

Governing Body Minutes – February 1, 2022

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, February 1, 2022. The Governing Body members of the City of Topeka met in regular session at 6:00 P.M. with the following Councilmembers present: Councilmembers Hiller, Valdivia-Alcala, Kell, Dobler, Duncan and Lesser -6; and Councilmembers Ortiz and Naeger participated remotely

-2. Mayor Padilla presided - 1. Absent: Councilmember Emerson -1.

Public comment for the meeting was available via Zoom or in-person. Individuals were required to contact the City Clerk's Office at 785-368-3940 or via email at cclerk@topeka.org by no later than 5:00 p.m. on February 1, 2022, after which the City Clerk's Office provided the Zoom link information and protocols prior to the meeting start time. Written public comment was also considered to the extent it was personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at cclerk@topeka.org on or before February 1, 2022, for attachment to the meeting minutes.

AFTER THE MEETING was called to order, Barry Feaker, Topeka Rescue Mission, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited by meeting participants.

BOARD APPOINTMENT recommending the appointment of Samuel Sutton to the Metropolitan Topeka Airport Authority Board for a three-year term ending February 1, 2025, was presented. (*Council District No. 6*)

Councilmember Dobler moved to approve the board appointment. The motion seconded by Councilmember Hiller carried on roll call vote. Mayor does not vote. (8-0-0)

CONSENT AGENDA was presented as follows:

ORDINANCE NO. 20338 introduced by Interim City Manager William E. Cochran, allowing and approving City expenditures for the period October 30, 2021 through November 26, 2021, and enumerating said expenditures therein, was presented.

ORDINANCE NO. 20339 introduced by Interim City Manager William Cochran, allowing and approving City expenditures for the period November 27, 2021 to December 31, 2021, and enumerating said expenditures therein, was presented.

APPROVAL of a Utilities contract amendment to the existing professional engineering services agreement between the City of Topeka and Bartlett and West for providing additional consultant work for the 2.0 Million Gallon West Zone Elevated Tank project, was presented.
(Contract No. 50108)

MINUTES of the regular meeting of January 11, 2022 and January 18, 2022 was presented.

Councilmember Lesser moved to approve the consent agenda. The motion seconded by Councilmember Valdivia-Alcala carried unanimously on roll call vote. Councilmember Dobler abstained. (8-0-1)

APPEAL to the Governing Body as specified under KSA 75-2724 for the issuance of a fence permit, found by the Topeka Landmarks Commission to damage and destroy the historic integrity of the property located at 333 SW Greenwood Avenue, and the surrounding Potwin Place National Historic District, in the City of Topeka, Shawnee County, Kansas, was presented
(CLGR21/12) (Council District No. 1)

Bill Cochran, Interim City Manager, stated the appeal was discussed at the January 18, 2022, Governing Body meeting and is now being presented for action.

Amanda Stanley, City Attorney, reported the Governing Body has three options to consider when making a determination on the Fence Appeal and stated approval of the item would deny the

appeal, thus requiring the property owner to pursue an identified prudent and feasible alternative, subject to review and approval by the Topeka Landmarks Commission. The options include:

- (1) There are feasible and prudent alternatives to the fence and these alternatives are sufficient to minimize harm to the property;
- (2) There are no feasible and prudent alternatives to the fence and all possible planning has been done to minimize harm to the property; or
- (3) Defer the item

Councilmember Duncan stated he would recuse himself from the conversation and vote of the fence appeal due to a conflict interest.

Brigid Markey, applicant's legal counsel, referenced comments made by Helen Crow at the January 18, 2022, Governing Body meeting and the historic integrity of the Potwin Place National Historic Neighborhood. She stated she believes the Neighborhood Association should use this as an opportunity to create a notification system to avoid this from happening in the future while allowing the Adams' family to keep their fence, and move forward from this point.

Vern Jarboe, applicant's legal counsel, stated his client hired a recognized fencing company in the Topeka community. He stated in this case, the applicant was asking for a special accommodation for a military veteran; therefore, by virtue it would not create precedent and an undue burden on the neighborhood. He noted other fences in the neighborhood have also been erected.

Lindsay Adams stated she would be willing to sign an agreement with the City that if they leave the home they would remove the fence upon selling the home. She expressed her apologies and noted it was never their intent to disregard the rules and/or standards of the Potwin Place National Historic Neighborhood.

Marie Hall made comments as it relates to acquiring a home for sale in a national historic district. She expressed her appreciation to the Topeka Landmarks Commission for their unwavering support and compliance of historic standards. She expressed her disappointment in

approving the appeal and setting a precedent for the entire neighborhood and removing the historic district standard.

Dan Crow spoke in support of upholding the Topeka Landmarks Commission and Topeka Planning Commission findings to remove the front yard fence. He stated the fence is a clear violation and this would undermine the nature of historic district laws and regulations. He stated endorsing the unlawful construction of an unpermitted fence should be denied.

Councilmember Lesser moved to uphold the ruling of the Topeka Landmarks Commission decision. The motion was seconded by Councilmember Naeger.

Councilmember Kell stated he would like to defer the item because he believes all options that could be considered feasible have not been discussed.

Councilmember Naeger stated the Topeka Landmarks Commission and the Topeka Planning Commission have conducted their research and made a conclusion. She noted approval would create an inconsistent ruling that is not fair to citizens.

Councilmember Valdivia-Alcala spoke to the needs of a veteran suffering from Post-Traumatic Stress Disorder (PTSD) and stated she supports the Appeal because she believes the case should be considered a reasonable accommodation for a military veteran. She stated there are additional elements involved that would not normally be a part of the process.

Councilmember Hiller stated there has been a thorough accounting of the situation between the Topeka Landmarks Commission and Topeka Planning Commission outlined in their reports as well as City Planning Staff support documentation. She spoke in support of the recommendations by the Topeka Landmarks Commission and noted approval would set precedent.

Councilmember Dobler inquired on the options for the Governing Body.

City Attorney Stanley clarified if the motion made by Councilmember Lesser to uphold the ruling of the Topeka Landmarks Commission fails the fence would remain on the property.

Councilmember Dobler made a substitute motion that there are no feasible and prudent alternatives to the fence and all possible planning has been done to minimize harm to the property. The motion was seconded by Councilmember Valdivia-Alcala.

Councilmember Kell stated he believes the information presented has not been accurate; therefore, he does not trust the decisions made by the Topeka Landmarks Commission and Topeka Planning Commission. He noted he believes real estate listings such as Zillow are not legal binding documents and spoke in support of deferring the item to allow for consideration of all options such as wood, vegetation or metal fencing.

The substitute motion, that there are no feasible and prudent alternatives to the fence and all possible planning has been done to minimize harm to the property failed. Councilmembers Hiller, Ortiz, Kell, Naeger, Dobler, Lesser and Mayor Padilla voted “no.” Councilmember Duncan recused himself from the vote and was not present in the room. (1-7-0)

Councilmember Kell moved to defer the Appeal until March 1, 2022. The motion died due to lack of a second.

The motion to uphold the Topeka Landmarks Commission decision carried. Councilmembers Valdivia-Alcala and Kell voted “no.” Councilmember Duncan recused himself from the vote and was not present in the room. (6-2-0)

ORDINANCE NO. 20340 introduced by Interim City Manager William Cochran, concerning zoning and design standards for downtown, amending Topeka Municipal Code Sections 18.200.010, 18.200.020, 18.200.090, 18.225.010, 18.60.010 and 18.60.020 and repealing original sections, was presented.

Bill Cochran, Interim City Manager, stated the ordinance was discussed at the January 18, 2022, Governing Body meeting and Staff recommends approval as presented.

Bill Fiander, Planning & Development Director, reported this is the first phase of a two-

step process to implement the Downtown Master Plan. He stated the first phase includes the proposed rezoning of approximately 91 properties; and the second step are text amendments to the Topeka Municipal Code that would help align the text of the “D” zoned districts.

Councilmember Naeger moved to adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. (9-0-0)

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

ORDINANCE NO. 20341 introduced by Interim City Manager William Cochran 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 properties located in Downtown Topeka from “M-2” Multiple-Family, “M-3” Multiple-Family, “C-2” Commercial, “C-4” Commercial, “O&I-2” Office and Institutional, and “I-1” Light Industrial to “D-1” Downtown District, was presented. (*Z21/08*) (*Council District Nos. 1 and 3*)

Bill Cochran, Interim City Manager, stated the ordinance was discussed at the January 18, 2022, Governing Body meeting and Staff recommends approval as presented.

Bill Fiander, Planning & Development Director, reported approval of the proposed ordinance would implement the first phase of rezoning in the downtown district. He stated there are various properties and zoning districts the changes will effect; however, all will be conforming except for five properties that will be grandfathered in.

Councilmember Hiller thanked Staff for their work on the plan and process moving forward.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Kell carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Valdivia-Alcala,

Ortiz, Kell, Naeger, Dobler, Duncan, Lesser and Mayor Padilla -9.

ORDINANCE NO. 20342 introduced by Councilmember Neil Dobler, concerning compulsory retirement, amending Chapters 2.30 and 2.35 of the Topeka Municipal Code, was presented. *(Deferred from the meeting of December 21, 2021.)*

Councilmember Dobler stated this information was previously included in the Topeka Municipal Code; however, when the Code was rewritten the information was accidentally omitted. He stated the amendment is supported by City Executive Staff and Union employees across the organization.

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

Councilmember Duncan asked if anyone will be immediately affected by the change. He stated he would like to retain good employees and will support this because of the productive dialogue he has shared with Police and Fire personnel.

Councilmember Hiller spoke in opposition of the ordinance. She stated she believes times have evolved and implementing an age cap discourages middle-aged transfers and is an arguable age discrimination issue and unnecessary.

Councilmember Kell questioned if the change would have a direct impact on current employees. He also questioned the long-term effects it may have on the City as it relates to age discrimination lawsuits.

The motion to adopt the ordinance carried. The Mayor did not vote. *(The proposed ordinance involved a matter of home rule on which the Mayor has veto authority.)* (6-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Valdivia-Alcala, Ortiz, Naeger, Dobler, Duncan and Lesser -6. Nays: Councilmembers Hiller and Kell -2.

DISCUSSION regarding the demolition of the structure located at 911 N. Kansas Avenue,

was presented.

Bill Cochran, Interim City Manager, stated the property is located in the North Topeka (NOTO) Arts District and has had a demolition order in place for quite some time.

Councilmember Lesser moved to suspend Governing Body Rule 5.3 to consider the item as an action item directing the City Manager to issue a Request for Proposal (RFP) to move forward with the demolition in the form of a resolution approved by the Governing Body. The motion was seconded by Councilmember Doblér.

Councilmember Hiller inquired on the reasoning to take action on the corresponding resolution at this time instead of following the regular agenda process and engaging in discussion prior to voting on the issue.

Councilmember Valdivia-Alcala spoke in support of approving the resolution at this time due to the unsafe nature of the building and the concerns expressed by her constituents.

Councilmember Lesser stated by approving the resolution at this time, it reinforces to the community that the City is serious about cleaning up the city.

Mayor Padilla spoke in support of moving forward with the item due to the unsafe condition of the building making it a public safety hazard.

Councilmember Hiller stated she would oppose suspending the Governing Body Rules to approve a resolution at this time because it bypasses the public input process.

The motion to suspend Governing Body Rule 5.3 carried. Councilmember Hiller voted “no.” (8-1-0)

RESOLUTION NO. 9289 regarding the demolition of the structure located at 911 N. Kansas Avenue, was presented.

Bill Cochran, Interim City Manager, requested the Governing Body grant the City Manager permission to issue an RFP for the demolition process of the building by utilizing up to \$200,000 in surplus funds so it would not deplete the City's demolition funds.

Councilmember Lesser moved to approve the resolution, granting the City Manager permission to issue an RFP to begin the demolition process of the building by utilizing up to \$200,000 in surplus funds so it would not deplete the City's demolition funds. The motion seconded by Councilmember Valdivia-Alcala carried unanimously on roll call vote. (9-0-0)

DISCUSSION regarding the election of the Deputy Mayor by amending Charter Ordinance No. 117, Section 5 as codified at Section A2-26 of the Topeka Municipal Code, was presented.

Amanda Stanley, City Attorney, stated Councilmember Ortiz requested the amendment due to the change in election laws and the fact that newly elected governing body members are sworn in at the first meeting in January; making it appropriate to elect a new Deputy Mayor at the same meeting. She stated if passed, the charter ordinance will not take effect until 60 days after its second publication in the Topeka Metro News unless a protest petition is filed by the electors in accordance with the Kansas Constitution, at which point an election may be called.

Councilmember Duncan confirmed approval of the charter ordinance would allow for the swearing in of new Governing Body members and the election of Deputy Mayor to occur on the same evening.

DISCUSSION concerning the use of the City of Topeka's American Rescue Plan Act (ARPA) funds, was presented.

Bill Cochran, Interim City Manager, stated a certain amount of funds have been set aside for infrastructure as reported at the Special Meeting Workshop conducted on January 15, 2022, when the Governing Body met in a special meeting work session to discuss the allocation and use of the American Rescue Plan Act (ARPA) funds. He stated at the conclusion of that meeting, the

Governing Body directed staff to prepare a resolution designating the funds as lost revenue, allocating a minimum amount for infrastructure, and tasking the Policy and Finance Committee with creating a process for the distribution of the remaining funds.

Stephen Wade, Director of Administrative and Financial Services, provided an overview of the impact of using ARPA funds for utility rate increases, utility rate rebates as well as the General Fund forecast as it relates to the mill levy. He reported the funds will be separate from the \$27 million of General Obligation bonds needed for the Polk-Quincy project (\$20 million) and parking (\$7 million). He stated the proposed use of ARPA funds would allow approximately \$5.1 million of ARPA funding to be utilized for social services or other projects.

Councilmember Valdivia-Alcala stated as they discuss how they plan to help the Low to Moderate Income (LMI) communities there is a need to promote the utility rebate program so that the leftover funds are not deposited back into the General Fund. She spoke to the City receiving \$600 million of SPARK funding. She stated the City is in dire need of addressing the human infrastructure which includes mental health, unsheltered populations, affordable housing, food deserts and the lack of child care.

Councilmember Duncan asked if there is a list of specific projects that these dollars will be applied to; if the funds include the Polk-Quincy Viaduct project and/or does Staff plan to use ARPA funding for the Polk-Quincy project; and if there are plans to apply for grants. He asked how much of Polk-Quincy project has been bonded. He requested Staff compile a list of all reserve fund balances across all City departments.

Stephen Wade stated there is currently \$59 million previously approved GO bond projects in the CIP and that does not include the Polk-Quincy project funds. He stated Staff will provide reserve amounts when 2021 numbers are closed in the City's accounting system.

Bill Cochran stated there is no intent to use ARPA funds for the Polk-Quincy project; as

they continue to work with the State regarding the need for additional funding for utilities and detouring of traffic flow for side streets. He reported Staff is applying for grants.

Councilmember Dobler stated there is a need to lower debt in the community. He requested the amount of ARPA funds Shawnee County received and what they are doing with those funds. He inquired about the \$600 million of SPARKS funding the State will receive and how it is being used. He noted there are a lot of individuals with a lot of needs and it is important that the City make the best use of all available funding sources.

Bill Cochran reported Shawnee County received approximately the same amount of money the City did with half of the funds being used to renovate the Shawnee County Courthouse and mitigation for the COVID-19 virus.

Councilmember Kell requested an updated priority list for every department, roads and structural projects. He stated any short-term fixes where the funds will be used should have long-term effects.

Councilmember Duncan stated that it was his understanding the previous project list as proposed by the former City Manager was considered obsolete when the Governing Body decided the CIP would serve as the infrastructure priority list.

Councilmember Kell stated he would like an updated list beyond the CIP list.

Councilmember Hiller stated she appreciates the thought process on what has been proposed by Staff to date. She stated fundamentally, the City needs to decide on the use of the money to offset projects to reduce taxes or use it to pay for projects that have been delayed in the CIP, as well as consider the capacity of the community to perform the work. She encouraged continued negotiations with the State of Kansas regarding the Polk-Quincy Viaduct project. She requested the previous project list be annotated, and identify what projects are being taken care by other entities. She stated she does not want to start from scratch in regards to creating a priority

list as this would disregard efforts of citizens and Staff. She asked when the next ARPA funding meeting would be held.

Councilmember Ortiz requested Staff provide information on the Impact Avenues Program and the \$500,000 needed to continue the program.

Councilmember Hiller asked for confirmation if the Governing Body would lay out the categories of funding as a Body and allow a Council committee to develop the application process once the Body as a whole decides on what they want to consider.

Councilmember Duncan stated he concurs with Councilmember Hiller as it relates to the process and allowing a Council committee to manage the application process and the Governing Body make the final funding decisions.

Mayor Padilla spoke in support of conducting another meeting to discuss the ARPA funding in order to work out the details.

Councilmember Valdivia-Alcala stated there is a need to allow public comment at the meeting to provide the Governing Body with a look into the needs of the community.

Councilmember Kell stated he concurs with Councilmember Valdivia-Alcala in order for him to better understand the needs of the community. He requested department directors be present at the ARPA funding meeting in order to answer questions.

Councilmember Lesser stated he concurs with Councilmembers Valdivia-Alcala and Kell. He suggested organizations submit their needs in writing because it will be more beneficial to allow the Governing Body to evaluate.

Bill Cochran reminded the Governing Body that they requested to implement an application process similar to the Social Service Grant Committee process.

Councilmember Hiller suggested they conduct a public comment opportunity on ARPA funding at the February 8, 2022, Governing Body meeting, followed by a special meeting work

session on February 12, 2022.

Councilmember Valdivia-Alcala stated she concurs with Councilmember Hiller to allow individuals to submit public comment in writing stating why they believe ARPA funds are needed through social services, from their citizen perspective.

Mayor Padilla directed Staff to allow public comment on February 8, 2022, with no action taken, followed by a special meeting work session on February 12, 2022, and final action on February 15, 2022.

Councilmember Lesser suggested the Governing Body set a firm time limit for public comment.

Brett Martin, United Way of Greater Topeka, spoke to a list of 11 agencies with needs in the community. He asked the Governing Body to seek input from the community in the use of ARPA dollars; utilize direct investment of human infrastructure; and imagine using the dollars for something great that creates lasting change in neighborhoods across the community.

Pastor Carl Frazier, New Hope Community Church, encouraged the Governing Body to increase funding for the housing trust fund to support affordable housing initiatives as well as funding to reduce needs impact for Low to Moderate Income (LMI) communities.

Joseph Ledbetter spoke in support of reducing GO Bond funding. He suggested selling City of Topeka parking garages and setting funds aside for construction of new homes and offering incentives to attract developers. He stated he supports increasing the City's population. He expressed the importance of the City enforcing property codes adequately and consistency for the 42% of residents who live in rental properties.

PUBLIC COMMENT was submitted via email by Joseph Ledbetter and the following individual provided public comment in-person:

John Rush stated on October 1, 2021 Councilmember Emerson stated he would provide

Mr. Rush with an affidavit of the dates related to his incident that took place at his home concerning the Topeka Police Department.

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

Brenda Younger, City Clerk, provided an overview of the February 8, 2022, Governing Body meeting agenda.

Bill Cochran, Interim City Manager, stated due to the impending weather situation only essential City of Topeka personnel will report to work on February 2, 2022.

Councilmember Hiller reminded everyone that the application process is open for the Mosaic Partner Pairs Program.

Councilmember Valdivia-Alcala reminded everyone to prepare for the impending inclement weather and to properly care for their pets, check on each other and the elderly.

Councilmember Kell thanked the Public Works employees who will be working during the inclement weather. He congratulated the Topeka Police Department new police recruit graduates.

Councilmember Ortiz offered condolences to the family of Colleen Johnson.

Councilmember Naeger wished everyone a Happy Lunar New Year. She referenced Asian Americans or Pacific Islander community members who have experienced hate incidents due to the misinformation regarding COVID-19. She recognized the importance of Black History Month.

Councilmember Duncan suggested that everyone check on their friends and family members during the inclement weather. He referenced the 2021 City of Topeka crime statistics that decreased by 25% from the previous year, and stated the decrease is due to the Topeka Police

Department and community groups working together.

Mayor Padilla offered his condolences to the family of retired Topeka Police Officer Darrell Trimble.

Councilmember Hiller moved to recess into executive session for a period of 30 minutes to discuss matters related to an individual employee, pursuant to KSA 75-4319(b)(1). To aid in the discussion, the following individuals were present: Members of the Governing Body and Interim City Manager William Cochran. No action was anticipated when the meeting resumed open session in the City Council Chambers. The motion was seconded by Councilmember Dobler.

Mayor Padilla asked all those in favor of recessing into executive session to indicate so verbally by saying “yea” and those opposing to indicate so verbally by saying “no.” After the voice vote occurred, Mayor Padilla announced the motion carried unanimously on voice vote. (9-0-0)

Following a 30-minute time period, the meeting reconvened into open session and Mayor Padilla announced no action was taken during the executive session.

NO FURTHER BUSINESS appearing the meeting adjourned at 9:40 p.m.

(SEAL)

Brenda Younger
City Clerk

Attachment A

Kelly L. Bogner

From: Joe Ledbetter <joe_ledbetter@yahoo.com>
Sent: Tuesday, February 1, 2022 6:54 PM
To: City Clerk; City Council; Neil Dobler; Michael Lesser; Tony Emerson; Michael Padilla; Spencer Duncan; Sylvia Ortiz; Karen A. Hiller
Cc: Bill Cochran
Subject: Public Comments for the record. Council rules.

As said before by me:

We need council rules changed allowing council members to request items be added to the agenda. Also these council agendas need to be set and publicized a minimum of two weeks in advance of any meeting. We need to have public comments on all presentations which sometimes are a large part of our meetings and are often used to formulate public policy. We need to allow the public to comment at committees. This is where much of our public policy is formulated. Also, most importantly we need to change our charter ordinance to have all contracts of \$50,000 and above to be voted on and passed by a majority of the council or not be signed by the City Manager. This should include any change orders of \$25,000 to contracts/ projects. Thank you. Joseph Ledbetter JD, MPA.

Sent from my iPhone

Kelly L. Bogner

From: Joe Ledbetter <joe_ledbetter@yahoo.com>
Sent: Tuesday, February 1, 2022 8:18 PM
To: City Clerk; Neil Dobler; Tony Emerson; Michael Lesser; Bill Cochran; Spencer Duncan; Sylvia Ortiz; City Council
Subject: ARPA fund comments

I definitely don't want our mil levy going up especially when the population was gone down 5,000 in eight years. We need to become more productive with our staff. If you want to cut GO bond borrowing I am good with that. However, I don't want money counted for replacing water lines that should be replaced each year by rate increases already given but have not been replaced. We are not replacing six miles per year as promised. We have only done 1.5 miles for multi-years. I would like some housing incentives for owners building new single houses and duplexes so we start growing our population and tax base again. Joseph Ledbetter JD, MPA

Sent from my iPhone