

## **Governing Body Minutes - January 10, 2023**

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, January 10, 2023. 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, Ortiz, Kell, Duncan, Dobler and Hoferer -6. Councilmembers Valdivia-Alcala, Naeger and Emerson were absent: -3 Mayor Padilla presided -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](mailto:cclerk@topeka.org) by no later than 5:00 p.m. on January 10, 2023, 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](mailto:cclerk@topeka.org) on or before January 10, 2023, for attachment to the meeting minutes.

AFTER THE MEETING was called to order, Pastor Gregory Durant, True Light Church Ministries, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited by meeting participants.

CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of January 3, 2023, was presented.

Councilmember Dobler moved to approve the consent agenda. The motion seconded by Councilmember Kell carried unanimously on roll call vote. (7-0-0)

ORDINANCE NO. 20401 introduced by City Manager Stephen M. Wade amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code on property located west of SE Adams Street and 200 feet south of SE

37th Street from "PUD/C-4" Commercial District to "PUD/M-1" Two-family residential uses on approximately 6.05 acres, was presented. *(PUD 87106A) (Council District No. 5)*

Stephen Wade, City Manager, stated approval would allow for the development of affordable senior duplex residences and Staff was recommending approval.

Mayor Padilla stated prior to proceeding with the vote, each member of the Governing Body who engaged ex parte communication with any individual either in favor of, or against, the matter being considered, must state that the communication occurred and indicate that even in light of having engage in the communication they were able to fairly, objectively, and impartially consider the measure the measure based only upon the evidence provided on the record. The record includes the Planning Commission minutes, the Staff report and its attachments, the public comments made during the Planning Commission hearing and similar relevant information related to the matter.

No ex parte communication was declared by Governing Body members.

Councilmember Kell moved to adopt the ordinance. The motion seconded by Councilmember Hoferer carried unanimously.

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Kell, Dobler, Duncan, Hoferer and Mayor Padilla -7.

AN ORDINANCE introduced by City Manager Stephen M. Wade amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code, by providing for certain changes in zoning on property located at 401 and 501 SW Gage Blvd. from "R-1" Single Family District and "PUD" Planned Unit Development with "R-1" Single Family District and "O&I-2" Office and Institutional District TO "PUD" Planned Unit Development with "O&I-2" Office and Institutional District (per interior storage) and "I-1"

Light Industrial District (per approved site plan), was presented. *(PUD22/05)(Council District No. 9)*

Stephen Wade, City Manager, reported due to the amount of input they have received from area residents Staff recommends the Governing Body remand the ordinance to the Planning Commission for reconsideration.

Councilmember Hoferer stated in light of the fact, property owners were advised that they would have an opportunity to comment on the changes made by One Gas, Inc. subsequent to the November 21, 2023, Planning Commission meeting, she would move to remand to the Planning Commission to conduct another public hearing to consider additional public comment. The motion was seconded by Councilmember Ortiz.

Councilmember Hiller stated the issue arose from using the term public hearing verses public comment. She asked if the motion would reset the protest period.

Councilmember Duncan asked if they could reset the protest petition period without an official motion.

Amanda Stanley, City Attorney, stated the motion made by Councilmember Hoferer would not reset the protest petition period under State law; however, the Governing Body has the option to voluntarily re-implement a protest petition period by including it in the motion to remand back to the Planning Commission; or choose to voluntarily honor the protest petitions that have already been filed.

Councilmember Duncan expressed his appreciation to the Legal Department for their guidance; however, he will not support the motion unless it includes language to reset the protest petition period. He stated the City needs to correct the mistake and do what is fair and equitable for area residents.

Councilmember Hiller stated she would encourage adding a language amendment to address the protest petition period to the motion.

Councilmember Kell stated he would support added a language amendment to the motion.

Councilmember Hoferer stated she would accept the friendly amendment to add the statement, "and reset the protest petition clock" to the motion to remand to the Planning Commission. The second concurred.

Councilmember Hiller suggested that whenever there has been a consideration of changes and/or amendments by the Planning Commission, that feedback would be allowed by the effected parties.

Councilmember Dobler stated he believes additional communication was unnecessary as it was apparent the process works because the City has been adopting zoning ordinances through the Planning Commission for years. He recognized that mistakes get made and that is why in this instance, it was important to follow up with residents and provide an opportunity for input.

Councilmember Duncan reported that he read all documentation and referenced the "Golden Factors" that are to be used when considering zoning change requests. He stated the first rule was the character of the area, and the area is clearly residential with a zoo, school, apartment complexes, hospitals and a cemetery. Looking at zoning and uses of nearby properties, it includes residential and office uses and the applicant is seeking Commercial "C-4" which is clearly different and he wants to remain cautious of how they set future zoning precedence for the area. He expressed concern with the suitability of the property because it was surrounded by residential properties as well as a school. He suggested an emergency plan be created due to its proximity to homes and schools.

Mayor Padilla asked the City Attorney if the request could be considered "spot zoning" and if so, would this set precedence for what zoning would be allowed in the future.

City Attorney Stanley, reported "spot zoning" was not considered a technical term and she would be happy to provide a detailed memo explaining exactly what it is and how it works. She stated there tends to be arguments that spot zoning is illegal, and it generally refers to the singling out of a single small parcel of land for a use classified differently from the surrounding areas. Appellate courts generally treat "spot zoning" as a descriptive term rather than a legal term; however, it would not technically be invalid under State law. She stated she would report back to the Governing Body with specific information as it relates to this zoning case before it was brought back before the Governing Body for consideration.

Councilmember Hiller stated she concurs with Councilmember Duncan and inquired on the plans for the undeveloped land located south of the property. She asked if the City plans to vacate their portion and give it to One Gas, Inc.

Bill Fiander, Planning and Development Director, confirmed the City owns some right-of-way on the land and no official action has been taken place at this time. He reported discussions are taking place between the City of Topeka, the school and One Gas, Inc. about making the exchange if the zoning was approved.

Mayor Padilla asked the City Clerk to state the motion to be considered.

Brenda Younger, City Clerk, stated the motion as follows:

"In light of the fact, property owners were advised that they would have an opportunity to comment on the changes made by One Gas, Inc. subsequent to the November 21, 2023 Planning Commission meeting, Councilmember Hoferer would move to return the recommendation to the Planning Commission to conduct another public hearing to consider additional public comment and reset the public protest petition clock."

The motion as stated by the City Clerk carried unanimously on roll call vote. (7-0-0)

RESOLUTION introduced by City Manager Stephen Wade determining the advisability of a sales tax exemption in connection with the issuance by the City of Topeka, Kansas of its Health Care Facilities Revenue Bond (Brewster Place) Series 2022A and Series 2022B, for the purpose of Financing Improvements to the health care and retirement facilities owned and operated by the Congregational Home, was presented. *(Deferred from the meeting of December 20, 2022.)*

Stephen Wade, City Manager, stated that resolution was deferred from the meeting of December 20, 2022. He reported there was an estimated \$9,012,224 in materials only project costs that would qualify under K.S.A 79-3606(b) for sales tax exemption. This would equate to \$135,183 in forgone sales tax to the City based on our 1.50% sales tax rate. Additionally, the exemption would equate to \$585,795 in forgone tax for the State (6.5%) and \$103,641 for the County (1.15%), bringing to the total estimated economic impact to \$824,619 total tax exemption.

Councilmember Dobler moved to approve the resolution. The motion was seconded by Councilmember Ortiz.

Councilmember Dobler asked if Brewster Place was considered a nonprofit 501(c)(3) organization and already exempt from paying sales tax.

Councilmember Hoferer asked if they have started the improvements and if this was the only IRB that was outstanding for Brewster Place.

Matthew Bums, Brewster Place Chief Executive Officer, reported they are only exempt from paying sales tax on medical items; and construction has begun on the improvements.

Rachelle Matthews, Administrative and Financial Services Deputy Director, stated this was the only outstanding IRB for Brewster Place.

Councilmember Dobler stated he would oppose the request because Brewster Place already receives sales tax exemptions in other areas of business.

Councilmember Kell stated he concurs with Councilmember Dobler. He expressed the importance of the City capturing all available funding as they deal with making the difficult decision to increase utility rates.

Mayor Padilla expressed his appreciation for the quality housing provided by Brewster Place to the community, however, as elected officials they must be fiscally mindful of all available funding sources that could be used to provide core services to citizens.

The motion to approve the resolution failed. (0-7-0)

ORDINANCE NO. 20402 introduced by City Manager Stephen Wade, concerning motor vehicle claims, repealing Sections 3.35.010, 3.35.020 and 3.35.060 of the Topeka Municipal Code, was presented.

Amanda Stanley, City Attorney, reported City Manager Wade has made an administrative decision not to renew the City's motor vehicle insurance and instead process all motor vehicle claims under the Kansas Tort Claims Act, requiring an amendment to the Topeka Municipal Code (TMC) to change the location of processing of these claims from Risk Management to the City Attorney's Office. She noted it would also require an amendment to the City Attorney's settlement authority under Topeka Municipal Code Sections 3.35.030 and 3.35.040.

Councilmember Dobler spoke in support of the proposal. He stated the City would be required to pay a \$500,000 deductible to an insurance company to provide coverage. He questioned if the City has ever had a claim exceeding \$500,000.

Councilmember Duncan spoke in support of the amendment. He questioned if the City needs to have an umbrella policy for catastrophic incidents.

City Attorney Stanley reported the City has not had a claim exceed \$500,000 and Special Liability and Risk Funds have been set aside to help cover the cost of catastrophic incidents.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Kell carried unanimously. The Mayor does not vote.

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Kell, Dobler, Duncan and Hoferer -6.

DISCUSSION concerning the unlawful possession of catalytic converters, was presented.

Amanda Stanley, City Attorney, reported catalytic converter thefts in Topeka are on the rise, and in 2021, the thefts reported to TPD numbered over 100 in Topeka. She stated the increase of thefts was due to various factors, including the rise in the value of the precious metals within the parts. Additionally, it is not uncommon for a victim to have the theft repeated after replacement of the part. She stated approval of the ordinance would provide provisions for prosecution and make the penalty for the crime a misdemeanor offense.

Councilmember Kell asked if there was identification on the catalytic converters for tracking purposes and if the City requires precious metal dealers to report.

Bryan Wheelles, Topeka Police Chief, stated there are options available as it relates to identification such as engraving kits; however, he believes continued public education was the best option to address the issue. He reported the majority of scrap metal dealers have surveillance on premises to help identify violators.

Councilmember Duncan stated scrap metal dealers are regulated by State statute and required to register with the Kansas Attorney General's Office as well as report certain information to the Kansas Bureau of Investigation database.

Councilmember Ortiz reported that catalytic converter theft was a serious problem in District 3. She stated that she believes the thefts are hurting citizens as it relates to the market for repairs and thanked Staff for making sure there are tracking mechanisms in place.



Mayor Padilla asked if the ordinance mandates tracking.

City Attorney Stanley reported all scrap metal records are kept in accordance with the provisions of the State of Kansas Scrap Metal Theft Reduction Act; therefore, the proposed ordinance would not include tracking mandates.

Police Chief Wheelles reported the Topeka Police Department has a good working relationship with local scrap dealers. He commended Topeka Police Property Crime Investigators and Detectives for bringing the proposal forward and the Legal Department for finding a solution.

Councilmember Hiller spoke in support of the ordinance. She questioned if promoting the new law and regulations could cause an increase in thefts.

Police Chief Wheelles stated he would not anticipate an increase in thefts because the ordinance provides a solution for the problem.

Mayor Padilla questioned when the ordinance would be considered for action.

Councilmember Ortiz asked if the Governing Body could consider the ordinance at this time.

City Attorney Stanley stated the Governing Body Rules and Procedures would need to be suspended before the ordinance could be considered.

Councilmember Ortiz moved to suspend the Governing Body Rules and Procedures to allow for the consideration of the ordinance. The motion seconded by Councilmember Dobler carried unanimously on roll call vote. (7-0-0)

ORDINANCE NO. 20403 introduced by City Manager Stephen Wade, concerning the unlawful possession of catalytic converters, creating Section 9.30.050 of the Topeka Municipal Code, was presented.

Councilmember Ortiz moved to approve the ordinance. The motion seconded by Kell carried unanimously. The Mayor does not vote.

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Kell, Dobler, Duncan and Hoferer-6.

PUBLIC COMMENT was submitted via email by Henry McClure (*Attachment A*) and provided by the following individual.

Henry McClure referenced his experience in real estate and the importance of changing with the times. He requested the City and County return to a combined metropolitan planning commission. He stated he disagrees with the way the City's contractor handles economic development proposals and funding. He stated it seems counter-productive not to support those that create sales tax and noted he was working with a local pizza hut that has the potential to contribute approximately \$43,000 to the annual tax base.

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

Brenda Younger, City Clerk, announced until further notice beginning January 17, 2023, Governing Body meetings would be held at the Cyrus K. Holliday Building, First Floor Conference Room, located at 620 SE Madison Street Topeka. She also provided an overview of the January 17, 2023 Governing Body meeting agenda.

Stephen Wade, City Manager, recognized Bill Fiander, City of Topeka Director of Planning and Development, for his service to the City. He announced Mr. Fiander would retire January 13, 2023, and pursue a new opportunity in the community by joining the staff at Washburn University as a faculty lecturer in the Political Science Department developing the public administration program and next generation of public sector leaders.

Mayor Padilla thanked Bill Fiander for his service to the City.

Bill Fiander, Planning and Development Director, thanked the Governing Body for partnering with Staff. He stated it has been a great honor to serve the City and he plans to share his experience in the class room with the intent to continue public service.

Councilmember Ortiz thanked Bill Fiander for his service. She offered her condolences to the family of Jerry Boyd, owner of Ace Pawn Shop for 38 years located at 1923 SW 6th Street, Topeka.

Councilmember Kell announced January 11th was National Human Trafficking Awareness Day. He referenced the shooting of a Newport News, Virginia, teacher by 6-year old boy on January 6, 2023. He encouraged those that own weapons to be responsible and store appropriately.

Councilmember Dobler thanked Bill Fiander for his service to the City.

Councilmember Duncan thanked Bill Fiander for his service and congratulated him on his next career phase. He announced Reverend David Wilson has been elected as the first Native American bishop in the United Methodist Church. He commented on the many events scheduled during the Living the Dream week-long celebration in Topeka, and noted more information could be found at [www.ltdtopeka.com](http://www.ltdtopeka.com). He announced the Living the Dream banquet would be held on January 14, 2023, at the Ramada by Wyndham Topeka Downtown Hotel & Convention Center located at 420 SE 6th Street, Topeka.

Councilmember Hoferer thanked Bill Fiander for his service to the City and the community.

Councilmember Hiller thanked Bill Fiander for his service to the City and expressed her appreciation for his honesty on the issues and his progressive ideas for the city. She encouraged people to participate in all activities for the week-long Living the Dream celebration.

Mayor Padilla announced Living the Dream art work created by local youth artists would be on display in the Mayor's office. He encouraged people to celebrate Dr. Martin Luther King in their own way. He commended Governing Body members and citizens for contributing to the success of the City of Topeka and thanked the City Manager for creating a core innovation team to help move the City forward.

Councilmember Dobler moved to recess into executive session not to exceed 15 minutes for consultation with the city attorney to discuss attorney-client privileged matters regarding possible litigation as justified by K.S.A. 75-4319(b)(2). The open meeting will resume in the City Council Chambers. The following Staff members were requested to assist the Governing Body in its deliberations: City Manager Wade, City Attorney Stanley, and any other staff deemed necessary. The motion was seconded by Councilmember Kell.

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 on voice vote. Councilmember Ortiz voted "no." (6-1-0)

Following a 15-minute time period, the meeting reconvened into open session and Mayor Padilla announced no action was taken during the executive session.

Councilmember Dobler moved to recess into executive session not to exceed 30 minutes to discuss employer/employee negotiations relating to one or more unions as justified by KSA 75-4319(b)(3). The open meeting will resume in the City Council Chambers. The following Staff members were requested to assist the Governing Body in its deliberations: City Manager Wade and any other staff he deemed necessary. The motion was seconded by Councilmember Kell.

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 on voice vote. Councilmember Ortiz voted "no." (6-1-0)

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 7:33p.m.

(SEAL)

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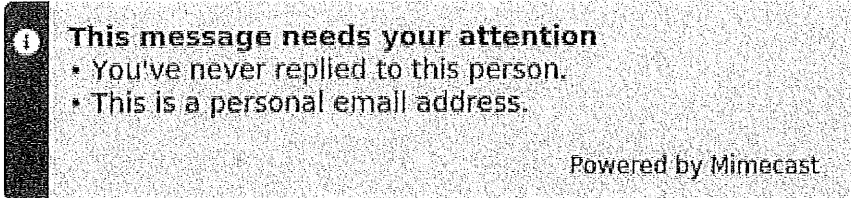
Brenda Younger City Clerk

# ATTACHMENT A

**Tonya L. Bailey**

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**From:** Henry McClure <mcre13@gmail.com>  
**Sent:** Tuesday, January 10, 2023 5:00 PM  
**To:** City Clerk; mcre1.open@blogger.com  
**Cc:** Governing Body  
**Subject:** Fwd: JEDO  
**Attachments:** 1 10 2023 jedo request pizza hut sewer extension .pdf



**Could you enter the attachment into the record at my public comment tonight?**

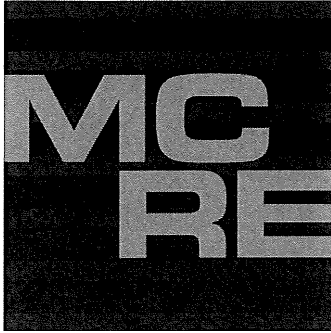
----- Forwarded message -----

**From:** Henry McClure <mcre13@gmail.com>  
**Date:** Tue, Jan 10, 2023 at 4:56 PM  
**Subject:** JEDO  
**To:** Bill Riphahn <bill.riphahn@snco.us>, <hnaeger@topeka.org>

**Please review**

**Henry McClure**  
**Time kills deals**  
**785-383-9994**

**Henry McClure**  
**Time kills deals**  
**785-383-9994**



JEDO request January 10, 2023 - Pizza Hut Sewer extension

Bill Riphahn  
County Commissioner - Chair  
E-mail: Bill Riphahn Bill.Riphahn@snco.us  
Serving: District 1

District: 6  
Councilmember: Hannah Naeger  
Phone: 785-368-3710  
Email Hannah Naeger

As my representative in the Constitutional Republic, I'm seeking your help as a small businessperson.

ASK - Funds based on actual costs on to exceed

Address: **2061 SE 29TH ST**  
City State ZIP: **Topeka, KS 66605**  
Owner Name: **QSR REAL ESTATE LLC**  
Size: **1.64 Acres**  
Parcel ID: **1351602002002000**  
QuickRef ID: **R40563**

Request - to create shovel ready land for new construction of a new Pizza Hut. Fund will be used for special circumstances when the deferred maintenance from the public utilities creates hardships to the developer of new owner related to the costs associated with providing public utilities to the property.

SNCO Real Estate Taxes

Pizza Hut	\$	1,600,0CXJ.00
RE Tax estmant for SNCO	\$	23,840.00
Estimated Sales	\$	1,700,0CXJ.00
Sales TAX SNCO only	\$	19,550.00
Total first year estimate.	\$	43,390.00

# Utilities Exploration Map

City of Topeka, Kansas

City of Topeka [More Maps](#)

Find an Address or Intersection



Layer List







MCRE, LLC 785.383.9994 - 3625 SW 29<sup>th</sup> Street #100 @ MCRE Topeka KS 66614 [mcre13@gmail.com](mailto:mcre13@gmail.com)



*Henry McClure*