

Governing Body Minutes – December 3, 2019

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, December 3, 2019. The Governing Body members of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Hiller, Ortiz, Emerson, Padilla, Jensen, Dobler, Coen and Lesser -8. Deputy Mayor Clear presided -1. Absent: Mayor De La Isla -1.

AFTER THE MEETING was called to order, Rt. Rev. Cathleen Chittenden Bascom, Bishop of Kansas, provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited by those present in the chamber.

PRESENTATION of the Troy Scroggins Award was presented to the following individuals by the Topeka Human Relations Commission:

- Larry Robbins for his service to Topeka in advocating equal opportunity for staff development and minority groups in the Topeka school district.
- Chris Omni for her service to Topeka as a visionary who gathers diverse groups of people and empowers them to advocate for the needs of the community.
- Edith Gaines for her service to Topeka in being a leader of promoting health equity and educating the community on how race impacts health.

PRESENTATION on the City of Topeka Public Works Department 3rd Quarter Report was provided by Brian Faust, City Engineer.

Councilmember Emerson requested to remove Item 2A, disposal of property located at 421 SW Huntoon Street, from the consent agenda for separate consideration.

Upon hearing no objections, Deputy Mayor Clear, announced the item would be removed from the consent agenda for separate consideration.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of November 19, 2019, was presented.

APPROVAL of the following licenses was presented:

Cereal Malt Beverage:	<u>Business Name</u>	<u>Address</u>
	Dickey's Barbecue Pit	609 NW Highway 24
	Porubsky's	508 NE Sardou Avenue
Dance Hall:	<u>Business Name</u>	<u>Address</u>
	Lazy Toad	5331 SW 22 nd Place #2
	Los Charros	4111 SW Gage Center Drive
	Midwest Lodge	1316 SE Madison Street
	Skinny's Sports Bar & Grill	4016 SW Huntoon Street
	Wild Horse Saloon	3249 SW Topeka Boulevard

Councilmember Jensen moved to approve the consent agenda as amended. The motion seconded by Councilmember Coen carried unanimously. (9-0-0)

APPROVAL of the Disposal of Real Property located at 421 SW Huntoon Street, was presented.

Brent Trout, City Manager, requested to withdraw the item from the agenda to determine if the property will be needed to store construction equipment during the adjacent water main improvement project. He stated he would report back to the Governing Body upon determination from staff.

PUBLIC HEARING NOTICE

PUBLIC HEARING regarding the establishment of the Dynamic Core Redevelopment District was presented.

Doug Gerber, Deputy City Manager, noted the public hearing was recessed from the Governing Body meeting of October 15, 2019. He stated additional public comment will be considered with the intent to recess the public hearing until December 10, 2019, at the request of Greater Topeka Partnership (GTP). He reported representatives of GTP and City staff members have worked through a number of issues with the Topeka Public School Board resulting in the Board voting to approve the project at their December 2019 Board meeting.

Deputy Mayor Clear commended staff for working with Topeka Public Schools in addressing their concerns.

Councilmember Hiller announced she would host an informational meeting on December 5, 2019, at the Lardnard Stone Building, 320 SW 1st Street, from 10:30 a.m. to 12:00 p.m. with area businesses to discuss the Dynamic Core Redevelopment Project as well as other potential development for the downtown and riverfront area.

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

Upon no one appearing, Deputy Mayor Clear announced the public hearing would be recessed until December 10, 2019.

Councilmember Jensen moved to recess the public hearing until December 10, 2019. The motion seconded by Councilmember Dobler carried unanimously. (9-0-0)

ORDINANCE NO. 20224 introduced by Councilmember Sylvia Ortiz, creating a new Article 3 of Chapter 9.45 of the Topeka Municipal Code concerning camping was presented.

Deputy Mayor Clear commended the Public Health and Safety Committee for their extensive research and work in addressing homelessness in the community and allowing all those affected to be involved in a solution.

Councilmember Ortiz, Public Health and Safety Committee Chair, provided an overview of the extensive process in helping the homeless population in the community and finding a solution that works for the community. She thanked the organizations and individuals involved in the effort. She gave the committee report and stated the Committee recommended approval of the proposed ordinance creating a new Article 3 of Chapter 9.45 of the Topeka Municipal Code (TMC) to include restrictions on camping within specified zones/areas of the city.

Lisa Robertson, City Attorney, provided a summary of the proposed changes through discussion and commentary provided during multiple PHS Committee meetings, imposing a partial ban of camping within certain zones in the city of Topeka. She reported the following:

Private Property: As a result of multiple PHS Committee meetings, it became evident that who can and cannot camp on a particular piece of private property would be a decision best left to the corresponding property owner. Placing TPD in the position of checking whether or not a particular camper has been given permission to camp on private property creates an unnecessary administrative burden on law enforcement. Private property is best handled through trespassing complaints by individual property owners. If a property owner does not wish for individuals to camp on his/her property, he/she can contact TPD and TPD will respond accordingly.

Flood Control Works: The revised partial ban ordinance (with zones) defines the term “flood control works” as the system comprised of levees, flood walls, relief wells, closure structures, pump stations and ponding areas that serve to protect the City from flooding – because “flood control works” encompass more than the levee systems. Public Works and Utilities Staff members have detailed knowledge of the components that make up “flood control works” – including, but not limited to, the levee systems – as well as the corresponding areas that would be covered by the camping restriction. If TPD comes upon an area where camping is taking place but is uncertain whether or not camping is restricted in that area as a “flood control works,” TPD would have the option of either accessing ownership information in real time through GIS mapping or contacting a Public Works or Utilities Staff member. There would be no need for an elaborate review of levee system maps to determine if a violation of the ordinance has occurred.

Zones: As a result of multiple PHS Committee meetings, there seemed to be a desire to focus on particular areas within the city – downtown and NOTO were specifically mentioned. Staff analyzed this perspective and believes establishing zones within which camping is restricted would withstand legal challenge. Selecting areas within which the City can document its governmental interest (i.e., promoting economic developing, protecting infrastructure assets), yet ensuring people have alternative locations to camp, was key. Specifically-identified boundaries have been established for downtown and NOTO in the currently proposed ordinance. There is no need to develop any type of “property registration procedure” – primarily because this would add an additional level of bureaucracy that is not needed (particularly given that private property is no longer included as a restricted area). It should also be noted that a ten-foot restriction has been added with respect to camping near any doorway, loading dock, stairway or fire escape.

Trails: Reported the reason trails were not addressed was because the City must ensure that people have alternative locations to camp in order to withstand a legal challenge. This means the City must be very deliberate as it picks and chooses restricted areas. Hike/bike trails are not listed as part of the definition of “public infrastructure.” Although there have been instances where individuals have been found camping on or

along these trails, TPD has conveyed that these instances are few and far between. If individuals are found to be obstructing these trails, users may contact TPD with the location and a ticket can be issued for such obstruction. The prohibition against obstructing a trail would be the same as the prohibition against obstructing a sidewalk.

Councilmember Ortiz stated citizens have expressed concern with homeless camping along trails throughout the city.

Councilmember Ortiz moved to amend lines 41-42 of the ordinance to include the term “trails.” The motion was seconded by Councilmember Lesser.

Lisa Robertson stated trails were excluded due to the legal ramifications that could arise from not having alternate camping locations for the homeless population.

Councilmember Jensen inquired on the definition of “trails.”

Luther Ganieany, Topeka Police Legal Advisor, reported there are a number of different trails throughout the city making it difficult to define; however, camping has not been a concern along the trails and noted if there was an issue along trails the individual could be dealt with through existing laws. He expressed the importance of the ordinance tying back to a government purpose.

Councilmember Emerson questioned if the people that will be displaced as a result of the proposed ordinance will camp along the trails and if so, could Shawnee County pass and ordinance that would prohibit this type of activity along Shawnee County owned trails.

Councilmember Hiller confirmed if there was a law in place to prohibit a certain activity it was not included in the language of the ordinance. She stated including the term “trails” in the language would not address the problem because camping would take place in the surrounding area of trails. She reported there was not an issue with trails right now and it was believed, no more than five people will be displaced with the new camping ordinance. She commended everyone involved with the process and believes the ordinance language was drafted well.

Dr. Russell Burton distributed a handout. He stated if the term “trails” was included in the language of the ordinance people will be displaced. He noted the ordinance as crafted was a good compromise; however, it may cause folks to be chased around the community. He expressed the importance of the homeless community having access to housing and mental health services.

Michelle Reeves commended the City for partnering with Dr. Burton and local organizations to provide housing for the homeless. She reported the assistance has provided her with the opportunity to get her life back on track and back in touch with her family.

Pamela Burghart thanked the City for providing her with housing and giving her the opportunity to get her life back on track. She asked the Governing Body to continue to support the housing first initiative as a viable community solution to homelessness.

Bob Cuther asked the City to delay approval of the ordinance until pending federal court cases are ruled upon. He spoke in opposition of the ordinance and believes it was not needed and cautioned the Governing Body against making sure the ordinance language was appropriate and did not criminalize homelessness and/or mental health issues.

Councilmember Jensen questioned the number of homeless people that would be displaced if the ordinance was passed. He also questioned if the effective date of the ordinance should be delayed until there was a ruling on federal court cases and winter months are over.

Lisa Robertson reported Luther Ganieany conducted extensive research on the topic and the type of language that should be included in the ordinance so it will limit legal ramifications for the City.

Councilmember Emerson spoke in opposition of delaying the effective date of the ordinance due to the extensive damage caused in 2018 by fires being ignited under the Kansas River Bridge by the homeless population.

Councilmember Ortiz reported the homeless population has been very involved in the process and the drafting of the ordinance along the way. She reported the City, in partnership with community organizations, will continue to monitor the issue and report back regularly to the Governing Body.

Councilmember Padilla spoke in support of the ordinance and expressed his appreciation for the through discussions conducted at the committee level resulting in the problem solving of community issues. He stated the ordinance language has been crafted with the help of the community and the City will continue to offer help and advocate in providing assistance to the homeless population.

Councilmember Lesser asked if the language would encompass bridges located on trails.

Luther Ganieany confirmed bridges on city-owned trails would be included.

Topeka Police Sgt. Josh Klamm reported the homeless population camping near trails was approximately 10-20 people; however, approval of the ordinance would displace approximately five to seven people city-wide.

The motion to amend lines 41-42 of the ordinance to include the term “trails” failed.

Councilmembers Hiller, Padilla, Jensen, Dobler and Deputy Mayor Clear voted “no.” (4-5-0)

Councilmember Hiller moved to amend line 66 of the ordinance by removing the word “attended.” The motion seconded by Councilmember Emerson carried unanimously. (9-0-0)

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

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Emerson, Padilla, Jensen, Dobler, Coen, Lesser and Deputy Mayor Clear -9.

UPDATE and possible ACTION on the proposed traffic and pedestrian safety ordinance. (*90-day update from the meeting of September 3, 2019.*)

Councilmember Jensen, Special Committee Chair, reported no action was anticipated as the proposed ordinance would be discussed at the next Special Committee meeting on December 9, 2019.

Dr. Russell Burton spoke in opposition of the ordinance and stated if passed, it would have a devastating impact on the homeless population specifically in the east and south parts of the city where panhandling was a necessary source of income in order to purchase shelter. He stressed the importance of not criminalizing homelessness or panhandling and noted it was the only source of income for some people dealing with mental illness.

Deputy Mayor Clear reported the ordinance being considered in committee focuses on traffic and pedestrian safety not homelessness.

Councilmember Jensen moved to accept the Special Committee Update. The motion seconded by Councilmember Coen carried unanimously. (9-0-0)

DISCUSSION regarding nonexclusive franchise for American Medical Response.

Brent Trout, City Manager, stated approval would grant AMR a franchise agreement for one year to allow AMR to provide ambulance services to city residents.

Craig Duke, Topeka Fire Chief, reported the agreement provides for payment from AMR to the City for "lift assists" provided by the Topeka Fire Department personnel in non-emergency situations. He stated negotiations for 2021 would begin after the first of the year.

Councilmember Hiller questioned if requirements for the implementation of the Topeka Fire Department Advanced Life Support (ALS) Program would be included in negotiations for 2021.

Chief Duke confirmed the needs of the Fire Department to implement the ALS Program will be included as part of the upcoming negotiations as they move forward.

DISCUSSION regarding the legislative priorities identified by the Governing Body to be addressed or monitored during the 2020 Legislative Session was presented.

Brent Trout, City Manager, stated Whitney Damron, lobbyist for the City of Topeka, was present to provide information on the 2020 legislative session. He requested Governing Body members provide input on the items they would like addressed during the next Legislative Session.

Whitney Damron, City of Topeka Lobbyist, reported he would provide information on the City's 2020 Legislative agenda to the Shawnee County Delegation on December 4, 2019, with the 2020 Legislative Session scheduled to begin January 13, 2020. He highlighted the proposed legislative priorities for the City of Topeka including the revenue forecast; major issues likely to be considered in 2020; priorities of the League of Kansas Municipalities and priorities of the Kansas Association of Counties. City of Topeka 2020 Legislative Priorities were summarized as follows:

- Support for a Comprehensive Transportation Plan to Succeed T-WORKS Program (Forward Kansas) specifically the advancement of the Polk-Quincy Viaduct Project.
- Protection of Local Government Streams of Revenue
- Support for City Authority to Regulate Placement of Political Signs
- Collection of Sales Taxes on Internet Sales
- Property Tax Assessment.
- Telecommunications Infrastructure

Councilmember Hiller referenced the Dark Story Theory (large vacant commercial box store properties) involving Johnson County as well as other cases across the nation. She expressed concern with similar situations that could result in Topeka.

Councilmember Dobler spoke in support of the priorities as presented, specifically the

priorities related to protection of local government streams of revenue and collection of sales tax on internet sales.

Councilmember Jensen inquired on the movement of any vacant and/or abandon property rights proposals.

Councilmember Ortiz requested the youth population be included in proposals to address mental health issues. She questioned why there has been no action taken on the advancement of the Polk Quincy Viaduct Project and if more funding could be allocated for the transportation system, specifically in Topeka.

Whitney Damron responded as follows:

- Many counties across the state are concerned with the outcome of the Supreme Court case related to assessing property valuation in Johnson County, Kansas. He noted the alleged ruling under Kansas law is that commercial real estate can be assessed based on the value of the land and the buildings on it; however, Johnson County supports the value of the business to be factored into the property tax determination.
- At this time, there is no movement on property rights proposals.
- The Polk Quincy Viaduct Project will be extremely expensive to construct (\$180,000,000 to \$250,000,000) and in the past, has not been a priority for the T-WORKS Program; however, he will ask the Shawnee County Delegation to give favorable consideration to the City of Topeka due to the fact the city is long overdue to receive approval for a large improvement project similar to other large cities in Kansas.

DISCUSSION on the governance of operations at the Topeka Zoo was presented.

Brent Trout, City Manager, stated the purpose of the discussion was to provide the Governing Body an update on the opportunity that exists to modify the current operational partnership between the City and Friends of the Topeka Zoo (FOTZ) and exploring a City agreement with a non-profit organization to manage the full operation of the Topeka Zoo.

Doug Gerber, Deputy City Manager, reported the City of Topeka currently operates the Topeka Zoo through a public-private partnership with FOTZ and in the fall of 2018, FOTZ retained a consultant to assist both organizations with evaluating the direction of the partnership

and future governance of the Zoo. He stated the recommendation to evaluate the form of governance of the Topeka Zoo took place in 2009, and the topic has been discussed every two or three years since then. He reported the recent conversation was initiated due to the level of growth the Topeka Zoo continues to experience.

Brendan Wiley, Topeka Zoo Director, provided an overview of the timeline of events that led to the evaluation of Zoo operations. He spoke in support of the operational model they are working towards as it would provide relief to the general fund and allow the same people to perform the same duties. He reported the best practices transition has already begun and over the next five years, the new budget model would provide for more benefits; clarify fund raising parameters; provide clear direction for staff; and offer efficiencies in many other areas of operations. The timeline was as follows:

- 2009 - began working through compliance issues and recommendation to evaluate Zoo operations
- 2012 - consultant was hired to evaluate the form of governance of the Zoo
- 2013 - public-partnership was developed with FOTZ by transferring certain operations
- 2015- FOTZ began hiring employees
- 2016 - continue conversations with Zoo advisors in regards to what the Zoo operations model might look like
- 2019 - FOTZ hired part-time education staff and absorbed all expenses possible to relieve the general fund

Doug Gerber reported a Request for Quote (RFQ) for services was distributed across the nation and only one response was received from FOTZ; employment and compensation models for exiting employees along with a retirement model will be similar to the City's current employment model; and preliminary discussions have taken place with the AFT bargaining union. He stated they continue to develop asset lists and are requesting input from the Governing Body on the following:

1. The term of license agreement. Staff was considering 10-15 years. There are deed restrictions that will not allow for a lease agreement to be executed.

2. FOTZ Board representation. Staff was proposing two Governing Body member representatives and two City staff members (Director of Public Works and Director of Administrative and Financial Services)
3. Management Fee Model. Continue to allocate two mills of general fund dollars or some percentage of the general fund such as 2% which could steadily decline through the course of the license agreement.

Lisa Robertson, City Attorney, reported other action that would be required by the Governing Body includes amending all Topeka Municipal Code sections relating to the Zoo as well as all AFT Bargaining Union agreements if needed. She stated the license agreement would give permission for FOTZ to operate the Zoo.

Councilmember Hiller asked staff to comment on the management of assets and how it relates to the use of Capital Improvement funds.

Doug Gerber spoke to the importance of proper asset management and how it would relate to the continued use of capital funds for maintenance.

Lisa Robertson reported asset lists are being created and will be transitioned over to FOTZ through the term of the license agreement.

Doug Gerber reported the underlying ownership of the property will remain with the City.

Councilmember Emerson requested an email be distributed to the Governing Body outlining the pros and cons *i.e.* an analysis of each option presented by staff.

Councilmember Dobler spoke in support of a three-year term license agreement. He questioned if the FOTZ Board representation could be appointed members by the Governing Body, similar to other boards and commissions. He also asked staff to provide information on the City's liability and insurance requirements.

Councilmember Ortiz expressed the importance of making sure the transition of privatizing Zoo operations will be supported by the community as well as staff. She stated she would prefer funding for the Zoo decrease as it becomes fully privatized. She expressed concern with the

City's liability as it relates to the public-private partnership.

Doug Gerber asked for an affirmation of direction by the Governing Body.

Brent Trout expressed the importance of the City having a partner such as FOTZ willing to address the financial challenges as well as provide the necessary resources to support a quality Zoo that will continue to grow.

Fred Patton, Kansas House of Representatives, District 50, spoke in support of the private-public partnership with FOTZ. He stated private-public partnerships are the way of the future by supporting the concept of doing more with less and the first step in making the Zoo better. He stated the partnership would allow for a boarder funding raising base and noted FOTZ has raised \$22 million over the past five years.

Deputy Mayor Clear expressed the importance of allowing the experts to operate the Zoo and suggested Governing Body members serving on the FOTZ Board provide guidance not directive.

Councilmember Hiller requested staff send examples of operational models so she can better understand the context of knowledge of how different concepts work.

Councilmember Emerson spoke in support of the private-public partnership if it saves money and improves operations. He expressed the importance of the license agreement details and concurs with Councilmember Dobler in regards to an initial short-term license agreement.

Councilmembers Dobler, Lesser and Jensen spoke in support of moving forward and evaluating the partnership with FOTZ.

Councilmember Hiller suggested Zoo entry fees be evaluated and addressed in the license agreement.

PUBLIC COMMENT was expressed by the following individuals:

Joseph Ledbetter spoke in opposition of a utility rate increase. He expressed concern with the timing of the proposal; the proposed percentage amount; the lack of notification to commercial customers; and the need to complete the study and discuss it in detail.

Carol Marple questioned the rush by staff to approve the utility rate increase and the proposed amount. She expressed the importance of properly notifying residential and commercial customers and the need for overall input from the community on the completed study.

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

Brenda Younger, City Clerk, provided an overview of the December 10, 2019, Governing Body agenda.

Brent Trout, City Manager, announced a public meeting would be held on December 5, 2019, at the Topeka-Shawnee County Public Library to discuss the proposed utility rate increases. He also announced the City, in collaboration with the Greater Topeka Partnership, would host a “Doing Business with the City of Topeka” informational workshop on December 12, 2019, from 11:30 a.m. to 1:00 p.m. at 719 S. Kansas Avenue.

Councilmember Hiller reported the City’s industrial customers have requested at least a one-year notice in regards to utility rate increases to accommodate their budget cycles. She announced Megan Hayes, local individual investor, will be renovating a 19-unit apartment building located at 719 SW Topeka Boulevard.

Deputy Mayor Clear announced the Sheep Dog Organization conducted a Turkey Trot fundraiser on Thanksgiving Day to help buy Christmas gifts for military and first responder families.

Councilmember Ortiz moved to extend the meeting past 10:00 p.m. The motion seconded by Councilmember Emerson carried. (8-0-0) Councilmember Coen did not vote.

Councilmembers Coen and Lesser left the meeting.

Councilmember Dobler moved to recess into executive session for a period of time not to exceed 30 minutes to discuss confidential employment matters pertaining to nonelected personnel, as justified by KSA 75-4319(b)(1), in order to protect the privacy of those discussed. To aid the discussion, the following individuals were present: Members of the Governing Body; Human Resources Manager, Shawn Maisberger and Human Resources Director, Jacque Russell. No action was anticipated when the open meeting resumes in the Governing Body Chambers. The motion seconded by Councilmember Dobler carried unanimously. (7-0-0)

Following a 30-minute time period the meeting reconvened into open session and Deputy Mayor Clear announced no action was taken and there was a need to continue the Executive session with the same parameters.

Councilmember Emerson moved to recess into executive session for a period of time not to exceed 30 minutes to continue discussion on confidential employment matters pertaining to nonelected personnel, as justified by KSA 75-4319(b)(1), in order to protect the privacy of those discussed. To aid the discussion, the following individuals were present: Members of the Governing Body; Human Resources Manager, Shawn Maisberger and Human Resources Director, Jacque Russell. The motion was seconded by Councilmember Jensen carried. Councilmember Ortiz vote "no." Councilmember Dobler was out of the room. (5-0-0)

Following a 30-minute time period the meeting reconvened into open session and Deputy Mayor Clear announced no action was taken and there was a need to continue the Executive session with the same parameters.

Councilmember Dobler entered the room.

Councilmember Jensen moved to recess into executive session for a period of time not to exceed 20 minutes to continue discussion on confidential employment matters pertaining to nonelected personnel, as justified by KSA 75-4319(b)(1), in order to protect the privacy of those discussed. To aid the discussion, the following individuals were present: Members of the Governing Body; Human Resources Manager, Shawn Maisberger and Human Resources Director, Jacque Russell. The motion was seconded by Councilmember Padilla carried. Councilmember Emerson was out of the room. (6-0-0)

Councilmember Emerson entered the room.

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 11:27 p.m.

(SEAL)

Brenda Younger
City Clerk