

## **Governing Body Minutes – October 17, 2017**

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, October 17, 2017. The Governing Body members of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Hiller, Clear, Ortiz, Emerson, De La Isla, Jensen, Coen and Harmon -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember Schwartz -1.

AFTER THE MEETING was called to order, Maurice Hime, Topeka Police Department Chaplain, gave the invocation.

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

Doug Gerber, Interim City Manager, requested to withdraw item 7B, Discussion on Wheatfield Village Development from the Governing Body agenda.

Upon hearing no objections, Mayor Wolgast announced item 7B would be withdrawn from the Governing Body agenda.

BOARD APPOINTMENT recommending the reappointment of Heather Weed to the Topeka Sustainability Advisory Board for a term ending December 31, 2019 was presented.

Councilmember Clear moved to approve the board appointment. The motion seconded by Councilmember Coen carried unanimously. (8-0-0)

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8956 introduced by Councilmember Sandra Clear, approving a special event known as the Halloween Street Fair in NOTO, was presented.

RESOLUTION NO. 8957 introduced by Councilmember Karen Hiller, granting Top City Kustomz an exception to the provisions of City of Topeka Code Section 9.45.170 concerning noise prohibitions was presented.

ORDINANCE NO. 20087 introduced by Interim City Manager Doug Gerber, allowing and approving City expenditures for the period of September 2, 2017, through September 29, 2017, and enumerating said expenditures therein was presented.

MINUTES of the regular meeting of October 10, 2017, was presented.

APPROVAL of a Cereal Malt Beverage License application for Mariscos La Jaiva located at 2511 SE California Avenue was presented.

Councilmember De La Isla moved to approve the consent agenda. The motion seconded by Councilmember Jensen carried unanimously. (9-0-0)

APPROVAL of an amendment to the development agreement with Historic Jayhawk Theater, Inc., to reallocate Transient Guest Tax funds and require approval of changes to project scope exceeding \$100,000, was presented. (Contract No. 46346)

Doug Gerber, Interim City Manager, reported on September 5, 2017, the Governing Body approved Resolution No. 8947 authorizing the reallocation of \$155,000 of Transient Guest Tax funding from costs associated with construction of the Jackson Street marquee to architectural construction documents. He stated the proposed amendment to the development agreement captures the reallocation of funds and requires approval by the Governing Body.

Councilmember Hiller moved to approve the development agreement amendment. The motion seconded by Councilmember Coen carried. Councilmember Jensen abstained. (8-0-1)

ORDINANCE NO. 20088 introduced by Interim City Manager Doug Gerber, concerning employees, the personnel code, departments created, and established positions; amending, repealing and renumbering several chapters in Title 2, Administration and Personnel of the Topeka Municipal Code was presented.

Councilmember Emerson, Policy and Finance Committee Chair, reported the Committee met on August 10 and 25, 2017, and again on October 12, 2017; and recommends approval of the ordinance as amended by a vote of 2-0-0 on October 12, 2017.

Mary Feighny, Deputy City Attorney, stated approval would create the Utilities Department and provide for certain changes to clarify other department code language to improve consistency and clarity.

Councilmember Emerson moved to adopt the ordinance as recommended by the Policy and Finance Committee. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Emerson, De La Isla, Jensen, Coen, Harmon and Mayor Wolgast -9. Absent: Schwartz -1.

ORDINANCE NO. 20089 introduced by Interim City Manager Doug Gerber, concerning the organization of the utilities department, adding new sections and amending and repealing several original sections of Title 13, Utilities, of the Topeka Municipal Code was presented.

Councilmember Emerson, Policy and Finance Committee Chair, reported the Committee met on August 10 and 25, 2017, and again on October 12, 2017; and recommended approval of the ordinance as amended by a vote of 2-0-0 on October 12, 2017. He stated approval would establish a Utilities Department and clean up other items in the Topeka Municipal Code to improve consistency and clarify the code.

Councilmember Hiller questioned if staff received any comments from the industrial users.

Doug Gerber, Interim City Manager, stated the revisions also include changes requested by the United States Environmental Protection Agency (EPA) for industrial pretreatment procedures.

Braxton Copley, Utilities Department Deputy Director, reported 18 industrial users were provided a summary of the code changes, input was received from some and applied where appropriate.

Councilmember Emerson moved to adopt the ordinance. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Emerson, De La Isla, Jensen, Coen, Harmon and Mayor Wolgast -9. Absent: Schwartz -1.

A PUBLIC HEARING and ORDINANCE NO. 20090 introduced by Interim City Manager Doug Gerber, relating to the vacation of a segment of SE 8<sup>th</sup> Avenue located between SE Adams Street and SE Hancock Street and including a section of the BNSF Railway tracks, in the City of Topeka, Shawnee County, Kansas was presented. (V17S/03)

Doug Gerber, Interim City Manager, reported the request by BNSF Railway provides for the vacation of a segment of SE 8<sup>th</sup> Avenue public right-of-way. He stated a public utility easement within the subject right-of-way will be retained at the time of vacation and the application will pay for construction of a new roadway between SE 8<sup>th</sup> and 10<sup>th</sup> Avenues for an alternative access route with completion anticipated in February 2018. He noted the ordinance would not be published until an agreement has been executed with BNSF Railroad.

Councilmember Hiller commended staff for spending the time needed to help residents and businesses understand the process and working with BNSF Railroad to ensure there was an alternative access route.

Mayor Wolgast opened the public hearing and asked if there was anyone present who would like to speak to the matter.

Kamalah Young, BNSF representative, thanked the City for their work during the process.

Upon no one else appearing, Mayor Wolgast announced the public hearing was closed.

Councilmember Clear moved to adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Emerson, De La Isla, Jensen, Coen, Harmon and Mayor Wolgast -9. Absent: Schwartz -1.

A PETITION, PROJECT BUDGET in the amount of \$2,013,485 and RESOLUTION NO. 8958 introduced by Interim City Manager Doug Gerber, authorizing Improvement Project No. T-701027.00 which will provide street and storm sewer services on SW 49<sup>th</sup> Street from Wenger Road to BNSF Railroad Crossing as more specifically described therein was presented.

Doug Gerber, Interim City Manager, reported approval would authorize the project budget for the street and storm sewer projects located on SW 49<sup>th</sup> Street and would be funded 100% by the property owners within the Improvement District.

Mayor Wolgast reported the JEDO Board approved the project budget and the use of JEDO funds.

Angela Sharp, Bartlett & West Engineers, spoke in support of the project and thanked the Governing Body for their support of the improvement project.

Councilmember De La Isla moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Coen carried unanimously. (9-0-0)

ORDINANCE NO. 20091 introduced by Interim City Manager Doug Gerber, repealing Chapter 5.170 of the Topeka Municipal Code concerning the regulation of scrap metal dealers was presented.

Doug Gerber, Interim City Manager, reported approval would repeal the City ordinance regulating scrap metal dealers. He stated State law placed the regulation of scrap metal dealers

under the purview of the Kansas Attorney General and prohibits cities from regulating the activity.

Councilmember Hiller expressed concern with the State regulations and noted it appears the State has until January 1, 2019, to put many of the regulations in effect. She asked if the State enforces similar or stronger regulations than the City ordinance.

Mary Feighny, Deputy City Attorney, reported the following:

- In 2015, the Kansas Attorney General was granted the responsibility to regulate scrap metal dealers and create a database of necessary information to follow through with those regulations; however, more time was needed to build the database prior to the regulations going into effect – an extension of time was granted in 2016.
- The Kansas Attorney General has the ability to enforce regulations by issuing consent orders and file clerical judgement actions against scrap metal dealers; whereas, cities have never had the authority to prosecute scrap metal dealers or impose civil penalties against them.

Councilmember De La Isla moved to adopt the ordinance. The motion seconded by Councilmember Clear carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Emerson, De La Isla, Jensen, Coen, Harmon and Mayor Wolgast -9. Absent: Schwartz -1.

DISCUSSION on the Fire Department Strategic Plan was presented.

Craig Duke, Topeka Fire Chief, provided an update on the Topeka Fire Department Strategic Plan and the steps needed to obtain accreditation through the Center for Public Safety Excellence (CPSE).

Councilmember Jensen questioned if the Plan forecasts population growth and expressed the importance of the Plan working now and in the future in anticipation of a growing community.

Chief Duke stated accreditation plans for the future include the reallocation of resources when necessary and that would include growth in population.

Councilmember Ortiz thanked Chief Duke for considering all operational studies that have been conducted on the Topeka Fire Department to date. She commended him for educating the public on the overall operations of the Department so they understand how accreditation would benefit the community as a whole.

Councilmember De La Isla stated she looks forward to the implementation of a solid plan by 2020. She thanked Chief Duke for moving forward with a plan for the future that applies community-wide and reallocates resources.

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

Doug Gerber, Interim City Manager, commended staff for their work on Topeka Municipal Code Titles 2 and 13 revisions. He announced Boo at the Zoo would occur October 21 and 28, 2017, from 9:00 a.m. to 3:00 p.m. He recognized Ismael Bermudez, Topeka Police Department and Liz Rodriguez, Meter Services for graduating from the Latino Leadership Collaborative of Kansas program.

Governing Body members commended Doug Gerber for his leadership and service as Interim City Manager.

Councilmember Ortiz encouraged residents to participate in City of Topeka Smoke Detector Program sponsored by the American Red Cross.

Councilmember Coen announced the Shawnee County Local Emergency Planning Committee was honored for Outstanding Achievement in Planning for Chemical Emergency.

Councilmember De La Isla moved to recess into executive session for a period of 15 minutes for consultation with the City's legal counsel to discuss attorney-client privileged matters regarding pending litigation as justified by K.S.A. 75-4319(b)(2). In order to aid the discussion,

the following staff members should be present: Governing Body; Interim City Manager Doug Gerber; Human Resources Director Jacque Russell; Finance and Administrative Services Director Nickie Lee and Deputy City Attorney Mary Feighny. The motion seconded by Councilmember Clear carried unanimously. (9-0-0)

Following a 15 minute time period, the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember Emerson moved to recess into executive session for a period of 10 minutes to discuss the status of employer/employee negotiations as justified by K.S.A. 45-4319(b)(3). In order to aid the discussion, the following staff members should be present: Governing Body; Interim City Manager Doug Gerber; Finance and Administrative Services Director Nickie Lee; Human Resources Director Jacque Russell and Deputy City Attorney Mary Feighny. The motion seconded by Councilmember Clear carried unanimously. (9-0-0)

Following a 10 minute time period, the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember De La Isla moved to recess into executive session for 30 minutes to discuss the financial affairs or trade secrets of the Wheatfield Project Developer as justified by K.S.A. 75-4319(b)(4). In order to aid the discussion, the following persons should be present: Governing Body; Interim City Manager Doug Gerber; Financial and Administrative Services Director Nickie Lee; Deputy City Attorney Mary Feighny; the City's financial advisor Jeff White, from Columbia Capital; Bob Johnson and Jennifer Sourk, attorneys for the Wheatfield Project Developer. The motion seconded by Councilmember Jensen carried unanimously. (9-0-0)

Following a 30 minute time period, the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.



Councilmember Harmon left the room.

Councilmember De La Isla moved to recess into executive session for 15 minutes to continue discussion of the financial affairs or trade secrets of the Wheatfield Project Developer as justified by K.S.A. 75-4319(b)(4). In order to aid the discussion, the following persons should be present: Governing Body; Interim City Manager Doug Gerber; Financial and Administrative Services Director Nickie Lee; Deputy City Attorney Mary Feighny; the City's financial advisor Jeff White, from Columbia Capital; Bob Johnson and Jennifer Sourk, attorneys for the Wheatfield Project Developer. The motion seconded by Councilmember Coen carried. Councilmembers Clear and Ortiz voted "no." (6-2-0)

Councilmember De La Isla left the room.

Following a 15 minute time period, the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:18 p.m.

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Brenda Younger  
City Clerk