

## **Governing Body Minutes – October 6, 2020**

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, October 6, 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, Valdivia-Alcala and Duncan -3; and the following Councilmembers participated remotely: Ortiz, Emerson, Padilla, Naeger, Dobler and Lesser - 6. Mayor De La Isla presided -1.

AFTER THE MEETING was called to order, Councilmember Valdivia-Alcala provided the invocation.

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

ADVISORY COUNCIL APPOINTMENT of Marilyn Lind to the City of Topeka Americans with Disabilities Act (ADA) Advisory Council for a term ending September 30, 2022, was presented. (*Council District No. 7*)

BOARD APPOINTMENT recommending the reappointment of Wiley Kannarr to the Topeka Planning Commission for a term ending September 30, 2023, was presented. (*Council District No. 8*)

BOARD APPOINTMENT recommending the reappointment of Marc Fried to the Topeka Planning Commission for a term ending September 30, 2023, was presented. (*Council District No. 9*)

Councilmember Emerson moved to approve the appointments. The motion seconded by Councilmember Naeger carried unanimously on roll call vote. (9-0-0) The Mayor does not vote.

CONSENT AGENDA was presented as follows:

APPROVAL OF MINUTES of the regular meeting of September 15, 2020, was presented.

Councilmember Dobler moved to approve the consent agenda. The motion seconded by Councilmember Naeger carried unanimously on roll call vote. (10-0-0)

APPROVAL of the sale of City of Topeka surplus property located at 101 N.E. Jefferson to Amherst Holdings, LLC in the amount of \$2,000, was presented.

Brent Trout, City Manager, reported approval would authorize the sale of surplus property in the amount of \$2,000 to Amherst Holdings, LLC to expand their building.

Councilmember Duncan inquired on the actual appraised value of the property and if the parcel would return to the tax rolls if development does not occur.

Ed Collazo, Independent Police Auditor, Executive Department, reported the property was appraised at \$1,000 in 2019, and \$7,000 in 2020. He stated he was informed by the Shawnee County Appraiser's Office that the substantial increase in property value was due to the back log of services and the property had not been appraised for several years.

Councilmember Ortiz moved to approve the real estate agreement. The motion seconded by Councilmember Padilla carried unanimously on roll call vote. Councilmember Emerson abstained. (9-0-1)

ORDINANCE NO. 20262 introduced by City Manager Brent Trout, "need heading of ordinance"

Brent Trout, City Manager, reported the ordinance provisions were presented at the September 15, 2020, Governing Body meeting and staff recommends approval as presented.

Braxton Copley, Utility Department Deputy Director, reported the language provisions transpired as a result of an agreed upon executive order of consent between the City of Topeka and the Environmental Protection Agency (EPA) in August 2020. He reported all EPA concerns have been addressed with the exception of ongoing inspections of post construction Best

Management Practices ( BMPs) which will be addressed in the proposed ordinance. He noted the request to extend approval of the regulations until the end of October 2020 was approved by the EPA.

Joseph Ledbetter spoke in opposition of the ordinance as proposed. He stated he believes further research needs to take place on the language provisions and the Governing Body needs to conduct their due diligence regarding the use of tax payer dollars. He questioned if the EPA violations were caused by negligence of City employees; and why the City's Legal Department did not draft the ordinance instead of hiring a consultant in the amount of \$380,000.

Councilmember Duncan referenced the lack of aesthetics of the detention area (BMP) located behind Love's Truck Stop located at 1811 N.W. Brickyard Road. He requested staff begin the process of developing stricter landscaping requirements as well as facility designs to improve aesthetics throughout the city, specifically in residential areas.

Councilmember Valdivia-Alcala asked what services were provided by the consultant in the amount of \$380,000.

Councilmember Dobler stated the ordinance provisions do not go above and beyond what was being required by the EPA, making it an essential agreement to satisfy EPA requirements, therefore, he will support the ordinance.

Councilmember Hiller asked if the EPA violations were the result of City employees failing to complete their duties or if the EPA continues to implement stricter regulations.

Councilmember Emerson stated he agrees with comments made by Mr. Ledbetter, however, he remains concerned with the continued increase in EPA regulations and the lack of choice the City has at this time to follow those regulations.

Braxton Copley listed the overall services provided by the consultant and reported the violations were the result of stricter EPA regulations.

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

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

DISCUSSION of funding recommendations by the Alcohol and Drug Abuse Advisory Council in the amount of \$620,000 for the 2021 Special Alcohol Fund was presented.

Corrie Wright, Housing Services Division Director, reported State statute requires that one-third of the proceeds of the liquor tax collected by the State be deposited in the City's special alcohol and drug program fund to be used only for "the purchase, establishment, maintenance or expansion of services or programs whose principal purpose was alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers." She stated the review team recommended the following amounts for 2021:

- PARS (Prevention Programs) \$173,000
- PARS (Evaluation & Intervention) \$58,183
- Valeo (Social Detox Program) \$297,775
- Third Judicial District (Drug Court Program) \$55,500
- Kansas Children Service League (Successful Connections Drug Endangered Child Program) \$14,000
- Rollover - Mini-grants, capital improvements \$21,542

Councilmember Duncan referenced the \$21,542 of rollover dollars and asked what the \$11,500 of designated capital improvement grants would be used for; and asked if staff determines how program funding would be spent.

Corrie Wright stated capital grant funds would be used for facility improvements on a building that was being used to provide drug and alcohol program assistance; and the Special Alcohol and Drug Advisory Council determined how the funds would be spent.

DISCUSSION regarding the annexation ordinance for property located at the southwest corner of NW 25th Street and NW Button Road (Six Zero North Subdivision) within unincorporated Shawnee County, Kansas, and adjacent to the City of Topeka corporate limits Shawnee County, Kansas, was presented.

Bill Fiander, Planning and Development Director, reported the annexation of a 74-acre tract was to accommodate an industrial development with multiple small office/warehouse type industries. He noted the property was recently platted as Six Zero North Subdivision and located within the Employment Tier of the City's Urban Growth Area and has been deemed ready for annexation. He stated due to the speculative nature of the development proposal, required improvements to either of the two public roads were unknown at this time; however, the Traffic Improvement Analysis (TIA) for the entire subdivision must be approved at the time of development of the first lot and updated for development on each subsequent lot. He reported the Topeka Planning Commission reviewed the annexation proposal on May 18, 2020, and found the annexation to be consistent with the City's Land Use and Growth Management Plan.

Councilmember Valdivia-Alcala referenced the condition of the roads. She asked what type of road improvements would be needed for the development and if those types of projects would be included in a future capital improvement plan.

Bill Fiander stated streets would be improved to the City's urban standard to include curb, gutter, sidewalk, underground stormwater control, and possible expansion of lanes; and any development that requires less than an "arterial road" the developer pays for the impact.

Councilmember Hiller questioned if staff was considering a change in policy to ensure the City would not be left with high maintenance street improvement costs that may not be covered due to insufficient tax dollars being generated.

Bill Fiander reported the Land Use and Growth Management Plan ensure development takes place where infrastructure was already in place. He noted as a City they must be careful with these types of annexation by considering the cost benefit analysis as a whole.

DISCUSSION on the governance of operations at the Topeka Zoo was presented.

Brent Trout, City Manager, stated a general overview of the Zoo Governance would be the first of many discussions throughout the month of October.

Brendan Wiley, Topeka Zoo Director, reported the operations of the Topeka Zoo & Conservation Center through a public-private partnership was first recommended by an Association of Zoos & Aquariums (AZA) special inspection in the fall of 2009, and was again considered in 2012, 2016 and 2018. He noted the issue was most recently discussed at the June 4, 2020, Governing Body meeting. He highlighted the following:

- In a public-private partnership (PPP), the City would maintain ownership of all assets, including land, buildings and animals. The City would contract with a non-profit to operate the Zoo for an agreed upon annual management fee. Most City employees would become employees of the non-profit in the short-term. In the long-term, all personnel would become employees of the non-profit.
- The City currently contracts with Friends Of Topeka Zoo (FOTZ), a non-profit organization, to operate several Zoo functions for an agreed upon annual fee: (1) admission, rental concession and public area custodial (since 2013); (2) hiring seasonal animal care staff (since 2015); and (3) hiring seasonal education staff (since 2019).
- Completing this transition with FOTZ through a PPP would (1) facilitate operational and infrastructure growth without pressure on the City's general fund budget; (2) provide budgeting consistency for the City; (3) eliminate confusion related to areas of operational responsibility; and (4) create a better process for operational fundraising. Seventy- Five Percent (75%) of AZA zoos use a PPP model as it is an industry best

practice and allows for operational and infrastructure growth without passing the associated costs of such growth to the public.

In conclusion, Mr. Wiley highlighted the proposed timeline to include the discussion of financial matters on October 13, 2020; property ownership, insurance and proposed license fee on October 2020; City employee service agreements on November 10, 2020; and approval of license and management agreement with FOTZ and employee services agreement and approval of AFT Working agreement on November 17, 2020.

Councilmember Hiller asked for clarification of what direction staff was heading in regards to the operation of the Zoo. She stated the discussion in March 2020 included privatizing the whole operations of the Zoo, but the fundraising would still occur and the contractor would be FOTZ in which all the animals would be owned by them. She stated the capital improvements and maintenance would be privatized as well. She inquired if the voters would be allowed to choose if this would be a dual (city-county) taxing entity and requested a couple different options of financial models regarding maintenance costs of the Zoo.

Brendan Wiley stated at this time they are concentrating on the first step to transition into a public private partnership for the operation of the Zoo as non-profit 501 (c)(3) organization.

Councilmember Duncan expressed his appreciation to staff for presenting a short and long-term objective, however, he needs more clarification. He stated he believes a serious conversation needs to occur about establishing two separate boards, one for governance of the Zoo and the other for operational fundraising efforts with the goal to minimize the “politics” surrounding the matter. He requested FOTZ be more involved in the presentations and engaged in conversations so the transition would be conducted in a constructive manner.

State House Representative and FOTZ President Fred Patton, agreed that it was likely as they move forward two separate boards would be created. He stated FOTZ would be willing to

provide assistance as needed as they move through the process and will continue to consider a dual tax entity option in the future.

Joe Ledbetter spoke in support of providing the Zoo with a two mill subsidy for two years, and allowing FOTZ to become completely financially independent after ten years. He stated he believes FOTZ should receive all revenue proceeds from Gage Park and have no responsibility for future bond payments.

PUBLIC COMMENT was expressed by the following individuals:

Neil Carlson spoke in opposition of the 2012 Uniform Plumbing Code language amendments approved in City of Topeka Ordinance No. 20257.

Marlena Mitchiner referenced an incident that took place on September 19, 2020, between her son and a Topeka Police Officer. She stated her son was autistic and should have been treated with some compassion in order to change the occurrence of events. She requested that Topeka Police Officers receive more mental health training and approach situations with more compassion.

Russell Ridgeway spoke in opposition of the recent revisions to the 2012 Uniform Plumbing Code approved in City of Topeka Ordinance No. 20257.

Dave Cobler spoke in opposition of the revisions to the 2012 Uniform Plumber Code as outlined in City of Topeka Ordinance No. 20257. He asked that the revisions be repealed and the City conducts more discussions with industry experts to come to a fair solution.

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

Kelly Bogner, Assistant City Clerk, provided an overview of the October 6, 2020, Governing Body agenda.

Councilmember Valdivia-Alcala requested the ordinance she was proposing to establish a citizen review board be added to the October 20, 2020, Governing Body agenda for discussion and vote. She requested the ordinance be provided to the Governing Body by October 9, 2020. She also requested the City Attorney make a determination on if Councilmember Emerson had a conflict of interest relating to the language revisions approved in City of Topeka Ordinance No. 20257. She referenced an email she received from the City Attorney marked “confidential” however, it was sent to the entire Governing Body. She requested a more thorough answer to her question regarding all votes taken by Councilmember Emerson since he has been elected as a Council District Representative and noted Councilmember Emerson has received approximately \$7 million of tax payer dollars through services provided by his company, Emcon, Inc. to the City of Topeka.

Councilmember Ortiz referenced October as “Fire Prevention Month” and announced the Topeka Fire Department would install smoke detectors free of charge to all citizens through the month of October. She encouraged everyone take advantage of the program and instructed citizens to contact the Topeka Fire Department for more information on the program.

Councilmember Emerson stated he attended the ribbon cutting ceremony on October 5, 2020, for the remodel of the Hillcrest Community Center.

Councilmember Padilla commended SENT, Topeka (Strengthening and Empowering Neighborhoods Together) for renovating homes in the Hi-Crest neighborhood. He encouraged citizens to participate in the 2020 U.S. Census. He expressed his appreciation to the Hispanic community for making the Topeka community a wonderful diverse place to live.

Councilmember Naeger expressed the importance of participating in the 2020 U.S. Census. She reminded citizens to vote on November 3, 2020, for the General Election.

Councilmember Dobler clarified that all of the funds received by Councilmember Emerson through his company Emcon, Inc., were received through the City's Request for Proposal (RFP) process, awarding service contracts to the lowest bid.

Councilmember Lesser stated many Councilmembers own private businesses as well as they are required to sign a disclosure to act ethically when becoming a member of the Governing Body, however, when a person becomes an elected official it does not take away their right to make a living.

Councilmember Hiller commented on the great Downtown Plaza events as well as the improvements and redevelopment that were taking place in the Hi-Crest neighborhood. She referenced SORT grants in regards to housing redevelopment funding. She announced the next Police and Community Special Committee meeting would be held on October 26, 2020.

Councilmember Valdivia-Alcala reported there were 30-40 private plumbers that were protesting outside prior to the Governing Body meeting and she believes they have a right to make a living just like members of the Governing Body.

Councilmembers Lesser and Ortiz expressed concern with the enforcement of Governing Body Rules & Procedures as it relates to being respectful of fellow Governing Body members as well as procedural matters relating to responses of Governing Body members to citizens during public comment.

Councilmember Padilla moved to recess into executive session for a time period not to exceed 15 minutes to discuss upcoming employer/employee negotiations, as authorized by KSA 75-4319(b)(3). In order to aid the discussion, the following individuals should be present: Members of the Governing Body; City Manager, Brent Trout; Administrative and Financial Services Director, Jessica Lamendola; Human Resources Director, Jacque Russell; Senior

Assistant City Attorney, Catherine Walter; Budget & Performance Manager, Stephen Wade; and City Attorney, Lisa Robertson. No action was anticipated to be taken when the open meeting resumed in the Governing Body Chambers. The motion seconded by Councilmember Lesser carried unanimously. (10-0-0)

Following a 15-minute time period, the meeting reconvened into open session and Mayor De La Isla announced no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:00 p.m.

(SEAL)

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Brenda Younger  
City Clerk