

## 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 Monday, May 3, 2021. Mayor Peggy Dunn presided.

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

**Councilmembers Present via Zoom:** Andrew Osman

**Councilmembers Absent:** Julie Cain

**Staff Present:** Scott Lambers, City Administrator; Patty Bennett, City Attorney; Stacie Stromberg, Assistant City Clerk; Mark Klein, Planning Services Director; Ross Kurz, Information Services Director; Mark Tepesch, IS Specialist

## **Discussion to allow chickens in the City of Leawood**

Mark Klein, Planning Services Director, addressed the Governing Body. He stated that staff reviewed several cities' regulations on raising backyard chickens. He explained that most of the cities that allowed backyard chickens had a limitation on the number of chickens and either a requirement for a Special Use Permit (SUP) or Special Animal Permit (SAP.) He noted that 3 acres or more were common as a dividing line for allowing chickens, and that less than 3 acres required a permit. Mr. Klein stated that some cities listed setbacks to help impose the regulation, but he noted that there was a big variation in the property lines and surrounding buildings. He stated that most cities do not allow roosters due to noise, but mentioned that hens can make some noise when laying eggs that are much quieter than roosters. Mr. Klein stated that in regards to the structures, staff found 3 different types: a chicken coop, a chicken run, and a chicken tractor. He explained that the chicken tractor is basically a coop without a bottom and is light enough to be moved around the yard so the waste gets distributed.

Mr. Klein stated that a few of the cities defined chickens as Gallus Domesticus to distinguish them from other fowl, such as ducks and geese, and that only female chickens are allowed. The list of regulations included zoning, permit requirements, minimum lot size, yard location, setbacks, the maximum number of chickens, enclosures, keeping of feed, waste from chickens, noise, odor, selling of chickens or eggs, and killing of chickens.

- **Zoning:** Mr. Klein stated that almost all cities allow chickens within agricultural districts, some allow within residential districts, and other cities regulate based on SUPs or SAPs. He pointed out that the City of Overland Park plans to discuss backyard chickens later this year.
- **Permit Requirements:** He reiterated the issuance of SUPs or SAPs with some cities and stated that there are terms of permits that ranged from annual to 5-10 years for renewals. He explained

that most cities allowed an appeal process with their Governing Body or Board of Zoning Appeals (BZA.) Mr. Klein stated that one city required that inspections be allowed.

- **Minimum Lot Size:** Mr. Klein stated that some communities allow chickens on 3 acres but require a SUP for properties with less than 3 acres. He stated that other cities did not specify a minimum lot size, but still required a SUP or SAP no matter the lot size. He remarked that some cities rely on setbacks.
- **Yard Location:** He stated he was surprised to discover that some cities allow side or rear yard locations.
- **Setbacks:** Mr. Klein explained that setbacks varied widely from both property lines and neighboring or adjacent structures.
- **Maximum Number of Chickens:** He provided data from Lenexa, Shawnee, Olathe, Prairie Village and Roeland Park, showing a span of the number of chickens allowed with restrictions of lot size or age of chickens.
- **Enclosures:** Mr. Klein explained the types of structures. He stated that most of the cities the staff researched required the chickens to be kept inside a structure. He mentioned that in their investigation they found that chickens can be destructive to bushes while hunting bugs, and fencing is needed to be high enough in the yard so the birds cannot get over it. He stated for the health of the bird, most communities require that chicken coops be built with a minimum of 2 square feet per chicken. Other communities listed a maximum size limit such as 84 -100 sq. ft. Mr. Klein presented images of four chicken structures. Councilmember Azeltine asked if the type of structures shown would qualify as detached structures under the City's ordinance. Mr. Klein replied that they would be, so they would not be allowed.
- **Keeping of Food:** He stated that most cities require that chicken feed be kept in a rodent-proof and rodent-free container. He cautioned that if rodents had access to the feed but it has been rectified they may go after young chicks as a source of food.
- **Waste from Chickens:** Mr. Klein stated that cities prohibited an excessive accumulation of waste, although some allowed composting of chicken waste as long as it met their regulations. Other communities required it to be disposed of off-site.
- **Selling of Chickens or Eggs:** Mr. Klein pointed out the most communities allow the selling of chickens and eggs in agricultural districts but not for profit in residential areas. He stated that it could generate traffic within a neighborhood and would also be prohibited in Leawood as a home occupation.
- **Killing of Chickens on Site:** He stated that some of the ordinances in other cities either did not address this issue or mixed their agricultural and residential regulations together. Other cities that did address the issue did not permit the slaughter of chickens within residential areas.

Mayor Dunn asked if the SUPs or SAPs fall under administrative review. Mr. Klein stated yes and that most cities listed the appeal process going through their Governing Bodies, district court, or BZA.

Councilmember Sipple expressed concern with the health and welfare of the chickens if free range and their predators. Mr. Klein stated that an ordinance could define that the chickens must stay inside an enclosure. He mentioned that in his research he found the recommendation that enclosures be buried 1-2 ft. to keep from predators digging underneath. Councilmember Sipple asked if any cities' ordinances required surrounding neighbor's permission. Mr. Klein stated he did not notice that outlined in the ordinances, but remarked that a requirement could be listed as part of an SUP.

Patty Bennett, City Attorney, stated that the City of Overland Park requires an SUP that would go through their Planning Commission and City Council, if under 3 acres, and requires notification from neighbors.

Councilmember Sipple asked how the City would instruct a chicken owner to use best practices. Mr. Klein stated he found organizations for chicken owners for guidance of the health of a chicken. He stated that if there is a permit process, the City would have the ability to shut it down, if necessary. Councilmember Sipple asked if the City would be involved in the inspections. Mr. Klein answered that there should be an inspection process, especially if it is an annual renewal.

Mayor Dunn, spoke on behalf of Councilmember Cain, who was absent at the meeting. She stated that Councilmember Cain was not in favor of allowing backyard chickens anywhere in the City, except where zoned agricultural elsewhere in the county.

Councilmember Rawlings thanked Mr. Klein for a comprehensive report. He remarked that if the Council decides to allow backyard chickens, there should be several steps in place before a permit is issued.

Councilmember Osman asked how many residents in neighboring cities have applied for permits to keep backyard chickens. Mr. Klein stated that he is unaware of the number. Councilmember Osman expressed concern for the number of staff needed to register chickens and do inspections on an annual basis, if it were to be 5, 15 or 50 applications per year. He asked if many Home Owner Associations' (HOA) restrictions in Leawood would supersede a City ordinance. Mr. Klein stated that the staff had not surveyed HOAs to find out that information, but he agreed that it would fall to the more restrictive of the two. Councilmember Osman made the suggestion to ask the HOAs if beekeeping or backyard chickens would infringe on their policies. He requested information on how many people keep bees and chickens in neighboring cities to determine the capabilities of Leawood staff in the future.

Mr. Klein stated that he received one email from a resident complaining of a neighbor's chicks. The resident said he knew the City was going to discuss the topic, and he said he was not in support of allowing them. Mayor Dunn replied that she has heard from other residents who are concerned.

Councilmember Larson thanked Mr. Klein for his work on gathering information. She stated that her HOA bylaws do not allow fowl in their neighborhood and suspected other HOAs would be the same. She expressed concern over the aesthetics and appearance of a structure, and agreed with Mayor Dunn that she heard no positive comments from residents. Mr. Klein commented that he researched screening requirements for aesthetics in other cities but found none.

Councilmember Harrison suggested that when most people move to Leawood, they likely do not imagine having chickens in the backyards. She opined that if a resident has 2-3 acres, it may not be an issue with neighbors. She stated her concerns with moving a coop around the yard, dogs who may be

annoyed or attracted to the chickens, and predators. She asked about the approval process. Mr. Klein stated a SUP would typically go through the Planning Commission, then the City Council. If an applicant was denied he/she could go to the Board of Zoning Appeals (BZA.)

Councilmember Filla thanked Mr. Klein for the information. She stated there are not large lots in the cities of Prairie Village and Roeland Park. Mr. Klein stated those cities did not have a minimum lot size requirement but they do have more detailed restrictions. She suggested that the City try a pilot program with a SUP and that HOAs can add a restriction to their bylaws, if they chose. Councilmember Filla stated that chickens do not make the noise that a dog can, and if there are any problems, the City can take away the SUP.

Councilmember Azeltine thanked Mr. Klein but verbalized that he sees many red flags in the issue. He stated he has not received much communication from constituents, either for or against backyard chickens, but believes it is a solution in search of a problem. He commented that most people who move to Leawood does not envision chickens. Councilmember Azeltine stated that he grew up in an agricultural community and is familiar with chicken waste not being suitable for composting. He stated too much of the chicken waste can produce pneumonia issues. He stated his biggest concern is the chicken coop structure versus a detached structure, which is not allowed in the City.

Scott Lambers, City Administrator, noted that there is a large distinction between a rural and urban community. He agreed with Councilmembers Cain and Azeltine that chickens belong elsewhere in the county and that would be too many exception requests in the application process. He recommended that the Council not allow them in the City of Leawood.

Councilmember Rawlings noted that he is on the board of his HOA and does not believe there are any restrictions in their bylaws regarding chickens because the City already does not allow it. He asked if an HOA added the restriction later, would it override the City's allowance. Ms. Bennett replied that the stricter of the two would prevail. She pointed out that usually HOA bylaws do not specifically state chickens are allowed but may state that no livestock is allowed, especially in older neighborhoods.

Councilmember Sipple asked about the Sharp family on Mission Road and if he is grandfathered in. Ms. Bennett stated the Sharp family farm is in an agricultural district.

Mayor Dunn indicated a concern with the detached structure issue mentioned by Councilmember Azeltine, and the HOAs that do not currently have restrictions in their bylaws regarding chickens. She stated she is interested in knowing if there is a large number of residents who want to allow chickens or not.

Councilmember Filla stated that she does not believe there is a great demand for backyard chickens, but is open to gathering feedback from HOAs if it is allowed for 1.5 acre lots, instead of 2-3 acres. Mayor Dunn pointed out the restriction of detached structures covering all of Leawood. Councilmember Filla stated that if allowed, it would have to be a variance. She expressed concern for the City regulating what a resident can do in their backyard. Councilmember Rawlings asked if the City regulates dog pens. Mr. Klein stated that dog houses are listed as an exemption for a detached structure.

Councilmember Harrison stated that she is now aware of three residents who are in favor of backyard chickens but two of them live in north Leawood, where it is highly unlikely to be allowed. She stated

that she agreed with Councilmember Filla for a special variance, if allowed, but questioned if the issue would only be for the desire of 2 or 3 residents.

Mayor Dunn stated that she would like to get feedback from the residents for the issues of both beekeeping and backyard chickens. She asked about cleanliness regulations in other cities. Mr. Klein stated that most cities did state that maintenance and a humane manner of the chickens had to be maintained.

Councilmember Filla stated that chickens should be allowed to roam during the day and cooped at night, just like a family dog could do.

Mayor Dunn asked for a consensus to direct staff to query all of the HOAs in the City on their restrictions. Mayor Dunn affirmed that five Councilmembers did not wish to direct staff forward on this issue and three Councilmembers did want more information. Councilmember Osman asked about beekeeping restrictions. Mayor Dunn stated that she expects to hear from the public on that issue when it comes forward. Councilmember Sipple confirmed that it is at the committee level currently and that the Sustainability Advisory Board (SAB) is nearly ready with a draft presentation. Ms. Bennett pointed out that it will go from the SAB to the Planning Staff then be scheduled for a Planning Commission meeting. She noted that beekeeping regulations will deal with setbacks and accessory structures, so it will take a little time before it comes before the Council.

Mayor Dunn stated that the presentation was very informative and she thanked Mr. Klein and his staff.

*The meeting adjourned at 7:11 p.m.*