

Governing Body Minutes – March 6, 2018

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, March 6, 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, Mays, Coen and Lesser -8. Mayor Michelle De La Isla presided -1. Absent: Councilmember Jensen -1.

AFTER THE MEETING was called to order, Chaplain Major Joshua Buford, provided the invocation.

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

The 2018 Topeka Armed Forces Personnel of the Year Awards was presented by Mayor De La Isla. The following military personnel were honored:

- Master Sgt. Willie F. Carter, Kansas National Guard
- Hospital Corpsman First Class, Jamie Tuttle, United States Navy
- Staff Sgt. Anthony Miller, United States Marine Corps
- Yeoman Third Class, Chloe L. Boatman, United States Coast Guard
- Chief Master Sgt. Troy C. Abel, Kansas Air National Guard

A PRESENTATION on the 2017 Public Works 4th Quarter Report was presented by Jason Peek, Public Works Director.

A PRESENTATION on the 2017 Utilities 4th Quarter Report was presented by Braxton Copley, Utilities Deputy Director.

A PRESENTATION on the City of Topeka Water Quality Report was presented by Bob Sample, Utilities Director.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8971 introduced by Councilmember Karen Hiller, approving a special event known as the Country and Food Truck Festival was presented.

RESOLUTION NO. 8972 introduced by Councilmember Karen Hiller, approving a special event known as the Jazz and Food Truck Festival was presented.

RESOLUTION NO. 8973 introduced by Councilmember Karen Hiller, approving a special event known as the Rock and Food Truck Festival was presented.

RESOLUTION NO. 8974 introduced by Councilmember Karen Hiller, approving a special event known as Tap That Topeka was presented.

RESOLUTION NO. 8975 introduced by Councilmember Karen Hiller, approving a special event known as Tacos y Tequila was presented.

RESOLUTION NO. 8976 introduced by Councilmember Sandra Clear, approving a special event known as the Classic Movie Nites in NOTO was presented.

RESOLUTION NO. 8977 introduced by Councilmember Karen Hiller, granting Greater Topeka Partnership an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8978 introduced by Councilmember Karen Hiller, granting Greater Topeka Partnership an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8979 introduced by Councilmember Karen Hiller, granting Greater Topeka Partnership an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8980 introduced by Councilmember Karen Hiller, granting Greater Topeka Partnership an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8981 introduced by Councilmember Karen Hiller, granting Greater Topeka Partnership an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8982 introduced by Councilmember Karen Hiller, granting Greater Topeka Partnership an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8983 introduced by Councilmember Sylvia Ortiz, granting Randy Wheat an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

ORDINANCE NO. 20111 introduced by City Manager Brent Trout, allowing and approving City expenditures for the period of December 30, 2017, through February 2, 2018, and enumerating said expenditures therein was presented.

MINUTES of the regular meeting of February 20, 2018, was presented.

APPROVAL of Open After Midnight License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Dutch Goose	3203 SW 10 th Street
Faces, L.L.C.	802 N Kansas Avenue
Hooters of Topeka	6100 SW 10 th Avenue
Hy-Vee #1658	2951 SW Wanamaker Road
Hy-Vee Gas	6011 SW 29 th Street
Kwik Shop #705	114 NW Topeka Boulevard
Kwik Shop #713	5700 SW 21 st Street
Kwik Shop #720	102 SE 37 th Street
Kwik Shop #757	2619 SW 21 st Street
Kwik Shop #780	2520 SW 6 th Avenue
Kwik Shop #781	4500 SW Topeka Boulevard
Kwik Shop #788	1414 SW 17 th Street
Kwik Shop #789	746 NE Wabash Avenue
Kwik Shop #791	1700 SW Topeka Boulevard
Oscar's Inc.	1424 SW Lane Street
Pancho's Inc.	3506 SW Topeka Boulevard
The Pennant	915 S Kansas Avenue

<u>Business Name</u>	<u>Address</u>
Sk8away Inc.	815 SW Fairlawn Road
Taco Bell	101 SE 29 th Street
Taco Bell	1560 SW Wanamaker Road
Taco Bell	2013 N Topeka Boulevard
Terry's Bar & Grill	522 SW 6 th Avenue

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

ORDINANCE NO. 20112 introduced by City Manager Brent Trout, concerning fireworks, amending City of Topeka Code Section 8.35.070 and repealing original section was presented.

Brent Trout, City Manager, reported the proposed language amendments are based on discussion from the February 20, 2018, Governing Body meeting.

Doug Gerber, Deputy City Manager, stated the following amendments are being proposed and if approved, would become effective on July 5, 2018:

1. Reduce the time period for the sale of fireworks from the current period of June 27 through July 5 to June 27 through July 4.
2. Reduce the period of time for the discharge of fireworks from the current period of July 1 through July 3 (8:00 a.m. to 11:00 p.m.) to July 4 (8:00 a.m. to 12:00 midnight) to July 1 through July 4 (8:00 a.m. to 11:00 p.m.)
3. Prohibit discharge of fireworks if the sound level exceeds 120 decibels. He noted this regulation would be challenging to enforce.
4. Increase the permit fee from \$280 to \$500.
5. Prohibit the discharge of fireworks within 500 feet of a hospital.

Teresa Miller spoke in support of the sale and display of fireworks on July 4th only.

Councilmember Clear expressed concern with the effects the discharge of fireworks has on veterans and animals. She proposed the discharge of fireworks only be allowed on two days from 10:00 a.m. to 11:00 p.m.

Councilmember Clear moved to adopt the ordinance as proposed. The motion was seconded by Councilmember Lesser.

Councilmember Clear moved to amend the ordinance to reflect an effective date upon approval and publication. The motion was seconded by Councilmember Ortiz.

Councilmember Hiller questioned if a change in the effective date would have an effect on the ordering of inventory for vendors.

Councilmember Ortiz stated she would not support the motion to amend because many vendors order inventory a year in advance.

Councilmember Emerson spoke in opposition of changing the effective date at this time. He stated many families have already made plans for the 2018 July 4th Holiday.

Councilmember Mays suggested making changes to the ordinance first, followed by consideration of the effective date based on the impact of the changes.

Councilmember Lesser stated he concurs with Councilmember Mays.

Councilmember Clear withdrew her motion to amend the effective date of the ordinance. The second concurred.

Mayor De La Isla announced the Governing Body would consider the proposed language amendments as presented by staff.

Amendment No. 1: Reduce the time period for the sale of fireworks from the current period of June 27 through July 5 to June 27 through July 4.

Lisa Robertson, City Attorney, highlighted the proposed amendment regarding the sale of fireworks beginning on Line 101, which states, “June 27 through and including July 4” for dates of permits issued to vendors to sell fireworks.

Councilmember Clear moved to amend the ordinance on Line 101 changing the dates of sale from “June 30 through and including July 4.” The motion was seconded by Councilmember Lesser.

Councilmember Ortiz suggested the City's dates of sale coincide with Shawnee County's dates of sale.

Doug Gerber reported Shawnee County has no plans to change their fireworks regulations now or in the near future.

Councilmember Mays questioned if the language could reflect the "last Saturday of June" and not a specific date to make it more business friendly for vendors.

Councilmember Lesser expressed the importance of considering the different challenges the City has compared to Shawnee County in setting regulations. He noted the City must consider the location of the Veterans Administration Hospital, St. Francis and Stormont Vail Hospitals as well as the Helping Hands Humane Society and the Zoo.

Councilmember Ortiz stated she concurs with Councilmember Lesser; however, she believes City residents would still purchase fireworks in the County and discharge the fireworks in city limits.

The motion to amend the ordinance on Line 101 changing the dates of sale from "June 30 through and including July 4" failed. Councilmembers Hiller, Ortiz, Emerson, Padilla and Coen voted "no." Mayor does not vote. (3-5-0)

Councilmember Ortiz moved to amend the ordinance on Line 101 changing the dates of sale for the period of "June 27 through and including July 4." The motion seconded by Councilmember Emerson failed. Councilmembers Clear, Padilla, Mays and Coen voted "no." Mayor does not vote. (4-4-0)

Councilmember Mays moved to amend the ordinance on Line 101 changing the dates of sale from the "final Saturday of June through and including July 4." The motion seconded by

Councilmember Clear failed. Councilmembers Hiller, Clear, Ortiz, Emerson, Padilla and Coen voted “no.” Mayor does not vote. (2-6-0)

Councilmember Clear moved to amend the ordinance on Line 101 changing the dates of sale from “June 29 through and including July 4.” The motion was seconded by Councilmember Coen.

Councilmember Hiller questioned if the change in dates would have an effect on the Topeka Fire Department in regards to inspections.

Craig Duke, Topeka Fire Chief, reported the change should not cause any issues with inspections and the Fire Department would adjust their operations to accommodate any changes in policy implemented by the Governing Body.

The motion to amend the ordinance on Line 101 changing the dates of sale from “June 29 through and including July 4” carried. Councilmembers Ortiz and Coen voted “no.” Mayor does not vote. (6-2-0)

Amendment No. 2: Reduce the period of time for the discharge of fireworks from the current period of July 1 through July 3 (8:00 a.m. to 11:00 p.m.) to July 4 (8:00 a.m. to 12:00 midnight) to July 1 through July 4 (8:00 a.m. to 11:00 p.m.)

Lisa Robertson highlighted the proposed amendment regarding the times of day to discharge fireworks on Lines 46-49, which states, “(i) Between the hours of 8:00 a.m. and 10:00 p.m. on July 1st, July 2nd and July 3rd of each year. (ii) Between the hours of 8:00 a.m. and 11:59 p.m. on July 4th of each year.”

Councilmember Clear moved to amend the ordinance on Lines 46-49 to state, ““(i) Between the hours of ~~8:00~~ 10:00 a.m. and ~~10:00~~ 11:00 p.m. on ~~July 1st, July 2nd, and~~ July 3rd of each year. (ii) Between the hours of ~~8:00~~ 10:00 a.m. and 11:00 p.m. on July 4th of each year.” The motion was seconded by Councilmember Mays.

Councilmember Hiller commented on discussion held with constituents and vendors and how enforcement of regulations seemed to be the most important issue discussed.

Bill Cochran, Topeka Police Chief, stated the Police Department would conduct normal enforcement of violations to the best of their ability.

Councilmember Clear stated she believes the only way to control the discharge of fireworks would be through the enforcement of the law and reducing the time of discharge.

Bill Cochran reported the Topeka Police Department continues to work towards building a positive influence in the community; therefore, a solid enforcement policy must be implemented that would support this initiative.

Councilmember Hiller stated she believes the ordinance would allow the Topeka Fire Department to be part of the enforcement; however, this has not been discussed as a strategy for enforcement.

Councilmember Padilla stated he believes control should start with the adults in our community as they cannot expect the Topeka Police Department to implement complete enforcement, as well as overtime of police officers should be used for more serious crimes. He suggested officers on “light duty” assist with enforcement of discharge dates and times.

Councilmember Coen stated he believes people should be better educated on the discharge dates and times to help with the issues.

Councilmember Coen called the question.

The motion to amend the ordinance on Lines 46-49 to state, ““(i) Between the hours of ~~8:00~~ 10:00 a.m. and ~~10:00~~ 11:00 p.m. on ~~July 1st~~, ~~July 2nd~~, and July 3rd of each year. (ii) Between the hours of ~~8:00~~ 10:00 a.m. and 11:00 p.m. on July 4th of each year.” carried. Councilmembers Ortiz, Emerson and Coen voted “no.” Mayor does not vote. (5-3-0)

Amendment No. 3: Prohibit discharge of fireworks if the sound level exceeds 120 decibels. He noted this regulation would be challenging to enforce.

Lisa Robertson highlighted the proposed amendment regarding the sound decibels on Lines 70-73, which states, “(7) Notwithstanding subsection (c)(6), it shall be unlawful to ignite or cause the discharge of any firework that produces a sound level exceeding 120 decibels when measured at a distance of 50 feet from the property where the firework is ignited or discharged.”

Councilmember Lesser moved to amend the ordinance to strike lines 70-73 as read by the City Attorney. The motion seconded by Councilmember Padilla carried. Councilmember Hiller voted “no.” Mayor does not vote. (7-1-0)

Councilmember Hiller noted she would have supported the motion if the Governing Body would ban the extremely loud fireworks.

Councilmember Clear questioned how the City could enforce the decibel level of fireworks.

Bill Cochran stated it would be almost impossible to enforce the decibel levels.

Amendment No. 4: Increase the permit fee from \$280 to \$500.

Lisa Robertson highlighted the proposed amendment regarding the permit fee on Line 99, which states, “increase the permit fee from \$280 to \$500.”

Councilmember Ortiz moved to amend the ordinance on Line 99 to delete “\$500” and insert “\$280.” The motion was seconded by Councilmember Emerson.

Doug Gerber reported the \$500 permit fee was proposed to cover some of the costs associated with the inspections and overall process conducted by the Topeka Fire Department.

Councilmember Padilla spoke in support of a \$50 increase in permit fees.

Councilmember Clear spoke in support of increasing the permit fees as she believes the vendors have an obligation to cover the cost of conducting business.

The motion to amend the ordinance on Line 99 to delete “\$500” and insert “\$280” carried. Councilmembers Hiller, Clear and Lesser voted “no.” Mayor does not vote. (5-3-0)

Amendment No. 5: Prohibit the discharge of fireworks within 500 feet of a hospital.

Lisa Robertson highlighted the proposed amendment regarding the discharge of fireworks on Lines 64-66, which states, “Fireworks shall not be discharged within 500 feet of any general hospital or special hospital as those terms are defined in K.S.A. 65-425.”

Councilmember Ortiz moved to amend the ordinance on Lines 64-66 to state, “Fireworks shall not be discharged within 500 feet of any general hospital or special hospital, as those terms are defined at K.S.A. 65-425.” The motion was seconded by Councilmember Padilla.

Councilmember Padilla questioned how the 500 feet would be measured.

Brent Trout stated it would be measured from the property line.

Councilmember Lesser expressed concern with the proposed distance of 500 feet and questioned if it would be effective. He suggested a friendly amendment to also include “mental health inpatient facilities.”

Councilmember Ortiz accepted the friendly amendment. The second concurred.

Councilmember Hiller commented on implementing “Firework Free Zones” and noted it was determined that fireworks are not an issue for hospitals in our area. She stated she would be hesitant to add “inpatient facilities” without first gathering input from those it would have the most effect on as well as those facilities that do hold July 4th celebrations for their patients.

Brent Trout stated he believes it will be an issue for hospitals as the discharge of fireworks has an effect on their patients, and in regards to facility celebrations, the City has the authority to designate approval of a special event permit for any specific facility that may host celebrations.

Lisa Robertson read the definition of a “special hospital” as defined in K.S.A. 65-425 and stated the definition encompasses “inpatient mental health facilities.”

Councilmember Lesser withdrew his friendly amendment.

The motion to amend the ordinance on Lines 64-66 to state, “Fireworks shall not be discharged within 500 feet of any general hospital or special hospital, as those terms are defined at K.S.A. 65-425.” failed. Councilmembers Hiller, Emerson, Padilla, Mays and Coen voted “no.” Mayor does not vote. (3-5-0)

Councilmember Emerson suggested the 500 feet be measured based on the radius of the Veterans Administration (VA) hospital and surrounding buildings as opposed to the property line.

Brent Trout asked the Governing Body to allow staff time to determine a recommendation with input from VA representatives in regards to what would be considered a safe distance for discharge of fireworks, and if need be, an amendment could be made to the ordinance at a later date.

Councilmember Mays moved to amend the ordinance to ban the discharge of fireworks within 500 feet of a Veterans Administration structure. The motion was seconded by Councilmember Emerson.

Councilmember Ortiz questioned if this would include Felker Park because of its proximity to the VA Hospital grounds.

Brent Trout stated he believes the majority of Felker Park could still be used for July 4th celebrations.

Councilmember Mays spoke in opposition of including specific parks in the regulation.

Councilmember Emerson stated federal properties such as the VA are federally protected and do not allow fireworks of any kind on the property.

Councilmember Ortiz stated she would oppose the motion if it included Felker Park.

Councilmember Hiller questioned the necessity of the motion and noted 500 feet from a VA structure would fall inside the boundaries of the VA property.

The motion to amend the ordinance to ban the discharge of fireworks within 500 feet of a Veterans Administration structure carried. Councilmembers Ortiz, Padilla and Coen voted “no.” Mayor does not vote. (5-3-0)

Councilmember Clear moved to reconsider the motion to amend the ordinance on Lines 46-49 to state, ““(i) Between the hours of ~~8:00~~ 10:00 a.m. and ~~10:00~~ 11:00 p.m. on ~~July 1st~~, ~~July 2nd~~, and July 3rd of each year. (ii) Between the hours of ~~8:00~~ 10:00 a.m. and 11:00 p.m. on July 4th of each year.” The motion seconded by Councilmember Coen carried. Councilmember Padilla voted “no.” Mayor does not vote. (7-1-0)

Councilmember Clear moved to amend the ordinance on Lines 46-49 to state, ““(i) Between the hours of 10:00 a.m. and 11:00 p.m. on July 3rd of each year. (ii) Between the hours of 10:00 a.m. and ~~11:00~~ 11:59 p.m. on July 4th of each year.” The motion seconded by Councilmember Coen carried. Councilmembers Padilla and Mays voted “no.” Councilmember Lesser abstained. Mayor does not vote. (5-2-1)

Mayor De La Isla announced the final amendment to consider would be the effective date of the ordinance.

Councilmember Ortiz moved to amend the ordinance to reflect July 5, 2018, as the effective date. The motion was seconded by Councilmember Padilla.

Councilmember Clear spoke in opposition of the ordinance as amended. She stated she believes the regulations do not take into consideration the safety or the mental health of veterans and animals.

Councilmember Emerson spoke in support of the ordinance as amended; however, he believes many of his constituents will not support the changes.

Councilmember Padilla spoke in support of the ordinance as amended because he believes the effective date of July 5, 2018, would allow enough time to educate the public for 2019 celebrations.

Councilmember Hiller noted the effective date of July 5, 2018, would reduce the sale of fireworks by one day (July 5) this year.

The motion to amend the ordinance to reflect July 5, 2018, as the effective date carried. Councilmember Coen voted “no.” Mayor does not vote. (7-1-0)

Councilmember Ortiz moved to adopt the ordinance as amended. The motion seconded by Councilmember Clear carried. Councilmembers Emerson and Coen voted “no.” Mayor does not vote. (6-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Padilla, Mays and Lesser -6. Noes: Emerson and Coen -2. Absent: Jensen -1.

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

Brenda Younger, City Clerk, gave a brief overview of the March 13, 2018, Governing Body agenda.

Brent Trout, City Manager, announced the USDA conducted an unannounced inspection at the Topeka Zoo on March 6, 2018, and there were no violations found. He commended Topeka Zoo staff members for their hard work and dedication to the animals and patrons of the zoo.

Mayor De La Isla announced the next JEDO Board meeting would occur on March 14, 2018, at 6:30 p.m. in the City Council Chambers; and a 2019 Budget Hearing would be held on March

14, 2018, at 5:30 p.m. at the Topeka-Shawnee County Public Library. She congratulated the individuals inducted into the Junior Achievement of Kansas Business Hall of Fame 2018. She stated Pete Buttigieg, Mayor of South Bend, Indiana, visited Topeka to speak at an event and commented on the similarities between Topeka and South Bend.

Councilmember Mays congratulated Washburn University on their 13th Post Season appearance at the National Collegiate Athletic Association (NCAA).

Councilmember Coen expressed the importance of filing police reports and how it documents incident details that may be important later.

Councilmember Hiller expressed concern with teen violence, suicide and intervention and encouraged Governing Body members to promote job offers in the community so teens know there are local opportunities for them. She reported she attended the Fair Housing and Financial Markets Diversity Symposium on March 6, 2018, at Washburn University and how it relates to Topeka's housing initiatives.

Councilmember Clear announced the Boys & Girls Clubs of Topeka 2018 Great Futures Gala on March 27, 2018, at 5:00 p.m. at the Ramada Inn Downtown. She thanked constituents for their input on fireworks.

Councilmember Ortiz encouraged everyone to participate in the Free Smoke Alarm Program sponsored by the Topeka Fire Department.

Councilmember Emerson thanked Richard Sigle, Topeka Fire Chief of Emergency Medical Services, for teaching a "hands-free" CPR class. He also thanked Morgan Bracken for serving as the southeast neighborhoods Community Police Officer.

Roosevelt Boyd, Sam Reilly, Sarah Oglesby-Dunegan, Mary Akerstrom and O'Shara Hayes appeared to speak under public comment.

Councilmember Emerson moved to recess into executive session for a time period of 15 minutes for consultation with the City's legal counsel to discuss attorney-client privileged matters related to worker's compensation, as justified by K.S.A. 75-4319(b)(2). In order to aid the discussion, the following individuals were present: Governing Body members; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Financial and Administrative Services Director, Nickie Lee; Human Resources Director, Jacque Russell; Risk Manager, Shannon Langston; and City Attorney, Lisa Robertson. The motion seconded by Councilmember Coen carried. Mayor De La Isla did not vote. 8-0-0

Following a 15 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 9:25 p.m.

Brenda Younger
City Clerk