

## **Governing Body Minutes – January 17, 2023**

CYRUS K. HOLLIDAY BUILDING, Topeka, Kansas, Tuesday, January 17, 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, Emerson, Kell, Duncan, Dobler and Hoferer -6. Councilmembers Valdivia-Alcala, Naeger and Ortiz participated remotely -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 17, 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 17, 2023, for attachment to the meeting minutes.

AFTER THE MEETING was called to order, Pastor Brail Watson, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited by meeting participants.

BOARD APPOINTMENT recommending the appointment of John Gaches to the Topeka Tourism Business Improvement District Advisory Board for a term ending December 31, 2023, was presented. (*Council District No. 1*)

BOARD APPOINTMENT recommending the appointment of Rehan Reza to the Civil Service Commission to fill an unexpired term ending January 17, 2027, was presented. (*Council District No. 7*)

Councilmember Emerson moved to approve the board appointments. The motion seconded by Councilmember Dobler carried unanimously on roll call vote.

The Mayor does not vote. (9-0-0)

CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of January 10, 2023, was presented.

APPROVAL of a Cereal Malt Beverage license application for Supermart El Torito located at 3000 NW Topeka Boulevard, was presented.

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

APPROVAL of the City of Topeka's 2023 Annual Consolidated Action Plan and Budget in the amount of 4,300,000, was presented.

Councilmember Hiller expressed her appreciation to Staff for their work and referenced the additional Equity Access Shelter (EAS) positions. She questioned if both positions will be funded in the 2024 budget. She strongly recommended a master neighborhood revitalization plan be created to ensure infrastructure, housing, economic development and community buildings are tied to neighborhood development. She stated the creation of a master plan would by nature, incorporate and address the City's Changing Our Culture of Property Maintenance initiatives including interdepartmental collaboration, outcomes, use of City funds, grants funds, private funds, self-help programs and volunteerism. She expressed the importance of making these goals work for next year.

Stephen Wade, City Manager, reported the second position for Equity Access Shelter (EAS) would be funded through the General Fund and the Governing Body would not be obligated to fund positions in upcoming budgets.

Councilmember Dobler moved to approve the 2023 Annual Consolidated Action Plan and Budget in the amount of \$4,300,000. The motion seconded by Councilmember Duncan carried unanimously on roll call vote. (10-0-0)

ORDINANCE NO. 20404 introduced by City Manager Stephen Wade, concerning contracts and procurement regulations, amending Section 3.30.010 through Section 3.30.220 of the Topeka Municipal Code, was presented.

Stephen Wade, City Manager, stated approval would increase vendor diversity by reducing the administrative burden. He reported one of the concerns expressed by vendors was the City's burdensome policies making it difficult for some vendors to do business with the City and by increasing the bid threshold to \$10,000 without requiring a bid will enhance the amount for small businesses and help support vendor diversity.

Councilmember Kell asked if the work advertised in bids would be separated to accommodate several small businesses for a single project.

Leigha Boling, Contracts & Procurement Division Director, reported City departments do their best to separate bids for services if projects allow for it.

Councilmember Naeger spoke in support of the policy and expressed the importance of inclusion of small businesses.

Councilmember Hiller spoke in support of increasing the threshold to \$10,000. She expressed the importance of accommodating diverse local businesses of all sizes to engage in the bidding process, not just small businesses. She encouraged Staff to make sure when creating or amending policy statements to consider all departments and divisions that will be implementing the policies.

Mayor Padilla questioned if the policy would only require an administrative change or if it would be considered a procedural change. He also questioned how Staff plans to educate local business

owners on the new policy.

Division Director Boling stated the change in threshold amount would be considered administrative. She reported the City will host internal Staff training sessions; continue to work with the program review committee; actively post in the City Manager's weekly report as well as reach out to vendors before bids are released using the electronic notification system, along with applicable search engines and cooperative agencies to reach vendors.

Mayor Padilla expressed his appreciation to Staff for their work on the policy.

City Manager Wade reported Staff would continue to work with the Greater Topeka Partnership and coordinate Lunch and Learn events for vendors. He announced a Vendor Workshop scheduled on February 18, 2023, from 9:00-10:00am at the Cyrus K. Holliday Building, First Floor Conference Room, 620 SE Madison Street, Topeka, to assist vendors with changes.

Councilmember Duncan moved to adopt the ordinance. The motion seconded by Councilmember Naeger carried. The Mayor does not vote. *The proposed ordinance involves a matter of home rule on which the Mayor has veto authority.*

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Valdivia-Alcala, Ortiz, Kell, Naeger, Dobler, Duncan and Hoferer -8. Emerson abstained -1.

APPROVAL of CONTRACT NO. 50982 a two-year labor agreement for AFT Kansas Local 6406 effective January 1, 2023, through December 31, 2024, was presented.

Mary Kuckleman, Senior Attorney, reported the two-year agreement includes a 4% wage increase across the pay matrix for all positions in 2023, and a 4.5% matrix increase in 2024. Employees will continue to receive a 1.5% anniversary step increase in each year of the contract in addition to the matrix increase. The total increase of 5.5% in 2023 will keep wage increases

consistent with the average increase for Shawnee County, as reported by the Kansas Department of Labor earlier this year.

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

ELECTION of two City Council voting representatives to serve a one-year term on the Joint Economic Development Organization (JEDO) Board, was presented.

Mayor Padilla opened the floor for nominations.

Councilmember Dobler moved to nominate Councilmembers Emerson and Naeger. The motion was seconded by Councilmember Hiller.

After the tally of the vote, Brenda Younger, City Clerk, announced Councilmember Emerson received 9 votes and Councilmember Naeger received 10 votes.

Mayor Padilla announced Councilmembers Emerson and Naeger would serve as the 2023 JEDO Board voting members. He expressed the importance of JEDO Board meeting attendance and participation by all members of the Governing Body.

Councilmember Duncan reminded voting members to appoint a proxy in their absence as JEDO Board Operational Rules prohibits virtual voting.

Councilmember Hiller encouraged all members of the Governing Body to attend JEDO Board meetings and spoke to the importance of participation.

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 3300 SW Van Buren Street from “I-1” Light Industrial District to “O&I-2” Office and Institutional District, was presented. (Z22/07) (Council District No. 5)

Stephen Wade, City Manager, reported the ordinance has been brought to the Governing Body at the request of the Planning Commission.

Mayor Padilla stated prior to proceeding with the vote, each member of the Governing Body who has engaged in 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 engaged in the communication they were able to fairly, objectively, and impartially consider 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.

Ex parte communication was declared by Councilmembers Emerson, Kell, Dobler, Valdivia-Alcala, Naeger, Duncan, Ortiz and Hiller.

Councilmember Ortiz moved to approve the Planning Commission's recommendation. The motion was seconded by Councilmember Kell.

Councilmember Ortiz questioned how the filing of a protest petition effects due process of the zoning case.

Amanda Stanley, City Attorney, stated because a valid protest petition has been filed an increase in the number of votes by the Governing Body would be necessary. She reported it would take at least eight votes to approve or amend the Planning Commission's recommendation; and at least seven votes to reject the Planning Commission's recommendation.

Dan Warner, Deputy Planning and Development Director, reported the request was to rezone from a Light Industrial (I-1) District to an Office & Institutional (O&I) District to permit a community living facility. He recapped the nature of the area and stated it has industrial zoning;

however, it has been developed as office uses. He stated there was not an industrial use in the area, and in review of the comprehensive plan, and based on the use perspective of the property, the zoning district was appropriate for the area. Other items he mentioned included excess parking of what would be required, I-1 zoning would be considered less restrictive than the O&I zoning which protects or preserves the office use character of the area more so than the industrial zoning allowing businesses such as tow lots, outside storage and auto repair shops. In reference to the use, the facility would not be considered a residential use but instead, more of an institutional use only permitted through a conditional use permit in a mixed use zoning area.

Councilmember Kell referenced spot zoning and questioned why this was the only parcel selected to be rezoned and not the entire area.

Deputy Director Warner stated the request came from the one property owner and evaluation was based on that specific application to rezone the single parcel.

Councilmember Dobler stated it would seem the request would not be valid unless it was for a larger area due to the fact O&I zoning protects the area from uses that are currently permitted under the I-1 zoning and would only apply to a single corner lot.

Councilmember Duncan questioned if all community living facilities are considered an institutional use because regardless of what services are being provided, facility residents will be living there 24 hours/7 days a week. He referenced the recommendation of approval by Staff and asked what level of service the City Planning Department offers as it relates to facilitating issues up front before it reaches the level of consideration by the Planning Commission and Governing Body.

Deputy Director Warner stated a request to rezone a larger area as opposed to one lot would be helpful in this case. He reported an assisted living facility would likely be an institutional type

use rather than a residential type use and in regards to Staff assistance, Staff considers all “use” options of the area and then determines what zoning matrix category would allow the proposed use of the property in conjunction with an option Staff could support and recommend to the Governing Body.

Councilmember Emerson asked Staff to provide examples of permissible uses under the current I-1 zoning. He suggested if the request to rezone was denied, Staff could work with the applicant and surrounding neighbors on acceptable uses.

Councilmember Dobler expressed his appreciation to Staff for working with applicants; however, after review of the Planning Commission minutes and all support material provided he will not support the rezoning based on the Golden Factors. He stated regardless of the current zoning, he will not support allowing a residential facility surrounded by office uses as it would be inconsistent with the character of the neighborhood. He noted the comprehensive plan outlines the future use of the area as large commercial uses and this use would not fit into that category of zoning.

Councilmember Naeger stated she understands designating the zoning of the parcel to better match the surrounding properties; however, she remains concerned with the proposed institutional use within an office use area. She questioned if there were stipulations or guidelines for this property owner that would reconcile the use to the surrounding business properties; and if there were different recommendations Staff could make in general, not related to planning and zoning, allowing the business to co-exist in the area.

Deputy Director Warner highlighted some of the permissible uses under the current I-1 zoning including auto repair, tow service and certain warehouse uses. He reported there are no stipulations or guidelines in place aside from the zoning code which provides for “use” definitions



only. He stated in single family districts there are quasi residential uses that would be more restrictive by limiting the number of people allowed to reside in the facility.

Councilmember Naeger stated while the request to rezone makes sense because it matches surrounding properties, she remains hesitant to support the request due to the proposed use.

Councilmember Kell questioned if guidelines could be put in place to regulate the number of residents allowed in the facility.

Deputy Director Warner stated the City's zoning code and licensing regulate the type of uses in residential verses nonresidential areas.

Councilmember Valdivia-Alcala expressed concern with the way the Governing Body was notified of the request. She stated while she understands some of the issues surrounding the housing facility were NIMBY (Not in My Backyard Phenomenon) in scope, she believes the main concern was setting future zoning precedence for the area; therefore, she will not support the ordinance.

Councilmember Hiller stated she has reviewed all documentation and will support the request. She reminded the Governing Body no zoning districts located in the city will have 100% uniformity. She reported this Industrial District has laid dormant for over 20 years and the proposed use provides for a controlled access, referral based, secured living facility unit for a period of time that would be allowed anywhere in the city that is zoned I-1. She noted the district has begun to change and she believes area businesses need to work with the City to determine the type of zoning designation they prefer to support existing businesses.

Councilmember Kell spoke in support of the facility; however, he believes the best solution would be to remand the ordinance to the Planning Commission to consider rezoning the entire area

as mixed use to support growth and revitalization of the area. He noted the majority of complaints he received related to setting precedence with the approval of “spot zoning.”

Councilmember Duncan asked Staff to confirm if all property owners were properly notified.

Deputy Director Warner confirmed all property owners were notified.

Councilmember Duncan urged all property owners before making an investment of property to be aware of what they are purchasing as it relates to the zoning and if that zoning was in context to the area as well as contact City Staff members and others to make sure ideas for development are feasible to avoid these types of issues. He stated it was not the intent of the Governing Body to be a road block, and he believes as a collective Body they support this type of facility as it is needed in Topeka. He expressed his appreciation to those constitutes that offered valid and constructive feedback.

Councilmember Hoferer stated she has struggled with the case and initially believed the office and institutional use was appropriate for the neighborhood; however, after reviewing the zoning map it was apparent it was a mixed use area and has been for a long time. She stated while she supports this much needed facility in the community, she opposes the location due to questions raised by the neighbors and the proposed type of zoning.

Mayor Padilla asked the City Attorney to explain the voting options of the Governing Body.

City Attorney Stanley explained the voting options as follows:

1. Adopt the Planning Commission’s recommendation to rezone based on the Golden Factors, Staff Report and support documents. A minimum of eight (8) votes would be necessary;
2. Amend the Planning Commission’s recommendation to rezone the property. Staff recommends all amendments be sent to the Planning Commission for approval. A minimum of eight (8) votes would be necessary;

3. Reject the Planning Commission's recommendation (deny rezoning) based on the fact it was inconsistent with the character of the neighborhood or it would detrimentally affect all properties as evidenced by the discussion and the public comments that the Governing Body has heard. A minimum of seven (7) votes would be necessary; or
4. Remand to the Planning Commission specifying the basis to consider it further. A minimum of six (6) votes would be necessary.

Councilmember Kell stated he would prefer to remand the ordinance to the Planning Commission to consider rezoning the entire area as multi-use or mixed use.

City Attorney Stanley clarified the motion to remand could only relate to the single application being considered by the Governing Body and any additional restrictions or different type of zoning for the entire area would need to be addressed through a separate ordinance proposal.

Mayor Padilla stated in an effort to follow a clear process, he would suggest the original motion to approve the Planning Commission's recommendation be considered before any other motions are offered.

The motion to approve the Planning Commission's recommendation failed. Councilmembers Valdivia-Alcala, Ortiz, Kell, Naeger, Dobler, Duncan, Hoferer and Mayor Padilla voted "no." (2-8-0)

Councilmember Kell moved to remand the ordinance to the Planning Commission for further consideration. The motion was seconded by Councilmember Emerson.

Councilmember Hoferer asked for clarification on the specific reason the ordinance was being remanded to the Planning Commission for consideration.

Councilmember Kell stated he would like further consideration to rezone the entire area as mixed-use to allow for growth and revitalization.

City Attorney Stanley clarified the motion to remand could only relate to the one property lot being considered by the Governing Body.

Councilmember Hiller suggested remanding the ordinance to the Planning Commission for consideration of a zoning strategy that would be more suitable.

Councilmember Dobler asked what options are available to the property owner if rejected and how soon could a new proposal come back for consideration by the Planning Commission and Governing Body.

Deputy Director Warner stated he was uncertain of the timeline for consideration; however, there may be a zoning strategy as mentioned by Councilmember Hiller that would work such as a Planned Unit Development (PUD) Industrial zoning with limited use allowed under O&I.

Councilmember Dobler stated because a PUD allows for use restrictions the applicant has other options. He suggested the Governing Body approve or deny the ordinance to allow the property owner to move forward with a different option as a rezoning request for the entire area would be a lengthy process.

Councilmember Kell withdrew the substitute motion. The second concurred.

Councilmember Dobler moved to reject the Planning Commission's recommendation based on issues discussed, review of support documentation as well as review of the Golden Factors as it relates to the character of the neighborhood and use of nearby properties. The motion was seconded by Councilmember Ortiz.

City Attorney Stanley stated if the motion to reject carries it would be considered the final decision by the Governing Body; however, the applicant could appeal to the District Court or apply for a new rezoning or a PUD as discussed by Deputy Director Warner.

The motion to reject the Planning Commission's recommendation based on issues discussed, review of support documentation as well as review of the Golden Factors as it relates to the character of the neighborhood and use of nearby properties failed. Councilmembers Valdivia-

Alcala, Ortiz, Emerson, Kell, Naeger, Dobler, Duncan, Hoferer and Mayor Padilla voted “no.” (1-9-0)

DISCUSSION concerning the adoption of the 2021 International Building Code (IBC), was presented.

DISCUSSION concerning the adoption of the 2021 International Fire Code (IFC), was presented.

Stephen Wade, City Manager, stated the Building and Fire Code discussions would be discussed as one item.

Richard Faulkner, Development Services Division Director, reported the IBC and IFC codes are updated by the industry every three years and the City reviews the need for code changes every two cycles, or as soon as practical in order to be most up to date. He noted the codes would be updated from the 2015 to 2021 versions, and have been reviewed by the Board of Building & Fire Appeals made up of local design and construction professionals appointed by the Governing Body. He stated the City of Topeka Building Official, Fire Marshal and the Permit Section Manager also served as liaison to the Board. He reported the Policy and Finance Committee approved the recommendations on December 16, 2022. He highlighted the following notable amendments:

- IBC amendments include continuation of sprinkler exemptions for up to two (2) dwelling units in a mixed used building and up to four (4) attached dwelling units in a non-mixed use building. Also, a new chapter was added for solar power and energy systems.
- IFC amendments include continuation of sprinkler exemption for up to two (2) dwelling units in a mixed used building and up to four (4) units in a non-mixed use building. Also, mobile food preparation vehicles are now addressed in the IFC.

Councilmember Kell inquired on the amendment related to mobile food vendor inspections.

Alan Stahl, Topeka Fire Marshal, reported approval would allow for the inspections of mobile food vendors as part of the permitting process.

Councilmember Duncan thanked Staff for their work in keeping codes updated and including stakeholders in the process.

Mayor Padilla thanked Staff for working with the Governing Body and ensuring City codes are updated.

PUBLIC COMMENT was provided by the following individual:

Erma Forbes, spoke on behalf of the Gil Carter Initiative and asked the Governing Body for assistance as it relates to continued problem with a homeless camp located near her property. She distributed pictures of her property as it relates to trash and destruction. She reported vehicles trespass through her property to get to the Shawnee County property where the homeless camp resides. She asked for help from the Governing Body because the problem continues to get worse.

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

Steve Wade, City Manager announced the City's Contract and Procurement Division, would host a Vendor Workshop on February 18, 2023 from 9:00-10:00 a.m. in the Cyrus K. Holliday Building, First Floor Conference Room located at 620 SE Madison Street, Topeka, to assist vendors with new policy changes. He also announced the City of Topeka would conduct the annual Homeless Point in Time Count on January 25, 2023 from 6:00 a.m. to 7:00 p.m., and to call 785-368-0168 to report the location of homeless individuals or camps to be included in the count. He stated the City Manager Weekly Report was being released via email to those requesting it. He reported Captain Ty Forshee, Topeka Fire Department, has been released from the hospital. He wished Captain Forshee well and thanked him for his service to the community.

Mayor Padilla encouraged Staff to work with Shawnee County and other community partners to create a plan to assist and help reduce homelessness.

Councilmember Ortiz extended her continued prayers for Captain Ty Forshee, Topeka Fire Department.

Councilmember Naeger expressed her deep felt gratitude to public safety officers. She also encouraged citizens to be safe on the roadways.

Councilmember Hiller commented on the tremendous out pouring related to the Living the Dream events. She stated she has a short list of topics for a community campaign to address homeless populations and challenge them to meet the same standards as all residents of the city.

Councilmember Valdivia-Alcala referenced the chronic unsheltered in the city and believes the Equity Access Shelter (EAS) initiative was a good start. She stated the large number of homeless camps has given an urgency to the seriousness of the problem that needs to be handled at the Governing Body level so citizens know the City is serious about coming to real solutions and being proactive.

Mayor Padilla expressed his gratitude for the opportunity to meet a lot of great people during the weeklong celebration of Martin Luther King's Birthday. He was encouraged to see the growth and enthusiasm from the community and urged Governing Body members to continue to answer the call to action and participate when possible.

Councilmember Kell 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 following staff assisted the Governing Body in its deliberations: City Manager Wade and any other staff he deemed necessary. The open meeting will resume in the Cyrus K. Holliday Building First Floor Conference Room. 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.” The motion carried on voice vote. Councilmember Ortiz voted “no.” (9-1-0)

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 8:06 p.m.

(SEAL)

---

Brenda Younger City Clerk