

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
May 16, 2016**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 16, 2016 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

ROLL CALL

Acting Mayor Ted Odell called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Jori Nelson, Serena Schermoly, Steve Noll, Eric Mikkelson, Andrew Wang, Brooke Morehead, Sheila Myers, Courtney McFadden, Ted Odell and Terrence Gallagher.

Staff present was: Tim Schwartzkopf; Chief of Police; Captains Wes Lovett, Byron Roberson and Myron Ward; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

INTRODUCTION OF STUDENTS & SCOUTS

No Scouts or students were in attendance.

PUBLIC PARTICIPATION

No one was present to address the Council and public participation was closed.

CONSENT AGENDA

Terrence Gallagher asked for #4 to be removed. Brooke Morehead moved the approval of the Consent Agenda for May 16, 2016, items 1 - 3:

1. Approve Regular City Council Meeting Minutes - May 2, 2016
2. Approve Claims Ordinance #2942
3. Approve an Interlocal Agreement with the City of Overland Park for the maintenance and operation of shared streetlights that are owned and maintained by the City of Overland Park.
4. Ratify the Mayor's reappointment of the following committee members:

A roll call vote was taken with the following members voting "aye": Weaver, Nelson, Schermoly, Noll, Mikkelson, Wang, Myers, Morehead, McFadden, Odell and Gallagher.

Terrence Gallagher noted a discrepancy in the cover memo and confirmed that the appointee was Thomas O'Brien, not Thomas Brown.

Terrence Gallagher moved the City Council ratify the Mayor's reappointment of the following committee members:

Thomas O'Brien	Environment/Recycle Committee thru 4/2018
Deborah English	Environment/Recycle Committee thru 4/2018
Rick Howell	Tree Board thru 4/2018
James Breneman	Planning Commission/BZA thru 4/2019
Melissa Brown	Planning Commission/BZA thru 4/2019
Gregory Wolf	Planning Commission/BZA thru 4/2019

The motion was seconded by Eric Mikkelson and passed unanimously.

Eric Mikkelson noted that additional persons had entered the Chambers and asked Acting Mayor Ted Odell to reopen Public Participation. Mr. Odell consented.

PUBLIC PARTICIPATION

Kaitlyn O'Toole, 7746 Chadwick, read a statement encouraging the City Council to repeal the current ordinance which prohibits breed specific animals, specifically pit bulls. She noted there is no valid evidence to support the ban. The Center of Disease Controls tracks animal bites by breed. It recently reported that the ten year old study upon which much of the current breed-specific legislation is based does not identify specific breeds that are most likely to bite or kill and thus is not appropriate for policy-

making decisions. The Center reports that there is currently no accurate way to identify the number of dogs of a particular breed, and consequently no measure to determine which breeds are more likely to bite or kill. Information from the National Care and Control Association for animal welfare and public safety was distributed. Ms. O’Toole urged the Council to reconsider its existing breed specific animal ban. Mr. Mikkelson asked those present who supported Ms. O’Toole’s comments to raise their hands. Several members of the audience did so.

COMMITTEE REPORTS

Council Committee of the Whole

COU2016-35 Consider authorizing City Administrator to sign a Video Services Provider Agreement with Google Fiber Kansas, LLC

Brooke Morehead moved the City Council authorize the City Administrator to sign a Video Services Provider Agreement with Google Fiber Kansas, LLC. The motion was seconded by Sheila Myers and passed unanimously.

Mayor’s Report

No Mayor’s report was given in Mayor Wassmer’s absence.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf reported the recent “Tip-a-Cop” event held at Johnny’s raised \$1500 for Special Olympics and thanked those that participated.
- Friday, May 20th will be “cookie with a cop” at 11 o’clock at Great Harvest Bread.
- May 31st will be the annual Torch Run for Special Olympics.
- Wednesday, May 15th the Department will recognize “National Police Week” with a flag raising ceremony at the Municipal Complex at 7:30 a.m.

Public Works

- Mr. Bredehoeft announced another staff vacancy with the resignation of a laborer.
- The Park & Recreation Committee held their annual Parks tour last week.

- The neighbors on Howe Drive cul-de-sac returned sufficient responses opposed to the construction of a sidewalk at that location in conjunction with the current street project. No sidewalk will be constructed.

ADMINISTRATION

- Quinn Bennion reminded the Council of the upcoming Ground Breaking ceremony for the Meadowbrook project on Monday, May 23rd at 11 a.m.

Terrence Gallagher noted that the Planning Commission minutes reflected an increase in the lot sizes and asked if that would have an impact on the Performa for the number of lots required. Mr. Bennion replied that he would look into that and get back to him.

- Mr. Bennion noted that the Johnson County Park & Recreation District has conducted a study on the club house and determined the best course of action would be to demolish the existing facility. They are now focusing on whether to rebuild the facility immediately, rebuild the facility later or not rebuild the facility. He encouraged Council members and residents to share their thoughts with the Park Board.

Mr. Bennion went on to state that the Board was split on the question of constructing the facility which is estimated to cost \$2.5M to \$5M and had asked him for input from the City Council. He replied that the Council had not discussed the issue officially, but felt that most of the residents, Council included, believed from the presentations by the Park District that there would be an activity center on site.

Ted Odell noted that he was under the impression that the clubhouse would remain and was part of the Parks Master Plan.

Jori Nelson moved the City Council officially express its desire to have a community/activity center offered as part of the development of Meadowbrook Park and understood that this facility would be available to the public. The motion was seconded by Brooke Morehead and passed unanimously.

Terrence Gallagher noted the large number of white boxes appearing in the right-of-way with conduit. He feels they are both an eyesore and safety hazard. They appear to be related to the Google installation and asked if the city had any requirements on the location, size and color of these. Mr. Bennion responded that boxes within an identified footprint and size are allowed by code with Planning Commission approval and these

boxes fall into that category. Staff has worked with Google to secure the best location for these whenever possible trying to locate the boxes in side yards. Mr. Gallagher noted there are several along 77th from Mission to State Line within two feet of the curb. He would like to look at this more at a future meeting as they impact the appearance of Prairie Village neighborhoods.

OLD BUSINESS

COU2016-31 Consider approval of contract with Olsson & Associates for Meadowbrook project inspections

Quinn Bennion noted that this item was discussed at the prior City Council meeting where there was the request for the contract to be reviewed by independent legal counsel. The city's Assistant City Attorney Shannon Marcano has received the agreement and made minor revisions which are reflected in the document in the packet. The changes have been accepted by Olsson & Associates. The agreement covers inspections of the street improvements, conspan construction, the pond improvements and the stream restoration.

Eric Mikkelson moved the City Council approve the Construction Inspection Services Agreement with Olsson Associates for Meadowbrook Public Improvements at a cost of \$179,995.50. The motion was seconded by Steve Noll and passed unanimously.

COU2016-32 Consider approval of contract with Superior Bowen for the Meadowbrook Park street and stormwater improvements.

Mr. Bennion noted that this contract was also reviewed by Assistant City Attorney Shannon Marcano and approved as to form with no changes.

Eric Mikkelson moved the City Council approve the Construction Contract with Superior Bowen Asphalt Company for the 2016 Meadowbrook Street Improvements (MBSTREET) and the Stormwater Improvements (MBDRAINX) in the amount of \$5,899,774.34. The motion was seconded by Andrew Wang and passed unanimously.

Breed Specific Animal Restrictions (Topic introduced at meeting)

Mr. Mikkelson stated that he has had several conversations with residents on the city's ban on pit bulls and its method of determining an animal to be dangerous. He feels that the city may have an unjust ordinance on the books in its prohibition of ownership of pit bull dogs in Prairie Village. He stated that only 3 of 20 Johnson County cities still have similar prohibitions in place. Mr. Mikkelson moved to have this issue be added to the Council's priority list and discussed by the City Council within the next few months. The motion was seconded by Andrew Wang. He suggested that during this discussion that the group present at this meeting be invited to speak as well as other individuals knowledgeable and experienced in this field, to have the city attorney research the issue and to hear from the city's animal control and police officers.

Terrence Gallagher agreed that professionals need to be included in the discussions, but asked that the discussion be delayed until after the completion of the Council's review of the 2017 budget.

Chief Schwartzkopf stated that he and his staff are meeting with representatives of the group present this evening on May 25th to discuss their concerns and possible ways for them to be addressed. He noted that the City of Mission Hills is also looking at this issue and the issue of dangerous animal and requested that whatever action is taken be approved by both cities as the department services both cities. He would like

to have the ordinance reviewed collectively and noted that Mayor Wassmer has requested its review.

Sheila Myers noted that she had heard that insurance companies will charge higher premiums for households with specific breeds of animals and would like to have this verified and input from them also.

Quinn Bennion noted that committee agendas will be full with consideration of the budget through the first meeting in July. Mr. Odell stressed the need for broad input from all parties.

The motion was voted on and passed by a vote of 10 to 1 with Mr. Odell voting in opposition.

City Attorney Katie Logan responded to Mr. Gallagher's earlier question regarding the Meadowbrook project confirming the number of homes proposed is still the same as that agreed upon in the plat and designated on the plat.

NEW BUSINESS

Appeal of Animal Control determination regarding Dangerous Animal Designation

Ted Odell reviewed the process to be followed in the appeal and called upon Chief of Police Tim Schwartzkopf. The city's municipal code Section 2-103 states: "Where City records indicate a dog or cat has attacked or bitten any person and/or domestic animal without provocation, all known facts shall be considered in determining whether the dog or cat is a "dangerous animal". The Animal Control Officer or Chief of Police of the City shall have the authority to determine whether or not any animal in the City should be classified as a "dangerous animal" and read the applicable code addressing the criteria for the declaration. If the declaration is upheld by the Governing Body the animal must meet the conditions required to secure a dangerous animal permit

or the animal must be relocated outside of Prairie Village. Chief Schwartzkopf reviewed the requirements that must be met for a dangerous animal permit to be approved. If the determination is overruled, no restrictions shall be required.

Mr. Kendall Schaaf, 8405 Juniper Lane, addressed the City Council to appeal the designation of his German Shepherd, Otto as “dangerous” per case 2016-00589 which was made on April 18th and based on two incidents. After reviewing the information, they have serious concerns with the veracity of the incident that occurred on 3/22/2015. This incident involved four dogs of similar size that had a mutual engagement through a wrought iron fence. Their two dogs and the Stanfield’s two dogs remained on their respective properties; all four were engaged in the incident. Mr. Schaaf noted that at no time did the Stanfield’s inform them that it was their opinion Otto was either the sole aggressor or the responsible part for the injury to Kaun. In fact, on more than one occasion they have stated that given the four dogs’ involvement, there was no reasonable way to determine who bit whom. They do not believe this incident satisfies the condition as outlined in Section 2-103(a) as an attack “without provocation” to be used in the determination of a dangerous animal. Mr. Schaaf noted that no incident report on the occurrence of 3/22/2015 has been submitted as documentation in this determination and views its lack of inclusion as representation that it was not considered in the determination made. They do not recall any other incident with Otto other than the one occurring on March 4, 2016; that would meet the criteria listed in Section 2-103.

They do not dispute the facts of the incident occurring on March 4, 2016 which occurred as a result of a failure of owner control. If Mrs. Schaaf had remained in control of Otto, the incident simply wouldn’t have happened. They do not believe that the failure of an owner should result in an animal being deemed “dangerous”. Without the

incident of March 22, 2015 or any other incident, the criteria for the city's ruling would not be met.

The point of this designation is to guarantee public safety and compliance. Mr Schaaf stated they voluntarily agree to comply with conditions (a) through (h) as outlined in Section 2-121. Additionally they are mending the public-facing areas of their fence so that their animals cannot reach beyond the fence line. In viewing the totality of the situation, they do not believe Otto to be a "dangerous" animal and should not be labeled as such. They believe that compliance with these actions meets the expectation of safety required by the City and desired by them.

Mr. and Mrs. Schaaf believe the determination made by CSO Jasminski was based in part on bad information and ask that the City Council grant their appeal of the determination.

Community Service Officer Allie Jasminski presented her report on the incident of March 4, 2016 in responding to a call from Emily Covington of 8445 Juniper Lane reporting a dog bite from earlier in the morning where her dog Oskar, a miniature Dachshund was bitten by a neighbor's dog, Otto, a German Shepherd mix owned by Patricia and Kendall Schaaf of 8405 Juniper.

On March 4, 2016, Patty Schaaf was walking both her dogs in the neighborhood, Otto had a leash affixed to his collar but was not being held by Patty. When passing Emily Covington's residence, Otto ran into the yard and bit Oskar who was unattended in his front yard with his leash shut in the front door. The injuries incurred were severe.

Otto was placed on home impound for rabies observation and Mrs. Schaaf issued a NTA for her dog running loose. While investigating this bite case, a neighbor notified Ms. Jasminski of Otto biting another dog in March 2015.

It was reported that on March 22, 2015, there was an incident on the property line between the Schaaf's residence and the Stanfield's residence at 8409 Juniper Lane. The Schaaf's two dogs and the Stanfield's dogs were on their respecting sides of the fence when Otto bit the Stanfield's dog Kaun, through the fence resulting in a laceration of 2 to 3 inches on the hip requiring stitches.

Because the bite to Oskar is considered a "vicious" bite and the previous engagement with Kaun, three of the four factors to consider in determining a "dangerous animal" were met and the declaration of dangerous animal was made on April 18, 2016.

Jori Nelson confirmed that the first incident was more than a year ago.

Patricia Schaaf reported what happened on March 4, 2016, taking full responsibility for Otto's actions as she was not restraining him with his leash while out walking.

Mr. Schaaf stated they do not dispute the reports on the actions related to the March 4, 2016 incident and noted that this is the first opportunity they have had to address the incident of March 22, 2015, which they feel is misrepresented in the Police Department report. Mr. Schaaf restated that the occurrence involved four animals with all of the animals on their own property. In his communication with the neighbor's regarding the incident it was agreed by both parties that it was not possible to determine which animal bit Kaun and that the bite was not considered serious by Kaun's owners. He does not understand how and why this incident is relative to the incident that occurred on March 4, 2016 approximately a year later.

Officer Jasminski reviewed the three factors considered in her ruling. The animal bite occurred without provocation; the animal did not have permission to be on the

property where the bite occurred. Based on previous incident the animal demonstrated a propensity, tendency or disposition to attack. The animal had a prior history of bites.

Eric Mikkelson asked what evidence there was regarding the March 22, 2015 bite. Chief Schwartzkopf replied that the animal bit another animal without provocation on their property resulting in serious injury. Upon investigation of the bite, staff learned of the previous bite. That incident is not part of the 2016 declaration.

Mr. Mikkelson asked if either of the owners whose animals sustained bites were present. They were not. He stated that without the owners' testimony and lack of an official report on the incident, he does not feel there is evidence to support the determination.

Jori Nelson asked if there have been any instances where Otto has been aggressive with children or others. Officer Jasminski responded, Otto is a large dog, but has not displayed aggression. Chief Schwartzkopf noted that Sgt. Washington had spoken with the Schaaf's twice regarding this process. Mr. Schaaf responded that Officer Jasminski and city staff have been accessible. His frustration was that he was unable to respond to the report. He feels the City staff made their determination in good faith, but made it on inaccurate information.

Mrs. Schaaf noted they have owned Otto for five years without incident. Mr. Schaaf stated they are committed to safety and will comply with the conditions stated in Section 2-121.

Andrew Wang confirmed that there is no reliable presence of someone witnessing the bite that occurred in 2015.

Eric Mikkelson believes the city's determination was made in good faith by the Animal Control Officer and this is not a court of law where the 2015 incident would be inadmissible evidence leaving only one of the criteria to be met in an incident that was caused by owner error; therefore, move that the determination of Otto as a "dangerous animal" be overturned. The motion was seconded by Andrew Wang.

Mr. Wang stated public safety made the only determination it could following the process established which provides an opportunity for the owners to appeal. This is another reason for the city to re-evaluate its dangerous animal regulations. He feels the city needs to have the authority to place restrictions on animals without a full declaration of "dangerous animal" being made. Steve Noll confirmed that if the appeal is granted and the determination is overturned, the city does not have the ability to place any restrictions on Otto. Mr. Mikkelson replied that the City has the Schaaf's word in open testimony that they will abide by the restrictions listed in the code as a matter of public record.

Courtney McFadden noted this is not just a matter regarding the actions of animals, but also on the responsibilities of animal owners to ensure public safety. She does not support overturning a decision of the Animal Control Officer who followed policy.

The motion was voted on and passed by a vote of 7 to 4 with Morehead, McFadden, Odell and Gallagher voting in opposition.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks:

VillageFest Committee	05/19/2016	5:30 p.m.
Environment/Recycle Committee	05/25/2016	5:30 p.m.
Council Committee of the Whole	06/06/2016	6:00 p.m.
City Council	06/06/2016	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present the works of “The Saturday Group” in the R. G. Endres Gallery during the month of May. The artists’ reception will be Friday, May 13th, from 6:30 to 7:30 p.m.

Recreation sales have begun. Pool will open for the 2016 season on Saturday, May 28th at 11 a.m.

Congratulations to Terrence Gallagher, Meghan Buum and Wes Jordan on their graduation from the Northeast Johnson County Leadership Program on Thursday, May 19th at the Overland Park Marriott from 11 a.m. to 1 p.m.

Join the celebration at the Ground Breaking ceremonies for the Meadowbrook Project on Monday, May 23rd at 11 a.m.

City offices will be closed on Monday, May 30th in observance of the Memorial Day Holiday. Trash services will be delayed one day that week as Waste Management also observes the Monday holiday.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 8:50 p.m.

Joyce Hagen Mundy
City Clerk