

Governing Body Minutes – February 20, 2018

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, February 20, 2018. 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, Padilla, Jensen, Mays, Coen and Lesser -9. Mayor Michelle De La Isla presided -1.

AFTER THE MEETING was called to order, Councilmember Jensen asked for a moment of silent meditation.

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

A PRESENTATION on the 2017 Financial 4th Quarter Report was presented by Nickie Lee, Administrative and Financial Services Director.

A PRESENTATION on the 2017 Year End Development and Growth Management Report was presented by Bill Fiander, Planning Department Director.

BOARD APPOINTMENT recommending the reappointment of Darcella Goodman to the Topeka Human Relations Commission to fill an unexpired term ending February 1, 2020, was presented.

BOARD APPOINTMENT recommending the reappointment of Deborah Swank to the Topeka Sustainability Advisory Board for a term ending March 1, 2020, was presented.

Councilmember Ortiz questioned the appointment term for Deborah Swank.

Councilmember Hiller moved to approve the board appointment of Deborah Swank based on verification of term. The motion seconded by Councilmember Emerson carried unanimously. (9-0-0) The Mayor does not vote.

Councilmember Coen moved to approve the board appointments as amended. The motion seconded by Councilmember Jensen carried unanimously. (9-0-0) The Mayor does not vote.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of February 13, 2018, was presented.

Councilmember Jensen moved to approve the consent agenda. The motion seconded by Councilmember Coen carried unanimously. (10-0-0)

A RESOLUTION to establish a policy for tax increment financing (TIF) economic development incentives in the city of Topeka was presented.

Brent Trout, City Manager, reported staff consulted with subject matter experts, the City's financial advisor, and other communities with significant experience structuring TIF districts in drafting the proposed TIF Policy. He stated he believes the policy was crafted in a manner that was broad and not restrictive in order to provide good guidance for developers and noted the policy could be deviated from when necessary. He referenced a memo distributed to the Governing Body outlining feedback from developers and staff responses to their concerns. He asked the Governing Body to inform staff of any concerns they may have with the proposed policy so staff could address the issues or the Governing Body could refer the policy to a Council committee for further discussion.

Councilmember Emerson expressed his appreciation to staff for discussing the policy in detail with him. He reported he has been approached by a major developer who has expressed a number of concerns with the policy as it relates to growth in the community; therefore, he would like to refer the item to a Council committee for further review.

Councilmember Emerson moved to refer the resolution to the Policy and Finance Committee. The motion was seconded by Councilmember Ortiz.

Councilmember Jensen spoke in support of the referral and stated he believes developers should have input in the proposed policy.

Councilmember Hiller spoke in support of the referral because she believes it should be vetted through developers in the community.

Joseph Ledbetter spoke in support of the referral and noted it is important to engage developers in the process.

The motion to refer the resolution to the Policy and Finance Committee carried unanimously. (10-0-0)

SUSPENSION of Governing Body Rules to allow Motion for Reconsideration of Ordinance No. 20109 (Aqua Blast Laundry Rezoning); Reconsideration of Ordinance No. 20109 was presented. (Ordinance No. 20109A)

Councilmember Lesser moved to suspend the Governing Body Rules to reconsider Ordinance No. 20109, Aqua Blast Laundry Facility. The motion was seconded by Councilmember Jensen.

Councilmember Lesser stated he would like to reconsider the proposal to change the closing time of the laundry facility to 12:00 a.m. the same day.

Tracy Chamberland, developer, spoke in support of changing the operational hours to support the facility and stated he believes a 12:00 a.m. closing time would be adequate. He reported the building would fit the character of the neighborhood and the additional two hours of operation, per day, would produce enough revenue for the business to be successful.

The motion to suspend the Governing Body Rules to reconsider Ordinance No. 20109 carried. Councilmember Ortiz voted “no.” (9-1-0)

Councilmember Jensen moved to reconsider Ordinance No. 20109, Aqua Blast Laundry Facility. The motion seconded by Councilmember Emerson carried. Councilmembers Ortiz and Padilla voted “no.” (8-2-0)

Councilmember Padilla asked if there are security plans in place for the facility and suggested implementing a CPTED - Crime Prevention through Environmental Design.

Councilmember Clear questioned the need to be open until 12:00 a.m.

Councilmember Hiller asked for clarification of the services the laundry facility would provide to customers.

Tracy Chamberland stated surveillance would be located inside and outside of the facility; in order for the \$2 million investment to be financially feasible the closing time needs to be extended until 12:00 a.m.; and the facility would also provide drop-off services in addition to general laundry services.

Councilmember Jensen thanked Mr. Chamberland for his interest in investing in the community.

David Hines and Gary Lucas spoke in support of the facility and being open until 12:00 a.m.

Councilmember Coen questioned why the initial proposal of a 24-hour operation was not being reconsidered.

Councilmember Emerson left the meeting.

Councilmember Lesser stated 12:00 a.m. was a compromise which works for the local residents and the developer.

Councilmember Hiller spoke in support of the proposal and complimented the developer on his laundry facility located in east Topeka.

Councilmember Lesser moved to amend the time set out in the ordinance from 10:00 p.m. to 12:00 a.m. the same day for a closing time. The motion seconded by Councilmember Jensen carried. Councilmembers Clear and Ortiz voted “no.” Councilmember Emerson was absent.

(7-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Padilla, Jensen, Mays, Coen, Lesser and Mayor De La Isla -7. Noes: Clear and Ortiz -2. Absent: Emerson -1.

APPROVAL of the Governing Body Rules and Procedures was presented.

Brent Trout, City Manager, stated the Governing Body Rules and Procedures was initially discussed at the January 16, 2018, Governing Body meeting and deferred from the February 13, 2018, meeting.

Lisa Robertson, City Attorney, reported staff has incorporated the following revisions to the Governing Body Rules and Procedures. She listed the following revised sections to include: Section 3.2(e) Special Governing Body Meetings; Section 4.1 Chair and Duties; Section 5.1 Presentation of Circulation and; Section 8.5(b), (c) and (d) Procedure and Committee Items.

Councilmember Lesser moved to approve the amendments as listed by the City Attorney. The motion was seconded by Councilmember Clear.

Councilmember Hiller noted she has been assured by City Manager Trout that Section 5.1 (Preparation and Circulation) would be handled administratively concerning attachments to both the preliminary and final agendas. She commented on the proposed language of the election of deputy mayor and stated she believes the language may be too restrictive.

Councilmember Lesser withdrew his motion to amend the rules as stated by the City Attorney. The second concurred.

Councilmember Hiller moved to approve all amendments that have been presented to date to the Governing Body Rules and Procedures, with the exception of the deputy mayor proposal (Lines 259-274). The motion was seconded by Councilmember Jensen.

Councilmember Clear spoke in support of the deputy mayor proposal and stated she would oppose the motion as proposed.

Mayor De La Isla spoke in opposition of the motion due to the elimination of the deputy mayor proposal. She reminded the Governing Body the Rules would be reviewed on an annual basis.

Councilmember Mays expressed concern with altering the Governing Body Rules and Procedures with regards to the deputy mayor proposal.

Councilmember Ortiz stated the intent of the proposal was to ensure the election of a deputy mayor was a fair process.

Councilmember Jensen stated the proposal as written would only be considered a recommendation on how to proceed with the election of a deputy mayor.

Councilmember Lesser expressed concern with the deputy mayor election being based on seniority and stated he believes service should be based on the best person for the job.

Councilmember Emerson entered the room.

Councilmember Padilla spoke in support of the proposal and noted it would help ensure a fair process.

Discussion continued by Governing Body members on proposed language amendments relating to the election of the deputy mayor.

Mayor De La Isla announced the Governing Body would take a 5-minute recess to allow the City Attorney time to draft the language amendment concerning election of a deputy mayor.

Following a 5-minute recess, the Governing Body reconvened into open session and the following proposed language relating to the election of the deputy mayor was proposed:

Section 4.1(b) would read as follows: “In the absence of the mayor the deputy mayor shall preside. Anytime there is a need for an election of a deputy mayor, councilmembers who have served the longest period of time and have not previously served as deputy mayor will automatically be nominated.

Councilmember Hiller made a friendly amendment to approve all amendments that have been presented to date to the Governing Body Rules and Procedures, including a revision to Section 4.1(b) that would read as follows: “In the absence of the mayor the deputy mayor shall preside. Anytime there is a need for an election of a deputy mayor, councilmembers who have served the longest period of time and have not previously served as deputy mayor will automatically be nominated.” The second concurred. Councilmember Emerson abstained.

(9-0-1)

DISCUSSION on proposed adoption of the 2015 International Building Code, 2015 International Fire Code and the 2015 National Fire Protection Association Life Safety Code was presented.

Richard Faulkner, Development Services Division Director, provided an overview of the process used to review the 2015 Building Codes to determine the need for local amendments as well as the changes being proposed for each code.

Governing Body members continued discussion regarding “grandfathered” properties and how the 2015 code updates would affect property owners; the comparisons between the 2006 and 2015 Codes; how the codes address residential, commercial and industrial properties as well as small businesses. They asked if a “clean” ordinance could be provided to the Governing Body.

In response, Richard Faulkner stated the following:

- Properties that are “grandfathered” will not have to make changes if the 2015 Codes are adopted unless there are extenuating circumstances that occur to the properties after the codes are adopted.
- Staff would provide a “clean” ordinance to the Governing Body as well as the comparisons between the 2006 and 2015 Codes.
- Staff has been working with the Growth Organization of Topeka (GO Topeka) to address issues for small businesses.

Councilmember Jensen thanked staff for their continued efforts to ensure the codes are applicable to the community.

Mayor De La Isla asked the Governing Body to send any additional questions or concerns to the City Manager.

Councilmember Emerson stated he would prefer that staff meet with community businesses before the Governing Body considers the ordinances.

DISCUSSION concerning the regulation of fireworks, amending City of Topeka Code Section 8.35.070 was presented.

Doug Gerber, Deputy City Manager, stated as a result of the discussion held at the February 6, 2018, Governing Body meeting, staff has proposed the following changes: (1) limit the days and times for sale and discharge; (2) increase the permit fee; and (3) prohibit discharge within 500 feet of a hospital.

Councilmember Jensen suggested each firework stand post a schedule of dates when it is lawful to discharge fireworks for customers.

Councilmember Ortiz stated the Topeka Fire Inspectors give each permitted firework stand a schedule they are to hand out to each customer as stated in the current ordinance. She noted when the Governing Body last addressed the issue, there was hours of testimony by proponents and opponents and the current ordinance was adopted as a compromise.

Councilmember Coen questioned why the permit fee would increase. He spoke in support of discharging fireworks until 11:00 p.m.

Doug Gerber stated the increase would help recoup some of the inspection fees for the Topeka Fire Department.

Councilmember Clear stated many of her constituents have expressed their support of a complete ban on fireworks. She stated she believes the enforcement of fireworks would be possible because many people would respect the law and not discharge fireworks, and if fireworks were banned, the City would still receive sales tax revenue from fireworks sold in Shawnee County. She suggested the City of Topeka draft a similar ordinance as the City of Lawrence, banning all types of fireworks that explode in the air. She stated she would support the discharge of fireworks only on July 3rd and 4th from 10:00 a.m. to 11:00 p.m.

Dave Guccione, Kansas Fireworks Association, spoke in support of safe celebrations; limiting discharge of fireworks to 500 feet from a hospital; permit fee increase language and extending discharge of fireworks until 11:30 p.m. on July 4th.

Chuck Levian spoke in support of fireworks safety; limiting discharge of fireworks around medical facilities; and language that would address one or two different dates to discharge fireworks.

Rusty Watson expressed concern with changes to dates and how it would relate to inspections of firework tents. He spoke in support of the current ordinance.

Dana Hayden spoke in support of a complete fireworks ban; however, he believes the proposed amendments are a step in the right direction. He suggested asking the public to vote on the issue as there are many public health issues to consider.

Lisa Robertson, City Attorney, stated the State Legislature must prescribe a ballot measure for a subject to be presented for a public vote.

Teresa Corlee spoke in support of the current ordinance. She stated the sale and discharge of fireworks in the city of Topeka provides an opportunity to raise money for youth programs.

Councilmember Emerson spoke in support of the current ordinance as most neighborhoods come together and celebrate on July 4th which helps build neighborhood relationships. He spoke in opposition of a total fireworks ban; however, he supports allowing the same dates for the sale as well as the discharge of fireworks.

Councilmember Jensen spoke in support of discharging fireworks until 11:00 p.m. every day with sale dates from June 27 through July 4. He thanked everyone who has provided input on the issue.

Councilmember Hiller provided an overview of the responses she received from posting the proposed ordinance amendments on her Facebook page and Nextdoor. She stated she would like the Topeka Fire Chief and Topeka Police Chief to provide comment on if the City could do more on the enforcement of fireworks as that tends to be the majority of concerns expressed by residents. She asked staff to explore the idea of regulating fireworks at certain decibel levels; the product difference between consumer and commercial fireworks; and the definition of “place or institution” as defined by the National Fire Protection Association 101; what the entire economic impact of hosting July 4th celebrations have on the community as a whole; and consider revising the requirements concerning posting of educational materials as written in the current ordinance.

Councilmember Lesser reported he received an overwhelming response supporting a complete ban on fireworks or a limitation of the discharge fireworks. He questioned how much cost would be associated with enforcement of the issue and noted a number of neighborhoods may require more enforcement than others. He spoke in support of large fireworks displays, allowing the sale of fireworks on July 1st through July 4th, and the discharge of fireworks on July 4th only.

Councilmember Padilla stated the proposed amendments would provide an opportunity for compromise and self-regulation to some degree. He suggested any extreme changes to the ordinance take effect in January 2019 to allow time to educate and inform people.

Bill Cochran, Topeka Police Chief, provided historical statistics for 2014-2016 and commented on the different types and levels of enforcement between the Topeka Fire and Police Departments. He stated everyone must be aware of neighborhood celebrations and how they can vary; however, an enforcement plan could be created at the will of the Governing Body. He noted he would provide the number of calls received during this timeframe and the statistics on call responses to the Governing Body.

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

Brent Trout, City Manager, announced the City of Topeka Alternative Sentencing Court recently had four participants graduate from the program. He gave a brief overview of the March 6, 2018, preliminary Governing Body agenda.

Mayor De La Isla extended her condolences to the families affected by the recent school tragedy in Parkland, Florida, and expressed the need to discuss serious issues relating to gun control and mental health issues as a community. She congratulated Federal Home Loan Bank on their new facility and thanked Bank representatives as well as City and County staff members for working together on the project. She also congratulated the 2018 Top Tank winners Brew Bank and G's Cheesecake, and stated she looks forward to the businesses being a part of the community. She expressed her appreciation for being selected as one of the award recipients as a leader for women who exemplifies ethical standards and behaviors by the Temple of Deliverance Church of God in Christ at the 2018 Black History Brunch event.

Councilmember Jensen congratulated the 2018 Top Tank winners and commended the community for celebrating entrepreneurship.

Councilmember Coen announced the February 14, 2018, JEDO Board meeting has been rescheduled to February 28, 2018.

Councilmember Lesser stated the Topeka Rescue Mission is in need of a ¾ ton four-wheel drive pickup truck and asked if anyone needs additional information to contact Barry Feaker at 785-354-1744.

Councilmember Hiller offered her condolences to the families in Parkland, Florida, affected by the recent school tragedy. She congratulated the 2018 Top Tank winners. She encouraged everyone to participate in the many events throughout the community celebrating Black History Month.

Councilmember Ortiz encouraged everyone to participate in the Free Smoke Alarm Program sponsored by the Topeka Fire Department and stated those interested in participating in the program could contact the Topeka Fire Department at 785-368-4000.

Councilmember Emerson announced he left the Governing Body meeting for a short time to attend the Shawnee Heights High School Senior Night where his daughter was a participant.

Councilmember Padilla thanked the City Street Department for working during inclement weather conditions.

Topeka Police Chief Bill Cochran reported on the recent homicide and stated all four suspects have been arrested. He thanked the community for providing information to assist the Police Department in this matter.

Mary Akerstrom and Marty Hillard appeared to speak under public comment.

Councilmember Ortiz moved to extend the meeting past 10:00 p.m. The motion seconded by Councilmember Emerson carried unanimously. (10-0-0)

Councilmember Jensen moved to recess into executive session for a time period not to exceed 30 minutes for consultation with the City's legal counsel to discuss attorney-client privileged matters related to potential litigation, as justified by K.S.A. 75-4319(b)(2). To aid the discussion, the following individuals should be present: Governing Body members; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Administrative and Financial Services Director, Nickie Lee; Public Works Director, Jason Peek; Chief of Litigation, Shelley Starr, and City Attorney, Lisa Robertson. The motion seconded by Councilmember Emerson carried. Councilmember Ortiz did not vote. (9-0-0)

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:25 p.m.

Brenda Younger
City Clerk