

Governing Body Minutes – January 8, 2019

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, January 8, 2019. 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, Reverend Barry Feaker, Topeka Rescue Mission, gave the invocation.

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

A SERVICE AWARD CEREMONY was conducted for Councilmember Sylvia Ortiz, recognizing 13 years of service as Council District No. 3 representative.

A PRESENTATION on Impact KCK: A Foundation for Action to End Student Homelessness was given by Desiree Monize, Avenue of Life Executive Director.

BOARD APPOINTMENT recommending the appointment of Margo Rangel to the City of Topeka Citizens Advisory Council for an expired term ending December 31, 2021, was presented.

Councilmember Emerson moved to approve the board appointment. The motion seconded by Councilmember Jensen carried unanimously. (9-0-0)

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of December 18, 2018 were presented.

APPROVAL of an Open After Midnight License application for Cyrus Hotel located at 920 S. Kansas Avenue was presented.

APPROVAL of a Cereal Malt Beverage License application for Arturo's located at 105 SE 10th Avenue was presented.

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

RESOLUTION NO. 9064 introduced by City Manager Brent Trout, relating to the City of Topeka's legislative agenda for the 2019 Legislative Session was presented.

Brent Trout, City Manager, reported the 2019 proposed legislative agenda includes items suggested by the Governing Body and staff recommends approval of the resolution as presented.

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Jensen carried unanimously. (10-0-0)

APPROVAL of the proposed revisions to Governing Body Rules and Procedures was presented.

Joseph Ledbetter spoke in support of allowing free speech and noted public comment continues to be a vital part of municipal government. He requested additional time be allowed for public comment during budget deliberations.

Councilmember Hiller commended staff for capturing suggestions made by the Governing Body.

Councilmember Hiller moved to approve the Governing Body Rules and Procedures. The motion seconded by Councilmember Clear carried unanimously. (10-0-0)

ORDINANCE NO. 20164 introduced by City Manager Brent Trout, renaming the Planning Department and authorizing fee waivers; amending City of Topeka Code Sections 2.30.090; 2.50.010; 2.50.020; 14.20.060, subsection 109.6; 14.55.150, and repealing Sections 2.50.030, 2.50.040 and 2.50.060 was presented.

Brent Trout, City Manager, reported following discussion by the Governing Body on December 11, 2018, the language of the ordinance has been revised to authorize the city manager

to consider fee waivers in cases of (1) emergency situations and (2) affordable and charitable housing projects where materials and labor are donated.

Councilmember Emerson questioned why the term “policy” was removed from the language; and if the language was too vague and should include the word “all” in regards to materials and labor being donated.

Brent Trout spoke in support of the language as proposed and noted the intent of the ordinance was to allow staff to develop a policy administratively.

Councilmember Jensen moved to adopt the ordinance. The motion seconded by Councilmember Coen carried unanimously. Mayor does not vote. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Emerson, Padilla, Jensen, Mays, Coen and Lesser -9.

ORDINANCE NO. 20165 introduced by City Manager Brent Trout, creating Chapter 18.275 of the Topeka Municipal Code concerning non-residential design standards was presented.

Brent Trout, City Manager, reported the ordinance was discussed on October 9, 2018, and on October 23, 2018, the Governing Body remanded the ordinance back to the Planning Commission for further review.

Bill Fiander, Planning Director, stated the Planning Commission was directed by the Governing Body to review changes concerning art features being included as an item in alternative compliance and also as a possible architectural detail when integrated in the façade.

Councilmember Hiller spoke in support of the revised ordinance and commended staff for the proposed language.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Jensen carried unanimously. (10-0-0)

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

Mayor De La Isla left the meeting.

DISCUSSION on granting a non-exclusive franchise agreement to ExteNet Systems, Inc., to construct and maintain its facilities in the public right-of-way as a wireless infrastructure provider was presented.

Mary Feighny, Deputy City Attorney, reported ExteNet was an infrastructure provider that utilizes rights-of-way to install small cell equipment by attaching antennas to existing utility poles or installing new poles. She stated the proposed franchise agreement provides a means for access and securing compensation to the City which includes 5% of ExteNet's gross revenue and \$600 annual service fee for the use of the poles.

Councilmember Jensen asked if the City could implement a "blanket" franchise agreement that would encompass all companies that provide infrastructure to cell service providers instead of an agreement for each company.

Mary Feighny stated State statute requires a separate agreement for each entity.

Councilmember Lesser suggested the agreement include language that would address costs for damages as well as a clause that specifically outlines a penalty for not finishing work on time – similar to the language included in construction contracts.

Mary Feighny stated a city cannot hinder the ability of wireless service providers to operate or it could be considered a violation of federal and state laws. She noted State statutes are very restrictive relating to these types of agreements.

Councilmember Hiller expressed concern with the City's lack of authority to control the amount of poles being erected and asked if this issue could be addressed in the design standards

ordinance. She also questioned if the City would have the authority to limit the amount of equipment added to the poles.

Mary Feighny stated the City has the right to adopt aesthetic standards to address some of Councilmember Hiller's concerns. She reported the Planning Department was currently working on addressing the problem and noted many other cities throughout the nation are dealing with the same issues.

Councilmember Hiller asked the City Manager to join the efforts of other cities for a solution to address the issues in the future.

Councilmember Jensen noted the larger towers may eventually be replaced with equipment attached to telephone poles throughout a community.

Councilmember Lesser spoke in support of requiring the infrastructure be placed underground.

Mary Feighny noted underground infrastructure was requested in the agreement; however, the City could not require it.

DISCUSSION on the 2019 Standard Traffic Ordinances (STO) and local amendments was presented.

DISCUSSION on the 2019 Uniform Public Offense Code (UPOC) and local amendments was presented.

Karan Thadani, Chief of Prosecution, reported the League of Kansas Municipalities (LKM) prepares and publishes the Standard Traffic Ordinances (STO) as well as the Uniform Public Offense Code (UPOC) on an annual basis, and unless there are major changes, the City does not regularly adopt the new editions each year. He noted a new system will be implemented in the Topeka Police Department Records Division for reporting crime statistics to the Federal Bureau

of Investigation (FBI); therefore, the most current version of the statutes was required to be adopted and used. He stated the new versions are published each year around July 1st.

Councilmember Hiller stated she believes there are conflicts with K.S.A. 8-1590(d) (Riding on bicycles or mopeds; riding on roadways and bicycle paths) and 8-1592 (Lamps, brakes and other equipment on bicycles) and requested the City amend the STO accordingly.

Karan Thadani stated all current amendments would carry over to the 2019 UPOC and STO.

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

Brenda Younger, City Clerk, gave a brief overview of the January 15, 2019 Governing Body agenda.

Councilmember Ortiz thanked Governing Body members for honoring her years of service. She offered her condolences to the David Douglas family.

Councilmember Emerson thanked Councilmember Ortiz for her service.

Councilmember Padilla thanked Councilmember Ortiz and Elizabeth Toyne, Council Office Assistant, for their help in delivering Christmas presents to their adopted family.

Deputy Mayor Jensen thanked Councilmember Ortiz for her service.

Donna Anderson appeared to speak under public comment.

Councilmember Ortiz moved to recess into executive session for a period of time not to exceed 20 minutes for consultation with the City's legal counsel to discuss attorney-client privileged matters, as justified by K.S.A. 75-4319(b)(2). In order to aid the discussion, the following individuals were present: Members of the Governing Body; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Administrative and Financial Services Director,

Nick Hawkins; Deputy City Attorney, Mary Feighny and City Attorney, Lisa Robertson. The motion seconded by Councilmember Lesser carried. Councilmember Lesser did not vote. (8-0-0)

Following a 20-minute time period, the Governing Body reconvened into open session and Deputy Mayor Jensen announced no action was taken.

Councilmember Emerson moved to recess into executive session for a period of time not to exceed 10 minutes to continue consultation with the City's legal counsel to discuss attorney-client privileged matters, as justified by K.S.A. 75-4319(b)(2). In order to aid the discussion, the following individuals were present: Members of the Governing Body; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Administrative and Financial Services Director, Nick Hawkins; Deputy City Attorney, Mary Feighny and City Attorney, Lisa Robertson. The motion seconded by Councilmember Coen carried. Councilmember Lesser did not vote. (8-0-0)

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

Councilmember Clear moved to recess into executive session for a period of time not to exceed 10 minutes to continue consultation with the City's legal counsel to discuss attorney-client privileged matters, as justified by K.S.A. 75-4319(b)(2). In order to aid the discussion, the following individuals were present: Members of the Governing Body; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Administrative and Financial Services Director, Nick Hawkins; Deputy City Attorney, Mary Feighny and City Attorney, Lisa Robertson. The motion seconded by Councilmember Emerson carried unanimously. (9-0-0)

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:00 p.m.

Brenda Younger
City Clerk