

Governing Body Minutes – December 19, 2017

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, December 19, 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 and Coen -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember Harmon -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 of the Public Works Quarterly Report was presented by Jason Peek, Public Works Director.

A PRESENTATION of the Utilities Quarterly Report was presented by Braxton Copley, Utilities Deputy Director.

BOARD APPOINTMENT recommending the appointment of Caleb Asher to the Downtown Business Improvement District Advisory Board to fill an unexpired term ending January 2, 2020, was presented.

BOARD APPOINTMENT recommending the appointment of Leo S. Martinez to the City of Topeka Board of Electrical Appeals for a term ending December 20, 2019, was presented.

BOARD APPOINTMENT recommending the appointment of Ashley Canas to the Topeka Human Relations Commission to fill an unexpired term and a full term expiring July 7, 2020, was presented.

BOARD APPOINTMENT recommending the appointment of Walt Frederick to the Civil Service Commission to fill an unexpired term ending January 5, 2020, was presented.

BOARD APPOINTMENT recommending the appointment of Stephanie Gassen to the Topeka Tourism Business Improvement District Advisory Board for an unexpired term ending January 1, 2019, was presented.

BOARD APPOINTMENT recommending the appointment of Linda Morgan to the Topeka Tourism Business Improvement District Advisory Board for an unexpired term ending January 1, 2019, was presented.

BOARD APPOINTMENT recommending the appointment of Vince Frye to the Topeka Tourism Business Improvement District Advisory Board for an unexpired term ending January 1, 2019, was presented.

BOARD APPOINTMENT recommending the appointment of Kurt Young to the Topeka Tourism Business Improvement District Advisory Board for an unexpired term ending January 1, 2019, was presented.

BOARD APPOINTMENT recommending the appointment of Robert Bergquist to the Topeka Tourism Business Improvement District Advisory Board for an unexpired term ending January 1, 2020, was presented.

BOARD APPOINTMENT recommending the appointment of Thad Halstead to the Topeka Tourism Business Improvement District Advisory Board for an unexpired term ending January 1, 2020, was presented.

BOARD APPOINTMENT recommending the appointment of Dean Patel to the Topeka Tourism Business Improvement District Advisory Board for an unexpired term ending January 1, 2020, was presented.

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

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of December 12, 2017, was presented.

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

<u>Business Name</u>	<u>Address</u>
Arturo's	105 SE 10 th Avenue
Cypress Ridge	2533 SW Urish Road
Dickey's	609 NW US 24 Highway
Great Life North	350 NE US 24 Highway
Lupita's	730 S Kansas Avenue

APPROVAL of Dance Hall License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Kansas Expo	One Expocentre Drive
Midwest Elks Lodge #1441	1316 SE Madison Street
Wild Horse Saloon	3249 SW Topeka Boulevard

Councilmember Schwartz moved to approve the consent agenda. The motion seconded by Councilmember Clear carried unanimously. (9-0-0)

SECURITY GUARD LICENSE APPEAL submitted by Marcus Freeman was presented.

Luther Ganieany, Police Legal Advisor, highlighted the facts in the appeal case as presented to the Topeka Police Department. He stated approval to deny the appeal would affirm the decision of the Topeka Police Department to deny the renewal of Mr. Freeman's security guard license.

Marcus Freeman provided a detailed statement regarding the facts in the case and stated the incident was a result of him trying to protect his family. He reported he has been a security guard for nine years with no legal problems that would have caused him to lose his license.

Councilmember Clear asked Mr. Freeman why he pled guilty to the charges.

Councilmember Hiller questioned if an expungement would have made a difference in the approval of the appeal.

Councilmember Jensen thanked Mr. Freeman for providing information to the Governing Body. He asked for the definition of lawful defense.

Councilmember De La Isla asked if police officers have been called to the residence for past incidents.

Marcus Freeman stated he has no financial means to defend the charge in a court of law and police officers have been called numerous times to the property.

Luther Ganieany stated Mr. Freeman could have been granted renewal of the license if he was granted a diversion; however, the decision has been based on several different factors. He defined lawful defense as self-defense by pleading no-contest; however, Mr. Freeman did not make a defense which was why “lawful defense” would not apply in this case.

Councilmember Coen moved to approve the denial of the security guard license appeal. The motion was seconded by Councilmember Clear.

Councilmember Hiller asked if there was a way to resolve the issue at the court level and if the Governing Body has the right to override the denial of the appeal.

Luther Ganieany stated the court case has been concluded and the appeal period has expired.

Lisa Robertson, City Attorney, stated each appeal has been considered on a case by case basis; however, the Governing Body does have the right to override the denial of the appeal.

The motion to approve the denial of the security guard license appeal carried. Mayor Wolgast voted “no.” Councilmember Ortiz abstained. (7-1-1)

ORDINANCE NO. 20104 introduced by City Manager Brent Trout, concerning franchise fees for ambulance service, amending City of Topeka Code Section 5.10.040 and repealing the original section was presented.

Brent Trout, City Manager, stated approval would increase fees related to ambulance services.

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

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

ORDINANCE NO. 20105 introduced by City Manager Brent Trout, providing for a non-exclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka which replaces the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2017, was presented.

Brent Trout, City Manager, stated approval would grant American Medical Response (AMR) a nonexclusive franchise agreement for two years.

David Price spoke in opposition of increasing franchise fees and stated he believes the City of Topeka does not have the authority to do so.

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

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

A RESOLUTION introduced by City Manager Brent Trout, authorizing the use of excess general funds from unreserved fund balances was presented.

Brent Trout, City Manager, stated approval would authorize the transfer of \$543,205 for the following items: (1) \$222,125.34 from the General Fund for payment of the Topeka Police Department vehicle lease payment, and (2) an amount not to exceed \$321,080 from the General

Fund for the Fire House Annual Renovation Project (T-131052) approved in the 2018 Capital Improvement Plan.

Councilmember De La Isla requested some of the funds be allocated to a Housing Trust fund. She expressed the need for additional support in code enforcement as the housing stock continues to deteriorate due to the economic crisis and reduction of federal funding. She expressed the importance of finding opportunities to mitigate the issues and suggested setting aside \$100,000 for affordable housing in 2017 and 2018 as well as work with community partners to find matching funds in the amount of \$500,000. She noted the additional funding would allow for the opportunity to create a taskforce and implement a possible housing study as suggested by Councilmember Hiller while making the best use of the funds by partnering with the non-profit organizations that are already doing the work to help address the problem.

Councilmember Clear stated the Governing Body should consider priorities set for streets and water infrastructure which serve every citizen in the community.

Mayor Wolgast asked the City Manager to comment on the City's financial situation in regards to allocating funds towards affordable housing in 2018 to show a good faith effort by the City until there is a more definitive plan on how the funds should be utilized.

Brent Trout reported there would be approximately \$200,000 that could be set aside in a Housing Trust Fund in 2018.

Councilmember Hiller stated she concurs with Councilmember Clear and believes the priorities set by the Governing Body should be followed. She asked for an assessment of overall housing needs through an affordable housing study in the city. She stated she was not comfortable with using excess funds for affordable housing because the funds are earmarked for other items. She suggested generating private funds to support the effort.

Mayor Wolgast stated the City has to make a commitment at some point as the taskforce has been working hard on the issue for almost two years. He expressed the importance of quality of place and encouraged the Governing Body to consider the issue in the near future.

Councilmember De La Isla suggested researching options to use funding that would be available to leverage more funding as it would be a community project. She noted federal and state funds continue to decrease; therefore, \$100,000 should be set aside for seed money to start a Housing Trust Fund.

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

Councilmember Jensen moved to amend the resolution to allocate \$200,000 as matching funds from the 2017 City of Topeka Operating Budget excess funds to a Housing Trust Fund provided a full and complete housing plan has been completed and approved by the Governing Body. The motion was seconded by Councilmember De La Isla.

Nick Hawkins, Budget and Performance Manager, clarified the amendment would move \$200,000 of 2017 excess funds to the fund balance and in 2018, a formal amendment would have to be made to expend the funds as specified by the Governing Body.

Councilmember Clear suggested the \$200,000 be used to assist people on a fixed income that need help with increased utility rates. She expressed the importance of the Governing Body following through on the priorities set regarding support of streets and water infrastructure.

Councilmember Schwartz stated she understands there are affordable housing issues that need to be addressed in the city; however, a Housing Trust Fund should be a line item in the operating budget and not supported with excess funds.

Councilmember Jensen stated he concurs with Councilmember Schwartz and believes a long-term plan should be approved before funds are allocated. He suggested adding a \$1 service fee to all building permits issued by the City to be used for a Housing Trust Fund. He also stated he concurs with Councilmember Clear and the need to assist people on a fixed income with utility fees.

Mayor Wolgast noted many cities impose additional fees on services such as permits to generate additional funding to address affordable housing issues.

Councilmember De La Isla stated she believes the City should make a statement to the community that the City takes the affordable housing issue seriously by setting aside seed money to start a Housing Trust Fund.

Councilmember Coen called the question.

The motion to amend the resolution to allocate \$200,000 as matching funds from the 2017 Budget excess funds to a Housing Trust Fund provided a full and complete housing plan has been completed and approved by the Governing Body carried. Councilmembers Hiller, Clear, Schwartz and Coen voted “no.” (5-4-0)

The motion to approve the resolution as amended carried. Councilmember Clear voted “no.” (8-1-0)

ORDINANCE NO. 20106 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, reported the ordinance was deferred from the meeting of December 5, 2017, to allow time for staff to review the language presented by Councilmember Hiller.

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

Councilmember Hiller stated that several additional amendments were submitted for consideration at the December 5, 2017 Governing Body meeting which staff has considered and has no objection. She asked the City Attorney to read through each of the proposed amendments.

Lisa Robertson, City Attorney, outlined the final Title 6 revision proposals from Councilmember Hiller presented at the December 12, 2017 Governing Body meeting.

Amendments were as follows:

- Section 6.05.070(b) – Keeping or harboring animals
 - Inserting the words “disease, accumulation of flies and” between the words “preventing” and “the” in Lines 475-476 on page 21
- Section 6.05.110(a) – Injuring or killing of wild and undomesticated animals unlawful; exceptions
 - Deleting the word “knowingly” from Line 809 on page 36
- Section 6.05.120(b) – Animal Fighting
 - Deleting the word “knowingly” from Line 837 on page 37
- Section 6.05.130(b) – Deceased Animals – deletion of the words “whose owner can be identified” from Line 860 on page 38
 - Inserting of the words “or anyone who discovers a deceased domestic pet on a property” between the words “pet” and “contacts” in Line 862 on page 38
 - Deleting of the words “to the residence” from Line 863 on page 38
- Section 6.15.170(a)(1)(ii) – Dangerous Dogs
 - Inserting the words “and humanely” between the words “securely” and “muzzled” in Line 1134 on page 50
- Section 6.20.010(d)(v) – Exotic or captive wild animals
 - Deleting of subsection (v) from the exceptions to the prohibitions set out in 6.20.010 – see Line 1322 on page 58

Councilmember Hiller moved to adopt the amendments as read by the City Attorney. The motion seconded by Councilmember Jensen carried unanimously. Mayor does not vote. (8-0-0)

The motion to adopt the ordinance as amended carried. Councilmembers Ortiz, Emerson and Coen voted “no.” Mayor does not vote. (5-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, De La Isla, Jensen and Schwartz -5. Noes: Ortiz, Emerson and Coen -3. Absent: Harmon -1.

AN ORDINANCE introduced by City Manager Brent Trout, concerning utility rates amending City of Topeka Code Section 13.05.020 through 13.05.060 and repealing original sections was presented.

Brent Trout, City Manager, reported discussion on the potential increases was conducted at the December 12, 2017 Governing Body meeting.

Doug Gerber, Deputy City Manager, provided an overview of the process to date and the steps taken by the City to help the Governing Body make the difficult decision to increase rates.

Councilmember Coen asked how much would be generated from utility rates annually. He noted the proposed allocation of \$200,000 for a Housing Trust Fund could be used to help reduce utility rates.

Doug Gerber reported the following budgetary impact to utility revenues:

- 2018 - \$1.87 million additional water revenue, \$1.64 million additional wastewater revenue and \$400,000 additional stormwater revenue
- 2019 - \$1.71 million additional water revenue, \$1.45 million additional wastewater revenue and \$355,000 additional stormwater revenue
- 2020 - \$1.80 million additional water revenue, \$1.52 million additional wastewater revenue and \$373,000 additional stormwater revenue

Pat DeLapp spoke in opposition of raising the utility rates. He suggested the City only charge people for the amount of water they use.

Nicole Malott, Office of Utilities and Transportation Billing Services Director, gave a brief overview on how usage of water, wastewater and stormwater was calculated for customers.

Councilmember Coen stated he believes the proposed rate increases are reasonable for the amount of improvements needed to the City's utility systems.

Councilmember Emerson moved to adopt the ordinance. The motion was seconded by Councilmember Coen.

Councilmember Jensen moved to amend the ordinance to include an income verification process. The motion was seconded by Councilmember Clear.

Doug Gerber questioned the legality of the amendment and noted it would reference a protected class of people which would violate City ordinance.

Lisa Robertson, City Attorney, stated there have been court cases pertaining to equal protection issues.

Councilmember De La Isla stated there are many programs in the community that are in place to help low-income households with their utility bill. She stated the rate increase would generate an additional \$100,000 annually for programs that provide financial relief for low-income households.

Councilmember Jensen stated he believes the current programs offered to low-income households are cumbersome and difficult.

The motion to amend the ordinance to include an income verification process was withdrawn. The second concurred.

The motion to adopt the ordinance failed. Councilmembers Clear, Ortiz, Schwartz and Coen voted “no.” (5-4-0)

Councilmember Hiller questioned the number of affirmative votes needed to approve the amendment to the resolution approving the allocation of excess general funds. She stated the motion to amend the resolution to allocate \$200,000 as matching funds from 2017 budget excess funds to a Housing Trust Fund only received five (5) affirmative votes not six (6).

Lisa Robertson, City Attorney, confirmed the amendment to the resolution allocating excess funds failed. She stated Governing Body Rules & Procedures 2.2 states “six members of the governing body shall constitute a quorum and be necessary for the transaction of business.” She stated the Governing Body has the option to reconsider the amendment to the resolution.

Mayor Wolgast stated the motion would be to reconsider the amendment made by Councilmember Jensen and seconded by Councilmember Coen to amend the resolution allocating excess funds (to allocate \$200,000 as matching funds from 2017 budget excess funds to a Housing Trust Fund provided a full and complete housing plan has been completed and approved by the Governing Body).

Councilmember Jensen moved to reconsider the motion to amend the resolution allocating excess funds. The motion seconded by Councilmember Coen failed. Councilmembers Hiller, Clear, Schwartz and Coen voted “no.” (5-4-0)

Councilmember Emerson moved to reconsider the motion to adopt the ordinance concerning utility rates. The motion seconded by Councilmember Jensen carried. Councilmembers Clear, Ortiz and Coen voted “no.” (6-3-0)

ORDINANCE NO. 20107 introduced by City Manager Brent Trout, concerning utility rates amending City of Topeka Code Section 13.05.020 through 13.05.060 and repealing original sections was again presented.

Councilmember Emerson moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried. Councilmembers Clear, Ortiz and Coen voted “no.” (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Emerson, De La Isla, Jensen, Schwartz and Mayor Wolgast -6. Noes: Clear, Ortiz and Coen -3. Absent: Harmon -1.

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

Councilmember Emerson thanked everyone involved in the completion of the SE California Avenue improvement project.

Councilmember De La Isla encouraged everyone to be kind and offer support during the holidays to those in need.

Councilmember Jensen encouraged the community to help those in need. He thanked Councilmember Schwartz for her service and wisdom and looks forward to serving with Mayor-Elect De La Isla.

Councilmember Schwartz expressed her appreciation to all Governing Body members for their help during her tenure. She stated she would be working with St. Jude Hospital for the 2018 Dream Home Giveaway which is a home donated by the construction laborers and would offer Open House Tours in May with a raffle in June 2018.

Councilmember Hiller thanked the UNESCO Site Selection team in regards to Sumner and Monroe schools, all those involved in the Global World Heritage Sites process and supporting the movement. She thanked staff for their work in citywide improvement projects. She announced the Topeka Performing Arts Center has reached their fundraising goals to receive grant fund matches.

Councilmember Clear reported she participated in the Love 146 training, an international human rights organization working to end child trafficking and exploitation through survivor care and prevention, and plans to make this her focus moving forward into retirement.

David Price, Rose Welch, Brian Moore, Christina Valdivia-Alcala, Yasmari Rodriguez, Marty Hillard, Sarah Oglesby-Dunegan, Oshara Hayes, Marty Grist and Brian Cole appeared to speak under public comment.

Councilmember Jensen moved to recess into executive session for a period of 10 minutes to consult with the City's legal counsel regarding potential litigation related to tort claims, which requires privileged attorney/client communication. In order to aid the discussion, the following individuals should be present: Governing Body members; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Associate City Attorney, Nick Jefferson; and City Attorney, Lisa Robertson. The motion seconded by Councilmember Coen 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 Ortiz left the room.

Councilmember Emerson moved to recess into executive session for a period of 15 minutes to discuss personnel matters in order to protect the privacy of those discussed. In order to aid the discussion, the following individuals should be present: Governing Body members; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Human Resources Director, Jacque Russell and City Attorney, Lisa Robertson. The motion seconded by Councilmember Coen carried unanimously. (8-0-0)

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 9:50 p.m.

Brenda Younger
City Clerk