

**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, January 9, 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; Brice Soeken, Director of Parks and Recreation.

Visitors: Joe Elder, 2705 West 51<sup>st</sup> Terrace, Westwood, Kansas; Jim Hafner, 6242 Glenfield Drive.

**CALL TO ORDER AND ANNOUNCEMENTS**

Mayor Hepperly called the meeting to order.

**PLEDGE OF ALLEGIANCE**

Mayor Hepperly led the Council in the Pledge of Allegiance.

**FAIRWAY POLICE OFFICER RECOGNITION**

Chief Thurlo thanked the Council for the opportunity to recognize officers who were involved in an incident that occurred on November 24, 2022. On that date, Officers Schemper and Rubio stopped a vehicle on Shawnee Mission Parkway for a traffic violation. As they went up to the car, they noticed an open container. The investigation continued, and a passenger was asked to step out from the vehicle at which time Officer Rubio noticed a handgun in the individual's waist band. Officer Rubio ordered the passenger to show his hands and the passenger did not comply but instead reached for the weapon. Officer Rubio took control of the individual and a tussle ensued. Officer Schemper moved to a position to assist. Officers Metz and Oswald responded immediately to the scene and assisted with taking the individual into custody. The individual remained combative throughout the processing procedure. He was taken to a hospital for evaluation. There were no serious injuries, and, fortunately the incident did not escalate.

Chief Thurlo explained that the officers involved were professional throughout the incident and showed an extreme level of integrity. He presented each of the officers with a Certificate of Exemplary Performance, stating that their actions

bring great credit to themselves, the Fairway Police Department, and the City of Fairway.

Mayor Hepperly thanked the officers involved. She also thanked the Police Department for everything they do, explaining that residents appreciate the Department's work and that residents feel safe.

#### MONTHLY REPORTS OF STANDING COMMITTEES

##### CONSOLIDATED FIRE DISTRICT NO. 2, CHIEF CHICK

Mayor Hepperly informed that Chief Chick was not present at the meeting. She referred the Council to the report in the packet, subject to questions.

##### 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 City finished the year very strong from a financial position, reaching record high sales tax in several months in 2022. The next Administration and Finance Committee meeting is scheduled for January 25, 2023 at 6:30 P.M.

##### POLICE COMMITTEE, CHIEF THURLO

###### Monthly Report

Chief Thurlo referred to the report in the packet, subject to questions. He discussed the increase in police activity and stated that the officers have been diligent and active, which is part of Fairway's patrol style. They want guests who are coming into Fairway to feel safe, but also want individuals who are planning to do something wrong, to know that the police are present.

Councilman Watkins referred to the incident discussed earlier this evening for which the officer's received recognition. He asked if it was unusual to have four officers on duty at one time.

Chief Thurlo responded that it is unusual to have four officers on duty at the same time. He noted that Officer Schemper is newer to Fairway and while he has previous experience and tenure, he was doing some field training to get acclimated to Fairway. He is proud of the officers.

##### PUBLIC WORKS COMMITTEE, MR. STOGSDILL

###### Monthly Report

Mayor Hepperly noted that Director Stogsdill was not present at the meeting and referred to his report in the packet, subject to questions.

#### PARKS AND RECREATION COMMITTEE, MR. SOEKEN

##### Monthly Report

Director Soeken referred to the report as submitted, subject to questions. He explained that they are getting prepared for pool season and have started the hiring process. Work continues on the pool and when temperatures increase, he expects there will be more progress made.

#### MONTHLY REPORTS OF SPECIAL COMMITTEES

##### Tree Board

No report.

#### APPROVAL OF CONSENT AGENDA

Mayor Hepperly outlined the four 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 #1776 – December 2022; (C) Letter of Understanding with Johnson County Aging and Human Services for the administration of the Utility Assistance Program; (D) Letter of Understanding with Johnson County Planning, Housing and Community Development.

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

Mayor Hepperly asked discussion from the Council.

Responding to Councilwoman Brofsky's question, City Administrator Nogelmeier explained that the balance in the Utility Assistance Program is maintained at \$1,000. The City receives quarterly statements and when the balance gets down to zero, the City contributes another \$1,000. He thinks there is currently \$400 or \$500 in the program.

Mayor Hepperly asked for a motion.

Councilman Bailey moved that the Council approve Consent Agenda items A through D. Councilman Watkins seconded the motion and the motion carried unanimously.

#### NEW BUSINESS

- A. 2022 and 2023 Agreement with Kansas City Metropolitan Crime Commission.

Chief Thurlo explained that this is an annual Agreement with the Kansas City Metropolitan Crime Commission and the cost is a little over \$1,000 each year. The funds are used for metropolitan crime fighting, including the TIPS hotline and other things that the Commission supports for officers through the Kansas City metropolitan area. He was contacted by the Commission who discovered that the City was inadvertently not billed for or sent the 2022 Agreement. Therefore, the Commission sent the 2022 Agreement and he expects to receive the 2023 Agreement in the next week or so.

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

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

Councilman Watkins moved that the Council approve the 2022 and 2023 Agreement with the Kansas City Metropolitan Crime Commission. Councilman Rogers seconded the motion and the motion carried unanimously.

B. Building Permit Extension for 5450 Aberdeen.

City Administrator Nogelmeier stated that this permit extension is for 5450 Aberdeen and staff has no concerns about granting the extension.

Mayor Hepperly asked the applicant to address the Council.

Joe Elder, 2705 West 51<sup>st</sup> Terrace, Westwood, Kansas, stated that he is the contractor for the project. He explained there have been supply chain and scheduling issues with the individuals/companies he uses for the work.

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

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

Councilman Watkins moved that the Council approve the building permit extension for 5450 Aberdeen, Fairway, Kansas. Councilman Smith seconded the motion and the motion carried unanimously.

C. Discussion Concerning HOA Covenants.

Mayor Hepperly explained that this discussion regarding HOA Covenants was added to the agenda because City Administrator Nogelmeier was notified last week about a bill that will be introduced in Topeka concerning the restrictive covenants of HOA agreements. She recalled that this issue was discussed several years ago and at that time, the City had researched the issue. She understands

that some cities were contacted about the bill but other cities, like Fairway, were not contacted.

City Administrator Nogelmeier explained that the current law provides a mechanism for HOAs to change the restrictive language in their covenants, plats and deeds. HOAs can redact the documents and refile them with the County with no refiling fee being charged. The current law does not address what happens if the HOA is inactive and the proposed bill addresses that situation. The proposed bill will keep the original mechanism intact, but adds a provision that cities may, if they have determined that an HOA is defunct, have the restrictive language redacted from covenants, bylaws, and declarations of HOAs. The City would have any redaction and refiling work completed by its legal counsel. The process would not delete the original documents but would designate the redacted document as the primary source. If a title search is conducted, the new redacted document would be referenced.

City Administrator Nogelmeier explained that Mission Highlands HOA is now defunct. He has not been able to locate the Mission Highlands HOA Covenants in the City's records and he has not been able to locate them with the County either. He did locate and review the deed and Articles of Incorporation, neither of which contain restrictive covenants.

City Administrator Nogelmeier reviewed a sampling of the Reinhardt HOA plats and found no restrictive language on the plats. He also reviewed the covenants for the remaining HOAs in Fairway; however, he is not certain he has updated copies. When the original law was passed, HOAs were given 30 days to change their Bylaws, Covenants or plats and get them refiled with the County. He does not know what was communicated to the HOAs or if they made those revisions.

Roeland Park contacted the City and has asked for support from the Governing Body. He plans to gather more information to determine what financial impact there would be for the City. He understands the City's legal counsel would need to search County records, plats, bylaws and the declarations and covenants of the HOAs, particularly for Mission Highlands. The City would likely reach out to the active HOAs to determine if they have already made changes. Should the City decide to move forward with the Mission Highlands HOA properties, he will need to determine whether the City would have to submit 400 or so individual documents to the County for each of the properties, or if one document for all of those properties would be sufficient.

City Administrator Nogelmeier explained that he has already told Roeland Park and two of the legislators involved that he did not think the City would be opposed to looking into the issue, but advised that the Governing Body had not yet discussed it, specifically from the economic standpoint. He understands the bill has been pre-filed in the House of Representatives. If the legislation is enacted, he assumes there will be public interest to push the City to get any necessary redactions made. The City will need to determine the costs involved

and whether those costs would fit within the City's existing budget for legal services.

Responding to Mayor Hepperly's question, City Administrator Nogelmeier confirmed that there is existing law that makes any restrictive language in the HOA records unenforceable and thus, both the City and residents are protected.

Mayor Hepperly explained that HOA agreements are between private citizens and HOAs are independent entities that do not involve the City. Based on that, the City will need to be careful how the situation is handled. Finally, there are financial considerations for the City that will need to be considered.

City Administrator Nogelmeier explained that he is not asking the Governing Body for anything this evening, and he is not certain the HOAs have any problematic covenants or restrictions without more research. If the Council wanted to issue some sort of statement of public support by a Resolution, the earliest that could be considered and adopted would be at the February meeting.

Mayor Hepperly added the issue is being brought forward this evening so the Council is aware of it. Conversations have taken place with other cities; however, Fairway was not aware of the bill until recently and is now a little behind the game.

Councilman Smith pointed out that the Mission Highlands HOA is defunct, so any restrictive covenants would not be enforceable. He asked what Roeland Park was asking the City to solve.

Councilwoman Brofsky thinks the idea is to remove any restrictive covenants that were put in place years ago that state that a person cannot buy a home on the basis of their race. And, while she agrees that the legal problem has already been addressed by the courts, she considers it a human dignity issue and that the covenants should have never stated that someone could not purchase a home because of their race.

Mayor Hepperly agreed that the restrictive covenants have already been addressed, which is why the language in the proposed bill states that the City "may" take additional steps to redact any restrictive covenants that appear in the records. Therefore, the Council needs to consider the cost of that process.

Councilman Smith agreed that the restrictive covenant language should have never been included; however, he also thinks the problem has already been solved by the Supreme Court.

Councilman Watkins explained that the restrictive covenants have been invalidated for a long time. The factor of the defunct HOA comes in because there is no entity to act if the HOA documents have offending restrictive covenant language that needs to be expunged. The HOA is responsible for removing language and, as long as the HOA is active, the City would not be involved. If

Mission Highlands is the only inactive HOA, it would be the only HOA that the City would need to look into in detail.

Mayor Hepperly pointed out that the City would have to also consider that it would be using taxpayer dollars for a private entity.

Councilwoman Brofsky agreed that the City should be conscious of spending taxpayer dollars; however, she thinks the City should ask residents what they care about. She thinks it would be painful for someone to buy a home and see the deed said, for example, that you could not buy the home because you were Jewish. The language is still there and is still present. So, even though it is not enforceable, it could still be painful and offensive. Since everyone agrees that it should not have been there in the first place, she thinks it is worth seeing whether or not the City could make the redactions work within the budget.

Mayor Hepperly indicated that whether the redactions could work within the budget would be part of a future discussion.

City Administrator Nogelmeier explained that he did not find the restrictive language in any of the deeds he reviewed. The homes have been sold over the years and the language has been removed from the deeds during the course of those sales.

City Administrator Nogelmeier also pointed out that there are some homes in Fairway that are not within an HOA so the City would also need to look at the deeds of those homes to see if they contain the restrictive language. He understands philosophically the benefits of moving through the process. If there will be a significant legal expense involved, it will be a policy decision from the Governing Body as to how to spend taxpayer dollars.

City Administrator Nogelmeier explained that he could gather more information and this issue can be discussed further at the Administration and Finance Committee meeting later this month. If a decision is made to move forward with an indication of support, the issue could be considered at the February City Council meeting.

Councilman Watkins pointed out that if there needs to be an indication of support, the City has already adopted a Non-Discrimination Resolution and a Non-Discrimination Ordinance and those are consistent with support.

Councilman Smith thinks that a consideration of support for the bill could be that the State provide funding for the City's legal expenses because the issue is broader than a City issue.

City Administrator Nogelmeier stated that the legal expenses could be minimal. He talked with Zoning Counsel Krstulic who indicated that she would need more information. He has reached out to the State Representatives and the Johnson County Recorder's office to find out what the process would involve. He noted

that this would only involve properties in the former Mission Highlands HOA and those that are not within an HOA. The active HOAs would have to cover any expenses themselves. If the County requires only one document that can be filed for all 400 plus properties within Mission Highlands, that would not be significant work. However, if the County requires individual documents for each property, as well as revisions to the covenants and bylaws, that will involve legal counsel and could result in significant cost.

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

#### COMMENTS BY GOVERNING BODY

Mayor Hepperly asked if there were comments from the Council on any item. Hearing none, she closed the Governing Body comments.

#### PUBLIC COMMENT

Mayor Hepperly asked for public comment for items not listed on the agenda.

Jim Hafner, 6242 Glenfield Drive, asked who he should talk with concerning guidelines for how big a house can be built after the existing house is torn down.

City Administrator Nogelmeier responded that Mr. Hafner would speak with the Planning Commission, or he could also speak with City Clerk Young or Director Alani at City Hall who could respond to his questions.

Mr. Hafner next stated that he heard at a different meeting that Fairway has never lowered its mill levy, and that it is the only City in Johnson County that has never lowered its mill levy over the years.

Mayor Hepperly stated that she has been on the Council since 2009 and she agrees that the mill levy has not been lowered since she has been on the Council.

Mr. Hafner indicated that his concern is that smaller homes are being replaced by multimillion dollar homes and he thinks that would affect the City's budget in a positive way. He wondered why the mill levy could not be lowered.

Mayor Hepperly agreed that valuations continue to increase; however, the City's costs also continue to increase. She stated that each year during the budget process the budget begins at zero and is then built with the services that residents want.

Councilman Watkins gave an example of streets that were repaved this year. The bid to repave the seven streets came in at 50 percent higher than budgeted. The City had to delay two of those streets to next year in hopes that the costs will come down. He agreed that the property values in general have increased, but the City's expenses just to maintain the status quo have gone up similarly. Each year



during the budgeting process the City looks at the mil levy and asks the question whether it can be lowered, stay the same, or be increased. Fortunately for the last few years, the City has not needed to increase the mill levy because of the increases in property valuation.

Mr. Hafner also asked what the status is for the former Houlihan's restaurant, which has been vacant for two years or more.

Mayor Hepperly responded that Houlihan's is owned by a group of private investors and for whatever reason, they seem to be content with it being empty. The City has met with them and the private investors know that the City is not happy about the situation. She understands that three different entities were interested and submitted plans to the investors but all of those deals fell through.

Mayor Hepperly asked if there were additional comments from the public. Hearing none, she closed the public comment portion of the meeting.

#### EXECUTIVE SESSION – ATTORNEY CLIENT PRIVILEGE

Councilwoman Keys moved that the Council recess into Executive Session to obtain legal advice related to the Shawnee Indian Mission, pursuant to the Attorney/Client Consultation Exception, K.S.A. 75-4319(b)2. The Executive Session will include Attorney Rich Cook, City Administrator Nogelmeier and Councilmembers. The open meeting will resume in Council Chambers at 8:30 P.M. Councilman Rogers seconded the motion and the motion carried unanimously.

The Council recessed into Executive Session at 7:30 P.M.

The Council reconvened at 8:30 P.M.

#### ADJOURNMENT

There being no further business to come before the Council, the Mayor adjourned the meeting at 8:31 P.M.

---

Mayor Melanie Hepperly

Attest:

---

Barb Fox, Recording Secretary