendment to the agenda:

- Item No. 9 – Councilmembers Report from Councilmember Gary Bussing continued to the December 5, 2011, Governing Body meeting

A motion to approve the amended agenda was made by Councilmember Filla; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. **CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.**

4. PROCLAMATIONS – None

5. PRESENTATIONS/RECOGNITIONS GFOA Distinguished Budget Presentation Awards Program

Mayor Dunn presented Interim Finance Director Dawn Long and Budget Coordinator Kathy Byard with the Government Finance Officers Association [GFOA] Award, reflecting the commitment of the Governing Body and staff to meeting the highest principles of governmental budgeting.

**City of Leawood ‘Honorable Mention’ for
Bicycle Friendly Community
[Councilmember Filla; Bicycle Friendly
Committee]**

Councilmember Filla thanked Parks and Recreation Director Chris Claxton for representing the Sustainability Advisory Board as the Staff Liaison and Parks Superintendent Brian Anderson for his leadership with the Bicycle Friendly Committee.

Mr. Anderson recognized Bicycle Friendly Committee Chair Rod Crawford and Vice-Chair Alicia Jennings for all of their hard work. He further commented that the committee members have worked with local schools encouraging participation in the bike and walk to school events held over the last year.

Councilmember Filla thanked everyone who participated in the Complete Streets Program, which was a large component of Leawood receiving the ‘Honorable Mention’ recognition this year. Leawood was the first City in Johnson County to establish a Complete Streets Policy.

6. SPECIAL BUSINESS – None

7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 2011-43 and 2011-44
- B. Accept minutes of the November 7, 2011 Governing Body meeting
- C. Accept minutes of the November 7, 2011 Governing Body Work Session
- D. Accept minutes of the October 11, 2011 Parks and Recreation Advisory Board meeting
- E. Accept minutes of the October 18, 2011 Public Works Committee meeting
- F. Accept minutes of the October 13, 2011 Sustainability Advisory Board meeting
- G. Accept minutes of the September 13, 2011 Historic Commission meeting
- H. Accept minutes of the September 8, 2011 Sustainability Advisory Board meeting
- I. Accept minutes of the August 10, 2011 Bicycle Friendly Committee meeting
- J. Approve 4th and Final Payment in the amount of \$12,421.72 to Precision Construction and Contracting, LLC, pertaining to improvements to Gezer Park, located at 13300 Mission Road

- K. Approve Massage Establishment License for Sunrinity Health, located at 4701 College Boulevard, Suite # 107, in accordance with Code § 5.5 of the Code of the City of Leawood, 2000
- L. **Resolution No. 3701** calling for a Public Hearing to be held on Monday, December 19, 2011 at 7:30 P.M., or as soon thereafter as may be heard, regarding amendments to the 2011 Fiscal Budget for the City of Leawood, Kansas
- M. **Resolution No. 3702** approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2012 alcohol tax fund for an amount not to exceed \$130,000
- N. **Resolution No. 3703** approving and authorizing the Mayor to execute a Purchase Agreement between the City and Motorola Solutions in the amount of \$710,565.08, pertaining to the new police radio system [\$269,000 MARC portion] [for 2012 purchase]
- O. **Resolution No. 3704** approving and authorizing the Mayor to execute a Maintenance Agreement between the City and Harris Corporation for an amount not to exceed \$36,740.040 pertaining to the maintenance of police radio equipment [contingent upon approval of above referenced Motorola Solutions Agreement]
- P. **Resolution No. 3705** approving and authorizing the Mayor to execute an Independent Contractor Agreement between the City and Professional Turf Products, in the amount of \$78,140, pertaining to irrigation upgrades at Ironhorse Golf Course, located at 15400 Mission Road
- Q. **Resolution No. 3706** approving and authorizing the Mayor to execute an Inter-local 911 Cooperation Agreement by and between the City of Leawood, and the Board of Johnson County Commissioners [BOCC], and cities of Overland Park, Lenexa, Prairie Village and Shawnee, to provide distribution of 911 fees and prepaid wireless fees to Johnson County
- R. **Resolution No. 3707** approving and authorizing the Mayor to execute a Construction Agreement between the City and Kaw Roofing and Sheet Metal in the amount of \$125,835.00, pertaining to the roof replacement on the Salt Dome located at the Public Works Facility, 14303 Overbrook Road [Project # 74045]
- S. **Resolution No. 3708** approving and authorizing the Mayor to execute a Construction Agreement between the City and Godard and Son Roofing in the amount of \$36,091.00, pertaining to the roof replacement at Fire Station No. 1, located at 9609 Lee Boulevard [Project # 74015]
- T. **Resolution No. 3709** approving and authorizing the Mayor to execute a Construction Agreement between the City and Premier Contracting in the amount of \$76,800.00, pertaining to the roof replacement at Fire Station No. 3, located at 14801 Mission Road [Project # 74045]
- U. **Resolution No. 3710** approving and authorizing the Mayor to execute a Construction Agreement between the City and Premier Contracting in the amount of \$78,000.00, pertaining to the roof replacement at Ironhorse Maintenance Building, located at 15400 Mission Road [Project # 74045]
- V. **Resolution No. 3711** approving a Final Plan for a tenant finish for Town Center Plaza – Suite 2095 Cold Shell Addition, located north of 119th Street and east of Nall Avenue (PC Case 93-11) [*from the September 27, 2011 Planning Commission meeting*]

- W. **Resolution No. 3712** approving a Revised Final Plat for Tuscany Reserve Village – Tuscany Piazza Condominium, located north of 137th Street and east of Pawnee. (PC Case 90-11) *[from the October 25, 2011 Planning Commission meeting]*
- X. Fire Department Monthly Report
- Y. Police Department Monthly Report
- Z. Municipal Court Monthly Report

Mayor Dunn referred to Item No. 7J complimenting the Leawood Foundation on the outstanding public/private partnership this park development has represented. They have done an excellent job raising private donations.

Mayor Dunn pulled Item No. 7M and Councilmember Filla pulled Item Nos. 7N and 7O for discussion.

A motion to approve the remainder of the Consent Agenda was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

- 7M. **Resolution No. 3702** approving the recommended distribution of alcohol taxes by Johnson County Drug and Alcoholism Council [DAC] for allocations of the 2012 alcohol tax fund for an amount not to exceed \$130,000

Kimberly Reene, Drug and Alcohol Council [DAC] of Johnson County, thanked the City of Leawood for supporting the program. The DAC is a Citizen Advisory Board consisting of representatives from all cities that choose to participate. This board allocates funds to providers in cities who do education prevention and treatment services. The Alcohol Tax Fund is collected from a State tax on liquor by the drink. Part of this revenue is returned to cities, which must be used for programs whose principle purpose is alcoholism and drug abuse prevention education, alcohol and drug detoxification intervention, and treatment of persons who are alcoholics, drug abusers, or in danger of becoming so. This year, those funds are being used specifically in educating alcohol awareness and drug abuse in the Shawnee Mission and Blue Valley Schools. Leawood has allocated \$130,000 of the \$1.3 Million used in Johnson County.

A motion to approve Item No. 7M was made by Councilmember Rasmussen; seconded by Councilmember Filla. The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

- 7N. **Resolution No. 3703** approving and authorizing the Mayor to execute a Purchase Agreement between the City and Motorola Solutions in the amount of \$710,565.08, pertaining to the new police radio system [\$269,000 MARC portion] [for 2012 purchase]

Police Chief John Meier stated this is the first time in the history of the County that all law enforcement agencies, emergency services, and fire departments will be able to communicate through a superior radio system. They hope to be on the new system by the end of the first quarter in 2012. The maintenance company has agreed to keep them on a month-to-month billing cycle.

A motion to approve Item No. 7N was made by Councilmember Filla; seconded by Councilmember Rasmussen.

Chief Meier confirmed this amount includes 911 equipment. There is \$269,067 worth of 911 funds everyone pays through their phone bills that is being used for dispatch equipment.

The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

70. **Resolution No. 3704** approving and authorizing the Mayor to execute a Maintenance Agreement between the City and Harris Corporation for an amount not to exceed \$36,740.040 pertaining to the maintenance of police radio equipment [contingent upon approval of above referenced Motorola Solutions Agreement]

A motion to approve Item No. 7O was made by Councilmember Filla; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

8. **MAYOR'S REPORT**

- A. Attended a Leawood Chamber of Commerce ribbon cutting ceremony celebrating the 2nd Anniversary of Amore' Chocolate Pizza Company, located on the north side of Town Center Plaza. Mayor Dunn wished them continued success in the future.
- B. Mayor Dunn thanked Councilmember Julie Cain for representing her at a Leawood Chamber of Commerce ribbon cutting ceremony for Bare Esthetics Medical Spa, located at 151st and Nall at the Ironhorse Center. Mayor Dunn wished them much success.
- C. Leawood hosted the final dinner of six regional suppers that were located across the State of Kansas at the Ironwoods Lodge. There were an estimated 70 elected officials from multiple counties in attendance to hear from the League of Kansas Municipalities [LKM] Executive Director Don Moler who discussed the 2012 Statement of Municipal Policy and the upcoming legislative session. Councilmembers Andrew Osman, Lou Rasmussen and Jim Rawlings were in attendance. Special recognition goes to City Administrator Scott Lambers, Parks and Recreation Director Chris Claxton and her team, City Clerk Deb Harper and Assistant City Clerk Pam Gregory for their efforts in helping make this dinner a great success.
- D. Mayor Dunn had the privilege of addressing new Eagle Scouts and their families at Troop 10's "Eagle Court of Honor." Troop 10 is sponsored by the Leawood Lions Club. Congratulations to all of the new Eagle Scouts and to Troop 10 and their families.

- E. Mayor Dunn thanked Parks and Recreation Director Chris Claxton and Special Events Supervisor Shelly Pollock for their efforts in organizing the Holiday Lighting Ceremony. Councilmembers Debra Filla, Lou Rasmussen, Jim Rawlings and Julie Cain were in attendance. There were new performers this year including the Carillon Ringers, which is the Bell Choir from the Church of the Resurrection, Stage Right Performing Show Choirs, which is a group of area high school students, 7 year-old Grace Fields, an exceptional soloist, and the Leawood Singers who always do a wonderful job.
- F. Mayor Dunn wished each and everyone a wonderful Thanksgiving holiday.

**** 9. **COUNCILMEMBERS' REPORT**

Councilmember Bussing – Governing Body Goal Setting Process –*CONTINUED TO THE DECEMBER 5, 2011 GOVERNING BODY MEETING*

10. **STAFF REPORT** - None

COMMITTEE RECOMMENDATIONS

11. **PLANNING COMMISSION**

[from the October 25, 2011 Planning Commission meeting]

- A. **Ordinance No. 2518** approving a Special Use Permit for Molle Off-Site Parking for New Vehicles, located south of 104th Street and west of State Line Road (PC Case # 107-11) [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Rezac asked if the owner was looking for an alternate location or if this would be something coming before them in the future. Evan Fitts, Esq., Polsinelli Shughart, replied the Council has asked that it be limited to a 1-year term. As far as he knew, the land owner wasn't looking for another location, but was willing to comply and return each year to renew.

The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Osman absent).

- B. **Resolution No. 3713** approving a Revised Final Plan for a tenant finish for One Nineteen – Fo Thai Restaurant, located at the southeast corner of 119th Street and Roe Avenue (PC Case 96-11)

A motion to approve the resolution was made by Councilmember Rasmussen; seconded by Councilmember Azeltine.

Tim Bowman, Compass Resources, stated they would be removing the top 6" beam and installing an additional section, totaling six panels. Community Development Director Richard Coleman commented staff felt this new proposal was an improvement over the original design and confirmed it was similar to the La Bodega Restaurant, located just down from Fo Thai.

Mayor Dunn confirmed with Mr. Bowman they opened approximately 3 weeks ago and are currently operating under a Temporary Certificate of Occupancy [TCO].

The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

- C. **Resolution No. 3714** approving a Revised Final Plan for One Nineteen – Additional Parking, located at the southeast corner of 119th Street and Roe Avenue (PC Case 117-11)

Bart Lowen, RED Development, stated the One Nineteen Development is doing well and is currently 70%-75% occupied. Some tenants are in the planning process for the remaining space and are scheduled to open in the spring of 2012. Traffic flow has increased with the success of the development. There are currently 75-100 employees being shuttled off-site behind Camelot Court on Thursday, Friday, and Saturday evenings to help alleviate parking. In working with staff, the Planning Commission and the Board of Zoning Appeals [BZA], they were able to convert a landscaped area behind the development to 75 additional employee parking spaces. This landscaping will be relocated on site. The valet program will remain in place at least for the holidays; however, it is not being utilized as they had anticipated. The additional parking should bring the total to approximately 750 spaces, which is just under the maximum the ordinance allows.

Mayor Dunn asked if they would need to continue to shuttle employees once they reach 100% occupancy. Mr. Lowen replied since implementing the shuttle program, there are several available spaces. They can continue an off-site program if needed in the future. The additional parking should be completed by late spring of 2012.

Councilmember Rezac noted they were adding a lot of impervious paving and asked how this would impact stormwater runoff and if it would continue to be captured on-site. Mr. Lowen replied they will be working with the Public Works Department and engineers to ensure the current design will handle the flow.

A motion to approve the resolution was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

- D. **Ordinance No. 2519** approving a Rezoning from SD-NCR [Planned Neighborhood Retail District] to SD-CR [Planned General Retail], a Preliminary Plan, Final Plan and Final Plat for the City of Leawood Justice Center, located at the southwest corner of Tomahawk Creek Parkway and Town Center Drive (PC Case 81-11) [Roll Call Vote]

Ken Henton, Hoefler Wysocki Architects, gave an overview of the Justice Center. The goal of this project was to tie the architecture to the existing City Hall building to create more of a civic campus. The building is L-shaped combining police and court. A two-level parking garage is located on the south end of the site. The lower level consists of a 40-space parking garage, which leads directly into the Police Department. The main level houses the courthouse and a continuation of the Police Department with a main level parking garage.

There is a 2-story lobby in the Police building with a corridor linking the two buildings. The main floor has a break room with a balcony that will be shared by all staff. The court clerks will be protected behind bullet resistant glass. The upper floor consists of the IS Department, City Attorney offices, Police Administration and Investigations. The main conference room will overlook the park. If needed, there is a land-banked area to install future parking for the alternate basement.

Mayor Dunn complimented Mr. Henton and his team for architecturally tying the City Hall plaza area with the new Justice Center site.

A motion to pass the ordinance was made by Councilmember Bussing; seconded by Councilmember Azeltine. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Osman absent).

- E. Ordinance amending Section 16-4-9 of the Leawood Development Ordinance [LDO], Fences and Walls, pertaining to fences constructed on top of a deck (PC Case # 119-11) [Roll Call Vote]

Planning Official Mark Klein stated the Leawood Development Ordinance [LDO] currently states all fence heights are measured from the grade to the top of the fence. The amendment is proposed to clarify if a deck is elevated, the height of that fence would need to be measured from the bottom of the deck to the top of the fence. Staff was concerned if a deck is elevated and someone wanted to screen the bottom, they could add lattice from the grade and then add fencing from the bottom of the deck to the top of the fence, which would make the fencing appear several feet tall. The Board of Zoning Appeals [BZA] is not permitted to grant a fence height exception to anything over 6 feet. The proposed ordinance will allow a fence a maximum of 4 foot in height as measured from the floor of the deck to the top of the fence, provided that the underside of the deck may be screened to a maximum height of 4 foot if the deck is located within the building setback and shall remain open or screened only with landscaping if the deck encroaches into the building setback.

Councilmember Cain asked if they could use lattice however tall they wanted as long as they are not located within a building setback. Mr. Coleman confirmed they could only lattice 4 feet. Mr. Lambers noted there were several tall decks throughout the City with lattice underneath. If these decks get replaced, they would only be able to replace the lattice 4 feet, whereas previously this was enclosed and used for storage. With this amendment to only allow 4 feet, it would leave a large open gap. Ms. Cain felt it would be much less unsightly to have lattice under the decks rather than have a gaping hole. Mr. Coleman noted they may be able to give further definition to the lattice language so it wouldn't appear as solid wall construction.

A motion to remand this to the Planning Commission to further review what would be appropriate inside and outside the setbacks was made by Councilmember Filla; seconded by Councilmember Cain. The motion carried following a unanimous vote of 7-0. (Councilmember Osman absent).

- F. **Ordinance No. 2520** amending § 16-4-12.3 of the Leawood Development Ordinance [LDO] 'Special Use Permit Required,' pertaining to wireless communication towers and antennae. [PC Case # 134-11] [Roll Call Vote]

City Attorney Patty Bennett stated the Council had discussed potential changes to the City's Cell Tower Ordinance and considered having a 2-year period for further study with the input of Curtis Holland, Esq., Polsinelli Shughart, his client, and a consultant retained by the City to consider potential options for the tower, located at 135th and Nall. The proposed amendment would allow an expiring Special Use Permit [SUP] holder to request 1-year extensions for both the tower and antenna when it is a non-conforming use. She asked that the Council consider making this 2 years, which would allow time to perform the studies and make a determination whether the ordinance should be changed. Mr. Lambers stated the 2 years would also give the applicant enough time to go through the City's planning process and install replacement antennas to allow it to continue to function.

Mayor Dunn noted the Planning Commission voted to grant "up to, but not to exceed 1 year." Granting 2 years would be an override of the Planning Commission's recommendation. She understood this could take up to 2 years; however, she requested they do quarterly checkpoints to review the status since it's been known for 5 years that this deadline was looming. Ms. Bennett stated they could issue the SUP under the condition that they provide quarterly status reports.

Councilmember Cain was concerned that maintenance at the tower site had not been enforced in the past and didn't want this to continue for 2 years. Ms. Bennett replied the Codes Department could enforce it through the court if needed. Mr. Lambers responded the applications they received were for the antennas, not the tower. The representative of the antennas had stated he would speak with the tower owner telling them the Council was dissatisfied; however, this did not work. Now that they are dealing specifically with the tower they have the ability to stipulate it and enforce it. When the applicant returns before the Council, they can stipulate by a date certain (April 30th or May 31st) that whatever landscaping plan they submit with their application would have to be completely installed. Mr. Lambers thought the applicant would need 90 days to have the analysis done and then the City would need 30 days to complete theirs. The consultant would be retained by the City; however, the consultant fee would be reimbursed by the applicant.

Mayor Dunn noted this would take 6 affirmative votes to override the Planning Commission's recommendation.

A motion to pass the ordinance with the added language of "up to, but not to exceed 2 years" after "Upon application, subject to pre-existing wireless communications, facilities, towers and antennas may receive an extension of expiration of their permit" was made by Councilmember Azeltine; seconded by Councilmember Filla. The motion carried following a unanimous roll call vote of 7-0. Nay: None. (Councilmember Osman absent).

12. OLD BUSINESS - None

13. OTHER BUSINESS - None

14. NEW BUSINESS - None

ADJOURN

There being no further business, the meeting was adjourned at 9:00 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Assistant City Clerk