

Governing Body Minutes – August 22, 2023

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, August 22, 2023. The Governing Body members of the City of Topeka met in special session at 6:00 P.M. with the following Councilmembers present: Councilmembers Hiller, Valdivia-Alcala, Ortiz, Emerson, Kell, Naeger, Dobler, Duncan, and Hoferer -9. 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 by no later than 5:00 p.m. on August 22, 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 on or before August 22, 2023, for attachment to the meeting minutes.

AFTER THE MEETING was called to order Reverend E. Bernard Hurd, Jr., Calvary Baptist Church, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited by meeting participants.

A PRESENTATION on the Equity. Access. Shelter. (E.A.S.)Program was provided by Carrie Higgins, Housing Services Division Director. A short video was displayed on the program.

Councilmember Kell asked if the Topeka Veterans Affairs (VA) Medical Center was considered a community partner providing program participants an opportunity to take advantage of benefits offered to veterans. He stated he believes the housing navigator should be someone who has gone through the struggle of being homeless.

Councilmember Valdivia-Alcala asked what the criteria was to become an outreach partner, and if important data was being shared between the City and its partners. She spoke to the importance of “wrap around services” and asked when these services would be in place. She asked Staff to consider the possibility of the program being even stronger if they would utilize the Built for Zero model concept; and if the City plans to apply for Federal funding grants. She expressed the importance of the City having a full-time dedicated grant writer.

Councilmember Duncan asked if there was enough housing available to accommodate those on the wait list.

Councilmember Ortiz expressed the importance of long-term case management and to make sure individuals as well as families are provided assistance.

In response, Director Higgins stated the following:

- The City plans to partner with more agencies and they will consider suggestions made by Councilmember Kell.
- The only criteria to become a partner is the willingness to work with the E.A.S. Program.
- They are actively working on the data sharing initiative.
- It was unknown at this time if there was enough housing available; however, they continue to work with land lords to accept second chance renters.

Rhiannon Friedman, Planning and Development Director, reported Staff continues to connect with other communities working on the same initiatives; and Staff continues to apply for grant funding until a full-time grant writer was hired.

Freddy Mawyin, Chief Financial Officer, reported a full-time grant writer position was included in the 2024 Operating Budget and Staff was currently reviewing applications to fill the position.

Councilmember Duncan asked Staff to determine the average cost of the program for those on the wait list to help the Governing Body determine a matrix of funding needs that could be earmarked for the Program in the 2024 Operating Budget.

Councilmember Hiller asked Director Higgins if she believes the City was the best organization to lead the Continuum of Care (COC) aspect of the Program along with serving as the hub for the HMI (Homeless Management Information) System data. She inquired if the City plans to consider the entire COC including homeless prevention, immediate action and follow up of the unsheltered population in order to really solve the problem.

Director Higgins stated the City of Topeka was required by Housing and Urban Development (HUD) to use the HMI System as well as serve as the lead for the COC; therefore, in a lot of ways it make sense for the City to continue to be that data hub for COC services. However, partnering agencies are just as important to the process by working with the City collectively as well as the Homeless Prevention Team will approach the issue with an open mind of every possible scenario and build upon the resources already in place.

Councilmember Valdivia-Alcala expressed her faith in City Staff and stated she believes Staff understands what needs to be done.

CONSENT AGENDA was presented as follows:

RESOLUTION NO. 9462 introduced by Councilmember Sylvia Ortiz, granting Leroy Ware an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions, was presented. (*Council District No. 3*)

APPROVAL of a Utility Engineering Contract NO. 51547 Amendment between the City of Topeka and Alfred Benesch and Company, in an amount not to exceed \$74,800 for engineering services, was presented.

MINUTES of the regular meeting of August 15, 2023 was presented.

Councilmember Naeger moved to approve the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously. Councilmember Emerson did not vote due to technical difficulties. (9-0-0)

PUBLIC HEARING

To consider the establishment of the Eastgate Subdivision No. 4 Reinvestment Housing Incentive District (RHID) and adoption of the Plan, was presented.

ORDINANCE NO. 20448 introduced by Interim City Manager Richard U. Nienstedt establishing a Reinvestment Housing Incentive District (“RHID”) for the Eastgate Subdivision No. 4 and adopting a plan for the development of housing and public facilities in the RHID, was presented. (*City of Topeka Development Agreement No. 51545*)

Richard U. Nienstedt, Interim City Manager, stated approval would establish the City's first Reinvestment Housing Incentive District ("RHID") and adopt a development plan for housing and public infrastructure.

Rhiannon Friedman, Planning and Development Department Director, reported the developer has requested the City establish an RHID to facilitate the construction of 23 duplexes with 46 units for affordable rental housing in the northeast quadrant of SE Rice Road and SE 10th Street. She stated after the public hearing was concluded, the Governing Body must take action to establish the RHID and adopt a development plan and ordinance. She noted the developer were present to for questions.

Freddy Mawyin, Chief Financial Officer, reported similar to a TIF District, the increase in property taxes generated by the project will be used to reimburse the developer for a portion of the costs of the project, as set out in the development agreement.

Mayor Padilla opened the public hearing and asked if there was anyone present who would like to speak to the matter.

ShaMecha King Simms spoke on behalf of the Citizens Advisory Council and expressed concern with the process of addressing the blight of surrounding properties to the north and making sure those property owners are aware of the resources available. She stated she believes the Topeka Housing Study does not have enough data or statistics relating to the shifting balance of rentals.

Upon no one else appearing, Mayor Padilla announced the public hearing was closed.

Councilmember Ortiz spoke in support of the RHID and the much needed housing. She stated there was a plan in place to speak with the property owners to the north in regards to addressing the blight, and homeowners to the west support the development.

Alfredo Vasquez, A&P Property Management, LLC, thanked Staff and the Governing Body for allowing him to utilize the RHID incentive for a development that otherwise would not have been possible.

Councilmembers Dobler, Hiller and Valdivia-Alcala spoke in support of the development.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Emerson carried unanimously. (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Valdivia-Alcala, Ortiz, Emerson, Kell, Naeger, Dobler, Duncan, Hoferer and Mayor Padilla -10.

RESOLUTION NO. 9463 introduced by the Public Infrastructure Committee comprised of Councilmembers Tony Emerson, Neil Dobler and Michelle Hoferer amending Resolution No. 9385 to add to the 2023 FIRM program a project benefiting the Topeka Fire Department, was presented.

Richard U. Nienstedt, Interim City Manager, stated approval would add the Topeka Fire Station Alerting and Paging Project to the list of 2023 FIRM Program projects approved by the Governing Body on February 7, 2023.

Braxton Copley, Public Works Director, stated the project cost requires approval by the Governing Body to hire a consultant to create project plans for the release of request for proposal bids.

Randy Phillips, Topeka Fire Chief, provided an overview of the Fire Department Station Alerting and Paging System. He expressed the importance of approving the upgrade and replacing critical communication infrastructure to ensure public safety. He commended Staff for identifying other Fire Department FIRM projects that could be delayed in order to prioritize the project.

Councilmember Dobler moved to approve the resolution. The motion seconded by Councilmember Ortiz carried unanimously. (10-0-0)

RESOLUTION NO. 9464 introduced by the members of the Public Infrastructure Committee comprised of Council Members Tony Emerson, Neil Dobler and Michelle Hoferer recommending approval of certain public infrastructure projects, was presented.

Richard U. Nienstedt, Interim City Manager, stated approval would authorize the project budgets for the NE Kansas Avenue and NE Gordon Street Intersection Project 701064.00 and the SW Topeka Boulevard and SW 45th Street Turn Lane Project 601163.00. He reported both project budgets exceed \$250,000 and are ready for construction.

Councilmember Emerson moved to approve the resolution. The motion seconded by Councilmember Dobler carried unanimously. (10-0-0)

RESOLUTION NO. 9465 introduced by the Public Infrastructure Committee comprised of Councilmembers Tony Emerson, Neil Dobler and Michelle Hoferer amending the 2023-2032 CIP and the 2023-2025 CIB to add Project No. 841107.00, was presented.

Richard U. Nienstedt, Interim City Manager, stated approval would authorize cost sharing of the SW Auburn Road Improvement Project 841107.00 with Shawnee County utilizing Citywide Half Cent Sales Tax funds, and adding the project to the 2023-2032 Capital Improvement Plan and 2023-2025 Capital Improvement Budget.

Braxton Copley, Public Works Director, stated the recent annexation of the USD 437 tract of land for the new middle school at SW 29th Street and SW Auburn Road was to the section lines, which are approximately the centerlines of SW 29th Street and SW Auburn Road, making the City responsible for maintenance of that portion of both roads. He reported Shawnee County was in the process of designing improvements of SW Auburn Road including the construction of a new roundabout at the intersection of SW Auburn Road and SW 29th Street. He noted the new section of road would be an urban 3-lane design with curb and gutter with a 10-foot wide shared use path on one side and a 5-foot wide sidewalk on the other. He reported the estimated cost of the project was \$5.5 million and the County was asking the City to pay \$1 million of the project costs. He noted the Legal Department has prepared a contract stating that the City was responsible for maintaining the existing portion of SW Auburn Road to be paid for with Citywide Half Cent Sales Tax.

Councilmember Dobler spoke in support of the project. He requested the City Manager direct Staff to draft an annexation plan for the properties located to the north and west in order for the City to take advantage of potential property tax revenue.

Councilmember Kell asked if this same type of situation has happened in other areas of the city.

Director Copley stated there are many other properties around the city that would be considered the same situation.

Councilmember Duncan referenced the many discussions that took place between the City of Topeka, Shawnee County and the USD 501 School District. He stated he believes the City was getting the better deal regarding the overall cost of the project. He asked the City Attorney to comment on the laws of annexation for municipalities.

Amanda Stanley, City Attorney, reported State law can force cities to annex property to the middle of a street or road.

Councilmember Dobler moved to approve the resolution. The motion seconded by Councilmember Emerson carried unanimously. (10-0-0)

DISCUSSION related to the City of Topeka 2024 Operating Budget, was presented.

Richard U. Nienstedt, Interim City Manager, stated the discussion would continue on the City's Recruitment and Retention efforts and the General Fund reserve balance.

Ernestor De La Rosa, Chief Diversity and Equity Officer, asked if there were any follow up questions on the Recruitment and Retention handout distributed at the August 15, 2023 Governing Body meeting. No questions were asked by Governing Body members.

Jacque Russell, Human Resources Director, provided an overview of the Recruitment and Retention services and goals with a total budget of \$449,228.

In response, Governing Body members asked for an update on the City's intern program; in-service training initiatives; the City's recruitment partnership with Washburn University; and the methods used to track why people leave employment with the City.

Director Russell reported the City continues to focus on summer internships for the engineering program at K-State and Kansas University with on-going communication upon completion. However, the Washburn University Police Cadet Program has been phased out. She stated in regards to in-house training, the Human Resources Department was now using Vector Solutions, an online training and risk management program that tracks employee training as well as utilization of the Linked in Learning Program with the Topeka Shawnee County Public Library. She reported an employee exit survey and/or an exit interview was conducted with each employee providing aggregate information to share with the City Manager and applicable departments.

Bryan Wheelles, Topeka Police Chief, reported they are still utilizing the summer intern program with area colleges as well as regular trips to the state of Mississippi.

Director Russell provided an overview of Risk Management services and goals with a total budget of \$21,216.016.

Freddy Mawyin, Chief Financial Officer, provided an overview of the history of the General Fund reserve balance and the purpose or reserve funds. He reported Staff was proposing to reduce the General Fund reserve balance from 27% to 24% in the 2024 Operating Budget.

Councilmember Hiller asked for an update on the purchase of the Hotel Topeka at Center City.

Braxton Copley, Public Works Director, reported the City was in the process of negotiation the terms and conditions with an asset manager that was familiar with the entire aspect of the hotel business. He stated the City was also in the process of having the mechanical, electrical and plumbing systems as well as the structural condition of the hotel inspected. He also

stated the City would continue to seek a responsible owner, and to the greatest extent possible the Hotel will remain open for business.

Councilmembers Duncan inquired on the actual dollar amount of the 3% reduction in the General Fund reserve balance.

Budget Manager Vaughn stated the General Fund reserve percentage will vary from year to year with each budget. The General Fund reserve balance in 2023 was 27% and the proposed General Fund reserve balance in 2024 will be 24% without spending reserve dollars.

Councilmembers Duncan and Dobler spoke in support of reducing the General Fund reserve balance for the purpose of paying one-time expenses.

CFO Mawyin stated he would provide a list of items to the Governing Body that could be paid for with General Fund reserve dollars.

Councilmember Ortiz asked for an update on the Sales Tax and Revenue (STAR) Bonds that were issued for the Heartland Motorsports Park.

Councilmember Emerson requested a list of the large companies (MARS, Target Distribution Center, etc.) that would soon be added to the tax roll and generate additional property tax revenue.

Councilmember Ortiz asked for a financial update on the Topeka Zoo.

Budget Manager Vaughn reported the City will pay \$2 million annually according to the master lease agreement; however, it was anticipated the City will begin to receive revenue due to the newly implemented Gage Park sales tax.

Councilmember Duncan stated the City will only pay approximately \$500,000 in 2023.

Councilmember Dobler expressed his appreciation to Staff for their work on the budget.

Councilmember Valdivia-Alcala requested a report on Topeka Zoo financials be provided to the entire Governing Body. She expressed her appreciation to Staff for their patience and detailed explanation of the budget.

Budget Manager Vaughn announced public hearings on the Revenue Neutral Rate for Topeka Metropolitan Transport Authority (TMTA) and the City as well as the City's operating budget would be held on September 5, 2023, and approval of the budget would be presented on September 12, 2023.

DISCUSSION of possible amendments to the City's unlawful camping ordinance for consideration by the Governing Body, was presented.

Richard U. Nienstedt, Interim City Manager, stated he requested that the City Attorney prepare possible options for amending the City's current Camping Ordinance to be considered by the Governing Body.

Amanda Stanley, City Attorney, referenced (Attachment A) a Memo dated August 11, 2023, concerning possible camping ordinance amendments and the Legal landscape, included in the agenda packet. She stated there are also several attachments demonstrating the legislative history included in the agenda packet. She reported on various case laws associated with the issue specifically as it relates to the Eighth Amendment. She also referenced (Attachment B) a Supplemental Memo dated August 22, 2023, concerning the 500 foot buffer ordinance proposal distributed via email to the Governing Body and included in the agenda packet. She stated it was important to have the law applied equally to all similarly situated land to accomplish the legitimate governmental interest of safety for pedestrians. She expressed the importance of the legislative record being clear on the important governmental interests being protected. She highlighted the following ordinance proposals for consideration:

1. Proposal to ban camping in public areas of established neighborhoods.
2. Proposal to limit camping in certain areas to no longer the 10-Days.
3. Proposal to ban camping within 500 feet of a trail or sidewalk.
4. Proposal to ban camping on public property from 7:00 a.m. to 8:00 p.m. daily.

Seth Waggoner spoke on behalf of Downtown businesses in support of the enhanced camping ordinance and the importance of enforcement.

Councilmember Kell asked if there was a current ban on living in a Recreational Vehicle (RV) within city limits.

Dan Warner, Planning Division Director, stated this would be treated as a second dwelling unit through zoning enforcement action.

Councilmember Dobler thanked City Attorney Stanley for drafting his proposed ordinance. He stated after viewing the map distributed by the Planning Department he believes 500 feet from any trail system makes sense, however, not for sidewalks. He stated he would propose the ban for sidewalks be narrowed down to 30 to 40 feet in residential areas.

Councilmember Valdivia-Alcala stated she has agreed to be co-sponsor the ordinance proposed by Councilmember Dobler. She asked if the Kansas River Levee and riverbanks need to be included in the ordinance in order to address the displacement of encampment residents.

City Attorney Stanley reported camping was already prohibited in the Kansas River Levee area. She stated Staff will provide various map scenarios and research authority along the Kansas River.

Councilmember Kell requested to include public owned property in the ordinance.

Mayor Padilla requested an overlay of where current encampment sites are located to be included on the maps.

Councilmember Duncan referenced the proposed Shawnee County Home Rule Resolution included in the agenda packet, implementing a complete camping ban in Shawnee County. He expressed concern with the ban pushing the unsheltered population into the various cities of the county. He spoke in support of the ordinance proposed by Councilmember Dobler and suggested placing a 7-day limit on the number of camping days allowed. He also suggested including a definition of the term “neighborhood” as it relates to public safety.

City Attorney Stanley reported Case Law defines the term “neighborhood” as “you know when you see it.”

Councilmember Hiller referenced laws already in place related to trash, public indecency, vicious animals etc. She proposed to totally ban camping on public and private property with the exception of organized camping grounds; if permission was granted from the property owner; and permission would never be granted in the other areas as proposed. She encouraged the City of Topeka to sync their laws with Shawnee County, including all procedures in dealing with the unsheltered population. She noted the Planning Department would soon propose an accessory structures ordinance enabling the City to address certain living situations (RVs, tiny homes etc.).

Councilmembers Naeger and Dobler expressed the importance of ensuring the authority was clearly defined and extend the ban to the Kansas River area if possible as it relates to public safety.

Councilmember Ortiz spoke in opposition of allowing camping with permission and provided a detailed explanation of a situation in District 3 as to why she would not support the proposal.

Councilmember Valdivia-Alcala stated she concurs with Councilmember Ortiz and would not support allowing camping with permission. She expressed the importance of the Governing

Body staying on the current path and not delaying action any longer. She noted that she received a map of current encampment sites from the former City Manager and if needed, she could forward it to the Governing Body and Staff.

Councilmember Kell spoke in support of not being too restrictive as it relates to routine recreational camping for families in residential areas. He expressed the importance of helping businesses deal with homeless situations as well as what continues to happen in the streets. He suggested they consider banning panhandling at high traffic intersections. He requested the City Attorney ensure all police officers on all shifts are trained on the new laws when implemented.

Councilmember Emerson questioned how the City could effectively enforce this type of ban as there are neighborhoods without sidewalks as well as other areas of the city.

Councilmember Dobler commended the Governing Body for having good discussion on the ordinances proposed, and reminded the Body they must start on a solution that ties to public safety and keep it simple to understand and enforce.

Councilmember Valdivia-Alcala stated there is always a level of homelessness that cannot be resolved. She thanked the Governing Body for having the deep and difficult discussion on the subject matter.

Councilmember Ortiz suggested they include language that would prevent the same person from returning to the same location *i.e.* habitual violators.

City Attorney Stanley stated every city struggles with enforcement. She suggested that penalties could increase with a more severe offense for habitual violators. She stated she would research the options and report back to the Governing Body.

Councilmember Hiller expressed the importance of property owners being held responsible for what they are allowing to take place. She stated she believes they need to figure out a more comprehensive solution that ties in with the property maintenance code.

Mayor Padilla suggested all additional comments or suggestions be sent to the City Attorney and City Manager. He stated he concurs with Councilmember Emerson as it relates to the ability of enforcement. He spoke in support of the efforts of the “Clean Team” and expressed the importance of securing private partnerships if they want to succeed with the initiative.

PUBLIC COMMENT was submitted via email by Betty Phillips. (Attachment C)

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

Richard U. Nienstedt, Interim City Manager, provided an overview of the efforts the City as an employer was doing for its employees during the extreme heat conditions. He urged the Governing Body to request a joint public meeting with the Shawnee County Commissioners to discuss common interests such as the unsheltered population and the future of the Hotel Topeka at Center City.

Councilmember Hiller spoke in support of the City meeting with the County to begin the tough discussions. She announced the Get Down in T-Town event on August 28, 2023, at the Brown vs Board Mural located near SE 15th and Monroe Streets.

Governing Body members commented on the extreme hot weather conditions and the importance of taking care of family members, the elderly and pets.

Councilmember Kell encouraged citizens to educate themselves on the new city council candidates prior to the November election.

Councilmember Naeger announced the new art exhibition "There Is a Woman in Every Color: Black Women in Art" at the Mulvane Art Gallery. She also announced the upcoming art exhibition "Do Pi Ka: Land Acknowledgement" from September 8 through November 26, 2023, at the Topeka Shawnee County Public Library.

Councilmember Dobler encouraged residents to support the Kansas Children's Discovery Center.

Councilmember Duncan announced he would host "Open Hours" at Fairlawn Plaza on August 24, 2023.

Councilmember Hoferer congratulated Topeka's Top 20 under 40 honorees sponsored by the Jayhawk Area Council.

Amanda Stanley, City Attorney, recognized Chief of Prosecution Kelly Trussell and Associate Attorney Brigid Markey for their great accomplishments in spear heading the City's domestic violence program. She stated they truly understand what was involved with the process and the needs of the victims.

Mayor Padilla asked for a round of applause for the City's Prosecution Team and their successes.

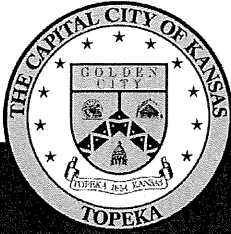
Councilmember Emerson moved to recess into executive session not to exceed 40 minutes for consultation with the city attorney to discuss attorney-client privileged matters regarding current litigation on multiple matters as justified by K.S.A. 75-4319(b)(2). The open meeting will resume in the City Council Chambers. The following staff was requested to assist the Governing Body in its deliberations: City Attorney Stanley. The motion seconded by Councilmember Naeger carried unanimously. Councilmember Ortiz voted "no." Councilmember Duncan abstained. (8-1-1)

Following a 40 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 9:52 p.m.

(SEAL)

Brenda Younger City Clerk



CITY OF TOPEKA

Legal Department
215 SE 7th Street, Room 353
Topeka, KS 66603

Amanda Stanley, City Attorney
Tel: (785) 368-3883
www.topeka.org

MEMORANDUM

To: Governing Body
From: Amanda L. Stanley, City Attorney
Re: Possible Camping Ordinance Amendments and the Legal Landscape
Date: August 22, 2023

I was asked by Interim City Manager Nienstedt to prepare possible options for amending the City's current Camping Ordinance for the Governing Body's consideration. As the Governing Body looks for innovative options to address the growing unsheltered crisis, I thought it also important to give some background on how the City arrived at its current ordinance and a summary of the current legal landscape regarding vagrancy laws nationally.

At the September 3, 2018 Governing Body meeting, action was taken to create a special Governing Body committee to consider similar underlying issues associated with the camping ordinance and the traffic pedestrian safety ordinance. The committee was tasked with addressing "the issue of homelessness and the displacement of persons as well as poverty."

The result of over a year of work was the passage of the current Camping Ordinance approved December 3, 2019 which can be found in TMC 9.45.340 et seq. At the time of passage, this ordinance was viewed as a limited, partial ban on camping that represented a balanced restriction to protect certain sensitive areas and infrastructure while continuing to meet the needs of the unsheltered in our community. Attached to the Novus item are several attachments demonstrating the legislative history.

As the City was undergoing this process, a case was working its way through the federal court system out of the 9th Circuit, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019). In *Martin v. Boise*, homeless persons brought a §1983 claim challenging the city's ordinance as a violation of the Eighth Amendment which prohibits cruel and unusual punishment. The 9th Circuit held in the case that the Eighth Amendment prohibited the imposition of criminal penalties for sitting, sleeping, or lying outside on public property on homeless individuals who could not obtain shelter. The City of Boise petitioned for a writ of certiorari to the Supreme Court asking for the decision to be overturned. On December 16, 2019, approximately two weeks after the City of Topeka passed its amended camping ordinance, the Supreme Court denied the City of Boise's petition for review leaving the 9th Circuit's decision in place. *City of Boise, Idaho v. Martin*, 140 S. Ct. 674, 205 L. Ed. 2d 438 (2019). This denial was a disappointment to cities who were hoping the Supreme Court would step in and prevent this expansion of the Eighth amendment or, at a minimum, provide more clarity. Litigation was seen across the country citing to *Martin v. Boise*.

Cities across the nation have spent the last four years testing the limits of the law in regard to homelessness and so have Homeless Advocacy groups. Nationwide we have seen lawsuits trying to expand constitutional protections to a wider array of conduct around homelessness and cities likewise trying to narrow the rights. *Martin v. Boise* only dealt with criminalization of camping not code enforcement, zoning, public health laws etc. The law has not been static. In other jurisdictions, simply attempting to clean the streets and remove debris have led to claims of Fourth amendment violations for allegedly unreasonably considering property abandoned or collecting property without notice. See *Proctor v District of Columbia*, no. 18-cv-701 (D.D.C Nov 27, 2018) and *Sullivan v. City of Berkeley*, no. 17-06051 (N.D. Cal. Jan. 19, 2018). Other suits have been even broader arguing city cleanup activities violated the First, Fourth, Eighth, and Fourteenth Amendments. In these cases, individuals allege the encampments were an expression of free speech to call attention to the crisis of affordable housing, that the city's policies were cruel and unusual punishment when there were not sufficient shelter beds, that denying people the right to a safe place to sleep, rest and recuperate violates the Fourteenth Amendment right to travel, and that removing tents, tarps, blankets, clothing, and other property may be creating an unlawful state-created danger for the homeless. See IMLA May-June 2021 / vol. 62 No. 3 /35.

One of the most recent cases to be decided is *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) which was decided by the 9th Circuit as recently as July 5, 2023. In this case, individuals experiencing homelessness brought a putative class action against the city challenging the constitutionality of city ordinances which precluded use of a blanket, a pillow, or a cardboard box for protection from the elements while sleeping within city's limits. The ordinances result in civil fines up to several hundred dollars per violation and persons found to violate the ordinance multiple times could be barred from all city property. If a homeless person was found on city property after receiving an exclusion order, the individual was subject to criminal prosecution for trespass. See *Johnson*, at 875. Grants Pass did not have adequate shelter beds compared to the number of homeless individuals.

In *Johnson v. Grants Pass*, the Ninth Circuit held that the Grants Pass utilization of a civil enforcement mechanism first before proceeding to a criminal enforcement mechanism did not allow the City to evade the Eighth Amendment.

“the anti-camping ordinances prohibit Plaintiffs from engaging in activity they cannot avoid. The civil citations issued for behavior Plaintiffs cannot avoid are then followed by a civil park exclusion order and, eventually, prosecutions for criminal trespass. Imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized does not cure the anti-camping ordinances' Eighth Amendment infirmity.”
Johnson, at 890.

Additionally the Ninth Circuit held “the district court correctly concluded the anti-camping ordinances violated the Cruel and Unusual Punishment Clause to the extent they prohibited homeless persons from ‘taking necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available’ by banning bedding, sleeping bag, or other material used for bedding purposes. *Johnson*, at 891. The court did not go so far as to find that the banning of “fire, stove, and structure prohibitions deprive homeless persons

of sleep or ‘the most rudimentary precautions’ against the elements.” *Johnson* at 868, 895 (9th Cir. 2023).

The litigation in other jurisdictions has created a body of caselaw under the Fourth and Fourteenth amendments governing standards for removal of encampments. The Fourteenth Amendment requires both pre- and post-deprivation notice and the Fourth Amendment guards against “unreasonable” search and seizures. When adopting the City’s Administrative Procedures governing the cleanup of public lands under the City Manager’s caretaker power, this caselaw heavily influenced the drafting of the policy to ensure the City remains in constitutional compliance while also having necessary rules in place to protect the health and safety of our community. The City’s administrative policy provides advance notice of the cleanup, allows opportunity for property to be removed in advance, provides storage for particular types of property such as medications when it is clear there was likely no intent to abandon the property, and provides for post-clean up notice on where this type of property can be retrieved. Individuals have the right to be homeless; however, individuals do not have the right to build permanent structures and convert public land to private land.

One of the common arguments when discussing stricter camping ordinances is that *Martin v. Boise* is not binding precedent in Kansas. While Kansas is in the 10th Circuit and the 9th Circuit is not binding precedent, it is considered persuasive precedent. Additionally, in a relevant 10th Circuit case decided before *Martin v. Boise*, there is a specific statement that the only reason the ordinance at issue did not violate the Eighth amendment was because the camping ordinance did not criminalize involuntary behavior because an individual could not be charged with a violation of the camping ordinance when there were no open beds in a shelter. *Cochran v. City of Wichita*, No. 18-1132-JWB, 2018 WL 4637237, at *7 (D. Kan. Sept. 26, 2018), *aff’d*, 771 F. App’x 466 (10th Cir. 2019). When caselaw like this is combined with *Martin v. Boise*, it is highly probable the argument in *Martin v. Boise* is likely to prevail in the 10th Circuit.

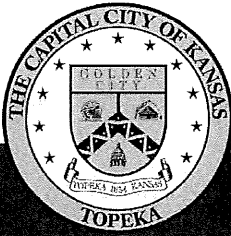
Everything is a balancing act. The ordinances included in the agenda are examples that try to strike a balance between the City’s current camping ordinance and a complete ban in a constitutionally compliant manner.

The Legal Department has only reviewed these ordinance from a constitutionality perspective and not a broader public policy perspective. Hopefully they will serve as a helpful starting point for Governing Body and public discussion.

Attachments:

Unlawful Camping (neighborhoods)
Unlawful Camping (10 day limit)
Camping-Article III, Chapter 9.45 TMC

cc:



CITY OF TOPEKA

Legal Department
215 SE 7th Street, Room 353
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Amanda Stanley, City Attorney
Tel: (785) 368-3883
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MEMORANDUM

To: Governing Body
From: Amanda Stanley
Re: 500 foot buffer proposal
Date: 8/21/2023

The purpose of this memorandum is to provide items for discussion as the Governing Body considers the proposed 500 foot buffer ordinance. It should be viewed as a supplement to the memorandum provided in the Governing Body Agenda Packet for 8/22/2023 titled Possible Camping Ordinance Amendments.

It is helpful when discussing a 500 foot buffer to have a visual. 500 feet is approximately 1.4 football fields in length or about 1 ½ city blocks. The proposed buffer would be 500 feet from the center line of any trail or sidewalk in city limits.

There are two main components to the proposed ordinance (1) the trail system (predominately the Shunga and Landon Trails) and (2) sidewalks inside city limits.

As drafted, the ordinance would apply to public and private land. As the buffer zone has been proposed as a response to public safety concerns, it is important to have the law applied equally to all similarly situated land to accomplish the legitimate governmental interest of safety for pedestrians.

Planning Staff has determined that for the proposed Shunga 500 foot buffer, there are 1,450 total properties within the buffer. Of those, 40 are “public” and 1,410 are private. The forty public parcels consist of city, county, state, and 501 property.

The sidewalk piece is harder to get a complete picture of the possible effects. To illustrate this, Planning Staff brought forth the following example.

For simplicity sake, let’s assume a typical home or commercial building is setback 30 feet from a public sidewalk and the property is typically about 150 feet deep.

- A 500 foot buffer around sidewalks would extend past the front yard, past the back yard and well into the next properties behind. This would prohibit camping in front yards and even in the back yards. Accessory recreational camping by the property owner has generally been an acceptable use.

- A rough mapping exercise with a 500 foot buffer around sidewalks covers approximately 85% of the city.

“It is well settled, however, that a law denies due process of law guaranteed by the Fourteenth Amendment of the United States Constitution if (1) it is so vague that a person of ordinary intelligence is not put on notice of the conduct which is prohibited, or (2) if the law is so overbroad that it makes common conduct criminal and provides the police with unfettered discretion to arrest.” § 24:591. Loitering, congregating, camping in streets and public places, 7A McQuillin Mun. Corp. § 24:591 (3d ed.)

A prohibition of camping within 500 feet of the centerline of any trail or sidewalk cannot be too broad, vague, or arbitrary. The Governing Body will need to articulate the rationale basis for the 500 foot buffer and demonstrate why this this particular distance is necessary.

This raises several issues. (1) Are there factors supporting a prohibition on camping that justifies a further distance from a sidewalk than the standard setback for a house or business? (2) Does this by default prohibit camping in the City of Topeka which could run afoul of the 8th Amendment caselaw if there are not sufficient beds available? (3) Is there a need for the Governing Body to carve out exemptions in the ordinance for RV Parks and other commercial properties that allow for camping but also have sidewalks? (4) Are there differences between the Shunga Trail compared to a sidewalk that would justify different distances? For instance, the prevalence of streetlights, overgrowth of vegetation, etc.? Could a shorter buffer zone for sidewalks and a longer buffer zone of 500 feet for the trails accomplish the same goal while being more narrowly tailored to the particular harm?

For example, the City of Los Angeles allows buffer zones of up to a maximum of 10 feet for operational driveways or loading docks, within 5 feet of an operational or utilizable building entrance or exit, within 2 feet of any fire hydrant, fire plug, or other fire department connection, or, if the City has posted notice and determined the conduct poses a particular and ongoing threat to public safety such as repeated serious crime or fires, of up to a maximum of 500 feet for sensitive use property (schools, day care centers, public parks, or public libraries), designated overpass, underpass, freeway ramp, tunnel, bridge, pedestrian bridge, subway wash, spreading ground, or active railway, and up to a maximum of 1000 feet from a designated homeless shelter.

As the Governing Body looks at options, some factors it could consider are calls for service related to sidewalks or on the trail system, news articles and public comment demonstrating public concern, and data from agencies that work with the homeless, factors that make it more dangerous in certain locations such as lack of lighting and vegetation. It will be important for the legislative record to be clear on the important governmental interests being protected.

Attachments:

cc:

Tonya L. Bailey

From: Betty@networksplus.net
Sent: Saturday, August 19, 2023 4:53 PM
To: Mayor; City Council
Cc: Michael Bell; Carrie Higgins; Jane M. Murray; Bianca Burnett; Monique Glaude; Richard U. Nienstedt; Clark Trammell; Mary Thomas; City Clerk; Jonathan Sublet; Jill Rice; Tomari Quinn; Timothy Hrenchir; phil.anderson@wibw.com; 27news channel; Nellie Hogan; Joe Ledbetter; John Schardine; JUMP
Subject: Fwd: Trailer for the homeless

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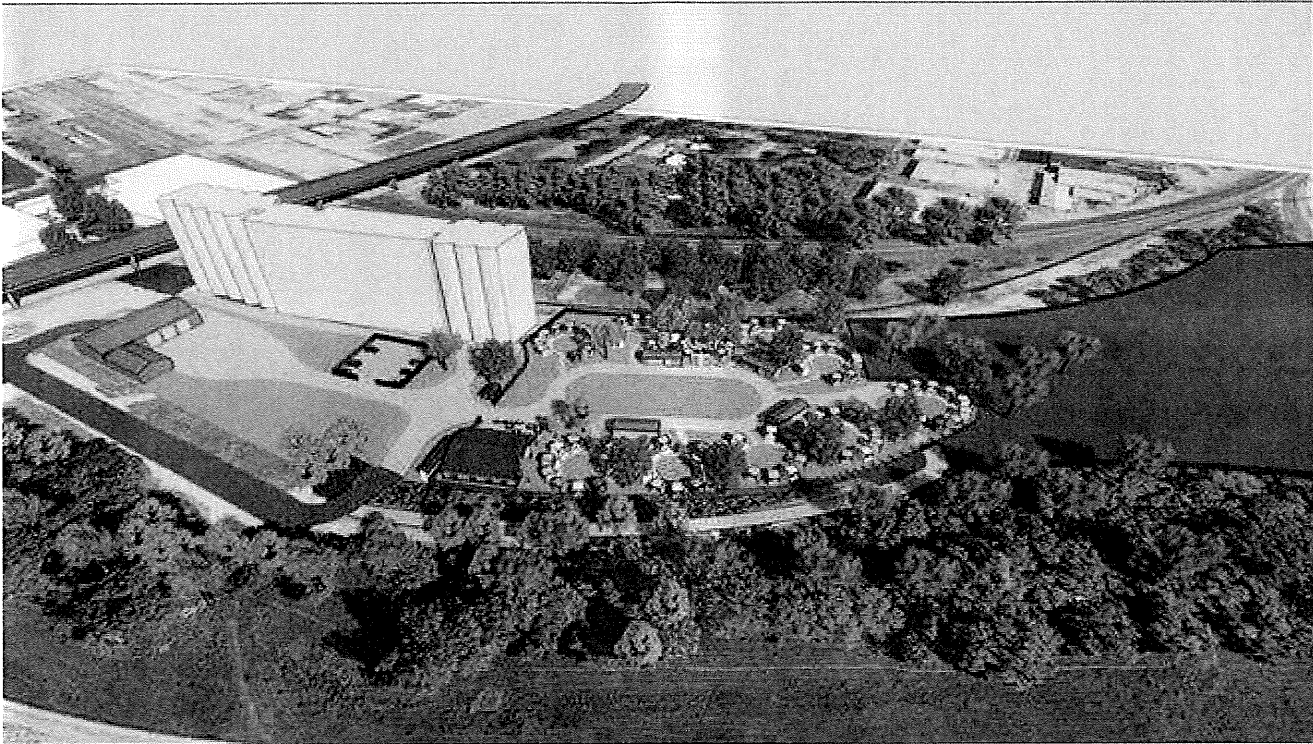
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Whatever happened to this program to help alleviate the homeless problems? I hadn't heard it had been cancelled.

Proposal for tiny house village in Topeka merits serious consideration. Idea could help homeless gain footing.

By The Editorial Advisory Board

[View Comments](#)



The Topeka Rescue Mission's proposal for a tiny house village at the one-time site of a tent city is worth serious consideration. We should give the mission and its executive director, Barry Feaker, credit for creative thinking in addressing one of our city's thorniest problems.

The concept is simple. Create homes for people who don't have them. While the units would be transitional (and tiny, of course), they would also have electricity and climate control. They would cost less than \$5,000 apiece, last 20 years, and have about 64 square feet of space. The cost would be about \$5.7 million.

The city has some money to spend, it turns out. The federal American Rescue Plan has sent \$47 million to Topeka, and while there are many ideas about how to use it, we hope that the city council gives serious consideration to the village.

The challenge, as has been well documented, is that folks usually don't become homeless overnight. It can be the last step of a lengthy process. So asking someone to rebuild his or her life without a place to live may get the process backward. Stable living arrangements can be a prerequisite for turning lives around. The tiny house village, then, would allow for just the kind of positive, long-lasting change everyone wants to see.

As Feaker noted to the council, the rescue mission also has a defined place and role in our community. It's not going anywhere, and it shouldn't. Temporary shelter for those in need

continues to be critical for those experiencing domestic violence or other traumas in their personal lives.

But tackling chronic homelessness takes a different approach. It's not about a night or two of shelter while solving an immediate problem. It's about changing lives for the long term. This tiny house village approach looks like just the ticket.

Betty Phillips

To: Vickie Smith

Nellie said she'd like to live in one when we were promoting it several years ago. I like the idea of solar panels or anything that saves them money. I hope it succeeds.

On Jul 30, 2021, at 11:31 AM, Vickie Smith <vickie@SENTtopeka.com> wrote:

Thanks for sharing Betty! I **personally** agree with you on the tiny house villages. I hope and pray the new owners find peace in "owning" a place to call home!

Vickie ☺

On Fri, Jul 30, 2021 at 8:09 AM Betty@networksplus.net <betty@networksplus.net> wrote:
This was nice of him!!

Let's hope Topekans agree we need to get serious about this problem and direct the comparably fewer dollars for this than for some other projects.

We all benefit in the long run when we help those who can't help themselves for various reasons.