Governed Body Minutes – December 12, 2023

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, December 12, 2023. The Governing Body members of the City of Topeka met in regular session at 6:00 P.M. with the following Councilmembers present: Councilmembers Hiller, Ortiz, Emerson, Kell, Naeger, Dobler, Duncan and Hoferer -8. Councilmember Valdivia-Alcala participated remotely -1. 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 December 12, 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 December 12, 2023, for attachment to the meeting minutes.

AFTER THE MEETING was called to order Councilmember Emerson provided the invocation.

THE PLEDGE OF ALLEGIANCE was recited by meeting participants.

BOARD APPOINTMENT recommending the reappointment of Jeff Romine to the Board of Plumbing Examiners for a term ending December 31, 2025, was presented. (Council District No. 7)

BOARD APPOINTMENT recommending the reappointment of Robert Bausch to the City of Topeka Board of Electrical Appeals for a term ending December 31, 2025, was presented. (Council District No. 5)
Councilmember Dobler moved to approve the appointments. The motion seconded by Councilmember Naeger carried unanimously on roll call vote. Mayor does not vote. (9-0-0)

Richard U. Nienstedt, Interim City Manager, stated the Topeka Fire Department Emergency Medical Response Assessment Presentation has been moved to the December 19, 2023, agenda and may be postponed until January 2024.

CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of December 5, 2023, was presented.

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

PUBLIC HEARING

PUBLIC HEARING for the purpose of hearing and answering objections of taxpayers relating to the proposed amendments to the 2023 City of Topeka Operating Budget, was presented.

ORDINANCE NO. 20468 introduced by Interim City Manager Richard U. Nienstedt, approving and adopting certain amendments to the operating budget for the City of Topeka for the year 2023 and appropriating the amounts for the purpose as set forth therein, was presented.

Richard U. Nienstedt, Interim City Manager, reported the State requires a public hearing be conducted and an ordinance be adopted to amend the City of Topeka 2023 Operating Budget.

Rachelle Mathews, Acting Finance Director, stated the proposed amendments total $3,729,962 increasing expenditures from $9,286,954 to $13,016,916.

Mayor Padilla opened the public hearing and asked if there was anyone present who would like to speak to the matter.
Upon no one appearing, the public hearing was closed.

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

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

ORDINANCE NO. 20469 introduced by Interim City Manager Richard U. Nienstedt, providing for a nonexclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka until December 31, 2024, and replacing the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2023, was presented.

Randy Phillips, Topeka Fire Chief, reported the Topeka Municipal Code requires an ambulance franchise in order to provide services and approval of the ordinance would renew the franchise agreement.

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

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

RESOLUTION NO. 8487 introduced by Interim City Manager Richard U. Nienstedt, in accordance with Section 18.60.010 of the Topeka Municipal Code (TMC), approving a Conditional Use Permit on property located at 1610 NW Tyler and zoned “X-1” Mixed Use District to enable expansion of the existing multiple-family residential development, was presented. (CU23/05) (Council District No. 2)
Dan Warner, Planning Division Director, reported the request would allow expansion to the existing eight unit apartment building. He stated the applicant conducted a Neighborhood Information Meeting where no concerns were expressed directly related to the project. He noted the Planning Commission and City Planning Division recommended approval.

Councilmember Valdivia-Alcala spoke in support of development and stated she has received no comments in opposition of the development.

Deputy 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.

Councilmember Valdivia-Alcala declared ex parte communication.

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

ORDINANCE NO. 20470 introduced by Interim City Manager Richard U. Nienstedt amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code on property located at 2900 SE Kentucky Avenue rezoning from “O&I-2” Office and Institutional District all to “PUD” Planned Unit Development District with O&I-2 uses and Automobile Sales, was presented. (PUD 23/07) (Council District No. 4)
Dan Warner, Planning Division Director, reported the request to change the zoning was for automobile sales and the Planning Commission and City Planning Division recommended approval.

Councilmember Duncan asked how a parking violation would be handled.

Director Warner reported if the applicant did not follow parking requirements as approved an additional zoning change would be required.

Deputy 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.

No ex parte communication was declared by Governing Body members.

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

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

DISCUSSION concerning the creation of Common Consumption Areas and designating area boundaries, was presented. (The Policy and Finance Committee recommended approval by a vote of 2-0-0 on December 6, 2023.)
Councilmember Duncan, Policy and Finance Committee Chair, reported a few cities have already adopted common consumption areas, and the proposed ordinance would be discussed on December 19, 2023 and January 2, 2023, with the intent to approve on January 9, 2023. He reported the proposed Common Consumption Areas "CCA" to be established are located in NOTO and Downtown Topeka, allowing for individuals to possess and consume alcoholic liquor outside of a licensed bar, restaurant, or other eligible establishment that is permitted to sell alcoholic beverages by the State of Kansas. He stated other areas of the city can apply; it would not be required on private property such as Fairlawn Plaza; and businesses located in a CCA could opt out. He highlighted signage, serving container and boundary requirements as it relates to the possession, consumption and purchase of alcoholic beverages.

Amanda Stanley, City Attorney, stated the City will be the permit holder and the businesses would be allowed to participate in the designated CCA.

Mayor Padilla asked when the ordinance would go into effect.

Councilmember Duncan stated he anticipates early spring as it will take a few months for the City to take the necessary actions to administer the CCA including implementing appropriate regulations.

City Attorney Stanley reported the City must also apply and receive a common consumption permit from the State of Kansas Alcohol and Beverage Control (ABC) Division.

Councilmember Hiller questioned if the boundaries encompass both sides of the streets. She suggested the hours be amended to start earlier in the day and end at the same time, Sunday through Saturday for consistency. She also questioned if events occurring along or partially located within the boundary of a CCA would be required to secure a permit.
City Attorney Stanley confirmed the CCA boundary would be considered the actual streets listed in the ordinance and would only include the land inside the boundaries, not both sides of the streets.

Councilmember Duncan reported events located outside the CCA as well as private and/or special events located inside the CCA will still be required to secure the proper permits from ABC. He also reported businesses will have the option to make their own decision as it relates to participating in the CCA zone; and he would be amendable to an earlier time; however, they want to be respectful of downtown residents.

DISCUSSION regarding an amendment to the Wanamaker Hills Community Development Improvement District (CID) Development Agreement, was presented.

Bob Johnson, Polsinelli Law Firm, reported approval would amend the development agreement approved by the Governing Body in 2019 for the CID located at SW 17th Street and Wanamaker Road. He reported the request to amend was due to the departure of Bed, Bath & Beyond and the developer was requesting changes to the original development agreement to include a Home Goods Store, a strong sales tenant. He stated the district was a sales tax funded "pay as you go" district with no impact to the City's budget, and the amendment will increase the developer’s total investment from $31.4 million to $39.3 million for Phase I ($8.5 million more than original agreement), or from $33.9 million to $44.0 million for Phase II ($10.1 million more than original agreement). He stated the 1% CID and commencing/ending date will remain unchanged. He reported the developer seeks to increase the maximum reimbursement amount from $6,046,550.00 to $8,960,023 for Phase I, or from $6,780,698.00 to $11,656,629 for Phase II.
Councilmember Kell asked if the TJ Maxx Store located at 2170 SW Wanamaker Road would close as a result of the Home Goods Store opening. He also questioned if there would be sufficient parking for the new store.

Councilmember Duncan spoke in support of the development due to the large investment of the area and its success. He asked if the request was to approve Phase I only.

Amanda Stanley, City Attorney, stated the request was to approve Phase I with a deadline contingency on Phase II.

Councilmember Hiller expressed concern with over investing and asked Bob Johnson to comment on the “but for” clause as it relates to Phase II of the project.

Bob Johnson reported the Bed Bath & Beyond bankruptcy had nothing to do with the performance of the development and in regards to the “but for” clause, without the increase of the CID cap the Home Goods deal would not take place and the financials for Phase II would not be feasible. He noted Phase II will require a high-level retailer.

Councilmember Dobler expressed his appreciation for the development. He spoke in support of the amendment as it would not increase property taxes and allow for the capture of increased sales tax revenue.

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

Brenda Younger, City Clerk, provided an overview of the December 19, 2023 Governing Body meeting agenda.

Councilmember Kell urged community residences to be mindful of the safety of school children during the winter break.
Councilmember Hiller announced the Topeka United Multicultural Holiday event on December 13, 2023, at 7:00 p.m. located at First United Methodist Church at 600 SW Topeka Boulevard, Topeka.

Councilmember Valdivia-Alcala announced the celebration of the “Feast of Our Lady of Guadalupe” on December 12, 2023.

Councilmember Ortiz thanked Public Works Director Braxton Copley for promptly fixing the SE 6th Street and S. Kansas Avenue traffic signal.

Director Copley recognized City Staff for their quick response to repair the traffic signal.

Mayor Padilla thanked all citizens, City staff and Governing Body members for extending their heartfelt condolences regarding the loss of his mother.

NO FURTHER BUSINESS appearing the meeting adjourned at 7:13 p.m.

(SEAL)                                         ________________________________

Brenda Younger City Clerk