

## **Governing Body Minutes – February 16, 2021**

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, February 16, 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, Padilla, Naeger, Dobler, Duncan and Lesser - 9. Mayor De La Isla 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, S.J. Hazim, Top Teer Foundation, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited virtually by meeting participants.

Councilmember Padilla acknowledged and thanked Staff members Trey Heikes, Monique Glaude, Rachele Vega-Retana , Molly Hadfield, Taylor Shley and City Manager Brent Trout for their work in assisting with the 2020 U.S. Census.

Mayor De La Isla announced Councilmember Padilla and Staff members that assisted with the 2020 U.S. Census would receive a City of Topeka Challenge Coin, provided to leaders in the community that make things happen through humility, kindness and the ability to connect.

Brent Trout, City Manager, expressed his appreciation to all the individuals that worked to help complete the 2020 U.S. Census.

AN UPDATE on the 2020 United States Census was provided by Jason Dean, U.S. Census Bureau, Kansas Office.

CONSENT AGENDA was presented as follows:

ORDINANCE NO. 20282 introduced by City Manager Brent Trout, allowing and approving City expenditures for the period November 28, 2020 through December 31, 2020, and enumerating said expenditures therein was presented.

MINUTES of the special meeting of February 6, 2021; and the regular meeting of February 9, 2021, was presented.

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

RESOLUTION NO. 9210 introduced by City Manager Brent Trout, temporarily suspending certain Governing Body Rules and Procedures in response to the COVID-19 pandemic until May 5, 2021, was presented.

Brent Trout, City Manager, reported approval would allow for the suspension of Governing Body rules until May 5, 2021, to include the allowance of virtual Governing Body meetings and Council Committee meetings. He announced if COVID-19 pandemic case numbers continue to decrease, then Governing Body meetings would move to a hybrid model beginning in March, allowing Governing Body members as well as members of the public to attend in-person or participate via Zoom. He referenced an amendment proposed by Councilmember Hiller distributed in the agenda packet allowing individuals the opportunity to enter their name in the record in support, or opposition of an item during virtual Zoom meetings without providing comments.

Councilmember Duncan inquired on the number of participants allowed in the Council Chambers.

Mayor De La Isla stated the maximum capacity with social distancing of six feet would be 10 people.

Councilmember Hiller moved to approve the resolution. The motion was seconded by Councilmember Naeger

Councilmember Hiller moved to approve the amendment as distributed. The motion was seconded by Councilmember Ortiz.

Councilmember Hiller stated the intent of the amendment was to allow people to show support on an agenda item by being present at the meeting via Zoom without speaking. The proposed amendment read as follows:

5. Virtual public comment may be allowed for those individuals who wish to speak (i) as part of a public hearing, (ii) regarding a specific agenda item or (iii) during General Public Comment; in addition to individuals who wish to be noted as present during (i) a public hearing or (ii) discussion of a specific agenda item. The City Clerk will provide the Zoom meeting link to the individuals who specify whether they wish to speak or have their presence noted for the record.

The motion to approve the amendment as distributed carried unanimously on roll call vote. (10-0-0)

The motion to approve the resolution as amended carried unanimously on roll call vote. (10-0-0)

APPROVAL of the 2019 Consolidated Action Plan Amendment No. 2, was presented.

Brent Trout, City Manager, reported the item was discussed at the February 9, 2021, Governing Body meeting. He stated the amendment provides the additional funds provided by U.S. Department of Housing and Urban Development (HUD) through the CDBG program to be able to provide additional assistance to small businesses. He noted staff recommends approval as presented.

Councilmember Naeger moved to approve the Consolidated Action Plan Amendment No.

2. The motion was seconded by Councilmember Emerson.

Councilmember Hiller stated she appreciates staff publishing the list of funding assistance that was available to small businesses; and noted the Joint Economic Development Organization (JEDO) was considering approval of another grant funding assistance program.

The motion to approve the Consolidated Action Plan Amendment No. 2. carried unanimously on roll call vote. (10-0-0)

ORDINANCE introduced by City Manager Brent Trout, concerning the adoption of the 2015 International Existing Building Code by creating Chapter 14.85 TMC, amending Section 2.235.010 and repealing Chapter 14.25 TMC, was presented.

Brent Trout, City Manager, reported Staff presented the 2015 International Existing Building Code (IEBC) for discussion at the December 15, 2020, Governing Body meeting. He stated during the discussion, Governing Body members asked questions relating to Landmarks Commission input, and whether a newer version of the Code would be more appropriate. He reported Staff would provide responses to the questions along with the information provided in the agenda packet.

Bill Fiander, Planning and Development Director, stated Staff received favorable feedback and responses from design professionals serving on the Landmarks Commission to advance the repurposing of existing buildings. He reported there was additional discussion regarding which version of the Building Code would be appropriate (2015 vs. 2018); however, Staff has been working over the past 18 months to tailor the proposed 2015 IEBC to the community, the reason why it takes Topeka longer than other cities to adopt a code. He also reported the proposed 2015 IEBC has similar regulations used by other cities; staff has been working on adopting a “family of codes in the same year” and adoption of the 2015 Energy

Conservation Code would complete that task with the 2021 version of codes being the next “family of codes” to be considered and adopted.

Governing Body members inquired on the following:

- When the proposed 2015 IEBC would be reassessed or updated
  - The differences between the 2015 and 2018 Building Codes and if those differences have been discussed by Staff
  - Questioned the length of time it takes to review and update codes and if the delay has been caused by personnel shortages
  - If it would be more advantageous to adopt the 2018 Building Code – the same code adopted by many surrounding cities
  - Who provides oversight for the review and approval process
  - The importance of including energy conversation as they move forward with updates
  - The importance of posting all City codes, including amendments, online in one place as well as a hard copy of all codes being on file in the City Clerk’s office.
- Councilmember Hiller suggested adding the words “online posting” to line 87 of proposed ordinance.

In response, Bill Fiander providing the following responses:

- The goal would be to review codes every 6-9 years with the next review of the Building Code starting in 2024. He believes there may be approximately 10 codes that were in need of an update.
- Staff tries to tailor codes to the needs of the community when meeting and discussing with contractors and other stakeholders, which takes time; and staffing levels are lower than usual.
- Codes are posted online and hard copies filed in the City Clerk’s office upon adoption by the Governing Body.
- Staff was currently working on updating the Energy Conservation Code to the 2015 version and they need to complete this task before moving forward with updating codes to the 2021 versions.

Councilmembers Duncan, Emerson, Dobler and Naeger stated they would prefer adopting the 2018 or newer version (2021) of the Building Code.

In response Richard Faulkner, Development Services Division Director, reported Staff works in conjunction with a volunteer board in conducting a detailed review of the Building Code, a document that contains over 300 pages. He stated Staff meets once a month with stakeholders such as engineers, contractors and developers in working through varying opinions

to tailor the Code to the needs of the community. He reported the next code slated for update would be the 2009 Residential Code containing over 1,000 pages and the review of a newer version (2018 or 2021) of the Building Code would delay this project even more.

Councilmember Duncan asked what the Board thought of the comments from the Governing Body in regards to adopting a newer version of the Code.

Richard Faulkner stated the Board expressed concern with the time already spent on reviewing the 2015 IEBC and they continue to support the recommendation to adopt the 2015 version of the Code.

Councilmember Duncan recognized the weight of the work already performed by Staff and the Board as well as staff shortages; however, he questioned the weight of that one-year of work compared to bringing City codes up-to-date resulting in a more long-term productive process.

Councilmember Dobler expressed his appreciation to Staff for their work; however, he questioned how advantageous it was for the City of Topeka to tailor the code to the community causing significant delays in the process or follow the lead of other cities by adopting the original code as presented.

Bill Fiander reported initially end-users requested that stakeholders be involved in the process; however, Staff remains open to considering new process ideas.

Councilmember Emerson recognized the process has been in place for many years and not implemented by current Staff; however, the City's regulations and approval processes seem very different from other cities. He urged Staff to standardize codes and develop a more streamlined approval process.

Brent Trent urged the Governing Body to consider approving the 2015 IEBC as presented due to the time already invested by Staff, stakeholders and the Board; as well as it would be a big improvement to what was already in place. He noted it would seem reasonable to standardize codes where feasible and suggested the Policy and Finance Committee review the overall approval process to determine the need for change.

Discussion ensued by Governing Body members regarding the options before them to consider including the adoption of the 2015 IEBC as presented; adopting a newer version of the code with or without stakeholder input; and amending the code were applicable at a later date if stakeholders did not approve of certain regulations outlined in a newer version.

Councilmember Lesser stated he believes the burden to update codes falls on the City not the stakeholders as many of those stakeholders work in several different municipalities and understand the need for standardization and uniform processes.

Councilmember Hiller spoke in support of referring the ordinance to the Policy and Finance Committee in conjunction with examining the entire timeframe and procedure for approval. She suggested the Committee discuss what the best practice has been for the process; if the Governing Body should be a part of the appeals process so they understand the points of contention with the Code; and what the update will do to resolve those points of contention and bring it current.

Councilmember Dobler moved to refer the ordinance adopting the 2015 International Existing Building Code (IEBC) to the Policy and Finance Committee for recommendation. The motion seconded by Councilmember Emerson carried unanimously on roll call vote. (10-0-0)

RESOLUTION OF ADVISABILITY NO. 9211 introduced by City Manager Brent Trout, authorizing Improvement Project No. T-601124.00 which provides for street improvements in Aquarian Acres Subdivision No. 9 as more specifically described herein, was presented.

Brent Trout, City Manager, reported the request to approve the creation of a special benefit district for the Aquarian Acres Subdivision No. 9 has been reviewed by Staff and meets the financial threshold as required by the City.

Jessica Lamendola, Administrative and Financial Services Director, provided a brief overview of the City's Special Benefit District Policy and cost benefit analysis of the project. She reported the subdivision would consist of 16 homes to fund street and stormwater improvements with an estimated total project cost of \$520,000. She stated the average homeowner would pay an estimated \$2,246 in annual special property tax for 20 years.

Councilmember Valdivia-Alcala asked if the developer owed any delinquent property taxes.

Jessica Lamendola confirmed the developer has certified they have no delinquent property taxes in the state of Kansas.

Jeff Laubach, SVP Engineering, was present for questions.

Councilmember Emerson moved to approve resolution. The motion seconded by Councilmember Ortiz carried unanimously on roll call vote. (10-0-0)

RESOLUTION OF ADVISABILITY NO. 9212 introduced by City Manager Brent Trout, authorizing Improvement Project No. T-601123.00 which provides for street improvements in Misty Harbor Estates No. 5 as more specifically described herein, was presented.



Brent Trout, City Manager, reported the request to approve the creation of a special benefit district for Misty Harbor Estates No. 5. has been reviewed by Staff and meets the financial threshold as required by the City.

Jessica Lamendola, Administrative and Financial Services Director stated the benefit district consists of 26 lots for street and stormwater management improvements with an estimated total project cost of \$745,000. She stated the average homeowner would pay an estimated \$1,980 in annual special property tax for 20 years.

Councilmember Dobler asked if the developer would pay for the cost of the project.

Jeff Laubach, SVP Engineering, reported the developer would pay 100% of the cost.

Councilmember Valdivia-Alcala asked if the developer owed any delinquent property taxes.

Jessica Lamendola confirmed the developer has certified they have no delinquent property taxes in the state of Kansas.

Councilmember Naeger moved to approve resolution. The motion seconded by Councilmember Dobler carried on roll call vote. Councilmember Emerson abstained. (9-0-1)

DISCUSSION of proposed amendment to Title 18, Division 4 of the Topeka Municipal Code (Zoning Code) regarding amendments to the regulation of short term rentals, referred to in the current Zoning Code as "bed and breakfast homes" and "bed and breakfast inns," was presented.

Brent Trout, City Manager, reported the change to the City of Topeka zoning code will provide regulations, in addition to what was already included in the Code for short term rentals.

Bill Fiander, Planning and Development Director, provided an overview of Short Term Rental (STR) including Airbnbs and Vrbos and noted STRs was not defined in the Topeka

Municipal Code. He stated Staff received complaints about a concentration of STRs in the Auburndale Neighborhood prompting the Planning & Development Department to prepare amendments to the zoning code regulations to address STRs. He reported Staff first researched Topeka's Short Term Rentals and the regulatory practices of other Kansas cities including Lawrence, Manhattan, Overland Park and Kansas City.

Councilmember Naeger stated she appreciates the application process includes neighbors being notified, supporting accountability by property owners.

Councilmember Hiller stated she concurs with Councilmember Naeger and believes the standards are responsive to the concerns of the neighbors as well as it was a good process overall. She expressed concern with people such as legislators, students and construction workers staying longer than 28 days. She stated it was her understanding, if someone stays in a house longer than 30 days it would not be a rental house and not regulated by the Kansas Residential Landlord and Tenant Act. She suggested removing the 28-day limitation and defining the term instead, holding property owners responsible.

Bill Fiander reported Staff preferred, and the City's Legal Department advised, to align the ordinance with State law and the City's Topeka Municipal Code transient guest tax. He noted the 28-day term would not be a limitation and would not prevent the renter from staying longer than 28 days.

Councilmember Hiller stated she believes the legal issue relating to owners and occupants was overlooked.

Councilmember Duncan inquired on the procedure to cease the application process of a Short Term Rental already in operation. He stated he believes the overall process was good and

helps generate business revenue while protecting nearby neighbors. He asked if the working title of the individual who will oversee regulating the service needs to be specified in the Code.

Councilmember Emerson asked who would enforce the ordinance and if Staff would have the time to the perform duties outlined.

Bill Fiander stated items such as a parking space violation would prompt an inspection by Staff ceasing the application process from moving forward and putting the applicant in jeopardy of not receiving a permit. He reported the City's Zoning Inspector could perform the inspections based on complaints received; he does not anticipate any staffing issues; and oversight authority will remain with him or his designee to issue permits.

Brent Trout reported Staff would review the language change and provide a response to the Governing Body prior to the March 2, 2021, Governing Body meeting.

DISCUSSION of the proposed 2022-2031 Capital Improvement Plan and 2022-2024 Capital Improvement Budget, was presented.

Brent Trout, City Manager, reported the Capital Improvement Plan (CIP) outlining a 10-year period and a 5-year Capital Improvement Budget (CIB) was presented at the February 9, 2021, Governing Body Special Meeting Workshop. He asked if there were any other items the Governing Body would like Staff to research before the March 2, 2021, and March 9, 2021, Governing Body meetings.

Councilmember Emerson asked if there have been any new handouts provided to the Governing Body since the February 9, 2021, Special Meeting Workshop.

Brent Trout reported Supplement No. 1 was included as an attachment in the February 9, 2021, Governing Body Meeting agenda packet.

Jessica Lamendola, Administrative and Financial Services Director, stated the Governing Body should receive a second set of questions and answers (Supplement No. 2) by February 19, 2021. She encouraged feedback from the Governing Body and the public.

Councilmember Hiller asked Staff to clarify the answers she received regarding the Biogas project. She reported an extra \$1.2 million would be required to construct the pipe needed under the Kansas River with an accompanying debt service of 27 years. She noted that due to the high cost of the project it would take 34 years for the City to financially breakeven on the project.

Brent Trout stated Staff was conducting additional research on the project and when completed he will report the findings back to the Governing Body.

Councilmember Valdivia-Alcala stated the project would generate \$1.7 million in revenue for City Utilities and the majority of Oakland Neighborhood residents who would prefer the project compared to methane gas being released into the atmosphere of their neighborhoods.

PUBLIC COMMENT was expressed by the following individuals:

Danielle Twemlow expressed concern with the lack of mental healthcare services offered in Topeka. She referenced the Topeka Police Department Crisis Intervention Team (CIT) and the benefits the program offers those involved in a mental health crisis. She suggested the CIT position be included in the 2022 budget.

Councilmember Ortiz thanked Ms. Tremlow for her comments. She reported she has been working with Valeo Behavioral Health Care and she plans to make a recommendation to fund the CIT position in the 2022 City of Topeka Operating Budget.

Jeff Martin, Customer Community Operations Vice President, Evergy, Inc. provided the following update on the energy emergency crisis that began on February 6, 2021, due to severe cold weather. He reported the following:

- On February 6, 2021, Evergy began working with the Southwest Power Pool (SPP) to assist with the problem. He thanked Mayor De La Isla for her assistance on February 7, 2021, as the city entered Energy Emergency Alert Level 1 and then Level 2 requesting commercial and industrial businesses to reduce their power use.
- On February 9, 2021, the city entered Energy Emergency Alert Level 3 requiring planned power outages. Evergy did follow a planned process in regards to shutting off power to customers; however, the duration was much longer than expected.

Mr. Martin apologized for the miscommunication and he thanked the Governing Body for their patience. He stated Evergy worked in conjunction with Mayor De La Isla and Shawnee County Emergency Management with the top three priorities being no interruption of power service to hospitals, COVID-19 vaccinations sites, and any company that delivers natural gas or propane. He stated as of February 16, 2021, the city remains in Energy Emergency Alert Level 2 and will have to go through the process of shutting down power February 17, 2021.

Mayor De La Isla expressed her gratitude to the Fellowship Hi-Crest Church for providing warming shelters from 8:00 a.m. to 8:00 p.m. for the homeless and elderly population. She also expressed her appreciation to Jeff Martin, Evergy Inc. in helping the City work through the energy crisis.

Councilmember Dobler asked if the City's Wastewater Facility was a priority.

Jeff Martin stated Evergy understands it was essential to keep the City's Wastewater Facility operational; however, during an event such as this, there are only so many priorities that they are able to maintain. He thanked Evergy employees for the hard work during the severe weather conditions.

Councilmember Valdivia-Alcala inquired about backup generators for the City's Wastewater Facility.

Brent Trout reported backup generators are onsite and Evergy has been working with the City to ensure a power source remains in place now and in the future. He stated so far, power outages have not affected the City's ability to treat the city's water supply.

Councilmember Duncan thanked Mr. Martin for the information and expressed the importance of citizens receiving a clear explanation of all the factors that have occurred to date. He noted some people were without power for 2-3 hours and the City has a responsibility to work with Evergy for an explanation. He requested that an After Action Report be generated so they can make an assessment and create an Energy Crisis Plan to address similar situations that may arise in the future.

Councilmember Hiller stated she appreciates the notices sent by Evergy regarding power outages; however, only some constituents received notice, causing panic. She questioned if the City's emergency management plan addresses an energy crisis.

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

Brent Trout, City Manager, announced the City's network issue was due to a generator issue. He stated the City's Wastewater and Water Treatment Plant was a priority and he will continue to work with Evergy to ensure consistent power. He thanked the City of Topeka Water Division crews and Staff for dealing with increased water main breaks during the severe cold weather as well as Street Division crews for the removal of snow. He announced an Operation Hand Sanitizer pop up event at the Jayhawk Area Agency on Aging Center (JAAAC) located at 2910 SW Topeka Boulevard on February 20, 2021, from 9:00 a.m. until 11:00 a.m. He reported

the JAAAC would assist those that do not have an electronic device or internet access to complete the COVID-19 vaccination survey. He also announced the I-70 Polk Quincy Viaduct Virtual Public Meeting on March 3, 2021, and those wishing to participate could register at [www.polkquincy.org](http://www.polkquincy.org).

Mayor De La Isla urged constituents to continue to conserve energy. She thanked the City Manager and the Shawnee County Incident Command Team for their fast response in regards to the energy crisis. She thanked constituents and City Staff for their service during this difficult time.

Councilmember Naeger thanked City Staff, Evergy, Inc. Staff and the Governing Body for their work in addressing the energy crisis.

Councilmember Dobler thanked the Public Works and Utilities Staff for their work during the severe cold weather.

Councilmember Duncan thanked Jeff Martin, Evergy Inc. for speaking about the recent energy crisis events addressing questions and criticism from constituents. He thanked Shawnee County Refuse and Recycling Department Staff for their services during the several cold weather.

Councilmember Hiller stated she appreciates everyone helping others and doing what they can for the community. She announced the YWCA 21-day Racial Equity and Social Justice Challenge in March; and the Mosaic Partner Pairs program begins in 2021 including three meetings each month from April through December, interested participants can sign up at [www.TopekaUnited.org](http://www.TopekaUnited.org). She commented on the Americans for Prosperity Program in Topeka; and the Choose Topeka program provided through the JEDO Board. She advocated for

individuals to participate in the Choose Topeka Program providing assistance to purchase, rent or rehabilitate a property.

Councilmember Valdivia-Alcala referenced the 3-hour power outage in the Oakland Neighborhood and commended City Staff for effectively distributing the information they had about the incident. She stated she believes it was a breakdown in communication between Southwest Power Pool and Evergy, Inc. She referenced the people that utilize medical equipment and that they must have consistent power. She asked Evergy, Inc. to provide a presentation to the Governing Body explaining how blackout decisions are determined.

Councilmember Ortiz thanked Topeka Habitat for Humanity for hosting a pop-up food distribution event on February 13, 2021. She announced the Internal Revenue Service (IRS) Volunteer Income Tax Assistance (VITA) offers free tax preparation for workers regardless of age. She stated many of the VITA sites remain closed for in-person services due to the COVID-19 pandemic; however, an IRS-certified VITA volunteer will review tax documents if mailed to their office.

Councilmember Emerson expressed his appreciation to City Staff, Jeff Martin and Evergy employees for their work during the energy crisis. He recognized City Street and Water Division employees for their work in repairing water main breaks during the severe cold weather.

Mayor De La Isla thanked City Street and Water Division employees for their work in repairing water main breaks during the severe cold weather. She offered her condolences to the John Homlish family.

Councilmember Naeger moved to recess into executive session for a period of time not to exceed 20 minutes to discuss upcoming employer-employee negotiations, as justified by KSA 75-4319(b)(3). In order to aid the discussion, the following individuals were present: Members



of the Governing Body; City Manager, Brent Trout; Administrative & Financial Services Director, Jessica Lamendola; Human Resources Director, Jacque Russell; Senior Assistant City Attorney, Catherine Walter; Budget and Performance Manage, 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 Emerson carried on roll call vote. Councilmembers Ortiz and Padilla voted “no.” (8-2-0)

Following a 20-minute time period the meeting reconvened into open session and Mayor De La Isla announced no action was taken.

Councilmember Emerson moved to recess into executive session for a period of time not to exceed 10 minutes to continue discussion on upcoming employer-employee negotiations, as justified by KSA 75-4319(b)(3). In order to aid the discussion, the following individuals were present: Members of the Governing Body; City Manager, Brent Trout; Administrative & Financial Services Director, Jessica Lamendola; Human Resources Director, Jacque Russell; Senior Assistant City Attorney, Catherine Walter; Budget and Performance Manage, 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 Naeger carried on roll call vote. Councilmembers Ortiz and Dobler voted “no.” (8-2-0)

Following a 10-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 adjourned at 9:59 p.m.

(SEAL)

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Brenda Younger  
City Clerk