



# The City of West University Place

*A Neighborhood City*

## **CITY COUNCIL**

Bob Higley, Mayor  
Kevin Trautner, Mayor Pro Tem  
John P. Barnes, Councilmember  
Lauri Lankford, Councilmember  
Ed Sobash, Councilmember

## **STAFF**

David J. Beach, City Manager  
Alan Petrov, City Attorney  
Thelma Gilliam, City Secretary

## **CITY COUNCIL MINUTES**

The City Council of the City of West University Place, Texas, met in a workshop and regular session via teleconference due to the Coronavirus (COVID-19) health threat on **Monday, May 18, 2020**, at **5:30 p.m.** in the Council Chambers in the Municipal Building, 3800 University, West University Place.

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Agenda items were as follows:

### **1. Call Workshop to Order**

Mayor Higley called the workshop to order at 5:30 p.m.

### **2. Roll Call**

Mayor Pro Tem Trautner, Councilmember Sobash, City Manager Beach, City Secretary Gilliam, Police Chief Walker, IT Director Dang and Public Works Director Barrera were present.

Councilmembers Barnes and Lankford, City Attorney Petrov and Planning and Zoning Chair Richard Wilson attended via teleconference.

### **3. Boards and Commissions**

Matters related to discussion concerning current and future projects of the City's boards and commissions and an update by Zoning and Planning Commission Chair Richard Wilson, with specific discussion relating to the City's noise and light ordinances. *Recommended Action: Discuss and take any desired action. Mr. Dave Beach, City Manager*

City Manager Beach presented and explained that this workshop is (1) to allow Zoning and Planning Commission (ZPC) Chair Richard Wilson to provide an update and receive feedback on the noise and lighting ordinances currently before the ZPC and (2) for Council to review issues it wants to address either at a boards and commissions level or at staff level.

Regarding the lighting ordinance, Mr. Wilson said it is being proposed that the ordinance be moved from the Zoning Ordinance to Chapter 54 of the Code where it would be a better fit because it deals generally with prohibited type activities that do have potential sanctions for violations.

Mr. Wilson said the existing general rule is that a person can't shine light onto a neighbor's property and it's the same premise in the proposed ordinance, though the ZPC has tried to improve on the wording.

Mr. Wilson said the ZPC meeting held last week resulted in two refinements of the ordinance:

1. All references to the phrase "light trespass" and the definition of light trespass are to be removed from the draft ordinance because the only place in the ordinance that the term actually appeared is in the exception for residential security lighting – Sec. 54-219(c). He said after a lengthy discussion on residential security lighting the ZPC decided that the light trespass standard was inappropriate for

security lighting and that the same general glare standard that governs in the ordinance was appropriate for security lighting; and

2. References to the lighting at the ballfield that are contained in 54-219(b) were deleted from the proposed ordinance because lighting at the ballfield is addressed in another specific ordinance that deals with ballfields in general.

Mr. Wilson said subject to any feedback received tonight, he thinks ZPC is ready to sign off on the final version of the ordinance at its next meeting.

Mayor Pro Tem Trautner asked if “glare” was different from “light trespass” and whether Nuisance Declared (Sec. 54-17) should include both because you can have a glare without light trespass and have a light trespass without a glare. Mr. Wilson said some amount of light on a property is going to illuminate a neighbor’s property regardless of what type of glare there is. He said the thinking behind staying away from light trespass is that there is too broad of a brush and it ends up prohibiting intrusions that are really not offensive to a person of ordinary sensibilities. Mr. Wilson said light trespass is a difficult term to define and as a matter of physics a certain amount of light trespass is really inevitable.

Councilmember Lankford said she noticed that a penalty applies to a person, corporation or association, but under the Nuisance Declared section it states only that it would be unlawful for any person to cause or permit, etc., and she wonders if it should be “any person, corporation or association” as stated in the penalty section. Mr. Wilson said he believes the catch all definition of persons that is in the general Code of Ordinances is broad enough to actually include corporation and association. He said his guess is that the penalty language was copied out of some other ordinance and maybe that is something the city attorney can review.

City Attorney Petrov confirmed that the definition of “persons” in the earlier part of the Code is extremely broad and includes corporations and associations, however he recommended that the language be made consistent.

Councilmember Lankford asked Mr. Wilson to confirm whether the field lighting portion has been taken out of the ordinance. Mr. Wilson said yes it has, because in Section 54-219(b) there is a provision that states field lighting for outdoor athletic facilities shall be turned off within 30 minutes and that the ordinance that governs the little league fields, which he believes is in Chapter 58, specifically addresses shut-off times on a field by field basis for those fields. He said any other fields would likely be owned by the City and one of the exceptions is to exempt the City from this ordinance. He said the City will develop its own procedures for when it wants to turn its lights off at the fields (i.e. the lights at the Rec Center).

Councilmember Lankford also pointed out that in number 4 of Section 54-219 the word “confirm” should be “conform.”

Councilmember Barnes asked in regards to 54-291(c) if there any kind of industry standard definition for residential security lighting that the City can use because he can see where the City could get into some kind of issue as to what constitutes security lighting. Mr. Wilson said no one has suggested any such definition and he thinks the example of motion activated flood lights is some indication of security lighting. He said the argument can be made that most of the exterior lighting, unless it’s illuminating the house itself, can be argued as being some form of security lighting.

The mayor then proceeded to the topic of noise.

Mr. Wilson said the City has an existing noise ordinance that's found in Chapter 54 and it has a slightly different structure than the proposed ordinance. He said the current ordinance basically does not have what is Sec. 54-40 in the proposed ordinance – a general noise level limit. He said the existing ordinance has a basic nuisance standard and an enumeration of a number of specific noises. He said the ZPC thought it was a good idea to just have a general rule and add it to Sec. 54-40.

Mr. Wilson said the two biggest noise issues are construction and yard equipment.

Mr. Wilson said in Sec. 54-41(7) of the proposed ordinance, which deals with construction noise, ZPC went with the approach that outside of quiet hours there is no noise decibel base prohibition on the theory that construction is what it is. He said setting levels would result in unintended consequences about the way construction actually functions. He also said that construction is somewhat transitory and its protection is the quiet hours, which have been expanded in the proposed ordinance by one hour in the evening on weekdays and three hours on Saturdays and Sundays.

Mr. Wilson said the way it will work under the proposed ordinance is that outside of quiet hours, construction noise is whatever construction noise is. Within quiet hours, construction is going to have to meet the decibel standard in Sec. 54-40, which is a fairly low standard.

Mr. Wilson then began the discussion on yard equipment. He said the ZPC had a tough time from a legislative approach on the subject of yard equipment, specifically leaf blowers. He said they considered a number of approaches, plus another that hasn't been discussed as a Commission but he will mention it anyway. He said the four approaches reviewed are:

1. Stay with the way it is under the current ordinance, which is that the activity is basically prohibited during quiet hours and outside of the quiet hours neither the equipment nor the sound levels generated by the equipment are regulated (this one received the most support at their recent meeting).
2. Have a noise-based standard outside of quiet hours so if a homeowner is using leaf blowers during the day, there will be a decibel limit.
3. Regulate the decibel of the equipment rather than that of the noise. This approach is contained in the proposed ordinance. The equipment has to be certified at 65 decibels or less. He said for enforcement it's a very simple matter to determine whether the equipment is compliant with the standard or not. He said the argument against the equipment-based standard is that it's likely that most landscapers working in West U probably don't own compliant equipment and would have to go to purchase compliant equipment, which would result in higher prices.
4. Limit the use of yard equipment to certain days of the week. The argument against this approach is landscapers have work elsewhere on different days. He said if Council were to take this approach it would probably have to allow the use of yard equipment outside quiet hours on Saturday for the do-it-yourself element of the City's populace.

Mayor Pro Tem Trautner said he thinks ZPC did a great job with the ordinance and said he is in favor of both the increase in quiet hours and the equipment decibel limitation. He said he thinks it's a nice option to go with the decibel limitation because ultimately Council can tweak the limitation now or in the future.

Councilmember Barnes said he agrees with Mayor Pro Tem Trautner and think it's great to have a mechanical decibel level approach. He said the one thing he would add is that the City allow contractors a time period to bring equipment into compliance rather than have it go into effect immediately.

Councilmember Sobash said if Council takes the approach of regulating equipment it ends up picking a number (65 decibels), which seems arbitrary. Mr. Wilson said 65 decibels is the number that frequently shows up in the ordinances of other municipalities.

Mayor Pro Tem Trautner said he is confident that this Council can agree upon either 65 or 70 decibels. He said the important thing is the structure and approach.

Councilmember Sobash said leaf blowers may be the majority of the lawn equipment used, but there are lawnmower noises, power washer noises and a host of very often used similar sounding equipment that are probably much louder. He said his power washer is much louder than his leaf blower and if he couldn't use his leaf blower and used his power washer to blow his sidewalks he'd be compliant with the rules and that seems strange to him.

Councilmember Sobash said there will be a lot of do-it-yourself homeowners like him whose equipment won't be in compliance.

Councilmember Lankford asked how the ordinance will be enforced. Mr. Wilson said when there is a complaint, Code Enforcement will go to the property with the sound meter. City Manager Beach added that on weekends it would be law enforcement that would respond to the complaint and that a lot of the equipment are stamped with the number of decibels. He said as the City moves forward with this, staff will have a list of approved machines that residents can refer to and the last result would be to pull up the manufacturer's website.

Councilmember Lankford asked why ZPC picked the property line of a property to measure noise levels rather than at any point on the property. She said a resident wrote in with a good point stating that noise can be muffled by a bush or vines at the property line but in the middle of the property the noise could be louder because of being further away from the buffers. Mr. Wilson said he is not an expert on sound but it seems to him that it is not real likely that the noise would be louder the further away from the source of it.

Mr. Wilson said the proposed ordinance has a laundry list of things in the new number 13 of Sec. 54-41 which basically deals with equipment other than leaf blowers. He said it provides for a decibel limit measured at 25 feet and the reason is that if you measure it at the property line all equipment would be in violation.

City Manager Beach begin to wrap things up and confirmed that Council is in favor of increasing the quiet hours and that a majority is in favor of looking at a decibel level for the equipment.

Councilmember Lankford inquired about Sec. 54-43. She said because of changes to the nuisance law in 2016 she thinks it is better to say "in violation of this article" instead of "declared to be a public nuisance." Councilmember Barnes said he agrees with the suggested language.

Mayor Higley said the city attorney can review the language and also see what kind of action would be considered offensive for the purpose of allocating damages.

City Manager Beach moved on to the discussion on projects for boards and commissions that were submitted to him by councilmembers prior to the workshop. He reviewed the items for feedback as to whether they want to proceed with the projects and at what level (board/committee or staff).

1. Are the City's rules with respect to removal of trees during construction and the requirement to plant replacement trees versus replacement inch certificates (e.g. contribution to the Tree Trust) still appropriate or do they need to be modified?

Council agreed that this should be reviewed at the staff level first to see if there is an issue before deciding to give it to the appropriate board/commission.

2. Are there new pervious materials that can be used for driveways? If so, can they be specified in the Code of Ordinances so that a special exception from the ZBA is not necessary anytime residents wish to use something other than concrete?

Council agreed to have the appropriate board/commission review.

3. The State has prevented cities from regulating building materials permitted under the International Building Code. Can a city do something along the lines of additional registration for problematic building materials, such as stucco?

Council agreed that staff will provide recommendations to the appropriate board/commission to review.

4. Should all "through" lots really be subject to the double setbacks currently in the City's Ordinances?

Majority of Council agreed to have the appropriate board/commission review.

5. Is it still appropriate to prohibit "multiple utility service" (i.e. a second utility meter) on a property?

City Manager Beach recommended leaving the process as a special exception.

6. I would like to see more virtual classes, activities and seminars added to our recreational offerings on an ongoing basis. (Parks & Senior Boards)

Council agreed to have the appropriate board/commission review.

7. I would like the Council to consider whether we would like a Board, such as the Recycling Board, to provide input on some green initiatives for residents, such as, the city offering rain barrels to every home and ended up cutting their detention requirements significantly. In West U's case, this would be unlikely to have a significant impact our runoff, however, every little bit helps.

Council agreed to have the appropriate board/commission review.

8. Consider increasing pervious surface on property/building sites to help with stormwater runoff, increasing separation between homes for airflow and possibly look a variable requirement based upon the size of the lot (Current coverage is 80/20 whether it is a 5,000 sq. ft. lot or a 20,000 sq. ft. lot)

Council agreed to have the appropriate board/commission review.

Councilmember Barnes said he wanted to add one issue that comes up periodically which is that Council should look at how it requires contractors to communicate when those "noisy" activities are going to be taking

place on adjacent properties. He said contractors should be required to inform neighbors of when construction that will take a day or two will take place because they know in advance.

**4. Adjourn Workshop**

Councilmember Barnes moved to adjourn the workshop at 6:29 p.m. Mayor Pro Tem Trautner seconded the motion. **MOTION PASSED.**

**Ayes:** Higley, Trautner, Barnes, Lankford, Sobash  
**Noes:** None  
**Absent:** None

**REGULAR MEETING (6:30 PM)**

**5. Call Regular Meeting to Order**

**6. Roll Call**

**7. Pledge of Allegiance or Moment of Silence**

Police Chief Ken Walker led the Pledge.

**8. Public Comments**

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

**Mr. Aurelio Diez, 4025 Southwestern** (attending via phone), spoke regarding the noise ordinance and thinks the current revision is a step in the right direction. He said he supports the increase in the quiet hours being proposed, but he suggested to Council that the quiet hours be expanded even further or that a noise-free day be established – maybe Sundays.

City Secretary Gilliam received and read emails received from residents. The emails have been summarized as follows:

**Elizabeth Strelow, 6519 Mercer**, expressed her support for both increasing the quiet hours and implementing a decibel restriction on equipment.

**Kim King, 6603 Rutgers**, expressed that she is in support of the draft ordinance that sets decibel maximums and expanding quiet hours.

**Richard Beck, 4116 Rice**, expressed that he is for both increasing quiet hours and implementing a decibel restriction on equipment. He stated that he also believes the measuring location should have more flexibility.

**Cynthia Johnson, 3805 Tennyson**, expressed her support for the addressing the hours of operation and permissible noise levels of equipment. She also suggested eventually phasing out the use of gas blowers as better equipment is available.

**Paul Scheet, 3602 Carnegie**, expressed that he is both for increasing the quiet hours and implementing a decibel restriction on equipment.

## 9. Council Rules of Procedures

Matters related to reviewing the Council Rules of Procedures. *Recommended Action: Discuss and take any desired action.* **Mr. Dave Beach, City Manager**

City Manager Beach presented and said the ordinance is being revised to include a rule that relates to remote council meetings. He said the current Rules were sent to Council prior to the meeting for review and any suggested revisions.

Mr. Beach read the following inquiries/suggestions received from Councilmember Lankford:

- Rule 7 and Rule 17 - Revisions necessary to permit remote attendance and how remote attendance affects who will be the presiding officer.
- Rule 10 - The Deadline for including an agenda item needs to be better defined. Does this mean 5 full days or 5 business days? Also, is the day of the meeting counted in the calculation of days or not? All makes a difference for the determination of the deadline.
- Rule 11 - When a request to include an agenda item is submitted to the City Secretary, the request must also be forwarded to all Council members. Rule 10 permits that such a request can also be submitted to the City Manager. When a Council member submits a request per Rule 10 to the City Manager, must the request be also be forwarded to all Council Members? This should be clarified.
- Rule 27 - I am concerned the passage of H.B. 2840 has impacted this rule. In part, Rule 27 requires that all public comments must be kept "relevant". H.B. 2840 states that "reasonable rules" may be adopted regarding the public's right to address a governmental body. However, H.B. 2840 also states that the governmental body may not prohibit "public criticism of the governmental body" unless the public criticism is otherwise prohibited by law. Since West U permits public comments all issues (agenda and non-agenda), I am concerned that the relevancy requirement in Rule 27 of the City Council's Rules of Procedure could be construed as an attempt to prohibit criticism. I would like the Council to consider whether the relevancy requirement of this Rule should be omitted.

Councilmember Trautner asked if a councilmember participating remotely under the new proposed ordinance revision would be considered present at a meeting for all purposes – meaning quorum, voting and so forth. City Attorney Petrov said yes if the member attends remotely per the provisions of the Open Meetings Act (OMA) the member will be considered present for all intended purposes.

Councilmember Trautner said the language being added relating to remote meetings infers that a quorum (3 members) has to be physically present at the meeting location. City Attorney Petrov said that is correct. He said right now the City is operating under a suspension of the OMA, but once the OMA begins operating under normal conditions members of City Council will be allowed to attend remotely but will be required to have a physical meeting location that is open to the public and a quorum present at the physical location.

City Attorney Petrov confirmed that a member attending a meeting via video conferencing is considered present for all purposes and counted as part of the quorum but that a physical quorum will need to be present at the meeting location as well.

Councilmember Lankford asked if renumbered Rule 24 where it states "...concurrence of a majority of the Council present" includes the member attending via video. City Attorney Petrov confirmed that it does include the member attending video because that person is in the meeting for all purposes.

Mayor Higley confirmed with City Attorney Petrov that a quorum has to be physically present at a meeting location but a councilmember (or two councilmembers) doesn't have to be physically present to be part of a voting group. Mayor Higley said he doesn't think it makes much sense.

City Secretary Gilliam said the reason for allowing video conferencing is so that a councilmember (or two) is able to attend the meeting if he/she is out of town or whatever and is not able to be in attendance physically.

Councilmember Sobash asked if the mayor was not in attendance if he would still be able to run the meeting via video conferencing. City Attorney Petrov said yes for all intended purposes. Councilmember Lankford questioned whether this was correct and asked the City Attorney to verify his position.

Councilmember Barnes suggested that for the future Council consider who the most "senior" councilmember is (Rule 17).

Councilmember Barnes also inquired about Rule 7 where it states "a request by a councilmember to attend a meeting remotely must be sent to the City Secretary within three days of a scheduled meeting. He asked if that is business or calendar days. City Secretary Gilliam replied 3 business days.

After a brief discussion, it was the desire of Council to remove the number of days from Rule 7.

Councilmember Lankford said on pages 6, 7, and 8 the Rules that have been embedded in the text (cross-references) have not been renumbered.

Mayor Pro Tem Trautner inquired about renumbered Rule 11 (Agenda Deadline) having to do with providing (in writing) to the City Secretary or City Manager with the subject of an item to be placed on the agenda by 5:00 pm on the fifth day preceding the meeting.

Councilmember Sobash suggested deleting the "fifth day" and "in writing" requirements from renumbered Rule 11 and all were in agreement.

Mayor Pro Tem Trautner suggested revisions to Rule 27 (Remarks to be Germane). He said what he thinks it means to say is "Public comments on agenda items..." so if the sentence was revised to say "public comments on agenda items must be kept relevant to the subject before the Council" he thinks that fits and works.

Councilmember Barnes said Council can't limit comments to what is on the agenda. Councilmember Lankford said Council can limit it to agenda items only, but it doesn't and City Attorney Petrov agreed and said that Council's Rules don't allow limitations as currently written.

Councilmember Barnes said he is not for limiting comments to agenda items only. Mayor Pro Tem Trautner said he was just talking about fixing the language. He said there are two sets of comments that people can make – either comments during the agenda discussion on the agenda items in which case you could say you want those comments limited to the agenda items and then they also have the opportunity under the public comment section that is unrelated to the agenda to just make any comments they want. He said he is fine substantively with people coming up on the agenda item and they have 2 minutes on the agenda item and they bring up something else for the remaining minute.

Councilmember Lankford said she is fine with that, too. She said because of the new House Bill that was incorporated into legislation states that Council can't prevent criticism, her concern is the statement that the public speaking about matters "must be kept relevant." She said she doesn't see why it needs to be relevant or irrelevant because people are allowed to talk about matters not on the agenda. She said if there is a subjective basis to prevent somebody for speaking by saying "that's not relevant" it could be applied to people that are criticizing and then would it be a restriction that isn't allowed. She said her concern is that it would look like they are restricting people from speaking.

City Attorney Petrov said he understands Councilmember Lankford's point regarding relevancy, especially when Council allows the public to speak on anything. He said to the House Bill, however, any criticism is by definition of the statute therefore relevant because the statute prevents the criticism. He said if a person were criticizing the council he would advise that the criticism is a relevant comment.

City Manager Beach said staff will bring back the ordinance with revisions based on tonight's comments for Council's review.

#### **10. Harris County Multi-Hazard Mitigation Plan**

Matters related to adopting a resolution accepting the Harris County Mitigation Plan. *Recommended Action: Accept Volume 1 and the City of West University Place's portion of Volume 2 of the Harris County Multi-Hazard Mitigation Plan. Mr. Aaron Taylor, Fire Chief*

Chief Taylor presented and said that under the Disaster Mitigation Act of 2000, the United States Federal Emergency Management Agency (FEMA) requires that local jurisdictions have in place a FEMA-approved Hazard Mitigation Action Plan (HMP) as a condition of receipt of certain future federal mitigation funding.

The HMP serves as a guiding document to analyze and reduce the jurisdiction's vulnerabilities to a variety of hazards and though updated annually it must be adopted by Council every 5 years.

Councilmember Sobash moved to adopt the Resolution accepting all of Volume 1 and the City of West University Place's portion of Volume 2 of the Harris County Multi-Hazard Mitigation Action Plan. Councilmember Barnes seconded the motion. **MOTION PASSED.**

**Ayes:** Higley, Trautner, Barnes, Lankford, Sobash  
**Noes:** None  
**Absent:** None

#### **11. Information and Updates related to COVID-19**

Matters related to COVID-19. *Recommended Action: Discuss and take any desired action. Mr. Dave Beach, City Manager and Mr. Aaron Taylor, Fire Chief and Emergency Management Coordinator*

Fire Chief Taylor reported the following:

- As of today, the cases for Harris County in Houston is 9,465 cases. Of those, 5,698 are active cases, 3,563 recovered and 204 deaths.
- As of Sunday, West U has 14 confirmed cases and no deaths of which staff is aware.
- This week is a week of transition for full-time employees for the City's reopening on June 1.
- Parks and Recreation continues to work on plans for a modified schedule to reopen the Rec Center on June 1.
- Governor Abbott provided an update to today – Executive Order GA13 Phase II of the Open Texas Plan.
- Surge of cases due to reopening has not happened.

- Phase II reopening was mostly restaurants increased capacity from 25% to 50%.
- There will be a delay in opening of West U Colonial Park pool.

Councilmember Sobash asked about guidance on parks and pools. Chief Taylor said the Governor is looking at the Disney model. City Manager Beach said the regular pools are able to open, but the Rec Center pool is scheduled to open on June 1 depending on the training of lifeguards, etc.

## 12. 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 Minutes

Approve the City Council Workshop Minutes of May 11, 2020.

### B. Landscaping Contract

Matters related to rejecting bids relating to the landscaping contract. *Recommended Action: Reject bids. Ms. Susan White, Parks and Recreation Director*

### C. Storm Sewer Management Project

Matters related to rejecting bids for the Storm Sewer Management project. *Recommended Action: Reject bids. Mr. Gerardo Barrera, Public Works Director*

Mayor Pro Tem Trautner moved to accept the Consent Agenda as presented. Councilmember Lankford seconded the motion. **MOTION PASSED.**

**Ayes:** Higley, Trautner, Barnes, Lankford, Sobash  
**Noes:** None  
**Absent:** None

## 13. Adjourn Regular Meeting

With no other matter before council, the meeting will adjourn.

Councilmember Lankford moved to adjourn the meeting at 7:20 p.m. Councilmember Sobash seconded the motion. **MOTION PASSED.**

**Ayes:** Higley, Trautner, Barnes, Lankford, Sobash  
**Noes:** None  
**Absent:** None

*Audio of this Council Meeting is available on the City's website or contact the City Secretary's office for a copy.*

Prepared by: City Secretary Thelma A. Gilliam

Approved by City Council on: June 8, 2020