

Governing Body Minutes – December 5, 2017

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, December 5, 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, Schwartz, Coen and Harmon -9. Mayor Larry E. Wolgast presided -1.

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

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

A PRESENTATION on the Topeka Metropolitan Transit Authority (TMTA) 2017 Annual Report was provided by Susan Duffy, TMTA General Manager and Jim Ogle, Topeka Metropolitan Planning Organization (MTPO) Policy Board member.

Councilmember Jensen asked how much increase to the mill levy would be needed to provide essential services.

Jim Ogle reported approximately \$4 million would be needed.

Councilmember Jensen expressed the importance of helping citizens understand what was actually needed in terms of additional tax dollars to provide essential services.

Councilmember Ortiz commended TMTA for their work and the services they provide to the community.

Nickie Lee, Administrative and Financial Services Director, reported TMTA has a unique financial structure in that it falls under the City's mill levy cap; therefore, the mill levy must be shifted or divided, increased through a public vote or propose a change in State law.

Jason Peek, Public Works Director, recognized Joe Singer, Manager of Survey and Design/Records for his 47 years of service with the City.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8963 introduced by City Manager Brent Trout, declaring the entire boundary of the City of Topeka and rescinding City of Topeka Resolution No. 8832, was presented.

DENIAL of a Tort Claim submitted by W & W Utility Construction for \$19,500 for extra labor that was allegedly expended due to the City's inability to efficiently locate its water mains was presented.

DENIAL of a Tort Claim submitted by Patricia Leal-Mack in the amount of \$80,000 to \$100,000 for damages related to a sewer back-up at her rental property was presented.

DENIAL of a Tort Claim submitted by Eric Kjorlie on behalf of Rost & Rost Consulting in the amount of \$845 for alleged damages to its sprinkler system was presented.

MINUTES of the regular meeting of November 21, 2017, was presented.

APPROVAL of the following Cereal Malt Beverage License applications were presented:

<u>Business Name</u>	<u>Address</u>
Chuck E. Cheese's	2215 SW Wanamaker Road
New China	201 SW 29 th Street
Pizza Pub	1801 SW Wanamaker Road #C05
Porubsky's	508 NE Sardou Avenue

APPROVAL of a Dance Hall License application for The Foundry located at 400 SW 33rd Street was presented.

Councilmember De La Isla moved to approve the consent agenda. The motion seconded by Councilmember Harmon carried unanimously. (10-0-0)

PUBLIC HEARING

A PUBLIC HEARING for the purpose of hearing and answering objections of taxpayers relating to the proposed amendments to the 2017 Operating Budget was presented.

Brent Trout, City Manager, reported the amendment would increase the expenditure level of the 2017 adopted budget by \$4,758,224 in specified funds (Citywide Half-Cent Sales, Transient Guest Tax and Tax Increment Financing).

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

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

APPROVAL of funding recommendations by the Alcohol and Drug Abuse Advisory Council in the amount of \$535,000 for the 2018 Special Alcohol Fund was presented.

Brent Trout, City Manager, reported approval would award \$535,000 from the Special Alcohol Program Fund to alcohol and drug programs.

Councilmember Schwartz spoke in opposition of funding cuts for the Topeka Youth Project.

Councilmember Schwartz moved to refer the funding recommendations back to the Alcohol and Drug Abuse Advisory Council and request that the Advisory Council reconsider funding for the Topeka Youth Project. The motion was seconded by Councilmember Harmon.

Governing Body members expressed concern with the importance of following the application process; supporting the recommendations of the Advisory Council; and implementing an appeal process.

Sasha Haehn, Department of Neighborhood Relations Director, stated the grants would have to be approved by the end of 2017 so the funds could be allocated in January of 2018.

Max Wilson, Topeka-Shawnee County Alcohol and Drug Abuse Advisory Council Chair, reported grant recommendations were based on hours of review and consideration by the Advisory Council; and all applications that were denied funding would have to be reconsidered to make certain the process remains fair.

The motion to refer the funding recommendations back to the Alcohol and Drug Abuse Advisory Council and request that the Advisory Council reconsider funding for the Topeka Youth Project failed. Councilmembers Hiller, Clear, Ortiz, Emerson, De La Isla, Jensen, Coen, Harmon and Mayor Wolgast voted “no.” (1-9-0)

Councilmember Clear moved to approve the funding recommendations in the amount of \$535,000. The motion seconded by Councilmember Coen carried. Councilmember Schwartz voted “no.” (9-1-0)

ORDINANCE NO. 20098 introduced by City Manager Brent Trout, amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code, by providing for certain changes in zoning on property located at 2300 SW 30th Street from “M-2” Multiple Family Dwelling District TO “O and I-2” Office and Institutional District was presented. (Z17/3)

Bill Fiander, Planning Department Director, reported approval would allow the re-use of the building located at 2300 SW 30th Street for office and institutional uses.

Councilmember Jensen asked if there were any protests filed from area residents.

Bill Fiander reported the protest petition was not presented at the Planning Commission meeting; however, there were concerns expressed after the public hearing was conducted relating to permitted uses. He noted he believes all concerns have been addressed regarding what types of uses would be permitted.

Councilmember De La Isla reported she received many telephone calls and emails expressing concern with the negative effect the zoning change may have on the neighborhood due to its close proximity to a church, preschool and elementary school. She stated she spoke with the

Planning Department, developer and real estate agent and was assured the proposed uses would not disrupt the neighborhood plan.

Mayor Wolgast stated very little comment was made at the public hearing in opposition of the request.

Councilmember Hiller asked if there was any new information pertaining to the zoning change request including why area residents circulated a protest petition.

Mayor Wolgast noted protest petitions do not have to include a statement of explanation.

Councilmember Harmon moved to adopt the ordinance. The motion was seconded by Councilmember Clear.

Mayor Wolgast asked members of the Governing Body to declare ex parte communications.

Mayor Wolgast and Councilmembers Hiller, Ortiz, Emerson, Jensen and Harmon declared ex parte communications in the form of emails and phone calls from proponents and opponents. They noted despite the communications received they were able to make a fair and objective decision on the application based on the evidence provided in the record.

The motion to adopt the ordinance carried unanimously. (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Emerson, De La Isla, Jensen, Schwartz, Coen, Harmon and Mayor Wolgast -10.

ORDINANCE introduced by City Manager Brent Trout, amending the “District Map” referred to and made a part of the Zoning Ordinance by Section 18.50.050 of the Topeka Municipal Code, by providing for certain changes in zoning on property located at the northeast corner of SW Westport Drive and SW 22nd Terrace FROM “O&I-2” Office and Institutional District TO “PUD” Planned Unit Development for “O&I-2” Office and Institutional use group plus self-service laundry use was presented. (*PUDI17/04*)

Bill Fiander, Planning Department Director, reported approval would allow for a 24-hour self-service laundry facility. He stated protest petitions were received by the Planning Department; however, there was not a sufficient amount to meet the statutory requirement for a super majority vote of the Governing Body. He noted staff recommended hours of daily operation for the self-service laundry be limited to no more than 18 continuous hours because of the concerns expressed by local residents; however, this recommendation was opposed by the Planning Commission.

Councilmember Harmon asked Mr. Fiander to elaborate on the 18-hour restriction as presented by staff.

Bill Fiander reported a 24-hour business would not be considered a normal use facility in a residential neighborhood.

Councilmember Coen stated he believes the proposed facility would not increase crime in the area.

Councilmember Emerson questioned how stipulations such as 24-hour attendants are enforced.

Bill Fiander stated enforcement would be handled through the normal process and more than likely result in a zoning violation.

Councilmember Ortiz spoke in opposition of the 24-hour self-service laundry facility. She stated she believes it would increase crime in the area similar to other 24-hour self-service laundry facilities located throughout the city.

Councilmember Ortiz moved to remand the ordinance back to the Planning Commission to consider reduced hours of operation. The motion was seconded by Councilmember Harmon.

Councilmember Hiller spoke in support of the zoning change and stated she believes the laundry facility would be used by neighborhood residents.

Councilmember Jensen spoke in opposition of a 24-hour self-service laundry facility. He questioned if the Governing Body could amend the ordinance to limit hours of operation.

Councilmember Harmon expressed concern with overriding the recommendation of the Planning Commission and stated residents have also expressed concern with increased crime and traffic issues.

Councilmember De La Isla stated she concurs with Councilmember Harmon and they need to consider all concerns expressed by local residents.

Mayor Wolgast asked how much additional traffic the facility would generate in the area.

Bill Fiander reported it was not anticipated that the laundry facility would generate enough additional traffic to warrant a traffic study; however, because residents have been dealing with increased traffic in the area due to a detour the issue may need to be addressed again with residents.

The motion to remand the ordinance back to the Planning Commission to consider reduced hours of operation carried. Councilmembers Clear and Coen voted “no.” (8-2-0)

ORDINANCE introduced by the Public Health and Safety Committee, revising Title 6, Animals of the City of Topeka Code was presented.

Councilmember Jensen, Public Health and Safety Committee Chair, gave the staff report and stated the intent was to legalize miniature pigs in City limits.

Lisa Robertson, City Attorney, gave a brief overview of the process to date. She reported the revisions are being proposed for purposes of eliminating inconsistencies and unnecessary

duplication, as well as develop guidelines that would allow individuals to house miniature pot-belly pigs within the city limits.

Brent Trout, City Manager, reported the City would make certain staff has the appropriate equipment, training and best practices in place to deal with miniature pot-belly pigs.

Councilmember Jensen moved to adopt the ordinance. The motion was seconded by Councilmember Clear.

Councilmember Coen distributed proposed amendments (Attachment A) to the ordinance.

Councilmember Coen made a motion to amend the ordinance for the specific purpose of excluding miniature pot-belly pigs by taking each of the actions set forth in Attachment A. The motion was seconded by Councilmember Harmon.

Councilmember Coen stated many residents do not support allowing miniature pot-belly pigs within city limits.

Councilmember Emerson stated he concurs with Councilmember Coen.

Councilmember Clear clarified that miniature pot-belly pigs are considered pets, not farm animals or large livestock.

Councilmember Jensen reported sanitation concerns have been addressed in general for all animals to ensure that the areas where animals are kept are safe and sanitary.

Councilmember Hiller asked Animal Control to address concerns expressed with the handling of miniature pot-belly pigs.

Lisa Pinkley, Senior Animal Control Officer, stated Animal Control officers would have the necessary equipment and training to handle miniature pot-belly pigs and a livestock veterinarian located in northern Shawnee County has agreed to shelter the pigs when necessary.

Brent Trout reported miniature pot-bellied pigs were legalized as pets in Mason City, Iowa, approximately two years ago and since that time, there have been no issues with the harboring of the pigs or enforcement by the Animal Control.

The motion to amend the ordinance for the specific purpose of excluding miniature pot-belly pigs by taking each of the actions set forth in Attachment A failed. Councilmembers Hiller, Clear, De La Isla, Jensen and Schwartz voted “no.” (4-5-0)

Councilmember Hiller reported she would like to propose a list of amendments she has finalized and discussed with experts who specialize in the field.

Mayor Wolgast questioned if Councilmember Hiller’s amendments were substantial in nature and if the Committee should review the amendments before being considered by the Governing Body.

Councilmember De La Isla stated she concurs with Mayor Wolgast.

Councilmember Harmon moved to defer the ordinance for two weeks for further review of Councilmember Hiller’s amendments. The motion seconded by Councilmember Ortiz carried. Councilmembers Clear and Coen voted “no.” (7-2-0)

REPORT on the Downtown Comprehensive Parking Plan recommendations was presented.

Jason Peek, Public Works Director, reported approval would adopt the Downtown Comprehensive Parking Plan and authorize staff to implement recommendations included in the plan.

Councilmember Hiller stated she was uncomfortable approving the report as presented and would recommend deferring action on the item for one week. She noted there are many

fundamental issues that need to be worked out as well as setting a timeline to draft a plan incorporating the recommendations for consideration of the Governing Body.

Councilmember Hiller moved to defer the Downtown Comprehensive Parking Plan for one week. The motion seconded by Councilmember Ortiz carried unanimously. (10-0-0)

ORDINANCE NO. 20099 introduced by Councilmember Elaine Schwartz, amending Section 59.05.080 of the Code of the City of Topeka, adding a local amendment to the Uniform Public Offense Code concerning the sale or furnishing of cigarettes, electronic cigarettes, tobacco products and liquid nicotine to any person under age 21 was presented.

Dr. Kim Richter, Kansas University Medical Center; Dr. Eric Voth, Stormont Vail Health Center; Ben Scott; Lauren Smith; Mia Weiler; Shawnee County Commissioner Bob Archer; Mary Jane Hellebust; Jim Barnett; Dr. Gianfranco Pezzino; Linda Ochs and Esther Lane spoke in support of the ordinance prohibiting the purchase of tobacco products to persons under the age of 21. They discussed the health impacts of smoking over time; the minimal financial impact it would have on the community; and the importance of changing the health culture across the state.

Bob Alderson, Casey's General Stores, Inc., and Tom Palace spoke on behalf of convenience stores across the state. They spoke in opposition of the ordinance and stated they believe the proposed ordinance was in direct conflict of State law and lacks personal accountability.

Councilmember Schwartz spoke in support of the ordinance. She stated a smoke-free environment provides for a much healthier approach for the community as a whole and it will have a very small financial impact on businesses.

Councilmember Jensen spoke in support of the ordinance. He stated a person's health should be considered in every aspect of government because there are many health issues that need to be

addressed. He noted this would be the first step in addressing the issue and believes education as well as other options should be reviewed and determined.

Councilmember Ortiz asked the City Attorney to provide a legal opinion on the City's authority to implement the law.

Lisa Robertson, City Attorney, stated the City has a solid legal standing to move forward with the ordinance.

Councilmember De La Isla referenced the many health issues related to smoking and the importance of making healthy decisions for the community at a municipal level by adopting laws that promote good health.

Councilmember Emerson stated he understands smoking causes many health issues; however, he believes government should not intrude on a person's personal choices.

Councilmember Coen stated he concurs with Councilmember Emerson and supports personal liberties.

Councilmember Clear spoke in support of the ordinance because it would help young adults make good decisions about their health.

Councilmember Hiller asked if there were other cities supporting this type of issue.

Councilmember Schwartz reported many cities are passing similar laws with the hope that the State will do the same, similar to the Clean Air Act. She suggested the issue be added to the City's 2018 Legislative Agenda.

Councilmember Schwartz moved to adopt the ordinance. The motion seconded by Councilmember Jensen carried. Councilmembers Emerson and Coen voted "no." (8-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, De La Isla, Jensen, Schwartz, Harmon and Mayor Wolgast -8. Noes: Emerson and Coen -2.

DISCUSSION related to the ordinance establishing a service fee levy for 2018 relating to the Capital City Downtown Business Improvement District was presented.

Vince Frye, Downtown Topeka, Inc. (DTI), Chief Executive Officer, provided an overview of the recent efforts in downtown revitalization. He highlighted the Business Improvement District program and administrative services as well as the method of funding for the District.

Councilmember Clear asked if DTI receives enough funding from the BID to provide sufficient services for the downtown area.

Vince Frye stated the amount of funding has not increased since 1986; therefore, a plan has been drafted to present a tiered system for service fees.

Councilmember Ortiz commended Mr. Paul Cervantes, DTI's District Maintenance Specialist, for his hard work in keeping the downtown area clean.

Councilmember Coen asked when they anticipate all the downtown storefronts to be occupied with tenants.

Vince Frye reported within two years they anticipate citizens will see a huge difference in merchants located in the downtown area.

DISCUSSION related to updating the Tennessee Town Neighborhood Plan as an element of the Comprehensive Plan was presented. (CPA17/02)

Bill Fiander, Planning Department Director, provided an update on the Tennessee Town Neighborhood Plan. He highlighted the history of the neighborhood, plan process, 2001 Plan accomplishments, neighborhood health trend, current neighborhood conditions, goals of the 2017 update, future land use, target areas, plan projects and SORT housing. He reported staff would present an ordinance that would adopt an element of the Comprehensive Plan on December 12, 2017, and implement the SORT housing and infrastructure projects in 2018 and 2019.

Mayor Wolgast commended staff, residents and neighborhood leaders for drafting a great neighborhood plan.

Councilmember Hiller commended staff for including infill housing in the plan.

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

Brenda Younger, City Clerk, gave a brief overview of the December 12, 2017 Governing Body agenda.

Brent Trout, City Manager, announced December 5, 2017, is the 163rd Birthday of the city of Topeka. He congratulated Logan Scroggins, City Property Maintenance Inspector, on his retirement and 19 years of service to the Topeka community. He asked citizens to provide input on the hiring of the next Topeka Police Chief by sending a letter addressed to the City Manager at 215 SE 7th Street, Topeka, Kansas, 66603; sending an email to nexttpdchief@topeka.org; or provide comments on the City's website at <https://www.topeka.org/your-next-tpd-chief>. He reported the job description would be posted and the process would continue through January at which time the public would get an opportunity to meet the final candidate(s) for final input.

Mayor Wolgast commended everyone who volunteered at the 50th Anniversary of the Topeka Community Thanksgiving Dinner. He reported 700 meals were served to individuals and 1,500 meals were delivered throughout the community. He announced City employees and the Topeka Fire Department were recognized for their participation in the event.

Councilmember De La Isla reported on her recent trip to Boston for the U.S. Conference of Mayors and stated all cities are having the same discussions and struggling with the same problems across the nation. She commended the students at the Scott Dual Language Magnet Elementary School for their volunteer efforts and noted staff was looking for bilingual volunteers

to read to children. She stated she is excited for the future plans of Topeka Metro because transportation is the number one issue to help overcome poverty issues in the community by giving people access to all areas of the city.

Councilmember Jensen commended staff for explaining community improvement projects to constituents at various public meetings over the past several weeks.

Councilmember Schwartz announced the Kansas Children's Service League (KCSL) Red Stocking Breakfast would be held December 9, 2017, from 7:30 a.m. to 10:30 a.m. to raise money for KCSL's child abuse prevention programs and services. She encouraged people to buy Mars products made in Topeka by purchasing candy labeled TOP21 on the back of the packages.

Councilmember Coen welcomed City Manager Brent Trout to Council District No. 8 where he will reside.

Councilmember Hiller commended Mayor-Elect De La Isla for attending the U.S. Conference of Mayors in Boston, Massachusetts. She commended City Manager Brent Trout for gathering public input on the hiring of a new Topeka Police Chief.

Rose Welch, Marty Hillard, Yasmari Rodriguez, Robert Scofield, Esther Lane and Sarah Oglesby appeared to speak under public comment.

Councilmember Harmon left the meeting.

Councilmember De La Isla moved to recess into executive session for 15 minutes for consultation with City legal counsel to discuss attorney-client privilege matters. To aid in discussion, the following individuals were requested to be present: Governing Body members; Brent Trout, City Manager; Lisa Robertson, City Attorney and Jacque Russell, Human Resources Director. The motion seconded by Councilmember Emerson 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.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:00 p.m.

Brenda Younger
City Clerk

Motion: I move to revise the proposed ordinance for the specific purpose of excluding miniature pot-belly pigs by taking each of the actions set forth below:

- (1) Delete the definition of “miniature pot-belly pigs” --
 - Page 5, Lines 113-115

- (2) Replace references to “dogs, cats and/or miniature pot-belly pigs” with “dogs and/or cats” in the following locations --
 - Page 4, Line 78 (Definition of “Domestic Animal”)
 - Page 7, Line 163 (Definition of “Vertebrate”)
 - Page 14, Line 325 (Complaint and notice to appear)
 - Page 21, Line 464 (Keeping or harboring animals)
 - Page 28, Lines 637-639 (Running at large prohibited)
 - Pages 31-32, Lines 699, 702, 705, 708, 711, 716, 718 and 719 (Cruelty to animals)
 - Page 40, Line 918 (Permit)
 - Page 41, Line 932 (When required)
 - Page 41, Line 944 (Exceptions)
 - Page 42, Line 959 (Application)
 - Page 43, Line 970 (Vaccination certificate prerequisite to issuance)
 - Page 44, Line 1000 (Obtaining permits after deadline; enforcement procedure)
 - Pages 45-46, Lines 1026, 1028, 1031, 1034-1035 (Tag)
 - Page 46, Lines 1041-1042 (Unlawful use)
 - Page 46, Line 1047 (When without a tag)
 - Pages 46-47, Lines 1051, 1054, 1056 and 1058-1059 (Animals at large; interference)
 - Page 47, Line 1063 (Notification of owner)
 - Page 47, Line 1070 (Detention period)
 - Pages 47-48, Lines 1077, 1080-1081, 1083-1084 and 1086-1087 (Redemption)
 - Page 48, Line 1097 (Failure to redeem)

- (3) Delete references to “miniature pot-belly pig” --
 - Page 79, Lines 1799-1802 (Swine prohibited) [**delete last full sentence*]

- (4) Delete proposed new Article V from Chapter 6.15 --
 - Page 55-56, Lines 1246-1271 (Article 5: TMC 6.15.200 and TMC 6.15.210)