

The City of West University Place

A Neighborhood City

CITY COUNCIL

Susan Sample, Mayor
Bob Kelly, Mayor Pro Tem
Burt Ballanfant, Councilmember
Brennan Reilly, Councilmember
Mardi Turner, Councilmember

STAFF

M. Chris Peifer, City Manager
Alan Petrov, City Attorney
Thelma Lenz, City Secretary

CITY COUNCIL MEETING MINUTES

The City Council of the City of West University Place, Texas, met in regular session on **Monday, February 8, 2016**, in the Municipal Building, 3800 University, West University Place, Texas beginning at **6:30 p.m.**

Agenda Items were as follows:

Call to Order. Mayor Sample called the meeting to order at 6:30 p.m. in the City Council Chambers. Council and Staff in attendance were: Mayor Pro Tem Kelly, Councilmembers Ballanfant, Turner and Reilly, City Manager Peifer, City Attorney Petrov, City Secretary Lenz, Police Chief Walker, Public Works Director Beach, Chief Building Official Chew and Executive Asst. / Asst. City Secretary Evelyn.

Councilmember Turner led the Pledge of Allegiance.

City Secretary Lenz confirmed that the notice of this meeting was duly posted in accordance with the Texas Government Code, Chapter 551.

1. Public Comments

This was an opportunity for citizens to speak to Council relating to agenda and non-agenda items.

Susan Oshfeldt, 4101 Tennyson, spoke about the issue of parking over sidewalks. She said parking over the sidewalk on Academy where she lives is the only way to park on her driveway. She said several houses on the west end were built without sidewalks thereby not impairing those residents' ability to use their driveways for normal parking purposes, like guest parking or washing the car. She said she does not have any relief except to tear down a beautiful 27-year-old oak tree by her driveway or get cited a ticket because she needs to park in her driveway to wash her car. Ms. Oshfeldt said parking on the street is not a good idea because of flash floods that happen several times a year in the City. She said the Americans with Disability Act (ADA) does not require a person to have a sidewalk and if it is a violation of ADA for her to park across her sidewalk, then she wants the City to take her sidewalk out because so she can use her sidewalk like every other resident of West U.

Judy Lee, 4104 Rice, spoke regarding parking over sidewalks. She said when cars are parked on both sides of her street, her neighbors have trouble getting out of their driveways and the ambulance and fire trucks almost can't get through. She said Rice floods a lot so if they park in front of their house, their car would likely flood. She said it is important to note that it is a matter of fairness and being able to use the driveway that they bought a long time ago and forced to build it the way it is. Ms. Lee said she believes, however, there is a compromise and she would hope that before the City would issue citations, it would work with residents who are trying to be good neighbors. Ms. Lee said parking on the street could also create a security hazard and encourage

vandalism when it's dark. She said parking on the street is also a concern for people who are handicapped or having mobility issues.

Alida Drewes, 6112 Fordham, spoke to say that she agreed with the last two comments about parking across the sidewalks, because she was forced to get a sidewalk against her will. She said additional concrete adds to street flooding and when people park on the streets during heavy rains, cars are damaged costing home owners thousands of dollars. She said the sidewalks are uneven and are a liability. Ms. Drewes also talked about the sculpture on Sunset and said it is a wonderful addition to the community and she prefers that the sculpture be allowed to stay.

2. Street Parking and Parking Violations

Matters relating to Parking Etiquette Program, designated drop off zones, parking on sidewalks, and guidance to staff regarding parking violations. *Discuss and take any desired action.*

City Attorney Petrov presented and gave his opinion on the City's potential liability for allowing people to park over sidewalks on short driveways. He said a policy was issued by the then City Manager in 2004, which took the position that cars parked over the sidewalk in those instances where driveways were shorter than the length of a car would not be considered illegally parked, so it would not be a violation.

City Attorney Petrov said the 2004 policy is basically an administrative interpretation and that city managers interpret the codes and how the city will enforce those codes all the time.

City Attorney Petrov said in his research of similar situations, he found that it is not uncommon amongst cities to have policies where those type situations are not considered violations given the totality of the circumstances, in that cars would be forced to be in other positions that may be just as difficult with respect to traffic. He said essentially the policy that was put in place in 2004 is a legally defensible policy and does not in and of itself create liability for the City. Mr. Petrov said there could at times be some specific incidences that might have to be addressed with some kind of accommodation under the ADA, but as a blanket rule the way the City has been interpreting this policy does not create a liability situation.

Public Works Director Beach spoke in reference to the 2004 policy regarding the installation of sidewalks and said the policy was made official by the City in August of 2008 per Ordinance 1879.

Mr. Beach said staff recently surveyed the number of corner lots (only) and there are 1,200 lots with driveways – 591 were in compliance and 421 were not. He said of the 421 corner lots that do not meet the parking requirement, 158 are “old stock” cottage homes. He said the rationale is that if the cottage homes are rebuilt they will then meet the requirement of the ordinance for parking, which would leave non old-stock homes in violation at 263.

Councilmember Ballanfant said over time all requirements would be addressed on a lot by lot basis as home ownership changes. Mr. Peifer pointed out that that would happen through redevelopment not change of ownership, because an old house can be bought and utilized as is but if it's torn down or significantly redeveloped, it would require that everything be brought up to code.

Councilmember Reilly said it is a State law that prohibits parking on sidewalks that was enacted in 1991* and the City policy wasn't changed for some time after that, but there are residents in the meantime that built houses still subject to that State law. He asked Mr. Beach how many homes were built after the State law was enacted and before the City adopted the Ordinance in 2008. Mr. Beach said he would research the answer. **Note: At the meeting of February 22, 2016, Councilmember*

Reilly asked that the Minutes be amended to note that after research he found that the 1991 State law was codified in 1995 and that the law prohibiting sidewalks is part of the Vernon's 1948 Code.

Mayor Sample asked were the new homes built in the 90's not required to have sidewalks. She said when the City had the sidewalk overhaul under Councilmember Ballanfant (then Mayor Ballanfant) it seems the City was adding sidewalks to side homes that didn't have sidewalks. Councilmember Reilly said people were required to have sidewalks, but the City wasn't building them. He said the residents were required to build the sidewalks. Mr. Beach said he will research what transpired with the sidewalks and the construction of homes in the 90's.

Councilmember Reilly asked City Attorney Petrov to speak on cases related to the Americans with Disabilities Act. Mr. Petrov said there have been instances where individuals have brought to the attention of a city a certain route, if you will, where the route was being utilized and was not ADA compliant and those cities were required to put in curb-cuts, etc., to accommodate individuals on an individual basis.

Councilmember Reilly asked City Attorney Petrov if Council was to receive an email from a resident who has a disability and said that the parking of vehicles on sidewalks was a problem, could the City revise its policy of not enforcing the restrictions under the State law of parking on sidewalks to no longer permit parking on the sidewalks. Councilmember Reilly said the City is never allowed under the State's statute to grant an exemption by ordinance from the no parking on sidewalks rule, but it seems that the City has done this with the administrative policy. City Attorney Petrov said he wouldn't say that. He said staff interpreted the requirements such that the situation is either placing the cars over the driveways or placing them in positions on the street, which may be just as much a traffic problem, so the City has taken the position to leave it up to the homeowner to decide where to place the vehicle in those situations.

Councilmember Reilly asked City Attorney Petrov to confirm whether it's the discretion of the police officer to make the decision to ticket violators or if it's an official policy of the City. Mr. Petrov said it can be done either way. He said it could be left up to the police to handle in a case-by-case situation, but in discussions with Chief Walker, Chief Walker would rather have a better guideline for his guys to go by rather than have them pick and choose out in the field. Councilmember Reilly said that's just part of the job.

Regarding the ADA issue, Mr. Petrov said the City has a responsibility to look at the individual circumstance and may have to adjust the policy in a given location for that individual to make an accommodation or the City may have to adjust the sidewalk or curb cuts to accommodate wheel-chairs and such. He said the City doesn't have to scratch the entire policy, but it might have to be tailored in specific circumstances.

Councilmember Reilly said despite a lot of debate from two councils ago about this 2004 policy, it was never officially approved or rejected by any City Council and was a creation by City staff.

Councilmember Reilly asked if there are any other parking laws that this City has an official administrative position regarding the non-enforcement of State laws. Mr. Petrov responded not that he is aware of.

Mayor Pro Tem Kelly said he believes this particular issue has come to the forefront because it is a very big issue with some people and it has been for some time.

Councilmember Reilly said he doesn't feel the City should have a position on the enforcement of a State law. He said he would leave it up to the discretion of staff and police on a case-by-case basis as to whether to give a ticket.

Councilmember Reilly said there are enough people in the City that have disabilities so that if the City continues with the policy in place, those people will be encouraged to go out and pursue claims against the City and the City will have to eventually enforce the law as written by virtue of complaints from citizens who need to use those sidewalks. He said the City needs to be honest and City Council ought to repeal the non-enforcement policy.

Mayor Pro Tem Kelly asked if there is anything to repeal. Councilmember Reilly said there is a policy on the books, which was approved by Michael Ross as City Manager that allows cars to park on the sidewalks when the home has a short driveway.

Councilmember Reilly moved that the City Council vote to direct staff to revoke the 2004 policy, which permits parking on the sidewalks in violation of the State law. Councilmember Ballanfant seconded the motion.

Mayor Pro Tem Kelly said Councilmember Reilly makes a strong, sound and legal type of argument, but he thinks the problem will eventually correct itself. He said if the ADA situation comes up and somebody gives a compelling argument, then that would be the time Council will decide what needs to be done, even if it means taking up the sidewalks. He said he would be generally opposed to changing the policy in place, even though he is not sure it is a binding policy since the Council didn't vote on it. He said he thinks the discretion still falls back on the Police Department and the Police Department now has the legal opinion that has been issued by the City Attorney, which he feels might be more controlling than Mike Ross' policy.

Councilmember Reilly said he thinks the City should have done a better job of implementing the policy requiring longer driveways. He said the City waited 16 or 17 years before putting that policy in place and the City should not have done that. He said on the point about the numbers going down, almost two-thirds of the homes that do not comply with the ordinance are new stock houses (houses built in the last 20 years or so) and so those houses are not going away anytime soon. He said it will be 60 or 70 years before the City is compliant and in the meantime, as people age, the City will see this become more and more of a problem for the residents.

Councilmember Ballanfant said while the City has been given a legal opinion, he doesn't know that Council has been given enough facts to come to a decision to vote tonight. He said he thinks Council needs to review everything that pertains to this issue before taking a position. He suggested that Council not consider what Brennan has moved, and he has seconded, and that Council should vote on it at the next Council meeting.

Councilmember Turner said Council has the policy, the survey, and the City's ordinance so she is wondering what additional information staff can provide that will make a difference.

Mayor Sample said she doesn't like walking in the street and said she always uses the sidewalks and when there are cars in the way it can be very annoying, but she sees the position of the people on the corner lots. She said many of them had to put a sidewalk in via the sidewalk renewal project and they went from being able to use their driveways to not being able to use their driveways. She said what she understands now and didn't think of before is while some people have the luxury of parking in front of their homes, those people on corner lots don't because they can't park 30 feet from the end of the street. Mayor Pro Tem Sample said as for walking in the street people do it

even though it's against State law. She said they walk in the street, not because of cars in the driveway, but rather they want to walk abreast and walk the strollers without hitting vegetation. She said she also sees the problem reducing itself so she doesn't want to go commando on a lot of people, because if Council pulls this policy, a lot of people are going to get ticketed and the City would probably open a Pandora's Box of other problems. She said if people are forced to park on the streets, it will invite thefts and she prefers not to invite more people into the City than there already are to break windows, stick their hands into cars and then move on into homes.

Councilmember Reilly said the argument that Council wants to get the cars off the street and onto the driveways even if they are parked over a sidewalk is just as valid an argument for somebody who has a very long driveway, but has four vehicles and need to park over the sidewalk at night. He asked Mayor Sample if this administrative policy is expanded to allow cars to park over driveways at night. Mayor Sample no.

Councilmember Ballanfant asked what the real reason is for the City not wanting to follow the State law. He reiterated that Council hasn't had a real written proposal to look at and so he thinks Council needs to go back and review this more thoroughly than it has in preparation for tonight.

Councilmember Reilly said he is happy to entertain a motion to table if someone wants to do that.

Councilmember Reilly asked those councilmembers who are in favor of the administrative policy if they want to make a motion to approve the 2004 policy as written so that the Council stands behind that policy. Councilmember Turner said the policy has been in place for 12 years so she is not sure Council needs additional votes to validate something that was put in place by the administrative head of the City. Councilmember Reilly said then the city manager could revoke the policy without any Council input. City Attorney Petrov confirmed that statement.

Mayor Sample called for a vote on the motion made by Councilmember Reilly for Council to direct staff to revoke the 2004 policy adopted by the City Manager, which permits parking on the sidewalks in violation of the State law and that Councilmember Ballanfant seconded.

Before the vote, Councilmember Reilly stated that he suspects that what Council will see next is a concerted move by individuals in the City who have disabilities or are adversely affected by this policy to get the City Manager to revoke it to avoid additional liability to the City. Mayor Sample said only if encouraged by an individual, because the City hasn't had an uprising in the last 12 years. Councilmember Reilly said he hopes residents understand what's happening tonight and seize the opportunity to take action and take things into their own hands if they are adversely affected by this.

At this time, a vote was made on the motion. **MOTION FAILED.**

Ayes: Ballanfant, Reilly
Noes: Sample, Kelly, Turner
Absent: None

3. Future Fence Height Restrictions

Matters related to the application of fence height restrictions to decorative items and the standard for granting variances to fence height restrictions. *Recommended Action: Discuss and take any desired action, including referral to Building Standards Commission and/or Zoning and Planning Commission.*

Councilmember Reilly presented this item and said recently the Building and Standards Commission (BSC) rejected a variance regarding an exception to a fence height restriction on a house on Sunset to install a decorative sculpture. He asked that Steve Brown come forward to provide some background and provide information on situations when the BSC has granted variances, if any, given the fairly extraordinary requirements.

Steve Brown, resident at 3305 Rice and Chairman of the BSC, spoke and said as usually happens when a rule comes before Council it's because of a specific case, which is what happened here. Mr. Brown said the City Code has extremely rigorous requirements for any variance request. He said in tonight's case and in the situation that existed with 3304 Sunset, the BSC was faced with requirements specified in Section 1820 of the City Code, which applies to all variance requests.

Mr. Brown said the BSC is a non-elected, non-legislative group that has to follow the rules as written and those written on variances on extremely strict. He said the most difficult one to meet, generally, is that it must be proved that there is an exceptional hardship and that the hardship cannot be financial only.

Mr. Brown said his thought on changing the rules on variances is that Council could have the Code changed and add a special exception possibility, which would make it easier for someone promoting something positive for the City to fit within the general idea of special exceptions.

Mr. Brown said he feels that the Codes should be simple and clear. He said City employees shouldn't be trying to make judgments about whether something is aesthetically pleasing and therefore good for the City. He said the employees and city manager should be provided with clear guidelines.

Mr. Brown said the BSC has had to rule within the framework of the guidelines it was given. He said in this particular case many on the BSC and many residents thought that this particular sculpture was attractive, but the BSC had no choice but to rule as it did with the guidelines given.

Councilmember Reilly reviewed two of the nine requirements for a variance: (1) An exceptional hardship, which just can't be financial; and (2) There must be no reasonable and feasible method of procedure currently available to comply with the requirement. Councilmember Reilly said he doesn't see how one could ever comply with that fence height restriction.

Councilmember Reilly asked whether the City has made the variance so difficult to get that it basically encourages non-compliance through another way. He said he feels the other 7 requirements would be the better way to get a variance and then he stated the other seven: (3) good and sufficient cause, (4) doesn't increase a threat to public or other safety, (5) consistent with the purpose and intent of the ordinance, (6) doesn't cause a nuisance, (7) doesn't cause fraud, (8) doesn't cause additional increase in public expenditures or budgets, and (9) doesn't create a conflict with any other ordinance, rule or regulation.

Regarding the nine requirements, Councilmember Reilly noted that it is an "and" situation not an "or" situation, which means that all nine requirements must be met in order for an individual to be granted a variance.

Councilmember Reilly asked if there has ever been a situation where the BSC would have granted a variance, but for the first two requirements. Mr. Brown said not in his brief experience with the BSC, but he can't speak for the period before his time.

Councilmember Reilly asked what is planned to be done in this particular situation to fix the problem.

Clay Chew, Building Official, responded that the applicant said he would fix the problem by taking it down and reconstructing the sculpture in a different way so that it's not part of the fence. He said the sculpture can be the same height, etc., just not attached to the fence.

Councilmember Reilly said so the City will be in the same exact position it would have been had the variance been granted, which makes him wonder why the City has the rules in the first place if a person can get to the same exact place and comply with the rules through something that's completely form over substance. He said maybe the City should have granted the variance in the first place. He said he understands that staff's hands were tied, but in the right situation the City should be able to grant a variance if the person can get there the exact same way.

Councilmember Reilly said he thinks the rules for getting a variance should be relaxed under particular circumstances so that effective non-compliance is not encouraged. He said he wants people to be encouraged to get a variance when appropriate.

Mr. Brown said the City will need to think about all the possibilities for variances. He said he doesn't know how the City arrived at the very strict prescription as to what is required to obtain a variance, but he would recommend building a possibility for a special exception into the Code rather than change the rules for variances.

City Manager Peifer cautioned that if the City wants to look at the method and criteria for allowing a variance is one thing, but cautioned that every well-intended knee-jerk reaction to a certain issue always carries unintended consequences.

Councilmember Reilly said he would like to send the requirements back to BSC for review.

Councilmember Turner said she doesn't mind looking at a special exception, but she doesn't want to change the current variance rules.

Mayor Sample said she would hate to jump into this where someone requested a variance, didn't get it, flouted the ruling and sent Council a letter asking to change the Code. She said she doesn't think that's a great way to legislate, which is why she doesn't want to send it back to BSC.

Councilmember Reilly said, to make it clear, the person who requested the variance for the sculpture is now going to get exactly what they wanted, but not through the variance process, but by building the exact same thing they have now and detaching it inches from the fence. He said his point is that Council, as a matter of policy, ought to set it up so that the process happens inside the system rather than outside the system.

Councilmember Reilly moved to refer to the BSC to ask the members to study whether nor not the current variance proposal is too strict and should be modified by looking at the practices of other cities as well as just a review of the City's own experience of the past year and to purely make a recommendation back to Council. **MOTION FAILED FOR LACK OF A SECOND.**

4. Additional Appropriation for the City's Annual Tree Planting Program

Matters related to a request by staff for an additional appropriation of \$25,000 to the City's Annual Tree Planting Program. *Recommended Action: Staff recommends that City Council appropriate an additional \$25,000 from the Urban Forest Enhancement Fund to the Annual Tree Planting Program.*

Public Works Director Beach presented this item and said the City has had the Annual Tree Planting Program for over 20 years. He said staff is requesting additional appropriation, not to exceed \$50,000. He said the funds will come out of the Tree Trust Fund.

In response to Sample's question as to how much a homeowner pays for cutting out a tree, Mr. Beach said currently it's about \$125 an inch, but said in 2017 staff will bring forth a recommendation to increase those fees.

Councilmember Reilly said if the expenditures are expected to double and the program is funded by penalties, the City should make the change contemporaneous with the additional funding.

Mr. Peifer said staff typically brings forth the fee schedule once a year, but staff might be able to bring it forth in April when the City of Houston increases its water rates.

Councilmember Reilly said he's inclined to not grant additional funding without the increase in the fees as a way to recoup the funding.

Mayor Pro Tem Kelly asked if the funding was needed right now.

Mr. Beach said that would be preferable so that when the bid comes in next week, staff can start having trees in the ground in February instead of mid-March because it gives the trees more time to establish before the heat of the summer.

Councilmember Reilly asked why the fee increase couldn't be brought forward to the next Council meeting. Mr. Peifer said it could, but staff tries not to put fees on the agenda more than once or twice a year.

Mayor Pro Tem Kelly suggested that Council approve the additional funds now and discuss increasing the fees at a later date.

Mr. Beach confirmed that staff isn't using general fund money, but rather Tree Trust money, which is a fund on its own.

Mayor Pro Tem Kelly moved that Council appropriate the additional \$25,000 to the City's Annual Tree Planting Program from the Tree Trust. Councilmember Turner seconded the motion. **MOTION PASSED.**

Ayes: Sample, Kelly, Ballanfant, Reilly, Turner
Noes: None
Absent: None

5. Future Agenda Items

Matters related to future agenda items. *Discuss and take any desired action.*

Councilmember Turner requested that the parkland requisition item be added back to the next agenda.

Councilmember Reilly asked Councilmember Turner if she would be willing at the same time to talk about the things the City can do to assist the development of Evelyn Park, in particular whether or not the City can discuss shared parking.

Councilmember Turner said the effort is already underway and the Parks and Recreation Director can provide a report at the same meeting.

Councilmember Turner seconded Councilmember Reilly's request to add the item for the Parks and Recreation Director to provide an update on Evelyn Park.

Councilmember Reilly said he would also like to add an item regarding the Harris County investigation of unfounded allegations that this City Council violated the Open Meetings Act. He said the District Attorney decided not to pursue that allegation because there was no basis for it, so he would like Council to discuss the City's policies regarding indemnification and reimbursement of City Council expenses.

Councilmember Turner pointed out that councilmembers were told specifically that nothing they paid for out of their own pockets regarding that issue were going to be reimbursed, so she is not sure why this is coming up now.

Councilmember Reilly said he thinks it would be appropriate to talk as a Council about the extent to which the City Councilmembers should be reimbursed for their out-of-pocket expenses that they were forced to incur because of spurious claims. *(Item not to be added to the future agenda items list due to lack of second from another Councilmember).*

6. Consent Agenda

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

A. City Council Meeting

Approve City Council Minutes of the January 25, 2016. *Recommended Action: Approve Minutes.*

Councilmember Turner moved to approve the Consent Agenda as presented. Mayor Pro Tem Kelly seconded the motion. **MOTION PASSED.***

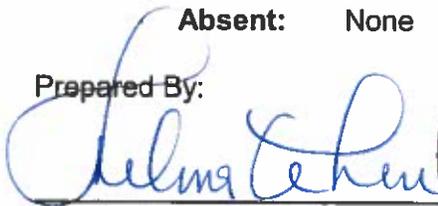
Ayes: Sample, Kelly, Ballanfant, Reilly, Turner
Noes: None
Absent: None

7. Adjourn

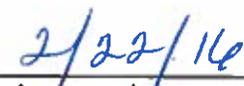
With no further discussion, Councilmember Turner moved to adjourn the meeting at 7:36 p.m. Mayor Pro Tem Kelly seconded the motion. **MOTION PASSED.**

Ayes: Sample, Kelly, Ballanfant, Reilly, Turner
Noes: None
Absent: None

Prepared By:


Thelma A. Lenz, City Secretary




Date Approved