

## **Governing Body Minutes – February 2, 2021**

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, February 2, 2021. The Governing Body members of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers participating remotely: Hiller, Valdivia-Alcala, Ortiz, Emerson, Naeger, Dobler, Duncan and Lesser - 8. Absent: Mayor De La Isla - 1. Deputy Mayor Padilla presided - 1.

Due to the increase of COVID-19 pandemic cases no in-person public comment was allowed. Zoom (virtual) meeting access was provided to those individuals signed up to speak to a specific item or general public comment. Public comment related to an item on the agenda, submitted in writing to the Office of the City Clerk, 215 SE 7<sup>th</sup> Street, Room 166, Topeka, Kansas, or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) was included as an attachment to the minutes.

AFTER THE MEETING was called to order, Marty Hillard, United Way of Greater Topeka, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited virtually by meeting participants.

COMMITTEE APPOINTMENT recommending the appointment of Johnathan Sublet to the Affordable Housing Review Committee for a term ending December 31, 2022, was presented (*Council District No. 5*)

COMMITTEE APPOINTMENT recommending the appointment of Harry Christian to the Affordable Housing Review Committee for a term ending December 31, 2022, was presented. (Council District No. 7)

ADVISORY COUNCIL APPOINTMENT of Marie Carter to the City of Topeka Americans with Disabilities Act (ADA) Advisory Council for a term ending January 31, 2023, was presented. (*Council District No. 5*)

BOARD APPOINTMENT recommending the reappointment of Mary Powell to the Topeka Sustainability Advisory Board for a term ending February 28, 2023, was presented. (*Council District No. 6*)

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

PRESENTATION on the Development and Growth Management 2020 Year End Report was presented by Bill Fiander, Planning and Development Director.

Councilmember Dobler asked if the Topeka Speaks Online government platform was implemented due to the COVID-19 pandemic.

Bill Fiander stated it was in the works prior to the pandemic; however, CARES Act Funding provided an opportunity to receive financial assistance and accelerate the idea.

Councilmember Hiller thanked staff for providing the report and helpful information.

Deputy Mayor Padilla asked if Planning was the only City department utilizing the online platform.

Bill Fiander reported Staff plans to use the online platform for the 2022 City of Topeka budget process as it would allow participants to provide their input to the Governing Body so they can interface with constituents and answer questions.

CONSENT AGENDA was presented as follows:

APPROVAL OF MINUTES of the regular meeting of January 19, 2021, was presented.

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

BOARD APPOINTMENT recommending the appointment of Carol Roberts to the Topeka Human Relations Commission to fill an unexpired term ending February 28, 2022, was presented. (*Council District No. 7*) (*Deferred from the meeting of January 19, 2021.*)

Councilmember Valdivia-Alcala expressed her appreciation to the Governing Body for allowing her to conduct her due diligence regarding the review of the application. She stated she spoke with Ms. Roberts at length and she respects her commitment to her family, faith and law enforcement family; however, she has concerns with Ms. Roberts' stance on her views of certain protected class statuses specifically the LGBTQ community and possibly some other stances on civil rights. She stated it was her understanding, one of the goals of the Topeka Human Relations Commission (THRC) was to represent and educate people on those that fall under protected class protections; and in the realm of THRC commissioners they are often focusing on human rights, civil rights and justice. She recognized that the current Commission may be evolving; however, individuals that are fall under the category of a protected class was not open for debate.

Councilmember Naeger questioned what prompted Councilmember Valdivia-Alcala to inquire on the applicant.

Councilmember Valdivia-Alcala stated the answers on Ms. Roberts' application and emails she received from concerned constituents prompted the inquiry.

Councilmember Dobler expressed his appreciation to Councilmember Valdivia-Alcala for taking the extra time to research Ms. Roberts' values; however, he has reviewed the application and believes she will be a good fit for the THRC as various viewpoints are essential to the overall duties of the THRC.

Councilmember Dobler moved to approve the appointment. The motion seconded by Councilmember Ortiz carried on roll call vote. Councilmember Valdivia-Alcala voted “no.” (8-1-0)

REVISED PROJECT BUDGET in the amount of \$15,000,000 and A RESOLUTION introduced by City Manager Brent Trout, amending and authorizing the project budget approved by Resolution No. 9174-A for Improvement Project No. T-701016.00 which provides for the reconstruction of SW 12th Street between Kansas Avenue and Gage Boulevard, was presented.

Brian Faust, City Engineer, stated the design had an initial cost of \$13.18 million for reconstruction of roadway; however, it became apparent during design that upgrades to the underground utilities were critical. He reported the project budget covered a maximum of \$1.1 million in relocation and upgrades to existing City utilities while any additional utility cost would be covered by Water, Wastewater and Stormwater funds. He stated there were six bids received, and based on those bids received and the combined costs for design, inspection as well as acquisition of easements and rights-of-way, the total project cost was \$14,635,078. He noted the requested increase to \$15 million provides for a contingency of \$364,922 to help account for unanticipated issues that typically occur during reconstruction activities.

Councilmember Naeger thanked staff for making sure the project sufficiently addressed all aspects of street improvements for years to come.

Councilmember Duncan questioned if the increase was due to new project costs or initial project costs not included in the budget; and if the funds were being transferred from another project budget slated in out years.

Brian Faust reported it was new project costs.

Brent Trout, City Manager, reported federal fund exchange dollars would be used to fund the project.

Councilmember Hiller concurred with Councilmember Duncan. She stated it was her understanding the City considered utility improvements with all street projects and the funding would be pulled from the I-470 and Huntoon project. She questioned if other funding sources were available.

Councilmember Dobler referenced the \$15 million in excess sales tax funds generated from the first 10 years of the Half-Cent Countywide Sales Tax. He asked Staff to research if Joint Economic Development Organization (JEDO) funds were available to use for the project.

Councilmember Dobler stated as the Senior Vice President of Bartlett & West Inc., he would abstain from voting because Bartlett & West serves as the project engineer.

Brent Trout reported he would verify if there were excess sales tax funds available and report back to the Governing Body.

Councilmember Ortiz asked if the project could be deferred for one week to determine if another funding source was available.

Brent Trout expressed the importance of moving forward with the contract as the project timeline was already behind schedule and the contractor was ready to mobilize.

Councilmember Ortiz moved to defer until February 9, 2021. The motion was seconded by Councilmember Lesser.

Councilmember Lesser inquired on what amount has actually been incurred to date on the project.

Brian Faust reported project costs to date are approximately \$1.8 million for design and inspection services.

The motion to defer until February 9, 2021 carried unanimously on roll call vote.

Councilmember Dobler abstained. (8-0-1)

Councilmember Padilla requested the financial information be provided to the Governing Body as soon as possible so they can make an informed decision.

DISCUSSION of the terms and conditions of a License and Management Agreement with the Friends of Topeka Zoo ('FOTZ') that will provide for the operation and management of the Topeka Zoo and Conservation Center by FOTZ as part of a proposed Public Private Partnership, was presented.

Brent Trout, City Manager, stated the Friends of the Topeka Zoo have partnered with the City to assist in operation of the Zoo for many decades. He reported FOTZ has shown a commitment to the Zoo over the years by expressing its intent to make funding and asset allocation decisions with the City's goal in mind - to support and improve the Topeka Zoo and Conservation Center while enhancing guest experience moving forward. He commented on the following:

- FOTZ has a proven record of successful fundraising efforts through the creation of new Zoo attractions such as Camp Cowabunga and Kay's Japanese Garden.
- The License and Management Agreement provides the City with the opportunity to enter into a Public Private Partnership with FOTZ transferring the risk associated with unanticipated expenditures and cost increases related to the Zoo, which at times, present municipalities with difficult funding decisions.
- The annual license and management fee that FOTZ will receive from the City to operate and manage the Zoo would not be the sole source of revenue. FOTZ will be responsible for cultivating additional revenue resources which they have proven successful over many years.
- The new arrangement would facilitate more possibilities. Multiple funding sources will be needed to maintain the Zoo in accordance with Association of Zoos & Aquariums (AZA) and United States Department of Agriculture (USDA) standards and regulations to implement the vision set out in the Zoo Master Plan.
- The City will continue to support capital maintenance needs at the Zoo with the agreement and provide Countywide Half-Cent Sales Tax monies approved by the voters to build new attractions to complete the Zoo Master Plan.

- FOTZ has established meaningful community relationships with partners that have expressed a great deal of interest in the Zoo. These partners have been generous with gifts and donations and he believes these types of partnerships will encourage support to a higher degree in coming years.
- FOTZ would be responsible for day-to-day operations as well as all aspects of executing the Zoo Master Plan

Lisa Robertson, City Attorney, provided an overview of the License and Management Agreement (LMA) that was the result of negotiations between the City of Topeka and the Friends of the Topeka Zoo (FOTZ). She stated City staff relied on guidance provided by the Governing Body over the course of many months on its long-term vision for the Zoo, as well as the more specific feedback received on December 8, 2020, related to the license and management fee and capital contributions. She highlighted the following:

- The agreement establishes the guidelines and commitments that both parties are making in the event of a management change and reflects the associated transfer of risk.
- Zoo Animals will be transferred to FOTZ on the Effective Date of the LMA.
- FOTZ shall provide care for Zoo Animals in accordance with AZA and USDA standards and regulations, including, but not limited to, those related to: (i) animal care and management; (ii) veterinary care; (iii) husbandry; (iv) feeding; and (v) cleaning.
- Should the LMA terminate, FOTZ shall provide the City with sole possession, custody and control of the Zoo Animals.

City Attorney Robertson continued discussion by providing an overview of how the guest experience would be enhanced. She highlighted the following:

- Continued development of new projects, programs and infrastructure
- Expanded hours of operation, catering to both working parents and seniors
- Enhanced accessibility for all segments of the community
- Expanded Animal Care and Animal Health programs to promote the well-being of the animals who live at the Zoo

Jessica Lamendola, Administrative and Financial Services Director, provided an overview of the City's financial commitments included in the LMA. She highlighted the following:

- The City commits to FOTZ the annual payment it will make to support FOTZ's operation and management of the Zoo (Article No. 7 )
- The City commits to selling \$2.85 million of bonds to fund the agreed capital maintenance requirement in the first 7.5 years of the 15-year LMA (Article No. 8)
- The City acknowledges and commits to \$2.85 million to support capital maintenance in the second 7.5 years of the LMA (Article No. 8)

Jacque Russell, Human Relations Department Director, provided an overview of how the City plans to address insurance related matters. She stated both parties consulted with insurance experts to determine specific coverage and other related matters. She highlighted the following:

- The City will provide and maintain property insurance covering the Zoo premises.
- FOTZ shall pay the deductible associated with any property losses; and the annual license and management fee paid to FOTZ will be reduced to reimburse City for the amount paid to maintain property insurance on the Zoo Premises. FOTZ will provide:
  1. General Liability Insurance
  2. Property Insurance covering all of its assets (including vehicles)
  3. Professional Liability (Errors & Omissions) Insurance
  4. Workers' Compensation Insurance
  5. Motor Vehicle Insurance

Catherine Walter, Assistant City Attorney, provided an overview of the Employee Supplemental Agreement for the 18 AFT Union Employees as well as the six non-union employees who currently work at the Zoo. She highlighted the following:

- If LMA was approved by the Governing Body, all Zoo employees will receive offers of employment from FOTZ

Options Available to Union Employees include:

1. Employees within three years of KPERs Retirement Eligibility may transition to FOTZ employment or retain City employment.



2. All other union employees may transition to FOTZ employment or search for a City position outside the Zoo pursuant to a preferential hiring process.

Options Available to Management Employees:

1. All non-union employees have the option to transition to FOTZ employment or retain City employment.

Agreed-upon Benefits and Financial Impact to City/FOTZ:

- Seniority follows City employees to FOTZ.
- Employees may transfer some vacation accruals to FOTZ. Costs associated with vacation accruals are responsibility of City.
- Employees may transfer 240 hours of sick leave to FOTZ. Transfer of sick leave would be an unfunded liability at time of transfer.
- A FOTZ reduction in force in the first year of operation entitles employees to severance pay at the expense of FOTZ.
- FOTZ will reimburse City for labor costs of City employees who elect to retain City employment and are assigned to the Zoo.

Employee Transition includes the following:

- The effective date of the Employee Services Agreement and the AFT Supplemental Agreement will be the date upon which the LMA is approved by the Governing Body.
- A six-week transition period will be needed for employees to exercise available options. City staff will work with employees during this transition period, at which time the transition of facilities, finances, information technology, etc. will also take place.
- Zoo operation and management functions will officially transfer from the City to FOTZ on April 3, 2021, at which time employees who accept FOTZ offers of employment will become FOTZ employees.

City Attorney Robertson provided an overview of the level of oversight that would be maintained as well as any timing issues that may be involved with the approval of the LMA. She highlighted the following:

- FOTZ Board of Directors Representation:
  1. One or two City Council Members will be appointed by the Governing Body to serve as voting members; or the Mayor and/or Deputy Mayor (by virtue of their position).

2. Two Staff Members will be designated by position (Financial Services Director and Public Works Director) to serve as non-voting members.
- Reporting Requirements:
    1. Annual Report no later than March 31<sup>st</sup> of each year (comprehensive; detailed information).
    2. Quarterly Reports (including attendance data; capital project updates; year-to-date budget performance data)
    3. Independently Audited Financial Statements no later than April 1<sup>st</sup> of each year.
  - Potential Timing Issues:
    1. An approval date in February will provide a sufficient transition period within which employees will be able to consider and then exercise their employment options in advance of a transfer of Zoo operation and management responsibilities to FOTZ on April 3, 2021.
    2. An approval date later than February will require that the effective date of the LMA be adjusted to the start of the third quarter (July 2021) – corresponding revisions to the LMA will be required.
    3. The AFT Supplemental Agreement will be void if the LMA was not approved by March 31, 2021.

Fred Patton, FOTZ Board President, spoke in support of the LMA as presented. He stated the Board firmly believes the financial model being presented will be successful as well as the agreement reached with AFT employees was fair and the benefit package was structured in a way to meet the needs of employees. He stated they look forward to a great partnership with the City and expressed his appreciation to City Staff members and FOTZ Board members for their hard work.

Councilmember Hiller spoke in support of the transition; however, she still believes there are small language adjustments that need to be made to the contract. She stated it was her understanding the City planned to eventually eliminate Zoo improvement projects from the CIP. She inquired on the following:

1. If the bonds would be issued for 7.5 or 15 years?
2. If the first phase of Zoo improvements have been implemented?
3. The amount of dollars that have been expended in fiscal years 2018 and 2019; and how much of the remaining \$10 million that was initially earmarked in the CIP has been expended.

Jessica Lamendola stated the City was considering a 7-year or 14 to 15-year ammonization.

Brendan Wiley, Topeka Zoo Director, reported when the Countywide Half-Cent Sales Tax was approved there was a Zoo Master Plan in place with no set funding source; therefore, the sales tax revenue was essentially used as a stimulus to provide a base for private donors. He stated when the initial phases of the Camp Cowabunga and Kay's Japanese Garden projects were drafted it was a best guess at that time; however, since then the CIP has been updated to accommodate how the Zoo Master plan will unfold. He noted all Countywide Half-Cent Sales Tax funded projects have to work together and he will continue to work with the City's Finance Director to make sure that happens. He outlined the \$10 million expenditure as follows:

- Approximately half of the \$7 million has been spent which includes what has been encumbered on the next Zoo project.
- \$2.45 million of sales tax funds have been spent on the Camp Cowabunga Project.
- \$500,000 has been expended on two smaller projects which include upgrades to the gas lines and water infrastructure improvements as outlined in the Zoo Master Plan.
- The next project (Giraffe Project) will cost approximately \$7.5 million. Including \$1 million in sales tax funds designated for the project. Staff will be requesting to designate another \$500,000.

Councilmember Hiller referenced the agreement as proposed and made the following comments:

- In reference to the City having to buy back all personal property if the agreement ends. She suggested the language be amended to state, "purchased during the time of the agreement shall be negotiated based on the City's contributions and other circumstances to date."
- She expressed concern with the choice of the City to bond improvement projects that do not meet the requirements of bonding parameters. She believes the City should not finance items that will not outlive the life span of the bonds – any of the purchases that

the Zoo made would need to comply with debt management and bond policies or they need to revise the list before being approved.

- She stated she opposes bonding maintenance expenses and would prefer to use reserve funds for the duration. She stated it was critical to reflect the true cost of borrowing which would include 25-30% more to bond the funds; deduct the cost of borrowing the dollars available to the Zoo or add the cost of financing to the overall cost for transparency purposes.
- She stated the commitment to the Zoo needs to be stronger. The annual management fee needs to be reviewed as it relates to how much the Zoo was getting at this time from the City. She expressed concerned with making the long-term commitment and protecting the taxpayers.
- She stated the City Manager will be notified of fee changes of capital purchases and believes the Governing Body should be notified as well.
- She stated the fee change language should make sure it would be affordable to local residents and noted the language only controls fee increases for the first 5 years of the 15-year agreement. There would be a need for additional language to govern the fee for duration of the agreement.
- She suggested an allowance for the City to continue promoting activities at the Zoo in collaboration with FOTZ. She suggested they seriously consider leading an effort to propose a ballot measure in the 2021 elections to approve a 0.05% or 0.10% sales tax to be allocated to the Zoo.

Councilmember Lesser questioned the actual value of personnel property if the partnership would dissolve.

Fred Patton stated the purpose of the partnership will be to benefit and serve the Topeka Zoo now and in 15 years; the purpose will not change.

Councilmember Duncan stated his primary concern would be if FOTZ files bankruptcy and ensuring the City has the first right of refusal to acquire the property.

Lisa Robertson reported the City would have the first right of refusal with structures; however, not in regards to personal property.

Councilmember Hiller stated she believes it was the job of the Governing Body to consider any and all worst case scenarios of what may occur.

Councilmember Duncan stated he would like the City to have some ability to terminate the contract if FOTZ loses AZA accreditation and they are not able to again secure the

accreditation in a timely manner; he will continue to advocate for a discounted rate for taxpayers of the city and the county; and there should be the ability to manage donor accounts for large projects if the contract dissolves before the projects are complete.

Lisa Robertson reported a termination by default would begin the dispute resolution process; however, including a clause regarding “notice of termination” may be a more expedient process.

Fred Patton stated FOTZ was more than willing to work with the City to make the partnership successful. He noted Dina Cox and Tim Resner, FOTZ Board members, were available for questions.

REVIEW of the City of Topeka Governing Body 10-Year Strategic Vision and Goals, was presented.

Brent Trout, City Manager, reported a set of five primary goals and multiple objectives under each goal have been outlined for an overall 10-Year Plan to be reviewed every two-years.

Councilmember Duncan asked what the follow-up process would be to ensure they are meeting the goals and objectives.

Brent Trout stated Staff will help develop strategies to assist the Governing Body in accomplishing the goals and vision in collaboration with applicable organizations. He stated the Governing Body will analyze the process in one-year and determine if they want to continue or modify the plan.

Deputy Mayor Padilla requested when a benchmark was reached or goals met to notify the Governing Body so they have a tracking mechanism.

Brent Trout reported the document provides for more measurable metrics and he would provide an update to the Governing Body on a quarterly basis.

Councilmember Dobler stated he would like to see an update in early June as budget deliberations begin to make sure Staff has the financial support to accomplish what was needed.

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

Brenda Younger, City Clerk, provided an overview of the February 9, 2021, Governing Body meeting agenda.

Brent Trout, City Manager, announced seven new firefighters would begin work on February 3, 2021, with the Topeka Fire Department. He also announced the Topeka Zoo will host a virtual event allowing the orangutans to pick what team will win the Super Bowl; and the Topeka Zoo will host the Val Watch Black Bear Emergence Contest for all Shawnee County school districts to predict when the bear will emerge from torpor.

Councilmember Naeger recognized February as Black History Month and encouraged residents to participate in the many activities throughout the city.

Councilmember Dobler thanked the owners of a local car wash located on SW Wanamaker Road for installing a fence on the east side of the property to minimize the noise for local residents. He commended Shawnee County Commissioner Mays; Councilmember Duncan; City Attorney Lisa Robertson; Planning and Development Director Bill Fiander; and former Topeka Police Chief Cochran for helping to resolve the issue. He encouraged Staff to remain mindful of surrounding property owners when approving car wash service locations in the future.

Councilmember Duncan thanked Hills Pet Nutrition for donating \$200,000 to the Helping Hands Humane Society to assist with the low-cost spay/neuter clinic. He asked District 8 citizens to continue utilizing SeeClickFix. He announced Topeka has been voted as best in the

state to purchase a home. He announced “You’re In the Huddle” NFL Alumni Live Stream virtual event on February 4, 2021, at Stormont Vail Events Center.

Councilmember Hiller referenced the Social Service Grant Committee item to be considered at the February 9, 2021, Governing Body meeting and noted the report was a narrative summary document outlining the changes. She thanked Staff and United Way for their collaboration. She announced she was a member of “Topeka United” a movement adopted by Envista Credit Union for the Envista Cares challenge to recognize and celebrate diversity in the community. She announced Topeka United Way was participating in Mosaic Partner Pairs. She offered her condolences to the Jack Homlish family.

Councilmember Valdivia-Alcala announced a Governing Body CIP Special Meeting Workshop would be held on February 6, 2021, at 9:00 a.m. via the Zoom meeting application and televised on City4. She recognized February as Black History Month and how reform will bring about true equity. She announced on April 26, 2021, there will be a How to Improve Racial Relations event hosted by Curtis Pitts; and Topeka Unified School District (USD) 501 will host a racial equity panel via Zoom meeting application and streamed on Facebook Live. She stated topics discussed during the panel include the 2021 Historical Inauguration and Equity in Education; information on how to participate will be released at a later date.

Councilmember Ortiz congratulated Housing Services Division Director Corrie Wright for her 19 years of service with the City. She thanked Mike Bell, Tennessee Town NIA President, for assisting with promoting smoke detectors in the community.

Councilmember Emerson stated he looks forward to finding a solution to reduce the noise generated from the car wash located near 25<sup>th</sup> Street and SE California Avenue.

Deputy Mayor Padilla commended public health workers for their dedication to service in administering the COVID-19 vaccine. He thanked his colleagues for their work in finding solutions to various community issues. He expressed his appreciation to those working to help individuals that are underserved in the community and are in need of food and shelter.

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

(SEAL)

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Brenda Younger  
City Clerk