

**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, February 14, 2022.

Present: Council Members Jenna Brofsky, David Watkins, Kelly-Ann Buszek (via Zoom), Dan Bailey, Joe Levin and Tanya Keys.

Absent: Jason Rogers.

Presiding: Mayor Melanie Hepperly.

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

Visitors: Bob Johnson, 5332 Falmouth Road; Kevin Wempe, Gilmore Bell, 2405 Grand Boulevard; Skip Hensler, 5657 State Park Road; Jerry and Grisel Wiley, 5403 Windsor Lane; Joe Alburty, 5905 Fontana; Sally Nelson, 5516 Belinder.

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.

PROCLAMATIONS

Black History Month

Mayor Hepperly read a Proclamation designating the month of February 2022 as Black History Month in the City of Fairway.

Princess Day in Fairway

Mayor Hepperly read a Proclamation designating February 26, 2022 as Princess Day in the City of Fairway.

MONTHLY REPORTS OF STANDING COMMITTEES

CONSOLIDATED FIRE DISTRICT NO. 2, CHIEF CHICK

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

ADMINISTRATION COMMITTEE, MR. WATKINS

Monthly Report

Councilman Watkins reported that the Administration Committee did not meet in January.

City Administrator Nogelmeier referred the Council to the report in the packet, subject to questions.

POLICE COMMITTEE, MS. KEYS

Monthly Report

Councilwoman Keys reported that the Police Committee did not meet in January.

Chief Thurlo referred to the report in the packet, subject to questions.

PUBLIC WORKS COMMITTEE, MS. BUSZEK

Monthly Report

Councilwoman Buszek referred to the report as submitted, subject to questions.

PARKS AND RECREATION COMMITTEE, MR. SOEKEN

Monthly Report

Director Soeken referred to the report in the packet, subject to questions.

FINANCE COMMITTEE, MR. LEVIN

Monthly Report

Councilman Levin reported that the Finance Committee did not meet in January.

City Administrator Nogelmeier referred to the report in the packet subject to questions.

MONTHLY REPORTS OF SPECIAL COMMITTEES

Tree Board

No report.

## APPROVAL OF CONSENT AGENDA

Mayor Hepperly outlined the seven items on the Consent Agenda. The Consent Agenda items include the following: (A) Minutes of Previous Regular and Special City Council Meetings; (B) Claims and Appropriations – Ordinance #1756 – January 2022; (C) Contract with Woodside Tennis Club for Tennis Instruction; (D) Contract with Bridget McGovern for Princess Day; (E) Contract with TREKK for Additional Storm Sewer CCTV and Project Prioritization; (F) Agreement with Burns and McDonnell for 2022 CIP Project Design; (G) Engagement Letter with Marr and Company, P.C. for 2021 Financial Audit.

Mayor Hepperly asked for public comment on the Consent Agenda items. Hearing none, she asked for discussion from the Council. Hearing none, she asked for a motion.

Councilwoman Brofsky moved that the Council approve the items on the Consent Agenda. Councilman Watkins seconded the motion and the motion carried unanimously.

## NEW BUSINESS

- A. Public Hearing: TIF Project Plan.
- B. First Read: Ordinance #1760 – An Ordinance of the Governing Body of the City of Fairway, Kansas Making Findings, Adoption a Redevelopment Project Plan Pursuant to K.S.A. 12-1770 et seq., and Amendments Thereto, and Approving a Redevelopment Agreement.
- C. First Read: Development Agreement for 4210-4220 Shawnee Mission Parkway.

Mayor Hepperly opened the Public Hearing. She indicated that each of these Agenda items would be discussed together and asked City Attorney Cook to discuss these items.

City Attorney Cook explained that there is no such thing as a perfect development agreement and the current agreement has been reached as a result of compromise. He explained that a good development agreement does three things: (1) ensures that a quality project is developed and is fully realized; (b) protects the City's financial interests; and (c) protects the City's and the broader community's policy interests. He believes the proposed development agreement checks each of those boxes.

The development agreement is for a project that represents a new product in the Kansas City market and requires that the project remain an Active Adult community for the lifetime of the agreement. The developer agrees to comply with a Fair Housing Act exception which requires at least 80 percent of the units have at least one occupant aged 55 or older. The development schedule also assures that the project is completed in a timely manner.

The development agreement contains language designed to ensure that the developer will not benefit from the TIF Plan more than what the City has determined is needed to make the project financially feasible. In addition, the agreement requires an annual payment that will fund one full time police officer and addresses other increased costs of the City.

Finally, the development agreement protects the policy interests of the community related to sustainability, diversity, community, stormwater and City services, as follows:

*Sustainability*

The developer will be required to apply for and achieve Green Globe – 2 Globes certification or an alternative certification agreeable to the City.

*Diversity*

The developer agrees to adhere to provisions of Fairway’s Code regarding the prohibition of discrimination, including Fairway’s recently passed Non-Discrimination Ordinance. The agreement also includes a use restriction prohibiting practice or treatment that seeks to change an individual’s sexual orientation or gender identity.

*Community*

The developer must work with Johnson County Transit for public transit opportunities and submit those for approval to the City. The developer may be required to contribute up to \$500,000 for any unanticipated traffic improvements that result from the project. The project will be subject to a restrictive covenant that goes beyond those uses currently allowed under applicable zoning. The developer agrees to participate in the civic, charitable, educational philanthropic and economic development of Fairway and, at a minimum, must at all times be a dues-paying member of the Northeast Johnson County Chamber of Commerce and make an annual donation to the Shawnee Indian Mission Foundation in an amount of at least \$5,000. The developer further agrees to work with the Parks & Recreation Department to design activities on site for residents of the community and general public, utilizing some of the health and recreation amenities planned for the project.

*Stormwater*

The developer agrees to submit a watershed analysis as part of the Planning Commission requirements and will address any identified issues prior to construction.

*City Services*

Due to the anticipated increase in population, the developer will contribute an annual Public Safety Fee to fund a new police officer position in the City. The fee includes a 2 percent escalator for the life of the TIF. The developer will also make annual payments to the Consolidated Fire District No. 2 for the life of the TIF.

City Attorney Cook explained that no one is 100 percent happy with all the terms of the development agreement. However, with the experienced attorneys involved, as well as Dave Arteberry from Stifel Nichols who has analyzed the developer's projections, this development agreement is on par or better than any other development agreement that he has been involved with.

City Administrator Nogelmeier presented information showing the expected revenues and net benefits from the TIF.

Responding to Councilwoman Brofsky's question concerning whether the project had a reasonable rate of return, Mr. Wempe explained that he was not able to make that determination and suggested that question would be best directed to Dave Arteberry.

Mayor Hepperly explained that Mr. Arteberry was not able to attend the meeting this evening but will be in attendance at the March Council meeting. She suggested that questions concerning analysis of the developer's projections be held until the March meeting.

Skip Hensler, 5657 State Park Road, asked if other developers had inquired about the site.

Jerry Wiley, 5403 Windsor Lane, asked if there were similar projects in the area.

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

Mayor Hepperly asked for a motion to continue the Public Hearing to the March 14, 2022 meeting.

Councilman Watkins moved that the Public Hearing on the TIF Project Plan be continued to the March 14, 2022 meeting. Councilman Levin seconded the motion and the motion carried unanimously.

D. Consider Ordinance #1757 – An Ordinance Approving a Special Use Permit for Large Utility Structures at 5519 State Park Road and 4200 Shawnee Mission Parkway.

City Administrator Nogelmeier explained that at the January 31, 2022 meeting, the Planning Commission considered the applicant's request for a Special Use Permit for two junction boxes. The applicant had already installed the junction boxes and obtained the required right-of-way (ROW) permits; however, during

inspection, the City's ROW specialist found that the junction boxes exceeded the allowed size, requiring the Special Use Permit.

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

Mayor Hepperly asked for a motion.

Councilman Bailey moved that the Council approve Ordinance #1757, an Ordinance approving a Special Use Permit for large utility structures at 5519 State Park Road and 4200 Shawnee Mission Parkway. Councilman Levin seconded the motion and the motion carried unanimously.

E. Consider Ordinance #1758 – An Ordinance Regulating Solar Energy in the City of Fairway.

City Administrator Nogelmeier explained that the City has received inquiries and some applications for solar energy systems as they are becoming more popular with residential property owners. Currently, the City has no regulations for solar energy systems. Permits have been issued in the last few years on roof mounted and free-standing solar panels. Staff treated the free-standing system as an accessory structure with respect to setbacks and height. The City did receive a complaint on the free-standing system after the property owner later increased the number of solar units.

The Planning Commission began discussing solar panel regulations at its October 2021 meeting and those discussions continued through 2021. The Planning Commission reviewed regulations from neighboring cities. The proposed regulations apply to the R-1 Residential District and will require site plan review and approval from the Planning Commission. A Public Hearing for the proposed regulations was held at the January 31, 2022 Planning Commission meeting.

Mayor Hepperly asked for discussion from the Council.

Councilman Bailey asked if the regulations would apply to solar boxes that are attached to the side of homes.

Councilwoman Brofsky asked whether there would be additional fees for the application if the Ordinance was approved.

Director Alani explained that there would be an application fee of \$150. He also pointed out that a site plan would be required; however, the site plan could simply be pulled from the Johnson County website depicting an aerial view of the home.

Councilwoman Buszek stated that she has concerns about the additional costs involved with the Ordinance. She knows there are benefits to solar power and believes that residents should be allowed to install them wherever they want without having to pay additional costs.

Discussion followed concerning the process for returning this item to the Planning Commission for further discussion. City Administrator Nogelmeier suggested that those Councilmembers who had concerns about the proposed Ordinance email their concerns to him and he would forward them to the Planning Commission.

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

Mayor Hepperly asked for a motion.

Councilwoman Buszek moved that the Council remand Ordinance #1758 – An Ordinance Regulating Solar Energy in the City of Fairway back to the Planning Commission for further review and revision. Councilwoman Brofsky seconded the motion and the motion carried unanimously.

F. Consider Ordinance #1759 – An Ordinance Extending the Current Mask Mandate to March 16, 2022.

City Administrator explained that the current mask mandate expires on February 18, 2022. He outlined the current pandemic numbers from Johnson County, providing a comparison with those at the peak of the pandemic.

Mayor Hepperly asked for discussion from the Council.

Councilwoman Brofsky would like the mandate to be continued. From discussions she has had with medical professionals, they have suggested that masks continue to be required for a little while longer.

Councilwoman Buszek agreed.

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

Joe Alburty, 5905 Fontana, stated he was supportive of extending the mandate.

Sally Nelson, 5516 Belinder, stated that she arrived at the meeting a little early and took time to walk through the Fairway Shops. She discussed that many of the shops had different signage related to masks, noting that each business had dealt with the situation in different ways. She suggested that the mask mandate be allowed to expire.

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

Mayor Hepperly asked for discussion from the Council.

Following brief discussion, Mayor Hepperly asked for a motion.

Councilwoman Brofsky moved that the Council approve Ordinance #1759 – An Ordinance Extending the Current Mask Mandate to March 16, 2022.  
Councilwoman Buszek seconded the motion.

Mayor Hepperly requested a roll call vote.

Councilman Watkins voted no.  
Councilman Bailey voted no.  
Councilman Levin voted no.  
Councilwoman Keys voted no.  
Councilwoman Brofsky voted yes.  
Councilwoman Buszek voted yes.

The motion failed 4 to 2.

G. Ward 2 City Council Vacancy Interviews.

Mayor Hepperly explained that because Councilman Cotter had resigned in December, there was a vacancy on the Council. The Code sets out the procedure for filling a vacancy. She explained that eight residents had submitted applications; however, one resident later withdrew their application. The seven remaining applicants were interviewed by Ward 2 Councilmember Bailey, Council President David Watkins, and Mayor Hepperly. Those seven applicants were narrowed to two: Beau Jackson and Jonalan Smith. The entire Council will be allowed to interview the two remaining applicants at this evening's meeting.

Mayor Hepperly asked Beau Jackson and Jonalan Smith to come to the podium, introduce themselves, and then stand for questions.

Beau Jackson, 5418 Neosho Lane, stated that he has lived in Fairway for almost seven years with his wife and children. Mr. Jackson is an attorney at Husch Blackwell in Kansas City, Missouri.

Jonalan Smith, 5809 Alhambra Drive, stated that he has lived in Fairway for eight years with his wife and children. He grew up in Colby, Kansas and is a pharmacist.

Mayor Hepperly asked if Councilmembers had questions for the applicants.

Councilman Brofsky explained that being on the Council was a time commitment and asked the applicants if they had considered the amount of time involved in serving on the Council.



Mr. Jackson responded that he was aware of the time commitment involved. He has discussed the situation with his wife and agreed that he would be able to make that commitment.

Mr. Smith also stated that he was aware of the time commitment involved and has discussed the situation with his wife. He would be able to commit to the time needed to serve on the Council.

Councilwoman Brofsky explained that the City is committed to diversity. She asked how the applicants would contribute to the diversity of the Council.

Mr. Jackson responded that he served in the Peace Corps in Africa and dealt with many diverse people through that experience. He also specializes in international law and travels overseas regularly, communicating and transacting business with many different nationalities.

Mr. Smith explained that during his pharmaceutical career and involvement on several Boards that he has worked with people from diverse and minority communities.

Mayor Hepperly asked if there were further questions from the Council. Hearing none, she asked for public comment.

Grisel Wiley, 5403 Windsor Lane, stated that she believed both candidates were qualified for the job and that either one would be a valuable member of the City Council.

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

Mayor Hepperly explained that a request was made by Councilmembers for a secret ballot. While this is not her preference, upon further communications with the Council she has agreed to this process. Ballots were distributed to each Councilmember to cast their vote, then collected and delivered back to Mayor.

Mayor Hepperly tallied the votes and announced that Jonalan Smith was selected to fill the Ward 2 Council vacancy.

#### COMMENTS BY GOVERNING BODY

Mayor Hepperly asked if there were comments from the Council on any item.

Councilwoman Buszek thanked the Public Works Department for their work during the recent snow storm.

#### PUBLIC COMMENT

Mayor Hepperly asked if anyone in the audience would like to make public comment on any items not on the agenda.

Hearing none, she closed the public comment portion of the meeting.

ADJOURNMENT

Councilman Watkins moved to adjourn. Councilman Levin seconded the motion and the motion carried unanimously.

There being no further business to come before the Council, the meeting was adjourned at 9:19 P.M.

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Mayor Melanie Hepperly

Attest:

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Barb Fox, Recording Secretary