

**Regular Meeting****THE LEAWOOD CITY COUNCIL**

July 19, 2021

**Minutes**

**Councilmembers Present:** Mary Larson, Deb Filla, Jim Rawlings, Lisa Harrison, James Azeltine, Andrew Osman and Chuck Sipple

**Councilmembers Present via Zoom:** Julie Cain

**Councilmembers Absent:** None

<b>Staff Present:</b> Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief Troy Rettig, Police Dept.	Dpt. Fire Chief Jarrett Hawley, Fire Dept.
Dawn Long, Finance Director	David Ley, Public Works Director
Mark Klein, Planning Services Director	Travis Torrez, Bldg/Code Enforcement Dir.
Nic Sanders, HR Director	Chris Claxton, Parks & Rec Director
Ross Kurz, Info. Services Director	Mark Tepesch, Info. Services Specialist
Kelly Varner, City Clerk	Stacie Stromberg, Assistant City Clerk
Holly York, Cultural Arts Coordinator	

**Staff Present via Zoom:** Ashlee Tomasic, Assistant City Attorney

**Others Present:** Kevin Wempe, Gilmore Bell; Ann Blessing, Arts Council Chairperson; Greg Musil, Rouse Frets White Goss Gentile Rhodes, PC

**Others Present via Zoom/Phone:** Curt Petersen, Polsinelli PC; Kevin Jeffries, Leawood Chamber of Commerce; David Eskov, Architect; David Rezac, VanTrust Real Estate; Michael Goslinga, Hofer Welker.

**1. ROLL CALL****2. PLEDGE OF ALLEGIANCE****3. APPROVAL OF AGENDA**

Mayor Dunn stated there was a modification to Item 10 Councilmembers' Report. Item 10C was added by Councilmember Sipple to discuss a recycling event.

**A motion to approve the amended agenda was made by Councilmember Rawlings, seconded by Councilmember Sipple. Motion was approved with a unanimous vote of 7-0. Councilmember Larson was not present.**

**4. 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 use profanity or 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. A TOTAL OF 30 MINUTES WILL BE ALLOCATED PER MEETING FOR CITIZEN COMMENTS.**

Jolynn Hobbs, 8309 Lee Blvd., addressed that Governing Body. She stated that she serves as the President of the Leawood Homes Association. She stated that north Leawood has a significant tree canopy with many large, established trees and that the HOA has invested heavily in maintaining, trimming, and replacing trees within their boundaries. She stated that they encourage their residents on the preservation of street trees, but that they have no legal jurisdiction to protect them. She stated that the HOA supports Councilmember Filla and requests that the City creates a strong ordinance that is clear and enforceable to protect the street trees and large, long established trees.

Bruce North, 8025 Lee Blvd., addressed the Governing Body. He stated that he is the Tree Committee Chairman for the Leawood HOA and a member of the City of Leawood Tree Committee. He urged the Council to consider Councilmember Filla's report on the protection of trees in the City's right-of-way and the older trees susceptible to new home construction. He explained that the HOA has made a significant investment in the trees in their community as outlined in their HOA declaration requirements since 1938. He stated that when the City of Leawood was incorporated in 1948 the public properties were transferred to the City but the responsibility of the tree maintenance remained with the HOA. He stated there has been a new wave of construction generating multiple instances requiring the authority that the HOA does not have. He stated that the trees in their community are so important to their residents that they agreed to raise dues in order to do bi-annual treatments to combat the Emerald Ash borer.

Mr. North explained that two of the ash trees that were recently treated were healthy 33" and 25" diameter trees, located on City property, and were cut down by a developer prior to submitting plans to the HOA or the City. He stated that the HOA invested over \$3,000.00 in each of the trees. Mr. North stated that they are asking the City to consider revising the Leawood Development Ordinance (LDO) to protect the street trees with something similar to what the City of Overland Park has addressed.

Nolen Seth Berry, 9419 Wenonga Rd., addressed the Governing Body. He stated that the Leawood Aquatic Center's current dependent care provider policy states that only 1 named nanny and/or grandparent is allowed on a family pass. He indicated that not all modern families fit that mold, so he asked for the Council to re-evaluate the policy to allow more flexibility and transferability.

Nora Berry (daughter of Mr. Berry, age 9 y/o) addressed the Governing Body. She explained that both her parents work full-time and her grandparents live out of state. She stated that they have 2 nannies that watch over them during the week, but they are only allowed to go to the City pool with one of the nannies on the days of the week she is with them. Ms. Berry stated that she enjoys going to the pool and her favorite activity is going down the slide.

Louis Berry (son of Mr. Berry, age 7 y/o) addressed the Governing Body. He stated that he likes going to the pool and he has gone down the slide 25 times. He stated that he does not know why their nanny, Savannah, cannot take them to the pool.

Mr. Berry requested flexibility from the staff for their family regarding the pool passes.

He stated he was a former Leawood HOA board member and that he is in support of Councilmember Filla's efforts of protection of the street trees.

Mr. Berry stated that he has concerns over the Leawood City Park t-ball field. He explained that there is only 1 porta potty for two t-ball fields and he estimates approximately 250-300 people there on any given night. He stated that given the amount of money that was spent across the street, it would behoove the City to look at the park's sanitation issue in the area. He pointed out that the restroom facilities are too far away for small children to walk so parents encourage them to go behind trees in the immediate area instead.

Mr. Berry stated that his children attend Curé of Ars School and walk home from school. He explained some of the problems are where parents instruct their children to walk when picking them up after school, that there are no sidewalks along 93<sup>rd</sup> St., local residents put up signs to keep off the grass, and traffic is lined up along 93<sup>rd</sup> St. forcing children to walk in the drive lanes. He asked that the City discuss the issue.

Mayor Dunn replied that the Curé of Ars parking concern has already been brought before the Council and that it will be discussed in August. She addressed that the area Mr. Berry referred to as "the expense across the street" is a large wastewater plant and is property of Johnson County. She stated all the residents of the County are spending money on this project, not just Leawood.

Mr. Berry stated that there is a stolen vehicle epidemic occurring in the City. He stated that last August he had two vehicles stolen when thieves entered their home and took the keys off a hook. He stated the individuals who stole his cars were not arrested or prosecuted. Mr. Berry asked the Council to encourage the Johnson County prosecutor to adjudicate the crimes in our area.

Mayor Dunn thanked Mr. Berry for his advocacy regarding the stolen vehicles. She stated that the Parks and Rec Director will contact him on several of his concerns.

## **5. PROCLAMATIONS**

## **Parks and Recreation Month**

Mayor Dunn read the proclamation into record and presented it to Chris Claxton, Parks and Rec Director. Mayor Dunn thanked her and her team.

## **6. PRESENTATIONS/RECOGNITIONS - None**

## **7. SPECIAL BUSINESS**

- A. Resolution authorizing the offering for sale of General Obligation Bonds and General Obligation Temporary Notes of the City of Leawood, Kansas; approving the form of notice of sale and preliminary official statement to be used in connection therewith; and authorizing the advertisement of such sale in the manner prescribed by law (F)

Dawn Long, Finance Director, addressed the Governing Body. She stated that this is a standard resolution prepared each year before the City offers the bonds and notes for sale.

**A motion to approve Item 7A was made by Councilmember Azeltine, seconded by Councilmember Filla. Motion was approved with a unanimous vote of 7-0. Councilmember Larson was not present.**

- B. A Resolution of the City of Leawood, Kansas regarding the Governing Body's intent to levy a property tax exceeding the Revenue Neutral Rate and scheduling Public Hearing for September 7, 2021 (F)

Ms. Long stated this is due to the new tax lid legislation that was implemented that provides to the City a new Revenue Neutral Rate (RNR). The rate came from Johnson County to the City as 24.08 mills. In order to keep the mill levy unchanged, a public hearing is required to notify citizens if the City wants to exceed the RNR.

**A motion to approve Item 7B was made by Councilmember Rawlings, seconded by Councilmember Sipple. Motion was approved with a unanimous vote of 7-0. Councilmember Larson was not present.**

- C. Resolution calling for a Public Hearing to be held on Tuesday, September 7, 2021 at 7:00 P.M., or as soon thereafter as may be heard, to consider the 2022 proposed Budget for the City of Leawood, Kansas (F)

**A motion to approve Item 7C was made by Councilmember Osman, seconded by Councilmember Harrison. Motion was approved with a unanimous vote of 7-0. Councilmember Larson was not present.**

- D. Resolution approving an Economic Development Revenue Bond Policy (Standard Process) in the City of Leawood, Kansas (L)

Councilmember Larson arrived at 7:30 p.m.

Patty Bennett, City Attorney, stated since the time this item was discussed, staff has added a few requirements as requested by the Council. She explained additions were that the applicant have or retain 50 jobs and that the job requirements must be met at the time of the performance agreement. It will not apply to those asking for a sales tax exemption for multi-family development only. Multi-family development may apply for sales tax exemption only if they provide underground or structured parking. Staff clarified in the policy that applicants can seek any other incentives that they feel they are entitled to apply for.

Ms. Bennett stated that the City addressed claw backs in the changes to the policy, in the case of sales tax exemption. She stated that because the applicant is using sales tax exemption for construction, if they build it and never come, the sales tax exemption is gone. She stated that the State may have some ability to recover it, if they choose. She explained that the claw back in this policy does require some kind of security, either a letter of credit or escrow upfront that covers the tax savings that they will get on City sales tax dollars. If the applicant builds it and comes, then they get their letter of credit or escrow returned to them.

Mayor Dunn thanked Ms. Bennett and the staff for covering everything that was discussed throughout multiple meetings. Councilmember Sipple asked who pays for legal fees if the City gets into a claw back situation. Ms. Bennett explained that although it is called a claw back, it works a little differently, in that the City would not abate as much on the property taxes going forward if the benchmarks are not met.

Curt Petersen, Polsinelli PC, addressed the Governing Body via Zoom. He stated that the policy regarding claw backs states a requirement of either a letter of credit or escrow as security. He stated that he has never seen those provisions listed in a policy in the entire Metro area, and requested it be changed to “may” instead of “shall” in the language.

Kevin Wempe, Gilmore Bell, addressed the Governing Body. Mr. Wempe pointed out the statement in the policy language that Mr. Petersen referred to and Ms. Bennett clarified that the word “shall” was implied and not actually included in the paragraph.

Mr. Wempe agreed that this is an atypical provision for cities in the Kansas City area. He stated that the intent of that requirement was for shorter term sales tax IRBs that may not have the same requirement of the performance metrics that property tax abatements would have. He suggested that similar to the jobs and multi-family requirements, the Council allow City staff to deem what is appropriate or not require that type of security. He noted it ultimately is a policy decision by the Council, but his suggestion would allow high-level guidelines to staff in the negotiations up front.

Mayor Dunn noted that the policy requirements could be changed to something that is less than mandated. Mr. Wempe replied that the Council could make it a more discretionary part of the policy, thus a language change. Scott Lambers, City Administrator, cautioned changing the language from a mandate because it is for a short time period and the information that is provided at the time will come into question. He stated that if it is discretionary, it will be a cost that an applicant will not want to pay and will fight it. Ms. Bennett stated that this is only for the Leawood portion of the sales tax.

Mr. Petersen acknowledged it is for the Leawood portion of sales tax, but stated that it can still be a significant amount of money on certain projects. He stated that he understands Mr. Lambers’ concerns, but he pointed out the cost of getting a letter of credit or escrow for a short amount of time. Mayor Dunn stated that it is not atypical for the City to require letters of credit for other policies, such as a Special Benefit District.

Councilmember Sipple expressed concern of putting additional work on the staff to negotiate every deal and he stated he is in favor of having a firm position.

Councilmember Azeltine stated that he is cautious of deals that may never come forward because of the provisions, yet could be a special project. He stated that the choice is to either to give staff direction that developers abide by the circumstances set in the policy, or let the Governing Body decide. He stated that if other cities in Johnson County or the Metro area do not have these provisions, he fears the missed opportunities the Council may never know about.

Councilmember Sipple stated that he believes a developer who may be denied at the Planning Commission could still make a case in front of the Council. Mayor Dunn stated that it would never come before the Planning Commission.

Councilmember Osman agreed with Councilmember Azeltine and stated that the Council has a fiduciary responsibility to the City. He stated that there are circumstances where out of town developers who have legal counsel, strictly look at the code of a City. If a policy is written where “shall” instead of “may” is stated, it is likely the developer will not spend the time or money to come before staff who would determine their outcome. He stated that this debate is over small, unique circumstances in the policy and he does not believe it will be for every development project in the City.

Kevin Jeffries, President of the Leawood Chamber of Commerce, addressed the Governing Body via Zoom. He agreed with Mr. Wempe and Mr. Petersen that he is not aware of any other community in which the Chamber is competing for investment dollars having those kinds of security requirements. He stated that he has not heard of any instances in his career that any city in Johnson County has been stuck holding the bill. Mr. Jeffries opined that on a multi-family project with structured parking, the City has

low risk with a sales tax exemption. He thanked the Council and staff for their hard work on this policy to help attract jobs and investment to the City. Mr. Jeffries agreed that allowing the Council the flexibility to review projects is important.

Mayor Dunn asked if changing the language in the policy to "...unless waived by the Governing Body." should be added. Ms. Bennett confirmed that it will default the applicant to having the provisions but it could still come to the Council. Mayor Dunn stated that the staff wrote the policy to protect the City, as they were asked to do, and that she has no issue with being the only City in Johnson County with these provisions.

Councilmember Cain was in favor of following the guidance of the City Administrator and leaving the language as is.

Councilmember Rawlings asked if the language can be written so that the City Administrator can bring forward a project he feels is worthy for the Council. Mayor Dunn replied that he is never precluded from doing that. Mr. Lambers stated that he is not opposed to having language in the policy allowing an alternative financial mechanism acceptable to the City. Ms. Bennett affirmed that the language would be added to the policy and remove the earlier suggested verbiage.

Councilmember Azeltine replied that he is encouraged by the suggestion given by Mr. Lambers and the sentiment of "may" versus "shall."

Councilmember Sipple liked the idea of having rules and that the Council could have the ability to overrule on a case by case basis.

Ms. Bennett stated that she understood the language as being 1.) "unless waived by the City Council, 2.) letter of credit or escrow or suitable security to secure the City's participation, or 3.) a hybrid of 1 and 2.

Councilmember Filla suggested having Mr. Lambers' suggested language in the policy to keep it simple. Mayor Dunn requested adding the language regarding some other accepting security to the City.

Mr. Wempe suggested adding "financial security at the discretion of the City, including but not limited to...". Councilmember Sipple asked if the City Council still retains the right to override. Mr. Wempe replied that the Council always retains that right anywhere in the policy.

**A motion to approve Item 7D with amendments was made by Councilmember Filla, seconded by Councilmember Harrison. Motion was approved with a unanimous vote of 8-0.**

## **8. CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted upon 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. 2021-25, 2021-26, 2021-27 and 2021-28
- B. Accept minutes of the June 7, 2021 Governing Body meeting
- C. Accept minutes of the June 14, 2021 Budget and Finance meeting
- D. Accept minutes of the June 21, 2021 Governing Body meeting
- E. Accept minutes of the March 18, 2021 Sustainability Advisory Board meeting
- F. Accept minutes of the May 5, 2021 Public Works Committee
- G. Accept Master Plan for Public Art [Plaid Collaborative]

- H. Accept the Mayoral appointment of Jo Anne Ward to the I-Lan Sister City Committee
- I. Approve Mayoral Appointments to the Sustainability Advisory Board for the Bike/Walk Leawood Committee (CC)
- J. Resolution accepting a deed of gift for a public art sculpture, entitled 'Praise,' from Christopher and Bridget Lee, by artist Bruce Niemi (PR)
- K. Resolution approving and authorizing the Mayor to execute an Agreement in the amount of \$4,181,000.00 between the between the City and Combes Construction LLC. pertaining to the Aquatic Center Pool Building Renovation Project [Project #71029] (PR)
- L. Resolution consenting to the assignment of the benefits of Resolution No. 5552 from KBP Investments, LLC to KBP Base Camp, LLC and authorizing execution of a Performance Agreement between the City of Leawood, Kansas, and KBP Base Camp, LLC (L)
- M. Resolution approving and authorizing the Mayor to execute an Agreement between the City and All City Management Services in an annual amount not to exceed \$80,254.80 to provide school crossing guard services for the 2021-2022 and 2022-2023 school years (PD)
- N. Resolution approving and authorizing the Mayor to execute Amendment No. 2 to the agreement between the City and V.F. Anderson Builders, LLC, in the amount of \$22,864.00 pertaining to the widening of Lee Blvd from 83rd to 95th Street (PW)
- O. Resolution approving and authorizing the Mayor to execute an Agreement in the amount of \$125,158.00 between the City and RLM Underground, LLC., pertaining to the installation of fiber along Kenneth Road [Project #72034] (PW)
- P. Resolution approving and authorizing the Mayor to execute an agreement between the City and the Department of the Army pertaining to the development of a comprehensive plan for Indian Creek Leawood Flood Assessment (PW)
- Q. Resolution requesting Johnson County, Kansas, to participate in the City of Leawood's Five-Year Capital Improvement Program through the 2022-2026 County Assistance Road System (C.A.R.S.) Program (PW)
- R. Resolution approving and authorizing the Mayor to sign KDOT Project Programming Request, pledging \$3,760,000.00 to the Tomahawk Creek Parkway Project (PW)
- S. Resolution approving and ratifying the Mayor's execution of the application for the American Rescue Plan (ARP) funds to be distributed by the State of Kansas to the City of Leawood (F)
- T. Resolution approving the City of Leawood Amended Purchasing Policy (F)
- U. Resolution amending Resolution No. 5586 authorizing the construction of a pool house / multipurpose building / bike hub in Leawood City Park in the City of Leawood pursuant to Charter Ordinance No. 33 (Project# 80157) (F)
- V. Resolution approving a Final Sign Plan for Scottsdale Asset Management - Ascentist, located south of College Boulevard and west of Roe Avenue (PL 42-21) (P)
- W. Resolution approving a Revised Final Plan for Chadwick Place – Colby Capital, located south of 135th Street and east of Chadwick Road (PL 67-21) (P)
- X. Resolution approving a Revised Final Plan for Parkway Plaza – Design Criteria, located north of 135th Street and west of Roe Avenue (PL 69-21) (P)
- Y. Resolution approving and authorizing the Mayor to execute an Agreement between the City and PowerDMS, Inc., pertaining to software access for policy, training and Compliance Management in an annual amount not to exceed \$18,356.95 (HR)
- Z. Approve the 3<sup>rd</sup> and final payment to G-B Construction in the amount of \$13,978.75 for Ironhorse Golf Course Parking Lot (PW)

- AA. Declaration of surplus equipment (1) 2016 Taurus, (2) 2014 Fusions, (1) 2007 F-350, (2) 2008 F-350, (1) Genie AWP-40S, (1) GreenSteel 4'x8' Whiteboard, (1) 65" Sony TV, Assorted Office Furniture (PW)
- BB. Police Department Monthly Report
- CC. Fire Department Monthly Report
- DD. Municipal Court Monthly Report

Item 8CC was pulled by Mayor Dunn.

Item 8M was pulled by Councilmember Filla.

Item 8J was pulled by Councilmember Larson.

**A motion to approve the remainder of the Consent Agenda was made by Councilmember Harrison, seconded by Councilmember Sipple. Motion was approved with a unanimous vote of 8-0.**

Discussion of Item 8J:

Councilmember Larson thanked the Lees for their donation to the City. She stated that this art piece is not listed in the Arts Master Plan and asked where it will be located. Holly York, Cultural Arts Coordinator, addressed the Governing Body. She stated that upon acceptance of the piece, it will go through the normal process site selection based on the Master Plan. She noted that its location has not yet been determined.

Ann Blessing addressed the Governing Body. She stated that the Lees offered the donation to the City in early December 2020. She stated that it was going through the appraisal process that happened to coincide with the preparation of the Arts Master Plan, so the Committee wanted to wait until approval of the donation before making a recommendation of a location based on the Master Plan.

Councilmember Sipple asked what typology the piece is considered according to the Master Plan. Ms. York stated that it is considered an intermediate piece and is approximately 17' high.

**A motion to approve Item 8J was made by Councilmember Filla, seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.**

Discussion of Item 8M:

Councilmember Filla stated that this is a great service to provide and that the Police Department is being competitive with the fees. She asked if ACMS is having any trouble with staffing issues. Chief Troy Rettig, Police Department, replied that there had been some staffing issues last year, but that was rare and they are doing a good job.

**A motion to approve Item 8M was made by Councilmember Filla, seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.**

Discussion of Item 8CC:

Mayor Dunn thanked the three Fire Department retirees, Capt. Scott Rutherford (33 years), Master Firefighter III Jeff Cox (24 years), and Administrative Assistant Becky Craig (20 years.) She pointed out that together it is a loss of 77 years of experience, but acknowledged that the Fire Department has no

trouble filling positions because of their great culture. Mayor Dunn congratulated their leadership and dedication.

**A motion to approve Item 8CC was made by Councilmember Filla, seconded by Councilmember Harrison. Motion was approved with a unanimous vote of 8-0.**

## **9. MAYOR'S REPORT**

- A. Annual Report: American Revolution Tricentennial CD Fund. On July 7, 1976, Mayor William Eddy asked that the CD fund in the amount of \$1,000.00 be reported annually with the interest rate on the meeting closest to the fourth of July. Last year it earned \$8.31 in interest on the principal amount that is now \$8,755.18. It yields an interest rate of 0.03% and will mature on June 25, 2022.
- B. I would like to offer great appreciation to the Leawood Facility and Community Events Supervisor Katie Burruss for leading a fantastic July 4<sup>th</sup> celebration. Our Director of Parks and Recreation, Chris Claxton, Brian Anderson, Kim Curran and their entire team were assisted by Police, Fire, and the Public Works Departments. After having no activities last year due to the pandemic, it was estimated there may have been 10,000 people in attendance. It was grand in every way and my sincere thanks to all for a wonderful job.
- C. I would like to offer congratulations to the Leawood Stage Company and Board Chairman Michael Blinn, Cultural Arts Supervisor, Holly York, and the entire cast and orchestra on the outstanding production of *Suessical*, the musical which was performed at our Ironwoods Park Amphitheater. Although two of the six evenings were rain outs, which was very disappointing, they still performed for about 2,000 delighted attendees. The cast was truly exceptional and everyone greatly enjoyed the performance. My appreciation and congratulations to all involved.
- D. Congratulations to Leawood Lightning Swim Team, who took 1<sup>st</sup> place at the All-City Swim Meet last Wednesday at Young Pool in Overland Park.
- E. Councilmembers Jim Rawlings, Lisa Harrison and Chuck Sipple joined me at the Leawood Chamber ribbon cutting at Panache Chocolatier, which is located in Park Place. The owners are residents of Leawood and are thrilled to be located in this beautiful mixed-use community.
- F. Leawood Chamber President Kevin Jeffries joined me and City Administrator Scott Lambers at a celebration of the partnership of AMC Theaters and Coca-Cola for 101 years. Also present were CEO of AMC, Adam Aron, and President and CEO of Coca-Cola North America, Alfredo Rivera. They had a dedication of a beautiful Live Oak tree located on the west side of City Hall. Mr. Aron announced that he would be donating 100 more Live Oak trees to the City to recognize the partnership. He surprised everyone with his announcement, and we are most grateful for this generous gift. They will be working with the City staff for the appropriate location of the trees. Our sincere appreciation to them.
- G. Congratulations are once again in order for the City of Leawood. We have been ranked by 24/7 Wall St. as the *Best Place to Live in Kansas*. There were four main categories: economy, affordability, quality of life, and community. The strong economic indicators were closely evaluated, as well as our highly regarded public school system; but the safety of our community was a huge factor. The City has a violent crime rate of 54 incidents per 100,000 people, and statewide is 411 per 100,000 people.

## **10. COUNCILMEMBERS' REPORT**

- A. Councilmember Osman – Referral to the Public Works Committee for Consultant Selection pertaining to the 2023 Residential Reconstruction Project

Councilmember Osman explained that there are a couple of projects planned ahead of this, so the referral will need to be done within the next year so it can be evaluated before 2023. Mayor Dunn asked if there is a date certain. He stated it is tentatively October.

**A motion to approve the referral to the Public Works Committee was made by Councilmember Osman, seconded by Councilmember Harrison. Motion was approved with a unanimous vote of 8-0.**

- B. Councilmember Filla – Discussion concerning Tree Protection

Councilmember Filla stated that she received an email in January from a person who expressed disappointment about 2 trees that were cut down, as mentioned by Mr. North earlier tonight. She stated that after speaking with the developer, the trees were cut down prior to the developer being hired by the new owner. He told her that his policy is to plant 25 new trees for every tree he cuts down. She said that it is admirable but is only for the enjoyment of future generations in future locations.

Councilmember Filla stated that the property values in north Leawood are increasing and she believes it is due to the mature tree canopies and low crime rate. She said that the City of Prairie Village recently passed a new tree ordinance protecting right-of-way trees and any tree over 60+ years old. Councilmember Filla expressed concern over how the City can provide check points, such as a required permit or neighbor notification. She also remarked that educating neighbors of the importance of trees should be included.

Councilmember Filla asked for the Council to refer this to the Leawood Tree Committee and ask for staff input to find ways to communicate how important the City's mature trees are.

**A motion to refer Item 10B to the Leawood Tree Committee was made by Councilmember Filla, seconded by Councilmember Azeltine.**

Councilmember Cain suggested that for any tree discussion be balanced and productive to include developers and neighbors. Mayor Dunn stated that she thought Councilmember Filla was going to ask staff to review the City of Prairie Village's tree ordinance to see if it would be appropriate for Leawood. Mayor Dunn pointed out that there are exceptions listed in the Prairie Village ordinance so as not to totally limit the rights of a property owner.

Councilmember Filla agreed with Councilmember Cain's suggestion to invite other voices to a panel. Councilmember Azeltine stated that there is nothing precluding the Tree Committee from inviting anyone to the discussion. Councilmember Sipple stated that the HOAs should have a right to be heard before any trees are felled, since they are maintaining the street trees. He indicated that instead of penalties that the Tree Committee should consider incentives and some flexibility. Councilmember Larson agreed with an incentive option. She mentioned that HOAs should have restrictions on the diameter of a tree being cut down.

Councilmember Harrison, Chairperson of the Tree Committee, stated that she would like to have Leawood staff review the Prairie Village ordinance before it comes before the Tree Committee. She

stated that the Committee is mandated to educate the public and not make policy. She expressed surprise that the HOA has accepted the care and maintenance of the trees and feels they should take responsibility for the provision. Councilmember Filla stated that Leawood Homes Association was the first subdivision in the City and does not have the same kind of restrictions and rules as other HOAs in Leawood. She pointed out that tree protection a concern for north Leawood now, but may be an issue for other HOAs in the future.

Councilmember Azeltine agreed with Councilmember Harrison to refer this item to staff first and withdrew his motion.

Mayor Dunn stated that she believes it should go to staff and the Legal Department before coming to the Tree Committee. Mayor Dunn pointed out that the rules and regulations of the HOAs supersede those of the City. Ms. Bennett agreed that is true unless the City is stricter. Mayor Dunn stated that usually the HOA is stricter than the City.

Councilmember Cain stated that the concern for trees has been around for a long time. She reiterated that Councilmember Filla is trying to express that the Leawood HOA has approximately 1,500 homes and no bi-laws, like the other communities. She stated that for the HOA to get deed restrictions on the preservation of trees, it would take 80% approval of their home owners. She mentioned the City has created a panel before with staff and been successful, but cautions that changes will be uniform across the entire City and not just old Leawood. Councilmember Cain suggested that the City include solar panels and not just trees in an ordinance and to include residents and developers in the discussion.

Mayor Dunn stated that if staff made a proposal, there would be public hearings and opportunities for citizen comments. She stated the City could also host a meeting and invite interested parties versus setting up a panel.

Councilmember Filla reworded her motion in order to allow staff to first review a tree protection plan in its totality and to invite citizens and developers for input.

Mr. Lambers asked to clarify the intent for staff direction. He remarked that an incentive would not work in this case and suggested having a well-publicized City policy outlining the restrictions and penalties. He stated he is in favor of a legacy tree policy (trees over 60 inches) not to be cut down without special consideration by the City. Mr. Lambers stated that the City needs to stay focused on the concept of legacy trees and older trees and not leave it open-ended for staff or the Tree Committee, for fear of a policy not being well received by the public. He agreed that a permit process should be in place. Mr. Lambers stated he supports the concept but that it needs focus.

Mayor Dunn stated that the policy in the City of Prairie Village is a good starting point. Mr. Lambers replied that a legacy tree should be well defined. Councilmember Harrison stated that she is more concerned with legacy and street trees. Councilmember Filla agreed that Mr. Lambers' suggestion of defining trees of a certain age and/or diameter is an important starting point.

**A motion to refer Item 10B to staff was made by Councilmember Filla, seconded by Councilmember Harrison. Motion was approved with a unanimous vote of 8-0.**

C. Councilmember Sipple – Discussion of Electronic Recycling Event

Councilmember Sipple announced that Saturday, July 24<sup>th</sup> the Sustainability Advisory Board (SAB) has joined forces with Town Center Plaza to host an electronic recycling event on the north side of Town Center Plaza from 8:00 a.m. to 12:00 noon. He stated this is for electronics only – computers, televisions, wires, etc. He stated volunteers will be there in two shifts – from 8-10 a.m. and 10-noon. The Parks Department has provided brightly colored t-shirts for the volunteers so that they can be more easily identified to help with traffic and unloading items. He stated that MRC has provided semi-trucks in which the items will be placed.

Councilmember Sipple stated that the SAB has sent notices to all the Leawood HOAs and the Chamber of Commerce has joined in advertising the event. He stated that only cash or checks will be accepted and there may be an additional charge for some special electronic items.

Councilmember Cain asked if there are any size restrictions for old televisions. Councilmember Sipple replied that he did not think so, but warned there may be an additional fee. He mentioned that there is a price list on the City’s website.

**11. CITY ADMINISTRATOR REPORT - None**

**12. STAFF REPORT – None**

**13. COMMITTEE RECOMMENDATIONS**

**[From the July 7, 2021 Public Works Committee meeting]**

- A. Consider the recommendation for the selection of a Design Engineer for Tomahawk Creek Parkway-College to Roe Boulevard

David Ley, Public Work Director, addressed the Governing Body. He stated that the Committee came together on July 7<sup>th</sup> to review four firms for the design of Tomahawk Creek Pkwy. He stated that they selected Olsson Engineering as their preferred consultant and are requesting the recommendation from Council to move forward.

**A motion to approve the recommendation for Item 13A was made by Councilmember Filla, seconded by Councilmember Azeltine. Motion was approved with a unanimous vote of 7-0. Councilmember Harrison was not present.**

**[From the June 22, 2021 Planning Commission Meeting]**

- B. Resolution approving a Final Plan and Final Plat for Hills of Leawood Villas, located north of 151st Street and east of Mission Road (PL 69-20)

Mark Klein, Planning Services Director, stated that the applicant’s representative was present to speak on their behalf. Greg Musil, 5250 W. 116<sup>th</sup> Place, Suite 400, Leawood, KS addressed the Governing Body. He stated that the Governing Body approved this last June, but it is in litigation to challenge the rezoning decision. He reminded the Council that they would like to move forward with the final plan and plat due to the development agreement timelines. Mr. Musil stated that there is a stipulation that no building permits will be issued until the litigation is final. He stated that the Leawood Planning Commission was unanimous in their approval of the final plan and plat and they are requesting approval from the City Council.

Councilmember Sipple asked if any concessions were made by the developer due to the number of concerns by the neighbors. Mr. Musil recalled that the plan that was approved by the Council included lots along the side of the neighbors as full R1 sized lots and setbacks. He stated there is also a 10 foot utility easement and 10 foot landscape easement on the final plan on the west side. Mr. Musil stated that the City was sued by two of the neighbors within 30 days of the Council's unanimous approval of the rezoning. He stated the last conversation he had with the neighbors was for a landscape option that they rejected.

Councilmember Larson mentioned that the lots appeared to have been changed near a Southwestern Bell substation. Mr. Musil stated that in the final title report it was determined there was an underground facility with an easement that needed to be excluded from the lot. Mr. Klein confirmed that the changes were small and only affected a couple of lots along the south side.

**A motion to approve Item 13B was made by Councilmember Osman, seconded by Councilmember Sipple. Motion was approved with a unanimous vote of 8-0.**

- C. Resolution approving a Revised Final Plan for Camelot Court – Joe's KC BBQ Restaurant, located east of Roe Avenue and south of Town Center Drive (PL 66-21)

David Eskov, 21466 W 120<sup>th</sup> St., Olathe, KS, addressed the Governing Body via telephone. He stated that the revised final plans are a result of what Joe's KC learned last year during Covid with the increase in pick-up orders. He stated that they are modifying the to-go and patio areas to allow social distancing and more carry out orders. Mr. Eskov stated that the changes will decrease the interior dining area but will allow a larger staging area for pick-up orders.

Mayor Dunn asked if the elevations plans included in the meeting packet are the revisions. Mr. Klein replied that they are the revisions and that their intent is to have similar architecture to Corner Bakery next door. Mr. Eskov stated that they are using similar rough sawn cedar for the patio construction, the stone would match the existing stone on Joe's BBQ, and the overhead doors could be opened or closed depending on the weather.

Councilmember Larson asked for clarification of the cedar planks location as shown on the renderings. Mr. Eskov replied that the polycarbonate roof is on top of the cedar joists. Councilmember Larson stated the patio is smart looking and is a proactive design for the building. Mayor Dunn stated that she is delighted to see Joe's KC making an additional investment in Leawood.

**A motion to approve Item 13C was made by Councilmember Osman, seconded by Councilmember Azeltine. Motion was approved with a unanimous vote of 8-0.**

- D. Resolution approving a Revised Final Plan for Three Hallbrook Place – Office Building – located south of College Boulevard and west of State Line Road. (PL 68-21)

David Rezac, VanTrust Real Estate located at 4900 Main, Kansas City, MO, addressed the Governing Body via Zoom. He stated that the Governing Body approved the plan in July 2019. He stated that since that time there was a change with their project team and Hofer Welker is now the architectural firm and KBP Investments will be the new property owner.

Mr. Rezac gave a brief description of the site location and elevations. He stated that if approval is granted by the Council, construction can begin by early Fall 2021 and be completed by late 2022. He stated that they have read and agreed to all 32 stipulations in the staff report.

Michael Goslinga, Hoefler Welker located at 11460 W. Tomahawk Creek Pkwy, Leawood, KS, addressed the Governing Body via Zoom. He stated they wanted to make a few minor adjustments to the site by shifting the entrance to the building slightly to the south to align with the center of the building, thus affecting 3 parking spaces. He stated that they worked with KBP Investments to meet their needs and desire for more glass and less brick and metal on the exterior. He stated that they enlarged the balconies on the façade to take advantage of the views of Hallbrook County Club.

Mayor Dunn commented that the modifications are very nice. Councilmember Sipple asked if the building will have a basement or subbasement for mechanicals and a safe space for occupants. Mr. Goslinga replied that the mechanical will be housed behind screens on the roof and that the safe spaces will be the stairwells, in case of inclement weather. Councilmember Filla asked if the HVAC has a good air filtration system. Mr. Goslinga stated that they are trying to implement all possible options to provide the best quality air for the tenants. Mayor Dunn mentioned the Climate Action Playbook and asked if any sustainable options are incorporated into the building. Mr. Goslinga stated that they are not seeking LEED Certifications, but they have chosen materials that are related to sustainability, such as renewable materials, limited off-gassing interior finishes, and recycling construction waste. He stated that the mechanical system exceeds the baseline standards. Councilmember Harrison asked if there will be any e-vehicle charging stations available. Mr. Rezac replied that there will be 3.

**A motion to approve Item 13D was made by Councilmember Rawlings, seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.**

#### **14. OLD BUSINESS - None**

#### **15. NEW BUSINESS**

- A. Ordinance amending Section 14-205 of the Code of the City of Leawood, Kansas, 2000, pertaining to truck routes within the City and repealing existing Section 14-205 and any other sections in conflict herewith (PD)

Ms. Bennett stated that this is an amendment to clean up the current ordinance, such as changing the wording from Kenneth Road to Kenneth Parkway, adding certain areas, and limiting certain areas. Councilmember Azeltine asked which specific section of Roe Ave. is included in the amendment. Mr. Ley replied that the truck route is 135<sup>th</sup> north on Roe Ave. and the restriction is air brakes.

**A motion to approve Item 15A was made by Councilmember Rawlings, seconded by Councilmember Larson. Motion was approved with a unanimous roll call vote of 8-0.**

- B. Resolution approving and authorizing the Mayor to execute a Public Lands Use Agreement between the City of Leawood and Sprint Communications Company L.P. pertaining to the installation and maintenance of communications facilities within existing conduit (L)

Ashlee Tomasic, Assistant City Attorney, addressed the Governing Body via Zoom. She stated that this is a renewal of the Public Lands Use Agreement. She explained that although it expired causing a delay in signatures due to the pandemic, there are no changes to the original agreement. Councilmember

Azeltine asked if a name change from Sprint is necessary. Ms. Bennett stated that the company requested to proceed with the name Sprint in the agreement.

**A motion to approve Item 15B was made by Councilmember Filla, seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.**

- C. Ordinance granting to Sprint Communications Company L.P. a Contract Franchise to construct, operate and maintain a telecommunications system in the City of Leawood, Kansas and prescribing the terms of said contract franchise and repealing Ordinance No. 2801C (L)

Ms. Tomasic stated that this ordinance is the telecom franchise portion of the agreement with no substitute changes. She stated that T-Mobile requested to keep the name Sprint in the contract.

**A motion to approve Item 15C was made by Councilmember Azeltine, seconded by Councilmember Sipple. Motion was approved with a unanimous roll call vote of 8-0.**

- D. Ordinance amending Section 3-104 of the Code of the City of Leawood, Kansas, 2000, pertaining to residency requirements for obtaining a cereal malt beverage retailer's license and repealing existing Section 3-104 and any other sections in conflict herewith (L)

Ms. Tomasic stated that City had considered removing the residency requirement, however the City uses forms provided by the Kansas Attorney General. She explained that there has been recent case law that made it unconstitutional, so now that State law has caught up, this amendment would remove the residency requirement to mirror State law.

**A motion to approve Item 15D was made by Councilmember Azeltine, seconded by Councilmember Osman. Motion was approved with a unanimous roll call vote of 8-0.**

- E. Ordinance amending Sections 3-111 and 3-204 of the Code of the City of Leawood, Kansas, 2000, pertaining to the Sunday sale of alcohol and gross receipts requirements and repealing existing Sections 3-111 and 3-204 and any other sections in conflict herewith (L)

Ms. Tomasic stated that this ordinance repeals the food sales requirement which was a ballot question last fall, and it also expands Sunday sale hours. She noted that this ordinance must be published for two consecutive weeks and there is a 60-day waiting period. She stated that it will not go into effect until 61 days after the second publication. Mayor Dunn mentioned that it is still the option of the retailer to decide whether or not to sell earlier on Sundays. Ms. Tomasic agreed that it allows a retailer to be open during that time period, but it is up to each individual retailer to determine their hours.

**A motion to approve Item 15E was made by Councilmember Osman, seconded by Councilmember Sipple. Motion was approved with a unanimous roll call vote of 8-0.**

- F. Schedule Governing Body meeting for Monday, August 2, 2021 at 7:00 P.M.

**A motion to approve Item 15F was made by Councilmember Rawlings, seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.**

**ADJOURN**

*Meeting adjourned at 9:45 p.m.*