

Governing Body Minutes – May 7, 2019

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, May 7, 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, Councilmember Ortiz asked for a moment of silent meditation.

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

AN ANNUAL REPORT on the Topeka Tourism Business Improvement District (TTBID) Budget and Services for 2020 was presented by Kurt Young, Topeka Lodging Association Executive Director and TTBID Advisory Board member.

PRESENTATION on the implementation of a Community Outreach Vehicle was provided by Sergeant Josh Klamm, Topeka Police Department Crisis Intervention Team (CIT) and Bill Cochran, Topeka Police Chief.

PRESENTATION on the Administrative and Financial Services Quarterly Report was presented by Jessica Lamendola, Administrative and Financial Services Director.

THE CONSENT AGENDA was presented as follows:

APPROVAL of Tort Claim submitted by CSAA General Insurance Company in the amount of \$50,000 related to damage to a home at 1111 SE 33rd Terrace was presented.

ORDINANCE NO. 20180 introduced by Councilmember Karen Hiller, designating a portion of the Crosby Place Parking Garages as temporarily exempt from the provisions of K.S.A. 41-719(d) and Topeka Municipal Code 9.15.020(e) was presented.

RESOLUTION NO. 9110 introduced by Councilmember Jeff Coen, granting Specks Bar and Grill an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

MINUTES of the regular meeting of April 16, 2019, were presented.

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

<u>Business Name</u>	<u>Address</u>
Bob's Carwash	2733 SE California Avenue
Bob's Carwash	4000 S Topeka Boulevard
Flamingo Bar & Grill	2335 NW Clay Street
Kickstart Saloon	2521 N Kansas Avenue
Louie's Lounge & Laundromat	1501 SW 21 st Street, Suite 109
Terry's Bar & Grill	522 SW 6 th Avenue
The Villa Event Venue	2941 SE Fremont Street
Walgreens #03069	1001 SW Topeka Boulevard

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

ORDINANCE NO. 20181 introduced by City Manager, Brent Trout, amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code, by providing for certain changes in zoning on property located between SW 21st Street and SW 29th along the west side of SW Indian Hills Road from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District, was presented. (Z19/1)

Brent Trout, City Manager, reported the request was the next step in the process following the approval of the plat and annexation by the Governing Body. He stated the Topeka Planning Commission recommends approval.

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, must state that the communication occurred and indicate that even in light of having engaged in the communication they were able to fairly, objectively,

and impartially consider the measure based only upon the evidence provided on the record. The record 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.

Exparte communication was declared by Councilmember Ortiz.

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

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

NOTICE OF PUBLIC HEARING

A PUBLIC HEARING on the advisability of establishing a community improvement district (CID) at SW 17th and SW Wanamaker.

ORDINANCE NO. 20182 introduced by City Manager Brent Trout, establishing a Community Improvement District (CID) at SW 17th Street and SW Wanamaker Road and levying a CID sales tax of one percent (1%) within the CID was presented.

Brent Trout, City Manager, reported a development agreement has been successfully negotiated.

Doug Gerber, Deputy City Manager, provided a brief overview of the project and advised that Mr. Bob Johnson, attorney for EIG Wanamaker, L.L.C., the developer of the SW 17th and Wanamaker project was present to answer questions.

Mayor De La Isla opened the public hearing on the advisability of establishing a Community Improvement District at SW 17th Street and Wanamaker and asked if there was anyone present who would like to speak on the matter.

Bob Johnson, attorney for EIG Wanamaker L.L.C., commended staff for professional negotiations and asked the Governing Body for their support.

Upon no one else appearing, Mayor De La Isla announced the public hearing was closed.

Councilmembers Jensen and Emerson thanked City staff for their work on the project and providing detailed information over the past couple of months.

Councilmember Clear moved to adopt the ordinance. The motion seconded by Councilmember Jensen carried. Councilmember Coen and Lesser voted “no.” (8-2-0)

The ordinance was adopted on roll call vote as follows: Hiller, Clear, Ortiz, Emerson, Padilla, Jensen, Mays and Mayor De La Isla -8. Noes: Coen and Lesser -2.

RECONSIDER (*RESOLUTION NO. 9111*) of a Conditional Use Permit (“CUP”) to allow an AT&T Communications Tower at 513-519 SW Taylor was presented. (CU19/3)

RESOLUTION NO. 9111 introduced by Brent Trout, City Manager, 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. (*CU19/3*)

Lisa Robertson, City Attorney, provided a brief overview of the procedural matters and the steps that must be taken in order to reconsider the item previously voted on during the April 2, 2019, Governing Body meeting. She reported the action taken by the Governing Body on April 2, 2019, did not result in the sufficient amount of votes for disapproval (seven); therefore, no affirmative action was taken by the Governing Body. She stated at that time, it was not clear the legal direction of the conditional use request, so staff met with representatives from AT&T to consider a resolution and AT&T requested to proceed with the initial request.

Councilmember Hiller moved to suspend Governing Body Rule 6.3(g) to allow for reconsideration of the conditional use permit CU19/3. The motion seconded by Councilmember Jensen carried unanimously. (10-0-0)

Governing Body Rule 6.3(g) reads as follows:

6.3(g) To Reconsider a Motion/Item. Any motion to reconsider must be made by a person who voted on the prevailing side of the motion to be reconsidered. Except as provided below, an item previously acted upon may not be reconsidered until six (6) months has elapsed since the previous action. This limitation shall apply to any matter upon which a vote was taken, including the consideration of ordinances or resolutions which repeal, in their entirety, previously adopted ordinances or resolutions. These limitations on reconsideration shall not apply to the following:

- (1) A motion to reconsider the matter that is adopted during the same meeting as the initial action.
- (2) Reconsideration is needed to correct a typographical or legal error in the original item, or if the new item amends or differs in a substantive manner from the previously adopted or considered item.
- (3) Reconsideration is otherwise allowed by statute or law.

Councilmember Jensen moved to reconsider CU19/3, a conditional use permit for an AT&T communication tower at 513-519 SW Taylor originally discussed on April 2, 2019. The motion seconded by Councilmember Hiller carried unanimously. (10-0-0)

Mayor De La Isla announced the Governing Body would proceed with taking action on the conditional use permit requested by AT&T to allow a communication tower at 513-519 SW Taylor.

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, must state that the communication occurred and indicate that even in light of having engaged in the communication they were able to fairly, objectively, and impartially consider the measure based only upon the evidence provided on the record. The record includes the Planning Commission minutes, the Staff report and its attachments, the

public comments made during the Planning Commission hearing and communications received from AT&T's legal counsel and similar relevant information related to the matter.

Exparte Communication was declared by all members of the Governing Body.

Councilmember Jensen moved to remand the resolution back to the Planning Commission.

The motion was seconded by Councilmember Ortiz.

Councilmember Hiller reported the Planning Commission has not received the information the Governing Body has received to date; therefore, she would be hesitant to remand the request back to the Planning Commission and would prefer they make a decision on the request at this time. She expressed the importance of the neighborhood having the ability to receive 5G and/or the best service possible and avoid a "cell desert" anywhere in the neighborhood or the city. She stated under the Golden Rules (*Golden Factors*) the Governing Body could deny the request based on a real estate reason that would cause harm to the neighborhood such as the height of the pole would not fit the character of the neighborhood; however, since the initial discussion on April 2, 2019, she has learned other options would not provide sufficient service. She reported the neighborhood residents preferred different sites which AT&T researched and considered; however, other suggested sites were located outside the ideal location for service and overlapped the downtown area. She stated she believes AT&T has considered all the options and conducted sufficient research.

Councilmember Jensen stated he believes there are infrastructure alternatives because the 150-foot pole would not fit the character of the neighborhood.

Councilmember Mays asked for feedback from AT&T representatives.

Councilmember Jensen withdrew the motion to remand the resolution back to the Planning Commission. The second concurred.

Councilmember Lesser moved to suspend Governing Body Rule 5.4. The motion seconded by Councilmember Emerson carried unanimously. (10-0-0)

Governing Body Rule 5.4 reads as follows:

5.4 Planning Department Agenda Items: Public hearings on zoning matters shall be conducted by the Planning Commission in accordance with state law. No additional public hearings shall be held by the governing body.

Councilmember Hiller questioned infrastructure alternatives. She stated it was her understanding there was not a structure located in the area tall enough to accommodate the type of cell tower needed to provide sufficient service.

Councilmember Emerson asked for clarification on the term “Macro Site.”

Councilmember Jensen expressed the importance of retaining the character of the neighborhood and considering all options available.

Molly Coker-Boyers, AT&T representative, reported the site would serve commercial businesses as well as residents and support improved public safety communications as mandated by the Federal Communications Commission. She stated all accommodations requested by the Planning Commission have been met and AT&T continues to work in conjunction with the macro structure which was considered a core service of a wireless network. She noted she would have to ask a network expert for their opinion in regards to different infrastructure designs.

Councilmember Clear asked what the opinion was of neighborhood residents regarding the request.

Councilmember Hiller stated there were many discussions with neighborhood residents regarding concerns about health factors and aesthetics; however, these items were not an issue and law does not allow denial based on health and aesthetics factors.

Councilmember Mays questioned the use of masking opportunities used in other communities.

Molly Cokers-Boyers stated she would need to consult with infrastructure engineers to determine if there were masking options for the site.

Brent Trout, City Manager, suggested the Governing Body remand the request back to the Planning Commission to be considered at the May or June 2019 Planning Commission meeting following a meeting with neighborhood residents and AT&T representatives.

Councilmember Jensen moved to remand the request back to the Planning Commission to be considered at the May or June 2019 Planning Commission meeting following a meeting with neighborhood residents and AT&T representatives. The motion seconded by Councilmember Ortiz failed. Councilmembers Hiller, Clear, Emerson, Padilla, Mays, Coen, Lesser and Mayor De La Isla voted “no.” (2-8-0)

Councilmember Clear moved to approve the resolution. The motion seconded by Councilmember Mays carried. Councilmember Jensen voted “no.” (9-1-0)

RESOLUTION introduced by Councilmembers Karen Hiller, Tony Emerson and Jeff Coen, sitting as the Policy and Finance Committee, amending Article II of the City of Topeka Personnel Code, relating to residency requirements, was presented.

Brent Trout, City Manager, reported the policy was discussed at the February 2, 2019, and April 16, 2019, Governing Body meetings. He stated approval would remove the Shawnee County residency requirement and delegate to Department Directors the responsibility to establish time-reporting requirements for specific positions and assignments. He also stated the change would increase the City’s ability to expand their recruiting pool; give employees the personal liberty to live where they please; and support employee retention in dual-income

families. He reported a salary incentive would only affect 20% of the personnel at the supervisory level as the majority of the union contracts would not allow a language change without reopening negotiations.

Linda Cook spoke in support of removing the residency requirement for City employees for the purpose of conforming to the common practice of commuting and accommodating dual income families.

Pat DeLapp, Teresa Miller and Joseph Ledbetter spoke in opposition of removing the residency requirement and stated they believe people are more vested in a community if they reside in the community; the importance of filling vacant positions with internal candidates or locally through the collaboration with local universities and technical schools; and the need to further research ways to include union employees in all requirements.

Matt Blassingame, Fraternal Order of Police Lodge No. 3, spoke in support of removing the residency requirement to expand the candidate pool for vacant positions allowing Topeka to remain competitive in the workforce. He noted people will remain vested in the community if it was their desire to do so.

Mayor De La Isla stated she believes the residency requirement comes down to community pride; therefore, she would not support removing the requirement.

Councilmember Ortiz spoke in opposition of removing the residency requirement as she believes people understand the requirement when they accept employment with the City. She stated her constituents want employees to reside in Topeka or Shawnee County.

Councilmember Clear spoke in support of removing the residency requirement as she believes the Human Resources Department has the expertise to determine the needs of filing

vacant positions. She stated the City of Topeka could not hire city residents if they do not apply for the positions.

Councilmember Jensen reported the majority of his constituents responding to the electronic survey he distributed did not support removing the residency requirement; therefore, he would oppose the resolution.

Councilmember Hiller spoke in support of the residency requirement and noted when the requirement was created it was a different time and lifestyles were different. She noted when given the choice, she believes most people would choose to live in the city and a residency requirement was unnecessary. She commented on the improvements that have been made in regards to affirmative hiring efforts; however, it was crucial that they figure out how to attract employees and engage people in the community by securing a good quality of place.

Councilmember Mays expressed concern with the negative reputation of the city of Topeka specifically relating to crime. He stated there was a shortage of public safety employees and if the removal of the residency requirement will help fill vacant positions then he would support the resolution.

Councilmember Padilla expressed concern with the negative image residents portray about Topeka. He stated citizens as well as the Governing Body need to concentrate on promoting a positive attitude about the community. He referenced the goal of the Governing Body to grow the population which would include a residency requirement to reside in Shawnee County.

Councilmember Emerson stated he received approximately 150 responses from his constituents in opposition of removing the residency requirement; therefore, it was a difficult decision for him. He asked if a change in the residency requirement would reopen union contract negotiations.

Catherine Walter, Assistant City Attorney, provided an overview of the contracts that would require the reopening of negotiations if the removal of the residency requirement was approved.

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

Councilmember Mays moved to amend the resolution to include only City personnel that was classified as a Level 7 or higher on the Management and Executive Classification and Pay Plan. The motion was seconded by Councilmember Clear.

Councilmember Ortiz spoke in opposition of the amendment because she believes it was unfair and all employees should be treated equally.

Councilmember Jensen expressed concern with not receiving any input from the union employees and questioned how removing the residency requirement would affect union contracts.

Catherine Walter reported there was not a straight forward directive; however, each bargaining effort must be made in good faith.

Councilmember Padilla stated he believes the residency requirement should be required for every City position otherwise it will create an obstacle to the promotion process.

Jacque Russell, Human Resources Director, provided an overview of the positions that would be included in the residency requirement and stated it could restrict internal promotions.

Councilmember Mays stated the residency requirement was about recruiting entry level positions and not filling vacancies; however, he believes if an individual was promoted to management, they should move to Shawnee County to become vested in the community.

Councilmember Padilla asked Topeka Police Chief Cochran to comment on the recruitment practices of the Topeka Police Department.

Chief Cochran reported he was confident they could fill vacant positions by extending recruitment outside the Shawnee County boundaries and find ways to hire qualified individuals. He noted the residency requirement was a citywide issue and not just a public safety issue.

Councilmember Mays withdrew his motion to amend the resolution to include only City personnel that was classified as a Level 7 or higher on the Management and Executive Classification and Pay Plan. The second concurred.

The motion to approve the resolution failed. Councilmembers Ortiz, Emerson, Padilla, Jensen and Mayor De La Isla voted “no.” (5-5-0)

AN OVERVIEW of the Sanitation Abatement Rapid Process Improvement Event was presented.

Brent Trout, City Manager, reported the Sanitation Abatement process for the Property Maintenance Division was selected as the second Rapid Process Improvement (RPI) Event for the City conducted the week of March 4, 2019.

Mike Haugen, Property Maintenance Code Unit Division Director, provided an overview of the Sanitation Abatement RPI Event resulting in the elimination of 21 steps from the original 157 step process. He stated the elimination of steps would result in an immediate 13.40% increase in efficiency; all of the improvements were inter-departmental or from City agency to County or District Court; and all groups were open to requested changes making implementation that much easier. He noted an unanticipated impact from the Event would be the ability to take the improved process and apply it to other abatement processes within the Property Maintenance Division operations. He expressed the importance of the greatest impact of the Event which was the improved working relationship established between the Property Maintenance Division and the Utility Billing Division as well as the Administrative Hearing officer.

Councilmember Jensen asked if there were changes made to the SeeClickFix program.

Mike Haugen stated there were no changes made to the SeeClickFix program.

Councilmember Emerson thanked Mike Haugen and Code Enforcement Division employees for their hard work.

Councilmember Padilla commended the Code Enforcement Division for their efforts in serving citizens.

Mayor De La Isla thanked City Manager Brent Trout for implementing the RPI process and realizing efficiencies in City operations.

UPDATE on the Topeka Fire Department Strategic Plan was presented.

Brent Trout, City Manager, stated the Topeka Fire Department Strategic Plan defines its strategy and direction for making operational decisions and allocating resources to maintain Fire and Emergency Medical Services. He reported this will be the first discussion of three to include Advanced Life Support (ALS) Program Overview on May 14, 2019, and Fire Station Locations on May 21, 2019.

Craig Duke, Topeka Fire Chief, reported the Topeka Fire Department Strategic Plan has been updated to reflect goals and vision of the Department through the year 2022. He stated the Department would address future needs of the community through the creation and utilization of a complete strategic plan through Administration, Operations, Fire Prevention, Training and Emergency Medical Services.

Councilmember Emerson referenced recent changes in recruitment efforts by the Topeka Police Department and asked Chief Duke to comment on Topeka Fire Department recruitment efforts.

Craig Duke stated the Topeka Police Department handles training in-house for recruits as opposed to the Topeka Fire Department which requires individuals to be EMT certified before offering employment.

Councilmember Padilla questioned if there were local agencies the Fire Department could partner with to provide necessary certifications on site or locally to generate more qualified individuals to fill vacancies at a lower cost to the applicants.

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

Brenda Younger, City Clerk, gave a brief overview of the May 14, 2019 Governing Body agenda.

Mayor De La Isla thanked Governing Body members for their support during the recent death of her grandmother. She announced she would be absent for the May 14, 2019 Governing Body meeting.

Councilmember Ortiz thanked the Topeka Fire Department for installing smoke detectors throughout the community. She announced senior citizens can ride free on the Topeka Metro in the month of May. She also announced Coffee with Police Chief Cochran on May 9, 2019, at Tacos Del Sol from 6:00 p.m. to 7:30 p.m.

Councilmember Emerson offered his condolences to Mayor De La Isla for the loss of her grandmother.

Councilmember Padilla thanked the Topeka Fire Department for installing smoke detectors in the community. He announced a Pancake Feed would be held on May 11, 2019, for the Hi-Crest Neighborhood Improvement Association to recognize the NIA for their efforts in the community.

Councilmember Jensen thanked Visit Topeka for their efforts in the community and announced May 5-11, 2019, was National Tourism Week. He encouraged everyone to shop local.

Councilmember Lesser thanked the Topeka Fire Department for allowing him to participate in a fire training event.

Councilmember Hiller offered her condolences to the Ed Hughes family. She announced many Brown vs. Board of Education's 65th Anniversary events would begin May 10, 2019. She commended City staff and the Governing Body for a constructive meeting.

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

Councilmember Clear announced 2019 Germanfest events would be held June 1-2, 2019; and the Fiesta Mexicana events would be held July 16-20, 2019. She commended Brendan Wiley, Topeka Zoo Director, for his professional conduct in disseminating information to the community regarding the recent tiger attack.

Laura Wetzel appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:04 p.m.

(SEAL)

Brenda Younger
City Clerk