

Governing Body Minutes – September 15, 2020

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, September 15, 2020. The Governing Body members of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Hiller and Duncan -2; and the following Councilmembers participated remotely: Valdivia-Alcala, Ortiz, Padilla, Naeger, Dobler and Lesser - 6. Absent: Mayor De La Isla -1. Deputy Mayor Emerson presided -1.

AFTER THE MEETING was called to order, Jason Lichte, Cair Paravel Latin School, provided the invocation.

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

A RECOGNITION CEREMONY was conducted for City of Topeka Retirees.

CONSENT AGENDA was presented as follows:

APPROVAL OF MINUTES of the regular meeting of September 8, 2020, was presented.

APPROVAL of the following Cereal Malt Beverage-Off Premise licenses was presented:

<u>Business Name</u>	<u>Address</u>
ALDI #9	2320 NW Clay St.
Neighborhood Smoke	1700 SW Van Buren St.

Councilmember Naeger moved to approve the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously on roll call vote. (9-0-0)

APPROVAL of a three-year labor contract effective January 1, 2021, through December 31, 2023, between the City of Topeka and United Workers of Environmental Trades of Topeka, representing employees of the Water Pollution Control Utility Division, was presented. **(Contract No. 48905)**

Brent Trout, City Manager, stated the labor agreement was discussed at the September 8, 2020, executive session and staff recommends approval.

Councilmember Dobler moved to approve the labor agreement. The motion seconded by Councilmember Naeger carried unanimously on roll call vote. (9-0-0)

ORDINANCE NO. 20260 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 at 605 SW Fairlawn from “C-4” Commercial District to “M-3” Multiple Family Dwelling District, was presented.

Bill Fiander, Planning and Development Director, reported approval would allow for the conversion of a hotel and conference center into approximately 140 dwelling units to include studio as well as one and two bedroom apartments for workforce housing. He stated the conversion would also provide for specified accessory uses including management office, common areas for co-working spaces, and indoor playground and storage units for the apartments. He reported the intensity use was supported by the City’s Comprehensive Plan and would not generate additional traffic. He stated the Planning Commission and staff recommend approval.

Councilmember Naeger stated she believes the project would be a good fit for the community in this area.

Councilmember Hiller thanked the developers, City Planning staff and the Topeka Planning Commission for finding a creative use for the property.

Councilmember Lesser stated he was excited to see the project being developed. He reported the project would be considered affordable housing not Section 8 Housing.

Councilmember Lesser moved to adopt the ordinance. The motion was seconded by Councilmember Hiller.

Deputy Mayor Emerson 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.

Ex parte communication was declared by Councilmembers Ortiz and Lesser.

The motion to adopt the ordinance carried unanimously.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Hiller, Valdivia-Alcala, Ortiz, Emerson, Padilla, Naeger, Dobler, Duncan and Lesser - 9.

ORDINANCE NO. 20261 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, approving a major amendment to the Planned Unit Development (PUD) Master Plan for Wanamaker West on a 2.1 acre property located approximately 500 ft. west of the intersection of SW Wanamaker Road and SW 30th Terrace along the south side of SW 30th Terrace in order to add the use of “Indoor Recreation Type II” to the allowed (C-2 and I-1) uses indicated in the PUD Master Plan all being within the City of Topeka, Shawnee County, Kansas, was presented.

Bill Fiander, Planning and Development Director, reported the property was vacant land located south of the Hyvee grocery store on Wanamaker Road, and the current use allows for commercial and light industrial uses. He stated the amendment will allow an additional use, for

an indoor simulated golf recreation and entertainment facility. He noted there would be no adverse impacts with the current zoning, no public comment was received at the Planning Commission public hearing, and the Planning Commission and staff recommend approval.

Councilmember Duncan moved to adopt the ordinance. The motion was seconded by Councilmember Dobler.

Deputy Mayor Emerson 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.

Ex parte communication was declared by Councilmember Duncan.

The motion to adopt the ordinance carried unanimously

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Hiller, Valdivia-Alcala, Ortiz, Emerson, Padilla, Naeger, Dobler, Duncan and Lesser - 9.

UPDATE on the City of Topeka 2020 Operating Budget was presented.

Brent Trout, City Manager, stated the Finance Department continues to provide updates on the City's financial forecast while responding to the downturn in revenue due to the COVID-19 pandemic. He stated at this time, staff will provide an update on the revenues and expenditures as it relates to the 2020 Budget.

Jessica Lamendola, Administrative and Financial Director, reported the City's

current financial forecast was more positive than anticipated in May of this year. She referenced the memorandum she distributed via email to the Governing Body detailing the items she would highlight. She stated the current forecast for the City's general fund indicates that the City will end the year with revenue under budget by approximately \$2.8 million; and budget expenditures will be at \$1.8 million. She noted if everything occurs as expected at the end of year the City will be under budget by \$356,000. She highlighted the following areas of interest in terms of the year end outcome as it relates to revenue forecast assumptions:

- Sales tax performance remains the same in quarter three and four as it did in the second quarter staff expects sales tax to be about 1-3% for year over year growth. She stated the City may receive sales tax at \$1.5 million using the current model, but that was not included in the forecast provided. She stated franchise fees tend to be difficult to predict because the City receives only a percentage of the revenue generated by each company.
- Building permits for commercial properties were trending down in August 2020. There are no larger commercial properties in the City's permitting pipeline, which can be a leading indicator for decreases in revenue which staff will continue to monitor.
- Zoo Revenues was expected to experience a \$300,000 - \$400,000 loss of revenues for this budget year; however, the revenues are trending better than expected. The sales tax revenues will not be "counted" until after December 31, 2020.
- Expenses largest variance was the health payment holiday that reflects the vacant positions and the State of Kansas workshare program that employees participated in. Contractual services are projected to end the year above budget while commodities remain essentially flat. There was an expected budget variance of \$1.8 million which also reflects the assumption of moving some of the COVID-19 response related expenses to the CARES Act funding as well as capital expenditures and technology improvements.

Councilmember Duncan asked if the City could save an additional \$709,000 outside of what has already been saved through another health holiday and questioned if conversations have

begun with the appropriate parties. He also asked if the anticipated \$2 million of additional fund balance needed included the \$356,000 shortfall.

Brent Trout noted the additional health holiday was already included in the language of applicable labor agreements; therefore, if financially feasible, the City will consider an additional health holiday.

Jessica Lamendola stated the anticipated \$2 million of fund balance includes the \$356,000 shortfall.

Councilmember Duncan inquired on the prioritization of funding for 2020.

Brent Trout reported the number of Police Department recruits have increased from 10 to 16 and will begin the Police Academy in October 2020; and 10 Fire Department recruits will begin the Fire Academy in November 2020. He stated they would focus on one-time capital expenses such as budgeting software in case the budget changes by the end of the year.

Joseph Ledbetter suggested decreasing the number of full time employee (FTE) by seven percent, excluding emergency services personnel. He inquired on the amount of utility account revenue lost due to the city's decreasing population, forcing an increase in utility rates.

Councilmember Hiller thanked Jessica Lamendola for the detailed budget update which she believes was encouraging. She requested the Governing Body receive a similar forecast for the entire operating budget after completion of the third quarter.

Brent Trout stated staff could at least provide a financial forecast on the utilities budget to the Governing Body to see how revenues are trending.

Deputy Mayor Emerson expressed his appreciation to staff for the sacrifices they have made over the past six months.

DISCUSSION regarding proposed City of Topeka stormwater management code provisions was presented.

Braxton Copley, Utilities Department Deputy Director, reported in April 2018 the Environmental Protection Agency (EPA) conducted an audit of the City's Municipal Separate Storm Sewer System (MS4) storm sewer program. In August 2019, the City was served with a notice of violation and entered into negotiations with the EPA resulting in an agreed upon consent order. He stated the four major items in the consent order were (1) Improvements to construction sites for erosion and runoff; (2) Best Management Practice (BMP) maintenance; (3) Better stormwater prevention plans; and (4) Reduce the discharge of certain pollutants. He reported the City engaged Wood Environment and Infrastructure Solutions to perform a review of the MS4 in light of best practices followed by other stormwater utilities. He noted in 2019, the City was successful in obtaining a grant from the Kansas Department of Agriculture (KDA) to allow for two dimension modeling of the City's stormwater runoff.

Mary Halley, P.E., Water Resources Engineer with Wood Environment and Infrastructure Solutions, Inc., provided an overview of the Stormwater Program Revisions. She reported on the following:

- Important Terms:
 - a) Best Management Practice (BMP) – a structural facility used to manage stormwater runoff from one or more properties.
 - b) Stormwater Quality BMP – protects streams and properties from pollutants in stormwater and protects downstream properties from flooding.
- TMC 13.25 Stormwater Utility/Stormwater Fee Discount
- TMC 13.35 Stormwater Management/Stormwater Quality
- TMC 13.40 Stormwater BMP Maintenance (new chapter)
- TMC 17.10 Buffer Areas/Stream Buffers
- TMC 17.30 Floodplain Management
- TMC 18.235 Landscape Requirements

Joseph Ledbetter stated he believes the proposed ordinance revisions needs to be referred to a committee to allow the public an opportunity to provide input. He inquired on which developers were invited to provide input and if he could obtain a copy of the consent decree between the City and the EPA. He expressed concern with dam and stormwater regulations for streams and asked that the condition of steams be reviewed. He stated he believes if City codes were enforced there would be less litter throughout the city.

Deputy Mayor Emerson inquired on the timeline for approving the ordinance.

Braxton Copley reported staff has requested a second extension until October 2020. He noted due to the COVID-19 pandemic staff asked for an extension of time in May 2020 until September 2020.

Councilmember Lesser inquired on the following:

- He referenced the inspection information outlined in Section 13.40 and asked if it will be required every two years and what would be the estimated cost.
- He asked what the estimated cost would be for a certified professional to perform the inspection every six years. He noted he would prefer a ten-year inspection requirement.
- He asked if a property fails inspection would an approval be required prior to the sale of a property.
- He questioned the City's culpability in the event where loss may occur.
- He asked if existing staff will make sure inspections are complete or will new staff be hired to perform the duty.

Braxton Copley provided the following responses:

- If the property owner performs the inspection it will cost nothing. The property owner will use a worksheet from the maintenance handbook to complete the inspection.
- If the property owner wants to hire a professional engineer or a landscape architect they may do so. He would report back to the Governing Body regarding estimated cost.
- An inspection would not be required by the City; however, it could be negotiated by the seller and buyer. It was noted all new BMP's implemented would fall under ordinance requirements.

- In regards to culpability of the City, the City's failure to perform an inspection does not give liability to the City; however, it would depend on the facts and circumstances and would be considered on a case by case basis.
- Existing staff will ensure inspections are completed.

Councilmember Dobler inquired on the following:

- The negotiations with the EPA and how the development community was involved.
- What constitutes redevelopment of a site and requires the site to meet the proposed BMP regulations.
- How the proposed ordinance compares with the cities of Lawrence, Kansas, and Kansas City, Kansas, ordinances.
- If any regional BMP's were considered for stormwater quality and if individual property owners could pay into a regional BMP fund to help maintain it.

Braxton Copley provided the following responses:

- Negotiations with the EPA were very successful resulting in no financial penalties imposed on the City. Staff met with various design firms and discussed their concerns. In August 2020 a virtual meeting was held with 27 participants. The process has been open and engaging with many of the changes to the stormwater ordinance being completed administratively.
- Site redevelopment to meet BMP regulations would only be required if the change resulted in more than one-acre of impervious surface. Single-family residences would be exempt. Regulations only apply to commercial development.
- The municipalities in Johnson County, Kansas, require an annual inspection by a professional engineer. The City of Topeka chose a more moderate approach to inspect once, every six years, by a professional engineer.

Braxton Copley reported the City continues to seek opportunities for regional BMP's that would help with stormwater quality; however, the City decided to forgo payment into a regional BMP fund by individual properties due to the legal challenges.

Councilmember Dobler expressed his appreciation for the input provided by staff and stated he would support the ordinance.

Deputy Mayor Emerson asked if an example of a regional BMP would be a community based pond that would be 3 to 4 acres in size.

Sylvia Davis, Deputy Director of Operations Utilities Department, confirmed the example provided by Deputy Mayor Emerson was correct and noted there are many regional BMP's located on public properties throughout the city.

Councilmember Hiller asked if utility fee discounts would be applicable for a residential property.

Braxton Copley stated a residential property would not be eligible for the discount because a residential property owner would not be required to construct a BMP and maintain it on their property.

Councilmember Duncan inquired on the process used by the City to assist property owners in building the proper BMP for a particular site.

Braxton Copley reported the City would review the stormwater management plan and drainage report for the proposed BMP to ensure it meets the required level of service as well as make certain it has the appropriate BMP for the particular site.

Deputy Mayor Emerson asked when the ordinance must be adopted.

Braxton Copley stated staff has requested an extension from the EPA until the end of October 2020. He stated the ordinance has as effective date of January 2021, and staff will work with the development community and developers and distribute educational material.

Councilmember Duncan asked if the BMP requirements only apply to properties located within city limits; and if the ordinance could be adopted at any of the Governing Body meetings in October.

Braxton Copley stated the requirements are only applied within city limits, and if the EPA grants the extension until the end of October, the ordinance must be adopted by October 20, 2020, the last meeting of the month.

Councilmember Ortiz stated she has additional questions and expressed concern with the timeline for approval of the ordinance.

Councilmember Hiller mentioned the two hearings held with the contractors and asked if there were any more concerns contractors have regarding the proposed ordinance.

Braxton Copley stated he met with the design community which includes engineers and architects; however, he did not meet with contractors. He noted the Design Handbook and Maintenance Handbook were available for review on the City's website.

Brent Trent referenced the Frequently Asked Questions (FAQ's) documents included in the agenda packet that could be referred to and staff would make themselves available for questions to the Governing Body. He suggested keeping the ordinance on the October 6, 2020, Governing Body agenda as an action item and if the extension was granted from the EPA there would be time for additional discussions by the Governing Body.

PUBLIC COMMENT was expressed by the following individuals:

Brian Roach referenced the 2012 Uniform Plumbing Code (UPC) and stated he believes the City was not following the requirements as adopted. He stated he was confused how Councilmember Emerson's excavating business would not benefit from the adoption of Ordinance No. 20257 as amended. He highlighted the definitions for "excavator/excavators" and "plumber" and it was his interpretation the term "licensed contractor" was not included in the definition of a "plumber." He stated that a licensed contractor would be in violation of the 2012 UPC. He stated he opposes the ordinance because it neglects public safety and the minimum requirements of the 2012 UPC as adopted.

Kacia Szot stated when she moved to Topeka she met caring police officers, firefighters, and Governing Body members along with many other caring individuals in the city. She stated

she continues to enjoy visiting the various historic sites throughout the city and looks forward to be involved by serving on various boards and committees.

Ron Gish referenced the Strengthening Police and Community Partnerships (SPCP) program and stated he believes the selection process for those who serve in an advisory role need to be held accountable and to a higher professional standard. He noted that some of the SPCP members have posted Black Lives Matter (BLM) and anti-police information on their social media accounts.

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

Brent Trout, City Manager, provided an overview of the October 6, 2020, Governing Body meeting agenda.

Councilmember Hiller thanked staff for their work over the last few months and expressed her pride in serving as an elected official. She reported a local businessman has purchased the Bank of America Tower located at SE 6th Street and Kansas Avenue, and announced the Townsite Café' would reopen on September 16, 2020.

Councilmember Valdivia-Alcala announced the grand opening Doughboyz Pizzeria located at 1312 N. Kansas Avenue. She commented on celebrating Underground Railroad month as the nation continues to struggle with civil and human liberties. She stated she read a very sad social media commentary that called out and disrespected the National Association for the Advancement of Colored People (NAACP), Mainstream Incorporated and Topeka Center for Peace and Justice. She encouraged all to honor the history of the Underground Railroad network.

Councilmember Ortiz announced October was National Fire Prevention month and reminded citizens to honor fallen firefighters. She noted Topeka Fire Trucks continue to honor firefighters lost in 911 by displaying the sign “Stay back 343 feet” on Topeka fire truck apparatus signifying the number of firefighters that lost their lives in the line of duty on September 11, 2001, in the World Trade Center attack.

Councilmember Padilla announced September was Hispanic Heritage month. He reminded everyone to participate in the 2020 U.S. Census. He sent information to the Governing Body this week regarding the Safe Streets coalition and noted he would like to keep the program active in the community. He referenced the violence that continues throughout the nation and stated everyone must continue to do their part to stop the violence. He asked for a moment of silence to honor law enforcement personnel during this difficult time.

Councilmember Naeger stated she echoes the comments made by Councilmembers Valdivia-Alcala and Padilla. She encouraged people to support each other for a safer and better community.

Councilmember Dobler stated he supports the continuation of the Safe Streets program. He expressed his appreciation to the City of Topeka retirees and noted he worked with many of them during his tenure with the City.

Councilmember Duncan stated he will continue to promote the 2020 U.S. Census. He expressed his appreciation for honoring City of Topeka retirees and noted it helps the Governing Body recognize the time they gave to the City. He announced October 13, 2020, was the deadline to register to vote.

Councilmember Lesser stated he will continue to promote the 2020 U.S. Census. He expressed his appreciation to the City for recognizing the long-term employees who are retiring as it says a lot about the organization and its employees.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:47 p.m.

(SEAL)

Brenda Younger
City Clerk