

**City of Westwood, Kansas**  
**City Council Meeting**  
**4700 Rainbow Boulevard**  
**December 10, 2020 – 7:00 p.m.**  
**Held Remotely Via Zoom**

Council Present: David E. Waters, Mayor  
Lisa Cummins, Councilmember  
Jeff Harris, Council President  
Jason Hannaman, Councilmember  
Laura Steele, Councilmember  
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, CAO/City Clerk  
Greg O'Halloran, Chief of Police  
John Sullivan, Director of Public Works  
Michelle Ryan, City Treasurer  
Ryan Denk, City Attorney

**Call to Order**

Mayor David E. Waters called the meeting to order at 7:00 p.m. on December 10, 2020. The City Clerk called the roll. A quorum was present.

**Comment on Non-Agenda Items**

Any comments for the Governing Body on non-agenda items were to be submitted to Ms. Schneweis by 5:00 pm on Thursday, October 8, 2020 to be shared during the meeting. Comments were to be limited to five minutes in length, as read.

No comments were made

**Approval of November 12, 2020 City Council Meeting Minutes**

Minutes from the November 12, 2020 Council Meeting were included in the agenda packet. Motion by Councilmember Hannaman to approve minutes documents a submitted. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

**Treasurer's Report**

Mrs. Ryan provided a review of the November 2020 Treasurer's report and offered to answer questions.

Motion by Councilmember Hannaman to approve Appropriations Ordinance No. 721 for November 2020 in the amount of \$217,839.89. Second by Councilmember Cummins. Mrs. Herring performed a roll call vote, motion carried by a 5-0 vote.

**City Attorney Report**

**Consider Government Enforcement Services Agreement for Johnson County Local Health Officer Orders and County Board Health Orders**

On November 13, 2020, the Johnson County Board of County Commissioners, sitting as the Johnson County Board of Public Health, adopted Johnson County Board of Public Health Order No. 002-20 (the "Health Order"). Among other things, the Health Order established certain social distancing requirements and limitations on gatherings for individuals, businesses, and activities. The Health Order became effective in all of Johnson County as of 12:01 A.M. on Monday, November 16, 2020, and shall remain in effect through 11:59 P.M. on January 31, 2020, unless otherwise amended, revoked, or replaced.

The Health Order was issued by the County pursuant to certain statutory authority, namely K.S.A. 65-119. This type of order could generally be enforced by the district attorney pursuant to K.S.A. 65-127 and, depending on the situation, K.S.A. 65-129. However, there has been concern over the practical ability to enforce such rules given the backlog of cases currently pending in district court (which has seen eliminations of or, at best, severe reductions in, trials).

However, pursuant to K.S.A. 19-101d, the Board of County Commissioners has the power to enforce certain of its "resolutions" by prosecution in the Johnson County Codes Court. To help alleviate district court pressures, and presumably to better allow the County to enforce its own Health Order, on November 19, 2020, the County adopted Resolution No. 108-20 establishing noncompliance with the Health Order as a violation of the Johnson County Code.

That notwithstanding, there is some question as to whether the County can enforce its own resolutions in Johnson County Codes Court within city limits, absent an agreement by the applicable city to allow for that (as cities generally have their own home rule powers within their borders). Accordingly, the County has requested that cities within Johnson County approve an agreement with the County allowing for County enforcement of the Health Order, as incorporated into the County Code. That Agreement is presented tonight to the City Council for consideration and approval. The City Attorney has worked with other city attorneys and the County on preparing and finalizing an acceptable form of Agreement, which provides for the following:

The County, and not the City, will be responsible for enforcement of the Health Order within the City limits. The City agrees to reasonably cooperate with the County in the sharing of information related to enforcement, and to also assist in educating its citizens as to the requirements of the Health Order. The Agreement is limited only to Johnson County Board of Public Health Order No. 002-20. No other orders would be covered by this Agreement (there are not currently any in effect, but if there should be, the County and the City could amend the Agreement appropriately). Either party can terminate the Agreement at any time, if deemed in the best interests of the City or County.

Motion by Councilmember Harris to approve the Government Enforcement Services Agreement for Johnson County Local Health Officer Orders and County Board Health Orders. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

**Consider Resolution No 88-2020 establishing fees for the location of small cell facilities in the City's right-of-way**

The purpose of the attached Resolution is to establish fees specifically for the small cell facilities in the City, both for new facilities and for attachment to existing facilities. The City has received requests for the placement of small cell facilities which may come in the form of a new monopole or attachment to an existing facility such as a streetlight pole.

Use of City facilities and the City's Right-of-Way for small cell is heavily regulated, both by the State of Kansas and the Federal Government. This fee resolution contains alternative pricing based on the continuing existence and validity of FCC Regulations that establish safe harbors for what a municipality may charge for placement of small cell facilities. On September 27, 2018, the FCC issued a Declaratory Ruling that established safe harbor amounts for both one-time and annual small cell fees. In doing so, the FCC did not create any binding regulations on what a municipality may charge. However, the safe harbor amounts presumptively comply with Federal laws and regulations and, therefore, would not be the subject of a challenge by small cell providers. This resolution sets out fees that are in excess of the safe harbor amounts but contains a caveat that small cell providers may choose to pay the safe harbor amount instead of the fee listed in the resolution. If the FCC's Declaratory Ruling is overturned by a court, however, the small cell provider would need to pay the City the difference between the fees it previously paid, and the fees as listed in this resolution.

The City is obligated to manage the rights-of-way, balance the needs of its users, and to preserve and promote the public health, safety, and welfare. The City is also responsible to its citizens for the use and management of public facilities, to protect public finances, and to ensure appropriate compensation for the private use of public property. Allowing providers to attach communication equipment to City streetlight poles or place a new pole, when such secondary use will not interfere with the intended public use, properly managing such collocation, and obtaining consistent and market-based compensation for the use of the City's street lights, minimizes incursions into the right-of-way, furthers the City's regulatory and proprietary obligations, and promotes the public health, safety and welfare. Applicable state and federal law and regulations require the City to exercise its responsibilities in a reasonable, nondiscriminatory, and competitively neutral manner. Thus, the City must charge users the same fees for the same or similar uses.

Motion by Councilmember Harris to adopt Resolution No. 88-2020, establishing fees for the location of small cell facilities in the City's Right-of-Way

#### **Consider Small Cell Facility Deployment and Master Right-of-Way Agreement with AT&T**

The City has been approached by New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T), which is interested in placing small cell facilities in the City's Right-of-Way to provide 5G service. AT&T anticipates that most facilities will be attached to existing poles, but some new monopoles – dedicated small cell poles – may be necessary. The attached agreement is the result of a group negotiation of several City Attorneys in Johnson County, spearheaded by Overland Park, with AT&T.

The City has previously entered into franchise agreements with telecommunications providers, including one with Mobilitie (a different entity than AT&T Mobility despite the similar names) in 2017. However, the State of Kansas enacted a statutory change in 2019 prohibiting the use of franchise agreements for small cell facilities. Based on this change in statutory scheme, this Agreement was drafted through negotiations between AT&T and several cities in the area. Other cities have already approved this agreement, with Overland Park doing so earlier this week and Lenexa last week. Staff expects that additional cities will approve the same or similar agreement in the coming months, including Leawood, Olathe, Merriam, Prairie Village, and Shawnee.

This is a non-exclusive agreement with AT&T that will govern the construction, operation, installation, and maintenance of AT&T's small cell facilities within the City. As set out in the City's new Fee Resolution, Resolution 88-2020, passed tonight, AT&T will pay for both attachment of facilities to

existing poles and placement of new poles. AT&T will also pay an annual fee for the continued placement of its facilities in the ROW.

Pursuant to this Agreement, AT&T will pay an annual fee of \$25 per site for ROW use, plus an annual fee of \$270 per site. AT&T will also reimburse the City for any reasonable costs incurred to inspect potential sites and make those sites ready for attachment.

Motion by Councilmember Harris to authorize the Mayor to enter into the Small Cell Facility Deployment and Master Right of Way Agreement with AT&T. Second by Councilmember Cummins. Motion carried by a 5-0 voice vote.

#### **Administrative Report**

Mrs. Herring provided a review of the November 2020 Administrative report and offered to answer questions.

#### **Consider Request for Fence Variance – 4942 Booth**

On December 4, 2020, City staff received an application for a fence variance for 4942 Booth St. Homeowner Karl Phares is proposing to install a new 5' steel fence in his backyard. This application requires a variance for:

- Material – fences exceeding 4' in height are to be made of wood or live material (Westwood Zoning Ord. Section 4.3.9.A.2).
- Height – a 5' fence would only be allowed in the rear yard of the property (Westwood Zoning Ord. Section 4.3.9.B.2); and
- Placement – the 5' rear yard fence is proposed to come nearer to the front property line than the rear line of the primary structure (Westwood Zoning Ord. Section 4.3.9.C.3).

Mr. Phares has received acknowledgement from the two adjoining residential neighbors of his proposed fence. The proposed fence does not pose an impediment to the right of way. The proposed fence does not impact any established trees on the property. The proposed fence does not pose any sight line issues.

Mr. Phares was in attendance and offered to answer any of the Governing Body's questions.

Motion by Councilmember Hannaman to approve the fence variance for 4942 Booth as submitted. Second by Councilmember Steele. Motion carried by a 5-0 voice vote.

#### **Informational Item: League of Kansas Municipalities 2021 Statement of Municipal Policy**

Each year, before the legislative session begins, the League of Kansas Municipalities (LKM) updates and publishes its Statement of Municipal Policy. This document is intended for use by LKM when working with legislators on behalf of Kansas cities and counties and our interests.

This past summer, LKM invited officials from cities all around the state to review and workshop the Statement of Municipal Policy. I personally sat in on committees to review and update policy positions pertaining to public officers & employees and utilities and, as such was able to learn about other updates and changes discussed.

Notable updates to the Statement include:

- Police Reform. New section added to voice support for local police departments and to state that federal or state reform should be focused on providing resources, incentivizing transparency, encouraging good police practices, and promoting racial equity and justice.
- Emergency Management. Sentence added to promote cities' role in responding to disasters.
- Transportation Safety. Sentence added to be inclusive of all users of the transportation system.
- Electric Charging Station Infrastructure. New section added to support expansion of same.
- Stormwater Management. Sentence added to endorse state measures to incentivize and enable investment in green infrastructure.

### **Public Safety Report**

Chief O'Halloran referred to the November 2020 Public Safety report and offered to answer questions.

### **Public Works Report**

Mr. Sullivan referred to the November 2020 Public Works report and offered to answer any questions.

### **Consider 2021 Johnson County CARS funding Agreement for Improvements on State Line**

State Line Road is slated to be resurfaced in 2021 with a two-inch mill and overlay. The project is a joint project with Kansas City, Missouri. The engineering estimate of this work is \$191,000.00.

As a designated County Assistance Road System ("CARS") Program road, this work on State Line Road qualifies for up to 50% financial assistance from Johnson County. Since the roadway is located within two jurisdictions, Westwood will be reimbursed by Kansas City, MO for the work performed within its jurisdiction and Westwood will be reimbursed up to \$55,000.00 for the work within its jurisdiction by Johnson County. Enclosed is the agreement for Johnson County CARS funding for the State Line Road work.

Motion by Councilmember Steele to authorize the Mayor to execute the Agreement between Johnson County, Kansas, and the City of Westwood, Kansas, for the Public Improvement of State Line Road from its North City Limits to its South City Limits. Second by councilmember Wimer. Motion carried by a 5-0 voice vote.

### **Committee Reports**

#### **a. Administration & Compensation Committee**

Councilmember Hannaman had nothing to report.

#### **b. Business & Community Affairs Committee**

Councilmember Cummins noted the committee met on December 9<sup>th</sup> and discussed replacing street banners and messaging to residents about how to stay informed on city issues.

#### **c. Public Safety Committee**

Councilmember Harris had nothing to report. Mr. Harris thanked Mr. Sullivan, Mrs. Herring and Chief O'Halloran for their leadership throughout the year.

**d. Public Works Committee**

Councilmember Steele noted the committee met on December 3<sup>rd</sup> to discuss and provide input to staff about a request for proposals for consultant services for the MARC Planning Sustainable Places project on 47<sup>th</sup> Street. Councilmember Steele, Mr. Sullivan and Mrs. Herring attended a Vision Zero workshop hosted by MARC for city staff and elected officials. Vision Zero is a strategy to eliminate traffic fatalities and severe injuries.

**e. Parks & Recreation Committee**

Councilmember Wimer thanked the Governing Body and staff for participating in and facilitating the Mayor's Holiday Tree Lighting video. The video was recorded and produced by Westwood resident as Jackson Swain. Councilmember Wimer noted that the committee is holding a holiday decoration contest and encouraged all in attendance to submit any entries to city staff.

**Mayor's Report**

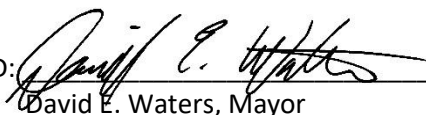
Mayor Waters noted that upon successful passage of a bond issue in January 2021, the Shawnee Mission School District will build a new Westwood View Elementary School.

Mayor Waters thanked the Governing Body and staff for their hard work over the past year and wished them a happy holiday season.

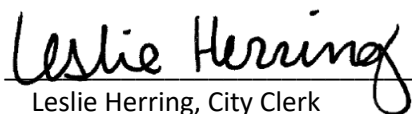
**Adjournment**

Motion by Councilmember Harris to adjourn the meeting. Second by Councilmember Hannaman. Motion carried by a 5-0 voice vote. The meeting adjourned at 8:52 pm.

APPROVED: \_\_\_\_\_

  
David E. Waters, Mayor

ATTEST: \_\_\_\_\_

  
Leslie Herring, City Clerk