

**Governing Body Minutes – November 19, 2019**

CITY COUNCIL CHAMBERS, Topeka, Kansas, Tuesday, November 19, 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, Clear, Ortiz, Emerson, Padilla, Jensen, Dobler, Coen and Lesser -9. Mayor De La Isla presided -1.

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

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

PRESENTATION on the City of Topeka Annual Winter Operations Plan was provided by Jason Peek, Public Works Director.

PRESENTATION on the City of Topeka Utility Services 3<sup>rd</sup> Quarter Report was provided by Braxton Copley, Utility Deputy Director.

THE CONSENT AGENDA was presented as follows:

ORDINANCE NO. 20219 introduced by City Manager Brent Trout, allowing and approving City expenditures for the period of October 5, 2019 through November 1, 2019, and enumerating said expenditures herein, was presented.

ORDINANCE NO. 20220 introduced by City Manager Brent Trout, concerning Appendix C of the International Fire Code, repealing Section 14.40.130 of the Topeka Municipal Code, was presented.

MINUTES of the regular meeting of November 12, 2019, was presented.

APPROVAL of the following Cereal Malt Beverage Licenses were presented:

<u>Business Name</u>	<u>Address</u>
Chuck E. Cheese #961	2215 SW Wanamaker Road
Glory Days Fleming Place	1033 SW Gage Boulevard Suite 600
Glory Days Lake Shawnee	3310 SE 29 <sup>th</sup> Street

Business Name (continued)

Hooters of Topeka  
A&B LLC dba Low Cost

Address

6100 SW 10<sup>th</sup> Avenue  
3101 SE 6<sup>th</sup> Avenue

Councilmember Jensen moved to approve the consent agenda. The motion seconded by Councilmember Clear carried unanimously. (10-0-0)

ORDINANCE NO. 20221 introduced by City Manager Brent Trout authorizing and directing the issuance, sale and delivery of \$1,625,000 Taxable General Obligation Temporary Notes, Series 2019-C, of the City of Topeka, Kansas; providing for the levy and collection of an annual tax, if necessary, for the purpose of paying the principal of and interest on said notes as they become due; making certain covenants and agreements to provide for the payment and security thereof; and authorizing certain other documents and actions connected therewith, was presented.

Jessica Lamendola, Administrative and Financial Services Director, reported the temporary notes will fund seven projects that have been included in approved capital improvement plans. She stated it was indicated that the City would use cash reserves as the funding source to pay for these projects; however, operating funds have been used as the funding source. She noted the proposed transaction will use cash reserves that are currently held within the City's Debt Service Fund to pay off the temporary note at maturity, and thereby use those cash reserves as the funding source for the projects.

Councilmember Jensen 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, Clear, Ortiz, Emerson, Padilla, Jensen, Dobler, Coen, Lesser and Mayor De La Isla -10.

AUTHORIZING a public hearing date of December 10, 2019, for the purpose of hearing and answering objections of taxpayers relating to the proposed amendments to the 2019 Operating

Budget was presented.

Nick Hawkins, Administrative and Financial Services Deputy Director, reported approval authorizes publication of the Public Hearing Notice establishing a public hearing date of December 10, 2019, to consider 2019 budget amendments. He stated staff has identified necessary amendments for the following funds totaling \$2,345,156:

- Special Alcohol Fund - The 2019 adopted budget is \$570,000, the recommendation is to increase the budget authority to \$669,206.
- Federal Funds Exchange - The newly established fund had no prior budget, the recommendation is to approve an expenditure authority of \$1,305,952.
- Special Highway Fund - The 2019 adopted budget is \$7,578,445, the recommendation is to increase the budget authority to \$8,478,445.
- Information Technology Fund - The 2019 adopted budget is \$4,017,288, the recommendation is to increase the budget authority to \$4,057,288.

Councilmember Coen moved to authorize publication of the notice and approve a public hearing date of December 10, 2019. The motion seconded by Councilmember Jensen carried unanimously. (10-0-0)

RESOLUTION NO. 9152 introduced by City Manager Brent Trout, consenting to the establishment of Shawnee County Main Sewer District, No. 87, Lateral District No. 3, was presented.

Brent Trout, City Manager, stated Shawnee County was requesting consent from the City of Topeka to establish a sewer district.

Rick Schmidt, Schmidt, Beck & Boyd Engineering, LLC reported the developer of the Sherwood Village Subdivision has filed a petition with the Shawnee County Board of Commissioners to establish a sewer district that would service the new subdivision. He stated because the sewer district will extend into city limits, state law requires consent by the City, and if the Governing Body consents, the County Clerk will set the matter for a public hearing before the County Commission which will decide whether to create the district.

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

ORDINANCE NO. 20222 introduced by City Manager Brent Trout, concerning zoning regulations for small cell wireless facilities, amending City of Topeka Code Sections 18.55.030, 18.55.190, 18.60.010 and 8.225.010 and repealing original sections was presented.

Brent Trout, City Manager, reported the ordinance was discussed at the November 12, 2019, Governing Body meeting and staff recommends approval as presented.

Councilmember Emerson moved to adopt the ordinance. The motion was seconded by Councilmember Jensen.

Councilmember Hiller expressed concern with the City having more control over where these types of small cell wireless facility towers will be located. She requested staff provide Governing Body members with periodic updates or quarterly reports on tower locations within each council district.

Brent Trout reported staff will provide updates to the Governing Body as well as monitor Federal Communications Commission (FCC) regulations and will alert the Governing Body of any changes that occur so they can inform residents.

Councilmember Emerson moved to adopt the ordinance. The motion seconded by Councilmember Dobler carried. The Mayor did not vote. (9-0-0)

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

ORDINANCE NO. 20223 introduced by City Manager Brent Trout creating a new Chapter 8.65 of the Topeka Municipal Code requiring registration of vacant properties and properties that are the subject of mortgage foreclosure proceedings. (*Deferred from the meeting of October 15,*

2019.)

Brent Trout, City Manager, reported staff made language modifications to the proposed ordinance based on the input received from at the October 15, 2019, Governing Body meeting.

Sasha Haehn, Department of Neighborhood Relations Director, provided an overview of the major language changes in the proposed ordinance from the October 15, 2019, Governing Body meeting. The language modifications included the following:

- Adjusted the threshold period for staff to consider a chronically vacant property from 60 days to 180 days.
- Added language specifying that properties intended for the vacant property portion of the program will be chronically vacant and unutilized with the intent to narrow the scope of vacant properties to address the problem properties where there are no plans for productive use of the property.
- Adjusted the annual registration fee for vacant properties down to \$125 bi-annually or \$250 annually.
- Language has been added to specify properties that have acting building permits or active renovation or rehabilitation work that is on-going will be excluded from the registration requirements.

Councilmember Jensen clarified that the intent of the ordinance is not to include properties that are vacant during the winter as long as the utilities remain on.

Sasha Haehn confirmed it was not the intent of the ordinance to target “snow birds.”

Greg DeBacker thanked staff for adjusting the language; however, he opposes implementing the registration program and believes it is unnecessary. He suggested the Governing Body work with Shawnee County to get vacant properties sold and back on the tax roll.

Anthony Garvin spoke in opposition of the ordinance and the additional fees associated with the registration program. He stated he believes the ordinance would have a major effect on the properties he buys from tax sales because owners have one-year to reclaim their property; therefore, no improvements can be made. He suggested the Governing Body impose taxes on non-residents instead of the citizens that reside within city limits.

Steve Vogel spoke in opposition of the ordinance. He referenced the stagnate population of Topeka and believes the City should concentrate on increasing population through the rehab of dilapidated houses. He also stated he believes the new program is not business friendly and a step in the wrong direction.

Joseph Ledbetter thanked staff for the modification of the language; however, he still opposes the ordinance in theory. He questioned what the registration fees will be used for.

Pat DeLapp distributed a handout. He spoke in opposition of the ordinance and stated he believes it is not needed as there are other State and Federal programs that could be utilized by the City instead of implementing the proposed ordinance.

Mary Froese stated she agrees there continues to be an issue in the city with vacant and/or foreclosed properties and the negative effect it has on property value in neighborhoods; however, she believes the solution to the problem is educating people on the many different housing regulations so they better understand the processes involved.

Sasha Haehn provide the following responses to comments made by the public:

- The purpose of the ordinance is to incentivize owners of vacant and underutilized property blighting the neighborhoods into productive use - not to generate revenue for the City.
- The fees will be contributed to the general fund and will support the operations of the departments supported by the general fund. These fees are connected to the Code Enforcement Division by helping to offset the cost of caring for the properties that are not owned by the City.
- The City could allow vacant properties to be maintained according to IPMC standards; however, these properties are causing real problems in neighborhoods.
- Demolition and rehab was used as an example for tools that should be considered. The City already has a robust demolition program resulting in over 1,000 properties being demolished over the past four years. She reported millions of dollars are approved annually by the Governing Body that is used towards the rehabilitation of properties in the community.
- The registration program would be an additional tool available to the City to address chronically vacant and unutilized properties as well as dealing with foreclosed properties.
- The purpose of the resident agent requirement would be to help the City deal with emergency situations of vacant or foreclosed properties.

- The intent of the foreclosure registration is to make sure the City has the correct name of financial institute responsible for the property – at the closure of proceedings, not during. She noted staff was confident in the language of the foreclosure registration as drafted and believes it is specific enough for mortgaged properties that have been foreclosed.

Brent Trout reported the ordinance would not address any zoning issues and the City continues to consider implementing a land bank option in the future. He stressed the importance of the ordinance and stated he believes the registration program will be an impactful tool to help improve neighborhood properties.

Councilmember Lesser spoke in support of providing staff a tool that will allow them the resources needed to locate owners. He thanked staff for their work on the proposal.

Councilmember Dobler asked if there was an appeal process.

Councilmember Emerson referenced properties actively being advertised for rent or sale. He expressed concern with the interpretation of the ordinance and believes the language was too broad; therefore, he will not support the ordinance as written.

Councilmember Ortiz stated she concurs that staff needs a tool to address these types of properties; however, she was uncertain if this was the right tool. She suggested sending the ordinance back to committee for further review and expressed the importance of a consistent policy that can be applied to all properties. She spoke in opposition of the fee amount and stated she believes it is too high.

Councilmember Hiller expressed her appreciation to staff and thanked them for their work on the issue. She stated she does not believe the idea will be viable and questioned the legal risks that may be associated with the proposal. She listed a number of concerns related to the language of the ordinance and how the program would be administered.

Councilmembers Clear, Jensen, Lesser and Padilla thanked staff for their work on the ordinance and presenting a program that will serve as a good first step in addressing blighted

property throughout the community.

Councilmember Hiller stated she believes the language in the ordinance was not specific enough to exceptions outlined by staff.

Councilmember Lesser moved to adopt the ordinance. The motion seconded by Councilmember Padilla carried. Councilmembers Hiller, Ortiz and Emerson voted “no.” The Mayor does not vote. (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Clear, Padilla, Jensen, Dobler, Coen and Lesser -6. Noes: Hiller, Ortiz and Emerson -3.

CHARTER ORDINANCE introduced by Councilmembers Jeff Coen, Tony Emerson and Brendan Jensen, concerning term limits of the mayor and councilmembers, amending Section A2-22 and repealing said original section, was presented.

Councilmember Coen, Policy and Finance Committee Chair, reported the charter ordinance was discussed at the October 8, 2019, Governing Body meeting. He stated the primary components of the proposal include the following:

- May not be elected to office for more than two consecutive (four-year) terms in that office. [Exemption for serving a partial term]
- Disqualified from further service if person has served terms totaling sixteen consecutive years in that office; however, may serve again after at least a two-year break in service.
- Service resulting from an election occurring prior to November 3, 2020 not counted toward the total number of years a person can serve.
- If approved by voters at the November 3, 2020 election, date that terms would begin to count towards the limitation would be terms commencing in January, 2022 (following November 2021 election) for the Mayor and Council Members serving Districts 1, 3, 5, 7 and 9; and January 2024 (following November 2023 election) for Council Members serving Districts 2, 4, 6 and 8.

Mayor De La Isla clarified approval of the charter ordinance at this time would allow the issue to be decided by public vote in the November 2020 election.

Jim Reardon, 2014 Citizen Government Review Committee Chair, referenced the review of

the form of government conducted in 2014, and noted the proposal for implementing term limits was not a recommendation of the Review Committee. He noted approximately only 15% of cities impose term limits, and the majority of those cities, are large in population and need to address some type of illegal issue.

Councilmember Clear reported constituents have expressed their support of implementing term limits; therefore, she will support sending the proposal to a public vote.

Councilmember Padilla stated he believes the charter ordinance was not necessary because the public already has the ability to make the decision on who will be elected.

Mayor De La Isla spoke in support of allowing the people to vote on the issue.

Councilmembers Ortiz and Hiller stated they concur with the comments made by Councilmember Padilla and see no need to implement term limits.

Councilmember Jensen suggested delaying consideration of the charter ordinance until new Governing Body members are in place.

Councilmember Jensen moved to defer the charter ordinance until February 18, 2020. The motion seconded by Councilmember Padilla failed. Councilmembers Hiller, Clear, Emerson, Coen, Lesser and Mayor De La Isla voted “no.” (4-6-0)

Councilmember Coen moved to adopt the charter ordinance. The motion seconded by Councilmember Lesser failed. Councilmembers Hiller, Ortiz, Emerson, Padilla and Dobler voted “no.” (5-5-0)

DISCUSSION of proposed utility rate increases was presented.

Brent Trout, City Manager, stated the City has been working with Black & Veatch over the past year to develop and evaluate a comprehensive Utility Rate Study and much work has gone into determining the condition and replacement cycle of all Utility assets.

Braxton Copley, Utility Deputy Director, provided background on the process and stated the City has worked diligently with Black & Veatch to come to a responsible and manageable solution to its Utility infrastructure crisis. He stated after the presentation and discussion with the Governing Body, the potential rate changes will be presented to various use class groups in the city including industrial, commercial and residential. He noted staff will continue to take input, evaluate and make adjustments as necessary.

Anna White, Black & Veatch, provided an overview of the following:

- Rate Study Best Practices
- Rate Study Process including the objective and considerations given to the financial planning, cost of service analysis and rate design
- Repair and Replacement (R&R) Forecast Methodology
- Repair and Replacement Cost Scenarios (*Status Quo, Middle & Ideal*)
- Total Major CIP and R&R Costs for the Study Period (*Based on the Middle Scenario*)
- Days of Cash on Hand (*Based on the Middle R&R Scenario*)
- Debt Service Coverage – Annual Revenue Bond Coverage Test with and without No Revenue Increases (*Based on the Middle R&R Scenario*)
- Rate Setting Principles

Councilmember Hiller commended staff for the presentation. She stated the reason for the increase was due to the critical need to repair the original system as a result of deferred maintenance for many years.

Anna White stated many cities are having the same problem as Topeka and are trying to play catch up with deferred maintenance of infrastructure; however, Topeka is being proactive in the creation of an asset replacement model as it will serve as a great tool to monitor the type of plan needed along with corresponding investment levels.

Councilmember Hiller stated the history behind why the rate increase was being proposed continues to be a vital piece in helping citizens understand the need for a rate increase - the dollar amount compared to the proposed percentage of rate increases would be helpful.

Braxton Copley stated staff would provide a summary to the Governing Body.

Mayor De La Isla commended staff for their work in creating a comprehensive asset plan that works to address the problem – similar to the City’s Pavement Condition Index (PCI) program.

Councilmember Jensen thanked staff for the presentation and asked citizens to provide input and solutions to repairing the outdated system.

Councilmember Dobler noted the infrastructure problem was a symptom of a city that lacks growth.

Tim Zurawski commended Black & Veatch for the study. He stated revenue comes with growth and the issue of no growth in the city of Topeka must be addressed.

Joseph Ledbetter stated he believes the City needs to define the problem and create a plan to fix the problem before rates are increased. He expressed concern with high labor costs and low productivity and suggested privatizing repair services. He asked the City to allow citizen input on the issue.

Councilmember Dobler asked if the City has a program in place that monitors the number of breaks in certain areas. He also inquired on utility rebate programs offered by the City.

Braxton Copley reported breaks and areas that are highly likely to fail are monitored with a data driven software system. He also reported the City offers two programs that offer financial relief, the Water Share program and the Utility Rate Rebate program.

Mayor De La Isla noted the time was nearing 10:00 p.m.

Councilmember Ortiz moved to extend the Governing Body meeting past 10:00 p.m. The motion seconded by Councilmember Emerson carried unanimously. (10-0-0)

PUBLIC COMMENT was expressed by the following individuals:

David Jackson stated his request to waive the demolition order for his property located at 911 N. Kansas Avenue was denied. He stated he believes there is no support to promote and rehab

historic properties. He requested the Governing Body direct the City Manager to allow for a demolition waiver for his property as it would take approximately nine months to receive an official historic designation.

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

Brent Trout, City Manager, reported he has no intention to push for the demolition of the property located at 911 N. Kansas Avenue. He stated there have been issues related to this property spanning back four years including several meetings and administrative hearings in an effort to address the problems. He noted he understands the importance of the property located in the NOTO Arts District and the City will continue to work with Mr. Jackson to find a solution they can work through.

Councilmember Lesser inquired on the status of historic tax credits for the property located at 911 N. Kansas Avenue.

Councilmember Hiller referenced the difficulties in achieving historic designation of properties, specifically relating to the difficulty in the layering of finances related to tax credits. She requested the City, in correspondence with the Mr. Jackson property issues, consider adding the historic preservation language to the City's code. She commended the Public Health and Safety Committee for their work on the camping ordinance and stated she looks forward to consideration of the ordinance on an upcoming agenda.

Councilmember Clear reported she toured the newly renovated Fire Station No. 3 and looks forward to seeing much needed renovations to other fire stations.

Councilmember Ortiz thanked the Public Health and Safety Committee for their work on the camping ordinance and announced the ordinance would be placed on an upcoming agenda.

Mayor De La Isla asked Governing Body members and citizens to put others first during the holiday season.

Councilmember Emerson thanked Highland Park High School for inviting him to address the National Honors Society.

Councilmember Padilla encouraged citizens to donate and help the Salvation Army meet their Red Kettle goal during the holiday season.

Councilmember Dobler reported he recently toured the Capper Foundation and commended the Foundation for the services they provide the community.

Councilmember Jensen moved to recess into executive session for a period of time not to exceed 20 minutes to discuss the acquisition of real property necessary for the Wanamaker Force Main Project related to 1910 NW Grove, in addition to one other additional property, as justified by KSA 75-4319(b)(6). In order to aid the discussion, the following individuals were present: Members of the Governing Body; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Utilities Deputy Director, Braxton Copley; and City Attorney, Lisa Robertson. No action was anticipated when the open meeting resumed in the Governing Body Chambers. The motion seconded by Councilmember Emerson carried unanimously. (10-0-0)

Councilmember Coen left the room.

The Governing Body meeting reconvened into open session and Mayor De La Isla announced no action was taken.

Councilmember Emerson moved to recess into executive session for an additional 10 minutes to continue the discussion on the acquisition of real property necessary for the Wanamaker Force Main Project with the same parameters as stated. The motion seconded by Councilmember Dobler carried. Councilmember Ortiz voted “no.” (8-1-0)

The Governing Body reconvened into open session and Mayor De La Isla announced no action was taken.

Councilmember Dobler moved to recess into executive session for a period of time not to exceed 10 minutes for consultation with the City's legal counsel to discuss attorney-client privileged matters regarding litigation involving the City, as justified by KSA 75-4319(b)(2). In order to aid the discussion, the following individuals were present: Members of the Governing Body; City Manager, Brent Trout; Deputy City Manager, Doug Gerber; Administrative and Financial Services Director, Jessica Lamendola; Chief of Litigation, Shelly Starr; and City Attorney, Lisa Robertson. No action was anticipated when the open meeting resumed in the Governing Body Chambers. The motion seconded by Councilmember Jensen carried. Councilmember Ortiz voted "no." (8-1-0)

The Governing Body reconvened into open session and Mayor De La Isla announced no action was taken.

Councilmember Clear moved to recess into executive session for a period of time not to exceed 10 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 and Human Resources Director, Jacque Russell. No action was anticipated when the open meeting resumed in the Governing Body Chambers. The motion seconded by Councilmember Ortiz carried. Councilmember Ortiz voted "no." (8-1-0)

The Governing Body reconvened into open session and Mayor De La Isla announced no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:48 p.m.

(SEAL)

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Brenda Younger  
City Clerk