

**CITY OF ROELAND PARK, KANSAS  
CITY COUNCIL MEETING MINUTES  
Roeland Park City Hall  
4600 W 51st Street, Roeland Park, KS 66205  
Monday, March 16, 2020 6:00 P.M.**

- |  |   |  |
|--|---|--|
| <ul style="list-style-type: none"><li>○ Mike Kelly, Mayor</li><li>○ Trisha Brauer, Council Member</li><li>○ Benjamin Dickens, Council Member</li><li>○ Jan Faidley, Council Member</li><li>○ Jennifer Hill, Council Member</li></ul> | <ul style="list-style-type: none"><li>○ Jim Kelly, Council Member</li><li>○ Tom Madigan, Council Member</li><li>○ Claudia McCormack, Council Member</li><li>○ Michael Rebne, Council Member</li></ul> | <ul style="list-style-type: none"><li>○ Keith Moody, City Administrator</li><li>○ Jennifer Jones-Lacy, Asst. Admin.</li><li>○ Kelley Nielsen, City Clerk</li><li>○ John Morris, Police Chief</li><li>○ Donnie Scharff, Public Works Director</li></ul> |
|--|---|--|

**Admin**

Madigan

Brauer

**Finance**

Faidley

McCormack

**Safety**

Dickens

Rebne

**Public Works**

Hill

Kelly

(Roeland Park Council Meeting Called to Order at 6:03 p.m.)

**PLEDGE OF ALLEGIANCE**

Mayor Kelly called the meeting to order and led everyone in the Pledge of Allegiance.

(Pledge of Allegiance)

Mayor Kelly thanked everyone for their patience during this atypical time. He called on everyone to be good citizens and to follow the recommendations of the CDC, the state Department of Health, and the Johnson County Public Health Director in helping to do their part to help flatten the curve of the COVID-19 virus.

**ROLL CALL**

City Clerk Nielsen called the roll. All Governing Body members were present. Staff members present were City Administrator Moody, Assistant City Administrator Jones-Lacy, Public Works Director Scharff, Police Chief Morris, City Clerk Nielsen, and City Attorney Roto.

**A. Instructions to Access Online Meeting**

Mayor Kelly said the agenda only deals with pressing business. He also gave instructions to the Councilmembers on the way to participate in the discussion during the video meeting.

**MODIFICATION TO THE AGENDA**

Mayor Kelly said Ordinance #992 would be discussed before the Consent Agenda.

CMBR Madigan requested the February 17 Council minutes be removed from the Consent Agenda and added to New Business.

**I. CITIZENS COMMENTS**

*There were no citizen comments.*

## **II. CONSENT AGENDA**

**A. Appropriations Ordinance #946**

~~**B. February 17, 2020 Council Minutes**~~ (Moved to New Business Item D)

**C. March 2, 2020 Council Minutes**

**MOTION:** CMBR MCCORMACK MOVED AND CMBR HILL SECONDED TO APPROVE THE CONSENT AGENDA AS AMENDED. (MOTION CARRIED 8-0.)

## **III. ORDINANCES AND RESOLUTIONS**

### **A. Ordinance No. 992 - Remote Participation in Public Meetings**

CMBR Faidley wanted to ensure the ordinance has taken into consideration the Kansas Open Meetings Act (KOMA).

Mayor Kelly said the amendment was drafted with the City Attorney so that any future meetings will be broadcast in Council Chambers so that they are in full compliance with KOMA.

City Attorney Roto said the Kansas Municipal League has posted a notice on their website that at this time they are aware of telecommunication meetings being held. As long as the meetings are available to the public where they can call in and are able to participate via chat they will be in compliance. The league will also be publishing a letter to give cities more guidelines as well as a temporary regulation going forward.

CMBR Madigan believed the temporary change should be approved for the next 30-60 days. He does find the changes vague and said he was not ready to remove the entire Council from a discussion on the choice of time, place, and method of a meeting. He believed the entire Governing Body should be involved in this type of decision and not just three people.

CMBR Faidley noted that when there is a special call meeting they do require three Councilmember signatures. In this instance, they have the City Administrator, Mayor and Council President make the decision. She suggested adding two additional people to agree to request a meeting in a format such as this.

Mayor Kelly said a special call is for the purpose of holding a meeting outside of the regular schedule in the ordinary course of business absent compelling circumstances. He said that the three individuals are representatives of the City, in terms of an emergency, and recognizes the pressing nature of the circumstances. With the restrictions of the COVID-19 virus there is such a fluid change to the ability of groups to get together and believed the three would be sufficient and encouraged the Council to adopt Ordinance #992 as written.

CMBR Hill agreed with the comments of Mayor Kelly. She noted in a special call meeting it is important to have the three Councilmembers, but in the situation of an emergency it is fine the way this has been handled.

**MOTION:** CMBR HILL MOVED AND CMBR MCCORMACK SECONDED TO APPROVE ORDINANCE NO. 992 - REMOTE PARTICIPATION IN PUBLIC MEETINGS. (MOTION CARRIED 8-0)

## **B. Ordinance 991 - Updates to the Special Events Code**

Mayor Kelly said Ordinance No. 991 will amend the zoning code to allow for a special event permit for seasonal sales to be administratively approved going forward.

CMBR Rebne said this makes sense to be approved administratively, but believed for the first time a seasonal event is proposed by a business, they want to open it up to the public to make sure it is acceptable and the Council might want to have a say in an event they have not encountered before.

Mayor Kelly said the ordinance change was approved by the Planning Commission and any changes the Council would like to make must be approved by a two-thirds majority to override that recommendation.

Ms. Jones-Lacy said this was brought before the Planning Commission and currently there is an outstanding request from Lowe's who has had seasonal sales in the past. Walmart had their permit approved earlier. If this ordinance is approved, then Lowe's will be able to move forward. So far the only seasonal sale permit requests made to the City have been from Walmart and Lowe's.

CMBR Hill questioned the ten-day limit on seasonal sales. Ms. Jones-Lacy said the businesses have had to come before Council because of the limitation, but this ordinance amendment would preclude that from happening in the future and would be approved by the Building Official.

**MOTION:** CMBR MADIGAN MOVED AND CMBR DICKENS SECONDED TO APPROVE ORDINANCE NO. 991 (MOTION CARRIED 8-0)

## **IV. BUSINESS FROM THE FLOOR**

### **A. Applications/Presentations**

*There was no business from the floor.*

## **V. Mayor's Report**

*No reports were given.*

## **VI. Workshop and Committee Reports**

*No reports were given.*

## **VII. Reports of City Liaisons**

*No reports were given.*

## **VIII. Unfinished Business**

*There was no unfinished business.*

## **IX. New Business**

### **A. Award Bid for R Park Phase 1 & Phase 2 Project**

Mayor Kelly said this item gives the Governing Body an opportunity to add any of the five bid alternates Council would like to see approved. In addition to the information provided in the packet, all Council received a correspondence from one of the bidders, Mega. In comparing the bids, Gunter Construction had the low base bid and added that the bid alternates were not yet approved by the Council. The Parks Committee has recommended that all five bid alternates be approved.

Dan Miller, City Engineer, commented that the bids overall were very competitive and good for the City. The project as recommended with all the alternates is slightly under the construction budget. He said their job is in recommending an award since the bid alternates were not prioritized or how many alternates they might be able to afford, therefore, they have recommended an award from the lowest base bid.

The five alternates being discussed are:

- Fireplace
- Stone wall and pergola
- Grill and stone island
- Southeast wing of the pavilion
- Performance stage

CMBR Madigan said that he is in favor of these things being done at R Park, but said with the change in current events did not know that this is the time to be doing this. He noted that the Johnson County Commission is talking about reaching into reserves because of the shortfall on sales tax. He questioned how they would pay for this if the City takes a big economic hit.

CMBR Hill said she likes the fact that Mega has reached out to them and really wants the job and this says a lot to her about their work ethic. She asked if they have heard from Gunter Construction.

Mr. Miller said they have heard from Gunter. With their bid they supplied their qualifications, previous projects and subcontractors. They have provided everything that the contract requires for bid award.

City Administrator Moody said this project is being funded out of the Special Infrastructure Fund and the resources for this project are currently available in the fund. He added that there are additional projects the fund is planning to support. If future sales taxes did not come in as anticipated, then that could affect their ability to fund those projects. A portion of the R Park project and the pool project is anticipated to be funded with general obligation bonds.

Mayor Kelly asked City Administrator Moody to expand on why they are handling this as a time sensitive matter. Mr. Moody said this is a substantial City project and requires a complete construction season to complete. They would like to see the turf and seeding that is anticipated to occur following completion of the project to have the 2020 fall season and the 2021 spring season to establish before they see higher amounts of traffic at the park.

CMBR Rebne said in terms of people who bid on projects do they ever look at hiring union labor or pay prevailing union wages. City Administrator Moody said the project does not have any federal funding so it's not required to follow prevailing wage law and they don't require that the work be conducted by union contractors.

CMBR Faidley said she could see that Mega would be disappointed if they felt that the project was awarded based on the total bid. She wanted to know if it was clear at the outset that they were awarding based on the base amount. City Administrator Moody said the City purchasing policy does not require that the City award bids to the low bidder and it is not criteria to which they are bound. He said it is an indication to experienced bidders to know it is a project that they are not committed to doing all of the items but to the base portion, and they will consider doing the other elements if resources are sufficient to do them.

Mr. Miller said he has not worked with Gunter but they are a long-standing contractor. He knows other people that have worked with them. He has worked with Mega on projects and his opinion is that both contractors can complete the work. With regard to union contractors and prevailing wage, many contractors are union anyway. He said he is unsure about Gunter. He knows they're a WBE (Women Business Enterprise), but did not know for certain if they are a union.

CMBR Rebne said they seem to be very focused on the soccer field at R Park and they are moving the basketball hoop, but there is no real plan for the baseball diamond or the backstop. He asked if there was a reasoning for favoring one sport over another in the design.

Mayor Kelly said there has been a master planning process between the Council and the Parks Committee for the better part of two years considering the use of greenspace, the removal of asphalt, recognizing different types of play, and those considerations have gone into the planning.

City Administrator Moody added what is in Phase 1 and Phase 2 are the priorities developed by the Parks Committee and the Council. The Phase 3 plans include additional improvements in the northeast and southeast quadrants. There was a lot of previous discussion of ways to preserve greenspace and have nature as part of the park while also adding amenities that are more active.

Mr. Miller added that they are removing as part of Phase 1 and 2 the old asphalt north of the basketball goals. The basketball goal area remains with the project but they will take out the broken asphalt to the north and convert that area to greenspace. They are not doing anything by the baseball field.

CMBR Dickens said regarding the fireplace he is in favor of it, but asked what the safety procedures were. City Administrator Moody said the concern of safety regarding the fireplace has come up through discussion. They will not have a person posted at the fireplace even when they have a reservation, but it will have the same amount of patrol by way of the Police Department.

Mayor Kelly added that they have barbeque grills throughout the greater Johnson County community and in that respect it is not anything new. He believes aesthetically the fireplace is important to the overall design of the pavilion and noted it was strongly recommended by the Parks Committee that the feature be retained.

CMBR Hill said in speaking with the Parks Committee they were in favor of the fireplace first and foremost because of the aesthetics. There are also other newly-built structures around the area that have fire features and there have been no problems thus far. Ms. Hill asked if any of the other Councilmembers were interested in looking into Mega as another alternative.

Mayor Kelly said if they choose to go with all five bid alternates and Mega is the low bidder, then he would support Ms. Hill's suggestion as well.

CMBR Madigan agreed with CMBR Hill and the Mayor.

CMBR Faidley asked if Gunter has been notified that they had received the contract and were they told they were the low base bidder and were expecting to receive the contract.

Mr. Miller said that Gunter is aware they are the low base bidder. They were also at the Parks Committee meeting last week and said he didn't believe they have any reason to believe they will not be awarded the contract based on the bid recommendation by the Parks Committee.

CMBR Faidley said her only concern is they need to do this in a professional manner so it does not look like they're flip-flopping for less than \$3,000.

CMBR McCormack said that the process has already moved forward with Gunter and she would go with the original recommendation.

CMBR Madigan understands that Gunter is aware of the recommendation, but the Council does have the final authority.

Brian Gordon, President of Mega KC, addressed the Governing Body. (His comments were inaudible).

Ms. Jones-Lacy requested that Mr. Gordon type in his comments and they would be read into the record.

CMBR Dickens said that Gunter may have been under the impression they would have the bid, but as CMBR Madigan said it is for the Council to approve. He said he was still in favor of Mega and they are almost \$3,000 cheaper.

Mayor Kelly read Mr. Gordon's comments into the record. "Ethically the bid needs to be awarded to lowest and best bid. I'm confused because we were the low bid."

CMBR Hill asked if this was presented as the lowest bid overall or the lowest bid with the alternates. Mayor Kelly said that was not a presentation they made. They invited bids for the base bid and then for the alternates. He said by code that they are not required to accept the low bid although it is a good and prudent practice if they are for comparable services.

CMBR Faidley asked if this was clearly advertised that they were looking for a base bid and was this handled the best way as a City to look for the best person to do the job. City Administrator Moody said the approach they used in having a base bid plus alternates is a common best practice. If a contractor believes they will be awarded the contract because they have the lowest base bid, then they may put more of their expenses into the alternate and is one strategy for bidding. The City does not indicate they will award to the lowest base bidder.

CMBR Kelly asked if they say the bid would be awarded based on the base bid plus the five alternates then they could remove the alternates.

Mr. Miller said the bid form statement has a request for the base bid and the alternate bids where they put their prices in and it says, "The contract will be awarded to the lowest and best responsible bidder(s).

The City reserves the right to award the contract with the base bid and no bid alternate or with the base bid and any or all of the added alternates.”

CMBR Madigan said it troubles him that they are not required to go with the low bid as it is good business practice. If they go with only the base, then they should award to Gunter. If they will do the base and alternates, then it should go to Mega.

CMBR Hill asked if they have worked with either contractor previously. Mayor Kelly said as a City they have not worked with either company in the past. Mr. Miller stated he has worked with Mega and found them to be a competent contractor. The Mayor again stated if they are going to go with the base bid and the alternates, then they should move forward with Mega and they do at least have experience with their City Engineer knowing Mega is a competent contractor. He said this is not meant as a criticism to Gunter at all, but a reality of cost if they choose all five alternates.

**MOTION:** CMBR MADIGAN MOVED AND CMBR DICKENS SECONDED TO AMEND THE MOTION TO INCLUDE ALL FIVE ALTERNATES THE CONTRACT BE AWARDED TO MEGA. (MOTION FAILED 2-6 WITH CMBRS BRAUER, FAIDLEY, HILL, KELLY, MCCORMACK, REBNE VOTING NO.)

**MOTION:** CMBR HILL MOVED AND CMBR MCCORMACK SECONDED TO APPROVE AWARDED BASE BID TO GUNTER CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF R PARK PHASE 1 & PHASE 2 AND ADDING ANY OF THE 5 BID ALTERNATES. (MOTION FAILED 4-5 WITH CMBRS FAIDLEY, MADIGAN, HILL, DICKENS AND MAYOR KELLY VOTING NO.)

For clarification the vote was resubmitted and remained in a 4-4 split and moved to Mayor Kelly to break the tie. Mayor Kelly voted no to move forward with Gunter.

CMBR Rebne understands that people would like to go with the lower bid and in reviewing Mega’s letter and their background he does not get the sense they would be losing and, in fact, be gaining service with Mega. He is also conscious of the fact that Gunter has been somewhat involved with the project from a supervisory standpoint and has a better understanding of what the Parks Committee and the residents are asking for.

**MOTION:** CMBR HILL MOVED AND CMBR FAIDLEY SECONDED TO AWARD THE BASE BID TO MEGA CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF R PARK PHASE 1 AND PHASE 2 ADDING ALL OF THE FIVE ALTERNATES COUNCIL WOULD LIKE TO SEE INCLUDED. (MOTION CARRIED 6-2 WITH CMBRS KELLY AND MCCORMACK VOTING NO.)

#### **B. Approve Sanitary Sewer Easement at R Park**

**MOTION:** CMBR MCCORMACK MOVED CMBR HILL SECONDED TO APPROVE A SANITARY SEWER EASEMENT AT R PARK. (MOTION CARRIED 8-0.)

#### **C. Approve Purchase of Aquatic Center Chairs and Loungers**

City Administrator Moody said the Pool Committee found both of the options attractive. They did provide a preference for Palette A as reflected in the agenda report.

**MOTION:** CMBR BRAUER MOVED AND CMBR REBNE SECONDED TO APPROVE THE PURCHASE OF NEW CHAIRS AND LOUNGES FOR THE POOL FOR PALETTE A. (MOTION CARRIED 8-0)

**D. February 17, 2020 Council Minutes**

CMBR Madigan said there seems to be some confusion on page 4 of the minutes. He made a motion to move the discussion to the next Workshop and subsequently CMBR Hill made a motion for an amendment to move it to New Business at the next Council meeting. There was no motion regarding the sending of questions to the City Administrator. He noted that CMBR Hill’s motion amendment was approved. He said he and one other person voted nay on the amendment and believe he alone voted nay on the motion. He thinks it is incorrect as it stands.

Mayor Kelly suggested tabling the passing of the minutes and requested that staff listen to the recording and provide them with guidance at the next Council meeting.

**MOTION:** CMBR MADIGAN MOVED AND CMBR FAIDLEY SECONDED TO TABLE APPROVAL OF THE FEBRUARY 17, 2020 COUNCIL MINUTES UNTIL FURTHER REVIEW AND A RECOMMENDATION MADE BY STAFF. (MOTION CARRIED 8-0)

**X. Workshop Items**

*There were no items discussed.*

**XI. Reports of City Officials**

*There were no reports given.*

**XII. Adjourn**

Mayor Kelly again thanked everyone for their patience and continued cooperation as they move through the current challenging times. He said it is important as Governing Body members to show an example of proper decorum in this time and adhere to the guidance in place from various authorities in terms of social distancing. He stressed they continue looking forward with optimism, collegiality, and patience.

**MOTION:** CMBR MADIGAN MOVED AND CMBR MCCORMACK SECONDED TO ADJOURN. (MOTION CARRIED 8-0)

(Roeland Park City Council Meeting Adjourned at 7:24 p.m.)



Kelley Nielsen, City Clerk



Mike Kelly, Mayor