

Regular Meeting**THE LEAWOOD CITY COUNCIL**

February 7, 2022

Minutes

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, 7:30 PM on Monday, February 7, 2022. Mayor Peggy Dunn presided.

Councilmembers Present: Jim Rawlings, Julie Cain, Debra Filla, Chuck Sipple, Andrew Osman, James Azeltine, Lisa Harrison, and Mary Larson

Staff Present: Scott Lambers, City Administrator
Chief Dale Finger, Police Dept.
Brian Scovill, City Engineer
Nic Sanders, HR Director
Chris Claxton, Parks & Rec Director
Ross Kurz, Info. Services Director
Mark Tepesch, Info. Services Specialist

Patty Bennett, City Attorney
Chief Colin Fitzgerald, Fire Dept.
Mark Klein, Planning Services Director
Travis Torrez, Bldg/Code Enforcement Dir.
Loretta Morgan, Accounting Manager
Stacie Stromberg, Interim City Clerk

Others Present:

The meeting was called to order at 7:32 p.m. by Mayor Peggy Dunn.

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

Mayor Dunn stated the Item 8G recognizes Alicia Jennings as Vice-Chair of Bike/Walk Committee. Mayor Dunn stated that Councilmember Filla provided additional material to Item 10, Councilmembers' Report.

A motion to approve the agenda was made by Councilmember Larson and seconded by Councilmember Sipple. Motion was approved with a unanimous vote of 8-0.

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.**

5. PROCLAMATION – None

6. PRESENTATIONS/RECOGNITIONS – None

7. SPECIAL BUSINESS

Discussion to re-affirm Section 16-4-1.4, Attached Accessory Structure Requirements and Exemptions, of the Leawood Development Ordinance, which requires that all accessory structures shall be attached to the primary structure, except for those accessory structures exempted within this section.

Mark Klein, Planning Services Director, stated that the Council is being asked to re-affirm the ordinance in terms of the current limitations.

Councilmember Sipple asked if it is currently permitted that a resident could attach a greenhouse to their home. Mr. Klein replied that greenhouses are not currently listed as an accessory structure, so they would not be allowed but sunrooms are allowed.

Mayor Dunn called for citizen comments.

Jason Holladay, 2016 W. 95th St., addressed the Governing Body. Mr. Holladay requested that the current ordinance be re-evaluated to be property specific. He stated that equipment to maintain various size yards are vast. He stated that because of the size of his property and a pool he maintains it himself and needs equipment to do so, but cannot store all of it properly and safely without a shed. Mr. Holladay explained that at the time he purchased his house he removed an old, dilapidated shed and purchased a new one, received approval from his neighbors, and had it professionally landscaped without realizing the restriction. He stated that because of the large size of his property, he believes a shed would allow him to maintain the standards of the community. He stated that requiring residents to attach structures to their homes is expensive and adds additional taxes.

Mayor Dunn asked if there was anything that prevented Mr. Holladay from attaching a structure to his home. Mr. Klein stated that there is a requirement of matching materials and setbacks, but he is not familiar with his particular situation.

Councilmember Cain if Mr. Holladay could go to the Board of Zoning Appeal (BZA) for an exception. Mr. Klein stated that it is a use variance and in the state of Kansas, a resident cannot get a variance for a use. Councilmember Cain asked if a shed would have to be on a foundation.

Travis Torrez, Building and Code Enforcement Director, addressed the Governing Body. He stated that for structures added to a home, they are required to be on a foundation or engineered by an architect on what they see fit.

Patty Bennett, City Attorney, stated that it is difficult to get a variance due to the five statutory factors. Councilmember Cain acknowledged that there are sheds throughout Leawood that she has seen and asked if there is a grandfather clause.

Mr. Torrez stated that a resident could repair it to keep it to property maintenance standards, but not replace it. He stated that staff notified 3 residents whose violations were pending awaiting the outcome of the discussion.

Mayor Dunn asked if Mr. Holladay added a water closet to the shed, would he be able to keep it. Mr. Torrez stated that some residents have done that. Mayor Dunn clarified that the residents have two options: add a bathroom or attach the structure to the house, adhering to the setbacks.

Tim Fisher, 9641 Lee Blvd., addressed the Governing Body. Mr. Fisher agreed with comments made by Mr. Holladay. He stated that in his case, they are unable to attach a structure to the back of their house because of windows, a patio and pool. He asked if the Council would review shed requests on a case-by-case basis. He pointed out the difference in property and home sizes between neighborhoods north and south of I-435. Mr. Fisher stated that he does not believe the one-size-fits-all should be applied.

Mayor Dunn asked if Mr. Fisher had a shed with no bathroom. He responded that he does not, but spoke about a previous discussion of a property that was allowed to have a pool house with no running water or a toilet where the Council allowed the property owner to keep it. He felt that since the Council made accommodations in the past, they should do so in the future with stipulations.

Councilmember Harrison asked about the neighbors being notified. Mr. Torrez stated that these were not issued permits and would have received a notice to abate unless other action was taken. Mayor Dunn asked if their HOAs required approval from the neighbors. Mr. Torrez stated that he is unfamiliar with the situation since it was started with the previous Director. Scott Lambers, City Administrator, stated that staff will research the case mentioned by Mr. Fisher.

Councilmember Osman stated that he appreciated staff doing more research on the topic. He agreed with Mr. Fisher that lots north of I-435 are smaller and he mentioned the challenges of adding a bathroom to an outdoor structure. He stated there are some fundamental problems with the LDO, but he does not see a reason to make residents put in a bathroom in their backyard but allow chemicals and equipment for their large lot.

Councilmember Filla apologized for missing the meeting in which the topic of greenhouses was discussed. She suggested requiring a Special Use Permit (SUP) for these structure. She stated that it is unreasonable not to allow an outdoor structure built in good taste.

Councilmember Azeltine asked if SUPs are practical or doable. Mr. Klein stated that certain criteria is needed for SUPs and cautioned that many applications would come to staff. Mr. Torrez added that he believes there will be a lot of applications, as well, since it has been prohibited for a long time. Councilmember Azeltine noted that ignorance of the law is no excuse for breaking the law and the ordinance has worked well for the City for a long time.

Mayor Dunn recalled that the initial request was whether or not to allow detached structures, when a pool is involved, to store pool equipment and not have a bathroom requirement. She agreed with Councilmember Azeltine and stated that she has heard from many residents that the City not allow sheds in Leawood. She acknowledged it is complicated but that there should be a mechanisms in place to make sure what is built is allowable.

Mr. Lambers reiterated that a pool house is meant to store pool related equipment only, not lawn equipment, as it is not permitted.

Councilmember Harrison expressed consideration for both sides of the discussion. She was in favor of reviewing application on a case-by-case basis, but mentioned that residents should know or learn what the restrictions are when purchasing a house with a pool.

Mayor Dunn asked if there was a desire to refer to staff to review pool house requirements. Councilmember Filla was in favor. She also expressed the desire to review a grandfather clause. Ms. Bennett stated that the non-conforming use clause applies to structures throughout the City and she echoed Mr. Torrez's comment about maintenance.

Councilmember Azeltine expressed concern that allowing sheds would open a Pandora's box of requests that would become a burden for staff. He revised his opinion of requiring SUPs because of the process. Ms. Bennett confirmed that SUP applications go through Planning staff, Planning Commission, and the Council. Councilmember Azeltine stated that he sympathized with the residents, but the ordinance has served the City well and ignorance of the law is no excuse.

Mayor Dunn asked if there would be a lot of applications for pool houses if the bathroom requirement was removed. Mr. Torrez stated that he would expect there to be, but suggested adding language that the structure is attractive and aesthetically what the Council would want it to be.

Councilmember Harrison if allowance could be made for residents who have pools and only 2-car garages. Mr. Torrez replied that it would be up to the Council. Ms. Bennett suggested that those would be considered exceptions and have to go to the BZA and have the requirements really well defined.

Councilmember Cain stated the reason she voted no on the greenhouses was because of the setback requirements in proximity to the surrounding neighbors. She suggested that for the BZA there be a stipulation keeping the pool house closer to the pool itself. Mr. Torrez stated that currently the pool houses are required to have certain adjusted rear setback.

Mr. Lambers stated that an option would be to require that the pool house be abutting the pool structure including the surface improvements, such as the concrete perimeter.

Councilmember Osman stated that he would like to have a shed, but he does not want to look at it. He stated that he has received calls from residents who have the challenges of adding pool houses and sheds to their lots or screening structures behind 6 ft. high fences. He agreed that it is not a cut and dry decision tonight and suggested that staff return with hypothetical situations so the Council can make an educated decision.

Councilmember Azeltine asked to confirm what the BZA allows for uses. Ms. Bennett replied that what she was referring to earlier was variances and exceptions. She stated that exceptions do not need to meet the five factors, they instead have to meet elements that the Governing Body would set forth. Councilmember Azeltine asked if a lot of applications would be expected if certain exceptions are allowed. Mr. Torrez stated that he thought it would not be as many, but it depended on the criteria that the Governing Body sets. Councilmember Azeltine reiterated that he is still not in favor of allowing these structures, unless a very high bar is set.

Mayor Dunn stated that she likes the suggestion made by Mr. Lambers and any others that staff would deem appropriate, but with those directives staff could come back to the Governing Body for discussion before going to the Planning Commission. Mr. Lambers asked to clarify if the Council wishes to eliminate the toilet facility in the pool house ordinance. Councilmember Osman stated that was his original intent when he brought up this discussion last year.

Mr. Torrez asked to clarify whether this was for BZA or SUPs and if this was only for pool houses. Mayor Dunn stated it would only be to review pool houses and both options with BZA and SUPs. Ms. Bennett suggested that staff return to the Governing Body with the requirements that have been discussed tonight and anything else that staff comes up with, then show the difference of what an SUP or exception would look like as comparison.

Councilmember Rawlings asked what the minimum square footage is for a pool house. Mr. Klein replied that the only restriction is 2% of the lot area.

Councilmember Sipple stated that the City should try to accommodate the citizens and if they have lawn equipment. He was in favor of a pool house that is multi-use.

Councilmember Azeltine reiterated that the Council wants a very high standard if this were approved. Councilmember Larson and Mayor Dunn agreed. Councilmember Larson stated that she has reservations about allowing changes and felt that more residents do not want the pool houses than those who do.

A motion to refer recommendations to staff for further review was made by Councilmember Osman and seconded by Councilmember Filla. 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. 2021-54, 2021-55, 2022-1 and 2022-4
- B. Accept minutes of the December 6, 2021 Governing Body meeting
- C. Accept minutes of the January 3, 2022 Governing Body meeting
- D. Accept minutes of the August 18, 2021 Leawood Historic Commission meeting
- E. Accept minutes of the November 30, 2021 Leawood Arts Council meeting
- F. Accept minutes of the December 1, 2021 Public Works Committee meeting
- G. **Pulled by Mayor Dunn**
- H. Resolution approving an update for the State of Kansas Municipal Investment Pool (F)
- I. **Pulled by Councilmember Sipple**
- J. Resolution approving and authorizing the Mayor to execute an Inter-local Agreement and Letter of Understanding between the City of Leawood and the Cities of Fairway, Mission, Prairie Village, and Roeland Park pertaining to the 2022 SuperPass Program at the Leawood Aquatic Center (PR)
- K. Resolution accepting a Temporary Construction Easement from The Ripplewood Group, LLC pertaining to construction of a trail from Roe Avenue to Tomahawk Creek Parkway (PR)
- L. Resolution accepting a Temporary Construction Easement from SZR Leawood, LLC pertaining to construction of a trail from Roe Avenue to Tomahawk Creek Parkway (PR)
- M. Approve 2022 annual payment in the amount of \$22,542.21 for hosting and maintenance fees for NICHE Records Management System (PD)
- N. Approve purchase in the amount of \$37,448.00 from Custom Play Systems, Inc. pertaining to the replacement of the slide in the zero depth pool at the Leawood Aquatic Center (PR)
- O. Approve purchase in the amount of \$31,530.00 from Municipal Emergency Services pertaining to the replacement of forty-five (45) thermal imaging cameras (FD)
- P. Approve purchase in the amount of \$16,114.74 from Sprayer Specialties, Inc. for two (2) 5,000 gallon salt brine tanks (PW)
- Q. Approve final payment in the amount of \$10,148.00 from V.F. Anderson Builders, LLC pertaining to the Lee Blvd. Improvement Project [Project #72054] (PW)
- R. Declaration of surplus property: Norco Engine Stand, Bearing Press, Vehicle Ramps, four (4) Sterli Koni Lifts, two (2) Speedair Compressors, Ford Explorer Unit #141, and Towable Air Compressor Unit #487 (PW)

A motion to approve the remainder of the consent agenda was made by Councilmember Larson and seconded by Councilmember Sipple. Motion was approved with a unanimous vote of 8-0.

Discussion of Item 8G - Approve Mayoral Appointments of Council Liaisons and Volunteers for Committees, Commissions and Boards [Effective March 1, 2022]

Mayor Dunn expressed her gratitude to the volunteers and what a pleasure it is to connect with volunteers and those who are new. She thanked the Councilmembers who have agreed to take on multiple committees and commissions as liaisons and chairs.

Councilmember Cain asked about the request from Roger Prewitt for appointment to the Parks and Rec Advisory Board but had been added to the Public Works Committee roster. Mayor Dunn explained that she spoke to him and stated that the Parks Board had a finite number of members and he had agreed to volunteer on the Public Works Committee with the Mayor's knowledge that he would like to be appointed to Parks at some point in time.

A motion to approve Item 8G was made by Councilmember Cain and seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

Discussion of Item 8I - Resolution approving and authorizing the Mayor to execute a State and Municipal Lease/Purchase Agreement between the City and Clayton Holdings, LLC, in the amount of \$781,279.86 pertaining to the lease of a fire truck and appurtenant equipment and support systems (FD)

Councilmember Sipple asked if the City obtains more than one bid on big ticket purchases and if the City has ever done business with Clayton Holdings. Fire Chief Colin Fitzgerald replied that for the last two fire trucks the City received bids from the same companies as this time. He stated the Clayton Holdings is a branch of Commerce Bank and the other was from PNC Financing, which is the truck manufacturer's financing arm. Chief Fitzgerald stated that the better rates both times were with Clayton Holdings.

A motion to approve Item 8I was made by Councilmember Sipple and seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

9. MAYOR'S REPORT

- A. Just as numerous in-person events have been cancelled or postponed due to the Omicron surge, my "State of the City" recap for the 2021 calendar year was also cancelled. My tremendous thanks to our dedicated City Council, City Administrator Scott Lambers, and all of our professional staff for your hard work during this past year. Despite the pandemic, many outstanding achievements were accomplished. My full remarks will be on the Leawood web page later this month.
- B. We want to extend our warm farewell to Taipei Economic and Cultural Office in Denver Director General Jerry Chang. He sent me a letter to notify us that he will be returning to Taiwan in mid-March to work with the Foreign Ministry in his home country. His replacement is Mr. Bill Huang, who will be coming from the Embassy in St. Lucia. We look forward to meeting Mr. Huang and wish Director General Chang the very best.
- C. We want to wish I-Lan Mayor Chiang and all of our friends in I-Lan a Happy New Year celebrating the "Year of the Tiger." Our annual Lunar New Year event also had to be cancelled this year due to the Omicron surge.
- D. My thanks to Councilmember Mary Larson for representing the City of Leawood at a "SevenDays 2022 Kindness City" announcement event.
- E. Thank you also to Councilmember Larson for standing in for me at the Leawood Chamber ribbon cutting for aNu Aesthetics and Optimal Wellness. Councilmember Chuck Sipple was also in attendance. We wish them much success.

- F. The February 2022 Johnson and Wyandotte Counties Council of Mayors meeting was held via Zoom with Prairie Village Mayor Eric Mikkelson presiding. We had Dr. Areola from the Johnson County Health Department give us an update on how much better the COVID crisis has become. Two weeks ago there were 2,400 cases per 100,000 people, and last week there were 1,040 cases. Dr. Areola believes it has peaked and we are headed in the right direction. We also had the Johnson County Charter Commission Chair Greg Musil give a committee report. Their work began in Spring 2021 and it happens every ten years. There are 25 members, and for an amendment to be proposed to go on the ballot for the public, 13 members have to agree. There were 50 speakers during their meetings and 850 comments from residents on their web page. There were 15 proposed amendments but none had 13 members in agreement in order to be on the ballot. There were also five proposed recommendations, but there will be no changes. Mr. Musil reported that there was a great deal of public anxiety, anger and confusion throughout all of their meetings.
- G. I would like to offer my sincere congratulations to Fire Chief Colin Fitzgerald, Police Chief Dale Finger, and the Leawood Fire and Police Departments on the excellent Annual Reports for 2021. I encourage everyone to read them because there is a great deal of terrific information.

10. COUNCILMEMBERS' REPORT

Councilmember Debra Filla

Community Garden Task Force update

Councilmember Filla apologized for not being in attendance at the last Council meeting. She provided a handout to the Governing Body of the Leawood Community Garden Task Force Final Report. She stated that the 1-year pilot program started in 2015 will continue with an extension of 3 more years with the construction of the new Fire Station. Councilmember Filla stated that there are 24 out of 32 plots booked for this year.

She stated that the mission statement coming from the Task Force was “When it comes to local organically grown food, Leawood citizens would Know It, Grow It, Eat It, Share It.” She shared some examples of what the group learned over the years.

Councilmember Filla made a recommendation for the Community Garden to be programed under the Parks, Recreation and Arts Department and listed several other directions as listed on the Final Report. She pointed out the various sites where community gardens can be added other than the current location at 96th and Lee Blvd.

Councilmember Filla thanked the City and Council for creating the Task Force. She thanked many others who supported and participated in the first phase and continue to be gardeners.

Mayor Dunn thanked Councilmember Filla for her leadership and chairmanship and all the members of the Task Force. She asked if the Parks Department is in agreement. Councilmember Filla confirmed they are.

Councilmember Larson asked about the fencing at the Community Gardens at Fire Station #1 and if there was a uniform standard to keep small animals out that can still be attractive. Councilmember Filla agreed and stated that it had been discussed with staff liaison Dustin Branick, who would discuss a single fence with the Parks Dept.

A motion to recommend dissolving the Community Garden Task Force due to completion of the assignment was made by Councilmember Filla and seconded by Councilmember Azeltine. Motion was approved with a unanimous vote of 8-0.

11. CITY ADMINISTRATOR REPORT

Discussion of Covid and mask mandate

Mr. Lambers stated that all the indicators are that Covid is trending in the correct direction and he does not recommend making any changes at this time. Mayor Dunn stated that she enlightened Dr. Areola (Johnson County Director of Health and Environment) of the recommendations that the City has been advocating.

12. STAFF REPORT – None

13. COMMITTEE RECOMMENDATIONS

[From the January 12, 2022 Public Works Committee meeting]

- A. Consider the recommendation for the selection of Affinis as Design Consultant for the 2023 Residential Reconstruction

David Ley, Public Works Director, addressed the Governing Body. He stated the Committee met last month to review four firms that they ranked for two different projects. He stated that the first, clear choice was Affinis for the 2023 Residential Reconstruction project. He stated that the second ranked firm was recommended for the 123rd Street project.

A motion to approve the recommendation was made by Councilmember Cain and seconded by Councilmember Azeltine. Motion was approved with a unanimous vote of 8-0.

- B. Consider the recommendation for the selection of GBA as Design Consultant for the 123rd Street – Mission to State Line Road Improvement Project

A motion to approve the recommendation was made by Councilmember Filla and seconded by Councilmember Cain. Motion was approved with a unanimous vote of 8-0.

14. OLD BUSINESS – None

15. NEW BUSINESS

- A. Ordinance amending Chapter 4, Article 10 of the Code of the City of Leawood, 2000, by adding a new section 4-1008 entitled “International Swimming Pool and Spa Code, Section 305.2.4 Mesh Fence as a Barrier” and repealing other sections in conflict herewith (C)

Mr. Torrez stated that staff would like to delete mesh fences as allowable primary pool barrier. He stated that it was not in the code before and staff did not notice it with the recent code changes. He pointed out that it used to be in the International Residential Code. He explained that the ICC removed them from their code and added them to their own Pool and Spa Code. Mr. Torrez said he preferred not to wait to remove it from the code for fear of safety of children and residents.

Councilmember Sipple asked if any other municipalities in Johnson County allow mesh fences. Mr. Torrez stated that other cities adopt the code in the same manner as Leawood. He stated he would notify them of the change to Leawood’s code. Councilmember Sipple asked if there have been any accidents with mesh fencing. Mr. Torrez stated not that he is aware of and that there are not very many of these types of fences as the primary barrier in the City.

Mayor Dunn thanked Mr. Torrez for being proactive.

Councilmember Larson stated that she has not seen them in Leawood but mentioned they are popular in Florida used more as a fence within a fence. She thanked him for catching it.

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

- B. Ordinance amending § 13-102 of the Code of the City of Leawood, 2000, entitled “Incorporating Specifications and Standards,” regarding Public Improvement Construction Standards and repealing existing § 13-102 and other sections in conflict herewith (PW)

Mr. Ley stated that Public Works is requesting approval of the update. He explained that the prior updates were in 2015. He stated that the updates are notes, callouts and dimensions, and sidewalk ramp details were updated to better reflect how they are constructed in the field. He stated that the biggest change is removing the street light screw-in foundation to now have concrete footings. He stated that in speaking with contractors, there is no real difference in cost.

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

- C. Schedule Governing Body meeting on Monday, February 21, 2022 at 7:00 p.m.

A motion to approve Item 15C was made by Councilmember Rawlings and seconded by Councilmember Filla. Motion was approved with a unanimous vote of 8-0.

16. EXECUTIVE SESSION

Recess into executive session for the purpose of consultation with an attorney, deemed privileged in the attorney-client relationship, pursuant to the privilege exception, K.S.A. 75-4319(b)(2). The open meeting will reconvene immediately following the executive session in the City Council Chambers and on the public YouTube livestream.

A motion to recess into executive session for 20 minutes and reconvene into regular session was made by Councilmember Azeltine and seconded by Councilmember Cain. Motion was approved with a unanimous vote of 8-0.

At 9:40 p.m. the regular session reconvened in the Council Chambers.

Ms. Bennett stated that staff has asked that an ordinance be added to the agenda in light of a recent District Court opinion. Staff respectfully disagrees with the opinion and would like the City to reserve its right to appeal and not to acquiesce in the opinion. She stated, however, in light of the opinion, staff would ask the City to amend Section 2-102 with the title, Ordinance amending Section 2-102 of the Code of the City of Leawood, Kansas, 2000, pertaining to dangerous animals and repealing existing Section 2-102 and other sections in conflict herewith.

Councilmember Azeltine made a point of order. He asked if a separate motion is needed to amend the agenda first.

A motion to amend the agenda to include the added item was made by Councilmember Azeltine and seconded by Councilmember Larson. Motion was approved with a unanimous vote of 8-0.

A motion to approve amending the ordinance made by Councilmember Azeltine and seconded by Councilmember Harrison. Motion was approved with a unanimous roll call vote of 8-0.

Meeting was adjourned at 9:43 p.m.