

## **Minutes**

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting, 4800 Town Center Drive, at 6:00 P.M. on Tuesday, January 19, 2021. Mayor Peggy Dunn presided.

**Councilmembers Present:** Lisa Harrison, Julie Cain, Debra Filla, and Mary Larson

**Councilmembers Present via Zoom:** Chuck Sipple, James Azeltine, Jim Rawlings and Andrew Osman

**Councilmembers Absent:** None

**Staff Present:** Scott Lambers, City Administrator; Patty Bennett, City Attorney; Travis Torrez, Bldg/Code Enforcement Director; Mark Klein, Planning Services Director; Chris Claxton, Parks & Rec Director; Ross Kurz, Information Services Director; Mark Tepesch, IS Senior Specialist; and Stacie Stromberg, Assistant City Clerk

## **Continued discussion of the City's Policy on Above-ground Pools**

Scott Lambers, City Administrator, addressed the Governing Body. He stated the discussion of the above-ground pools started last year just as COVID was emerging. He reminded the Council that no action was taken at that time because there were still many unknowns related to the virus and staff was unsure if there would be a significant amount of demand from residents. He pointed out that since the initial discussion, he has not received any additional comments or communication from residents. Mr. Lambers stated that with vaccinations now started, he recommends that the current prohibition not be removed at this time.

Mayor Dunn reminded Council that any Home Owners Association (HOA) deed restrictions supersede what the City allows under its ordinance.

Councilmember Cain stated she initially brought this item before the Council because there was a Ward 4 neighbor who installed an above-ground pool. She explained that the neighbor's property backed up to 127<sup>th</sup> St. so the pool was visible to another resident who had been required to take down their pool. The resident with the pool insisted it was for the safety of her grandchildren and for the fact that their parents were First Responders. Councilmember Cain went on to say the resident told her that she did not want to potentially expose others at the City pool. She remarked that the resident refused to take down her pool and emailed Councilmember Cain that she fully intends to put it back up this summer.

Councilmember Harrison stated she remembered a resident in North Leawood inquiring about above-ground pools and also seeing conversations on the Nextdoor app. She asked if there were any other above-ground pools that were made to be taken down last summer.

Mark Klein, Planning Services Director, addressed the Governing Body and stated above-ground pools are currently not allowed. Travis Torrez, Building & Code Enforcement Director, addressed the Governing Body. He stated that there were 3 or 4 cases that Neighborhood Services was running at the time for violations of the ordinance. He believed all the pools were taken down, although some may have been toward the end of the season. Councilmember Cain stated the resident in Ward 4 kept her pool up into September because she saw it when she drove by. Councilmember Cain confirmed the resident had received notice to take the pool down, thus precipitating the call to her.

Mr. Torrez explained the current policy is to allow a resident 10-15 days, or a reasonable amount of time to take down the pool. He indicated that if it is not done, the City would issue a citation.

Councilmember Harrison inquired about HOA deed restrictions. Mayor Dunn replied that HOAs have many restrictions that the City does not require, but she mentioned that in some situations in the past the City has changed ordinances without conferring with the HOAs and have received complaints.

Councilmember Filla mentioned that if an HOA offers a neighborhood pool, it may be one reason why they do not allow individual pools. She asked what the pros and cons are of an above-ground pool. Mr. Lambers stated the pluses are affordability and lack of it being a permanent structure. Mr. Lambers stated the downside of the above-ground pool is there is no decking or landscaping. He said they are susceptible to deterioration due to sun exposure and algae. Councilmember Filla mentioned there is also a noise factor with backyard pools.

Councilmember Osman asked about infinity pools or similar structures that are partially in-ground. Mr. Torrez stated that they are considered in-ground and have to be at least 50% in the ground. Councilmember Osman questioned if that percentage listed in the ordinance should be changed. He mentioned that pool companies are backed up as much as 2 years due to the increased demand for pools due to COVID. He was concerned with a temporary allowance and the difficulty returning to the original restrictions. Mayor Dunn agreed.

Councilmember Harrison inquired about the inflatable pools that can be much easier to take down and stored away each year. Mayor Dunn noted that those can destroy a lawn. Councilmember Filla asked if staff has any comments on the inflatable type, filters, or choices of pools now available. Mr. Torrez replied that in the past anything more than 24 inches deep would be considered a pool.

Councilmember Larson indicated she does not support above-ground pools because of several reasons. She stated it can be difficult for a neighbor to sell their home if there is a pool next door and it can affect property values. She mentioned the City's public pool was open last summer, so the opportunity was there for residents. Councilmember Larson stated if there is no fence around the pool, it can become an attractive nuisance.

Mayor Dunn mentioned the challenges of allowing Special Use exemptions. Patty Bennett, City Attorney, agreed that it can become tangential. She suggested that if the Council wished to allow exemptions they would need to approve a Code Amendment that should include an expiration date. Ms. Bennett indicated that residents could be investing a lot of money in a pool and landscaping. Mayor Dunn noted that if the City included regulations regarding aesthetics, it may discourage some residents from getting a pool.

Councilmember Cain stated the neighbor who had the pool in question did have a cover for their pool and a fence. She stated it was a 4-foot tall pool that was not inflatable. She was told the resident did get letters of support from the adjacent neighbors and that the grandmother was providing daycare in this home. Councilmember Cain is in support of allowing everyone in Leawood an exemption until the end of 2021 out of respect for people trying to keep safe during the pandemic.

Mayor Dunn asked if the Council were to allow exemptions how could it be made clear that it is only for one year. Ms. Bennett stated the Council would have to pass a new Code Section and that it would need to be addressed with the Planning Commission, since it is also included in the Leawood Development Ordinance (LDO.) Mayor Dunn asked how residents would know it is only temporary. Mr. Torrez stated that it could be detailed in a required permit along with fence provisions that would need to be in place. Mr. Lambers suggested that instead of the end of 2021 as a deadline, to modify the restriction for the end of October and the pools must be removed by the end of December 2021. Councilmember Cain suggested that pools could be allowed until Labor Day and must be removed within 10 days-2 weeks after that.

Councilmember Rawlings agreed with Mr. Lambers in that it would be difficult for the City to allow exemptions. He stated the City has no responsibility to keep the resident's grandchildren in her backyard, and it would be overstepping its bounds. He stated the City has a Code that works well and he is totally against any type of pool exemption. Mr. Lambers stated it is the intention of the City to open the City's public pool this year on Memorial Day weekend, subject to COVID related restrictions.

Councilmember Filla asked if there were any complaints about the times and reservations from residents regarding the City pool. She remarked since there are many HOAs with pools, she does not feel that exemptions should be made.

Chris Claxton, Parks & Rec Director, addressed the Governing Body. She stated there were days that were sold out at the City public pool. She stated that Leawood was one of the few facilities that allowed residents only to use the pool. Mayor Dunn stated that she understood there were some challenges last season, but heard many compliments, too. She said she appreciated all the work Ms. Claxton and her staff did.

Councilmember Cain asked if a grandparent was a Leawood resident and the grandchildren were not, would they still be allowed to attend the pool. Ms. Claxton replied yes. Ms. Claxton indicated that to her knowledge there were no problems with operations, in terms of anyone suspected of having COVID so the City was able to run a safe environment. Ms. Claxton stated she is unsure which municipalities are able to open their pools this year, but the biggest challenge is training lifeguards. She stated Leawood used a training agency that was very proactive in training the guards in a safe manner.

Councilmember Harrison disagreed with Councilmember Rawlings. She stated that she would rather have neighbors, who already have a fence, put in a temporary pool rather than a permanent one. She supported the idea of making above-ground pools allowable for only one year with restrictions.

Councilmember Osman stated in his research that the average price for an in-ground pool is \$125,000. He stated that the above-ground pool prices range from \$1,000-\$3,000 and a temporary pool can be as low as \$250. He stated with a one-year exception, it may be likely that residents do not opt for the more expensive temporary pool price point along with having to include all the amenities. He cautioned if

residents pay a higher price for a temporary pool, it is likely they will set it up year after year hoping they will not be cited. He stated that the Council should not try to appeal to the 2-3 people who want the above-ground pools because it would create more problems than answers in the end.

Councilmember Cain stated she understands the Councilmembers' reasons for not supporting an exemption, but she pointed out that it is unknown at this time when children and adults will be vaccinated or when the COVID restrictions will end.

Councilmember Sipple commended Councilmember Cain for speaking up for her constituent, although he agreed with Councilmembers Rawlings and Osman. He stated Leawood is a high-quality city and neighbors expect enforcement of high-quality living. He stated he nor would his neighbors want to live next to someone with an above-ground pool and that his HOA restricts them. He stated he is not in support of even the one-year exception.

Mayor Dunn stated she is a believer in being consistent and persistent, and noted that the City has always tried to be fair and equal with the residents over the years. She pointed out that to change the restriction, even for only one year, would be problematic when including all the other requirements.

Councilmember Azeltine stated in 15 years he has only received a few inquiries about above-ground pools. He suggested that this is a solution in search of a problem. He agreed with the Mayor that a temporary solution has the potential to create confusion and opens a door that could be hard to close in another year. He mentioned that many HOAs already have restrictions against these pools.

Councilmember Sipple asked what the cost of infractions are for residents who do not comply with the City's ordinance. Mr. Torrez stated it would be determined by Municipal Court. He explained that the Codes Department would issue a notice to abate and give the resident a reasonable amount of time to comply, but if it did not get abated in that period of time, the City would issue a citation and it would go to court. He reminded the Council that this process does take some time. Ms. Bennett added that it is usually a daily fine, normally not more than \$500 a day, but it is the hope of City staff to work with the homeowner to remedy the violation.

Mayor Dunn reviewed the number of Councilmembers in favor or against supporting a change to the current ordinance and the consensus was 6-2 against above-ground pools in the City. Councilmembers Harrison and Cain were in favor of a change. Mayor Dunn pointed out that having the rules and regulations available from other Johnson County cities was very helpful in the discussion.

Mr. Lambers stated he would instruct the Information Services Department to run a message across the main page of the City's website to notify the public of the Council's consensus. Councilmember Filla asked to add a message stating that the City's public pool will be open this season. Mayor Dunn agreed.

Councilmember Rawlings asked if any adjacent cities that allow the pools in their jurisdiction gave any feedback when providing their information. Mr. Klein replied that they did not offer any. He commented that landscaping, screening and other requirements can be costly when a structure is only temporary. Mr. Torrez added that he did not receive any negative feedback from other cities, but stated he would imagine they have had issues with pools that are in a state of disrepair.

Mr. Lambers stated that in anticipation of this issue coming back to the Council, he will ask the City Clerk to do a survey of the HOAs for an idea of how many homes they encompass and if they have regulations on pools.

Mayor Dunn thanked the staff for their work and Council for the discussion.

The meeting adjourned at 7:00 p.m.