

## **Governing Body Minutes – February 21, 2017**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 21, 2017. The Governing Body members of the City of Topeka met in session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Clear, Ortiz, Emerson, Jensen, Schwartz, Coen and Harmon -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember De La Isla -1.

AFTER THE MEETING was called to order, Councilmember Ortiz gave the invocation.

THE PLEDGE OF ALLEGIANCE was recited by those present in the chamber.

A PRESENTATION on the City's 4<sup>th</sup> Quarter Financial Report was given by Nickie Lee, Financial Services Director.

BOARD APPOINTMENT recommending the appointment of LJ Polly to the Citizens Advisory Council for a term ending February 15, 2020 was presented.

ADVISORY COUNCIL APPOINTMENT of Marie Carter to the City of Topeka ADA Advisory Council for a term ending February 22, 2019 was presented.

Councilmember Harmon moved to approve the appointments. The motion seconded by Councilmember Hiller carried unanimously. (8-0-0)

Mayor Wolgast announced Minutes of the regular meeting of February 14, 2017, would be withdrawn from the consent agenda and deferred until March 7, 2017.

THE CONSENT AGENDA was presented as follows:

APPROVAL of a Workers' Compensation Settlement for Police Officer Melissa Miller in the amount of \$57,500 for the permanent partial impairment of her face and head for injuries suffered on February 7, 2010, was presented.

APPROVAL of a Workers' Compensation Settlement for Police Officer Melissa Miller in the amount of \$22,500 for the permanent partial impairment of her right knee for injuries suffered on January 14, 2012 was presented.

Councilmember Jensen moved to approve the consent agenda as amended. The motion seconded by Councilmember Coen carried unanimously. (9-0-0)

DENIAL of Appeal of an alarm agent application submitted by Charles J. Wilson IV was presented.

Luther Ganieany, Assistant City Attorney, provided background on the application process and the applicant's record. He reported the denial was based on a 2014 conviction in Osage County, Kansas; however, the Governing Body has the discretion to grant the license.

Councilmember Emerson moved to overturn the denial of the appeal. The motion was seconded by Councilmember Harmon.

Charles Wilson expressed concern with the current City Code relating to alarm agent licenses. He asked that the code provisions regulating alarm agent licenses be consistent with the merchant guard license requirements.

The motion to overturn the denial of the appeal carried unanimously. (9-0-0)

RESOLUTION NO. 8856 introduced by Interim City Manager Doug Gerber, relating to the establishment of a district planning committee to advise the Governing Body regarding establishment of a Tourism Business Improvement District was presented.

Doug Gerber, Interim City Manager, reported approval would establish a District Planning Committee made up of 10 members.

Councilmember Ortiz asked if the resolution could specify how the 10 members are decided and include assurances that a report would be completed.

Doug Gerber stated the process would not move forward unless the committee presents a report to the governing body as required by K.S.A. 12-1785.

Lisa Robertson, City Attorney, stated the Mayor would appoint a committee made up of the number of members approved by the Governing Body; however, there are no requirements in State statute that govern how members are decided.

Mayor Wolgast questioned the role of the Committee. He reported the members would be made up of people in the community who have a direct interest in the downtown plaza and how the funds would be spent.

Lisa Robertson stated the Committee would be charged with presenting a report that would include the proposed boundaries, services provided, the annual costs to provide the services for the next three years and overall finances.

Doug Gerber stated the Tourism BID is a State assessment; therefore, the businesses affected by the assessment would most likely be on the committee and help monitor the funds.

Councilmember Jensen stated he believes the Tourism BID would be a great asset to the community.

Councilmember Coen moved to approve the resolution. The motion seconded by Councilmember Jensen carried. Councilmember Ortiz voted “no.” (8-1-0)

ORDINANCE NO. 20054 introduced by Interim City Manager Doug Gerber concerning the building code enforcement division, amending City of Topeka Code Sections 2.50.010, 2.50.040, 2.50.060 and repealing said original sections and also repealing City of Topeka Code Section 2.50.050 was presented.

Doug Gerber, Interim City Manager, stated approval would move supervision of the Building Code Enforcement Division from the Public Works Director to the Planning Director. He

reported staff believes the process has been working well and there is value in having customers transact with the same staff person throughout the process. He noted lines 35-39 of the ordinance were deleted as the language was inconsistent with the City's current personnel policy.

Councilmember Hiller questioned why the deleted language still appears in other parts of City Code pertaining to other City departments. She requested an entire review of the Code be scheduled to ensure consistency.

Councilmember Jensen moved to adopt the ordinance. The motion seconded by Councilmember Clear carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Emerson, Jensen, Schwartz, Coen and Harmon -8. Absent: De La Isla -1.

RESOLUTION NO. 8857 introduced by Interim City Manager Doug Gerber authorizing initiation of condemnation proceedings to acquire temporary easements and permanent right-of-way easements for California Avenue Trafficway Improvement Project No. T-701011.00 was presented.

Doug Gerber, Interim City Manager, stated approval would authorize the City Engineer to perform a survey for the purpose of determining the necessity of condemning private properties for the California Avenue Trafficway Improvement Project T-701011.00 to survey 2921 SE California Avenue, 2050 SE 30<sup>th</sup> Street and 3140 SE California Avenue.

Councilmember Clear moved to approve the resolution. The motion was seconded by Councilmember Emerson.

Joseph Ledbetter expressed concern with reducing the traffic lanes on SE California Avenue at certain points and the lack of communication between the City and Hi-Crest residents.

Mayor Wolgast asked if the land survey would be conducted in the area where five lanes would be constructed and if property owners located in the narrow area of the improvement project could work with the City on easements.

Doug Gerber reported traffic count numbers were recently reexamined by staff, and based on new numbers, staff made the decision to reduce the number of traffic lanes from five to three in some areas of the project.

Mayor Wolgast stated other projects in Topeka are being reduced which supports improved pavement management by the City.

Councilmember Jensen asked if the City would reduce the traffic model from five to three lanes on most projects.

Doug Gerber stated staff would take each project under consideration and reexamine the paving conditions and long term maintenance.

Councilmember Emerson stated he concurs with Mr. Ledbetter about east Topeka; however, he supports revising the project to three lanes because the traffic count validates the change and reinforces good pavement management.

Councilmember Ortiz spoke in opposition of revising the project as she believes five lanes would encourage more commercial growth in the area.

Bill Fiander, Planning Department Director, stated staff works in conjunction with the Kansas Department of Transportation to conduct traffic counts and growth projections for the City extending 20-25 years, taking into consideration land uses, employment and population growth.

The motion to approve the resolution carried unanimously. (9-0-0)

APPROVAL of a Real Estate Purchase Agreement for the purchase of real property located at 324 NW Curtis Street, Topeka, Kansas was presented. (Contract No. 45754)

Doug Gerber, Interim City Manager, stated approval would acquire property at 324 NW Curtis Street as part of the Great Overland Station Riverfront Park project.

Councilmember Harmon asked what the future plans are for the property; what the funding source is for acquisition costs and if transient guest tax funds are being collected for the riverfront park project.

Doug Gerber reported the consensus is to finalize the purchase of properties; demolish the structures then enter into an interlocal agreement with Shawnee County to develop the park. He stated \$1,276,571 has been collected in TGT funds for the Riverfront Park project and of this total; \$586,082 has been expended for property acquisition and demolition.

Councilmember Schwartz moved to approve the real estate purchase agreement. The motion seconded by Councilmember Jensen carried. Councilmember Ortiz voted “no.” (8-1-0)

A FINAL PLAT for Lewis Industrial Park Subdivision on property located at the northeast corner of U.S. 24 Highway and NE Meriden Road within the city limits of Topeka was presented. (P16/20)

Bill Fiander, Planning Department Director, stated approval would subdivide a 9.6 acre tract of land into four lots for industrial land uses.

Councilmember Clear moved to approve the final plat. The motion seconded by Councilmember Coen carried unanimously. (9-0-0)

RESOLUTION NO. 8858 introduced by Interim City Manager Doug Gerber, authorizing the City to enter into an agreement with outside counsel for works’ compensation matters, was presented.

Doug Gerber, Interim City Manager, stated the resolution would authorize the City to contract with McAnany, VanCleave and Phillips to handle certain workers' compensation issues.

Councilmember Ortiz expressed concern with hiring an outside firm. She asked if an attorney in the City Attorney's office could handle workers' compensation matters.

Lisa Robertson, City Attorney, reported the City recently advertised a Request for Proposal for legal services related to workers' compensation matters and of the three responses received, the City would like to engage the services of a local sole practitioner and the Kansas City law firm of McAnany, VanCleave and Phillips.

Councilmembers Hiller and Clear spoke in support of hiring local agencies when possible.

Councilmember Jensen moved to approve the resolution. The motion seconded by Councilmember Schwartz carried. Councilmember Ortiz voted "no."(8-1-0)

ORDINANCE NO. 20055 introduced by Interim City Manager Doug Gerber, concerning workers' compensation, amending City of Topeka Code Section 2.140.150 and repealing said original section was presented. *This is a home rule ordinance in which the Mayor does not vote.*

Doug Gerber, Interim City Manager, stated approval would eliminate restrictions on hiring outside counsel for workers' compensation issues.

Lisa Robertson, City Attorney, stated as a result of reorganization of the City Attorney's office in 2012, the position assigned to advise Risk Management division was eliminated; therefore, many of the litigated workers' compensation claims have been and are assigned to outside counsel because workers' compensation is a highly specialized area of the law. She noted provisions in Topeka Municipal Code Section 2.140.150(a) need to be deleted as a result specifically (1) the City Attorney's office does not currently have the expertise to defend workers' compensation claims (2) contracting for attorney representation in workers'

compensation matters should be handled in the same manner as other contracts for legal services and (3) legal service contracts should not be geographically restricted, rather the City should have the flexibility to negotiate contracts with attorneys who can provide the level of services required for various types of claims.

Councilmember Jensen moved to adopt the ordinance. The motion seconded by Councilmember Coen carried. Councilmembers Clear and Ortiz voted “no.” (6-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Emerson, Jensen, Schwartz, Coen and Harmon -6. Noes: Clear and Ortiz -2. Absent: De La Isla -1.

RESOLUTION NO. 8859 introduced by Interim City Manager Doug Gerber approving an agreement with the Topeka Performing Arts Center, Inc., (TPAC) regarding funding for 2017 operational needs was presented. (Contract No. 45755)

Doug Gerber, Interim City Manager, reported the agreement includes revisions made by the Governing Body as a result of discussions over the past two months.

Nickie Lee, Financial Services Director, stated the Governing Body directed staff to stipulate quarterly payments and include presentations before authorizing each payment in the agreement. She reported dates were added in April, July and October and were agreed upon by TPAC for presentations and consideration of the Governing Body to disperse each quarterly payment.

Councilmember Jensen stated he would like some insight into the long term plan for TPAC.

Councilmember Hiller expressed concern with the proposed dates for quarterly presentations and authorization of payments as she believes it would not leave enough time to gather the appropriate information for review before it would have to be taken into consideration by the Governing Body.



Mayor Wolgast stated he believes the Governing Body should set the parameters and determine how the process should be laid out so that TPAC can succeed and staff can propose a fair and equitable agreement.

Councilmember Clear asked how the dates were determined.

Nickie Lee stated the City Attorney's office drafted the language which was agreed upon by TPAC regarding the quarterly payments as well as providing financial statements; six-month cash flow projections and quarterly progress reports to provide the most up-to-date information.

Councilmember Jensen moved to approve the resolution. The motion was seconded by Councilmember Schwartz.

Larry Gawronski, TPAC Executive Director, stated TPAC would follow the dates outlined in the agreement and post any revisions to provide the most up-to-date information as it becomes available.

John Siehl, Venuworks Chief Operating Officer, stated Venuworks is committed to reestablishing TPAC in the entertainment industry, ensuring the goals and objectives outlined in the agreement are a good path to move forward and build for future success.

Mayor Wolgast asked what the future plans are for TPAC.

John Siehl reported creating a diverse program, reintroducing TPAC into the entertainment industry as well as educating people that TPAC needs community support are just a couple of ways to move TPAC in the right direction.

Councilmember Jensen questioned how times are different now than when TPAC has received funds from the City in the past and asked if investing in TPAC is the solution. He stated many people have complained about ticket prices and asked how TPAC plans to overcome the issue.

John Siehl stated the entertainment industry has changed over the years and casinos are direct competition for civic centers; however, he reported TPAC has contracted with Ticketmaster and encouraged staff to be ambassadors in the community. He noted some of the issues come from the economic downturn in 2008-2010. He also stated 70% of the funding from the City will help TPAC move forward with community-type events.

Councilmember Schwartz spoke in support of the resolution and the new initiatives TPAC has outlined.

The motion to approve the resolution carried. Councilmember Coen voted “no.” (8-1-0)  
Councilmember Harmon left the room.

DISCUSSION on the pavement management program and budget levels needed to improve pavement conditions was presented.

Doug Gerber, Interim City Manager, commended Governing Body members for providing great feedback during previous discussions on the condition of city streets. He stated the final discussion would include Part 3 of the Pavement Management Program and would focus on the financial component of the program.

Jason Peek, Public Works Director, highlighted the following:

1. The overall pavement condition inventory (PCI) rating of city streets.
2. An overview of other major urban areas pavement conditions as well as how much other Kansas communities are spending on pavement management and the source of funding being used.
3. An overview of funding options and the average City of Topeka funding sources being used for pavement management. He reported \$17.4 million was currently planned for pavement activity over the next three years (2017-2019) with no General Operating Funds currently being contributed to the program.

Councilmember Ortiz asked how the City determines when a gravel street should be paved.

Councilmember Hiller questioned the frequency of when PCI inventory ratings should be conducted and the difference in results received. She noted the recommendation made by staff has been reduced from every ten years to every three years.

In response, Jason Peek reported the following:

1. Gravel street improvements could be accomplished through the capital improvement process; however, it would be a question of service priorities provided by the City.
2. More frequent inventory of PCI condition scores allows for a more accurate inventory by providing more data points in determining the life cycle of pavement based on regional pavement curves.

Discussion continued by Mr. Peek on the directive of the Governing Body to achieve a PCI of 70 while addressing the backlog of street repairs. He expressed the importance of funding the right priorities. He reported a PCI of 60 would address the backlog of streets and produce a \$7 million gap in funding (\$1.9 million for preventative maintenance and \$5.1 million for rehabilitation and reconstruction) and a PCI of 70 would produce a \$20.9 million gap in funding (\$2 million for preventative maintenance and \$18.9 million for rehabilitation and reconstruction).

Councilmember Jensen asked when the backlog of streets would be eliminated with a PCI of 70 and if they should aggressively begin to fund preventative maintenance in 2018 in the amount of \$2.7 million to support a PCI of 70, followed by a higher level of funding for preventative maintenance in subsequent years after a funding plan has been established.

Councilmember Ortiz asked if the program addresses pothole repair.

Councilmember Hiller questioned how the funding amount for preventative maintenance was determined by a set formula or by actuals. She expressed the importance of prioritizing services to make sure they economize the best use of funds for pavement management.

In response Jason Peek stated the following:

- An annual investment of an additional \$38.3 million would eliminate the backlog of streets with a PCI goal of 70 - the amount of years to eliminate the backlog has not been determined.
- Pothole repairs do not contribute to the overall pavement condition so they are not included in any of the funding scenarios. Pothole repair is funded through the Motor Fuel Tax with an annual investment of approximately \$2 million and will always have to be addressed.
- An incremental funding approach to preventative maintenance measures is the key to a successful pavement management program - it is important to invest in the good roads to keep them in good condition.
- A decision point must be made in regards to a certain type of preventative maintenance activities of preserving the structure of the pavement which could include crack sealing or pavement repair on a panel street; however, there are many activities and scenarios to be considered.

Discussion continued on the PCI gap funding options which include (1) use of the excess Countywide Sales Tax (2) service prioritization and (3) tax increases (sales or property).

Jason Peek reported the excess Countywide Sales Tax funds in the amount of \$10 million could be allocated towards the current pavement funding activities. He stated staff recommends \$2 million be used for preventative maintenance and \$1.3 million for rehabilitation and reconstruction annually over the next three years (2017-2019).

Councilmember Emerson asked if the three-year proposal was based on the resources available to the City to successfully complete projects as opposed to spending the \$10 million in one lump sum. He expressed the importance of starting preventative maintenance projects as soon as possible for the best return on investment possible.

Councilmember Hiller stated it would seem unrealistic to begin projects in 2017 as the City would not receive excess Countywide Sales Tax funding until June.

Jason Peek reported a three-year program schedule was presented because it would work best with the resources available on an annual basis; and because streets have already been prioritized and preventative maintenance projects are not as labor intense it will be easier to secure contracts and begin projects in 2017.

Doug Gerber referenced the list of service prioritization examples presented by staff to supplement the funding gap through existing resources. He stated they understand the political nature of these types of decisions; however, staff makes no judgement on the relative value of the services listed and only views the list as discretionary funds that are viable options to consider.

Jason Peek stated staff does not expect the Governing Body to make an immediate decision at this time they are only seeking direction from the Governing Body in regards to reducing services in some areas to augment funding for pavement management as they approach budget discussions.

Mayor Wolgast encouraged the Governing Body to consider items listed as they begin 2018 budget discussions.

Councilmember Clear stated she would not support any of the proposed funding sources on the list presented.

Councilmember Coen challenged the City's grant writer to seek grant funding opportunities for each of the items listed.

Councilmember Jensen encouraged the Governing Body to consider all options available including raising taxes before they cut vital services or any of the items listed. He suggested they reach out to constituents for feedback from the community on the options presented.

Councilmember Schwartz stated sales tax could be a viable funding mechanism for the pavement management program as it would encompass all residents in surrounding cities and counties that utilize streets in Topeka.

Concilmember Hiller requested they review the City of Topeka operating budget as a whole and in the same detailed manner as they did in 2009 and 2010 to determine if they could come up with \$1 to \$2 million that could be used for streets. She specifically would like to review staff

positions added or any line items that have increased over the past several years as well as funds that are now considered to be in a more healthy status. She asked the Governing Body to consider implementing a routine service fee on overweight trash trucks utilizing city streets and alleys and use the money generated for street repairs. She also requested they review the City's overall debt service and noted they are spending \$8 million annually in expenses, and if restructured, they could generate extra funding to help maintain streets in the long-term.

Jason Peek highlighted the following tax increase options:

- Sales Tax - current rate is 9.150% an increase of 0.25% would be required to meet a PCI of 60 and an increase of 0.70% would be required to meet a PCI of 70
- Mill Levy – current rate is 39.93 and an increase of 6.5 mill would be required to meet a PCI of 60 and an increase of 19.5 mills would be required to meet a PCI of 70

Councilmember Jensen asked if they could target the sales tax to not include items such as food as he believes this would be the most realistic option to fund the gap.

Doug Gerber reported sales tax was governed by State law and could not be regulated at the municipal government level.

Councilmember Emerson requested staff research how much an increase in sales tax would actually generate. He expressed concern with people shopping outside the community if area sales tax becomes too high.

Mayor Wolgast requested staff conduct a comparison of sales tax in other communities.

Councilmember Jensen encouraged citizens to provide input on the issue. He stated that he anticipates a sales tax increase will have to be implemented to cover the cost.

In summary, Jason Peek stated it was the consensus of the Governing Body to work for a minimum PCI goal of 60 - shooting for a goal of 70 as they move into the 2018 budget discussion as well as look at service prioritization and sales tax at the primary methods to address

the funding gap. He stated more discussion would take place on the excess Countywide Sales Tax in the near future.

Jonathan Schumm encouraged the Governing Body to review the budget in detail and find places to cut and not place the burden on taxpayers. He spoke in support of using general funds to help fund streets and gathering public input on the matter.

DISCUSSION related to extending the Neighborhood Revitalization Program (NRP) which expires on December 31, 2017 for one more year was presented.

Bill Fiander, Planning Department Director, reported the current NRP has operated since January 1, 2013, and will expire on December 31, 2017, and staff recommends renewing the NRP until 2018 when the neighborhood health map would be updated to enact a new five year plan to adjust boundaries as needed and renew for a three to six year period in sync with the neighborhood health map. He highlighted the following:

- NRP History (1994 – 2017)
- 539 Approved Applications
- \$367 million Invested in Commercial and Residential Properties
- \$43 million Invested in Tax Rebates for Commercial and Residential Properties
- \$19,367,573 in New Taxes Generated from 2006-2016
- 564 New Residential Units
- \$114 million Invested in the Downtown
- \$54 million Invested in Historic Properties

Mayor Wolgast asked how the NRP is marketed in regards to funding opportunities.

Bill Fiander stated the NRP has been mostly advertised by word-of-mouth through developers and businesses.

Councilmember Jensen questioned why Topeka as a whole is not considered in the program.

Councilmember Ortiz questioned why the Belmont neighborhood was not included in the map and asked if staff could research the status of the neighborhood.

Bill Fiander stated neighborhoods are categorized as a whole and it would be a policy decision by the Governing Body to include certain areas in the map. He reported the Belmont area was determined to be in “outpatient” status; therefore, it is not a priority any longer and was dropped from the health map. He noted if the City continues with the same philosophy when the health map is reconsidered in 2018, the Belmont neighborhood could be included.

Doug Gerber reported that some cities have an NRP that encompasses the entire city boundary; however, the State of Kansas Attorney General’s Office has issued an opinion against this practice.

Councilmember Jensen expressed concern with neighborhoods divided between good and bad areas and how it relates to the deterioration of the entire neighborhood if not addressed as a whole.

Councilmember Hiller requested a detailed review of who is utilizing the program, marketing opportunities and how the City of Topeka compares with other cities regarding the program’s progress.

Bill Fiander stated staff would present an ordinance at the March 7, 2017 Governing Body meeting for consideration to extend the NRP for an additional year.

Jackie Steele, GO Topeka Business Retention and Expansion Director, spoke in support of the program and stated GO Topeka markets the program when discussing opportunities with developers and businesses.

**ANNOUNCEMENTS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL;**

Doug Gerber, Interim City Manager, thanked the Governing Body for the great discussion regarding the pavement management program. He congratulated Brendan Wiley, Topeka Zoo



Director and staff for breaking the Zoo's February attendance record of more than 11,000 guests. He invited the public to a Meet and Greet to introduce the top three Topeka Fire Chief Candidates on February 22, 2017, from 6:00 p.m. to 8:00 p.m. at the Jayhawk Gallery located at 720 SW Jackson Street.

Councilmember Ortiz expressed her appreciation to the Topeka Zoo staff for the great job they are doing at the zoo.

Councilmember Emerson reported an abandoned mobile home located in the 2600 block of SE Colorado Street.

Doug Gerber stated staff would review the status of the property and report back to Councilmember Emerson.

Councilmember Jensen encouraged the community to utilize the many bicycle and nature trails in the community.

Councilmember Schwartz congratulated Anita Wolgast for her artistic work in the community and announced Topeka was named one of America's Most Artistic Towns by Expedia Viewfinder Travel Blog on February 15, 2017.

Councilmember Coen thanked the Interim City Manager for addressing the sidewalk issue in Council District No. 8.

Councilmember Clear announced St. Mark's African Methodist Episcopal Church located at 801 NW Harrison was awarded a National Park Service African American Civil Rights grant on February 19, 2017, totaling \$231,804 for rehabilitation of its brick building, which will turn 103 years old in May 2017.

Mayor Wolgast reported he spoke at the Tea with Muslims event on February 19, 2017, at the Islamic Center of Topeka and noted important topics were discussed such as immigration and how to ease tension in the Muslim community.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:15 p.m.

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Brenda Younger  
City Clerk