

**MINUTES OF THE REGULAR MEETING
OF THE CITY COUNCIL
OF THE CITY OF FAIRWAY, KANSAS**

The Council of the City of Fairway, Kansas, held their regular meeting at 6:30 P.M. at 5240 Belinder Road, Fairway, Kansas, on Monday, August 21, 2023.

Present: Council Members Jenna Brofsky, David Watkins, Jonalan Smith, Kelly-Ann Buszek, Jason Rogers, Dan Bailey, Joe Levin and Tanya Keys.

Absent: None.

Presiding: Mayor Melanie Hepperly.

Staff Present: Nathan Nogelmeier, City Administrator; Richard Cook, City Attorney; J.P. Thurlo, Police Chief; Bill Stogsdill, Director of Public Works; Brice Soeken, Director of Parks and Recreation.

Visitors: Rick Allen, Right of Way Specialist; Chris Mann, Assistant Director of Public Works; Jeff and Claire Sifrit, KC Arborist.

CALL TO ORDER AND ANNOUNCEMENTS

Mayor Hepperly called the meeting to order and asked Councilmembers to remain standing after the Pledge of Allegiance in remembrance of Officer Jonah Oswald.

PLEDGE OF ALLEGIANCE

Mayor Hepperly led the Council in the Pledge of Allegiance.

PROCLAMATION IN MEMORY OF OFFICER OSWALD

Honoring Officer Jonah Oswald, Mayor Hepperly read a Proclamation stating police officers put their lives on the line every day to protect the citizens and to maintain law and order in Fairway and surrounding cities. The community has been struck by a profound loss and sadness with the passing of its dedicated and courageous Police Officer, Jonah Oswald. Officer Oswald served as a pillar of strength, commitment and dedication to protecting residents of Fairway and Northeast Johnson County. He displayed exceptional bravery and professionalism in the face of danger upholding the highest standards of law enforcement and acting as a true role model of the community. Officer Oswald not only patrolled the streets but was actively engaged with the community members fostering relationships built on trust and respect and empathy, which are the foundations of a safe and harmonious society. He demonstrated a deep and abiding commitment to justice, fairness and equality, ensuring that all individuals were treated with the dignity and respect they deserved. The annual recognition of National Police Week and National Peace Officers Memorial Day will have a new personal meaning to the community. The loss of Officer Oswald is felt not only by the law enforcement community but also by the entire community of Fairway.

Mayor Hepperly proclaimed the City's deep gratitude for the service and sacrifice of Officer Oswald and offered unwavering support for Officer Oswald's family, friends and colleagues affected by this loss. The City commits to perpetuate the legacy of Officer Oswald by continuing to work towards creating a community characterized by unity, compassion and understanding.

MONTHLY REPORTS OF STANDING COMMITTEES

CONSOLIDATED FIRE DISTRICT NO. 2, CHIEF CHICK

Mayor Hepperly stated that Chief Chick was not present at the meeting and she referred the Council to the report in the packet.

ADMINISTRATION AND FINANCE COMMITTEE, MR. NOGELMEIER

Monthly Report

City Administrator Nogelmeier referred to the report in the packet, subject to questions. He noted that the Administration and Finance Committee did not meet in July.

POLICE COMMITTEE, CHIEF THURLO

Monthly Report

No report.

PUBLIC WORKS COMMITTEE, MR. STOGSDILL

Monthly Report

Director Stogsdill referred to the report in the packet, subject to questions. He highlighted that over a three-week time period, the City collected well over 2,000 cubic yards of debris from the recent storms. He commended KC Arborists for their assistance, doing the bulk of the work with their grabber trucks.

Director Stogsdill also reported that the Capital Improvement Project will begin on Wednesday, weather permitting.

PARKS AND RECREATION COMMITTEE, MR. SOEKEN

Monthly Report

Director Soeken referred the Council to the report in the packet, subject to questions. He highlighted that a new employee, Renee Reis, has been hired for Vickie Tillery's position as Recreation Supervisor. Vickie will move to Administration. He addressed questions he received regarding storm damage at

the Shawnee Indian Mission, stating that due to the extent of damage, the State is seeking bids for clean-up. He hopes that debris clean-up and the damaged trees will be removed within the next couple weeks.

Responding to Councilwoman Brofsky's question, Director Soeken explained the Super Pass Agreement for the Pool and when participating city pools are not open the same number of days per week how it impacts the pool of money received by each city.

Responding to Councilman Bailey's question, Director Soeken said that the Summer Camps are held at the Pool and on the outdoor deck. The camps used to be held at the Park shelters, but those have become so popular that they are no longer an option. The City could definitely grow the program if more space was available. He thinks the success is based on word of mouth because the marketing aspect has not changed. He knows that other camps in the area are also full.

City Administrator Nogelmeier added that the success of the Summer Camp programs relates to the quality of the program offered to participants.

Director Soeken stated that the program could be doubled in size if there was space to do so. He added that the ratio of counselors to kids is second to none. While other camps on average have two counselors per 30 children, Fairway's Summer Camps have a minimum ratio of one counselor to 5 children.

Mayor Hepperly thanked and commended Director Soeken, Director Stogsdill and City Administrator Nogelmeier for the accomplishments and leadership this year, especially over the last few weeks. She also thanked Chief Thurlo for his leadership as he has been there for his police officers and the community.

MONTHLY REPORTS OF SPECIAL COMMITTEES

Tree Board

Director Stogsdill reported that the Tree Board met and discussed several topics. The Board has not yet contacted Prairie Village to ask how their full-time arborist monitors private trees. The Board discussed the fine and fee structure for Right of Way trees damaged by contractors and decided against any changes. The Board also finalized the recommended tree list and posted it on the City website.

Councilwoman Brofsky discussed a conversation she had with a new resident who moved into a new home and the Right of Way tree was damaged by the contractor. The tree was not removed and is now the homeowner's responsibility. The homeowner was not notified of this in advance. She asked if there was something the City could do to notify new homeowners of this situation.

Mayor Hepperly responded that because the tree is no longer a City tree, the City would not be responsible for notifying the homeowner.

Councilwoman Brofsky stated that she understands the City is not responsible for notifying the homeowner, but she wondered if something more could be done by the City.

Councilman Watkins explained that this disclosure issue has been discussed by the Tree Board and it is a private contractual matter. When the seller or builder is selling the property, they are required to disclose that type of information to the buyer. If the seller does not make the disclosure, the buyer would have a cause of action against the seller for lack of a full disclosure.

Councilman Bailey would like to look further at the laws concerning disclosures because he thinks it centers more around mechanical deficiencies of the home rather than trees. He suggested that the City have a map available that shows the Right of Way trees.

Director Stogsdill stated that the City maintains an Excel spreadsheet of the location, size and whether the tree remains standing or was removed. He said that Excel spreadsheet could be posted on the City's website.

Responding to Councilwoman Buszek's question concerning how the City is notified of a new resident, City Administrator Nogelmeier explained that the City downloads quarterly property data from the County. The download is just a data dump and determining property ownership changes would require staff to crosscheck the list of 1,800 homes with the previous version. Additionally, the ownership changes would have occurred weeks/months prior the data download and import.

Councilwoman Buszek thinks that property owners should know if their Right of Way trees are no longer owned by the City and suggested that the City do something to notify new or old residents of those situations.

City Administrator Nogelmeier agrees that putting the Excel spreadsheet online is a good idea; however, he isn't sure a new homeowner would think or know to look at the City's website for this information. He does not know of any other City that treats the Right of Way trees the same way as Fairway. The cities of Roeland Park, Shawnee and Overland Park residents do not trim their Right of Way trees every three years because that service does not exist in those cities. Staff routinely receives calls from realtors/banks and potential buyers inquiring about outstanding permits/assessments on properties. Staff could use this opportunity to suggest that the caller review the online spreadsheet to determine the ownership of the Right of Way trees on the property. However, that requires the realtor or the potential owner to be proactive, which most times does not happen.

Mayor Hepperly agreed that adding the spreadsheet to the website would be helpful and the Focus on Fairway newsletter and Constant Contact emails could remind homeowners to check to the ownership of their Right of Way trees.

Addressing Director Stogsdill's report that the Tree Board had decided not to allow the Governing Body the ability to reduce fees for violation of the Tree Ordinance, Councilman Smith asked for specifics of that discussion.

Councilman Watkins pointed out that currently, appeals of a Tree Ordinance violation do not allow for reduction of the fine and only allow for a determination whether the Tree Manager properly applied the Ordinance. The Tree Board discussed the impracticality of allowing an exception to the fine at the Council level because once an exception is granted reducing the fine, the Council has essentially written the Ordinance out of the Code and lead to future violators asking for reductions in the fine. Allowing discretion on the amount of the fine would make the Code unworkable.

Councilman Bailey noted that it was obvious that the last person to appeal a Tree Ordinance violation thought there was an opportunity for the Council to reduce the fine. Somewhere there is a breakdown on expectations and he thinks that needs to be fixed.

Director Stogsdill explained that he isn't certain that those who appeal a Tree Ordinance violation know that they can only appeal the decision and not the fine. He will be sure to let those who receive violations know that in the future.

City Administrator Nogelmeier explained that not allowing violators to appeal the fine is by design and alleviates the uncomfortable position a Councilmember might find themselves in if a neighbor or contractor appeals their fine. As legal counsel indicated in the past, if the Council deviates from the Ordinance, this could risk the appearance of being arbitrary and capricious in the execution of the Ordinance. The intentional purpose of the Ordinance and harsh penalty is to be a deterrent to damaging trees.

City Administrator Nogelmeier also stated that Director Stogsdill and his staff do a great job of being judicious in terms of application of the Ordinance. He agrees that the person who recently appealed the Tree Protection Ordinance violation seemed to think the Council had the ability to reduce the fine. He and staff will work on some modifications to the letter notifying the homeowner or contractor of the violation, so it will be clear that they cannot appeal the fine.

Councilman Watkins added that while the fine is harsh, it does not come close to recouping the City's investment in an individual tree. The Council could eliminate the Tree Protection Ordinance, but he does not think that is a good option. He likes the idea of having information on the website about Right of Way trees, but is concerned about liability for not having an accurate list.

Councilman Bailey thinks it would be nice if there was some sort of discretion in the middle, rather than charging the fine and allowing the contractor or homeowner to cut down the tree. He would prefer to see the fine go to trying to save the tree.

Councilwoman Brofsky agreed, stating that as a policy matter, if the goal is to save the trees, fining the builder \$5,000 is not ultimately going to save the tree. She is worried about the trees are not going to be maintained by the City and the next person can come in and remove them. She wondered how that helps the community as the City of Trees.

Mayor Hepperly responded that the City would likely spend more than the \$5,000 fine from the contractor to care for a damaged tree.

City Administrator Nogelmeier stated that the Ordinance was crafted in concert with Kim Bomberger from the Kansas Forestry Division. They examined the types of damage occurring under the drip lines of the trees and the probability of the tree suffering irreparable harm in the next 3, 5 or 7 years. The expectation was that the tree would become unhealthy and/or die within the next number of years and would likely fall off the inventory anyway due to the damage.

City Administrator Nogelmeier added that contractors applying for a building permit must acknowledge the Tree Protection Ordinance on the application and staff provides them with the Ordinance. No other Ordinances are handed to the contractor. The contractors know they cannot bring any equipment on site or start demolition until they have a one-on-one meeting with the Right of Way Specialist Allen, who jointly works with the contractor to set the tree protection area and advises the contractor of the fines if they violate the Ordinance. In 99 percent of the contractor violations, there is a lack of project management with subcontractors. The burden is on the contractor. Staff has literally spoon fed them every piece of information they need to avoid violating the Ordinance. If the contractor chooses not to pass that information along to the subcontractors, that is not the City's problem.

Very few of the violations are issued to residents who do something to their own tree. The City repeatedly publishes articles about trees in Fairway, far more than any other City in Johnson County. Unless the City asks the Right of Way Specialist Allen to stand at the construction site, there is nothing more the City can do to educate contractors about Right of Way trees.

Mayor Hepperly noted that this was a very good discussion and worth the time. She is aware that staff gets lots of questions about this subject.

APPROVAL OF CONSENT AGENDA

Mayor Hepperly outlined the two items on the Consent Agenda. The Consent Agenda items include the following: (A) Minutes of Previous Regular City Council Meeting; (B) Claims and Appropriations – Ordinance #1787 – July 2023.

Mayor Hepperly asked for public comment on the Consent Agenda items. Hearing none, she closed public comment on this item.

Mayor Hepperly asked for discussion from the Council. Hearing none, she asked for a motion.

Councilman Bailey moved that the Council approve Consent Agenda items A and B on the Consent Agenda. Councilman Rogers seconded the motion and the motion carried unanimously.

NEW BUSINESS

A. Proclamation – Public Works.

Director Stogsdill introduced audience members, Right of Way Specialist, Rick Allen, Assistant Director of Public Works, Chris Mann, Jeff Sifrit and his wife Claire, from KC Arborist.

Mayor Hepperly read a Proclamation recognizing the Public Works Department and KC Arborist for their efforts and dedication in clearing debris from the recent storm, ensuring the safety, well being and swift recovery of the community.

B. Consider Agreement with ETC Institute for a Citizen Satisfaction Survey.

City Administrator Nogelmeier explained that this item was discussed at the Administration and Finance Committee meetings to conduct a survey in 2024. As a result of those conversations and the upcoming Capital Improvement Projects and other projects, the decision was that the survey would be moved up to this fall. He noted that the cost from ETC is the same cost that was charged for the 2019 survey. He asked for Council's approval for an amount not to exceed \$10,000.

Mayor Hepperly asked for discussion from the Council.

Councilwoman Brofsky noted that the threshold of 200 surveys is only about 11 percent of the households in Fairway. She wondered if that percentage would result in a meaningful survey.

City Administrator Nogelmeier responded that the 11 percent threshold is the same as was used in the 2019 survey. The City received around 300 survey responses in 2019. Paper versions of the survey will be sent out and then they will conduct phone calls to reach the needed threshold. They will only accept one survey from each address and participants must be 18 years old.

Chair Bailey suggested that staff ask ETC to increase the threshold.

Mayor Hepperly asked for public comment. Hearing none, she asked for a motion.

Councilman Watkins moved that the Council approve the Agreement with ETC Institute for the Citizen Satisfaction Survey, not to exceed a cost of \$10,000. Councilwoman Brofsky seconded the motion and the motion carried unanimously.

- C. Consider Interlocal Agreement between the City of Mission, the City of Fairway, and the City of Roeland Park for the Design and Construction of a Joint Project Which Will Consist of Mill and Overlay, Spot Curb Repair, Sidewalk and Striping of Roe Between 63rd Street and Johnson Drive.

Director Stogsdill reported that this Interlocal Agreement involves the design portion of the CARS Project, which is not covered by CARS funding. The CARS Project is a four-city project, but Prairie Village is declining funding for the design portion because they do not want to take away from their other project in 2024. He described the location of the work. The engineering estimates for construction are included but the project will not move forward until spring of 2024.

Mayor Hepperly asked for public comment. Hearing none, she closed public comment on this item.

Mayor Hepperly asked for discussion from the Council. Hearing none, she asked for a motion.

Councilman Watkins moved that the Council approve the Interlocal Agreement between the City of Mission, the City of Fairway, and the City of Roeland Park for the design and construction of a joint project which will consist of mill and overlay, spot curb repair, sidewalk and striping of Roe Between 63rd Street and Johnson Drive. Councilman Bailey seconded the motion and the motion carried unanimously.

- D. CONSIDER DONATION IN MEMORY OF OFFICER JONAH OSWALD

Mayor Hepperly explained that Answering the Call has provided a means to make donations, 100 percent of which will go to Officer Oswald's family for their support. Mayor Hepperly recommended that the City of Fairway donate \$25,000 to Answering the Call in memory of Officer Jonah Oswald. She stated this donation does not require a motion, but she asked for consensus and agreement from the Council.

All Councilmembers agreed with the proposed donation of \$25,000 to Answering the Call and Mayor Hepperly asked that City Administrator Nogelmeier proceed with making the donation.

- E. CONSIDER COST OF STORM-RELATED BRUSH COLLECTION FROM RECENT STORMS.

Mayor Hepperly explained that she declared a local state of emergency after the initial storm because the damage was significant. Declaring the emergency also allowed for the City to be eligible for FEMA funding to assist with the storm-related clean up. She asked City Administrator Nogelmeier to provide a summary

of costs related to clean up of storm debris, hanging branches, brush collection, and removal of damaged trees.

City Administrator Nogelmeier reviewed that the storm related clean up included the following: (1) the immediate removal of trees from the street on the day of the storm; (2) removal of trees from vehicles and making sure roads were passable curb to curb the day following the storm; (3) debris collection after residents had been given time to get their limbs to the curb; (4) identifying and removal of broken limbs still hanging in the trees; and (5) upcoming removal of seriously damaged street trees. He anticipates these external costs will be between \$160,000 and \$180,000. This does not account for overtime by Public Works and Police Department, which he estimates to be about \$20,000. Total spending is anticipated to be around \$200,000.

As for the opportunity for assistance from FEMA, City Administrator Nogelmeier explained that a threshold of \$2.7 million needed to be spent collectively by public agencies and jurisdictions in order for the State to consider an emergency declaration in Johnson County. Unfortunately, not all cities responded in the same manner when it came to clean up. Some cities in the County provided curbside collection, but some of the larger cities did not. The collective amount spent as reported to the Johnson County Emergency Management Office was short of the \$2.7 million mark, so FEMA assistance will not be forthcoming.

City Administrator Nogelmeier explained that the 2023 budget includes a contingency line item of \$110,000, which will not cover the storm-related costs. From a finance perspective, he does not plan to make any transfers at this time from the General Fund Reserve. Invoices received for the tree work will be coded to contingency and he anticipates the contingency will be in the red quickly. He will monitor the situation. If the City does not exceed its budgetary threshold at the end of the year (which he does not expect to happen), the City will apply funds necessary to cover the contingency and then make a smaller transfer from the General Fund to the Capital Improvement Fund.

COMMENTS BY GOVERNING BODY

Mayor Hepperly asked for comments by the Governing Body.

Councilman Rogers discussed t-shirts that are being designed for Officer Oswald that will be sold by the City with all donations going to the family.

Councilman Watkins thanked Chief Thurlo, Officer Bayless, staff and neighboring jurisdictions for all of the support the City has received over the last three weeks.

Councilman Levin discussed a project he is working on for another way to help with funding Officer Oswald's family by planting trees. The intent is to make it a win-win for the family, the environment, and for Fairway. He discussed a collaboration with a group whose mission it is to plant a million trees. There have

been discussions about planting trees donated on behalf of Officer Oswald at Powell Gardens, where a dedicated area or grove can be set aside.

City Administrator Nogelmeier explained that the City would become an avenue for folks to donate X amount for a tree to be planted. The group has indicated they could apply for carbon credits and would be able to provide the trees and planting at very low expense, if any. One hundred percent of the dollars will be donated to the Oswald family. While the specifics are still being worked out, he thinks it is an incredible concept and would be very powerful for the Oswald family.

Mayor Hepperly stated that she is proud of the Police Department and the City for their response to the tragedy.

Councilwoman Buszek stated that she has heard from several residents and wants the Oswald family to know there will always be people out there who are eager to help and be there for them.

PUBLIC COMMENT

Mayor Hepperly asked for public comment for items not listed on the agenda. Hearing none, she closed public comment.

ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 7:45 P.M.

Mayor Melanie Hepperly

Attest:

Barb Fox, Recording Secretary