

Governing Body Minutes – April 2, 2019

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, April 2, 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 De La Isla presided -1.

AFTER THE MEETING was called to order, Pastor John Menkveld, Oakland Church of the Nazarene, provided the invocation.

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

A PRESENTATION of the Topeka Flag Redesign Initiative was presented by Lindsey LaBon, Forge and Brittney Crabtree, Topeka citizen. They encouraged all members of the public to vote for their favorite design at topekaflag.com.

AN UPDATE on the Health Rankings and Roadmaps of Shawnee County was provided by Linda Ochs, Shawnee County Health Department Director and Dr. Gianfranco Pezzino, Kansas Health Institute and Shawnee County Health Agency Officer.

BOARD APPOINTMENT recommending the reappointment of David Monical to the Topeka-Shawnee County Public Library Board of Trustees for a term ending April 30, 2023, was presented.

BOARD APPOINTMENT recommending the reappointment of Elizabeth Dobler to the Topeka-Shawnee County Public Library Board of Trustees for a term ending April 30, 2023, was presented.

BOARD APPOINTMENT recommending the reappointment of Elizabeth Post to the Topeka-Shawnee County Public Library Board of Trustees for a term ending April 30, 2023, was presented.

BOARD APPOINTMENT recommending the reappointment of Shelby Edwards to the Topeka-Shawnee County Public Library Board of Trustees for a term ending April 30, 2023, was presented.

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

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 9091 introduced by Councilmember Karen Hiller, approving a special event known as the 2019 Second Saturday Concert Series was presented.

RESOLUTION NO. 9092 introduced by Councilmember Karen Hiller, approving a special event known as the 2019 Kansas Chocolate Festival was presented.

RESOLUTION NO. 9093 introduced by Councilmember Karen Hiller, granting Ronin Car Club, an exception to the provisions of City of Topeka Code Section 9.45.170, concerning noise prohibitions was presented.

RESOLUTION NO. 9094 introduced by City Manager Brent Trout, naming banks and savings institutions that are designated as depositories for all City of Topeka accounts and authorizing signatories and rescinding City of Topeka Resolution No. 8959 was presented.

RESOLUTION NO. 9095 introduced by City Manager Brent Trout, concerning the City of Topeka's participation in the State of Kansas Municipal Investment Pool and rescinding City of Topeka Resolution No. 9059 was presented.

ORDINANCE NO. 20177 introduced by City Manager Brent Trout, allowing and approving City expenditures for the period of February 2, 2019, through March 1, 2019, and enumerating said expenditures therein was presented.

MINUTES of the regular meeting of March 19, 2019, were presented.

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

<u>Business Name</u>	<u>Address</u>
American Legion Post 1	3800 SE Michigan
Brass Rail Tavern	401 NE Emmett Street
College Hill Pizza Pub	1418 SW Lane Street
Dutch Goose	3203 SW 10 th Street
Henry T's Bar & Grill	1521 SW 21 st Street
J&J's Gallery Bar	917 N Kansas Avenue
Serendipity	820 N Kansas Avenue
Studio 62	816 N Kansas Avenue
The Burger Stand @ College Hill	1601 SW Lane Street
The Spot Tavern	2202 SW Buchanan Street
Topeka Country Club	2700 SW Buchanan Street
Walmart #1802	1501 SW Wanamaker Road
Walmart #2131	1301 SW 37 th Street
Walmart #5441	2600 NW Rochester Road

Councilmember Emerson left the room.

Councilmember Clear moved to approve the consent agenda. The motion seconded by Councilmember Coen carried. (9-0-1)

Councilmember Emerson entered the room.

RESOLUTION NO. 9096 introduced by City Manager Brent Trout, in accordance with Section 18.60.010 of the Topeka Municipal Code (TMC), approving a Conditional Use Permit to allow for a "Communications Tower" on property zoned "R-1" Single Family Dwelling District and located at 2446 SE 29th Street in the City of Topeka, Shawnee County, Kansas, was presented. (CU19/4)

Bill Fiander, Planning and Development Director, provided an overview of agenda items 6A, 6B and 6C, conditional use permit requests from AT&T Wireless to install and operate cell towers at 2446 SE 29th Street, 730 SW Fairlawn Road and 513-519 SW Taylor, Topeka, Kansas. He noted in light of the quasi-judicial nature of these decisions the *Golden Factors* must be considered. He reported neighborhood meetings were conducted for all three cases and

neighborhood residents expressed concern about the tower's potential negative health effects and its compatibility with the residential neighborhood. He stated in regards to the health concern, both federal law and state law prohibit cities from regulating the placement of personal wireless service facilities such as cell towers on the basis of the environmental effects of radio frequency emissions or perceived/alleged environmental effects of radio frequency emissions or exposure. He stated the Planning Commission recommended approval of conditional use permits at 2446 SE 29th Street and 730 SW Fairlawn Road; and disapproval of the request at 513-519 SW Taylor based on land use factors because it was not included in the neighborhood plan and would discourage housing development on the lots near the tower's location.

Councilmember Padilla questioned if the applicant was obligated to notify residents being affected by the cell towers.

Bill Fiander stated residents were notified through the neighborhood informational meetings; however, he was unsure if private one-on-one meetings were conducted by the applicant.

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

Mayor De La Isla stated prior to proceeding with the vote, each member of the Governing Body who has engaged in ex parte communication with any individual either in favor of, or against, the matter being considered to indicate that even in light of having engaged in this communication they are able to fairly, objectively and impartially consider the measure based only upon the evidence provided on the record which includes the Planning Commission minutes, the Staff report and its attachments, the public comments made during the Planning Commission hearing and similar relevant information related to the matter.

Ex parte communications were declared by Councilmembers Hiller, Ortiz and Emerson.

Councilmember Lesser left the room.

The motion to approve the resolution carried. (9-0-1)

Councilmember Lesser entered the room.

RESOLUTION NO. 9097 introduced by City Manager Brent Trout, in accordance with Section 18.60.010 of the Topeka Municipal Code (TMC), approving a Conditional Use Permit to allow for a “Communications Tower” on property zoned “R-1” Single Family Dwelling District and located at 730 SW Fairlawn Road in the City of Topeka, Shawnee County, Kansas, was presented. (CU19/1)

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

Mayor De La Isla stated prior to proceeding with the vote, each member of the Governing Body who has engaged in ex parte communication with any individual either in favor of, or against, the matter being considered to indicate that even in light of having engaged in this communication they are able to fairly, objectively and impartially consider the measure based only upon the evidence provided on the record which includes the Planning Commission minutes, the Staff report and its attachments, the public comments made during the Planning Commission hearing and similar relevant information related to the matter.

No ex parte communication was declared.

The motion to approve the resolution carried unanimously. (10-0-0)

RESOLUTION introduced by City Manager Brent Trout, in accordance with Section 18.60.010 of the Topeka Municipal Code (TMC), approving a Conditional Use Permit to allow for a “Communications Tower” on property zoned “M-1a” Limited Multiple Family Dwelling

District and located at 513-519 SW Taylor Street in the City of Topeka, Shawnee County, Kansas, was presented. (CU19/3)

Councilmember Padilla asked what changes could be made if the request was remanded back to the Planning Commission.

Bill Fiander, Planning and Development Director, stated the Planning Commission has done as much as they can in regards to land use considerations.

Councilmember Hiller commented on the statements made at the Planning Commission meeting and encouraged the City's lobbyist to become engaged in the discussions of the regulations of these types of cell towers. She noted legislature was not crafted years ago with this type of structure in mind – a 130 foot tall structure in residential areas.

Councilmember Mays expressed concern with setting precedence for future cell towers locating in residential neighborhoods.

Mayor De La Isla encouraged telecommunication companies to create environmental designs that complement a neighborhood and not diminish the value and aesthetics of the area.

Councilmember Jensen stated Topeka was a small market and technology continues to work to compensate for use of other equipment as opposed to large cell towers; however, the structures should accommodate the land use in an area.

Councilmember Emerson expressed concern with creating a broadband desert if the conditional use permit was not approved. He cautioned against further dialogue in case of future litigation.

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

Mayor De La Isla stated prior to proceeding with the vote, each member of the Governing

Body who has engaged in ex parte communication with any individual either in favor of, or against, the matter being considered to indicate that even in light of having engaged in this communication they are able to fairly, objectively and impartially consider the measure based only upon the evidence provided on the record which includes the Planning Commission minutes, the Staff report and its attachments, the public comments made during the Planning Commission hearing and similar relevant information related to the matter.

No ex parte communication was declared.

The motion to approve the resolution failed. Councilmembers Hiller, Clear, Padilla, Jensen, Mays and Mayor De La Isla voted “no.” (4-6-0) *Please Note: Disapproval requires seven (7) votes; therefore, at this time it is not clear the legal direction of this conditional use request. Staff will meet with AT&T to determine the next steps.*

NOTICE OF PUBLIC HEARING

PUBLIC HEARING on the advisability of establishing a community improvement district (CID) for the Sherwood Crossing/Villa West Development at 29th and Wanamaker.

ORDINANCE introduced by City Manager Brent Trout, establishing a Community Improvement District (CID) for the Sherwood Crossing/Villa West Development at 29th and Wanamaker and levying a CID sales tax of one percent (1%) within the CID was presented.

Brent Trout, City Manager, reported the development agreement has not been finalized therefore, staff would request the public hearing be continued and the ordinance be deferred until April 9 or 16, 2019.

Mayor De La Isla announced the public hearing was open and would continue until April 16, 2019. She asked if there was anyone present who wishes to speak to the matter.

Upon no one appearing, Mayor De La Isla announced the public hearing would continue until April 16, 2019.

Councilmember Hiller stated she has questions regarding the Tax Increment Financing (TIF) District and CID. She asked if the Governing Body should delay the CID to discuss the TIF at the same time.

Ferd Neimann, 29th Street Partners, L.L.C., stated they have only a few items to work out and would like to stay on schedule for April 16, 2019. He stated he believes the TIF project plan should be ready in May 2019.

Councilmember Lesser stated the Governing Body needs adequate time to make a sound financial decision.

Doug Gerber, Deputy City Manager, stated staff will include discussion time within the project schedule for all future CID and TIF Districts so that all questions can be answered and the Governing Body receives the information they need to make a sound decision.

David Christie, 29th Street Partners, L.L.C., expressed concern with demolition construction scheduled to begin May 15, 2019, and making sure the process was in place for the demolition permit. He noted he would prefer most of the renovations to occur before the end of the year.

Councilmember Jensen thanked the developers for working with the City and moving the project forward.

Councilmember Jensen moved to defer the ordinance to April 16, 2019. The motion seconded by Councilmember Padilla carried. Councilmembers Hiller and Clear voted “no.” (8-2-0)

APPROVAL of a revised Project Budget in the amount of \$3,858,934 and authorizing as amended Improvement Project No. T-131036.00 which provides for the design and construction of City Hall Renovation as authorized by Resolution No. 8673 was presented.

Brent Trout, City Manager, reported staff has worked through the revisions and would provide a brief presentation of the changes.

Doug Gerber, Deputy City Manager, stated the City needs to address the 180 buildings with an overall maintenance program; however, staff was requesting the Governing Body take action on the revised project budget at this time to allow staff to move forward and address building improvement issues.

Jason Peek, Public Works Director, provided an overview of the differences between the Schwerdt Design Study in 2016 compared to the current proposed 2018 Design Plan. He stated the amendment request for the base phase of City Hall is \$3,858,934 including additional costs of the Chillers/Cooling Towers, Elevators, Furniture/Fixtures/Equipment; Program Scope, ADA Analysis, Chiller Noise Study and already encumbered items such as the fire line.

Councilmember Jensen questioned the amount purposed for office furniture.

Councilmember Ortiz questioned if the boiler system has been completely replaced.

Councilmember Emerson questioned if they removed the cost of furniture/fixtures/equipment if the cost of the project would be closer to the original project budget. He asked about eligible use of tax credits.

Jason Peek stated the office furniture item was estimated on the low side (\$4000 per unit) as well as includes a shelving system for the City Clerk's office. He reported the boiler system in City Hall has been replaced and will report back on the exact completion date.

Councilmember Jensen encouraged the Governing Body to preserve City Hall for future generations.

Joseph Ledbetter spoke in opposition of the revised project budget and stated he would prefer the streets be improved and funds used for other critical items such as code enforcement.

Vance Kelley, TreanorHL Architects, reported additional design fees could be used for tax credit reimbursements.

Councilmember Clear stated she believes the project was needed and her constituents support the project. She suggested the City consider selling the building if the Governing Body determines they do not want to repair the building.

Councilmember Hiller asked about the status of the roof and questioned why tuck-pointing the front of the building was left out of the revised project budget, i.e. the plaza plan. She noted the front of the building should be a modest cost to repair and the plaza plan could be included in Phase 2. She commented on the building's chillers and asked if the temperature controls would be replaced in the whole building.

Jason Peek reported the roof proposal was for the roof over City Hall and noted the warranty for the roof would expire during the proposed renovations which was why it has been included in the proposal. He noted staff was directed to return to the original scope (2016) of the project which was that all renovations would occur under Phase 1, and not affect the plaza proposal that was included in Phase 2. He stated the temperature controls would be replaced on the City Hall side of the building not TPAC.

Councilmember Lesser stated he continues to be frustrated with the process and has questions that have not been answered. He noted the Citizen Satisfaction Survey supports street improvements not renovations to City Hall; therefore, he spoke in opposition of the proposal.

Councilmember Emerson asked if there was a way to monetize the tax credit amounts as he was not opposed to the scope of the project; however, he would not support a project cost of \$12 million.

Vance Kelley stated the project must be completed before receiving tax credits.

Brent Trout stated he has been contacted by an individual to purchase the tax credits; however, the project has to be completed.

Councilmember Jensen asked if approximately \$3 million could be used from reserves.

Doug Gerber stated staff would not support the use of reserves because it would affect the City's bond ratings.

Councilmember Hiller expressed concern with what should be included in the proposal.

Mayor De La Isla stated the Governing Body has expressed concerns regarding more information and asked if the proposal should be deferred until May 7, 2019.

Councilmember Jensen moved to defer the revised project budget until May 7, 2019. The motion was seconded by Councilmember Emerson.

Brent Trout expressed concern with how the delay would have an effect on the proposed Capital Improvement Plan and requested to defer until April 16, 2019.

Councilmember Jensen revised the motion to defer until April 9, 2019. The second concurred.

Councilmember Lesser suggested the Governing Body make a decision on the project at this time.

Councilmember Jensen cautioned the Governing Body against the increased cost of deferred maintenance.

Brent Trout stated he has reviewed the project cost in detail and was expecting a 4% increase in construction costs if revisited next year.

Councilmember Padilla stated there are no assurances that Governing Body members will receive additional information to help make their decision and noted the building does not serve the Governing Body it serves the public and at some point the maintenance issues will have to be

dealt with. He spoke in opposition of deferring the project and would rather address the building issues at this time.

The motion to defer the revised project budget until April 9, 2019 carried. Councilmembers Mays and Lesser and Mayor De La Isla voted “no.” (7-3-0)

RESOLUTION introduced by City Manager Brent Trout, authorizing and adopting the 2020-2029 Capital Improvement Plan and the 2020-2022 Capital Improvement Budget and approving the project budgets attached as presented.

Brent Trout, City Manager stated staff would provide a brief overview of the 2022-2029 Capital Improvement Plan.

Braxton Copley, Deputy Utilities Director, provided a presentation on the Kansas River Weir Project options.

Councilmember Ortiz questioned if there was private funding available for the project.

Brent Trout stated there was no private funding available at this time; however, the City did receive a \$500,000 federal grant through the Kansas Department of Wildlife.

Councilmember Mays questioned the cost of completely replacing the weir.

Braxton Copley stated he does not know the costs of a complete replacement of the weir; however, it would be designed differently today than it was in 1985.

Nick Hawkins, Budget and Performance Manager, reported the only changes to the original proposed CIP was an increase to the Kansas River Weir and a decrease to the City Hall project.

Councilmember Emerson questioned if the Kansas River Weir and City Hall project amounts would have an effect on the bonding cap in regards to \$9 million versus \$13 million.

Brent Trout stated the addition or removal of either project would have an effect on the bonding cap amount.

Councilmember Mays expressed concern with the high cost of the Kansas River Weir project and questioned if staff was 100% sure there was not a better way to address the issue. He asked if a “design/build project” would be an option to lowering the costs of the project.

Brent Trout stated he understands the project was costly; however, the City hired one of the top engineers in the nation for this type of project and he trusts that their professional opinion would be the best possible solution for the City.

Doug Gerber stated the City could propose a “design/build project”; however, he believes it would cause a serious timing issue and jeopardize losing the \$500,000 grant which expires in 2020.

Councilmember Jensen questioned the City’s liability if the project was not completed.

Lisa Robertson, City Attorney, stated the weir was much safer at this point as more signage has been installed; however, there are potential risks involved.

Councilmember Hiller questioned if staff has reached out to a specialty design group with the intent of reducing the costs of the project.

Brent Trout stated due to deferring consideration of the City Hall project he requested the Governing Body defer the CIP resolution until April 9, 2019.

Councilmember Coen moved to defer the resolution until April 9, 2019. The motion seconded by Councilmember Jensen carried unanimously. (10-0-0)

RESOLUTION introduced by City Manager Brent Trout, declaring the necessity to repair, alter, reconstruct, enlarge or improve the City’s water, water pollution and/or stormwater utility system through improvement projects authorized by Resolution and providing Notice of Intention authorizing the issuance of revenue bonds in the manner required by K.S.A. 10-1201, et seq., was presented.

Councilmember Clear moved to defer the resolution until April 9, 2019. The motion seconded by Councilmember Ortiz carried unanimously. (10-0-0)

Councilmember Jensen moved to extend the meeting past 10:00 p.m. The motion seconded by Councilmember Emerson carried. Councilmembers Clear and Ortiz voted “no.” (8-2-0)

DISCUSSION of the 2018 Topeka Citizen Satisfaction Survey Results was presented.

Ryan Murray, ETC Institute, stated the purpose of the survey was to objectively assess satisfaction with the quality of City services; identify opportunities to improve satisfaction in services that are high in priorities to residents and measure trends over time and compare Topeka’s performance to other communities.

Mayor De La Isla stated it was nice to see how Governing Body discussions and action align with citizens’ concerns.

Councilmember Jensen stated he looks forward to receiving comments from the City Manager regarding some of the issues mentioned in the survey and how he believes the City can improve in those areas.

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

Brenda Younger, City Clerk, provided an overview of the April 9, 2019, Governing Body agenda.

Mayor De La Isla stated she attended training in Kansas City and commented on the positive impact Topeka has on visitors regarding the community and quality of life issues.

Councilmember Clear thanked the Topeka Police Department and community partners for attending the Strengthening Police and Community Partnerships meeting held for Council District No. 2.

Councilmember Emerson stated he received positive feedback on pothole repairs and thanked City staff for their work on the issue. He reported SE 29th Street would reopen on May 15, 2019.

Councilmember Padilla recognized Mayor De La Isla and Dr. Kim Morse, Washburn University Professor for co-hosting the Hermanitas Conference on March 21, 2019. He announced Hispanic Day on the Hill would be held April 3, 2019 from 8:00 a.m. to 12:00 p.m. at the Capitol building.

Mayor De La Isla thanked Kansas Congresswoman Sharice Davids, who attended and spoke to students at the Hermanitas conference.

Henry McClure appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:15 p.m.

(SEAL)

Brenda Younger
City Clerk