Council Minutes – May 20, 2014

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 20, 2014. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt and Harmon -8. Mayor Larry E. Wolgast presided -1.

AFTER THE MEETING was called to order, Reverend Dr. Neil F. Buono, Prince of Peace Lutheran Church, gave the invocation.

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

A PRESENTATION on the Citizen Government Review Committee Report *(Attachment A)* was provided by Jim Reardon, Committee Chair.

Mayor Wolgast introduced the members of the Citizen Government Review Committee including Jim Reardon, Committee Chair; Maynard Oliverius, Tina Williams, John Nave and Judy Moler.

Jim Reardon stated the Committee was impaneled to study and review the current form of government of the City of Topeka and make recommendations to the Governing Body for amendment or modification. He provided a brief history of the different forms of government dating back to 1983. He reported there was one consistent area of concern expressed by current and former elected officials, as well as, citizens and area business professionals and that is, "there is no clear direction for the mayor." He listed the following recommendations of the Committee members agreed to by unanimous consent:

- Section A2-4. Form of Government: Supports the Council—Manager form of Government.
- Section A2-21. Composition: That all 9 districts are retained and that all district representatives have equal voice, vote and power on the Governing Body.

- That all ten Governing Body members will be voting members with the exception that the Mayor will not have a vote on any matter upon which he/she has been given veto power by operation of law.

- That Governing Body members be elected on a nonpartisan basis. That all members continue to stand for election every four years on a staggered election basis. That Primary and General elections continue to be held at the current election dates.

- That the Governing Body be a 10 member body consisting of 9 members running for election from the council districts where they reside and a Mayor who resides in the city and is elected at-large. During a primary election held within the district, the two nominees from each district receiving the greatest number of votes within the district will stand for election in the General election on an at-large basis.

- Changing references to "Council" or "Councilmember" to "Governing Body" and "Governing Body" member. The committee would retain the language indicating that the Governing Body will have no administrative powers.

- That the Mayor serves as the presiding member for the purpose of conducting the business meetings of the city. As such, the Mayor would chair committees of the entire body, such as the budget committee and the committee of the whole.

- That the Mayor shall review the budget and strategic plan prepared by the City Manager and provide input and recommendations to the Governing Body.

- The governing body adopts language drafted by Deputy City Attorney Mary Feighny to bring the Topeka Charter Ordinance into compliance with State law.

- That a long range planning committee made up of city and county leaders be convened for the purpose of resolving issues and implementing a workable plan to consolidate city-county government.

Jim Reardon thanked the Governing Body for allowing the committee to serve.

Councilmember Hiller expressed her appreciation to the Citizen Government Review Committee for being thorough and engaging the public through the entire process.

Mayor Wolgast reported there is an additional page under Appendix No. 2 which outlines examples of items upon which the Mayor votes. He noted Appendix No. 3 indicates changes need to be made to the charter ordinance to follow State statutes in regards to the Mayor's vote, veto and veto override by the Council. He stated the well-researched arguments for the mixed

at-large system (and other topics) presented in a paper by Mr. Allyn Lockner were very informative and commented on the process moving forward with the Council voting on the suggested recommendations.

Councilmember Schmidt thanked the committee for their service and taking on the difficult task. He stated a great deal of information was uncovered and commended them for their work.

Councilmember Hiller questioned if the public should vote on the recommendations instead of the Council.

Jim Reardon stated he did not know if the recommendations should come before the public for a vote at this time.

Mayor Wolgast stated he believes it would depend on the recommendation and how they should be handled as stated in the charter ordinance.

Jim Reardon stated some details are very limited in the charter ordinance which lead the committee to the understanding of why it is important to have this type of government review every ten (10) years.

Jim Colson, City Manager, requested to withdraw Council agenda items 5C, a resolution regarding the 2015-2019 Capital Improvement Program (CIP) and 2015-2017 Capital Improvement Budget (CIB); and item 5D, a resolution regarding the issuance of revenue bonds for issuance of Enterprise Fund projects from the Council agenda and place the items on the June 3, 2014, Council agenda. He reported the request is due to the length of the Council agenda this evening and questions and/or concerns that have been raised by Councilmembers concerning the CIP and CIB.

Upon hearing no objections, Mayor Wolgast announced the items would be withdrawn from the Council agenda and placed on the June 3, 2014, Council agenda.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Mike Wilson to the Board of Building and Fire Appeals for a term ending May 31, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Thomas Woltkamp to the Board of Building and Fire Appeals for a term ending May 31, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Jeff Romaine to the Board of Plumbing Examiners for a term ending May 31, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Neil Carlson to the Board of Plumbing Examiners for a term ending May 31, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Charles Smelter to the Board of Mechanical Examiners for a term ending June 30, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Bill Beachy to the Topeka Human Relations Commission for a term ending May 31, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Lorean Williams to the Topeka Human Relations Commission for a term ending May 31, 2016, was presented.

RESOLUTION NO. 8618 introduced by Councilmember Sylvia Ortiz, granting Randy Wheat an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

MINUTES of the regular meeting of May 13, 2014, were presented.

Councilmember Harmon moved to approve the consent agenda. The motion seconded by Councilmember De La Isla carried unanimously. (8-0-0)

ORDINANCE NO. 19905 introduced by Councilmember Chad Manspeaker, concerning Domestic Partnership Registry by creating new Chapter 2.150 of the City of Topeka Municipal Code, was presented.

Councilmember Manspeaker thanked citizens and staff involved in crafting the legislature; and conducted many public meetings with no opposition expressed by those that attended; however, he reported he received many emails containing a form letter expressing opposition to the ordinances. He highlighted his response to the form letter by stating, sexual orientation is an identity, not a behavior, and has been covered in the city's employment policy for some time with no concerns; the domestic partnership does not create a marriage substitute; it would not insure any rights or responsibilities; management of the registry would not be time consuming; fees would be designed to cover the costs so no tax dollars would be spent; the American Psychological Association, the American Psychiatric Association and the American Medical Association have all endorsed gender identity as an authentic identity; and Gender Identity Disorder is no longer a diagnosis. He also stated approval of the ordinances supports economic development by opening the doors for employment to the most qualified professionals.

Chad Sublet, City Attorney, provided the definition of a domestic partner; listed the domestic partnership registry criteria; outlined the registration process and discussed procedures and fees. He also commented on the procedure for removal from the registry and criteria.

Vicki George, Pedro Irigonegaray, Shaun Kelly, Gary Smith, Bill Beachy, Amelia Markham, Stephanie Mott and Judy Pfeifer spoke in support of the ordinance. The following list highlights the comments made by these individuals:

- The registry would provide support and recognition to all couples
- All citizens should be treated equally
- The registry could allow families and children to have access to benefits that they deserve

- The registry would not violate the Kansas Constitution

Louis Dolton, Jan Medley, Mary Catherine Toburen, Frances Wood, Jim Lord, Harry Bishop, Gregory Smith, Robert Noland, Cecil Washington, Jim Hermesh and Kirk Nystrom spoke in opposition of the ordinance. The following list highlights the comments made by these individuals:

- Concerned with the effect the registry would have on the community and additional burden placed on the City
- Increased health risks
- Marriage is a union that should be between a man and woman only
- Requested the issue to be placed on the ballot for a public vote
- Referenced a Capital Journal newspaper article on September 22, 2013, which polled people about the ordinances and 62% opposed the issue
- Could create increases in healthcare costs

Councilmember Manspeaker thanked everyone for expressing their view and stated it is very important to have dialogue because the community shapes the future and keeps democracy strong.

Councilmember Manspeaker moved to adopt the ordinance. The motion was seconded by Councilmember De La Isla.

Councilmember De La Isla thanked the community for their involvement in the issue and urged those who oppose the issue to read the Bible in its full context that everyone is a person and should be treated as such. She reviewed the statistics and studies of a domestic partnership registry which can offer a higher caliber of professionals to the community. She stated she understands this is a difficult subject for most people; however, changes are made by everyday people and this would only allow domestic partners to receive benefits.

Councilmember Schmidt emphasized the ordinance provides a registry/documentation for any two people in a relationship to get benefits that are related to their employment and can provide the proof that some hospitals require so people can visit their partner. He noted his

constituents universally support the ordinance because it improves recruitment of professionals to the community. He referenced hate crimes in the community and stated if measures such as this ordinance help the equality in the community, he would fully support it.

Councilmember Ortiz asked if a fee has been established for the registry and if any legal rights have been established for individuals that register.

Chad Sublet stated a fee has not yet been established and the ordinance does not create any legal rights.

Councilmember Ortiz made a substitute motion to place the issue on the ballot. The motion was seconded by Councilmember Schwartz.

Councilmember Harmon asked the City Attorney if there are statutes that regulate the process of placing an issue on a referendum.

Chad Sublet stated he would direct staff to research the procedure to place an issue on a referendum and report back to the Council.

Councilmember Ortiz made a motion to amend the substitute motion to follow the process as stated by the City Attorney. The second concurred.

Councilmember Hiller spoke in opposition of the substitute motion and stated the issue is straightforward and would not need the time or expense of a public vote.

The motion to amend the substitute motion to direct staff to research the procedure that would allow the Council to take the necessary steps to place the issue on a referendum failed. Councilmembers Hiller, Everhart, De La Isla, Manspeaker, Schmidt and Harmon voted "no." (2-6-0)

The motion to adopt the ordinance carried. Councilmembers Ortiz, Schwartz and Harmon voted "no." (5-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Everhart, De La Isla, Manspeaker and Schmidt -5. Noes: Ortiz, Schwartz and Harmon -3.

ORDINANCE NO. 19906 introduced by Councilmember Chad Manspeaker, concerning the affirmative action program for City employees amending City of Topeka Code Section 2.135.020 and 2.135.040 and specifically repealing said original sections was presented.

Chad Sublet, City Attorney, provided an overview of each section of the ordinance.

Councilmember Ortiz asked the City Attorney to define "good faith effort" and questioned if it is guaranteed.

Chad Sublet stated good faith effort is defined as a diligent and honest effort under the same set of facts or circumstances.

Vicki George, Pedro Irigonegaray, Amy Cohen, Bill Beachy, Liatris Studer, Stephanie Mott and Judy Pfeifer spoke in support of the ordinance. The following list highlights the comments made by these individuals:

- Gender identity encourages diversity in the community
- Would provide equality under the law
- Topeka Human Relations Commission supports the ordinance
- Would provide the most qualified people to be employed with the City of Topeka

Louis Dolton, Jim Lord, Harry Bishop, Robert Noland, Jan Medley, Gary Smith, and Joe Foreman spoke in opposition of the ordinance. The following list highlights the comments made by these individuals:

- The definition of gender identity is confusing and subjective
- Requested the issue to be placed on the ballot for a public vote
- Could have serious ramifications
- Should focus on consistent benefits for all employees

Councilmember Manspeaker moved to adopt the ordinance. The motion was seconded by Councilmember De La Isla.

Councilmember Ortiz made a substitute motion to direct staff to research the procedure that would allow the Council to take the necessary steps to place the issue on a referendum. The motion was seconded by Councilmember Schwartz.

Councilmember Hiller spoke in opposition of the substitute motion. She stated the ordinance effects the employment practices of the City of Topeka and the Governing Body should make this decision as the policy making body.

Councilmember Everhart stated she believes the issue would not be allowed to be presented to the public on a referendum.

Chad Sublet stated the ordinance would be considered administrative in nature; therefore, it would not be allowed to be placed on a ballot.

The substitute motion to direct staff to research the procedure that would allow the Council to take the necessary steps to place the issue on a referendum failed. Councilmembers Hiller Everhart, De La Isla, Manspeaker, Schmidt and Harmon voted "no." (2-6-0)

Councilmember Schmidt spoke in support of the ordinance and stated it would treat all people with respect.

Councilmember Hiller spoke in support of the ordinance and stated she believes everyone should have an equal opportunity for employment and be treated with respect on the job with the same benefit options as anyone else.

Councilmember De La Isla spoke in support of the ordinance and stated there is a need to address this issue and protect classifications.

Councilmember Ortiz stated she believes the ordinance would not resolve the issue because people need to change from within themselves to accept others.

The motion to adopt the ordinance carried. Councilmembers Ortiz, Schwartz and Harmon voted "no." (5-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Everhart, De La Isla, Manspeaker and Schmidt -5. Noes: Ortiz, Schwartz and Harmon -3.

ORDINANCE NO. 19907 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of March 29, 2014, through April 25, 2014, and enumerating said expenditures therein was presented.

Doug Gerber, Administrative and Financial Services Director, reported approval would authorize City expenditures in the amount of $11,411,015.71.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt and Harmon -8.

RESOLUTION NO. 8619 introduced by Deputy Mayor Denise Everhart regarding the City Council's 2015 budget priorities was presented.

Councilmember Everhart moved to approve the resolution. The motion was seconded by Councilmember Schmidt.

Councilmember Harmon spoke in support of the resolution and stated the listed priorities provide sufficient direction for the 2015 City of Topeka Operating Budget.

Mayor Wolgast stated he believes the timeline to establish Council priorities for the budget should occur earlier in the year. He suggested reviewing the process for next year's priorities.

Councilmember Ortiz stated she concurs with Mayor Wolgast that the timing does not allow the opportunity for much discussion. She asked for clarification regarding the support of infrastructure and what that would involve.

Councilmember Everhart reported investing in infrastructure was a top priority expressed by the public, as well as, public safety.

Jim Colson, City Manager, stated the concept is to continue the program to maintain and look for ways to improve infrastructure and address long term issues with utilities.

Councilmember Hiller spoke in support of the resolution and expressed her appreciation that the priorities include fiscal sustainability.

The motion to approve the resolution carried unanimously. (8-0-0)

Retail Cereal Malt Beverage License applications were presented for the following:

Business Name	Address
Casey's General Store #2261	600 SE Rice Road
Casey's General Store #2312	4441 SE California Avenue
Dillons #47	2815 SW 29th Street
Dillons #54	800 NW 25th Street
Dillons #58	1400 SW Huntoon Street
Dillons #67	2010 SE 29th Street
Dillons #87	5311 SW 22nd Place
Dillons #88	4015 SW 10th Avenue
Kwik Shop 705	1114 NW Topeka Boulevard
Kwik Shop 713	5700 SW 21st Street
Kwik Shop 720	102 SW 37th Street
Kwik Shop 729	1700 SW Topeka Boulevard
Kwik Shop 740	2277 SW 10th Avenue
Kwik Shop 757	2619 SW 21st Street
Kwik Shop780	2520 SW 6th Avenue
Kwik Shop 781	4500 SW Topeka Boulevard
Kwik Shop 788	1414 SW 17th Street
Kwik Shop 789	746 NE Wabash
Walgreens #02846	2915 SW Gage Boulevard
Walgreens #03069	1001 SW Topeka Boulevard
Walgreens #03772	2901 SE California Avenue
Walgreens #04557	2121 SW Fairlawn Road
Walgreens #04782	3696 SW Topeka Boulevard

Business Name	Address
Walgreens #04981	3630 SW Wanamaker Road
Walgreens #07778	1001 SW Gage Boulevard
Walgreens #15601	2101 NW Topeka Boulevard
Walmart #1802	1501 SW Wanamaker Road
Walmart #2131	1301 SW 37th Street
Walmart #5441	2600 NW Rochester Road

Councilmember Everhart moved to approve the retail cereal malt beverage license applications as presented. The motion seconded by Councilmember Schwartz carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

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

The City Clerk provided a brief summary of the June 3, 2014, Council agenda.

Jim Colson, City Manager, announced a town hall meeting would be scheduled to gather public input on what qualities the community would like to have in a Police Chief on June 2, 2014, or June 9, 2014, at the Cyrus K. Holliday building located at 620 S.E. Madison with the time to be determined. He stated it is important to understand what the community sees as challenges, as well as, what works well in regards to the Topeka Police Department.

Mayor Wolgast stated the City of Topeka was served well by First Lady Michelle Obama, and the great speech she gave in honor of Senior Appreciation Day on May 16, 2014, at the Kansas Expocentre. He noted it was a great event and commended the 2014 high school graduates on their achievements. He reported he attended the Kansas Mayors Conference which was an extremely educational event. He commented on the City of Manhattan and the presentation given at the conference concerning the development of their downtown area. He encouraged the Governing Body to visit and experience the area for themselves.

Councilmember Schwartz encouraged citizens to celebrate and remember the purpose of the Memorial Day holiday.

Councilmember Schmidt thanked the community for participating in the Brown v. Board of Education 60th Anniversary celebration events, as well as, the outstanding speech given by First Lady Michelle Obama. He reported the community spirit was remarkable and included a large number of people celebrating many events and Topeka's role in the civil rights movement.

Councilmember Harmon referenced the unlawful employment practices ordinance approved by the Council and expressed concern with the language of the ordinance being unique to the City of Topeka. He stated he believes any discrimination other than the ability to perform a job is wrong. He requested that staff draft a language amendment that would accomplish a similar statement, that "there is no basis for discrimination on any level except the lack of ability to perform the job."

Councilmember Hiller commended staff and area organizations for the positive responses in resolving a number of community issues. She also commended those involved in the Brown v. Board of Education 60th Anniversary events and the excellent speech given by First Lady Michelle Obama. She noted it was a great weekend for the city of Topeka.

Councilmember Ortiz thanked Councilmember Hiller and Councilmember Schmidt for representing the Council during the Brown v. Board of Education 60th Anniversary celebration events. She asked Council District No. 2 constituents to be patient while she tries to respond to their questions and concerns as soon as she is able. She announced the Topeka Metro Transit Kids Ride Free Program would be provided to kids through age 18 from May 15th through August 15th on fixed bus routes. She congratulated the 2014 graduates and reminded citizens to slow down and watch for children during the summer months.

Councilmember Everhart congratulated all 2014 graduates and commented on the outstanding speech given by First Lady Michelle Obama, as well as, the excellent speeches given by the student speakers.

Councilmember De La Isla reported the Economic and Community Development Committee hosted meetings to address social service funding. She stated she is honored and delighted to work with such committed individuals as the Topeka City Councilmembers and Mayor. She stated May 16-18, 2014, was an example of what Topeka has to offer and believes the city should celebrate its rich history more often.

Councilmember Manspeaker stated he believes he has an obligation and duty to serve the members of the Lesbian, Gay, Bisexual and Transgender (LGBT) community to see that they have the same rights as everyone else. He commented on the process of drafting the two ordinances regarding the domestic partnership registry and unlawful employment practices and believes it was a very open process that provided plenty of time for public input. He noted he would consider all amendments to the ordinances to ensure the City has the best possible employees because it is about fighting for people in our community. He thanked all the people who helped him through the endeavor.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:43 p.m.

_____
Brenda Younger
City Clerk

THE CITIZENS GOVERNMENT REVIEW COMMITTEE

REPORT

City of Topeka, Kansas
May 20, 2014

TABLE OF CONTENTS

PART ONE: Review and Recommendations

I.	INTRODUCTION	3
II.	HISTORY	3
	1990 Topeka Charter Ordinance Review	4
	1999 Citizen's Review Committee	4
	2005 Council/Manager Ordinance	5
III.	COMMITTEE PROCESS AND METHODS	6
IV.	AREAS OF CONCERN	6
	No Clear Direction	6
	At-Large Representation	8
	Election Dates	9
V.	RECOMMENDATIONS : Functions, Powers & Duties	10
VI.	OTHER RECOMMENDATIONS	15
PART TWO:	Meeting Summaries	14
PART THREE:	Public Hearings	19
	Hearing No. 1	21
	Hearing No. 2	23
	Website Comments	23
PART FOUR:	City Councilmember Interviews	24
PART FIVE:	City Manager Interview	25
PART SIX:	Concluding Comments	28

APPENDICES

Attorney General Opinion No 2005-18	1
When Does the Mayor Vote?	2
Charter Ordinance Drafting Changes	3
Governing Body Election Comparison Chart	4
Lochner Paper: Improving Topeka's Form of Government	5
Position Paper: Kansas League of Municipalities	6
Governing Body Membership & Meetings Comparison	7
City Election Comparisons	8

Presented by:

CITIZENS GOVERNMENT REVIEW COMMITTEE 2014

Jim Reardon - Committee Chair *(City Council District No. 6 Nominee)*

Jim is a graduate of Washburn University Law School. He is president of Peoples Wealth Management LLC investment advisors. Jim was a Topeka City Council member for 12 years and a former division director at the Kansas Dept. of Administration.

Judy Anderson Moler - Committee Member *(City Council District No. 9 Nominee)*

Judy is an attorney with extensive experience in local government law. She worked for the City of Wichita and the Kansas Association of Counties. She has served on the Mayor's Commission for the Status of Women and is a member of the League of Women Voters of Topeka-Shawnee County.

John Nave - Committee Member *(City Council District No. 4 Nominee)*

John served on the city council from 2003-2007. He was also on the Citizen's Government Review Committee that proposed our current form of government. He works for Goodyear Tire & Rubber Co. He is a graduate of Leadership Topeka 2001 and has served on various boards including United Way, Golden City Sertoma, Red Cross of Topeka, and Living the Dream, Inc.

Maynard Oliverius - Committee Member *(City Council District No. 7 Nominee)*

Maynard is a graduate of Fort Hays State University and the Master's program at the University of Minnesota. He served as President and Chief Executive Officer of Stormont-Vail Healthcare from 1996 until his retirement in 2012. He serves on several boards and Foundations including the Topeka Community Foundation; Security Benefit Fund Board, and the Stormont-Vail HealthCare Foundation Board.

Tina Williams - Committee Member *(City Council District No. 1 Nominee)*

Tina Williams, M.S., Ed., was a Spanish Language and English Language Learner Instructor for 10 years. She is currently an administrator at Washburn University in the Office of International Programs. She is the President of MANA de Topeka and active in community affairs.

PART ONE

REVIEW AND RECOMMENDATIONS

I. INTRODUCTION

"There is no 'wrong' form of government, it is only wrong if it is not working for the community it is being used in."

—Don Moler, former Executive Director of the League of Kansas Municipalities

The Citizens Government Review Committee is impaneled to study and review the form of government of the city of Topeka and make recommendations to the city's government body for amendment or modification. To our knowledge, this is the third Citizen's Review Committee authorized by Resolution of the City Council/Governing Body.

We found many positives about the current form of government and the men and women who are entrusted with the governance of our community. We heard few actionable complaints in the two public hearings held at the Topeka Public Library or from the interactive internet connections established through Mayor Larry Wolgast's office; through the City website; or by council member invitations to constituents.

As this report reveals, we received many thoughtful written and spoken recommendations from conferees who attended our committee meetings and citizens who attended our public hearings. Many of these recommendations have been incorporated in our recommendations herein. Several City Council members and Mayor Wolgast attended our sessions and provided helpful insight as well.

We did become aware of some common and recurrent themes or concerns from the public which have led to some of our recommendations. We also learned of areas of internal concern that need to be addressed by changes to the language to the Charter Ordinance and by clarifying the roles of our elected officials. These are identified and addressed in Section IV: Areas of Concern.

II. HISTORY

1983 Citizens Advisory Committee of Forms of Government

The first citizens committee was charged with researching the different forms of government and recommending what they considered the best form for Topeka. There were 16 members selected by the 5 members of the governing body (4 commissioners and the mayor) one representative from eight community groups and one member from each of the 3 Topeka senatorial districts.

The committee held six public hearings throughout the city and met weekly from August 1983 through March of 1984. The committee recommended the adoption of a new form of government-the Strong Mayor/Council/Chief Administrative Officer—which was placed on the November 1984 ballot. The measure passed and the new form of government began in April 1985.

1990 Topeka Charter Ordinance Review Committee

Pursuant to 1988 Ordinance, requiring the convening of a citizen review committee before July 1, 1989 and every 10 years thereafter,-the Council impanelled committee to review the City's form of government. The committee was comprised of 15 members: 3 selected by the Mayor, one representative appointed by each of the nine Council members, and 3 at-large members selected by the other committee members. Thirteen committee meetings were held between August 1989 and April 1990. The major issue appeared to be the need to clarify the role of the mayor and council. The governing body adopted some recommendations and rejected others.

Discussion: The Strong Mayor/City Council Form of Government

Doug Mays, former City of Topeka Councilmember, told the 2014 committee he ran for the first Topeka City Council because people were fed up with the Commission Form of Government and wanted local government to be more responsive. He said the hybrid Strong Mayor/Council Form of Government seemed intriguing, and he wanted to be a part of it. He noted it was a wonderful experience to serve under the new form of government with a clean slate; however, system flaws developed early in the Strong Mayor/Council Form of Government. After approximately two years it was apparent the mayor was given too much power which continued to show in years to follow.

"Topeka is a collection of neighborhoods, which has hurt Topeka in the past and still continues to do."—*Doug Mays former City Councilman*

Mr. Mays said over time it became apparent that Topeka was becoming more and more parochial rather than a city of the whole. The Strong Mayor/Council Form of Government created a problem for the chief executive officer because this person had no basic power, and the mayor called all the shots, which is why it is so important to define the role of the mayor in the current form of government.

1999 Citizen's Review Committee

This committee was impanelled by Resolution and adopted by the City's governing body on September 22, 1998. The committee met weekly from September 1998 through May of 1999. One televised public hearing was held. The committee solicited advice from current and past City office holders, current and former department heads, representatives from business and labor and final citizen input. The committee recommended numerous changes to the charter ordinance and urged the governing body to initiate action to consolidate the governments of the city and county. None of the recommendations were adopted by the governing body.

However the matter of consolidation (i.e. unified government) did come to a vote. Despite community wide support of the proposal and an ultimate vote at the polls that carried 70% to 30% of all voters but the measure was doomed to fail by the adoption of "dual majority" voting requirements (requiring that the measure must be passed by a majority of votes cast in the county as well as in the city. This measure was determined by the Kansas Legislature and supported by the Shawnee County Delegation.

Consolidation of city-county governments requires approval of the state legislature.

Former City Councilman and former Speaker of the House Doug Mays attended Public Hearing No. 1 and summarized the provisions of House Bill 2185, Topeka/Shawnee County consolidation proposal approved by the Kansas legislature.

Mays reported that while the bill provided for one "unified" government, the boundaries of the city would have still existed. The governing body would consist of five (5) commissioners to be elected by district; the city council would determine bonding responsibilities for any project located within city boundaries and the bonding for the County would be decided by the commissioners. The bill called for the consolidation of services "wherever possible."

He stated the voters passed the proposal in the city; however, it failed because the majority of voters in the county were overwhelming against it. He said that a dual majority is very difficult to acquire. He noted that legislation led to the assumption of public health services from the City by the County; the voters of Topeka and Shawnee County created the Topeka and Shawnee County Public Library; and the City and County Parks & Recreation Departments are undergoing a merger.

In 2005 The Council/Manager form of government became effective.

The passage occurred in response to concerns expressed by a combination of business leaders, community leaders, and elected officials who wanted the governing body to end what seemed to be personality clashes and move forward in a more progressive manner. The committee was briefed on the decisions recommended, and the actions taken by the Governing Body in 2004 by former City Council member Lisa Stubbs, an advocate for the change, and Committee member John Nave (who was also a council member at the time of the change to the current form of government).

The subsequent meetings led the governing body members to adopt the Council-Manager form of government in 2004. As a result of the transition to the City-Manager Form of Government and the transfer of duties to the City Manager, the Mayor's salary was substantially reduced.

It was anticipated that the role of the Mayor would be diminished by the transfer of administrative duties to the City Manager and as a result the Mayor's salary was very substantially reduced.

The 2014 Citizens Committee to Review the Form of Government for the City was established by an ordinance established October 13, 2009 which replaced the 1988 ordinance and requires that a committee be impaneled before July 1, 2015 and every 10 years thereafter. The current committee of five citizens was selected by the City's Governing body from numerous applicants.

III. COMMITTEE PROCESS AND METHODS

Throughout its work the Committee benefitted from the professional staff that coordinated and attended all of the meetings. Assistance was provided by Vicki Buening, assistant to Mayor Larry Wolgast, who prepared agendas, coordinated communication with the public and press and made arrangements for the facilities to accommodate our meetings; and Brenda Younger, Topeka City Clerk who researched information from other cities, provided verbatim minutes and who captured lengthy public comments flawlessly.

Also assisting the committee was Deputy City Attorney Mary Feighny who helped define the scope of the committee's inquiry and explained the workings of Kansas Statutory law as it applies to the Charter Ordinance of Topeka.

The Citizen's Review Committee held its initial meeting on January 23, 2014

The Committee decided to schedule regular weekly meetings in the 1:00 to 3:00 pm time period each Thursday. In completing its assignment the Committee has held 11 separate meetings and 2 public hearings.

IV. AREAS OF CONCERN

i. No Clear Direction

The committee's January 30th meeting featured a presentation by Don Moler, former Executive Director of the Kansas League of Municipalities who briefed the committee on the different forms of government in Kansas. Moler expressed concerns in regard to language in the Charter Ordinance which may run counter to state law or be ambiguous.[1]

In his briefing, Don Moler identified what is perhaps the main area of concern:

> The general term of "the Mayor and District Council members" is used frequently throughout the charter ordinance. Mr. Moler believes that Topeka may have the only charter ordinance in the state (and possibly the nation) written in this manner. He believes that the language contributes to misunderstandings and leads to an unintended divisive relationship.
>
> Mr. Moler suggested that the committee consider the roles of the Mayor and Council members in terms of the "Governing Body."
>
> In Topeka the Mayor is not thought of as just a figure head (regardless of what might have been the intent of the 2004 actions). In Topeka, the Mayor has a part to play that should make him/her the focal point of the Governing Body.
>
> The Charter Ordinance was written in a way that creates unnecessary tension in the city government because there is no clear direction as to the roles of the Mayor and Council members as a Governing Body.
>
> Moler says that the League of Kansas Municipalities believes that for the purposes of the Charter Ordinance the Mayor has a vote because the Charter Ordinance references the "governing body" and the mayor is considered part of the governing body. Moler stated that trying to limit the mayor's authority to vote may violate statutory authority.

Comment: Former Mayor William "Bill" Bunten discussed a drafting flaw and legal decision that casts doubt on the legality of the current ordinance. An interpretation in 2004 by the City

[1] More discussion can be found in this report under *Areas of Concern.*

Attorney denied him the opportunity to vote on the ordinance. This left the measure short of the required votes necessary to pass a Charter Ordinance. A subsequent Attorney General's Opinion declared the Mayor a member of the "governing body." Therefore, his favorable vote was required in order to achieve a majority vote.[2]

In his February 6th presentation, Former Mayor William Bunten told the committee:

> "Another concern I had was that the duties of the city council were not to be found beyond Section 12, Subsection 1 and 2 on page 11, establishing a meeting time and electing a deputy mayor. You might respond that council members do vote on legislation, but they vote as members of the governing body, for it is the governing body which is vested with the 'power of legislation'...and that body currently includes the mayor. I believe the mayor should not be voting on legislation which he or she is empowered to veto."

In his February 13th discussion Mayor Larry Wolgast confirmed the drafting problems. Currently, the mayor is a member of the governing body and not a member of the council. Some items require a vote of the "governing body" and others a vote of the City Council.[3]

He sees the council and mayor as a "working unit" rather than assuming adversarial roles. He believes the current process and terminology is confusing for council members and for the public. He recommended that "the governing body" be the primary term used in the Charter.

Committee member John Nave was a City Council member at the time the current language was drafted. He reported that the language of the Charter Ordinance was approved by the City Council as a result of numerous meetings held in 2004 in response to concerns expressed by a combination of business leaders, community leaders and elected officials who wanted the city to move forward in a more progressive manner. He said it is now apparent the charter ordinance was crafted in a unique manner and is a hybrid to Topeka. Because of this, he said it is time to review the need for change or revision, specifically in regards to the districts (size/amount/election process); and to clarify the Mayor's leadership role because citizens in Topeka look to the Mayor for leadership and consider the mayor to be the presiding officer of the Governing Body.

All of this has led the committee to the realization that the attempt to diminish roles of the governing body (which was undertaken by popular request in 2004) resulted in the adoption of charter language that is vague and has created uncertainties. It likely that the current language is out of step with certain provisions of state law. For this reason, we suggested that more appropriate language be drafted and proposed for consideration by the governing body. Mary Feighny's draft is included in the Appendices.[4]

Comment: Doug Mays, former Topeka City councilman and legislative council to the City of

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[2] See Attorney General Opinion No 2005-18 at Appendix No 1

[3] For a better understanding of the matter of when the Mayor may or may not vote, see the Memo prepared by Deputy City Attorney Mary Feighny at Appendix No 2.

[4] See Appendix No 3

Olathe, suggested that the committee study the Olathe Charter ordinance which changed that city's form of government from a council-mayor type of government to a *modified mayor-council-manager* form of government.

As the roles of the mayor and council members have become more harmonious, it is time to recognize the fact that a well-run city requires a united governing body, sharing responsibility and acting as one to give direction and purpose to the City Manager.

ii. At-Large Representation

Councilman Schmidt encouraged the Committee to look at how the charter could be used by the governing body to be more responsive to the needs of the city as a whole. He stated that he believes nine (9) districts provide sufficient representation of the entire city. He urged the committee to consider the matter of at large representation.

Neil Dobler former City of Topeka Acting City Manager appeared in his role as Board Chairman of the Greater Topeka Chamber of Commerce. He stated there is strong support of the current form of government. He indicated that there is also public support for changing council district representation to include at-large districts. He recommended that 7 council members represent the districts and 2 at large members to be elected at large.

Former City Administrator **John Arnold** spoke to the Committee on February 27th. He told the committee that over his career he worked in 10 cities, and every one of those cities had some form of at-large representation.

Comment: Mr. Dobler and Mr. Arnold recommend a mix of at-large and single-member district Council members. The committee noted that Olathe and the Unified Government (Kansas City Kansas/ Wyandotte County have two at-large Council members.[5])

"..When candidates run for at-large positions, they raise issues that are broader in scope; issues that affect the entire community."—Testimony of Allyn O. Lockner

The committee considered well-researched arguments for the mixed at-large system (and other topics) presented in a paper by **Mr. Allyn Lockner**. Sometimes, district elected members may choose to subordinate citywide concerns in favor of parochial interests. It was decided that the time has come to introduce the at-large concept.

Mr. Lockner identified two situations when problems can arise in mixed at large systems:

- When at-large positions are perceived by the Council (or the public) to be superior to that of district members
- When at-large candidates are perceived to be rivals to the mayor

In the end, the committee decided that the "School Board" voting method treated all council members equally; placed them all on the same level; accomplished the ends of community wide representation and offered the path of least resistance to implementation.[6]

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[5] Brenda Younger, Topeka City Clerk compiled an excellent comparison chart detailing the number of representatives in each elected body including those elected at large. See Chart at Appendix No 4.

iii. Election Dates

The committee considered suggestions from former Mayor Bunten and public commentators that voter turnout would be larger if City elections were held in August and November in conjunction with other elected officials rather than in February and April.

The League of Women Voters of Topeka-Shawnee County and the League of Kansas Municipalities (LKM) strongly oppose this suggestion.

Although the purported purpose is to increase voter turnout, the LKM indicates that moving elections to November of odd-years will have little impact on voter turnout with only a 10% increase in voter turnout being documented in those states that have implemented the change.[7] Proponents claim turnout will increase because weather conditions are better in November than in April, but average temperatures and precipitation for early April and November are virtually identical.

What the LKM does not talk about in their position piece is the concern that local elections will be totally overshadowed by the heavily financed and intensive state and federal races. They fear that candidates for city elections will become for many voters, unknown names at the end of the ballot.

It appears that the municipalities are happy with the election system as it exists. We saw no good reason to change it.

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[6] For a well-researched paper on Voter Selection of Council Members and the Role of the Mayor in Budget Development see Improving City of Topeka's Council-Manager Form of Government by Allyn Lochner at Appendix No 5

[7] For LKM position paper see Appendix 6

V. RECOMMENDATIONS: CITY OF TOPEKA GOVERNING BODY

The Committee agreed to the following by unanimous consent:

Sec A2-4. Form of Government

The Committee:

Supports the Council—Manager form of Government.

Sec. A2-21 Composition

The Committee Recommends:

That all 9 districts are retained and that all district representatives have equal voice, vote and power on the Governing Body.

Comment: This information was shared by former Mayor Doug Wright. *"Prior to 1985 no women and no one east of MacVicar was part of the governing body. The geographic district system allows everyone to feel like they have a voice. Every citizen in Topeka has someone on the city council they can talk to in this form of government."*

While the number of Council members in Topeka is larger than most (but not all) Kansas cities, most of the council members and a number of the public commentators expressed satisfaction with the current average ratio of one council member to 14,500 constituents. City Manager Jim Colson indicated that he has no problem with the current number, and he said he has worked with larger Governing Bodies in other cities.[8]

Voting Powers

The committee recommends:

That all ten Governing Body members will be voting members with the exception that the Mayor will not have a vote on any matter upon which he/she has been given veto power by operation of law.

Eligibility of the Governing Body

The committee recommends:

That Governing Body members be elected on a nonpartisan basis.

Comment: It is noted that a current state initiative seems designed to turn local elections into partisan elections, to which there is great resistance by The League of Women Voters of Topeka-Shawnee County and the Kanas League of Municipalities as well. We believe that combining city elections with other elections that are partisan does not seem to be a good idea.

That all members continue to stand for election every four years on a staggered election basis.

[8] For a Comparison Chart of surrounding governing bodies See Mayor Wolgast Chart at Appendix 7

Comment: Topeka citizen **Jason Fizell** pointed out that there is an unfairness built-in to the current system that he believed should be corrected. Namely, the Mayor is elected to a four-year term in the same election as odd-numbered council district seats. Thus, any council person holding an odd-number district seat must give up their seat to run for mayor while a council person in an even number seat does not.

Mr. Fizell offered two solutions. 1) Require even number district council people to relinquish their seat if they run for mayor. 2) Make the mayor's term six years so that odd numbered districts would stand for election with the mayor during the one election cycle and the even numbered districts during the next.

That Primary and General elections continue to be held at the current election dates.

Comment: Former Mayor Bunten and others argued in favor of holding city elections at the same time as statewide elections. A move to August and November would disrupt the traditional budget cycle for cities and schools and complicate the timing of financial interest reports required to be filed by Kansas officials. According to the League of Women Voters, the city governing bodies and school boards in the state overwhelmingly favor continuing 153 years of spring elections.[9] We see no reason to disagree.

Method of Election[10]

The committee recommends:

That the Governing Body be a 10 member body consisting of 9 members running for election from the council districts where they reside and a Mayor who resides in the city and is elected at large. During a primary election held within the district, the two nominees from each district receiving the greatest number of votes within the district will stand for election in the General election on an at-large basis.

Comment: Proponents of this recommendation used the USD 501 School Board Member elections as an example. School Board candidates file for office and run in the primary election by district with city wide voters choosing one of two candidates from each district. While other methods of running at-large were considered by the 2014 Committee they required changing the composition of the districts or creating two classes of elected governing body officials.[11]

One downside with this this recommendation is the possible increase in expense for the candidates to get their campaign messaging out to the entire city and not just their district. Another downside (pointed out by Councilman Schmidt) is that a candidate could win overwhelmingly in his/her district and yet lose out in the general election.

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[9] For further discussion see *Areas of Concern*

[10] See Election Terms and Timelines Chart prepared by Brenda Younger, City Clerk at Appendix 8

[11] For further discussion see *Areas of Concern*

Sec. A2-25. Powers of the Governing Body

The committee recommends:

Changing references to "Council" or "Councilmember" to "Governing Body" and "Governing Body" member. The committee would retain the language indicating that the Governing Body will have no administrative powers.

Modeling the City's organizational structure as follows:

> ***The Governing Body is the equivalent of the City's Board of Directors, and the Mayor is the equivalent of the Chairman of the Board. The City Manager is the equivalent of the City's Chief Executive Officer tasked with administrative duties including carrying out the policy, legislation, ordinances, strategic plans and budgets approved by the Governing Body.***

Comment: The city is organized under a corporate charter and Committee member Maynard Oliverius, a long time corporate executive, pointed out that the current structure is similar to a traditional corporate model.

The following elements are recommended by Council Member Karen Hiller to be included in the City Manager's Strategic Plan:

- **Collaboration**
- **Integrity**
- **Accountability**
- **Professionalism**
- **Transparency**

It was suggested that the Strategic Plan express community values in the form of:[12]

- **Mission Statement**
- **Vision Statement**
- **Goal Statement**
- **Values Statement**

Mayor: Functions, Powers and Duties of the Mayor

The committee recommends:

That the Mayor serves as the presiding member for the purpose of conducting the business meetings of the city. As such, the Mayor would chair committees of the entire body, such as the budget committee and the committee of the whole.

That the Mayor shall review the budget and strategic plan prepared by the City Manager and provide input and recommendations to the Governing Body.

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[12] As recommended by former council member Lisa Stubbs

Comment: This idea was first suggested at the public hearing by Mr. Allyn Lockner who saw the need for the Mayor's review prior to presentation to the Council. It was also mentioned by Council Member Karen Hiller, former Mayor Bill Bunten and by Mayor Larry Wolgast.

Modifying current Charter Ordinance language to allow the Mayor to vote on all policy, ordinances, legislation, budgets and other matters, except where the Mayor has veto power expressly mandated by State Statute.

Comment: The committee expressed support for adopting language regarding the Mayor as similar to that outlined in City of Olathe Charter Ordinance No. 28, Section 2.4:

> *"He or she shall represent the city Governing Body at all official city functions, and shall be the official representative of the Governing Body at all meetings, conferences and negotiations relating to policy matters involving other governmental units and shall recommend Governing Body action relating thereto.*
>
> *The mayor shall be the official representative of the Governing Body at all conferences and meetings with citizen groups and organizations interested in promoting the welfare and development of the city, and shall recommend Governing Body action relative thereto. The mayor may inform the Governing Body concerning questions and policy, and may make policy recommendations to the Governing Body. The mayor shall be empowered to call special meetings as provided by law."*

The committee recommends:

The governing body adopts language drafted by Deputy City Attorney Mary Feighny to bring the Topeka Charter Ordinance into compliance with State law.[13]

VI. OTHER RECOMMENDATIONS

The committee recommends:

That a long range planning committee made up of city and county leaders be convened for the purpose of resolving issues and implementing a workable plan to consolidate city-county government.

> ***"Boundaries become barriers in regards to consolidation of government. If you want to consolidate, you will need extensive information on how counties operate today and in the past."*** --Joe Swalwell former Executive Director, Downtown Topeka

Comment: The idea of a long range plan was presented by former Downtown Topeka Executive Director **Joe Swalwell.** Swalwell referenced a detailed discussion of Shawnee County government written by the late **E.A. Mosher,** long time executive director of the League of Kansas Municipalities.

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[13] Comprehensive language changes can be found at Appendix No. 3

The report pointed out that Shawnee County is the hub of commerce for the surrounding 14 county region and it is critical that Shawnee County governing officials work together to maintain that position and to consider how to best accommodate this transitory demand on our facilities and resources. This seemed to provide a new approach to the continuing community interest in governmental consolidation since planning for the future holds no imminent jeopardy it offers the hope of future compromise and accommodation.

Recommends that the long range planning committee consider expanding the number of Country Commissioners from 3 to 5 in order to facilitate better communication among members, to provide broader representation of community interests.

Recommends that salary increases be implemented for Governing Body Members.

Comment: It should be noted that pay for Council members and Mayor was last discussed in 2004.

The committee expressed particular concern that the current low Mayor's salary (which was drastically reduced in 2004) will discourage many capable citizens from considering service as the presiding officer of our Governing Body.

Salary for public service is a complicated issue and there are many pros and cons. As former council member Lisa Stubbs pointed out: these positions were intended to be driven by a desire to do public service, not to serve as a career path. (Although it was noted that several council members have pursued other avenues of public service such as legislators or agency heads).

Public service as a Governing Body member is not an invitation to assume administrative duties or to micro-manage the city staff. Nevertheless, the Governing body responsibilities have increased over the years without as much as a cost of living increase for more than a decade. Governing Body Member salaries (like all other governing body salaries) should have at least, a periodic cost of living adjustment.

PART TWO

MEETING SUMMARIES

The committee's January 30th meeting featured a presentation by Don Moler, former Executive Director of the League of Kansas Municipalities who briefed the committee on the different forms of government in Kansas; how the term "Home Rule: relates to city government and the importance of the Charter Ordinance. Moler expressed concerns in regard to language in the Charter Ordinance which may run counter to state law or be ambiguous.[14]

February 6, 2014. Former Council Member **Lisa Stubbs** presented a review of the recommendations made by the 2nd Citizens Review Committee and the subsequent passage of the City Manager form of Government in November of 2004 by a 2 to 1 margin. Here is a summary of her discussion:

[14] More discussion can be found in this report under *Areas of Concern*.

"There is no perfect form of government. What we passed in 2004 was an improvement. The most important thing that we can do is make it possible for constituents to be informed and involved; and to elect quality people as our elected officials who have the best interest of our community in-mind."

The committee also heard from former Mayor **William "Bill" Bunten**. Mayor Bunten outlined a drafting flaw and legal decision that cast some doubt on the legality of the current ordinance. He also noted that the governing body had the "power of legislation"—not the city council. So the mayor had a vote as a member of the governing body to vote on legislation and also the power to veto legislation. Nowhere in the charter ordinance was the council given the power to override a mayoral veto. The result of this flaw left the "weak" mayor with the power to vote on legislation, veto legislation, and the council couldn't do anything about it. He said the ordinance as written didn't create a "weak" mayor, it created a possible despot.

While the ordinance was later changed, his commentary pointed out the hasty drafting that implemented the ordinance. Mayor Bunten said that the only duties specifically spelled out for the city council was to establish meeting times and elect a deputy mayor. Other key recommendations:

- Provide fiscal officer for mayor and council
- Hold elections in conjunction with state election dates in August and November
- Review compensation for Council and Mayor
- Vest the council with the "power of legislation" not the "governing body."

Mayor Bunten also recommended several procedural matters and mayoral duties.[15]

February 11, 2014. The Committee met with the Topeka City Council in order to receive commentary and to outline the method of procedure.

February 13th meeting featured a discussion with **Mayor Larry Wolgast** regarding respective roles of the Mayor and Council members. The mayor described the ambiguity he found in in the Charter language, and he encouraged the committee to review the mayor's duties and the mayor's role. He suggested the term "strong" or "weak" mayor not be used to define the role of a mayor. He said the powers and duties of the mayor, council, city manager and deputy mayor need to be more clearly defined.[16]

Mayor Wolgast pointed out that currently, the mayor can veto council legislation unless Kansas law gives the mayor a vote; however, the mayor votes on appropriation ordinances but also has the right to line-item veto specific items in the budget, a confusing process that should be clarified. The mayor emphasized that he believes veto authority takes away the legislative aspect of city government. He said it would not be his desire to exercise veto power and he expressed

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[15] Bill Bunten's comments in their entirety are on file at the City Clerk's Office.

[16] Lacking sufficient guidance from the Charter, Mayor Wolgast refers to Topeka Municipal Code Section A2-24: Mayor—Functions powers, and duties.

(a) *The Mayor shall be the chief elected officer of the city, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for the municipal activity."*

the importance of working with the council and sharing their views. The committee with the help of the City Attorney determined that veto power has rarely been used in the past.[17]

Councilmember Nathan Schmidt (District 8) attended the meeting and he was asked for his input. Councilman Schmidt indicated that he strongly supports the mayor serving as the lead member of the council and having equal legislative authority, as well as having authority to make appointments to boards and commissions. He urged the committee to consider how to make sure the governing body represents the city as a whole as well as the respective districts. He urged the committee to consider the matter of at large representation. [18]

February 20, 2014. Two public meetings were held at the Topeka/Shawnee County Public Library[19]

Meeting of February 27, 2014. The committee welcomed City of Topeka City Manager Jim Colson, former City of Topeka Chief Executive Officer John Arnold, and former City of Topeka Mayor Doug Wright as conferees and they invited the input of former Executive Director Joe Swalwell of Downtown Topeka, Inc who was in attendance.

Note: *We have chosen Mr. Colson's remarks for the Concluding Comments portion of this report.*[20]

Joe Swalwell, former Executive Director for Downtown Topeka, Inc., referenced a study written by Ernest A. Mosher, "Shawnee County Governance: Past, Present and in the Future" and made the following statements:

Boundaries become barriers in regards to consolidation of government and if you want to consolidate you will need extensive information on how counties operate today and in the past. Topeka is the center city gravity for surrounding communities and this factor should be used to our advantage.

Mr. Swalwell emphasized the need for better communication with city and county residents without creating anxiety because of fear of losing jobs, as well as, loss of equality of wages and duties. Any necessary training of employees should be in collaboration with local schools and attrition should be reviewed very carefully.

He suggested developing a round table discussion with Shawnee County leaders to develop a long-range study that would outline different consolidation scenarios including how consolidation could save money.

He suggested the council extend the city limits if overall costs of city government are to be reduced. He discouraged the council from altering city sales tax because people from surrounding cities and counties pay this tax and help fund infrastructure maintenance.

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[17] For a better understanding of the Mayor's Statutory Veto Powers see Appendix No 2
[18] For further at-large discussion see *Areas of Concern*. For addition remarks from Mr. Schmidt See City Council Interviews at Part 4

[19] See Public Hearings Section of this Report. P. 21
[20] See page 27 of this Report

"Leadership is defined by action—the act of getting people to work together."—**John Arnold**

John Arnold, former City of Topeka Chief Executive Officer, reported he has over thirty years of experience in local government, ranging from being an employee to managing nine organizations with 75 to 1300 employees. He made the following observations:

Arnold said the City Manager Form of Government seems to be working. He said in the City Manager Form of Government, the role of the governing body is to engage the public. Action is hindered in the City of Topeka because the mayor is not a full-time voting member of the council. This tends to inhibit the elected governing body from working together. The mayor's voting rights must be clarified because state law is not understood. He noted it has been unclear since 2004 when the charter ordinance was drafted.

He believes there are too many council districts. He says seven (7) is a better number with some being elected at-large. In his experience, seven (7) districts is a very workable number with four (4) elected by district and three (3) elected at-large. All the cities he has worked for included district members elected at-large; however, it always is a matter of opinion as to what is the best option for elections.

He said that the practice of referring matters to committees tends to slow down the progress of city business. He said it appears the City wants to operate like the State and he noted two former mayors (William Bunten and Joan Wagnon) have been former legislators.

Doug Wright, former City of Topeka Mayor and City Attorney. Mr. Wright served as the City Attorney during the Commission Form of Government, and was also the first Mayor when the City of Topeka changed from the Commission Form of Government to the Strong Mayor/Council Form of Government. Doug Wright stated he would provide a historical perspective as an observer of city government:

He said the Commission Form of Government proved to be an unfair system because four (4) out of the five (5) commission members where of the same ethnic race and from the same geographic area of the city. The current process of district elections should remain due to past statistics so everyone has a voice in local government and is provided the opportunity to communicate with a council person they can relate to. He cannot think of anything that would not apply to the entire city as a whole; therefore, he believes district elections are a good fit for Topeka. He said the mayor needs clearly defined powers because it is important for the community to look to a leader that has authority.

Review Committee Work Session-March 13, 2014

Council member **Karen Hiller** said the City of Topeka Charter Ordinance is sort of like a constitution. It should include core values and key non-negotiable ways of doing business. She briefly highlighted what she would like reviewed in the current charter:

- Mission and Vision for the city should be included;
- Language regarding excellence, long-range strategic plans and goals, performance-based, transparency and inclusiveness should be included;

- Role of the mayor is included, however, vote and veto issues need to be resolved;
- Role of the deputy mayor is included; however, the roles of city manager and other council staff hiring and review processes need to be addressed;
- Preparation of staff organization chart by the city manager is included and approved by the council; however it has not been followed;
- Annual report of financial condition and administrative actions by February 28 has not always been followed;
- Annual audit engaged by and reported to the council should be included;
- Agenda items should be provided twelve (12) days in advance notice as indicated in the Council rules;
- Emergency ordinances language allows them to be introduced and passed in the same day; however, she is not sure if this has ever happened;
- Regarding board and commissions she recommended consideration be given to specifying that the described procedure would apply to all appointments, not just those for City-created boards.

Comment: Committee members felt that this degree of specificity would not be included in a document similar to a constitution. A better place for this procedural detail would be a *policy manual*.

Councilmember **Nathan Schmidt** made the following statements:

He advocates making the mayor a full voting member of the council with legislative duties. The mayor's role should be similar to the Speaker of the House, with no veto power. The mayor should be elected at-large completing a ten (10) member city council.

Sylvester Zollicoffee, a member of the public appeared and spoke in opposition of changing the council districts. He stated he believes the mayor should have veto power and no voting rights. He stated he supports district representation only and believes the city needs to conduct more town hall meetings with the city manager and council members. He stated he supports only making technical changes to the charter ordinance.

Review Committee Meeting – March 20, 2014

Mayor Wolgast briefed the committee on **House Bill 2227** a proposal to move municipal elections to the fall (August and November) of odd-numbered years. Mayor Wolgast stated many city officials and school board members strongly oppose the change. He distributed a handout from the League of Kanas Municipalities expressing their concerns regarding the change in local elections, and why there is opposition to the bill throughout the state based on the following concerns:

- Political association would be required to be listed on the ballot;
- Transitional issues would impact all city officials (approximately 3,800) in the state of Kansas;
- Legislation would not make local elections partisan; however, the bill would give partisan officials the authority to fill vacancies on governing bodies;

- The bill would disrupt the budget cycle for cities by making the terms of elected officials to begin in January;
- The change complicates the many statutory requirements of local elections across the state;
- Increasing voter turnout is the purported purpose of the bill. Research indicates that moving local elections to the fall will have little impact with only a 10% increase in voter turnout being documented in those states that have implemented the change.

March 27, 2014 Review Committee Meeting

The Committee held a work session to discuss the content and structural development of the Report

Review Committee Meeting April 17, 2014

The Committee held a work session to review the first draft of the Report

Review Committee Meeting April 24, 2014

The Committee held a work session to review an updated draft of the Report.

Review Committee Meeting May 1, 2014

The Committee met to approve the final draft of the Committee Report

PART THREE

PUBLIC HEARINGS

Two public hearings were scheduled on **February 20, 2014** at the Topeka / Shawnee County Public Library.

Public Hearing No.1 1:00 P.M.

Frank Hoge stated he has lived in a neighborhood located close the Washburn University for the past 20 years. He has remained active in efforts to rebuild and renew neighborhoods. He stated things have changed a great deal from the past, and problems cannot be solved if new things cannot be thought of to help fix the problems, improving the overall city.

Marge Ahrens, spoke on behalf of the League of Women Voters (LWV) of Topeka and Shawnee County in the absence of MaryAnn Quilty, President of the organization who was ill. She stated the LWV does not support political parties or candidates; however, the LWV does promote the act of participation by citizens in government and educates people on those issues.

LWV indicated that they support the City Manager Form of Government with clear responsibility to appoint and supervise administrative personnel, as well as, the notion that elected officials should serve as policy makers and not interfere with the daily operations of the

City. She stated they are very concerned about the lack of public funds for services that they value.

LWV supports the core development of the city and sales tax incentive at its inception because it generates money to help develop the city. She said that while LWV supported GO Topeka being used as the economic development arm of the city; she cautioned that there is no oversight of funds, limited public participation and no measurable results from the services. She noted they purposed that a study be conducted of economic development and the effectiveness of GO Topeka.

Teresa Miller expressed concern with the Citizen Government Review Committee being selected by the Mayor and believes it is a conflict of interest. She stated there appears to be a power struggle between the Mayor and City Manager at this time. She spoke in support of consolidating city and county governments. She stated she supports how the City Manager is managing funds right now and noted the voters decided the current form of government, and it is slowly getting better.

She expressed concern that the past two council members that have represented Council District No. 2 not being from the north Topeka area. She requested that the City add a representative to the governing body to represent north Topeka.

John Jackson stated that he supports the current form of government and believes the City Council should continue to direct the City Manager on how to run the city. He stated he has tried to contact the Mayor and City Manager with no luck; therefore, he believes they should not reduce the number of council districts because people need a way to communicate with local government. He would support the same number of council districts or an increase in council districts.

David Cullip stated he supports the current structure of the Council and believes it provides excellent representation of citizens. He stated he supports 9 council districts because it allows representatives to interact with citizens. He said Topeka needs to work harder as a leader in promoting Kansas and set an example because Kansas is a strong state with a lot to offer.

He also expressed the importance of city and county leaders working together to find solutions and figure out a way to merge city and county government successfully because progress is stalled due to the repeated arguments between elected officials.

Kevin Dalton expressed concern with the current role of the mayor and believes it needs to be better defined in regards to voting and veto authority. He spoke in opposition of increasing the number of council districts because it could get cumbersome and difficult for elected officials to come to an agreement. He spoke in support of reducing the number of districts to six (6) and keeping the nine (9) district members. He explained there would be one representative elected from each six (6) districts and three (3) representatives elected at-large making a hybrid that works for Topeka.

He suggested increasing the number of county commissioners for better representation.

Allyn Lockner presented the committee with a paper based on research on the form of government he has compiled over the past 10 years. He encouraged Committee members to review his handout in its entirety. He said the current form of government is holding its own nationally, a form that is growing throughout the nation. He supports the current form of government; however, performance of the governing body could be improved by expending more time developing policy for the City and allowing the city manager to implement the policy.

The mayor is the only official in city government that represents the city at-large and the Topeka community is more than the sum of 9 districts. A thought, he said, that is not embraced by all current officials in city government. Mr. Lockner noted that the mayor currently has a diminished role in developing the budget, as the city manager prepares an annual budget for submission to the council for their review. This process is important because the policy determines what the city is willing to pay for. The mayor is elected at-large and should have more voice in the budget submitted to the council.

Mr. Lockner also advocated a method for electing City Council members on a mixed at-large basis:

1. All candidates for district council positions and for citywide council positions run for office in the primary election from the districts in which they reside.
2. Five (5) district council candidates run for office in the general election from the odd-numbered districts (1, 3, 5, 7 and 9) in which they reside.
3. Four (4) citywide council candidates run for citywide council positions in the general election from the even-numbered districts (2, 4, 6 and 8) in which they reside.

If the above recommendation is not approved, then he would recommend the entire council be elected at large with district residency requirements; the mayor would still be elected separately. He also recommends that council members who ran for citywide positions in general elections be compensated an additional 20% to 40% annually because of the additional citywide responsibilities and costs they would incur additional campaign expenses.

Public Hearing No.2 7:00p.m.

Mary Jo Mastriano stated she appears as a member of the ADA (Americans with Disabilities Act) City Council Advisory Committee and made the following statements:

- She believes the City Manager form of government is a positive for the community because there is no favoritism for any certain area.
- The mayor should have more authority in the decision making process.
- She believes it is a good idea to keep nine (9) council districts for equal representation; however, if there is a change then the city manager and mayor should work more closely together to resolve problems.

Sam Hargis stated he believes the City is doing a good job; however, the City Manager and the Council have a full plate to manage. He made the following recommendations:

- Do not reduce the number of council members because it is a reasonable number to represent a city the size of Topeka.
- City Council members are the people that can take the pulse of the city and are representatives that are easily approachable.
- He supports two (2) council members to be elected at-large to provide opportunity to gather more input from citizens.
- Increase wages for council members.
- The role of the mayor should not be changed, and if it is, it should happen in small steps.

Ed Serrano would hate to see a new policy introduced that would hurt the integrity or the concept of the City Manager Form of Government.

- It was his understanding the mayor was given veto power as a compromise to the change in the role of the mayor.
- Due to the low wage compensation of the mayor, all accountability should stay with the city manager.
- He said certain districts are not able to get good representation. He suggested reducing the number of district representatives to seven; establish at-large members; or widen district boundaries and increase wage compensation for those representing larger districts.
- He stated that the number of people that participate in local government is low because it appears that it is always the same people participating.
- He would suggest district members receive $20,000 annually if the number of districts were reduced to seven (7) with five (5) elected by district and two (2) elected at-large.

Lori Williams made the following comments:

- Do not reduce the number of council districts because 14,000 people is a lot for one council person to represent.
- She would support having one or two council districts elected at-large with the same amount of council districts.
- She stressed the importance of council members doing their best to meet with constituents, answering telephone calls, responding to emails, attending neighborhood improvement association meetings and staying on the move to keep up with the times.

J.R. Campbell stated he participated in the council district redistricting process. His comments:

- He would like to be represented by a person who knows the area.
- He would support having representatives elected by district and at-large.
- The number of districts needs to be a reasonable odd number.
- He suggested electing one of the council members to serve as mayor.
- A combined city-county government would be more efficient. The city and county should look at areas in government that could be combined and recommendation brought forward.
- Some of the larger counties have increased their county representatives to five (5) county commissioners. This suggestion should be studied as part of the consolidation plan.
- Mr. Campbell stated he would suggest seven (7) representatives be elected by district and two (2) at-large.

Chris Meinhardt said he believes council members salary should be increased or made the same as some City department heads.

The committee recognized the presence of Council members John Campos II, Chad Manspeaker and Nathan Schmidt. The Council members were invited to discuss some of the citizen comments with the committee.

Note: Brenda Younger, City Clerk, posted the unedited minutes and the audio recordings of the public hearing sessions conducted on February 20, 2014, to the City's website at the request of the Committee.

WEBSITE COMMENTS

The City of Topeka website offered a portal for public comments:

Glen Porterfield: (Grace Cathedral area). *"Go back to the Mayor/City Commission form of government."*

Tom Benaka: *"Please strongly consider a recommendation to merge Topeka and Shawnee County."*

Kevin Ratekin: *"...One of the major problems with this forum of government is that on one on the council are really qualified in any of the areas that they vote on. When it was the old forum of government when they had commissioners like Street Commissioner, Water Commissioner and Park Commissioner and so on. They were people that were all professionals in their fields...not just housewives and business people that know nothing about running a city... Please turn it back into the old forum of government..."*

Ken Kerl: *"Today's editorial in the Topeka Capital-Journal said a lot of things about a reduction in the size of the city council but offers no solid evidence to make the case. Just an opinion with nothing to back it up....The fact that the east side of town has a street project is a tribute to the 9-member council. Hey, I live on the west side of town, and I'm satisfied with city government performance...."*

Bob Schneider: *"I feel that it is much too early for the City Charter to be changed on representative districts. What is the rational for at-large City Council positions?"*

Joe Weissbeck: *"...Should we be looking at consolidation again with the City and County?*

Jason Fizell: It occurred to me as I was reading the most recent coverage of your committee's work that there is a bias built-in to the current system that really needs to be corrected. Any council person holding an odd-number district seat must give up their seat to run for mayor while a council person in an even number seat does not. I know this is late in the process, but it's

obviously unfair -- in that it affects different city council people differently, and some more negatively than others -- so I hope it's something you might all at least weigh in against it.[21]

PART FOUR

CITY COUNCIL MEMBER INTERVIEWS

Council member Chad Manspeaker reported that he is surprised the public is not more engaged in the budget process because municipal government is really important and touches every aspect of a citizen's life. He stated he continues to reach out to constituents in effort to engage them in city government. He stated he believes it is difficult for folks to sign up before a Council meeting. He said most people who ask for extension during public comment receive an extension. He stated that he feels like the Council is doing a good job and he understands it is their responsibility to educate the public on what is happening in the community and city government.

Council member Manspeaker said he supports consolidated government or one consolidated taxing entity. He noted consolidation was successful for Wyandotte County Kansas Unified Government because it has allowed growth as a community. He said would support the same format used by the Wyandotte County Kansas Unified Government which divides the city in two sections, one east district and one west district.

Council member Manspeaker stated he opposes representation at-large. He said he believes any Council person would help any constituent that contacts them. He understands the logic behind Topeka being viewed as a parochial community because a Council member is naturally defensive of those that put him/her in office. He indicated his is satisfied with the current number of council members. He supports district elections because he only has to please 14,000 citizens not 128,000 and that is a positive. He believes council district representatives will be more engaged with constituents when they are representing 14,000 people than if they were representing all 128,000 Topeka citizens.

Council member John Campos stated he opposes at-large elections because Topeka as community is very responsive to district representation. However, he believes there could be more unified duties within local government such as the functions performed by the Joint Economic Development Organization (JEDO). He said he respects the at-large election process; however, he stated he believes constituents in his district would oppose at-large representation because they expect him to remain actively engaged with them on a more personal level.

Council member Schmidt stated he would oppose following the same election format as the School Board. He would support keeping the number of council districts at nine (9) or reducing them to seven (7); and he would support splitting the city down the middle to create two (2) at-large districts.

Council member **Nathan Schmidt** made the following statements: He believes staff builds administrative procedures around the fact we have nine (9) separate council districts instead of

[21] The Committee agreed that the matter needed to be addressed. See Mr. Fizell's comments and solutions at *Areas of Concern* pages 10-11.

the city as a whole, making the City inefficient because specific areas are not being aggressively targeted like they should be. He supports seven (7) council representatives being elected by district and two (2) at-large, along with the mayor, providing 30% of the governing body vote to be generated from at-large representation.

The current system is working; however, he believes adding at-large representation would increase the functionality of the governing body as a whole. He believes nine (9) representatives is a good number that covers all areas of the city; however, there have been issues with projects being delayed because of the lack of at-large representation.

Council member **Karen Hiller** said that no form of government is perfect. The voters chose this one, which has worked well in other places. Whenever there is a major change it takes 5 to 10 years to recover. We are now at that point where the system may work well for the first time. It would not be wise to change the system at this time. Instead, the goal should be to make sure the mission and vision for the city are stated clearly and the charter is absolutely set correctly for the form of government Topeka has. Her overall goals for city government are:

- **Performance** - make sure there are provisions for strategic plans, goals and performance measures so success can clearly be measured in this way.
- **Inclusiveness** – make sure the charter is clear that we want a full elected body, as well as, all citizens to be affirmatively invited to the table on all issues, with enough advance notice, and provided sufficient information and time for them to participate in a meaningful way.
- **Transparency** –Make sure we affirmatively pursue open meetings and open records practices. Establish core requirements for disclosures and checks and balances on key council and city manager procedures including agenda management, voting and line-item veto issues for the mayor, acceptance rather than approval of financial reports, arrangements for annual financial audits, nominations to boards and commissions.

Ms. Hiller understands that a smaller governing body is more appealing. However, as a council member her district is very demanding. All council members are not the same and do not require the same level of constituent input. There are many different ways to make sure all district needs are met. Serving as a council member is a full-time job if you want everyone to feel like they are being represented. She noted there are not many issues that come before the council that receive a heavily split vote; therefore, she is not sure the number of council district representatives needs to be changed. She recognized the debate of district vs. at-large would always be present.

PART FIVE

CITY MANAGER INTERVIEW

In drafting this report, we have endeavored whenever possible to express our recommendations in the language and thoughts of the citizens and the conferees whose insight guides them. This section summarizes the insight shared with the committee by **Jim Colson,** City of Topeka City Manager.

Mr. Colson said his transition into the City Manager position has been a very positive experience that has led to his own personal and professional development. He expressed his appreciation in working with talented people that display leadership throughout the community. He commended citizens for making the decision to implement the City Manager Form of Government. His comments follow:

City Manager Form of Government

The City Manager Form of Government concept offers the ideal combination of a trained professional leader who has experienced the many aspects of running a larger urban community while being aware of the equal importance of the elective body; and the necessity to engage residents in city government so the governing body can make informed decisions based on constituent input.

Role of the Mayor

The role of the mayor is vital and needs to be firmly defined; responsibilities clearly understood; and fit the overall scheme of governing the community. He believes the mayor should have the same voting rights and authority as council members. He stated he believes the mayor should serve as a leader to the council in the same manner as a chairman would serve an executive board, allowing the mayor to provide leadership, focus discussions, and drive the agenda of the council.

Mayor and City Manager Relationship

It is vital that the mayor and city manager are viewed as having a good working relationship with open lines of communication. It is vital that the city manager be provided an opportunity to listen and discuss issues with elected officials in order to understand and serve the community. He stated the current working relationship between the mayor and city manager is good and they support each other very well.

Council Districts

Mr. Colson does not have a strong opinion on the number of council districts. He expressed the importance of citizens feeling like they are engaged in the process of city government. The current council districts do this based on representation of reasonable number of residents of the community. Active citizen participation helps council members understand what is important to them when making decisions.

Consolidation

In local government there is always a strong case for finding more efficiencies and cost reductions through consolidation. However, there are a lot of details that need to be worked out and the consolidation process needs to be evaluated thoroughly. Mr. Colson is currently working through the Parks & Recreation consolidation. He expressed the importance of providing the highest level of service at the appropriate cost to the community.

.....

PART SIX

CONCLUDING COMMENTS

It seems to this committee that over the past decade as the City Manager has become a vital part of the operation of the city; the important role the Mayor plays in the perception of its citizens and in the day to day conduct of the city's business was not contemplated or perhaps even intended by the language of the present charter ordinance. This has led us to the understanding of why it is so important for the city to conduct a periodic citizen's review.

We conclude this assignment with a much deeper appreciation of the demands placed on our elected officials and on our public servants. We have learned so much from the conferees who volunteered their time in order to share their valuable experiences and insight. We want to thank the City Council members who supported our appointment. It is our hope that other citizens will have similar enriching opportunities.

What impressed the committee most in our public hearings was the lack of antagonism and the general feeling of well-being expressed by the community. For the most part, constituents are comfortable with the number of districts and their representation by the governing body. Several citizens advocated salary increases for their elected officials.

It appears that the City Manager form of government is alive and working well in Topeka. Of course things could always run better, and we hope the recommendations we offer will help facilitate harmony and assure that all avenues for improvement continue to be explored.

Respectfully submitted:

2014 CITIZENS GOVERNMENTAL REVIEW COMMITTEE

By _____
Jim Reardon, Committee Chair

From the Committee Members:

Judy Anderson Moler

The Committee met from January through May on an almost weekly basis. The Committee received both written and oral input throughout the process. The task afforded the Committee was taken seriously and all recommendations were discussed and considered. A thorough dialogue was afforded the information and those wishing to offer opinions.

The Chairman did an excellent composite of the points agreed upon and discussed at length. In all, I think it is a reasonable and fair recommendation and document to present to the City Council of Topeka.

John Nave

I would like to thank Mayor Wolgast and Council woman Everhart for asking me to sit on the review committee. It has been one of those life experiences that one doesn't forget, and being part of a distinguished group of community leaders has also been very rewarding.

We were asked to make recommendations that will affect the citizens of Topeka for years to come. I think us as a committee accomplished what was asked of us. We listened to past elected officials, community leaders, and citizens of Topeka in meetings and forums. We exchanged ideas and shared our own opinions. What came from the meetings and forums are recommendations that we believe will work in our City. We hope these recommendations are taken by the City Council and Mayor; accepted; and put in place for the Citizens of Topeka for a more efficient City Government.

Maynard Oliverius

It has been an honor to serve on the 2014 Citizens Government Review Committee. I wish to express my appreciation to the many members of our community who shared their views regarding the future structure of governance for Topeka. That input and knowledge was very valuable to the Committee and underscores the importance of citizen involvement in shaping our future.

Further, I express my appreciation to the City staff and other members of the Committee for their time, effort and work on this project. It has been a pleasure to be part of this fine team.

Finally, I want to thank the Mayor and Council for asking us to do this work. I hope the recommendations made here are helpful in setting the future course of our great City.

Tina Williams

In summary, the 2014 Citizens Government Review Committee conducted a comprehensive review of the City of Topeka Charter. The committee sifted through policy, comparing the forms of governments of other cities similar in size, and took into consideration the views and opinions expressed by peer citizens through public testimony at public forums and meetings as well as from current and former elected officials. The final report is the result of work by the committee members, our consultants, city staff representatives and the Deputy City Attorney.

Given the goal of developing recommendations the committee focused on what it determined were the most urgent issues and studied others that may be considered for future review. The committee by unanimous consent has proposed the recommendations as outlined in the report to strengthen and improve the functionality of the Mayor, City Manager, and City Council form of government and to clarify the roles and responsibilities of our elected officials. We trust that our recommendations will prove useful to the city's governing body, and to the citizens of Topeka.

APPENDIX No. 1

Attorney General Opinion # 2005-18

August 4, 2005

ATTORNEY GENERAL OPINION NO. **2005-18**

Brenden J. Long
Topeka City Attorney
City Hall, 215 S.E. 7th Street
Room 353
Topeka, Kansas 66603

Re:

Constitution of the State of Kansas--Corporations--Cities' Powers of Home Rule; Charter Ordinances; Eligibility of Mayor to Vote as Member of Governing Body

Synopsis:

The mayor is a member of the "governing body" for purposes of the two-thirds voting requirement for passage of a charter ordinance prescribed by Article 12, Section 5(c)(2) of the Kansas Constitution, regardless whether a city's form of government precludes the mayor from voting on other matters coming before the council. Cited herein: K.S.A 12-104, 12-757, 12-1036a,12-1036b,12-10a01,12-10a02,77-101; Kan. Const., Art. 12, § 5.

* * *

Dear Mr. Long:

You inquire whether Article 12, Section 5(c)(2) of the Kansas Constitution includes the mayor as a member of the governing body for purposes of the two-thirds voting requirement for passage of a charter ordinance under circumstances where a city's form of government precludes the mayor from voting.

Article 12, Section 5(c)(2) of the Kansas Constitution prescribes the procedure for enacting a charter ordinance:

> "A charter ordinance is an ordinance which exempts the city from the whole or any part of an enactment of the legislature. . . . [S]uch charter ordinance shall . . . designate specifically the enactment of the legislature . . . made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, *and shall require a two-thirds vote of the members-elect of the governing body of such city.*"[1]

You indicate that the City of Topeka, by virtue of its home rule power, has adopted a council-manager form of government that does not utilize any of the statutory forms

of city government in Chapter 12 of the Kansas Statutes Annotated. Pursuant to Charter Ordinance No. 94, the City of Topeka's form of government includes a 10 member governing body comprised of nine district council members and the mayor.[(2)] Under this structure, the mayor may veto council legislation, but cannot vote on other matters that come before the council.[(3)]

There are no Kansas appellate court decisions addressing whether the Home Rule Amendment[(4)] includes the mayor as a member of the governing body for purposes of the two-thirds voting requirement when the city's form of government precludes the mayor from voting. However, we note that K.S.A. 12-104 defines "governing body" to include a mayor for all "acts granting . . . executive or administrative powers to city governments, or prescribing procedure." While the purpose of this statute, enacted in 1923, was to provide guidance to the commission formed to revise the general statutes,[(5)] it is reasonable to presume that the meaning of "governing body" was taken into consideration when legislators crafted the Home Rule Amendment.[(6)] In fact, the statutory mayor-council-city manager form of government,[(7)] that took effect the day before the Home Rule Amendment,[(8)] accords the mayor limited voting rights *except* in the case of charter ordinances in which case "the mayor's vote shall be counted on every occasion."[(9)]

We also note that at least one treatise on city home rule concludes that the mayor has an original vote on charter ordinances:

> "Unlike 'ordinary ordinances' which require for passage a favorable vote of a majority of the members-elect of the council of council cities or the mayor and other commissioners of commission cities, a charter ordinance requires a favorable vote of two-thirds of the members-elect of the governing body. Although the constitution does not define the term "governing body," it is defined by state law for construing legislative grants of authority to mean the mayor and council or mayor and commissioners. Accepting this definition as applicable to charter ordinances, it appears the mayor in council cities has an original right to vote, whereas his right to vote on 'ordinary ordinances' is limited to casting the deciding vote where the number of favorable votes is one less than required."[(10)]

Citing K.S.A. 12-104, the League of Kansas Municipalities has also concluded that the mayor is included in determining the vote for charter ordinances.[(11)]

While there are no Attorney General opinions addressing this issue, past Attorneys General have examined whether mayors can vote in zoning matters that require super majority votes.[(12)] In Attorney General Opinion No. 92-41, Attorney General Robert T. Stephan considered a statutory mayor-council form of government[(13)] where the mayor is a member of the governing body but is statutorily precluded from voting on any council matter.[(14)] The zoning statute in question required a three-fourths vote "of all of the members of the governing body."[(15)] General Stephan attempted to harmonize both statutes and concluded that the zoning provision

requiring a super majority vote did not include the mayor in a statutory mayor-council form[16] of government.

In Attorney General Opinion No. 99-5, Attorney General Carla J. Stovall considered the identical zoning issue in relation to the Unified Government of Wyandotte County/Kansas City, Kansas. Like the City of Topeka, the Unified Government eschewed the statutory forms of city government and utilized its own form of government created by charter ordinance. In the Unified Government, the mayor is a member of the governing body and has limited voting rights. After reviewing K.S.A. 12-104 and the Unified Government's procedural rules, General Stovall concluded that the mayor is a member of the governing body for purposes of voting on zoning matters.

Unfortunately, these opinions are not helpful when considering whether the *Kansas Constitution* gives a mayor an original right to vote on a charter ordinance. However, we agree with the opinion of one author of a treatise on home rule who opines that because charter ordinances substitute the wisdom of local officials for that of the Legislature; special procedures are required by the Constitution.[17] One of these procedures requires a two-thirds vote of the members-elect of the governing body. As the mayor is a member of the governing body by virtue of K.S.A. 12-104, no ordinance proscribing mayoral voting rights - charter or ordinary - can alter this constitutional requirement. Thus, despite the fact that the mayor of the City of Topeka has no voting rights in matters that come before the council, it is our opinion that the mayor is a member of the governing body for purposes of exercising a right to vote on charter ordinances.

Sincerely,

Phill Kline
Attorney General

Mary Feighny
Assistant Attorney General

PK:JLM:MF:jm

FOOTNOTES

Click footnote number to return to corresponding location in the text.

1. Emphasis added.

2. City of Topeka Charter Ordinance No. 94, Article II, §§ 7,11 ("[t]he council and mayor shall be the governing body of the city").

3. City of Topeka Charter Ordinance No. 94, Article II, §§10,16.

4. Kan. Const., Art. 12, § 5.

5. K.S.A. 77-101 *et seq.*; *State, ex rel. v. Davis*, 116 Kan. 211(1924).

6. *In re County Seat of Linn County*, 15 Kan. 500 (1875) (whenever a legislature uses a word in a statute in one sense and with one meaning and, subsequently, uses the same word in legislating on the same subject matter, it will be understood as using it in the same sense, unless there be something in the context or the nature of things to indicate that it intended a different meaning).

7. K.S.A. 12-1036a *et seq.*

8. June 30, 1961.

9. K.S.A. 12-1036b.

10. Wright W. Crummett, *City Home Rule in Kansas*, 9 W.L.J. 1, 14-15 (1969).

11. League of Kansas Municipalities, *Constitutional Home Rule in Kansas*, 15 (8th ed. September, 1994).

12. Attorney General Opinions No. 92-41 and 99-5.

13. K.S.A. 12-10a01 *et seq.*

14. K.S.A. 12-10a02.

15. K.S.A. 12-757(e) [now K.S.A. 12-757(f)(1)].

16. K.S.A. 12-10a01 *et seq.*

17. James W. Drury, *Home Rule in Kansas*, 65 (University of Kansas, 1965).

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Appendix No. 2

EXAMPLES OF ITEMS UPON WHICH THE MAYOR VOTES AND DOESN'T VOTE

MAYOR DOES NOT VOTE

A. Ordinances (Created in Municipal Code)

1. Allowing service monkeys within City limits
2. Establishing Council meeting schedule
3. Fire hydrants
4. Funeral processions
5. Historic landmarks
6. Human relations commission
7. Possession/consumption of alcohol
8. Public building commission
9. Repealing Utility Refund Program
10. Term limits/Sustainability Advisory Board
11. Topeka Zoo concessions/admission fees

B. Resolutions

1. Acquisition of fire apparatus
2. Approval of certain grants
3. Approving project budgets for capital improvement projects
4. Designating depositories
5. Establishing franchise fee rebate program
6. Establishing Legislative agenda
7. Establishment of Citizens Government Review Committee
8. Noise exceptions
9. Parking waivers
10. Participation in the Municipal Investment Pool
11. Personnel code amendments
12. SORT Planning Target Areas
13. Supporting grant applications
14. Waivers of annexation requirement/extension of city water/sewer

MAYOR DOES NOT VOTE (CON'T)

C. Miscellaneous

1. Appeal of tort claims
2. Appeals of business license denials
3. Appoint/terminate city manager
4. Appoint an employee to serve as city manager during the latter's disability or temporary absence
5. Approval of Council minutes
6. Approval of disposal of surplus real property
7. Approval of grants
8. Approval of settlement agreements
9. Approval of transient guest tax allocations
10. Approval of workers' compensation claims
11. Board appointments (mayor appoints/Council approves)
12. Business license applications
13. City manager contract
14. Demolition of properties not on state/national historic registers
15. Election of Council representatives to JEDO Board
16. Election of Council representatives to Metro Topeka Planning Organization Policy Board
17. Election of deputy mayor
18. Establish compensation for council members and mayor
19. Purchase of real estate

MAYOR VOTES

D. Ordinances

*1. Adopting uniform codes

*2. Annexation

*3. Appropriation ordinances

*4. Assessments to pay for costs/improvement districts

*5. Charter ordinances

*6. Condemnation/Initiation of Proceedings

*7. Establishing a community improvement district

*8. Establishing an improvement district (K.S.A. 12-6a01)

*9. Establishing Business Improvement District Service Fee

*10. Expenditure ordinances

*11. Franchise agreements

*12. Issuance of temporary notes/G.O. bonds/revenue bonds/refunding bonds

*13. Land use ordinances (zoning, conditional use permits)

*14. Liens on real estate/delinquent utility bills

*15. Vacation of streets/alleys/easements

E. Resolutions

*1. Approval of utility projects/authorizing issuance of revenue bonds

*2. Banning concealed weapons in City buildings

*3. Complimentary alcohol at certain art events

*4. Declaring corporate limits of the City of Topeka

*5. Establishing improvement district

*6. Initiation of condemnation proceedings

*7. Issuance of temporary notes/G.O. bonds/refunding bonds

*8. Setting hearing date for consideration of establishing a community improvement district

*9. Setting public hearing for consideration of establishing improvement district

*10. Special event/alcohol permits (liquor and cereal malt beverage)

MAYOR VOTES (CON'T)

F. Miscellaneous

*1. Approval of certain licenses (cereal malt beverage, scrap metal dealers)

*2. Approval of special alcohol grant recommendations

*3. Approval/Interlocal cooperation agreements

*4. Demolition permits/determination of feasible and prudent alternatives

** 5. Filling vacant Council positions (Sec. A2-29)

*6. Labor agreements

*7. Lease purchase agreements

*8. Plat approvals

*9. Setting the public hearing for the budget

**State law requires action by 'governing body.'*

** Charter ordinance 94

APPENDIX No. 3

CHANGES TO CHARTER ORDINANCES TO BE CONSISTENT WITH STATE LAW

1. A2-24. Mayor-Veto

Current: Mayor can veto Council legislation and 'line item' veto items in appropriation ordinances. Cannot veto legislation in which Mayor has a vote.

Proposed change: Mayor can veto ordinances, except where state law requires a governing body vote. K.S.A. 12-3003.

2. A2-25.5 Veto Override

Current: 2/3 vote required to override veto (6 votes)

Proposed change: 3/4 vote required to override veto (7 votes). K.S.A. 12-3003

3. Sec. A2-29(b) Forfeiture of Office. Repeal

~~(b) Forfeiture of office. A district Councilmember or Mayor shall ipso facto forfeit his or her office if he or she at any time during the term of office lacks any qualification for the office prescribed by this Charter Ordinance or other applicable law, or if he or she violates any other provision of this Charter Ordinance. A forfeiture does not occur if a district Councilmember no longer resides in his or her elected district as a result of redistricting.~~

The section conflicts with state law. Elected officials forfeit their office only in accordance with state law through an ouster proceeding brought by the Attorney General/District Attorney or recall by the electorate. K.S.A. 60-1205; 25-4302.

4. Sec. A2-30(d) Ordinance Form.

(d) Form . Proposed ordinary ordinances and resolutions shall be introduced ~~in the Council~~ only in written or printed form. ~~No ordinary ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause of all ordinary ordinances shall be: "Be it Ordained by the Council of the City of Topeka, Kansas:".~~ Any ordinary ordinance which repeals or amends an existing ordinary ordinance or part of the Code of Ordinances of the city shall set out in full the sections or subsections to be repealed or amended, and shall indicate matter to be omitted by

enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

The 2nd sentence is redundant in that K.S.A. 12-3004 addresses this issue.

The 3rd sentence conflicts with K.S.A. 12-3005 which prescribes the ordaining clause to read as follows: "Be it ordained by the governing body of the city of _____."

5. A2-30(f). Emergency ordinances. Repeal.

~~(f) Emergency ordinances. An ordinary ordinance may be passed as an emergency measure on the day of its introduction if it contains a declaration describing in clear and specific terms the facts and reasons constituting the emergency. Neither an ordinance granting, reviewing, or extending a franchise, nor a Charter Ordinance, shall be passed as an emergency ordinance.~~

Emergency ordinances are a remnant from when the charter ordinance required that an ordinance be read twice in a Council meeting before final passage, with one week in between. First readings have been eliminated. There is no need for an 'emergency ordinance.'

6. Sec. A2-30(g) and (h). Publication; Effective Date. Repeal

~~(g) Publication. The City Clerk or such other city officer as the Council may designate shall cause all ordinary ordinances, as soon as practicable after they have been passed and signed, to be published once in the official city newspaper, unless Kansas Statutes or other applicable law require more publications. In lieu of publication of the entire ordinance, the City Clerk may publish a summary of the ordinance provided all of the following requirements are met:~~

> ~~(1) The publication is identified as a "summary" and contains notice that the complete text of the ordinance may be obtained or viewed free of charge at the City Clerk's office or on the city's website.~~
>
> ~~(2) The City Attorney certifies the summary of the ordinance prior to publication to ensure that the summary is legally accurate and sufficient.~~

~~(3) The publication contains the city's official website address where a reproduction of the original ordinance is available for at least ninety days following the summary publication in the newspaper.~~

~~(4) If an ordinance is subject to a petition pursuant to state law, the summary shall contain a statement to that effect.~~

~~(h) Effective date. Except in the case of emergency ordinances, and except where Kansas Statutes otherwise specify, every adopted ordinary ordinance shall become effective upon its publication pursuant to subsection (g) or at any later date specified therein. Emergency ordinances shall become effective upon passage or at any later date specified therein.~~

K.S.A. 12-3007 controls publication, ordinance summaries, and the effective date of ordinances.

State law doesn't recognize 'emergency ordinances.' All ordinances are effective upon publication unless a later date is stated in the ordinance. Appropriation ordinances are effective when passed.

7. A2-30(i). Signature, authentication and recording.

(i) Signature, authentication and recording. All ~~ordinary~~ ordinances and resolutions passed or adopted by the Council shall be authenticated by the signatures of the Mayor and City Clerk or such other appointive officer as the Council may designate. ~~The City Clerk or such other appointive officer as the Council may designate shall record in a properly indexed "Ordinance Book" kept for the purpose of every ordinary ordinance, immediately after its publication, or in the case of emergency ordinances immediately after passage~~

Strike-type section is redundant. K.S.A. 12-3008 requires that City Clerk maintain an 'ordinance book.'

CITY OF TOPEKA

City Clerk's Office
215 SE 7th Street, Room 166
Topeka, KS 66603-3914
Tel: (785) 368-3940
Fax: (785) 368-3943
byounger@topeka.org

Appendix No. 4

February 18, 2014

RE: City Election Information

Committee Members:

Below is the information requested at the February 13, 2014 Citizens Government Review Committee meeting concerning elections in other cities.

City	Mayor	Total Members	At-Large	By-District
Wichita	at-Large	6		✓
Overland Park	at-large	12		✓
UGWC	at-large	10	✓ (2)	✓ (8)
Topeka	at-large	9		✓
Olathe	at-large	6	✓ (2)	✓ (4)
Lawrence		5	✓	
Manhattan		5	✓	

Overland Park - The Governing Body consists of the mayor and 12 councilmembers. Two councilmembers are elected from each of the city's 6 wards and serve staggered four-year terms.

Unified Government – The mayor serves as the eleventh member of the Commission.

Lawrence and Manhattan – One of the existing five members serves as mayor for a one-year term.

Thank you,

Brenda Younger, C.M.C.
City Clerk

APPENDIX No 5

Allyn Lochner Paper

IMPROVING CITY OF TOPEKA'S COUNCIL-MANAGER FORM OF GOVERNMENT

Testimony of Allyn O. Lockner before the

City of Topeka's Citizen Government Review Committee

at 1 pm on February 20, 2014 in Room 101C at

at the Topeka Shawnee County Public Library

at 1515 SW Tenth Avenue, Topeka, Kansas

Chairman Mike Reardon and members of the Citizen Government Review Committee: Thank you for the opportunity to share ideas with you about improving Topeka's council-manager form of government.

My name is Allyn Lockner. I reside at 2135 SW Potomac Drive, No. 4, Topeka. I am a retired economist and certified public manager. I am a member of the American Academy of Certified Public Managers and the American Society for Public Administration. I represent no organization or group.

Looking Back to 2004

On July 20, 2004, a major positive change occurred in Topeka City governance. On that date the Topeka City Council passed and approved Charter Ordinance No. 94 which established the council-manager form of municipal government in our city. Under the ordinance and amendments, the basic characteristics include:[1]

- Council has nine members who are elected by voters in nine council districts in the city.
- City council holds all municipal powers not otherwise held by the mayor or city manager, including override of mayoral vetoes by a two-thirds vote.
- Council appoints a professional city manager who has all administrative powers.
- Mayor is elected by voters at large in the city.
- Mayor and council are the governing body; mayor has no vote, except on charter ordinances.
- Mayor chairs council meetings, has veto power on council legislation, line item veto power of appropriation ordinances and exercises other specified powers.

[1] *Topeka Municipal Code*, Article II, Division 2 and Division 4.

Council-manager form is the most common form of municipal government.[2] According to the Municipal Year Book 1991 and 2008,[3] usage has grown from 36.2 percent in 1990 to 48.9 percent in 2007 in all U. S. cities over 2,500 in population. At the same time, the mayor-council form declined from 54.5 to 43.5 percent, and other forms declined from 9.2 to 7.5 percent.

I don't claim to know the detailed, unwritten, and informal processes of Topeka government. As a resident, I have followed the actions of the mayor and city council periodically via their televised meetings, commercial television, and the Topeka Capital-Journal. I am also aware of recent research on council-manager governments.

Recent Research Findings about Council-Manager Governments

After studying the one hundred year history of the council-manager form of government, researchers conclude that the form does not automatically produce good government without the appropriate contributions of elected and administrative officials. If, however, one is choosing the form of government most likely to produce sound, long-term governance; effective implementation and service delivery; capable management; and transparent, ethically-grounded and citizen-oriented processes, the council-manager form is the preferred choice based on essential structural features.[4]

Researchers continue to study the council-manager form and other forms of local government. They find some cities, while retaining the major characteristics, have modified minor features of the council-manager form.[5]

One measure of governance quality is the level of reported conflict and cooperation that is present between and among elected officials and administrators. High levels of conflict or low levels of cooperation can hinder the decision-making process. Researchers determine what factors are likely to lead to conditions conducive to cooperation and lower perceived conflict in the local governance process. Data on government performance and indicators of perceived conflict and cooperation were collected from a national survey of municipal mayors, council members, and chief administrators in cities with populations of 50,000 to 250,000. The results suggest that form of government and proportion of council members elected by district are two factors that significantly influence governance at the local level. The authors find that council-manager municipalities have higher levels of cooperation and lower levels of perceived conflict than mayor-council municipalities, particularly for empowered mayor-council-manager cities.

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[2] For a general discussion, see "Council-manager government."
[3] Svara and Nelson, Figure 1.
[4] Svara and Nelson.
[5] For a discussion of variations in the structure of city governments, see Nelson and Svara, "Adaptation of Models Versus Variations in Form: Classifying Structures of City Government."

The authors also find that higher proportions of by-district seats are associated with lower levels of reported cooperation.[6]

Using data on the adoption of e-government, reinventing government, and strategic practices, researchers investigate the characteristics of municipal governments that are related to implementation of innovative practices. They find that higher innovation rates are associated with council-manager governments --- both with and without an elected mayor, higher population, greater growth, lower unemployment, sunbelt location, and higher population density. Controlling for all other variables, form of government (and variations within form) account for the greatest explanation of the adoption of innovative practices in municipalities. The researchers conclude that form of government remains an important variable to consider when investigating local government management and performance.[7]

The "rules of the game" embodied in municipal government institutions constrain as well as provide opportunities for local government officials to capture individual benefits related to policy action. Whether the projected benefits of cooperation are localized or community-wide are thought to combine with the political incentives produced under different forms of government to influence the likelihood local officials will enter into an economic joint venture with other local governments. Analysis of pooling survey data from the same cities at two time points provides evidence that prior agreements influence future cooperative actions and that joint ventures are more likely when there are localized benefits combined with mayor-council government, or when broader benefits are pursued under manager-council form of government.[8]

Researchers reveal that social context factors --- in particular economic conditions --- generate both adoption and abandonments of council-manager government. The scenario in which economic and social forces create demand for change are generally along with political actors channeling those demands to specific types of institutions.[9] While applauding their work, a practicing deputy city manager comments that the researchers raise more questions than answers.[10]

The Great Recession's damaging effects on the finances of cities and counties have lead some observers to predict dramatic, widespread, and enduring changes to local government in response to fiscal pressure. However, the history of change in local government suggests otherwise, as does the experience of individual cities and counties that have confronted fiscal pressures in the past. Researchers suggest that financial problems will not overwhelm the

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[6] Nelson and Nollenberger.
[7] Nelson and Svara, "Form of Government Still Matters: Fostering Innovation in U. S. Municipal Governments."
[8] Hawkins.
[9] Choi, Feiock and Bae.
[10] Svrcek.

balance among an array of competing pressures that already confronted local governments long before the recession. Although some cities and counties will respond to the downturn with major, permanent changes, most will not. For local governments as a whole, equilibrium among the most important tensions they face will continue to resist dramatic moves and favor only gradual change.[11]

Based on the governing body's performance over the past ten years and recent research findings about the council-manager form of government, I support the continuation of the council - manager form of government for Topeka. Performance can be improved by the governing body --- mayor and council --- devoting more time and energy to developing policies for the city, and city manager continuing to implement the governing body's policies and proposing policies and budgets to the body.

Role of Topeka Mayor in Budget Development

The following comments and questions pertain to sections of the *Topeka Municipal Code.*

1. Under section A2-22(b) and (c), the mayor is the only elected city official who represents all voters in the whole city.
2. Under section A2-21, the nine council members are elected separately from nine districts and represent voters in their districts.
3. Under section A2-55(g), the city manager prepares an annual budget for submission to the council for review, revision and approval. The city manager's 2014 Budget transmittal letter was addressed to the council members and the mayor.[12] The Budget contains no language describing the mayor's role during its development.[13]
4. Under section A2-24(a) (i), may the mayor perform a role in developing the annual budget by recommending to the council additions, deletions and other revisions of the budget submitted by the city manager to the council?
5. If "no," does the mayor who represents the whole city have no up-front role in developing the budget that is submitted to the council?
6. If "yes," does the mayor surrender the line-item veto power under section A2-24(a) (ix)?

From my review of the City of Topeka's documents, the answers to questions 4, 5 and 6 are unclear but yet important because the needs of nine districts are unlikely to be the needs of the

[11] Ammons, Smith and Stenberg.
[12] http://www.topeka.org/pdfs/2014Budget/transmittal%letter.pdf.
[13] http://www.topeka.org/pdfs/2014Budget/mayor. Also, see section 3.05.050 Budget Schedule of the *Topeka Municipal Code.*

whole city. The content of the budget should reflect not only the needs of nine districts but also the needs of the whole city. The whole city of Topeka is greater than the sum of its nine districts.

If the mayor has no voice in developing the budget when city manager submits the budget to the council, there is a concern that the budget will not reflect city-wide priorities, but only or largely a collection of nine separate district priorities.

The mayor would have an opportunity to better perform these tasks by submitting to the council his/her recommendations on the annual operating budget submitted by the city manager to the council. Lastly, and most importantly, it would assist the mayor to perform his/her central role to inspire and encourage the city to move forward.

Having a voice in the development of the city budget would also better enable the mayor to perform at least two key powers and duties assigned to him/her by the council in the *Topeka Municipal Code*:

- Encourage programs for the physical, economic, social, and cultural development of the city, as specified in section A2-24(a) (ii), and
- Actively promote economic development to broaden and strengthen the commercial and employment base of the city, as specified in section A2-24(a) (iii).

I recommend that the *Topeka Municipal Code* specify that the mayor has the power to review the annual budget that the city manager submits to the council and to submit his/her recommended additions, deletions and/or other revisions of the budget to the council.

Voter Selection of Council Members from Topeka Districts and City

The council is representative of the diversity of the population of Topeka. There is a need to minimize actual or to avoid possible factionalism and divisiveness because council members represent the interests and priorities of voters in their separate districts rather than the city as a whole. For the mayor to exercise the powers specified in section A2-24, he/she needs to exercise leadership to forge consensus and negotiate compromise within the council. To do so, it is more important for the council to be a representative forum. The mayor needs to help council members to be able to work out their differences with more equality of power.[14]

The present single-member system for electing nine council members has other drawbacks. An inherent problem is the danger that district elected members will subordinate citywide

[14] Parts of this section were adapted from the *Model City Charter*.

concerns to district and parochial problems. A single member system also has the potential for the classic problem of "log-rolling" or vote-swapping among council members to achieve district ends.

Recognizing that all of the powers and duties that can be exercised by the city rest with the popularly elected city council, the *Topeka Municipal Code* must provide for a council which is truly more representative of the city.

Nine council members each representing one of nine districts encourages "neighborhood-based gridlock" by making it increasingly difficult to gain council approval of new initiatives that would benefit the city as a whole, but face strong district and neighborhood opposition. There is a need to bring into closer balance the number of council members elected by and from districts and the number of members by and from the city at large in order to achieve more balance in council performance of its powers and duties specified in section A2-25.5. They include all powers and duties which are not specified for the mayor in section A2-24 and city manager in sections A2-54 and A2-55. For example, balance is particularly important in developing, implementing, reviewing and, if necessary revising a strategic plan for the city to resolve complex and difficult long-range citywide issues while not ignoring short-range and immediate district-wide and neighborhood problems.

With a combination of district and citywide council members, more balance is achieved between district and citywide focus. While district council members continue to weigh their district interests and issues, citywide members have a broader constituency and a clearer obligation to weigh the entire city's interests and issues. If the city-district representation becomes unbalanced, the citywide elected mayor, acting as a facilitator, can facilitate consensus and compromise among district and citywide council members to better satisfy the preferences of the nine districts and the whole city.

Lastly and most important, Topeka City documents state "The city manager will work with the city council and mayor to develop a Strategic Plan that will serve as the foundation for annual review of services, programs and activities. Department business plans will be developed with direct linage to the Council's goals and the budget so that a <u>citywide vision of where we are and where we want to go will be achieved</u> through teamwork and communication."[15] (Underlining added.) The city council adopted the Balanced Scorecard management system in preparing and adopted (sic) the 2013 Annual Budget. The management system translates

[15] "City of Topeka - Strategic Plan."

strategy into tangible objectives and measures."[16] Both the Strategic Plan and Balanced Scorecard must be essential features of Topeka government.

For these reasons, a council with district-wide and citywide representation will be better able to work with the mayor and city manager in developing a more balanced district-wide and citywide strategic plan. Also, the city manager will be better able to implement the Balanced Scorecard management system that achieves the tangible objectives and measures that resolve the issues contained in the strategic plan.

At-large elections may tend to generate more candidates and greater voter turnout. That makes sense because more money is spent on at-large positions, raising awareness of the entire community that there is an important city election.

Also important, economic development issues take on a citywide scope. This is because representatives view themselves as stewards of the entire city, not just one part.

It should be noted that five council members representing districts would outnumber four council members representing the city at large and constitute a voting majority of the council. In addition, the at-large members need not ignore their interests of their four districts because they have to face the voters in their districts in the next primary. The mixed system ensures that district interests continue to receive consideration while the citywide interests are added for more consideration.

The mixed system combines the citywide perspective of the at-large council members with the local concerns and accountability of district council members. It allows minorities who live in concentrated areas to influence or even determine the outcome of elections in their districts.

A problem that may arise in the mixed system in two circumstances: when at-large members consider their positions to be superior to that of district members and when they are perceived as rivals to the mayor. To prevent this from occurring, at-large and district members should have equal status regarding the length of terms, and support services and facilities. Most important, all council members have the same duties, powers and functions.

The mixed system has become increasingly popular since the U. S. Department of Justice approved it as a method of electing the city council that is compliant with the requirements of the Voting Rights Act. For persons and groups concerned about scrutiny by the department or the

[16] "City of Topeka - Strategic Priorities."

courts under the act, precedent shows a clear preference for the majority of the council to be elected by and from districts rather than from the city at large.
Twenty-one percent of municipalities use mixed systems. These systems are most likely to be found in parts of the South and Central jurisdictions.[17]

Summarizing, what is necessary and logical is having the mayor and four council members who see the "big picture" in the Topeka community and they vote for the good of the entire community, not just a part of it. With an all-district council, the city runs the risk of not having coherent voices for major citywide issues. When candidates run for at-large positions, they raise issues that are broader in scope, issues that affect the entire community. The campaigns are about "us" as a city as well as about the "us" in each district.

With no at-large voices, the city would become more fragmented as each council member would want only those things that would reward his or her particular district.

Topeka needs a blend. The city needs district voices, and it needs citywide voices. The governing body would be balanced, and that is what needs to be achieved.

I recommend that section A2-22 of the *Topeka Municipal Code* specify a mixed at-large and single-member district system; the mayor is still elected separately.[18] The characteristics of the mixed system include:

1. **All candidates for district council positions and for citywide council positions run for office in the primary election from the districts in which they reside;**
2. **Five district council candidates run for district council positions in the general election from the odd-numbered districts (1, 3, 5, 7 and 9) in which they reside; and**
3. **Four citywide council candidates run for citywide council positions in the general election from the even-numbered districts (2, 4, 6 and 8) in which they reside.**

The committee may conclude the recommendation does not go far enough to ensure or enable members of the council consider the City of Topeka as a whole as well as their districts in making policy decisions. Or it may be concerned about characteristics 2 and 3.

If the above recommendation is not approved, I recommend that the entire council be elected at large with district residency requirements; the mayor would still be elected separately.[19]

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[17] National League of Cities. Also, see Frederickson, Johnson and Wood for a discussion of the changing structure of city governments, and International City/County Management Association for publications that discuss council-manager form of government.
[18] *Model City Charter*, Alternative III – Option B.

Both reforms ensure that council members give more consideration to the City of Topeka as a whole as well as their districts in making policy decisions.

Council members who run at large will assume additional citywide responsibilities and incur additional campaign expenses. They should be partially compensated for additional responsibilities and expenses.

I recommend that council members who ran for citywide positions in the general elections be compensated an additional 20 to 40 percent annually.

Conclusion

Overall, I believe the recommended improvements in the *Topeka Municipal Code* will enable the Topeka council, mayor and city manager to better collaborate in providing service benefits at costs that will better enable more Topekans to live better lives in the future.

I will respond to your comments and questions.

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[19] *Model City Charter*, Alternative II - Option B.

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300 SW 8th Avenue, Ste. 100
Topeka, KS 66603-3951
P: (785) 354-9565
F: (785) 354-4186
www.lkm.org

To: Senator XXX
From: League of Kansas Municipalities
Re: S Sub for S Sub for HB 2141 (Moving Local Elections)

In anticipation of the debate on S Sub for S Sub for HB 2141 (formerly SB 211), the League wanted to express major concern with the proposed legislation. There was no hearing on the bill in its current form, and one staff revisor has said the bill is so problematic that a trailer bill will be necessary. We do not believe the problems with this legislation can be fixed, and respectfully request that you vote NO on moving local elections.

Transitional Issues

S Sub for Sub for HB 2141 would impact the elections for all 3,812 elected city officials in Kansas and the drafting of the bill raises serious procedural concerns. Many officials currently holding office would be removed from office before their terms expire, while others will have their terms extended. Kansas citizens voted for these local officials to serve a certain amount of time, and we feel it is inappropriate for the state legislature to override their collective will. Kansas cities vary on when and how often they hold elections, and the bill's language is ambiguous about whether locally-determined terms will be replaced by four-year, two-year, or staggered terms. These issues are local in nature, not the type of statewide issue that requires state action.

Unnecessary Partisanship

Although the legislation would not make local elections partisan, it gives partisan officials (who may not even reside within city limits) the authority to fill vacancies on governing bodies, and appears to require the publication of the political affiliation of all candidates for city office. Kansas has been served well for 153 years by local officials who put community first. We believe inserting partisanship into our local governing bodies is both unnecessary and unwise.

Disrupts Budget Cycle

The bill also disrupts the budget cycle for cities by making terms for their elected officials begin in January, rather than April. The current system allows city officials to take office and then begin working toward budgeting for community services. The proposed legislation would create a lag time between the community choosing its representatives and when those representatives could begin carrying out the will of their citizens. It would also force local officials to finalize budgets while they're campaigning for the August primary.

Complicates Other Statutory Requirements

Many of our cities are required by law to appoint city officers in May of each year. These officers include municipal judges, city clerks, city treasurers, and others. By moving elections from April to November, this legislation would end an efficient appointment process where elected officials take office and shortly thereafter appoint city staff. The bill would also complicate the filing of financial interest reports, since KSA 75-4302a requires that statements of substantial interests for certain governing body members be filed between April 15 and April 30.

No Resulting Increase in Turnout

Although the purported purpose of the legislation is to increase voter turnout, the research we found indicates that moving elections to November of odd-years will have little to no impact on voter turnout. Proponents claim turnout will increase because weather conditions are better in November than in April, but average temperatures and precipitation for early April and November are virtually identical.

We also feel that using voter turnout as the sole determiner of democratic health is inappropriate. Even though local governments have lower voter turnout than state and federal races, local government has the highest level of citizen satisfaction. We believe that interfering with elections at the most popular level of government, when no city governing body in the state supports ending 153 years of spring elections, is poor public policy.

APPENDIX No 6

KLM Position Paper

City	Population	Mayor/Council	Official Meetings/Month
Wichita	384,445	M/6	3
Overland Park	176,185	M/12	2
Unified Govt. Wyandotte County	146,453	M/8	3
Topeka	128,188	M/9	3
Olathe	127,907	M/6	2
Lawrence	88,727	M/4	2
Manhattan	53,678	M/4	2

Citizen Government Review, February 13,2014; Mayor Presentation

APPENDIX No 7

Governing body comparison

CITY OF TOPEKA

City Clerk's Office
215 SE 7th Street, Room 166
Topeka, KS 66603-3914
Tel: (785) 368-3940
Fax: (785) 368-3943
byounger@topeka.org

Appendix No. 8

City Election Comparisons

City	Terms	Staggered	Election	Election Timeline	Process
Wichita, KS	4 yr. terms Limited to 2 terms	Yes	March/April	Election every 2 years, odd number years	Election Commission distributes dates & packets, City Clerk's office handles filing & fees then sends to Commission for verification
Overland Park	4 yr. terms No term limits	Yes	March/April	Election every 2 years, odd number years	Johnson County distributes dates & packets, CC handles paperwork & fees then sends to County for verification
Wyandotte Co	4 yr. terms No term limits	Yes	March/April	Election every 2 years, odd number years	Election office handles dates, packets, filings & fees
Olathe, KS	4 yr. terms No term limits	Yes	March/April	Election every 2 years, odd number years	Johnson County distributes dates & packets, CC handles paperwork & fees then sends to County for verification
Lawrence, KS	2 councilmembers serve 4 yr. terms, 4 councilmembers serve 2 yr. terms No term limits	Yes	March/April	Election every 2 years, odd number years	City Clerk's office handles filings & fees, Douglas Co processes packets & distributes fees & verification
Manhattan, KS	2 councilmembers serve 4 yr. terms, 1 serves 2 yr. term No term limits	Yes	March/April	Election every 2 years, odd number years	City Clerk's office handles filings & fees, Riley Co Election Officer distributes timelines and processes packets, fees & verification