City Council Chambers 214 SE 8th Street, 2nd Floor Topeka KS 66603
https://www.topeka.org

Governing Body Agenda

December 12, 2023
6:00 PM

Mayor: Michael A. Padilla

Councilmembers

Karen A. Hiller	District No. 1	Hannah Naeger	District No. 6
Christina Valdivia-Alcala	District No. 2	Neil Dobler	District No. 7
Sylvia E. Ortiz	District No. 3	Spencer Duncan	District No. 8
Tony Emerson	District No. 4	Michelle Hoferer	District No. 9
Brett D. Kell	District No. 5		

Interim City Manager: Richard U. Nienstedt

Addressing the Governing Body: Public comment for the meeting will be available via Zoom or in-person. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at cclerk@topeka.org by no later than 5:00 p.m. on the date of the meeting, after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting. View the meeting online at https://www.topeka.org/communications/live-stream/ or at https://www.facebook.com/cityoftopeka/.

Written public comment may also be considered to the extent it is personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at cclerk@topeka.org on or before the date of the meeting for attachment to the meeting minutes.

The Federal Communications Commission (FCC) has adopted use of the 711 dialing code for access to Telecommunications Relay Services (TRS). TRS permits persons with a hearing or speech disability to use the telephone system via a text telephone (TTY) or other device to call persons with or without such disabilities. To reach the City Clerk's office using the TRS, please dial 711.

Agendas are available by 5:00 p.m. on Thursday in the City Clerk's Office, 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or on the City's website at https://www.topeka.org.

CALL TO ORDER:

INVOCATION:

PLEDGE OF ALLEGIANCE:

1. ROLL CALL:

2. APPOINTMENTS:

A. Board Appointment - Board of Plumbing Appeals

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

B. Board Appointment - Board of Electrical Appeals

BOARD APPOINTMENT recommending the reappointment of Robert Bausch to the City of Topeka Board of Electrical Appeals for a term ending December 31, 2025. *(Council District No. 5)*

3. PRESENTATIONS:

Topeka Fire Department Emergency Medical Response Assessment

4. CONSENT AGENDA:

A. MINUTES of the regular meeting of December 5, 2023

B. APPLICATIONS:

5. ACTION ITEMS:

A. Public Hearing and Ordinance - 2023 Budget Amendments

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

ORDINANCE introduced by Interim City Manager Richard U. Nienstedt, approving and adopting certain amendments to the operating budget for the City of Topeka for the year 2023 and appropriating the amounts for the purpose as set forth therein

Voting Requirement: Action requires at least six (6) votes of the Governing Body.

Approval would amend the 2023 City Operating Budget. Amendments total $3,729,962 increasing expenditures from $9,286,954 to $13,016,916.)

B. Ordinance - American Medical Response (AMR) Franchise Renewal

ORDINANCE introduced by Interim City Manager Richard U. Nienstedt, providing for a nonexclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka until December 31, 2024, and replacing the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2023.

Voting Requirement: Action requires at least six (6) votes of the Governing Body.

(Approval would renew the AMR franchise for 2024.)

C. Resolution - Emilio Cuevas Apartments (CU23/05)

RESOLUTION introduced by Interim City Manager Richard U. Nienstedt, in accordance with Section 18.60.010 of the Topeka Municipal Code (TMC), approving a Conditional Use Permit on property located at 1610 NW Tyler and zoned "X-1" Mixed Use District to enable expansion of the existing multiple-family residential development. *(CU23/05) (Council District No. 2)*

<u>Voting Option Requirements</u>: (1) Approve Planning Commission's recommendation, 6 votes are required of the Governing Body (2) Reject or Amend Planning Commission's recommendation, 7 votes are required of the Governing Body; or (3) Remand back to Planning Commission, 6 votes are required of the Governing Body.

(Approval will allow 20 new residential apartments in addition to the existing eight residential apartments.)

D. Ordinance - DreamMakers LLC (PUD23/07)

ORDINANCE introduced by Interim City Manager Richard U. Nienstedt amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code on property located at 2900 SE Kentucky Avenue rezoning from "O&I-2" Office and Institutional District all to "PUD" Planned Unit Development District with O&I-2 uses and Automobile Sales. *(PUD 23/07) (Council District No. 4)*

<u>Voting Option Requirements</u>: (1) Approve Planning Commission's recommendation, 6 votes are required of the Governing Body (2) Reject or Amend Planning Commission's recommendation, 7 votes are required of the Governing Body; or (3) Remand back to Planning Commission, 6 votes are required of the Governing Body.

(Approval would allow for five existing off-street parking spaces to be utilized for the display of automobiles for sale.)

6. NON-ACTION ITEMS:

A. Discussion - Common Consumption Areas

DISCUSSION concerning the creation of Common Consumption Areas and designating area boundaries. *(The Policy and Finance Committee recommended approval by a vote of 2-0-0 on December 6, 2023.)*

(Proposed Common Consumption Areas "CCA" to be established are located in NOTO and Downtown Topeka. The defined areas allow for individuals to possess and consume alcoholic liquor outside of a licensed bar, restaurant, or other eligible establishment that is permitted to sell alcoholic beverages by the State of Kansas.)

B. Discussion - Wanamaker Hills Community Improvement District - Development Agreement Amendment

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

(Approval will amend the development agreement approved by the Governing Body in 2019 for the CID located at SW 17th Street and Wanamaker Road.)

7. PUBLIC COMMENT:

Public comment for the meeting will be available via Zoom or in-person. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at cclerk@topeka.org by no later than 5:00 p.m. on the date of the meeting, after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting. Written public comment may also be considered to the extent it is personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at cclerk@topeka.org on or before the date of the meeting for attachment to the meeting minutes. View the meeting online at https://www.topeka.org/communications/live-stream/ or at https://www.facebook.com/cityoftopeka/.

8. ANNOUNCEMENTS:

9. EXECUTIVE SESSION:

Executive Sessions are closed meetings held in accordance with the provisions of the Kansas Open Meetings Act.

(Executive sessions will be scheduled as needed and may include topics such as personnel matters, considerations of acquisition of property for public purposes, potential or pending litigation in which the city has an interest, employer-employee negotiations and any other matter provided for in K.S.A. 75-4319.)

10. ADJOURNMENT:

City of Topeka

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Mayor Michael A. Padilla**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Board of Plumbing Appeals**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**006 Communication / 005 Other**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

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

VOTING REQUIREMENTS:

Action requires at least five (5) votes of the City Council. The Mayor does not vote.

POLICY ISSUE:

The Board of Plumbing Examiners reviews applications and approves the issuance of licenses in accordance with City Code. The board is empowered to hear and determine interpretations of applicable codes and to permit exceptions, variances or waivers.

STAFF RECOMMENDATION:

Councilmember Dobler nominates and Mayor Padilla recommends the reappointment of Jeff Romine to the Board of Plumbing to a two-year term ending December 31, 2025. The position requires the member hold a professional engineering license and live within the city. Mr. Romine meets these requirements.

BACKGROUND:

This is a City-created board where the City Council nominates and the Mayor appoints. The board shall be comprised of five members; two licensed master plumbers, one engineer or equivalent practicing in the particular trade, and two persons who shall be a licensed journeyman, licensed master, or an engineer practicing in the particular trade. Members shall be appointed by the Mayor and serve two-year terms.

BUDGETARY IMPACT:

There is no budgetary impact to the City.

SOURCE OF FUNDING:

Not Applicable.

ATTACHMENTS:

Description

J. Romine - BPA Reappointment Application

City of Topeka Boards and Commissions Application

Submitted on	2 October 2023, 2:43PM
Receipt number	191
Related form version	8

Profile

First Name	Jeff
Last Name	Romine
Email Address	jdromine@brackengin.com
Street Address	6112 SW 39th Street
Suite or Apt	
City	Topeka
State	Kansas
Zip	66610
Are you a resident of the City of Topeka?	Yes
What district do you live in?	District 7
Primary Phone	17852716644
Alternate Phone	7856400509
Employer	Brack & Associates
Job Title	Associate
Which Board would you like to apply for?	Board of Plumbing Appeals
Are you a registered voter?	Yes
Are you currently a full or part-time employee of the City of Topeka?	No
Which department do you work for?	

Are you or any immediate family member related to any city governmental official or employee?

No

Who are you related to and how are you related?

Are you or have you been a party to any civil litigation involving the City of Topeka?

No

Please explain the litigation and your role in it:

Are you delinquent in payment of any taxes, fees, fines, or special assessments owed to the State of Kansas, Shawnee County or the City of Topeka?

No

Please explain your delinquent payment situation.

Please state why you are interested in serving on this board or commission:

I have served on this board since the mid 90's and enjoy giving back to the city.

Interests & Experiences

Please describe your education, experience, and expertise including any honors, awards, civic, cultural, charitable or professional organization memberships that relate to the position you are seeking.

Graduate of the college of engineering at Kansas State University. I have been employed as a consulting engineer at Brack & Associates since 1987.

List any professional licenses you hold in Kansas and advise if they are current. (We reserve the right to request a copy of your license prior to approval of your appointment.)

PE 12605

****Please upload a resume or any additional information you believe may be helpful in considering your application.**

Voluntary Self Identification

Ethnicity

Caucasian/Non-Hispanic

Gender

Male

Acknowledgements and Verification

Purpose of Information being submitted.

I Agree

The information I am submitting is true and correct.

I Agree

Your electronic signature

JEFF ROMINE

[Link to signature]

Alternative electronic signature

Jeff Romine

Notification to applicants for City Board/Commissions	Please be advised that your application and any documents that you attach are public records and, as such, are available to the public, upon request, pursuant to the Kansas Open Records Act. If you are appointed to the position, your application and resume will be included in the governing body meeting agenda which is posted online.

City of Topeka
Council Action Form
Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Mayor Michael A. Padilla**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Board of Electrical Appeals**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**006 Communication / 005 Other**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

BOARD APPOINTMENT recommending the reappointment of Robert Bausch to the City of Topeka Board of Electrical Appeals for a term ending December 31, 2025. *(Council District No. 5)*

VOTING REQUIREMENTS:

Action requires at least five (5) votes of the City Council. The Mayor does not vote.

POLICY ISSUE:

This board reviews applications and approves the issuance of licenses in accordance with the Code of the City of Topeka. The board is empowered to hear and determine interpretations of applicable codes and to permit exceptions, variances, or waivers there from, provided such exceptions, variances, or waivers meet the intent of the adopted code and do not endanger life, limb, property or public welfare.

STAFF RECOMMENDATION:

Councilman Kell nominates and Mayor Padilla recommends the reappointment of Robert Bausch to the City of Topeka Board of Electrical Appeals for a term ending December 31, 2025. Mr. Bausch is a licensed journeyman.

BACKGROUND:

The board shall be comprised of two licensed electrical masters, two licensed journeymen, and an engineer practicing in the trade. However, the two positions designated to be filled by journeymen may be filled by licensed journeymen, licensed masters, or engineers practicing in the electrical trade.

BUDGETARY IMPACT:

There is no budgetary impact to the City.

SOURCE OF FUNDING:

Not Applicable.

ATTACHMENTS:

Description

R. Bausch - Reappointment Application

City of Topeka Boards and Commissions Application

Submitted on	11 October 2023, 1:33PM
Receipt number	193
Related form version	8

Profile

First Name	Robert
Last Name	Bausch
Email Address	Robertb@ibew226.com
Street Address	3000 sw 36th
Suite or Apt	
City	Topeka
State	Kansas
Zip	66614
Are you a resident of the City of Topeka?	Yes
What district do you live in?	District 5
Primary Phone	785-554-7770
Alternate Phone	785-232-1761
Employer	IBEW Local Union 226
Job Title	Business Manager
Which Board would you like to apply for?	Board of Electrical Appeals
Are you a registered voter?	Yes
Are you currently a full or part-time employee of the City of Topeka?	No
Which department do you work for?	

Are you or any immediate family member related to any city governmental official or employee?	No
Who are you related to and how are you related?	
Are you or have you been a party to any civil litigation involving the City of Topeka?	No
Please explain the litigation and your role in it:	
Are you delinquent in payment of any taxes, fees, fines, or special assessments owed to the State of Kansas, Shawnee County or the City of Topeka?	No
Please explain your delinquent payment situation.	
Please state why you are interested in serving on this board or commission:	I have worked in the electrical industry for almost 29 years. I like giving to back to the trade.

Interests & Experiences

Please describe your education, experience, and expertise including any honors, awards, civic, cultural, charitable or professional organization memberships that relate to the position you are seeking.	I have been in the trade for almost 30 years and have worked on industrial, commercial, residential projects and worked in service. I serve on the electrical advisory board for washburn tech. I set on the apprenticeship committee at the Topeka Electrical Jatc. I am currently the business manager for IBEW Local Union 226.
List any professional licenses you hold in Kansas and advise if they are current. (We reserve the right to request a copy of your license prior to approval of your appointment.)	Journeymen license Topeka
****Please upload a resume or any additional information you believe may be helpful in considering your application.**	Robert Bausch Resume 2023.pdf

Voluntary Self Identification

Ethnicity	Caucasian/Non-Hispanic
Gender	Male

Acknowledgements and Verification

Purpose of Information being submitted.	I Agree
The information I am submitting is true and correct.	I Agree
Your electronic signature	
Alternative electronic signature	Robert Bausch
Notification to applicants for City Board/Commissions	Please be advised that your application and any documents that you attach are public records and, as such, are available to the public, upon

request, pursuant to the Kansas Open Records Act.

If you are appointed to the position, your application and resume will be included in the governing body meeting agenda which is posted online.

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Council Action Form
Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Misty Buckner, PPMC Wichita State University and Chief Tom Jenkins**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

Topeka Fire Department Emergency Medical Response Assessment

VOTING REQUIREMENTS:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

Description

Cover Memo - R. Phillips, Fire Chief (Dec 12, 2023)
Topeka Fire Department Medical Response Assessment (May 2023)

TOPEKA FIRE DEPARTMENT
Randy Phillips, Fire Chief
324 SE Jefferson Street
Topeka, KS 66607
Tel: 785-368-4000
Fax: 785-368-4030
www.topeka.org

December 12, 2023

Mayor and City Council,

Shortly after being named the Fire Chief in March of last year, then Interim City Manager Cochran met with me and stated that he wanted to bring in the Wichita State University Public Policy Management Center to conduct an overview of EMS delivery by TFD and the EMS system within Shawnee County as a whole.

The initial working group consisted of community members selected by Mr. Cochran, two executive board members of IAFF Local 83, a representative from city legal, finance, and human resources, as well as two TFD command staff members including myself. There had only been a few meetings with the WSU staff and the working group when former City Manager Wade took over in that role. At that time, he made the decision to reduce the size of the working group and going forward it consisted of the bargaining unit and management members of TFD along with Mr. Wade.

Over the next number of months TFD staff provided the WSU team with multiple sets of data related to TFD operations, staffing, deployment, and calls for service. They were also provided current copies of the bargaining unit contract, the city franchise agreement with AMR, and the Shawnee County contract with AMR. A member of the WSU team, Rogers, Arkansas Fire Chief Tom Jenkins visited Topeka meeting with myself as well as touring the Shawnee County Emergency Communications Center(dispatch). Additional WSU team members conducted multiple focus groups with TFD personnel across all ranks and shifts with a prepared list of questions related to EMS delivery as well as other topics related to TFD.

As the work progressed, prior to a report being finalized, Mr. Wade left employment with the City. In discussion with WSU team leader, Misty Bruckner, she informed me she had previously worked with Interim City Manager Nienstedt and that they had a good working relationship. I put them in contact with each other so that he could be brought up to speed and a path forward was agreed to. A draft report was shared with the working group for review and discussion. After this occurred, Mr. Nienstedt and I have had discussions related to the contents of the report and to prepare for the presentation of the report to yourselves and the public.

TOPEKA FIRE DEPARTMENT
Randy Phillips, Fire Chief
324 SE Jefferson Street
Topeka, KS 66607
Tel: 785-368-4000
Fax: 785-368-4030
www.topeka.org

I want to say Misty and her team have been very professional and good to work with. I would not hesitate to recommend working with them again in the future if it was felt the need arose. I also want to state that this report is not an action plan on how to move TFD from its current operational level to one of full ALS transport service. That is not the direction given to the WSU team by City officials.

Despite the changes in the City Manager's position during the course of the work done, I believe this report is beneficial as a picture of where TFD and Shawnee County EMS delivery are currently, as well as provides solid recommendations to move forward with to improve the quality of services provided to the community. I look forward to the opportunity to discuss any thoughts or questions you may have regarding the report as we continue to work to provide the highest level of service possible to our community.

Respectfully,

Randy Phillips
Fire Chief

Topeka Fire Department Emergency Medical Response Assessment

City of Topeka | May 2023

Contents

Prepared by

Wichita State University

Public Policy & Management Center

Misty Brucker, Director

Tom Jenkins, Project Associate/Technical Expert

Dulcinea Rakestraw, Applied Research & Collaboration Manager

Isabel Ebersole, Research Assistant

Acknowledgements

The Public Policy and Management Center (PPMC) would like to thank the numerous stakeholders who assisted with input into this report, especially those individuals who participated in interviews and focus groups. The PPMC would especially like to recognize the members of the leadership team for this project.

Randall Phillips, City of Topeka, Fire Chief
Jason Broadbent, Division Chief of Operations
Aaron Freeman, Lieutenant, IAFF Local 83 President
Jared Wilson, Lieutenant, IAFF Local 83 Vice-President

Disclaimer

This study was conducted by the PPMC at Wichita State University. The PPMC is an independent research body unaffiliated with the City of Topeka or the Topeka Fire Department. This report was prepared by the research team and data collected from external sources. PPMC's findings are based on assumption of data accuracy received from internal and external sources. The findings represent the findings, views, opinions and conclusions of the research team alone. The report does not express the official or unofficial policy of Wichita State University.

Executive Summary

The City of Topeka Fire Department provides comprehensive emergency response to the City of Topeka and its over 120,000 citizens using 12 strategically placed fire stations. These fire stations use two primary types of response apparatus, engines, and ladder trucks, to create the City's fire and emergency medical response framework. These fire companies respond in tandem with the local ambulance provider, American Medical Response (AMR), to care for individuals in the City. In addition, AMR provides ambulances service to the rest of Shawnee County.

The Topeka Fire Department (TFD) identified improvement opportunities related to emergency medical care and efficiencies by investigating a new deployment model of the fire department. In recent years the TFD has implemented advanced life support (ALS) fire companies at high call volume fire stations and considered patient transport capability.

The PPMC conducted research, stakeholder engagement, and data analysis in December 2022 through May 2023, to explore the assets, challenges, and opportunities for TFD to expand ALS and/or patient transport. The conclusion from the initial work is that a wide spectrum of investment must be undertaken to further consider and potentially implement emergency medical transport service within the TFD. Culturally, the department's members expressed concern about the consequences of such an investment, while also acknowledging the appropriateness of the idea. Logistic and leadership components of such an undertaking will offer fundamental changes to the structure and operation of this traditional organization.

Following this study, the PPMC recommends that continued conversations occur, and changes be implemented in the TFD to prepare for future needs in emergency medical service delivery, as outlined in the variety of recommendations provided.

Background & Recommendations

The City of Topeka provides ambulance services through a model commonly encountered in other communities of similar size across the United States, in which the ambulance service is operated by a private third-party provider. Shawnee County, including the City, maintains a contract with Global Medical Response / American Medical Response (AMR) for both physical and human resources to operate the ambulance. In addition to this contract, AMR operates under a franchise agreement for exclusivity with the City.

AMR utilizes between six and eight ambulances each day, working 12-hour shifts, to provide service to the City and County. These ambulances utilize a system status management model to strategically place resources in appropriate locations based on the number of units available. This model creates a regular rotation of units moving throughout the City and County as each shift transitions and as calls are received.

The fire department is an integral part of emergency medical care in the City, with a long-standing practice of providing first response service to supplement the third-party ambulance. This operation has occurred for several decades. Research and initiatives from the TFD during the previous decade helped identify the need for the department to further assist the ambulance provider. In 2020, the fire department successfully implemented paramedic fire companies at some of their busier fire stations to further supplement emergency medical care in the City.

Emergency medical incidents represent many of the emergencies handled by the Topeka Fire Department. In 2022, 68 percent of the 23,762 emergency incidents received by the department were for medical emergencies. This percentage is reflective of the entire US fire service, which reported that 64 percent of incidents were medical in nature in 2020 (TFRS, June 2022).

Recommendations

Based on the information collected and evaluated during this study, including industry best practice standards, the following recommendations are presented for consideration. Implementation of these recommendations will support TFD as they provide high quality, lifesaving first response services to Topeka.

1. Evaluate the current placement of advanced life support (ALS) fire companies taking into consideration the frequented posts of AMR ambulances, call patterns, and response time performance that exceeds 480 seconds travel time for an ALS resource (NFPA 1710 4.1.2.1).

2. Consider adding additional ALS fire companies into under-served areas of the City as performance issues are identified (ALS response greater than 480 seconds, 90 percent of the time, NFPA 1710 4.1.2.1).

3. Prioritize four-person staffing of ALS fire companies to allow the company's quick recoil after high-acuity EMS calls.

4. Consider establishing an EMS supervisor position on each shift and adding EMS staff positions to provide the leadership, training, and system reliability support to the EMS program.

5. Create a regular and productive communication framework to integrate the continuum of care provided by AMR and TFD, in accordance with Section 6 (B) of the City's franchise agreement. Leaders of these organizations should regularly meet to steer the EMS program with a defined agenda.

6. Modify the franchise agreement in 2024 to ensure a minimum of five ALS ambulances are available each day. Furthermore, at least 80% of on-duty ambulance resources should be ALS in capability.
   - ALS resources should be automatically sent to all first-alarm or greater structure fires in the City.

7. Create a process for automatic notification of "Status 0" to the TFD jointly with AMR and TFD input. Sharing this status will allow awareness of extended response times and prompt the dispatch of ALS companies in the absence of available ambulances.

8. Establish common nomenclature for the identification of ALS and BLS ambulances. Share estimated times of arrival between AMR and TFD using a CAD-to-CAD interface or similar process, so that the information on unit location is easily accessible to field responders.

9. Review 15% of medical calls receiving an EMD determinant code of "Delta" or "Echo" by an AMR EMD-Q. Share the results of each occurrence with TFD.

10. Complete a critical task analysis by TFD to tier its response to medical calls based on the complexity and task. This should be completed with medical director input and comment.

11. The City should create or improve incentives for the attainment of EMS training, including EMT-Advanced and EMT-Paramedic certification. These incentives

should be targeted at ensuring competitiveness with the area departments used by TFD for contract negotiation.

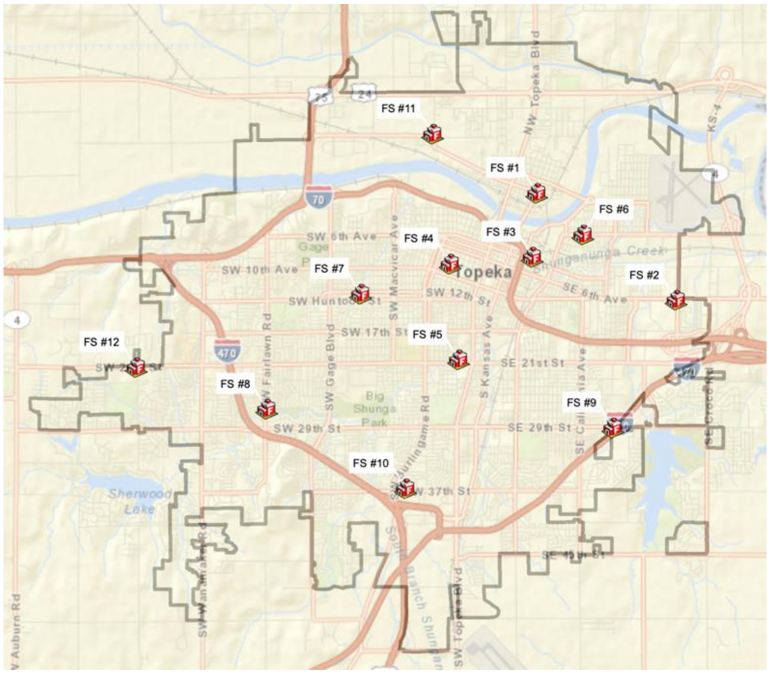
12. The City should begin an aggressive campaign to train approximately 15-25 firefighters each year in a paramedic program. Consideration should be given to online programs, as allowed by the Kansas Board of Emergency Medical Services, due to their compatibility with firefighter schedules. Consideration should be given to training contracts for individual firefighters that would require them to continue employment with the TFD for a certain number of years.

Current Structure & Best Practices Alignment

The Topeka Fire Department serves as a first response agency that supplements prehospital care provided primarily by AMR at the ALS level. This type of system, generally described as a “two-tier” first response system, is a best practice used by most fire departments in the United States. In a 2005 report of EMS Field Experiments, done by a variety of scientists as part of the Firefighter Safety and Deployment Study, it was found that first response resources, when dispatched simultaneously with an ambulance, arrive *prior* to the ambulance approximately 80 percent of the time (p.10).

The TFD staffs 18 fire companies each day. These fire companies include six truck companies and 12 engine companies that are quartered in 12 fire stations spread throughout the City. All 18 can respond to medical emergencies as basic life support (BLS) units. Basic life support, as defined by

Figure 1 - Topeka Fire Station Locations



the NFPA 1710 standard is defined as, “a specific level of prehospital medical care provided by trained responders, focused on rapidly evaluating a patient’s condition; maintain a patient’s airway, breathing, and circulation; controlling external bleeding; preventing shock; and preventing further injury or disability by immobilizing potential spinal or other bone fractures.” Four engine companies, Engines 5, 8, 10, and 12, are designated as advanced life support (ALS) units, in addition to their conventional firefighting duties. NFPA defines ALS care as, “emergency medical treatment beyond basic life support that provides for advanced airway management including intubation, advanced cardiac monitoring, defibrillation, establishment and maintenance of intravenous access, and drug therapy.” These companies may be staffed by either a paramedic or EMT-A provider to meet the threshold required for ALS care.

All TFD firefighters are certified to the EMT-Basic level. This minimum level of certification ensures plentiful numbers of clinicians to maintain the BLS level of service in the City. Paramedic and EMT-A certification is more time consuming and difficult to obtain for members, although financial incentives are provided by the department for members who obtain the certification and licensure. In fiscal year 2024, the EMT-A financial incentive is $2,250 and the paramedic incentive is $4,500.

The dispatch centers for both TFD and AMR are located at Shawnee County Emergency Communications Center (SCECC). AMR was relocated to the center a few years ago to improve coordination to medical incidents. This center is the primary answering point for all of Shawnee County, including the City of Topeka. Medical calls are handled by the AMR dispatchers located in the center. When the criticality and location of the call is appropriate for the response of the TFD, an incident is automatically populated on the Tyler Technology Computer Aided Dispatch System (CADS) using an interface between the AMR and TFD systems. During 9-1-1 caller interrogation, the National Academies of Emergency Dispatch ProQA system is utilized. Both TFD and AMR use the same Association of Public Communications Officials (APCO) Standard P25 digital radio system for interoperability.

Best Practices Alignment

Providing emergency medical care through the fire department is common throughout the country, with a 2020 report from the National Fire Protection Association showing that 46 percent of the 29,452 fire departments provide BLS care and another 17 percent provide ALS care. The manner and implementation of providing that care varies greatly depending on the jurisdiction. The TFD incorporates various best practices for a two-tier emergency medical first response, model including:

- BLS response from all fire companies
- Strategically located ALS/EMT-A response from fire companies
- Automatic dispatch coordination in a centralized location
- Radio interoperability between the ambulance provider and fire companies

The aim of this assessment was the potential for future improvement within the fire department to further integrate emergency medical *transport* capability within the agency. To determine the department's readiness for such an endeavor the following fundamental ingredients of such a process were assessed:

1. Current quantity and deployment of paramedics
2. Ability and timeframe for training additional paramedics
3. Internal EMS leadership and management capacity
4. Logistical capacity for additional emergency response resources (ambulances) inside fire stations

The current number of paramedics and EMT-As is sufficient to manage the four ALS fire companies, although anecdotal instances of their ALS capability being unavailable were shared during interviews and discussion. Because of promotions, retirements, and reassignment, maintaining adequate paramedic numbers is imperative to the mission of the TFD. The paramedic program within the TFD was established in 2019-2020, and therefore is still relatively new in design and implementation. Should the department consider additional ALS companies or the implementation of ambulance resources, the current quantity of paramedics would be insufficient.

Under the current deployment scheme, paramedics can be deployed at any rank (Firefighter, Driver/Apparatus Operator, Lieutenant, Captain) to the ALS fire companies. If ambulances were part of the response resources handled by the department, some ranks would likely be unassignable to fill those positions, thereby limiting paramedic deployment even more. As is recommended, the department should deliberately increase its emphasis in paramedic training, compensation, and leadership to attain greater impact in the field of emergency medical care.

Emphasizing paramedic training is not an easy endeavor. The commitment by the department and the individual member seeking the training is significant in terms of cost, time, and system oversight. It takes approximately two years for a paramedic to complete training and be available for use by the department. During that two-year period, that firefighter completing the training will likely commit hundreds of hours to classroom and clinical instruction, likely impacting daily staffing for the department and requiring the use of overtime compensation.

Recent studies by the American Ambulance Association show critical shortages in paramedic positions across the country. Due to Topeka's geographic location near the Kansas City Metropolitan area, training paramedics without proper incentivization could be a poor investment to the City if they are lured by competitive benefits and salaries just a few dozen miles away. Careful surveillance of the job market regarding paramedics should be regularly done to ensure any investment is appropriate and effective.

The City of Topeka, along with the fire department, is rich in tradition and culture. Research on the facilities of the department in the National Register of Historic Places shows three still in use on the list. With 18 fire companies, a few specialty units, and reserve/backup apparatus, the TFD lacks sufficient real estate for its current fleet, much less ambulances. As shown in Table 1, the department currently has 25 fire station apparatus bays that discharge to the front of the facility.

Table 1 - Bay Space in TFD Stations

Station No.	*Front Apparatus Bays*
1	1
2	2
3	2
4	2
5	4
6	1
7	2
8	2
9	2
10	2
11	3
12	2

Leading and managing an emergency medical program is a complex and arduous process. While many members of the department contribute to the EMS program, the EMS Chief is the single responsible party for all program components. No EMS-focused supervisor is assigned to shift duties and therefore clinical issues that develop after hours or on weekends must be dealt with by other supervisors (Captains, Battalion Chiefs) or wait until normal hours.

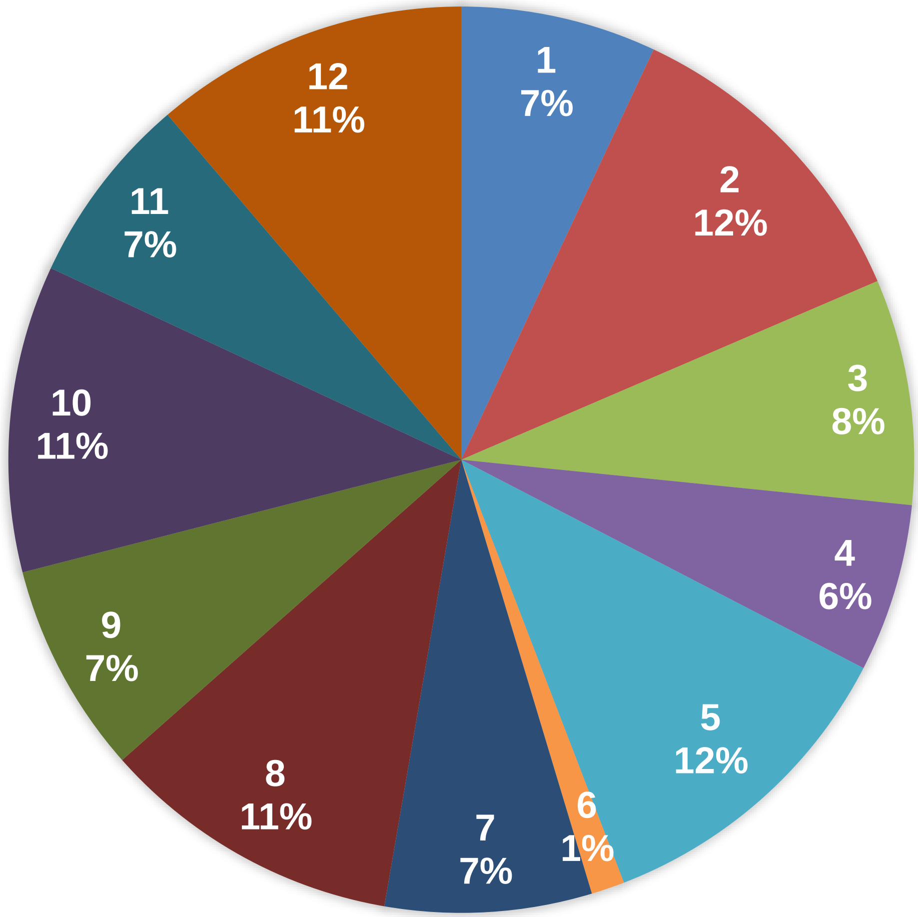
It cannot be assumed that the existing supervisory hierarchy would be sufficient for handling the task of EMS supervision and leadership in addition to the multitude of other tasks that come with running a fire department. Progress for prehospital emergency medical care will take investment in the quantity of paramedics, administrative support, and leadership.

Data Analysis

The TFD responds to a medical emergency about once every 30 minutes throughout the year. These calls are not evenly distributed throughout the day, but instead occur during predictable timeframes of heavy call volume in the late morning to early evening hours. The emergency medical call volume handled by the department in 2022 is 12 percent more than was predicted in a 2016 study by Emergency Services Consulting International. This rate of call volume growth, specifically emergency medical calls, signals that additional resources will likely be necessary to handle continued growth in the future.

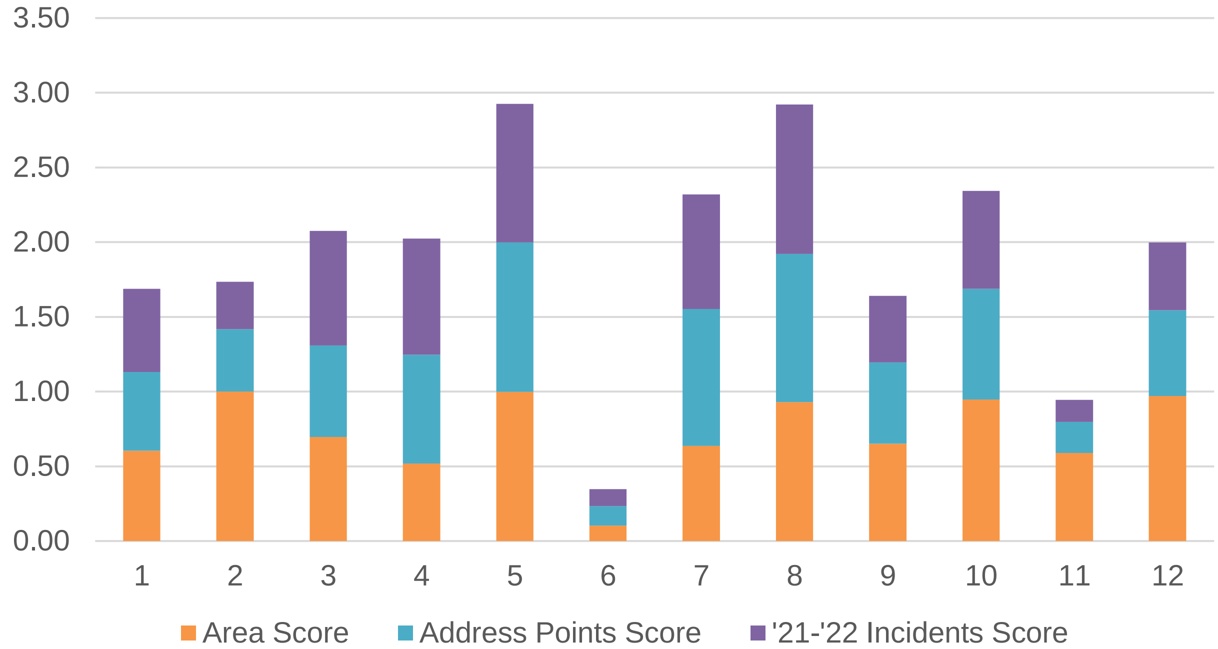
The 12 TFD fire stations are positioned to provide a 240-second travel time performance to 60,623 addresses in the City. Station 5 protects the largest quantity of addresses (8,201) and Station 6 protects the fewest (1,072). The geographic area protected by the various stations is shown in the figure below.

Figure 2 - Percentage of City Area Protected by Each Fire Station (Topeka Fire, 2023)



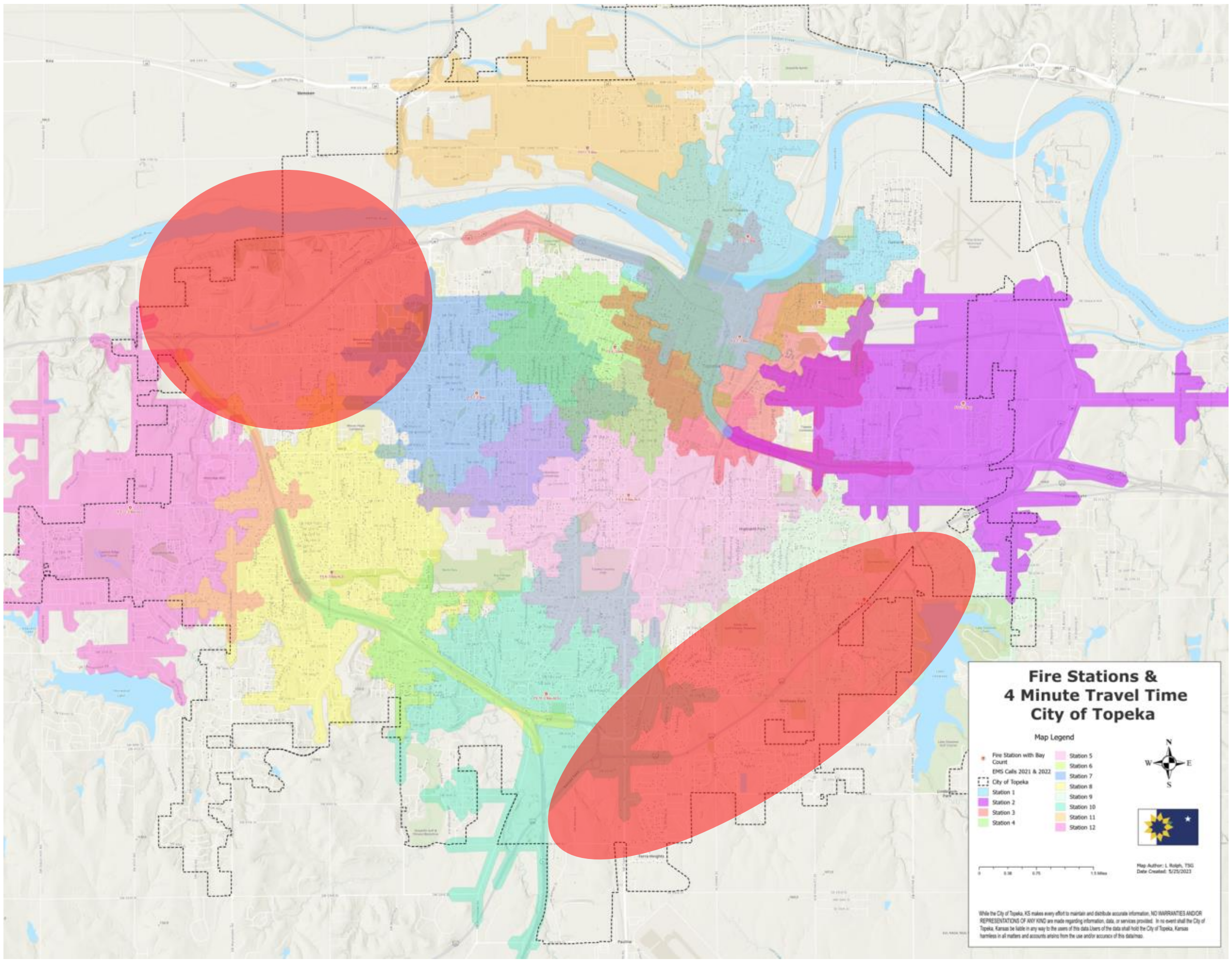
When considering call volume and square miles within the four-minute boundary of each station, along with the quantity of addresses protected, benchmarking can occur to illustrate some comparative risk between the different fire stations. This assessment shows the fire station with the highest risk, using these variables, to be Stations 5, 8, and 10. Figure 5 shows the total results of the risk analysis for all fire stations. Note: the call volume utilized for this analysis is the call volume occurring within the geographic region protected by the station, not necessarily calls handled by the units housed at the station (e.g., A call within Station 7’s geographic area that was handled by Engine 5 would count for Station 7 in this figure).

Figure 2 - Fire Station Risk Analysis using geographic area, address points, and incidents for benchmark ranking.



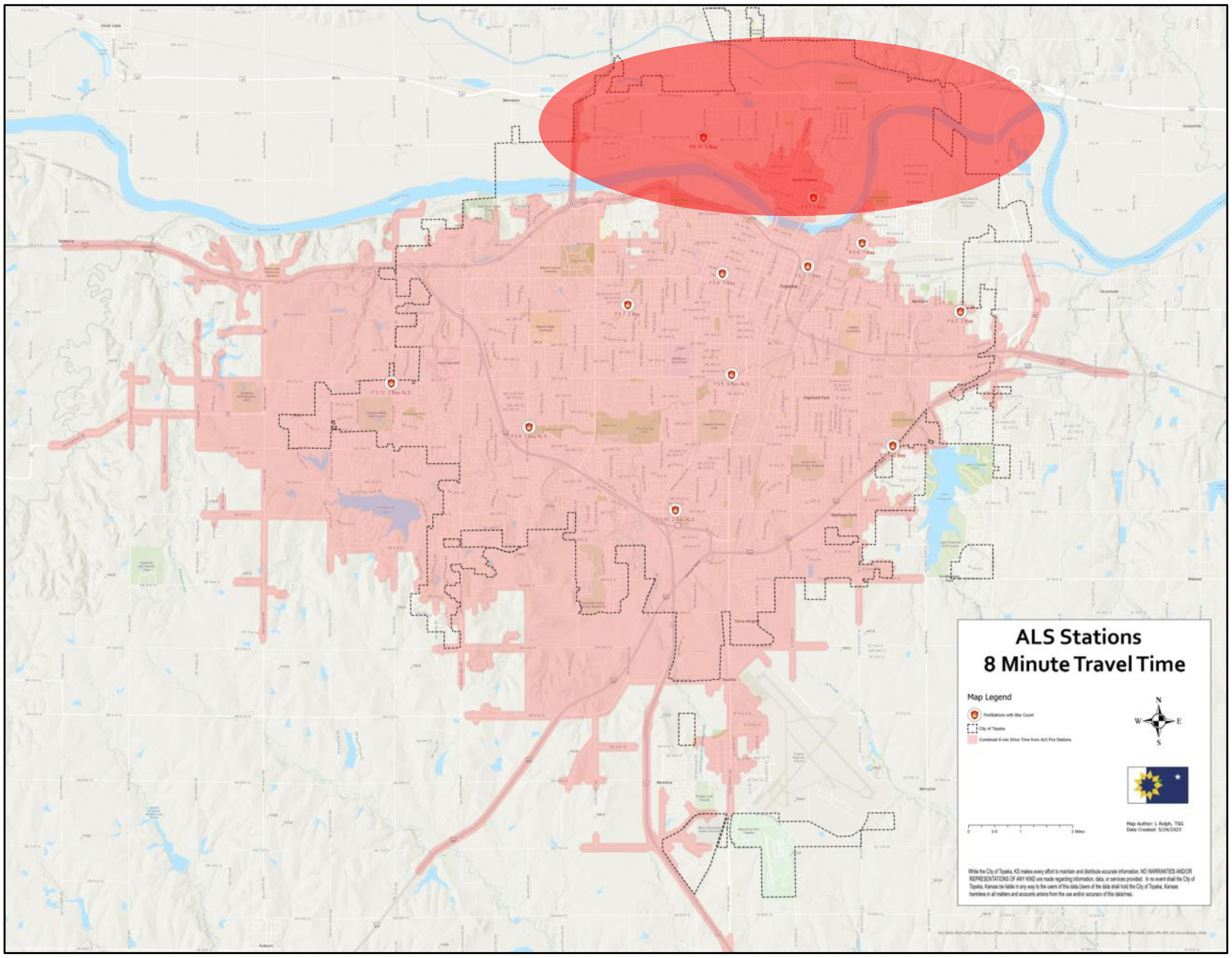
While the distribution of fire stations throughout the community provides an advantage for the TFD in fixed location response, gaps still exist throughout the community where *existing* resources cannot provide a 240-second travel time. A 240-second travel time is required by NFPA 1710 (4.1.2.1) for the arrival of a unit with first responder (BLS) capability. Two large sections of the City, as highlighted with transparent red circles in Figure 6., are noticeable gaps in service delivery. Other smaller areas of the City are also void of this travel time performance, as noted by locations without a shaded color, but within the jurisdictional boundary of Topeka. While overlapping coverage areas exist between some of the stations near downtown, this is also an area of high call volume, thus necessitating this concentration of resources for the frequency of incidents and needed concentration of resources on structural fires. An opportunity exists to construct additional fire station(s) and potentially relocate some of the less effective fire stations in the City. Should efforts to fund capital projects like this gain traction, the TFD should ensure sufficient apparatus bay space is incorporated into the design of the stations to accommodate future EMS needs.

Figure 3 - Four Minute Travel Times from TFD Stations (2023, City of Topeka)



Assessment of the geospatial ALS performance is a more complex process since both AMR and TFD provide these resources. AMR's resources are dynamic; knowing their location and resource availability for the purposes of modeling is difficult. The performance goal for the arrival of ALS resources is a 480-second travel time in accordance with NFPA 1710 (4.1.2.1). While the TFD operates only four ALS companies, their impact to the City is impressive, as demonstrated by Figure 7. A noticeable gap in coverage does exist on the north side of Topeka, along with other small areas of the City.

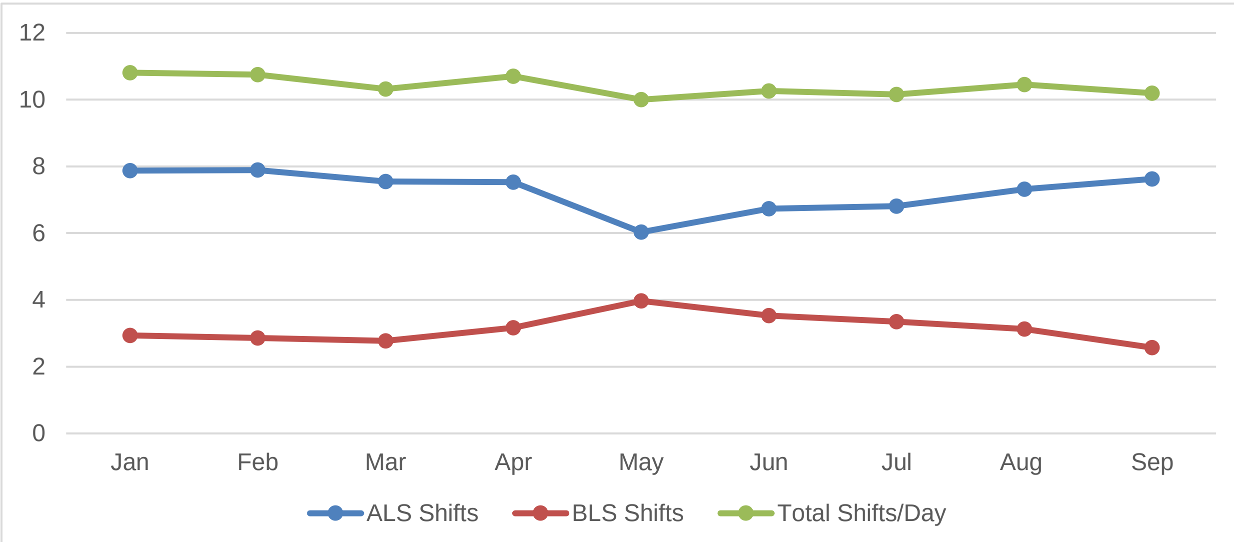
Figure 4 - TFD ALS Company Eight Minute Travel Time Performance (2023, City of Topeka)



The TFD provides consistent staffing and 24-hour coverage using its 12 fire stations. This deployment model is characteristically different from AMR's system, which moves ambulances from various geographic locations in the City based on unit availability and uses 12-hour shifts. This staffing algorithm allows for a more dynamic deployment model, modifying the number of ambulances during peak periods of call volume.

While information regarding the specifics of the AMR ambulance scheduling system was limited, a nine-month dataset from 2022 was made available for limited analysis to determine various characteristics that impact current service delivery. General concerns from the TFD about the current EMS model included insufficient ambulances and the frequent utilization of BLS units in place of ALS units, creating instances of incompatibility with the patient encountered or issues with patient handoff from TFD paramedic fire companies.

Figure 5 - Average 12-Hour Ambulance Shifts Unit Type, By Month (Jan-Sept 2022)



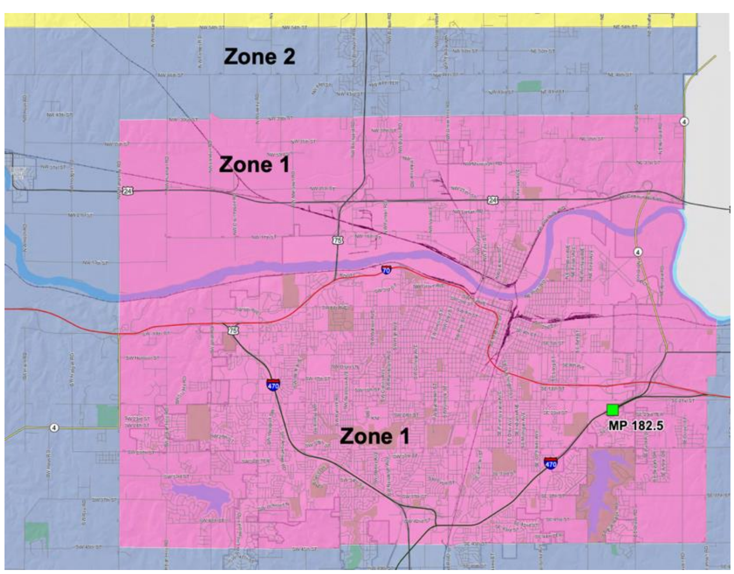
During the months analyzed, as shown in Figure 6, the Topeka/Shawnee County area had between 10 and 11 ambulances scheduled each day for 12-hour shifts. The majority of the ambulances scheduled each day were ALS units, ranging from a maximum of nine units to a low of five units. BLS ambulances ranged from six units to just one each day. There is significant variance in the composition of the daily ambulance staffing. While ALS ambulances were an average of 70 percent of the daily staffing during the entire dataset, it was inconsistent and varied from 90 percent to as low as 43 percent when reviewed daily, as opposed to a monthly average. The ratio of ALS to BLS ambulances and average number of ambulances staffed per hour also reflected significant variation. As shown in Table 2, the months with a lower percentage of ALS ambulances staffed/schedule also experience a decrease in the ALS to BLS ambulance ratio and a lower average number of ambulances scheduled. The fluctuation in ALS availability, increased interaction with BLS ambulances, and fewer total ambulances is a causal factor for the EMS issues facing the TFD.

Table 2 - Topeka / Shawnee County Ambulance Metrics (Jan-Sep 2022)

	Percentage of ALS Ambulances Scheduled Each Day	Ratio of ALS to BLS Ambulances	Average Number of Ambulances Per Hour
Jan	73%	2.68	5.4
Feb	73%	2.76	5.38
Mar	73%	2.73	5.16
Apr	70%	2.38	5.35
May	60%	1.52	5
Jun	66%	1.91	5.13
Jul	67%	2.03	5.08
Aug	70%	2.34	5.23
Sep	75%	2.97	5.1

Ambulance performance, as measured by response time within Topeka and Shawnee County is monitored, as part of the contract, by Shawnee County Emergency Management. The results of AMR's performance are published on the County's website each month. The response areas for AMR include areas of the Kansas Turnpike Authority, along with four other zones throughout Shawnee County. The City of Topeka is primarily in Zone 1, while some portions of the City are in Zone 2. For the purposes of this report, Zone 1 is targeted for analysis and is shown in the figure below.

Figure 6 - Ambulance Zone 1 and Topeka transportation network.



The requirements of response in Zone 1 are for the arrival of an ambulance at the scene of an emergency within nine minutes, 80 percent of the time, or within 14 minutes for non-emergency calls. This time includes the actual elapsed time, measured in minutes and seconds between the call being received by the AMR dispatchers in the SCECC and arrival of the ambulance.

Table 3 - AMR Performance in Zone 1 (2022-2020)

Attribute	2022	2021	2020
Total Calls	20,147	17,242	16,459
On Time Arrival	17,300	15,587	15,083
Late Arrival	2,847	1,655	1,376
Fines Issued	716	658	418
Percentage Late	14.1%	9.6%	8.4%
Percentage Fined	3.6%	3.8%	2.5%

While the contract with AMR has various appropriate exceptions for incidents with long response times, the standard penalty for late arrivals is $100 for each half percentage point below 80 percent and $10 per minute over 15 minutes. Each year, this amounts to a relatively small dollar amount of penalty when compared to the percentage of calls in which ambulances were late and the actual cost of adding resources to address the problem. The County should consider alternatives that might generate discussions to create realistic solutions to the increasing percentage of late calls, which have nearly doubled in the past three years.

Stakeholder Feedback

As part of the overall assessment for the Topeka Fire Department, the Public Policy and Management Center (PPMC) at Wichita State University conducted focus groups from March 2-6, 2023 with internal stakeholders. There were nine focus groups directly related to department assessment and medical transport, which were designed to have similar ranks or experience in each session. The following provides a summary of themes from the discussion.

Communication

The vast majority of participants indicated communication from administration had significantly improved under current fire department administration. Transparency, regular communication updates, and responsiveness to questions were common themes from the sessions. Based on concerns shared about historic communication issues, commitment to open dialogue was valued.

Fire Services

Participants were proud of the fulfillment of primary responsibilities of the department related to fire services. Participants believed the department had a good reputation within the profession of aggressive fire suppression, care of life and property, and community relations. The participants indicated resourcefulness, professional commitment, and public service focus were all points of pride for the department. Most participants believed Topeka Firefighters have pride in the job and actual satisfaction in the work.

Training

Participants indicated there had been a shift under current administration to approve time-off for training and extra resources from the department. There were still training concerns regarding in-house training effectiveness, especially as related to medical emergency services, and overall enough resources to meet the training needs of the organization.

Funding

Participants said funding was the fundamental issue that created challenges for the department. There was acknowledgment there had been recent improvements in some funding areas (facilities), but years of underfunding impacted the department. Participants said that the lack of support from the governing body and City administration was a concern.

Issues discussed that related to lack of financial resources include:

- Facilities: While there have been recent capital improvements, there is significant neglect in the buildings; ongoing maintenance concerns were cited
- Apparatus Maintenance: Due to a lack of mechanics, maintenance of vehicles and availability of apparatus is an ongoing concern
- Compensation: Participants indicated compensation is a concern, especially as related to the metro market; there is a concern with the change in generational behavior, that newer recruits are more likely to leave the department to go elsewhere for additional pay

Attraction and Retention

Participants recommended dedicated resources, financial and human, for attraction and retention. Participants indicated this as a priority for the ongoing success of the department. The workforce has changed, and the department needs to address it accordingly. Specific recommendations included:

- Dedicated recruiter
- Improved social media (actual video of the work)
- Recruitment plan
- Retention plan
- Increased training

Medical Transport

The following provides summary of the discussion specific to medical transport:

Current Structure of ALS

Participants were asked about the current ALS structure within the department. Most indicated this is a good idea, but resources hamper the success of implementation. There was also discussion about making this "person" centric, instead of station centric.

Responses were as follows:

- Need equipment and training, which is running thin already
- Need more resources/funding
- So many other priorities of basic functions, should not be a priority
- Spreading thinner
- More human resources
- Should be with "person" not station

Current AMR Response

Participants agreed there is a significant concern with the current emergency medical transport response provided by AMR. The majority of the conversation focused on the fact that AMR is a private provider with a financial incentive as their primary focus. Participants did not believe the County was doing enough to address the issue with services and that care of residents is often sacrificed. Specific issues raised included:

- Lacking overall County response
- AMR is for-profit, community is not the priority
- Not enough responders resulting in long wait times
- Not appropriately staffed resulting in not enough ambulances on the street
- Lack of paramedics and higher skills available
- Some good people at AMR, but also some low-quality service providers

Participants also provided specific examples of concerns, which included:

- Sending the wrong type of ambulance – clarity
- Slow care once on scene
- Inexperienced (examples of fire fighters correcting or being asked to do)
- Keep fire on scene longer than needed, unable to respond to other calls
- Examples of broken hips, seizures, significant medical calls where wait times were well beyond industry standards
- Concern expressed about how performance measures are being calculated
- Situations where firefighters are making recommendations to residents to "drive themselves" instead of waiting for medical transport

Impact of Current Emergency Medical Transport

When asked about the impact of the current state of emergency medical transport in Topeka through AMR, participants were primarily focused on how the low standard of care could result in death, impact to life, and prolonged suffering. Issues were raised about the fire department being held liable for care due to slow response times. In addition, there was concern about the poor quality of care impacting the reputation of the department. There was concern that AMR could decide to leave the community, creating a vacuum of services the community is not ready to address. In addition, the level of services creates perceptions of low morale and high rates of burnout among AMR staff. This constant turnover makes building relationships between the two entities (TFD and AMR) difficult.

Options for Emergency Medical Transport

Most participants indicated the first step was discussion with the County about addressing the performance issues. Holding the County responsible for their obligation was step one. Creating an alternative plan was also discussed, but all indicated additional resources are needed for any successful system.

Specific options discussed included:

- Fully operate both services within TFD
    - Make medical a separate division within fire department
    - Use newer employees for medical transport, gradually phasing out with tenure on department, if desired
- Add some services (ambulances)
- Grandfathering current employees

Concerns with Topeka Fire Department Involvement

There was little support for TFD providing medical transport without significant financial commitment. Participants feared it would take away from fire services. They also indicated that this is the role of the County and the County should be held responsible.

Other issues discussed were:

- Lack of funding: staff, vehicles, facilities
- Negative impact to response to fire
- System operates for the county, not positioned to do that
- No experience in medical billing
- Topeka has a good reputation for fighting fires, which attracts people NOT wanting to do medical transport; this could hurt and take away an advantage
- People would get training in Topeka and then leave to make significantly more in the KC metro

Paramedic Training

Participants were asked if the department provided paramedic training, would they be interested in taking the training. The majority indicated they would not, but there were a few (mostly newer employees) who indicated some interest. Almost all said the current pay incentive is not enough.

Innovative Community Examples

The following are examples of communities with innovative fire-based emergency medical service (EMS) response models. For decades, the International Association of Fire Chiefs (IAFC) has reaffirmed its position supporting fire-based EMS. IAFC says fire-based EMS is “the most efficient and effective” EMS delivery model. “When time is critical and effective pre-hospital care is necessary, the fire service is well positioned strategically, geographically, administratively, financially, and operationally (IAFC).”

Des Moines Fire Department (DMFD) | Iowa

DMFD is the largest fire-based EMS service in the state of Iowa. Each year, the department provides over 25,000 residents with pre-hospital medical care. Currently, there are 200 trained paramedics and 90 trained EMTs working in the department (City of Des Moines, A). A significant majority (70 percent) of calls to DMFD involve an EMS response (City of Des Moines, B).

Since 2022, as a condition of their employment, all DMFD firefighters must be or get certified as a Paramedic. Firefighters receive five percent Paramedic pay with their state certification or a year of service. All are certified in basic life support and advanced cardiac life support and receive regular training on topics like new equipment, procedures, medications, etc. (City of Des Moines, C).

Of their nine engines, four are Paramedic-level. The department has nine front line ambulances and seven reserve ambulances (City of Des Moines, A). “Co-dispatching EMT and Paramedic-staffed fire trucks with ambulances on medical emergencies allows the Department to rapidly provide large amounts of expertise and physical assistance at times of crisis (City of Des Moines, C) .”

Olathe Fire Department (OFD) | Kansas

In 2022, OFD responded to 8,970 EMS calls, compared to 318 fire calls. All applicants to OFD must have a current Kansas or National Registry EMT or Paramedic certification. The department works closely with Johnson County Med-Act to respond to emergency medical calls. The department has nine apparatuses operating at all times, but none are ambulances (Olathe Emergency Services).

In 2016, OFD was recognized by the Congressional Fire Services Institute (CFSI) for their Mobile Integrated Health (MIH) team (CFSI, 2016). The team, comprised of a firefighter, paramedic, and nurse practitioner, provide non-emergency medical services to the community (MIH, A). Three quarters (76 percent) of 911 calls are dispatched for medical reasons. One quarter (24 percent) are considered non-emergency. The MIH team provides and coordinates care like blood pressure checks, general exams, medical advice, etc. The ultimate goal is prevention (MIH, B).

Community Comparisons

The following are examples of departments comparable to Topeka Fire. These departments were chosen because:

- The department and community they serve are similar in size to TFD
- Like TFD, each contracts an outside entity for EMS services

Notably, all comparable departments require all firefighters to be certified EMTs.

Independence Fire Department (IFD) | Missouri

IFD works with AMR to provide quick emergency care by sending first responders to all City requests for EMS. While they do not have a contract, IFD permits AMR to provide primary pre-hospital care to the community. As explained in their *Community Risk Assessment Standard of Cover Analysis Master Plan* (December 2022), there are significant downsides to working with AMR on a permit rather than contract basis. Namely, there are no specific performance standards that AMR must meet and little accountability.

All IFD firefighters must be certified EMTs, but only some are certified Paramedics. All units are equipped for BLS care. Whether IFD can provide ALS care is dependent on how units are staffed. ALS care can only be provided when a Paramedic is on duty.

Due to recertification requirements, IFD and the EMS Instructor Group offer Continuing Education Units and in-person training opportunities. To support EMS administration, IFD has an EMS Advisory Committee that evaluates service delivery & performance data and works to resolve EMS issues with labor & management.

The Medical Director authorizes EMS provided by IFD and AMR. Only IFD has a contract with the Medical Director. The Medical Director oversees all aspects of the EMS response system including:

- Patient care protocols
- Emergency Medical Dispatch process
- Quality Assurance (QA) System, i.e., provider performance
- Quality Improvement (QI) System, i.e., provider training

The City of Independence has a fire protection sales tax of 0.5 percent used to fund building new, moving, and upgrading buildings, and adding units and personnel. The sales tax is projected to raise over six million dollars annually (IDF, 2022).

Norman Fire Department (NFD) | Oklahoma

Like most other fire departments, a large majority of NFD calls are for emergency medical services. NFD works with EMSSTAT, a hospital-based Paramedic department at the Norman Regional Health Center. EMSSTAT medics work the same schedules as the NFD (Norman Regional).

All Norman firefighters are certified EMTs as a condition of hire (NFD, B). NFD has an EMS Division responsible for all aspects of training activities and continuing education (NFD, A). The Medical Director oversees NFD and EMSSTAT. (Norman Regional)

Cedar Rapids Fire Department (CRFD) | Iowa

CRFD provides fire-based EMS to the community. The department works with Area Ambulance Service (AAS), a community-based, nonprofit organization servicing Cedar Rapids and surrounding cities. Representatives from each city sit on AAS's governing Board. Staffed with 65 full- and part-time Paramedics and EMTs, AAS operates 15 ALS ambulances. AAS does not receive any funding from the City and is funded by user fees (AAS).

All CRFD firefighters are required to be certified EMTs. Some (63) are certified Paramedics. All CRFD apparatus' have ALS capabilities (Cedar Rapids).

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City of Topeka

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Rachelle Mathews, Acting Chief Financial Officer**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**2023 Budget Amendments**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**004 Budgets or Appropriations / 001 Operating Budget - City**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

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

ORDINANCE introduced by Interim City Manager Richard U. Nienstedt, approving and adopting certain amendments to the operating budget for the City of Topeka for the year 2023 and appropriating the amounts for the purpose as set forth therein

Voting Requirement: Action requires at least six (6) votes of the Governing Body.

Approval would amend the 2023 City Operating Budget. Amendments total $3,729,962 increasing expenditures from $9,286,954 to $13,016,916.)

VOTING REQUIREMENTS:

Action requires at least six (6) votes of the Governing Body.

POLICY ISSUE:

Whether to conduct the public hearing and approve the proposed budget amendments. Any amended budgets for proposed increases in expenditures are required to be balanced by previous unbudgeted revenues or balances other than ad valorem property taxes. At no time after setting the maximum taxes levied can the governing body increase the ad valorem property taxes.

STAFF RECOMMENDATION:

Staff recommends the Governing Body conduct the public hearing and adopt the ordinance.

BACKGROUND:

As required by State law, the Governing Body must hold a public hearing to consider amendments to the 2023 Operating Budget. The public hearing notice was publishing in the Topeka Metro Newspaper on November 27, 2023.

Proposed amendments total $3,729,962 increasing expenditures from $9,286,954 to $13,016,916. Amended Funds include the following:

- Information Technology Fund increase from $4,462,045 to $5,239,991
- Facilities Fund increase from $1,828,426 to $3,405,342
- Alcohol and Drug Safety Fund increase from $87,009 to $125,416
- Opioid Fund: $28,584
- Economic Development Fund: $500,000
- Eastgate Subdivision No. 4 RHID Fund: $150,000
- Parking Fund increase from $2,909,474 to $3,567,583

BUDGETARY IMPACT:

Proposed amendments total $3,729,962 increasing expenditures from $9,286,954 to $13,016,916.

SOURCE OF FUNDING:

Fund Revenues and Balance

ATTACHMENTS:

Description

Budget Cover Memo - F. Mawyin (Nov 29, 2023)

Public Hearing Notice - 2023 Budget Amendments

Topeka Metro Newspaper Affidavit of Publication (Nov 27, 2023)

Ordinance

CITY OF
TOPEKA

Freddy Mawyin, Chief Financial Officer
Department of Administrative & Financial Services
City Hall, 215 SE 7th St., Topeka, KS 66603

fmawyin@topeka.org
Tel: 785-368-3970
www.topeka.org

To: Honorable Mayor Michael Padilla

Members of the Topeka City Council

Richard U. Nienstedt, Interim City Manager

From: Freddy Mawyin, Chief Financial Officer

Date: November 29, 2023

Re: Budget Amendment of the FY23 City of Topeka Budget

I am writing to request a budget amendment for the City of Topeka due to several unforeseen developments and proactive changes that have impacted our financial landscape. We believe that these adjustments are necessary to ensure the continued efficient functioning of our department and the well-being of our community.

Information Technology (IT): The migration of the Technology Services Group (TSG) from the Public Works department to the IT fund (613) has resulted in increased costs for the fund. Simultaneously, expenses in the General Fund (101) have seen a reduction as this is where the TSG department was originally budgeted. Additionally, we find ourselves lagging behind by two to three years on our standard replacement cycle costs which has increased costs.

To address this challenge, the IT department has proactively initiated the replacement of outdated machines and adjusted centralize payments for better efficiency. It's noteworthy that accounting practices for leases have undergone significant changes post the introduction of GASB87/96, which occurred after our budget was initially set.

2023 Adopted Expenditures	2023 Proposed Amended Expenditures	Difference Between Adopted and Proposed Budget	Funding Source	Funding Destination
$4,462,045	$5,239,991	$777,946	101: General Fund	613: Information Technology Fund

Facilities: A strategic initiative to save city funds and improve efficiency involves the shift of utility billing (water, electricity, gas) from individual departments within the General Fund (101) to the Facilities Operations budget (615). Although this plan was incorporated into the FY24 Budget, it remains unimplemented for the FY23 budget. It's important to note that this amendment aims to achieve a zero-net change across the entire enterprise.

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2023 Adopted Expenditures	2023 Proposed Amended Expenditures	Difference Between Adopted and Proposed Budget	Funding Source	Funding Destination
$1,828,426	$3,405,342	$1,576,916	101: General Fund	615: Facilities Fund & Fund Balance

Alcohol and Drug Safety: In the context of personnel expenses, we are currently covering costs for a position and a half. Our recommendation is to transfer these expenses into the General Fund to ensure more precise accounting and enhance oversight.

2023 Adopted Expenditures	2023 Proposed Amended Expenditures	Difference Between Adopted and Proposed Budget	Funding Source	Funding Destination
$87,009	$125,416	$38,407	101: General Fund	229: Alcohol & Drug Safety Fund – Balance

Opioid/Economic Development/Eastgate Subdivision No. 4 RHID: It is crucial to note that these funds were not established until after last year's budget was finalized. We kindly request budgetary accommodations to support these initiatives.

Fund	2023 Adopted Expenditures	2023 Proposed Amended Expenditures	Difference Between Adopted and Proposed Budget	Funding Source	Funding Destination
Opioid	$0	$28,584	$28,584	Revenue in this fund comes from settlements with pharmaceutical companies	730: Opioid Settlement Fund
Economic Development	$0	$500,000	$500,000	2022 year-end-surplus	740: Economic Development Fund
Eastgate Subdivision No. 4 - RHID	$0	$150,000	$150,000	The incremental property tax generated in the district boundaries	407: Eastgate Subdivision No. 4 - RHID

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Parking: Budget overage is due to the depreciation schedule of the assets that was not accounted for in the operational budget for 2023. Depreciation of parking assets for 2023 in the amount of $660,000 accounts for the budget overage. This overage is not due to cash expenditures or operational expense.

2023 Adopted Expenditures	2023 Proposed Amended Expenditures	Difference Between Adopted and Proposed Budget	Funding Source	Funding Destination
$2,909,474	$3,576,583	$658,109	601: Public Parking	601: Public Parking Fund - Balance

In light of these challenges and opportunities, we kindly request the City's Governing Body to consider a budget amendment totaling **$3,729,962** to ensure the sustainability of our department and the delivery of essential services to our community.

Your support in this matter is greatly appreciated.

State of Kansas
Amendment

2023

Amended
Certificate
For Calendar Year 2023

To the Clerk of , State of Kansas
We, the undersigned, duly elected, qualified, and acting officers of
City of Topeka
certify that: (1) the hearing mentioned in the attached publication was held;(2) after the Budget Hearing this Budget was duly approved and adopted as the maximum expenditure for the various funds for the year.

Table of Contents:		Page No.	Amount of 2022 Tax that was Levied	2023 Amended Budget Adopted 2023 Expenditures	2023 Amended Budget Proposed Amended 2023 Expenditures
Fund	**K.S.A.**				
Information Technology		1		4,462,045	5,239,991
Facilities		2		1,828,426	3,405,342
Alcohol & Drug Safety		3		87,009	125,416
Opioid		4			28,584
Economic Development		5			500,000
Eastgate Subdivision No. 4 - RHID		6			150,000
Parking				2,909,474	3,567,583
Totals		xxxxxxxxxx	0	9,286,954	13,016,916
Summary of Amendments		0			

Attested date:_____________

County Clerk

Assisted by:

Address:

Email:

Governing Body

CPA Summary

State of Kansas Amendment
2023

Notice of Budget Hearing for Amending the 2023 Budget

The Governing Body of

City of Topeka

will meet on the day of December 12, 2023 at 6:00pm at City Council Chambers at 214 E Eighth St for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of funds. Detailed budget information is available at https://www.topeka.org/finance/budget/ and will be available at this hearing.

Summary of Amendments

	2023 Adopted Budget			2023 Proposed Amended Expenditures
Fund	Actual Tax Rate	Amount of Tax that was Levied	Expenditures	
Information Technology			4,462,045	5,239,991
Facilities			1,828,426	3,405,342
Alcohol Drug & Safety			87,009	125,416
Opioid Settlement Fund				28,584
Economic Development				500,000
Eastgate Subdivision No. 4 RHID				150,000
Parking			2,909,474	3,567,583
TOTALS			9,286,954	13,016,916

/Brenda Younger/

Official Title: Brenda Younger, City Clerk

The Topeka Metro News

800 SW Jackson St., Ste. 1118
Topeka, KS 66612-1244
(785) 232-8600

CITY OF TOPEKA - CITY CLERK'S OFFICE
215 SE 7TH ST RM 166
TOPEKA KS 66603-3914

Proof of Publication

STATE OF KANSAS, SHAWNEE COUNTY, SS; Maureen Gillespie, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Clerk for The Topeka Metro News which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Shawnee County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

BUDGET HEARING FOR AMENDING THE 2023 BUDGET
11/27/23

Maureen Gillespie, Legal Notices Billing Clerk

Subscribed and sworn to before me on this date:

November 27, 2023

Notary Public

DEBRA VALENTI
Notary Public-State of Kansas
My Appt. Expires Aug. 21, 2027

First published in The Topeka Metro News, Monday, November 27, 2023.

State of Kansas Amendment
2023
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/Brenda Younger/
Official Title: Brenda Younger, City Clerk

11/27

L15844
Publication Fees: $31.50

(Published in the Topeka Metro News_______________________________.)

ORDINANCE NO. ____________

AN APPROPRIATION ORDINANCE introduced by Interim City Manager Richard U. Nienstedt, approving and adopting certain amendments to the operating budget for the City of Topeka for the year 2023 and appropriating the amounts for the purpose as set forth therein.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, THAT:

Section 1. *Amendments to the Budget incorporated by reference as a part of this Ordinance.* The amendments to the operating budget for the City of Topeka, Kansas, for the year 2023 as set forth in a document in the format prescribed by the Director of Accounts and Reports of the Kansas Department of Administration, as required by law, which has been published in a summary format together with a notice of public hearing, is hereby incorporated by reference as a part of this Ordinance with the same force and effect as if it were set forth herein in its entirety.

Section 2. *Amendments to the Budget approved and adopted.* The amendments to the operating budget as described and incorporated by reference in Section 1 above are hereby approved and adopted as amendments to the operating budget for the year 2023.

Section 3. *Funds appropriated by budget.* The amendments to the budget as approved and adopted herein shall constitute and shall be declared to be appropriations for the funds and departments as set forth therein, and the appropriations thus made shall not be used for any other purpose. No money in any fund or fund type shall be used to pay for any indebtedness created in excess of the amount appropriated for such fund or fund type, or for the departments of such fund or fund type as referred to in the operating budget. The appropriations made herein are for the year 2023 and no expenditures shall be incurred as being authorized by such appropriations prior to January 1, 2023 or subsequent to December 31, 2023.

<u>Section 4.</u> *Budget amendments.* Any further amendment to the operating budget must be approved by the Governing Body and enacted in accordance with the provisions of K.S.A. § 79-2929a.

<u>Section 5.</u> *As used in this ordinance “fund” is defined as follows*:

Fund. A fiscal and accounting entity with a self balancing set of accounts in which cash and other financial resources, all related liabilities and residual equities, or balances, and changes therein are recorded and segregated to carry on specific activities or attain certain objectives in accordance with special regulations, restrictions, or limitations.

<u>Section 6.</u> *The following fund types are authorized*:

Governmental (or statutory) Fund Type: including General Fund, Special Revenue Funds, Debt Service Funds, and Capital Projects Funds; Proprietary Fund Type: including Enterprise Funds and Internal Service Funds (fixed or flexible); and, Fiduciary Fund Type: including Trust and Agency Funds. This Ordinance applies to all funds as listed on the budget certificate and fund summary adopted and submitted to the county and state.

<u>Section 7.</u> This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the Governing Body on ________________________.

CITY OF TOPEKA, KANSAS

____
Michael A. Padilla, Mayor

ATTEST:

____
Brenda Younger, City Clerk

2023 BUDGET AMENDMENT SUMMARY

Below is a summary of each of the proposed amendments to the 2023 budget.

IT

TSG migration into IT has resulted in some higher costs in IT and lower costs in the General Fund. Two to three years behind on standard replacement cycle costs, the IT department has been proactive in getting machines replaced and has made a change in how costs are allocated to centralize payments. Global change on how accounting for leases has changed as a result of GASB87/96 which occurred after the budget was set.

Facilities

In an effort to save the city money through efficiencies gained, we have moved much of the utility billing of the City (Water, electricity, gas) from individual departments into the facilities budget.

Alcohol and Drug Safety

Personnel costs for a position and a half, these costs are being moved into the General Fund.

Opioid/Economic Development/Eastgate Subdivision No. 4 RHID

These funds were not created until after last year's budget was completed.

Parking

Expenses for unexpected repairs on sprinkler and elevator systems that costed more than expected.
Additional bills for troubleshooting parking software for entrance doors both for pedestrians and overhanging doors for cars. This was stemmed from malfunctions with locking methods of the doors via the software.

State of Kansas
Amendment

2023

Amended
Certificate
For Calendar Year 2023

To the Clerk of , State of Kansas
We, the undersigned, duly elected, qualified, and acting officers of
City of Topeka
certify that: (1) the hearing mentioned in the attached publication was held;(2) after the Budget Hearing this Budget was duly approved and adopted as the maximum expenditure for the various funds for the year.

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Attested date:_____________

County Clerk

Assisted by:

Address:

Email:

Governing Body

CPA Summary

Page No. 1

City of Topeka

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Randy Phillips, Fire Chief**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**American Medical Response (AMR)**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**013 Ordinances - Codified / 160 Franchises**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

ORDINANCE introduced by Interim City Manager Richard U. Nienstedt, providing for a nonexclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka until December 31, 2024, and replacing the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2023.

Voting Requirement: **Action requires at least six (6) votes of the Governing Body.**

(Approval would renew the AMR franchise for 2024.)

VOTING REQUIREMENTS:

At least six votes of the Governing Body

POLICY ISSUE:

Whether to continue the ambulance franchise with AMR for 2024.

STAFF RECOMMENDATION:

Staff recommends the Governing Body move to adopt the ordinance.

BACKGROUND:

Shawnee County contracts with AMR to provide ambulance services to the county, including the City of Topeka. City ordinance requires an ambulance franchise in order to provide services.

BUDGETARY IMPACT:

$275 Ambulance Vehicle Fee. AMR has 16 licensed vehicles.

$1500 Franchise Application Fee

SOURCE OF FUNDING:

Not Applicable

ATTACHMENTS:

Description

Ordinance (AMR Franchise)

(Published in the Topeka Metro News ______________________________________)

ORDINANCE NO. _____________

AN ORDINANCE introduced by Interim City Manager Richard U. Nienstedt, providing for a nonexclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka until December 31, 2024, and replacing the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2023.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. Authority.

This franchise ordinance is passed and approved by the Governing Body of the City of Topeka, Kansas, and enacted pursuant to K.S.A. 12-2001 and the authority found and provided for in Chapter 5.25 TMC.

Section 2. Satisfactory qualifications.

The Governing Body of the City of Topeka, Kansas, has considered the legal, character, financial, and other qualifications of the applicant and has found Medevac MidAmerica, Inc., doing business as American Medical Response, hereinafter “AMR,” to be qualified in all respects to own, maintain and operate an ambulance service in the City of Topeka, Kansas, hereinafter “City.” The Governing Body of the City of Topeka finds that public convenience will be promoted and public necessity requires such ambulance service under the terms and provisions of Chapter 5.25 TMC.

Section 3. Service.

The maintenance and operation of an ambulance service by AMR in the City shall be in accordance with these terms and conditions and performance standards set forth in the current ambulance service contract entered into by AMR and the Board of County Commissioners of Shawnee County, Kansas. Said contract is identified as Shawnee

County Contract C207-2016. In addition, AMR agrees to provide to the City Manager of the City copies of documents which are required to be filed pursuant to Shawnee County Contract C207-2016.

In the event that AMR intends to work toward implementing a community paramedicine program/service, it is the goal of AMR and Topeka Fire Department, hereafter "TFD," to jointly participate and collaborate in such implementation.

Section 4. Franchise grant.

Pursuant to the provisions of TMC 5.25.040, a nonexclusive franchise is granted to AMR to own, maintain, and operate an ambulance service within the City. Said nonexclusive franchise is granted through and including December 31, ~~2023~~ <u>2024</u>, and shall vest all rights, privileges and immunities of an ambulance service franchise with AMR; however, said nonexclusive franchise shall be subject to and conditioned upon all of the terms, duties and obligations found in the laws of the State of Kansas, Chapter 5.25 TMC, and this franchise ordinance.

Section 5. Payments to the City.

Consideration for the rights, privileges, and immunities granted to AMR includes the benefits to be derived by the citizens of the City of Topeka from the maintenance and operation of an ambulance service under the terms and conditions of this franchise ordinance.

(a) The ambulance service franchise application fee prescribed by TMC 5.10.040 has been paid to the City Clerk.

(b) On or before April 1st of each year within the term of this franchise ordinance, the fees set forth in TMC 5.10.040(b) are due, including the business fee and an ambulance fee for each AMR ambulance in operation in the City. An ambulance fee for each additional ambulance placed into operation after the initial fee payment is due at the time the additional ambulance is licensed.

(c) Within 30 days of the presentation of an invoice to AMR by the City, AMR shall make payments to the City Treasurer for the following types of assistance:

(1) For each TFD response to AMR's request for a nonemergency lift assist of any patient due to the patient's weight, AMR shall pay a fee of $200.00 per transport. For purposes of this subsection, "nonemergency" means any request that was not initiated by a 911 call. Any time that such fee is incurred, TFD shall make written request for payment that includes the date, address, and TFD incident number. Upon receipt of the invoice AMR will process the request per AMR AP policy of net 45 days.

Section 6. Other AMR responsibilities.

(a) Upon written request from the Fire Chief, the Chief of EMS, or their designees, AMR shall provide certain material data elements to calls within Contract Zone 1. These data elements include ALS/BLS response, response times, unit and triage. AMR shall respond to such requests within 30 days. Failure to provide the requested information within 30 days shall result in a penalty of $100.00 per week until the information is provided. If a request is for material data elements that are not typically included in reports generated pursuant to Shawnee County Contract C207-2016 as it relates to calls within Contract Zone 1 needs additional time beyond 30 days to respond to such request, AMR may request additional time before the initial 30 days expire, the amount of which to be agreed upon by the parties. TFD agrees that any cost associated with the development of a new report that is not currently available will be reimbursed to AMR if such report can be developed; provided, that AMR first provides TFD a written estimate of the associated costs and obtains approval from TFD. AMR's response time will be stayed while TFD reviews such estimates.

(b) AMR and the Fire Chief, the Chief of EMS and/or their designees shall meet no less than monthly for call review and quality assurance/improvement of selected calls to include, but not be limited to, severe trauma, cardiac arrest, or similar types of calls occurring in the City of Topeka limits. The intent is to look at the entirety of the call for improvements to address training, equipment needs and general system improvements.

(c) AMR agrees to provide notification through the County Protocol Committee to the Fire Chief and Chief of EMS concerning anticipated or desired changes to protocol, equipment, or medications that are not a result of national supply shortage or emergency. Further, AMR agrees that all proposed protocol changes that are not a result of a national supply shortage or emergency will be submitted for review to the County Protocol Committee prior to submission to the Medical Director. After submission to the Medical Director, the Fire Chief, Chief of EMS and/or their County Protocol Committee member shall be given the opportunity to attend meetings to discuss proposed protocol changes in the event the Medical Director changes the proposed protocols submitted to him/her. Notice of such meeting shall be provided as soon as reasonable based on the schedule of the Medical Director.

(d) Upon reasonable request and subject to available resources, AMR agrees to respond and provide a stand-by/posted ambulance upon request of the Fire Chief or designees when there is reason to believe a life-threatening public emergency presently exists to include fire, rescue and hazmat incidents. TFD agrees to release ambulance as soon as possible when the life-threatening public emergency no longer exists.

(e) In January of each calendar year, AMR shall provide copies of all written mutual aid agreements for ambulance service in the City of Topeka or provide written notice that no such agreements exist. Failure to submit this information by the last business day in January shall result in a penalty of $100.00 per day until submitted.

(f) AMR agrees to the use of designated dispatch radio channels for EMS operations within the City of Topeka. Further, AMR agrees that AMR units and dispatch are responsible for monitoring the designated channel while on scene.

(g) AMR will pursue an option if available to provide TFD command staff designated by the Fire Chief with access to view the availability of all on-duty AMR units in real time. If there is cost directly associated with the development, implementation or annual maintenance of this request, AMR will provide TFD a written estimated of the expense to seek approval for the reimbursement of this request. TFD agrees that any party with access to this system may be required to complete initial and annual training as deemed reasonably appropriate by AMR compliance or other regulatory department and consistent with such trainings required of AMR staff with similar view access. Failure of those individuals to complete training will result in revocation of rights and privileges to view the data.

Section 7. Insurance.

Upon the effective date of this franchise ordinance, AMR shall file with the City Clerk an insurance policy as required by TMC 5.25.140 and the same shall be approved as to form by the City Attorney's office. During the term of this franchise ordinance, AMR shall maintain paid insurance coverage according to TMC 5.25.140.

Section 8. Acceptance by AMR.

Operation of an ambulance service within the City by AMR on or after the effective date of this franchise ordinance constitutes acceptance of the provisions of the franchise ordinance.

Section 9. Remedies of City.

Nothing herein shall limit or preclude the City from seeking remedies at law or in equity in a court of competent jurisdiction for any violation by AMR of the laws of the State of Kansas or any ordinance of the City.

Section 10. Forfeiture.

Any material and substantial fraud, misrepresentation or default of the terms, duties and obligations imposed upon AMR by the laws of the State of Kansas, Chapter 5.25 TMC or by this franchise ordinance shall constitute grounds for forfeiture of this nonexclusive franchise ordinance. The City shall notify AMR in writing of any allegation of a material and substantial fraud, misrepresentation or default and shall hold a public hearing before the Governing Body of the City of Topeka on the merits of such allegations. Said public hearing shall be held within 30 days after the notification to AMR and shall be adjudicative in character but shall not bar the rights of any parties to pursue judicial review. Within 10 days following the conclusion of such hearing, the Governing Body of the City of Topeka shall act with respect to such forfeiture and shall submit a written statement to AMR. This franchise ordinance shall not be forfeited unless the Governing Body of the City of Topeka finds that there has been a material and substantial fraud, misrepresentation or default on the part of AMR so as to justify a forfeiture. In such case a notice of forfeiture shall be provided to AMR. In the event this franchise ordinance is forfeited, AMR shall, within 180 days of its receipt of notice of forfeiture, cease operation of an ambulance service hereunder.

Section 11. Surrender.

If, during the term of this franchise ordinance, AMR does not earn a fair rate of return upon the value of property used and useful in providing such ambulance service for a period of six months; and it is determined by AMR that it would not be practical, possible or in the public interest to cure the deficiency by an increase in rates and/or a reduction in service; and AMR has complied with all applicable procedures as prescribed by the Board of County Commissioners of Shawnee County, Kansas including the giving of notice of surrender to the City; then AMR upon 180 days' written notice to the City Clerk may elect to surrender this franchise ordinance and cease operation of the ambulance service hereunder. "Fair rate of return" means receipt of revenues for patient charges and public funds, if any, to include the sum of operating costs, depreciation reserves, growth and development costs and management fees.

Section 12. Transfer.

Only upon written approval of the Governing Body of the City of Topeka may the rights and obligations of AMR, pursuant to this franchise ordinance, be transferred to a person meeting the requirements for an ambulance service, as determined by the laws and regulations of the State and the City at the time of the contemplated transfer. Any approved transferee shall, without limitation, assume all the duties and obligations of AMR and AMR shall be released of all future rights, duties, and obligations arising from this franchise ordinance.

Section 13. Hold harmless.

AMR shall hold the City harmless for all liability, damages, costs and expenses of every kind for the payment of which the City may become liable to any person by reason of the rights and privileges herein granted and, if any action either at law or in equity be brought against the City for damages or for any cost to the City for any fault of AMR, its servants, agents, or employees, in the operation of its ambulance service, AMR shall pay all costs, damages and expenses including costs of defense for which the City may be held liable.

Section 14. Re-openers

In the event that Shawnee County Contract C207-2016 is materially and substantively amended or replaced by a new contract that is materially and substantively different, AMR and the City may mutually agree to re-open this franchise ordinance before the December 31, ~~2023~~ 2024, expiration date.

Section 15. Effective date.

This franchise ordinance shall take effect and be in force from January 1, ~~2023~~ 2024, and after its passage, approval and publication in the official City newspaper in the manner prescribed by law, and shall be binding upon AMR upon the conditions set forth herein.

PASSED AND APPROVED by the Governing Body on ____________________.

CITY OF TOPEKA, KANSAS

____
Michael A. Padilla, Mayor

ATTEST:

____
Brenda Younger, City Clerk

City of Topeka

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Dan Warner, AICP, Planning Division Director**	**DOCUMENT #:**	**CU23/05**
SECOND PARTY/SUBJECT:	**Emilio Cuevas Apartments**	**PROJECT #:**	**N/A**
CATEGORY/SUBCATEGORY	**020 Resolutions / 001 Special Permits**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

RESOLUTION introduced by Interim City Manager Richard U. Nienstedt, in accordance with Section 18.60.010 of the Topeka Municipal Code (TMC), approving a Conditional Use Permit on property located at 1610 NW Tyler and zoned "X-1" Mixed Use District to enable expansion of the existing multiple-family residential development. *(CU23/05) (Council District No. 2)*

Voting Option Requirements: (1) Approve Planning Commission's recommendation, 6 votes are required of the Governing Body (2) Reject or Amend Planning Commission's recommendation, 7 votes are required of the Governing Body; or (3) Remand back to Planning Commission, 6 votes are required of the Governing Body.

(Approval will allow 20 new residential apartments in addition to the existing eight residential apartments.)

VOTING REQUIREMENTS:

The Governing Body has the following options:

1. Approve the Planning Commission's recommendation by adopting the ordinance. A minimum of 6 votes is required.
2. Amend the Planning Commission's recommendation by amending the ordinance. A minimum of 7 votes is required.
3. Refuse to approve the Planning Commission's recommendation by rejecting the ordinance. A minimum of 7 votes is required.

4. Remand to the Planning Commission for further consideration, with a statement specifying the basis for the governing body's failure to approve or disapprove. A minimum of 6 votes is required.

POLICY ISSUE:

Whether to approve the Conditional Use Permit as recommended by the Planning Commission.

STAFF RECOMMENDATION:

Staff recommends the Governing Body move to approve the resolution.

BACKGROUND:

The request for a Conditional Use Permit (CUP) to allow five, four-unit apartment buildings as an expansion to the existing eight unit apartment building located at 1610 NW Tyler, Topeka.

The proposed development is consistent with the North Topeka West Neighborhood Plan.

The applicant conducted an in-person Neighborhood Information Meeting on October 25, 2023. Two persons other than applicant and City staff attended the meeting. Those individuals did not express any concerns directly related to this project.

The Planning Commission recommended approval by a vote of 9-0-0 at its November 20,2023 public hearing. The Planning Department recommended approval as stated in the attached staff report.

BUDGETARY IMPACT:

Approval of the conditional use permit will have no budgetary impact.

SOURCE OF FUNDING:

Not Applicable

ATTACHMENTS:

Description

Resolution
Presentation
Planning Commission Minutes CU23/05 (Nov 20, 2023)
Staff Report
Aerial Map
Zoning Map
Future Land Use Map
Neighborhood Information Meeting Email (Oct 26, 2023)
CUP Site Plan

RESOLUTION___________________

CONDITIONAL USE PERMIT

RESOLUTION introduced by Interim City Manager Richard U. Nienstedt, in accordance with Section 18.60.010 of the Topeka Municipal Code (TMC), approving a Conditional Use Permit on property located at 1610 NW Tyler and zoned "X-1" Mixed Use District to enable expansion of the multiple-family dwelling building for up to a maximum of 28 dwelling units. (*CU23/05) (Council District #2)*

BE IT RESOLVED by the Governing Body of the City of Topeka, Kansas, that the application under the provisions of TMC 18.60.010, approving a Conditional Use Permit to allow for a maximum of 28 multiple family dwelling units on property presently zoned "X-1" Mixed Use District and located at 1610 NW Tyler Street and more specifically legally described as follows:

LOT 1, BLOCK A, CUEVAS SUBDIVISION #2

be, and the same is hereby approved, **subject to:**

1. Use and development of the site in accordance with the approved Site Plans and Statement of Operations for the Emilio Cuevas Apartments (CU23/05).

ADOPTED AND APPROVED by the Governing Body of the City of Topeka, December 12, 2023

____
Michael Padilla, Mayor

ATTEST:

____
Brenda Younger, City Clerk

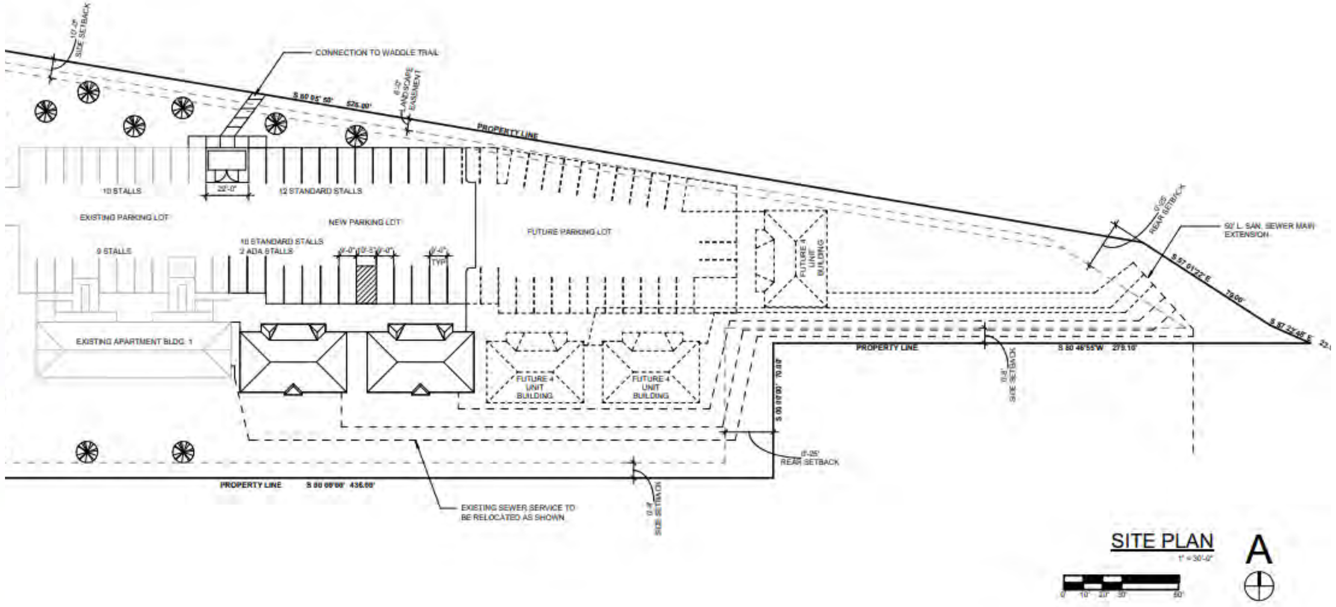
CITY OF
TOPEKA

CU23/05 Emilio Cuevas (School House Rentels LLC)
PUD23/07 DreamMakers LLC

Dan Warner, AICP, Planning Director

CU23/05 Emilio Cuevas (School House Rentals, LLC)

SITE AERIAL CONTEXT



PUD23/07 DreamMakers, LLC

CITY OF TOPEKA

TOPEKA PLANNING COMMISSION

Monday, November 20, 2023

CASE MINUTES

Members present: Corey Dehn (2023 Chair), Willie Brooks, Jennifer Hannon, Del- Metrius Herron, Jim Kaup, William Naeger, Katy Nelson, Donna Rae Pearson, Jim Tobaben (9)

Members Absent: NA

Staff Present: Rhiannon Friedman, Planning & Development Director, Dan Warner, Planning Director; Mike Hall, Land Use Planning Manager; Annie Driver, Planner; William Sharp, Planner; Amanda Tituana- Feijoo, Administrative Officer; Mary Feighny, Legal

Public Hearing of CU23/05 Emilio Cuevas (Schoolhouse Rentals LLC), rezoning to allow for expansion of multiple family dwellings for five additional, four – unit apartment buildings added to the property for a maximum of 28 dwellings.

Staff:
Annie Driver presented the staff report and staff's recommendation of approval.

Questions/Comments from Commissioners:
Commissioner Kaup asked for clarification regarding the off-street parking that was mentioned within the staff report. Ms. Driver stated that the total parking spots mentioned is for the complete buildout. There are 19 existing stalls, 24 stalls being built in phase one, and then another 25 for the phase two build. Ms. Driver stated that the additional parking could be more than what is needed.

Commissioner Kaup stated, at times he has concerns for too much parking, and questioned if the applicant were to come back and proposes less what would happen. Ms. Driver stated that could be discussed more at the site plan review. It is typical that property owners want more parking then what is required.

Owner's Representative:
Emilo Cuevas, Owner of Schoolhouse Rentals
Mr. Cuevas stated that he has owned that property for about 35 years, and the area around it has not changed a whole lot. He wants to add to the area for quality housing.

Commissioner Dehn declared the **public hearing open**.
With no one coming forward for public comment, **Commissioner Dehn declared the public hearing closed.**

Questions/Comments from Commissioners:
Commissioner Dehn stated that the Curtis Cemetery is behind this property, and adding of more buildings might deter "other folks" from living there. Commissioner Nelson also agreed with Mr. Dehn, and acknowledged that there is some homeless living in that area.

With no further questions from commissioners, Mr. Dehn called for a motion.

Motion by Commissioner Kaup, **second** by Commissioner Herron: **to adopt the findings and analysis in the staff report and to recommend approval of the requested CUP, subject to conditions set out in the staff report. Approved 9-0-0**

STAFF REPORT – CONDITIONAL USE PERMIT
TOPEKA PLANNING DEPARTMENT

PLANNING COMMISSION DATE: Monday, November 20, 2023

APPLICATION CASE NUMBER / NAME:	CU23/05 By: Emilio Cuevas (Schoolhouse Rentals LLC)
REQUESTED ACTION / CURRENT ZONING:	A Conditional Use Permit (CUP) to allow for expansion of multiple family dwellings for five additional, four-unit apartment buildings added to the property for a maximum of 28 dwellings units.
APPLICANT / PROPERTY OWNER :	Emilio Cuevas (Schoolhouse Rentals LLC)
APPLICANT REPRESENTATIVE:	Bryan Falk, Falk Architects
PROPERTY LOCATION / PARCEL ID:	1610 NW Tyler Street
PARCEL SIZE:	2.25 acres
	Annie M. Driver, AICP, Planner II
RECOMMENDATION:	Based upon the findings and analysis in the staff report, Planning staff recommend **APPROVAL,** subject to the conditions listed in the staff report.
RECOMMENDED MOTION:	Based on the findings and analysis in the staff report I move to recommend **APPROVAL** to the Governing Body, subject to the conditions listed in the staff report.
PROPOSED USE / SUMMARY:	A maximum of 28 dwelling units at a residential density of 12 units per acre. 20 new units are proposed and may be built in phases. (Five buildings, each with four units per building). The existing structure contains 8 units and has remained on the property since 1998.
DEVELOPMENT / CASE HISTORY:	A low-rise (two-story) garden apartment complex (5,940 sq. ft.) containing eight dwelling units was constructed in 1998 under the previous "M-2" Multiple-Family zoning. The property was rezoned to the "X-1" Mixed Use District as part of the North Topeka Neighborhood Plan in 2000. The "X" Districts (created after the adoption of this plan) were intended to accommodate the existing pattern of low intensity industrial and commercial uses previously existing in the neighborhood and to support very limited expansion of legal non-conforming uses already in the neighborhood. The CUP is required because the additional five apartment buildings exceed the expansions that are allowed under the X-1 zoning.
ZONING OF SURROUNDING PROPERTIES:	North: "OS-1" Open Space District / Old Soldier Creek (Land owned by City of Topeka)

South: “X-1” Mixed Use District / Self Storage Facility, Truck Repair (Kansas Powertrain & Equipment)

West: “X-1” Mixed Use District / General contracting and outside storage, vehicle salvage yard and single family residence

East: “X-1” Mixed Use District / Service garage and truck repair , Old Soldier Creek/ Soldier Creek trail

PHOTOS:

View of Property from NW Tyler Street

COMPLIANCE WITH DEVELOPMENT STANDARDS AND GUIDELINES

BUILDING SETBACKS:

The minimum building setbacks under the “X-1” Mixed Use District are as follows:

Building Setbacks:

- Front: 0 – 15 ft. **Compliant** (See below)- The existing front setback is deemed compliant.
- Side: 0 – 8 ft. (from property lines) **Compliant**
- Rear: 0- 25 ft. **Compliant**
- Minimum 10 ft. separation between buildings on the same lot (as noted)

The front yard setback of the existing building may have been reduced from it is original platted setback to 0 ft. because of right-of-way dedication along Tyler. Under the provision of TMC 18.230.020 (e) public improvement projects), a front yard setback less than that required by the code caused by dedication of right of way from a public improvement project is deemed to be in accordance with the code.

DENSITY & DIMENSIONAL STANDARDS:

Density: 12 units per acre (28 units/2.25 acres) – 12.44 units per acre is **Compliant** because of rounding and the right-of-way acquisition.

Maximum Height: 40 ft. – Buildings are proposed as two story and less than 25 feet in height as height is defined by zoning code - **Compliant**

	Maximum Building Coverage: **75 percent** – The east portion of the site is left as open space to accommodate stormwater detention.
OFF-STREET PARKING:	Residential dwellings in "X-1" Mixed Use District: Required off-street parking is one space per dwelling unit (28 total stalls required). The 19 existing, 24 proposed, and 25 future parking stalls provided on the plan are more than sufficient to satisfy the off-street parking standards for multiple-family in "X-1" zoning. Two bicycle racks are required by code. Surfacing: The applicant proposes the use of the existing parking to accommodate all off-street parking needs associated with the use. New surface parking is proposed, as needed, and will comply with the applicable off-street parking surfacing standards. The condition of the existing parking is evaluated at the time of site development. If maintenance and repairs are needed, this will be done at such time per City surfacing policy. The commercial driveway approach will be improved to City standard with concrete.
LANDSCAPING:	A Landscape Plan satisfying requirements of TMC18.235 will be required at the time of Site Plan Review for each phase as each phase develops. Staff has made recommendation that landscaping be provided along the north property line, accommodating medium or large trees and ornamental shrubs or grasses screening the parking lot perimeter. A note has been added to the site plan requiring submittal of a landscape plan at the time of site plan review.
OUTDOOR LIGHTING:	The existing outdoor parking lot lighting should be depicted on future submittal of site plans. *Any outdoor lighting shall comply with TMC 18.235(b)(6) not exceed three foot-candles as measured at the property line, shall be downward directed, and the source of illumination not be visible from adjacent properties or the public right-of-way.* .
SIGNAGE:	There is currently no signage identifying the apartments. If proposed, signage is subject to "X-1" standards and require separate sign permit submittal.
COMPREHENSIVE PLAN:	"Medium Low Intensity" – <u>North Topeka West Neighborhood Plan</u>.

OTHER FACTORS

SUBDIVISION PLAT:	The subject property is platted as Lot 2, Block A, Cuevas Subdivision. .
FLOOD HAZARDS, STREAM BUFFERS:	A stream buffer off-site covers the Old Soldier Creek Channel to the east of this property. The site lies in Zone X Area of Minimum Flooding, which are areas covered by the levee protection.
UTILITIES:	The existing building is connected to the existing City sewer and water mains. New connections to, or required extensions of, these mains to accommodate the new units will be made by the developer at the time of site development.

	A Stormwater Management Plan will be submitted at the time of the Site Plan Review Application. Water quality and quantity controls for storm water runoff will be reviewed at such time based on the runoff generated by the increase in impervious surface.
TRANSPORTATION/TRAFFIC:	All ingress to the site from an existing driveway off of SW Tyler. SW Tyler Street is currently under reconstruction and has ample capacity for traffic increase attributed to the minimal increase in units, up to a maximum of 28 units.. Traffic Engineering conditionally approved the proposal. Issues identified and will be addressed are as follows: 1. Bicycle racks will be added; 2. Provide private sidewalk connection to public shared use path along SW Tyler; 3. Improving commercial approach on Tyler to City standard.
HISTORIC PROPERTIES:	There are no listed historic properties or districts within proximity to the site.
NEIGHBORHOOD INFORMATION MEETING:	The applicant conducted a Neighborhood Information Meeting on Wednesday, October 25, 2023 at Papan's Landing Senior Center, 619 NW Paramore. Two neighbors attended the meeting and did not express any significant concerns directly related to this project. An email from the applicant is attached. Staff has not received any other public comments relative to the CUP.
FIRE:	Compliance with the City of Topeka's Life Safety Code will be required for all. A second fire hydrant may be required at the time of Development of the future phases due to dead-end length.
DEVELOPMENT SERVICES:	All permits, including submittal of civil plans and stormwater management plans associated with the project, will be provided to the City at the time of Site Plan Review application and prior to Building Permits.

KEY DATES

APPLICATION SUBMITTAL:	September 26, 2023
NEIGHBORHOOD INFORMATION MEETING:	October 24, 2023
LEGAL NOTICE PUBLICATION:	October 24, 2023
ADJOINING PROPERTY OWNER NOTICES MAILED:	October 27, 2023

STAFF ANALYSIS

EVALUATION CRITERIA: In considering an application for a Conditional Use Permit, the Planning Commission and Governing Body will make findings and conclusions regarding the following pursuant to Topeka Municipal Code Section 18.245.020 (b)(3)(ix) in order to protect the integrity and character of the zoning district in which the proposed use is located and to minimize adverse effects on surrounding properties and neighborhood. In addition, all Conditional Use Permit applications are evaluated in accordance with the standards established in the Section 18.215.030 for land use compatibility, site development, operating characteristics, and consistency with the Comprehensive Plan. The proposed CUP satisfies these standards of evaluation.

1. **The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies:** The proposed multiple family residential development is consistent with the applicable neighborhood plan. The subject property is located within an area designated on the Future Land Use Plan in the North Topeka West Neighborhood Plan as "Mixed Use Low Intensity". The designation is intended to support "a balance of compatible residential, office, civic, and neighborhood commercial retail/service uses of low to moderate intensity that complement . . . dense neighborhood residential areas and pedestrian usage with quality urban and pedestrian design." Additionally, locating higher density in proximity to higher traffic corridors and improving housing stock are guiding principles of the North Topeka West Neighborhood Plan, and the proposed residential development is consistent with these principles.

2 **The character of the neighborhood including but not limited to: land use, zoning, density, architectural style, building materials, height, structural mass, sitting, open space and floor-to area ratio:** As proposed, the five vinyl-clad, two-story, apartment buildings, each containing four apartments, will be similar in building materials, height, mass, and sitting to the existing structure to remain on the property. The narrow, linear property allows the placement of the buildings to the middle and rear of the property, clustering them around the central parking lot, which places them near the middle of the property and farther from the frontage of NW Tyler. This offsets any perceived negative impact on nearby properties because siting them to middle makes the buildings less visible from the roadway and, thereby, having less visual impact on adjacent properties. The medium density residential land use provides a suitable transition between the existing light industrial uses and open space/residential uses in the neighborhood. The site plan for the CUP includes a note to ensure construction is consistent with those elevations that were submitted.

3. **The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses:** The zoning classification of the subject property is not changing from the "X-1" Mixed Use District. The surrounding area is zoned X-1 Mixed Use District, OS-1 Open Space District and I-1 Light Industrial District. The base zoning of X-1 will remain and the total density of the apartments satisfies the maximum residential density allotted under X-1 zoning (12 units per acre). The existing legally non-conforming use of apartments have remained on the subject site since 1998. The CUP enables additional apartments, thereby allowing for significant improvements to be made to the property and buildings. The proposed use is a suitable land use lying between low intensity industrial and open space. All dimensional standards of the X-1 zoning will remain in effect or will otherwise be more stringent under the approved CUP.

4. **The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations:** The subject property is still suitable as currently zoned for X-1. A broad variety of land uses are permitted under X-1 zoning. The site would likely be suitable for some of those permitted uses were it not for the existing eight unit apartment building on the site. The proposed medium density residential use is an appropriate transition between the light industrial to the south and west and open space and light industrial to the north.

5. **The length of time the property has remained vacant as zoned:** The subject property has been zoned for the "X-1" Mixed Use District since the 2000 rezoning to implement the neighborhood plans. Prior to that, the property was zoned "M-2" Multiple Family Dwelling District. The existing eight unit apartment building was constructed in 1998 and, because it was not approved by a conditional use permit, rendered a legal non-conforming use by the City of Topeka when the zoning was changed to the "X-1" zoning in 2000.

6. **The extent to which the approval of the application would detrimentally affect nearby properties**:

Little or no detrimental effects upon nearby properties is anticipated since the residential use is less intense in nature than the commercial light industrial uses on surrounding properties. Approval of the CUP will allow the owner to make improvements to the property not presently allowed under the current zoning. SW Tyler Street has been improved to public standard and includes the construction of a shared use bike path adjacent to the property.

7. **The extent to which the proposed use would substantially harm the value of nearby properties:** There should be no significant harm upon the value of nearby properties by allowing the expansion. The development allowed by the CUP is of lesser negative impact than the commercial and light industrial uses on surrounding properties. The proposed CUP gives the owner the ability to expand the multi-family dwellings, which ultimately improves the value of the subject property.

8. **The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property:** The existing road network is sufficient to accommodate the proposed 28 residential multiple family units. A recent road project resurfaced and widened SW Tyler and added a bicycle path adjacent to the property as well as a private sidewalk connection to the shared use path along Tyler. There is adequate space on the property to accommodate off-street parking as depicted conceptually on the plan.

9. **The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution or other environmental harm:** The developer will be required to provide all associated civil, landscape, utility and stormwater management plans prior to the issuance and approval of Building Permits for approval by City staff. Stormwater management plans are required to detain runoff to the pre-developed condition and treat water runoff so that there is not a negative impact on adjacent properties. The proposed residential use is not likely to generate discernible air pollution or increases in noise. The project will be subject to all local and state requirements at the time of building and site development.

10. **The economic impact of the proposed use on the community:** The proposed use supports the expansion of missing middle housing in North Topeka, it allows rehabilitation of the existing apartments, and it supports a connection with the shared use path along Tyler.

11. **The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application:** There is no apparent gain to the public, health, safety and welfare by denial of the application as the use has remained on the property since for over two decades in its current state and the expansion is not likely to generate any substantial negative effects. The CUP will allow the owner to make significant investments in the property, thereby, raising the property value and potentially improving the value of surrounding properties. The hardship imposed on the landowner through the denial would be the inability for him to invest in the property by increasing dwelling units under the current zoning, other than maintenance and repairs to the existing 8-unit apartment.

RECOMMENDATION: Based on the above findings and analysis, Planning Staff recommends approval of the Conditional Use Permit subject to the conditions listed below.

RECOMMENDED MOTION: Based on the findings and analysis in the staff report I move to recommend to the Governing Body approval of the Conditional Use Permit subject to the conditions listed below:

1. Subject to Statement of Operations, Site Plan, and Building Elevations included with the application.

2. Adding note: "*The front property line as depicted on the CUP is an approximation and the actual boundaries will be surveyed at the time of site plan review application.*"

3. Numbering all notes on the CUP plan..

4. Removing Landscape Point Analysis form the plan. The exact points will be addressed with site plan review to include residential buffer and street tree requirements in addition to all required points and is already addressed in the existing note on CUP plan.

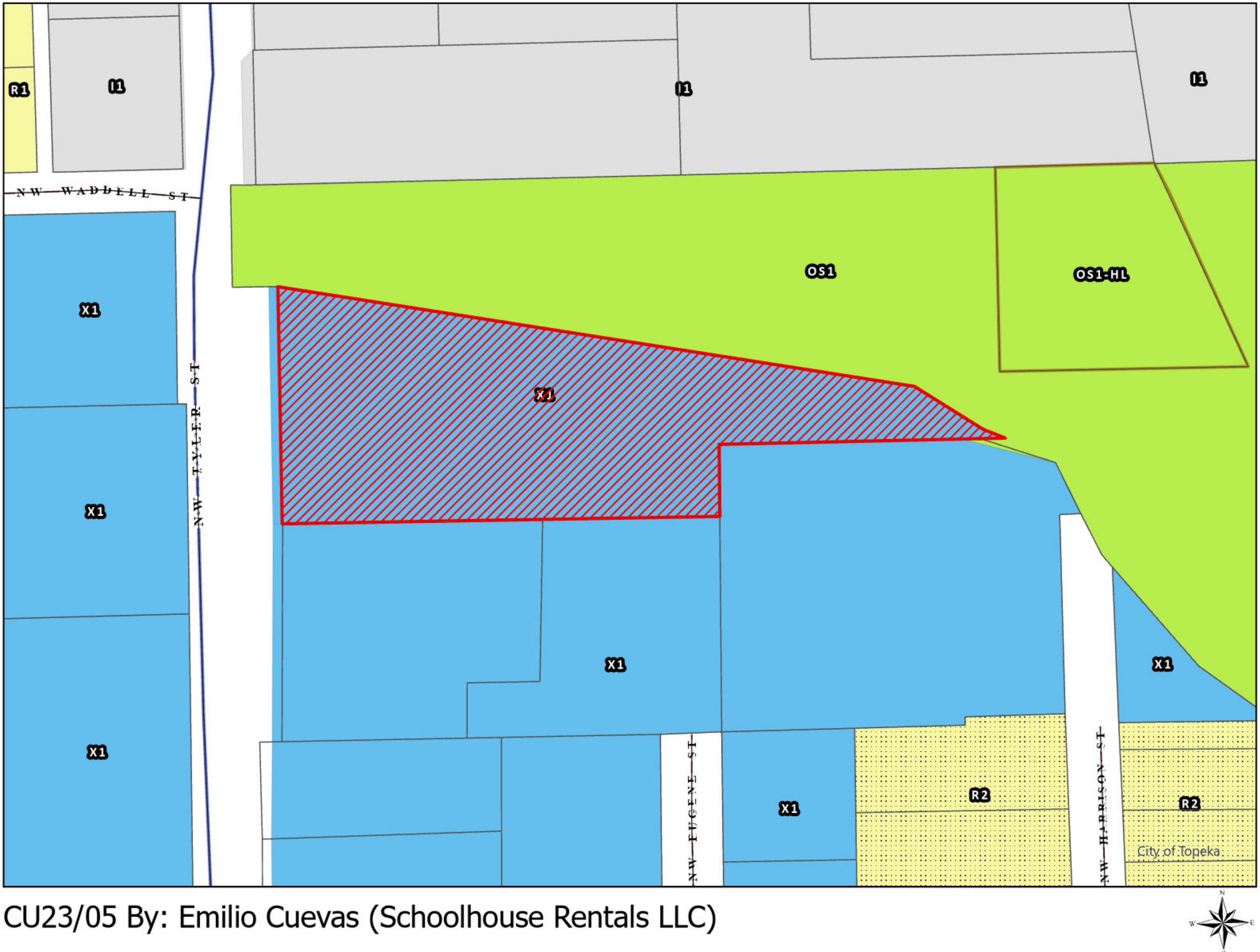
5. Removing the pedestrian path to the north from the CUP plan as upon further review the pedestrian path should be a suggestion and not a requirement because its placement on the plan is too specific for this stage of review. See condition 6a.

6. Revising and numbering note at bottom of page about pedestrian path to state:

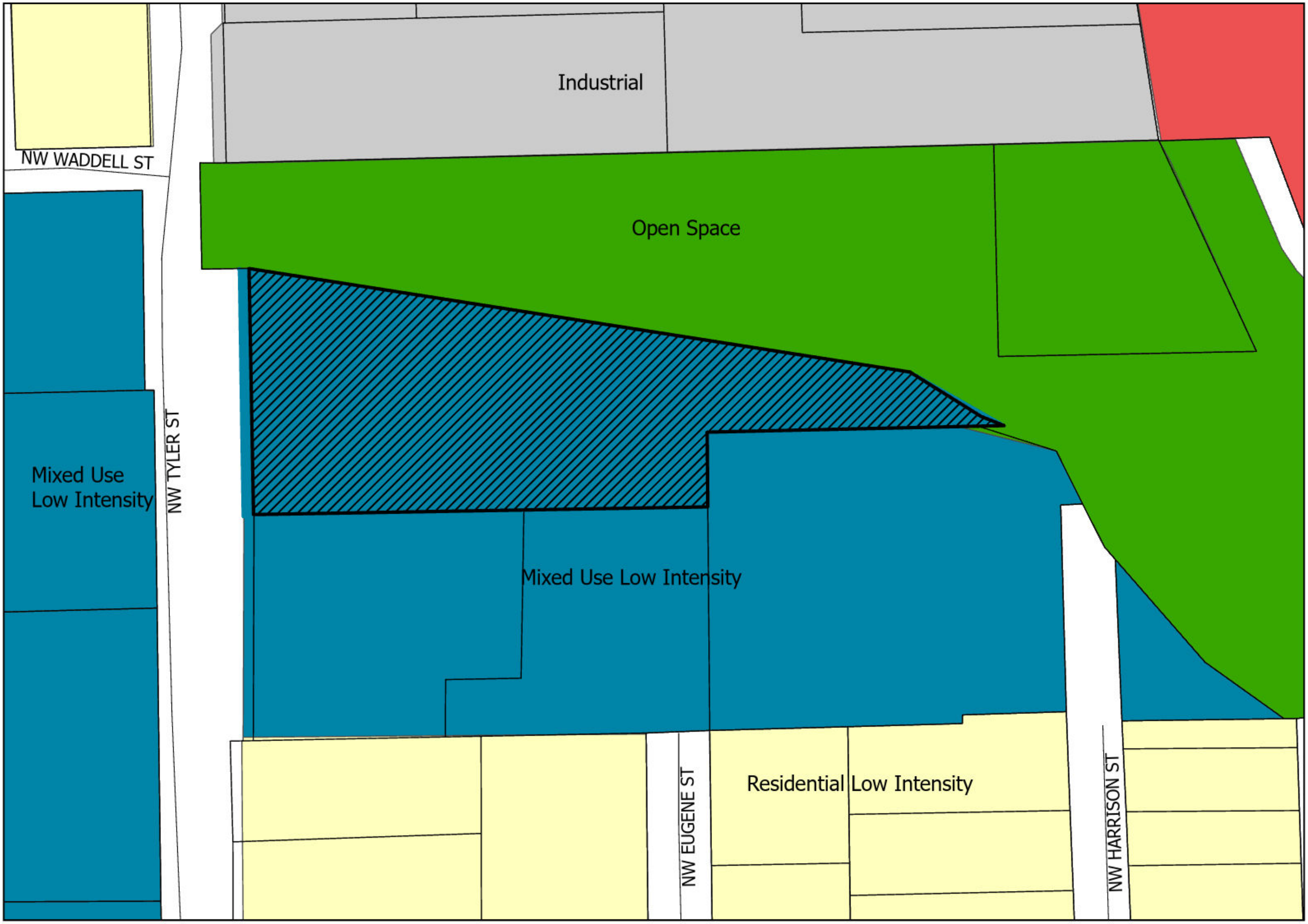
    a. Adding note: *"The property owner shall construct a private sidewalk connection with the public shared use path along NW Tyler at the time of site development. The pedestrian path to the north is optional."*

Exhibits:
CUP Site Plan
Aerial Map
Zoning Map
Future Land Use Map
Neighborhood Information Meeting Note

CU23/05 By: Emilio Cuevas (Schoolhouse Rentals LLC)



CU23/05 By: Emilio Cuevas (Schoolhouse Rentals LLC)



CU23/05 By: Schoolhouse Rentals LLC (Emilio Cuevas)

North Topeka West -
Future Land Use Map

From: Bryan Falk <bryan@falk-architects.com>

Sent: Thursday, October 26, 2023 11:39 AM

To: Annie Driver; John Sampson

Subject: Re: Last Night's Meeting

This message originated from outside your organization

Annie,

My summary is:

Two neighbors attended the meeting. One voiced his concerns that the City had treated him unfairly about his addition project a few years ago and warned the Owner about this. The second neighbor did not necessarily support the project but he did not object either. He was really just there to listen.

Let me know if you need anything further from me.

Thanks,

Bryan Falk, AIA - NCARB - LEED AP

Architect, *licensed in KS, MO, CO & NE*

Falk Architects, Inc

827 N. Kansas Avenue

Topeka, Kansas 66608

785-691-9958 (cell)

785-338-4920, extension #700 (office)

On Thu, Oct 26, 2023 at 11:03 AM Annie Driver <adriver@topeka.org> wrote:

> Bryan,
>
> When you get around to this please go ahead and send your summary of the meeting.
>
> Thanks,
>
> Annie Driver, AICP
>
> Planner II

Planning & Development Dept.

City of Topeka

785-368-3010

SITE PLAN LEGEND

	EXISTING PROPERTY LINES
	SETBACK LINES
	SEWER
	EXISTING IMPROVEMENTS
	NEW IMPROVEMENTS
	FUTURE PROPOSED IMPROVEMENTS
	2.5" CALIPER TREE - SPECIES TBD

1. **NOTES:**
2. AN EXISTING BUILDING OF SIMILAR OCCUPANCY IS LOCATED ON THE WESTERN PORTION OF PROPERTY.
3. AN EXISTING DRIVEWAY THAT COMPLIES WITH TMC STANDARDS IS IN PLACE ON THE WESTERN EDGE OF THE PROPERTY.
4. SITE IS APPROXIMATELY 2.25 ACRES WITH A DESIGNED IMPERVIOUS ZONE OF 29,030 SF AND A FUTURE PHASE ADDITIONAL IMPERVIOUS ZONE OF 16,000 SF
5. LANDSCAPING WILL MEET LANDSCAPING POINT MINIMUMS.
6. ALL WORK IN THE PUBLIC R/W SHALL MEET THE CITY OF TOPEKA STANDARD SPECIFICATIONS.
7. IMPROVED SITE WILL CONSIST OF 29,030 SF OF IMPERVIOUS AREA. THEREFORE, OWNER WILL NEED STORMWATER MANAGEMENT UNDER TMC 12.35.010/020.
8. CONTRACTOR SHALL COORDINATE WITH THE APPLICABLE CITY OF TOPEKA UTILITIES DEPARTMENTS TO PERMIT AND INSTALL WATER AND SANITARY SEWER SERVICE LINES.
9. CONTRACTOR TO PROVIDE EROSION AND SEDIMENT CONTROL IN ACCORDANCE WITH TMC 13.30.060, ALONG WITH ANY OTHER LOCAL, STATE AND FEDERAL REQUIREMENTS.
10. PROJECT IS OVER 3,000 SF, THUS REQUIRING A SITE CONSTRUCTION ACTIVITY PERMIT.
11. OWNER IS USING A DUMPSTER LOCATED IN MIDDLE OF NORTHERN EDGE OF PARKING LOT.
12. BUILDING DESIGN IS SUBJECT TO REVIEW AND APPROVAL BY CITY STAFF IN CONSIDERATION OF THE BUILDING DESIGN STANDARDS IN TMC 18.275, THE APPLICABLE NEIGHBORHOOD PLAN, AND NEIGHBORHOOD CONTEXT.
13. CITY OF TOPEA -PUBLIC SANITARY SEWER AND WATER SHALL BE PROVIDED WITH ALL CONNECTIONS BEING MADE AT THE EXPENSE OF THE DEVELOPER.
14. A LANDSCAPE PLAN FOR THE PROPERTY SHALL BE SUBMITTED AT THE TIME OF THE SITE PLAN REVIEW PURSUANT TO TMC18.235 THAT ADDRESSES ALL OF THE REQUIRED POINTS, SPECIES, AND QUANTITIES OF ALL LANDSCAPING, INCLUDING SUBSTANTIALLY ADDRESSING THE REQUIRED 6' WIDE RESIDENTIAL ZONE BUFFER ALONG THE NORTH PROPERTY LINE. tHIS LANDSCAPE PLAN SHALL BE DESIGNED BY A QUALIFIED PROFESSIONAL AND REFLEC TTHE COMMONLY ACCEPTED CPTED (CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN) PRACTICES.
15. APPROVAL OF ALL PERMITS FROM CITY OF TOPEKA DEVELOPMENT SERVICES IS REQUIRED, INCLUDING BUT NOT LIMITED TO BUILDING, FENCE, SIGN, SITE CONSTRUCTION, ACTIVITY, AND PARKING-LOT PERMITS, INCLUDING ANY REQUIRED EROSION AND SEDIMENT CONTROL AND DEMOLITION PLANS.
16. THE CITY OF TOPEKA STANDARDS FOR SURFACES OF PARKING AND OUTDOOR STORAGE AREAS APPLY FOR THE HARD SURFACING OF ALL PRIVATE OFF - STREET PARKING AREA, FIRE LANES, AND ACCESS DRIVES.
17. ALL WORK IN PUBLIC RIGHT-OF-WAY OR OTHERWISE ON CITY PROPERTY SHALL BE CONSTRUCTED TO CITY OF TOPEKA STANDARD TECHNICAL SPECIFICATIONS.
18. UNLESS STATED OTHERWISE HEREIN, THE BASE ZONING USE GROUP AND DIMENSIONAL STANDARDS OF THE "X-1" MIXED USE DISTRICTS SHALL APPLY.
19. CURRENT USE: EIGHT UNIT APARTMENT BUILDING ON WESTERN SIDE OF PROPERTY
20. STATEMENT OF OPERATIONS: A CONDITIONAL USE PERMIT TO ALLOW THE EXPANSION OF THE EXISTING EIGHT UNIT APARTMENT COMPLEX FOR A TOTAL OF 28 DWELLING UNITS ON THE PROPERTY (20 NEW UNITS WHICH MAY BE COMPLETED IN PHASES
21. NEW SIGNAGE SHALL COMPLY WITH TMC 18.10 SIGN CODE
22. NO BUILDING PERMIT(S) FOR ANY PHASED SHALL BE ISSUED UNTIL ALL STORMWATER MANAGEMENT REQUIREMENTS SET FORTH IN THE TOPEKA MUNICIPAL CODE (TMC) ARE MET: INCLUDING APPROVAL OF STORMWATER MANAGEMENT PLAN, GRANTING OF ANY NECESSARY STORMWATER MANAGEMENT, DRAINAGE OR STREAM BUFFER EASEMENTS, AND CONSTRUCTION AND INSPECTION OF ALL STORMWATER MANAGEMENT OF ALL STORMWATER MANAGEMENT FACILITIES CONTAINED IN THE APPROVED STORMWATER MANAGEMENT PLAN FOR EACH PHASE AS APPLICABLE.
23. CONSTRUCTION SHALL BE CONSISTANT WITH BUILDING ELEVATIONS SUBMITTED AS PART OF THE CONDITIONAL USE PERMIT, WHICH ALLOWS SOME VARIATIONS TO BE APPROVED ADMINISTATIVELY BY THE PLANNING DEPARTMENT AT THE SITE PLAN REVIEW OR BUILDING PERMIT PHASES.
24. THE PROPERTY OWNER SHALL CONSTRUCT A PRIVATE SIDEWALK CONNECTION WITH THE PUBLIC SHARED USE PATH ALONG NW TYLER AT THE TIME OF SITE DEVELOPMENT. THE PEDESTRIAN PATH TO THE NORTH IS OPTIONAL.
25. THE FRONT PROPERTY LINE AS DEPICTED ON CUP IS AN APPROXIMATION AND THE ACTUAL BOUNDARIES WILL BE SURVEYED AT THE TIME OF SITE PLAN REVIEW APPLICATION.

X-1 MIXED USE DISTRICT DIMENSIONAL AND SETBACK STANDARDS:

MAXIMUM BUILDING HEIGHT:
SETBACKS:
FRONT: 0'-0"
SIDE: 10'-0"
REAR: 25'-0"
10'-0" SEPERATION BETWEEN BUILDINGS ON THE SAME LOT

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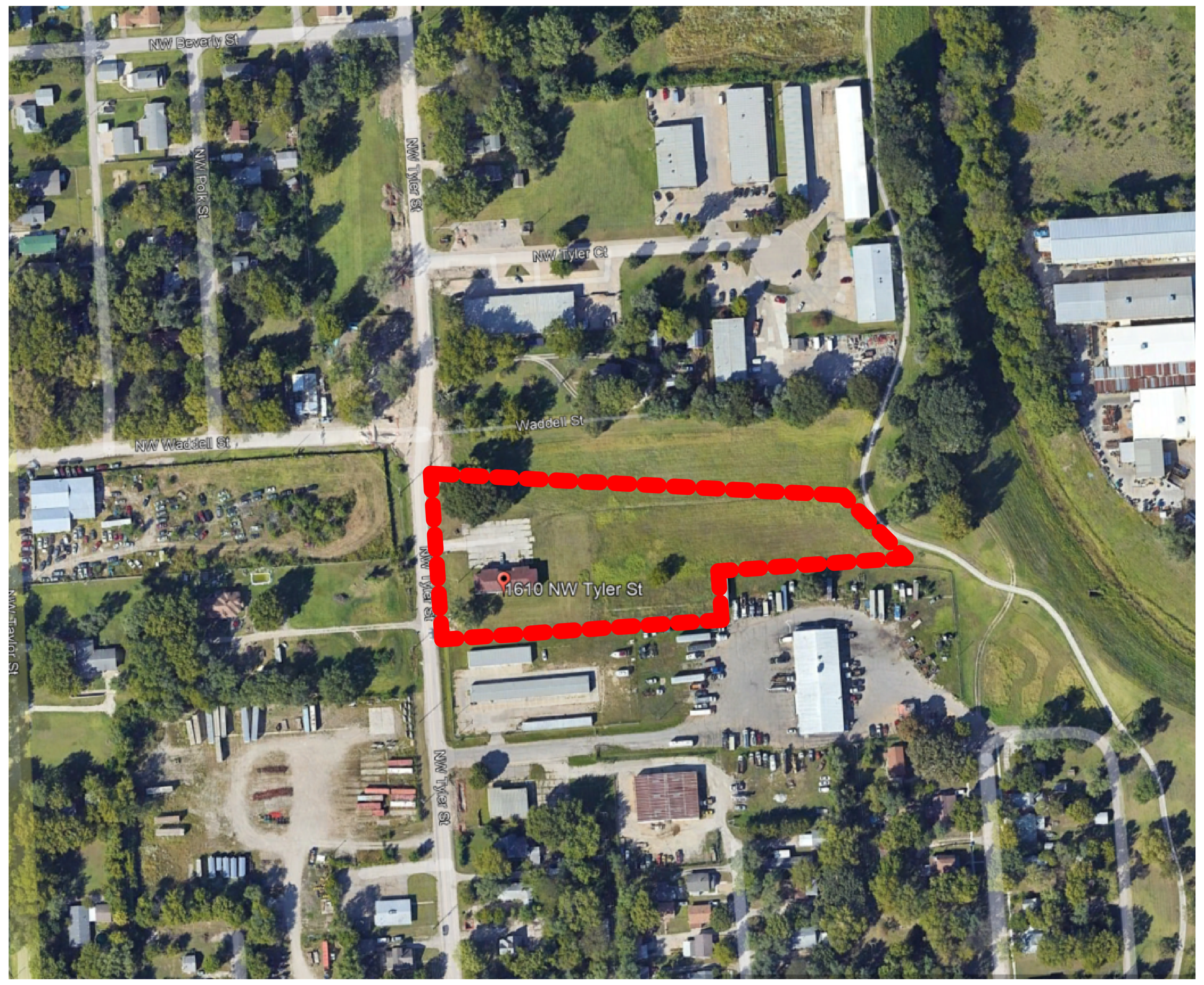
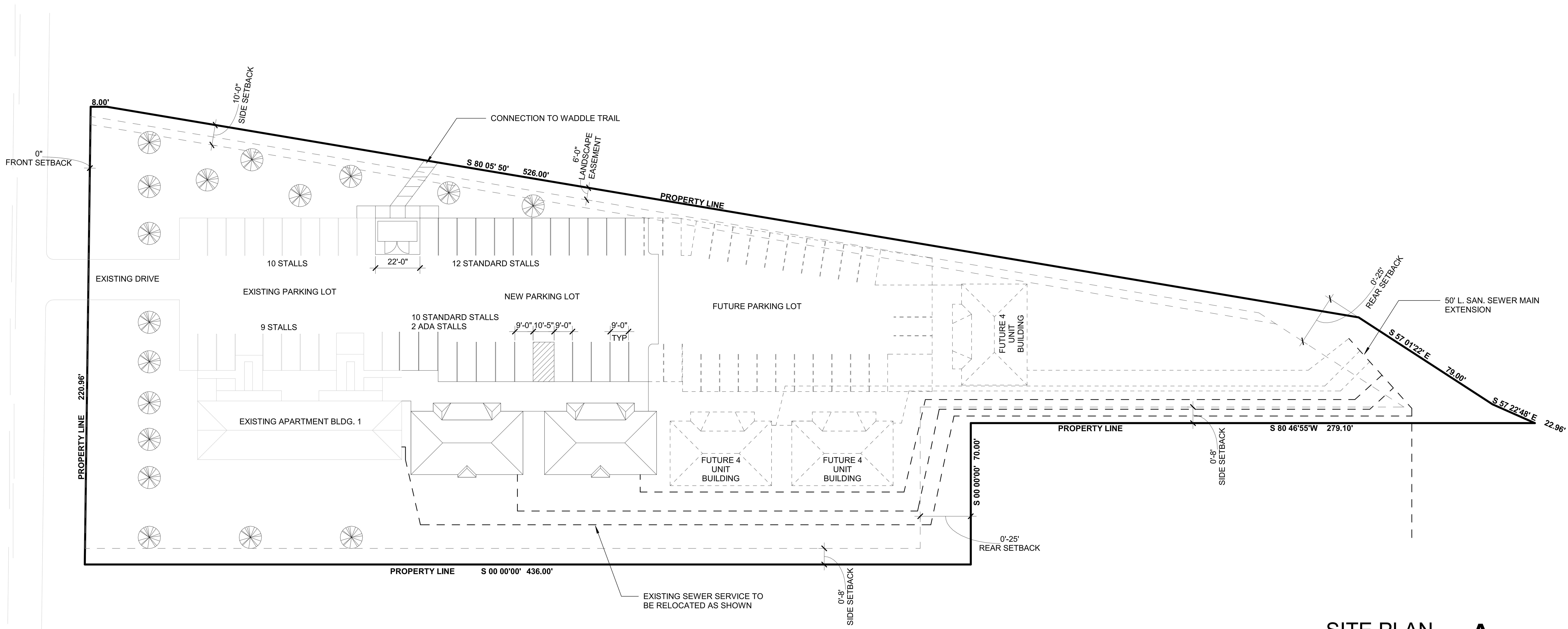


SITE AERIAL CONTEXT



SITE PLAN
1" = 30'-0"
0' 10' 20' 30' 60'
A

CUP
DATE: 11-28-2023
2021-014

EMILIO CUEVAS QUADPLEXES
1610 NW TYLER ST, TOPEKA KS, 66608

DRAWINGS NOT FOR CONSTRUCTION UNLESS PROFESSIONAL STAMP, SIGNATURE & DATE IS PROVIDED.

DRAWN BY: JES
CHECKED BY: BJF

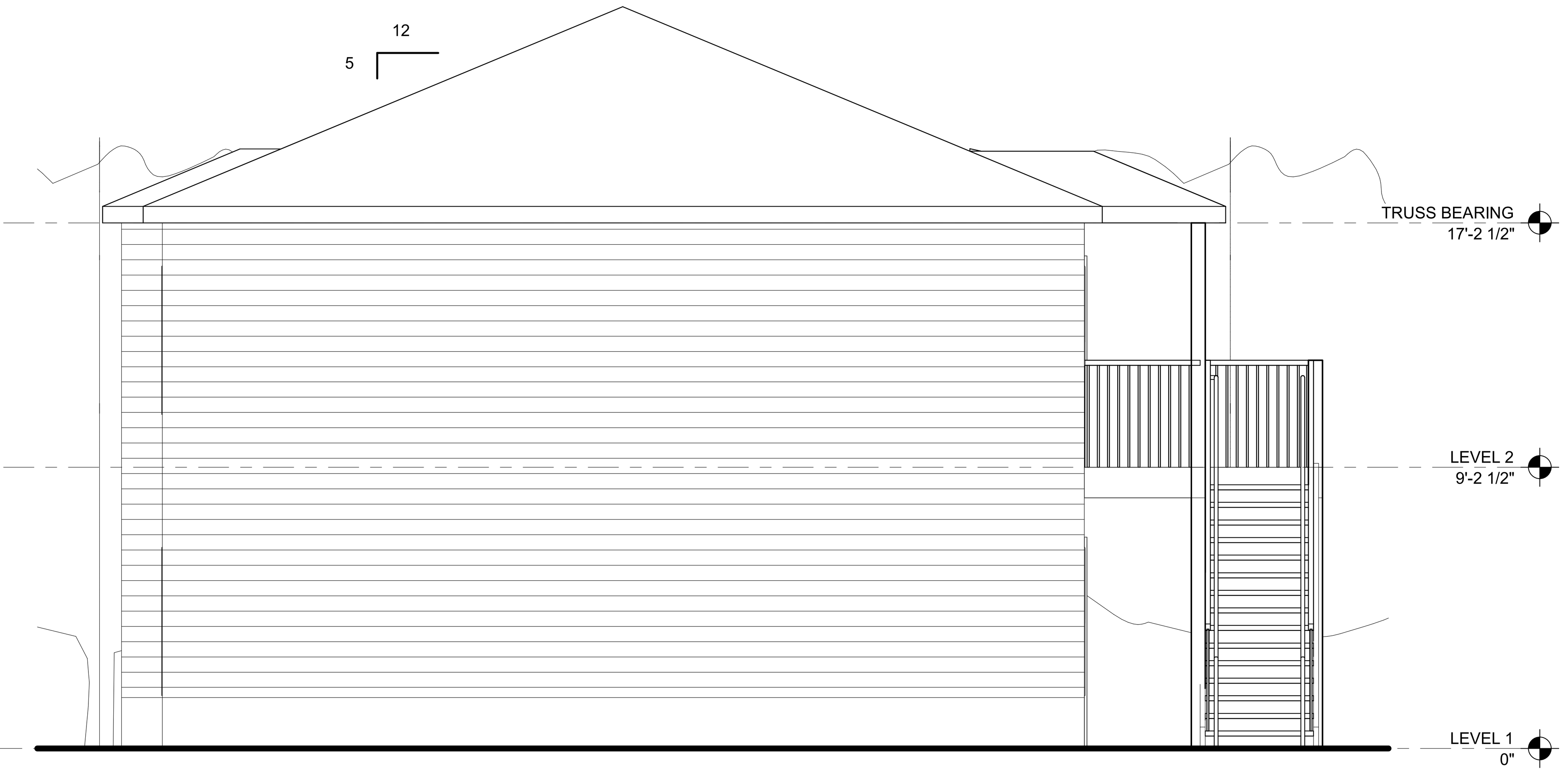
FALK ARCHITECTS

A100

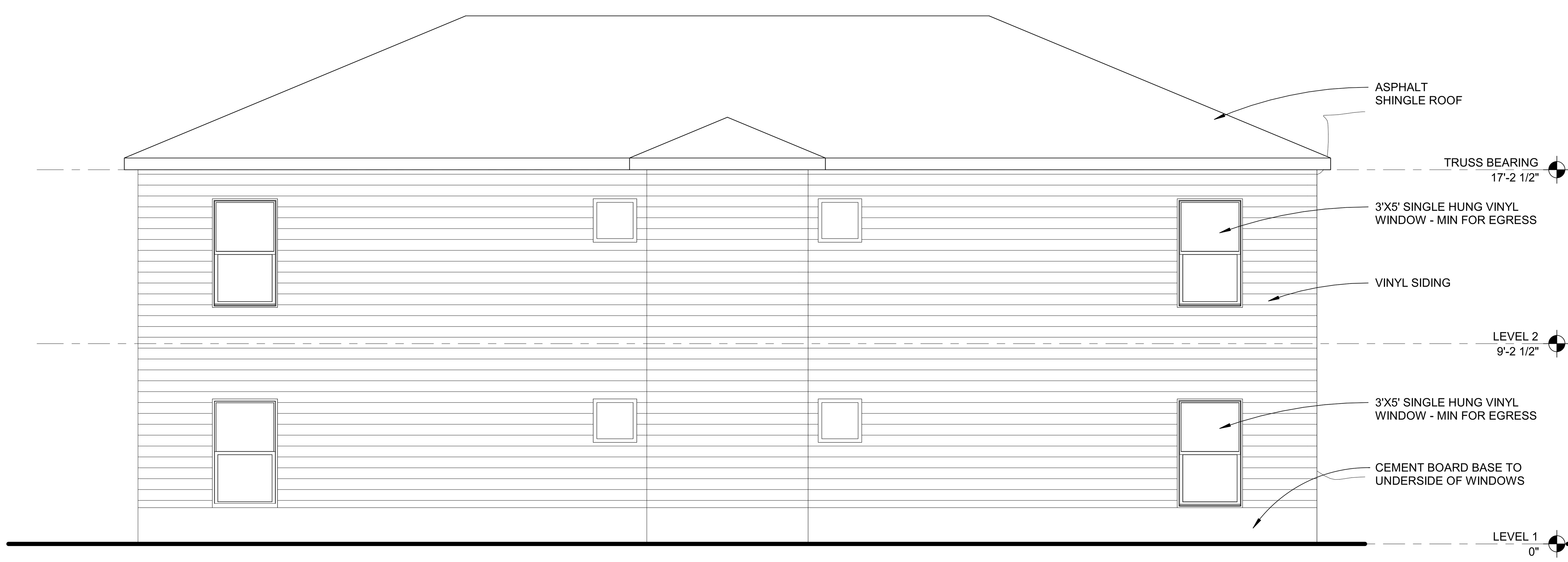
SITE PLAN

FALK ARCHITECTS INC

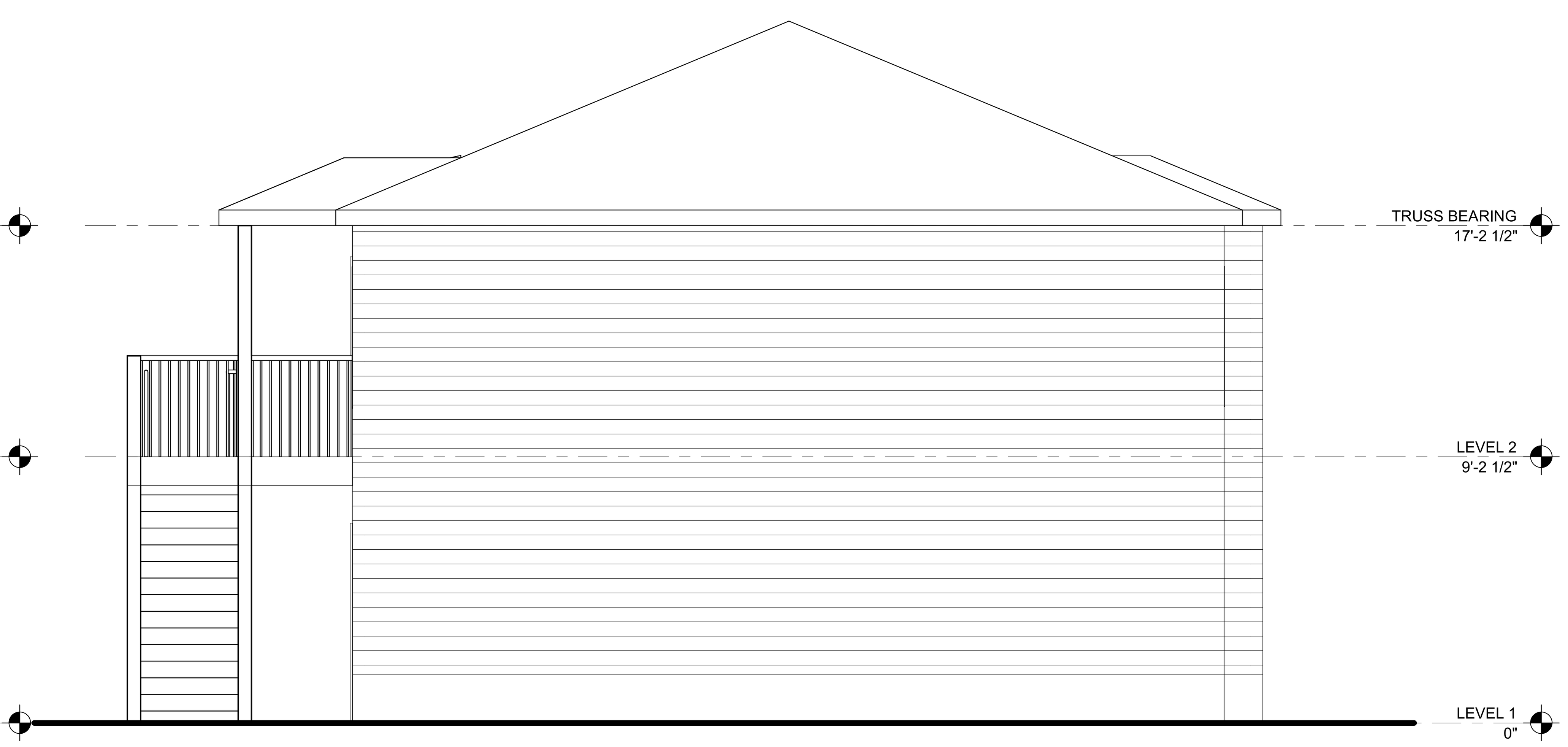
NORTH D
1/4" = 1'-0"



EAST C
1/4" = 1'-0"



SOUTH B
1/4" = 1'-0"



WEST A
1/4" = 1'-0"

DATE PRINTED: 11/28/2023 8:09:14 AM
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CUP

DATE: 11-28-2023

2021-014

EMILIO CUEVAS QUADPLEXES
1610 NW TYLER ST, TOPEKA KS, 66608

DRAWINGS NOT FOR CONSTRUCTION UNLESS PROFESSIONAL STAMP, SIGNATURE & DATE IS PROVIDED.

DRAWN BY: JS
CHECKED BY: BJF

FALK ARCHITECTS

A201

ELEVATIONS

FALK ARCHITECTS INC

City of Topeka
Council Action Form
Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Dan Warner, AICP, Planning Division Director**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Anthony Griffin**	**PROJECT #:**	**PUD23/07**
CATEGORY/SUBCATEGORY	**014 Ordinances – Non-Codified / 007 Zoning**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

ORDINANCE introduced by Interim City Manager Richard U. Nienstedt amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code on property located at 2900 SE Kentucky Avenue rezoning from "O&I-2" Office and Institutional District all to "PUD" Planned Unit Development District with O&I-2 uses and Automobile Sales. *(PUD 23/07) (Council District No. 4)*

Voting Option Requirements: **(1) Approve Planning Commission's recommendation, 6 votes are required of the Governing Body (2) Reject or Amend Planning Commission's recommendation, 7 votes are required of the Governing Body; or (3) Remand back to Planning Commission, 6 votes are required of the Governing Body.**

(Approval would allow for five existing off-street parking spaces to be utilized for the display of automobiles for sale.)

VOTING REQUIREMENTS:

The Governing Body has the following voting options:

1. Approve the Planning Commission's recommendation by adopting the ordinance. A minimum of 6 votes are required of the Governing Body.
2. Amend the Planning Commission's recommendation by amending the ordinance. A minimum of 7 votes are required is required of the Governing Body.
3. Refuse to approve the Planning Commission's recommendation by rejecting the ordinance. A minimum of 7 votes are required of the Governing Body.

4. Remand to the Planning Commission for further consideration, with a statement specifying the basis for the governing body's failure to approve or disapprove. A minimum of 6 votes are required of the Governing Body.

POLICY ISSUE:

Whether to adopt the Planning Commission's recommendation to rezone the property.

STAFF RECOMMENDATION:

Staff recommends the Governing Body move to adopt the ordinance.

BACKGROUND:

PUD23/07 is a request by DreamMakers LLC to change the zoning from "O&I-2" Office and Institutional District to "PUD" Planned Unit Development District with O&I-2 uses and automobile sales.

There is no master plan associated with PUD23/07. Conditions and restrictions of the PUD zoning are included in the proposed ordinance.
Automobile sales is a permitted use in C-3 and C-4 commercial zoning districts. To ensure compatibility with adjacent single family residential zoning, the PUD zoning allows the owner to utilize up to five existing parking stalls for the display of cars and light trucks for sale, while restricting incompatible uses that would be permitted by right under C-3 and C-4 zoning.

The recommended PUD zoning is consistent with the Land Use and Growth Management Plan 2040.

The applicant conducted a Neighborhood Information meeting on November 1, 2023 at 2900 SE Kentucky Avenue, Topeka. Besides City Staff and the applicant, no one from the neighborhood attended.

The Planning Commission held a public hearing on November 20, 2023 and recommended approval by a vote of 9-0-0. Staff recommends approval per the attached staff report.

BUDGETARY IMPACT:

Approval of the zoning change has no budgetary impact on the City.

SOURCE OF FUNDING:

Not applicable.

ATTACHMENTS:

Description

Ordinance

Presentation

Planning Commission Minutes PUD23/07 (Nov 20, 2023)

Staff Report

Fencing Specifications

Intended Use of Parking Lot (Exhibit by Applicant)

Aerial Map

Zoning Map

Future Land Use Map

Neighborhood Information Meeting Attendance and Summary (Nov 8, 2023)

(Published in the Topeka Metro News ______________________________________)

ORDINANCE NO. ________________________

ORDINANCE introduced by interim City Manager Richard U. Nienstedt amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code on property located at 2900 SE Kentucky Avenue ***from*** "O&I-2" Office and Institutional District all ***to*** "PUD" *Planned Unit Development District* with O&I-2 uses and Automobile Sales. **(PUD 23/07) (Council District No. 4)**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC), be, and the same is hereby amended, by reclassifying the following described property:

North 111 Feet of Lot 28, Shawnee Highlands Subdivision

FROM "O&I-2" Office and Institutional District TO "PUD" Planned Unit Development with "O&I-2" Office and Institutional District Uses and Automobile Sales.

Subject to:

(1) O&I-2 uses are permitted. In addition to O&I-2 uses, the sale of cars and light trucks is permitted. The use and dimensional standards applicable to O&I-2 zoning shall apply except as stated in these conditions.

(2) The sale of cars and light trucks, hereafter referred to as "auto sales", is permitted in accordance with the attached Statement of Operations in Exhibit A and with the following conditions.

(3) Automobile sales and leasing of vehicles is restricted to automobiles, pickup trucks, motorcycles and other vehicles that will not exceed a gross vehicle weight rating of 12,000 pounds.

At any single time, no more than five cars or light trucks for sale may be parked or displayed on the site. Cars or light trucks parked or displayed must be operable and have current registration with the Kansas Department of Motor Vehicles. All other parking of vehicles on the property is for customers and employees of business conducted on the site.

(4) Auto repair, whether as a separate use or a use accessory to auto sales, is not permitted on site.

(5) Use of feather signs and balloons as defined by the Topeka sign regulations (section 18.10.170) is not permitted. Streamers and other similar attention-getting devices are not permitted.

(7) Any fencing of the site requires a fence permit. Any fencing north of the building shall be the same or of a similar material, quality, and design as the black aluminum fencing shown in the attached Exhibit B.

(8) The inventory of vehicles for sale, lease, or service shall be parked only on paved areas and shall not displace the minimum required number of off-street parking spaces.

(9) Any substantial change to the auto sales use as described in the Statement of Operations or any of the

conditions herein may require an amendment to this Planned Unit Development in accordance with the amendment procedures in TMC 18.190.070.

PASSED AND APPROVED by the Governing Body, City of Topeka, Kansas on ___________________, 2023.

____
Michael A. Padilla, Mayor

ATTEST:

____
Brenda Younger, City Clerk

To Be Codified ___________
Not To Be Codified ___X___

Exhibit A

DreamMakers LLC

2900 SE Kentucky Ave Topeka KS, 66605

STATEMENT OF OPERATIONS

The written statement of operations is written up based on the need to expand the business operations at DreamMakers (2900 SE Kentucky Ave Topeka KS, 66605). The listed business wants to operate as a small used car dealership. The dealership at the above-listed address will only have on site a total of five vehicles that will be sold to the public. The owner has obtained the proper Sales Tax ID and Clearance.

The site will operate physically as a small used car dealership utilizing 5 parking spots in the parking lot for the inventory of vehicles that will be sold. The other parking stalls will be used for my personal vehicle to get to and from the office and for vehicles that our patrons drive to view our cars that are for sale. There are seven parking stalls to accommodate my vehicle and those of anyone viewing the vehicles. The office located inside at 2900 SE Kentucky Ave Topeka KS, 66605 will be used to conduct any paperwork needed to process the vehicles sale.

Our hours of operations will be 9:00AM- 5:00PM CST Monday through Saturday. I have included a copy of our zoning information that I obtained from the Shawnee County Appraisers website. Along with included documents is a screenshot of the parking lot listing where the vehicles will be parked and where my personal vehicle and those of our patrons will be parked.

In the screenshot provided there also lists where our property line is. The location of the fence will be where the property line is. I have included the type of fencing that will be used with specifications about that fence. The square footage of the proposed fencing is 460 sq ft.

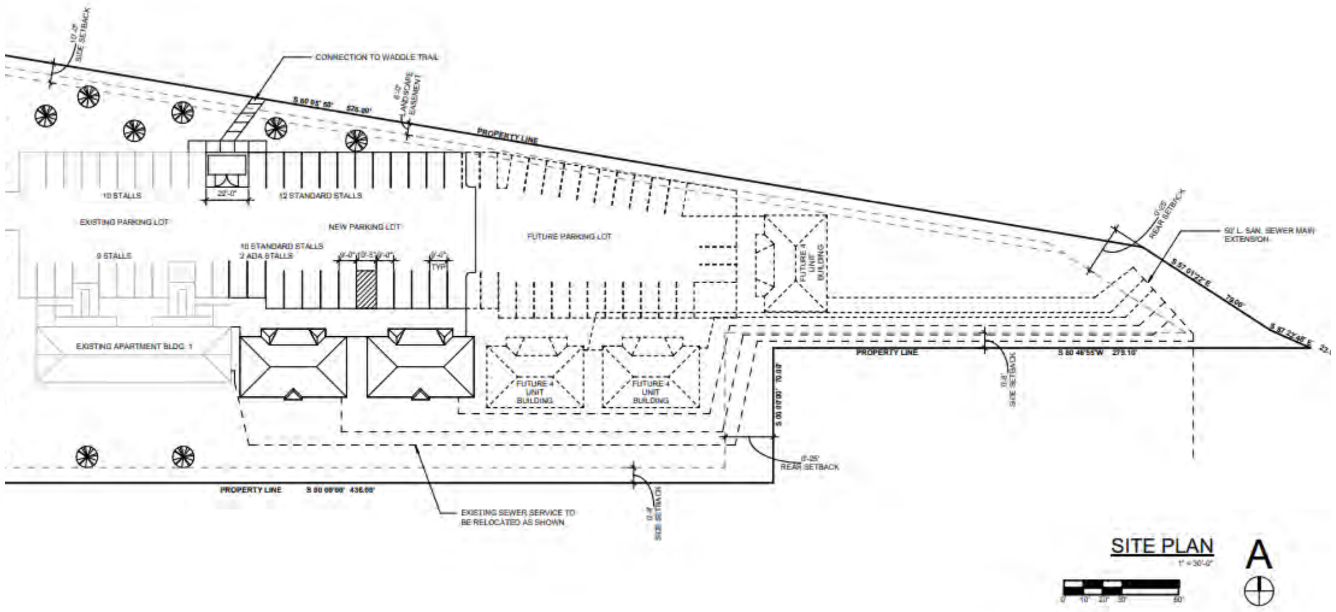
CITY OF TOPEKA

CU23/05 Emilio Cuevas (School House Rentels LLC) PUD23/07 DreamMakers LLC

Dan Warner, AICP, Planning Director

CU23/05 Emilio Cuevas (School House Rentals, LLC)

SITE AERIAL CONTEXT



PUD23/07 DreamMakers, LLC

CITY OF TOPEKA

TOPEKA PLANNING COMMISSION

Monday, November 20, 2023

6:00PM

CASE MINUTES

Members present:	Corey Dehn (2023 Chair), Willie Brooks, Jennifer Hannon, Del- Metrius Herron, Jim Kaup, William Naeger, Katy Nelson, Donna Rae Pearson, Jim Tobaben (9)
Members Absent:	NA
Staff Present:	Rhiannon Friedman, Planning & Development Director, Dan Warner, Planning Director; Mike Hall, Land Use Planning Manager; William Sharp, Planner; Annie Driver, Planner; Amanda Tituana-Feijoo, Administrative Officer; Mary Feighny, Legal

Public Hearing of PUD23/7 Dreammakers LLC, a rezoning from “O&I-2” Office and Industrial District to “PUD” Planned Unit Developmental to allow “O&I-2” uses and automobile sales.

Staff:
Will Sharp presented the staff report and staff’s recommendation of approval.

Questions/Comments from Commissioners:
Commissioner Dehn asked about the number of parking spots permitted, and why only five were designated for a dealership. Mr. Sharp confirmed that the applicant was present, and stated that he could answer that.

Commissioner Pearson asked for clarification on where the signs could be placed. Mr. Sharp confirmed that the existing signs will still be allowed, and signs that fall within the “sign code” will be allowed.

Commissioner Kaup asked about the alternative for the applicant, and if that would be the “C3 or C4” zoning. Mr. Kaup also asked for confirmation that staff would not have approved it due to the number of uses allowed which would be incompatible for the nearby residential community. Mr. Sharp confirmed that he did work with the applicant to allow what would otherwise not be permitted in the “O&I” district. Mr. Sharp also stated with the conditions attached, he believes car sales would be allowable.

Commissioner Naeger asked about the parking lot, and if it was combined with the parking lot to the south. Mr. Sharp stated that he does not foresee the parking lots to be combined, and that no plans or proposals have been presented.

Commissioner Hannon asked about putting fencing around the property. Mr. Sharp stated the applicant has proposed putting up a five-foot fence, and it is not a condition of the PUD.

Owner’s Representative:
Dineasha Jones, Owner Representative
Ms. Jones stated that she would address all the commissioner’s questions. There is a concrete barrier that separates the property and the apartment complex. Regarding the number of cars, Ms. Jones stated that they aren’t out to get rich but to help the community. Dreammakers LLC feels that five is enough for

them to handle.

Commissioner Dehn asked, if in the future Dreammakers wants to sell more cars, how would they proceed? Mr. Sharp stated that they would most likely have to go through a minor amendment process for increase in cars displayed for sale. Mr. Hall added that, if the applicant proposes an increase in the number of cars displayed for sale, staff would need to review the request in consideration of the ordinance to determine if doing so requires a minor or major amendment. Mr. Hall also explained that the owner is operating a few other businesses out of the building.

Commissioner Kaup inquired if the nine conditions in the staff report were agreeable with the applicant. Ms. Jones confirmed that she suggested some of those conditions, and feels comfortable with them.

Commissioner Dehn declared the **public hearing open**. With nobody coming forward to speak, he declared the **public hearing closed.**

Questions/Comments from Commissioners:
Mr. Brooks inquired about the allocated parking spots. Mr. Hall stated that he didn't see anything that would tie them to those first five stalls. Mr. Sharp stated that the designation was based off a picture provided by the applicant, however, the cars for sale could be located elsewhere on the site.

With no further questions from commissioners, Mr. Dehn called for a motion.

Motion by Commissioner Naeger, **second** by Commissioner Pearson **to a recommend APPROVAL, subject to the conditions stated in the staff report. Approved 9-0**

STAFF REPORT – PLANNED UNIT DEVELOPMENT
TOPEKA PLANNING AND DEVELOPMENT DEPARTMENT

PLANNING COMMISSION DATE: Monday, November 20, 2023

APPLICATION INFORMATION

APPLICATION CASE NUMBER/NAME:	**PUD23/07 by DreamMakers LLC**
REQUESTED ACTION / CURRENT ZONING:	Rezoning from “O&I-2” Office and Institutional District to “PUD” Planned Unit Development to allow “O&I-2” uses and automobile sales. Applications for PUD zoning typically include a master plan. As is allowed under TMC 18.190.050 (PUD procedures) the requirement for a master plan is waived in this case because the conditions and restrictions of the PUD can be adequately included in the ordinance reclassifying the property.
PROPERTY OWNER:	DreamMakers Real Estate Pros LLC
APPLICANT REPRESENTATIVE:	Anthony Griffin
CASE PLANNER:	William Sharp, Planner I
PROPERTY ADDRESS:	2900 SSE Kentucky Avenue – PID: 1341702001002000
PARCEL SIZE(S):	0.40 acre
PHOTOS:	

Corner of SE 29th St & Se Kentucky Ave

View looking east from northwest corner of property.

RECOMMENDATION:

Staff recommends approval of the application to rezone the property from "O&I-2" Office and Institutional District to "PUD" Planned Unit Development allowing O&I-2 uses and automobile sales subject to conditions described in the staff report.

The recommended zoning limits land use to what is permitted by O&I-2 zoning and automobile sales. The recommended PUD zoning includes restrictions regarding auto sales.

RECOMMENDED MOTION:

Motion to approve rezoning of the property located at 2900 SE Kentucky Avenue FROM "O&I-2" Office and Institutional District TO "PUD" Planned Unit Development with an "O&I-2" use group and operation of automobile sales subject to conditions as described in the staff's report.

PROJECT AND SITE INFORMATION

PROPOSED USE / SUMMARY:

Applicant proposes to utilize no more than five of the existing off-street parking spaces for the display of automobiles for sale. Applicant proposes to install a 5' high ornamental black aluminum fence around the site for security.

The State of Kansas requires those seeking an auto dealer's license to obtain zoning verification from the local zoning authority. The City of Topeka cannot provide that verification under the site's current O&I-2 zoning because "automobile sales and service" is prohibited on property zoned O&I-2. (TMC 18.60.010)

Rezoning as a PUD is necessary to restrict the permitted land uses to those that are compatible with the surrounding neighborhood. While some land uses within higher intensity zoning designations may be compatible with low density residential surroundings, others are not. Rezoning the property as a PUD provides for the option to restrict land uses such that the applicant can make use of compatible land uses while protecting the interest of surrounding land owners and residents from potentially incompatible land uses.

DEVELOPMENT / CASE HISTORY:

The property was annexed into the City of Topeka in 1959, the principal structure on the property was constructed in 1970 as the Highland Park State Bank with drive-in. In the following years the use of the building has largely remained the same as other businesses have utilized the building for accounting and tax services and insurance offices. The property's initial rezoning in the early 1960s was denied twice but was eventually rezoned from "A' single-family dwelling district to "E" Multiple-Family Dwelling District. "E" Multiple-Family Dwelling District converted to M-3 Multiple-Family Dwelling District, which allowed O&I-2 uses at the time of conversion.

ZONING AND CHARACTER OF SURROUNDING PROPERTIES:

North: "R-2" Single Family Dwelling District – Single-family neighborhood

East: "C-2" Commercial District – Convenience store

South: "M-3" Multiple-Family Dwelling District – Three-story garden apartment complex

West: "R-1" Single Family Dwelling District - Single Family Neighborhood

<u>COMPLIANCE WITH DEVELOPMENT STANDARDS AND GUIDELINES</u>

USE STANDARDS AND DIMENSIONAL STANDARDS:

City of Topeka O&I-2 use, density, and dimensional standards will apply except as noted in the conditions of this PUD. Conditions of the PUD include restrictions on the quantity of cars displayed for sale (5 maximum); the size of vehicles displayed for sale; temporary signs; and fencing. Auto repair on site is prohibited. Cars related to the auto repair use must be in operable condition and registered.

The PUD zoning allows owner to use the property as intended without the risk of future development into a potentially incompatible commercial use.

PARKING AND ACCESS:	Off-street parking requirements are determined by land use and not the zoning classification. (TMC 19.240) Total available parking spaces: 12 Parking for display of autos for sale: 5 Remaining spaces: 7 Required spaces: 5
DESIGN STANDARDS:	N/A (No substantial exterior changes to the building are proposed.)
LANDSCAPING:	Landscaping requirements will apply for expansion and new construction on site (TMC 18.235).
SIGNAGE:	Signage will be required to comply with the Sign Code (TMC18.10). Feather signs, balloons as defined by the Topeka sign regulations (section 18.10.170), and streamers and similar attention-getting devices are not permitted.
LIGHTING & SOUND:	Any exterior lighting installations shall not have a negative impact on traffic safety or the surrounding properties. Any new outdoor light shall not exceed a level of 3 foot-candles at the property line.
VARIANCES REQUESTED:	None requested.

OTHER FACTORS

SUBDIVISION PLAT:	Shawnee Highlands Subdivision
UTILITIES:	Public sanitary sewer and water connections are readily available.
FLOOD HAZARDS, STREAM BUFFERS:	None
HISTORIC PROPERTIES:	None
NEIGHBORHOOD PLAN:	Located in the Highland Crest neighborhood and is subject to the 2015 Hi-Crest Neighborhood Plan.
NEIGHBORHOOD INFORMATION MEETING:	The applicant conducted a Neighborhood Information meeting in person at the subject property at 2900 SE Kentucky Ave on November 1, 2023. Owners of properties within 300 feet of the property were invited to the meeting. No one attended other than the applicant and Planning staff.

REVIEW COMMENTS BY CITY DEPARTMENTS AND EXTERNAL AGENCIES

Public Works /Engineering:	No issues identified regarding traffic or engineering.
Water Pollution Control:	No issues identified regarding rezoning.
Fire Department:	No issues identified regarding rezoning. Fire Department has provided general comments and conditions applicable to site development.
Development Services:	No issues identified regarding rezoning. Permits will be required.

KEY DATES

SUBMITTAL:	October 4, 2023
LEGAL NOTICE PUBLICATION:	October 30, 2023
PROPERTY OWNER NOTICE MAILED:	October 27, 2023

STAFF ANALYSIS

Planning staff have reviewed the zoning application relative to the required findings and conclusions in Topeka Municipal Code Section 18.245 (Findings and conclusions reflect the "golden factors" per Donald Golden v. City of Overland Park, 1978 Kansas Supreme Court) as is required for applications for rezoning.

CHARACTER OF THE NEIGHBORHOOD: The surrounding neighborhood is characterized by small to medium-sized detached single family homes to the north and west. A convenience store borders the property to the east sitting on the corner of SE 29th St and SE Indiana Ave. A three-story, 24-unit apartment building built in 1972 is directly to the south. The subject property is located in the Hi-Crest neighborhood with the Central Highland Park neighborhood just to the north across 29th St. The limitations and requirements of the PUD zoning will help to prevent nuisances and maintain the character of the surrounding neighborhood.

ZONING AND USE OF NEARBY PROPERTIES: The properties to the north are zoned "R-2" Single-Family Dwelling District and with single-family residential being the predominant land use, although there is an auto repair use at the northwest corner of SE 29th and Indiana Avenue that does not conform to the R-2 zoning. Like the north, lands to the west are zoned "R-1" Single-Family Dwelling District and single-family residential use predominates. To the south is an apartment building zoned "M-3" Multiple-Family Dwelling District on its northern half and "M-2 Multiple-Family Dwelling District on its southern portion. To the east is a convenience store zoned "C-2" Commercial District.

LENGTH OF TIME THE PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER THE PRESENT CLASSIFICATION: The subject property received its current zoning designation in 1964. The property had been originally classified as "E" Multiple Dwelling District to allow use for a savings and loan branch office. The property has kept its office use and character with the site being used for a bank and insurance offices during its history. The property later converted to its current zoning of "O&I-2" Office and Institutional District.

SUITABILITY OF USES TO WHICH THE PROPERTY HAS BEEN RESTRICTED: The property is suitable for uses permitted under its current O&I-2 zoning, but the zoning does not allow the owner to sell cars and light trucks at this location. The current zoning allows for a limited range of nonresidential and noncommercial uses such as general purpose office, professional, or administrative operations. The property has appeared to stay within this office land use since its existence.

CONFORMANCE TO THE COMPREHENSIVE PLAN: The subject property is located in the Hi-Crest neighborhood and is subject to the 2015 Hi-Crest Neighborhood Plan. The neighborhood plan's Future Land Use Map designates the subject property as "Commercial - Neighborhood." The neighborhood plan indicates C-2 as an appropriate zoning classification, but automobile sales requires C-3 or C-4 zoning. C-3 and C-4 zoning does not meet the intent of the neighborhood plan and allows uses that might be incompatible with the adjacent residential land use. The proposed PUD zoning, which allows limited automobile sales with restrictions, is consistent with a goal and guiding principle of the neighborhood plan to protect existing single-family residential areas from encroachment of higher-intensity land uses particularly within the interior of the neighborhood.

THE EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: Development of the subject property as proposed is not expected to generate any substantial deleterious effects to the nearby properties. The proposed automobile sales use is limited to no more than five existing parking spaces for the sale of automobiles. The O&I-2 zoning will still remain on the parcel and the land use for the building will remain the same as well. Any type of service or maintenance required for the vehicles will be done offsite at another location.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER: The proposed zoning and development as designed is not anticipated to have a detrimental effect on neighboring property owners. The current zoning allows for office and institutional uses already at the location. The conditions of the PUD zoning designate five existing parking spaces for use of auto sales. The rest of the parking lot will remain for customers and staff.

AVAILABILITY OF PUBLIC SERVICES: All essential public roadways, utilities, and services are currently present and available at this location. The additional land use permitted by the PUD zoning will not result in a substantial increase in traffic.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS: Development under the proposed zoning will require compliance with the conditions detailed in the staff's report as well as "O&I-2" Office and Institutional District zoning, land use, and dimensional standards. The property is platted as a part of the Shawnee Highlands Subdivision and at this time there is no intent to subdivide the property.

STAFF RECOMMENDATION

Based upon the above findings and analysis, Planning staff recommend **APPROVAL** of the proposed zoning, subject to the following conditions, which are to be included in the ordinance adopted by the Governing Body:

(1) O&I-2 uses are permitted. In addition to O&I-2 uses, the sale of cars and light trucks is permitted. The use and dimensional standards applicable to O&I-2 zoning shall apply except as stated in these conditions.

(2) The sale of cars and light trucks, hereafter referred to as “auto sales”, is permitted in accordance with the attached Statement of Operations in Exhibit A and with the following conditions.

(3) Automobile sales and leasing of vehicles is restricted to automobiles, pickup trucks, motorcycles and other vehicles that will not exceed a gross vehicle weight rating of 12,000 pounds.

At any single time, no more than five cars or light trucks for sale may be parked or displayed on the site. Cars or light trucks parked or displayed must be operable and have current registration with the Kansas Department of Motor Vehicles. All other parking of vehicles on the property is for customers and employees of business conducted on the site.

(4) Auto repair, whether as a separate use or a use accessory to auto sales, is not permitted on site.

(5) Use of feather signs and balloons as defined by the Topeka sign regulations (section 18.10.170) is not permitted. Streamers and other similar attention-getting devices are not permitted.

(7) Any fencing of the site requires a fence permit. Any fencing north of the building shall be the same or of a similar material, quality, and design as the black aluminum fencing shown in the attached Exhibit B.

(8) The inventory of vehicles for sale, lease, or service shall be parked only on paved areas and shall not displace the minimum required number of off-street parking spaces.

(9) Any substantial change to the auto sales use as described in the Statement of Operations or any of the conditions herein may require an amendment to this Planned Unit Development in accordance with the amendment procedures in TMC 18.190.070.

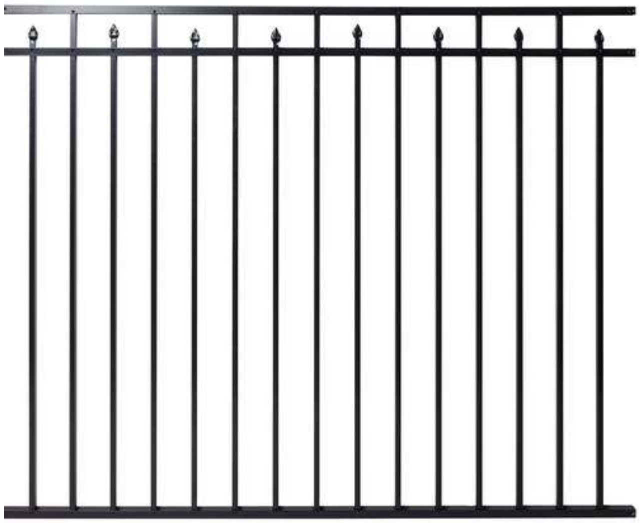
PLANNING COMMISSION MOTION: Based on the findings and analysis in the staff report, I move to recommend to the Governing Body **APPROVAL** of the rezoning from “O&I-2” Office and Institutional District TO “PUD” Planned Unit Development with an “O&I-2” use group and automobile sales subject to conditions as described in the staff report.

ATTACHMENTS:
Statement of Operations (Exhibit A to Conditions)
Fencing Specifications (Exhibit B to Conditions)
Intended Use of Parking Lot (Exhibit by Applicant)
Aerial Map
Zoning Map
Future Land Use Map
Neighborhood Information Meeting Attendance and Summary

EZ Fence Columbia 5' x 6' Black 3-Rail Aluminum Fence Panel

(Actual Size 60" H x 70-1/2" W)

Model Number: 1716800 | Menards ® SKU: 1716800



EVERYDAY LOW PRICE **$99.99**

11% MAIL-IN REBATE Good Through 9/24/23 **$11.00**

FINAL PRICE **$88.99 each**

You Save $11.00 with Mail-In Rebate

- Nominal 5' high
- Nominal 6' wide
- Quality aluminum construction

View More Information >

Ship To Store - Free!

Available for Special Order at

TOPEKA

Get it **as soon as 11/11/2023**

Delivery

Available

Description & Documents

This Columbia Aluminum Fence Panel features a classic smooth-rail top with traditional spear point pickets alternating below. The external post and bracketing system that's sold separately makes this product easy to install.

Brand Name: **Specrail**

Features

- Nominal 5' high
- Nominal 6' wide
- Quality aluminum construction
- Easy and fast installation
- This maintenance-free product doesn't require painting as it will keep its attractive finish without rusting or peeling
- Posts sold separately

Specifications

Product Type	Metal Fence Panel	Material	Aluminum
Thickness	1 inch	Special Features	Rust Resistant
Overall Height	60 inch	Weight	14 pound
Overall Width	70-1/2 inch	Color/Finish	Black
Installed Height	60 inch	Rough Opening Width	72 inch
Top Style	Flat	Shipping Dimensions	73.00 H x 61.00 W x 2.00 D
Shipping Weight	14.0 lbs	Return Policy	Regular Return (view Return Policy)

YARD BUILDING

LANDSCAPING

RESIDENTIAL POST FRAME

DECK

POST FRAME

The blue outline of the property will be where the proposed fence line will be once it is built.
I have attached a screenshot of the type of fence that will be used.

The yellow highlighted area will be where the used automobiles will be parked that we would be listing for sale. No more than five vehicles that will be for the intention of sale will be on the lot at one time. We are only choosing to utilize that space and only sell five vehicles at a time.

The other seven parking spaces in the office lot will be used for personal vehicles that we use for our personal transportation to and from the office and for customers that are there for our services.

20ft
-95.661 39.015 Degrees

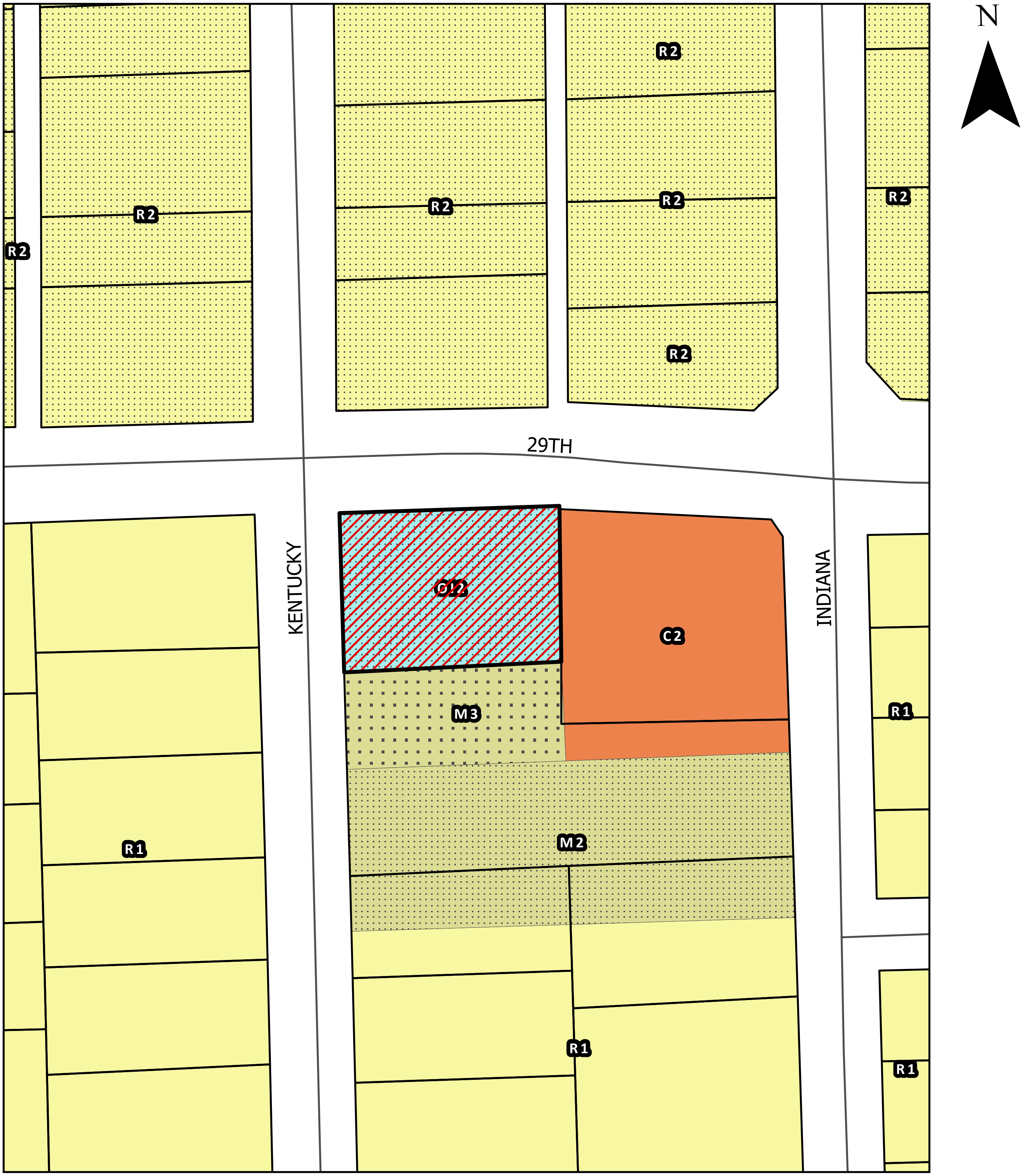
PUD23/07 by DreamMakers LLC

Topeka Planning Division

Subject Property

Aerial Map

PUD23/07 by DreamMakers LLC

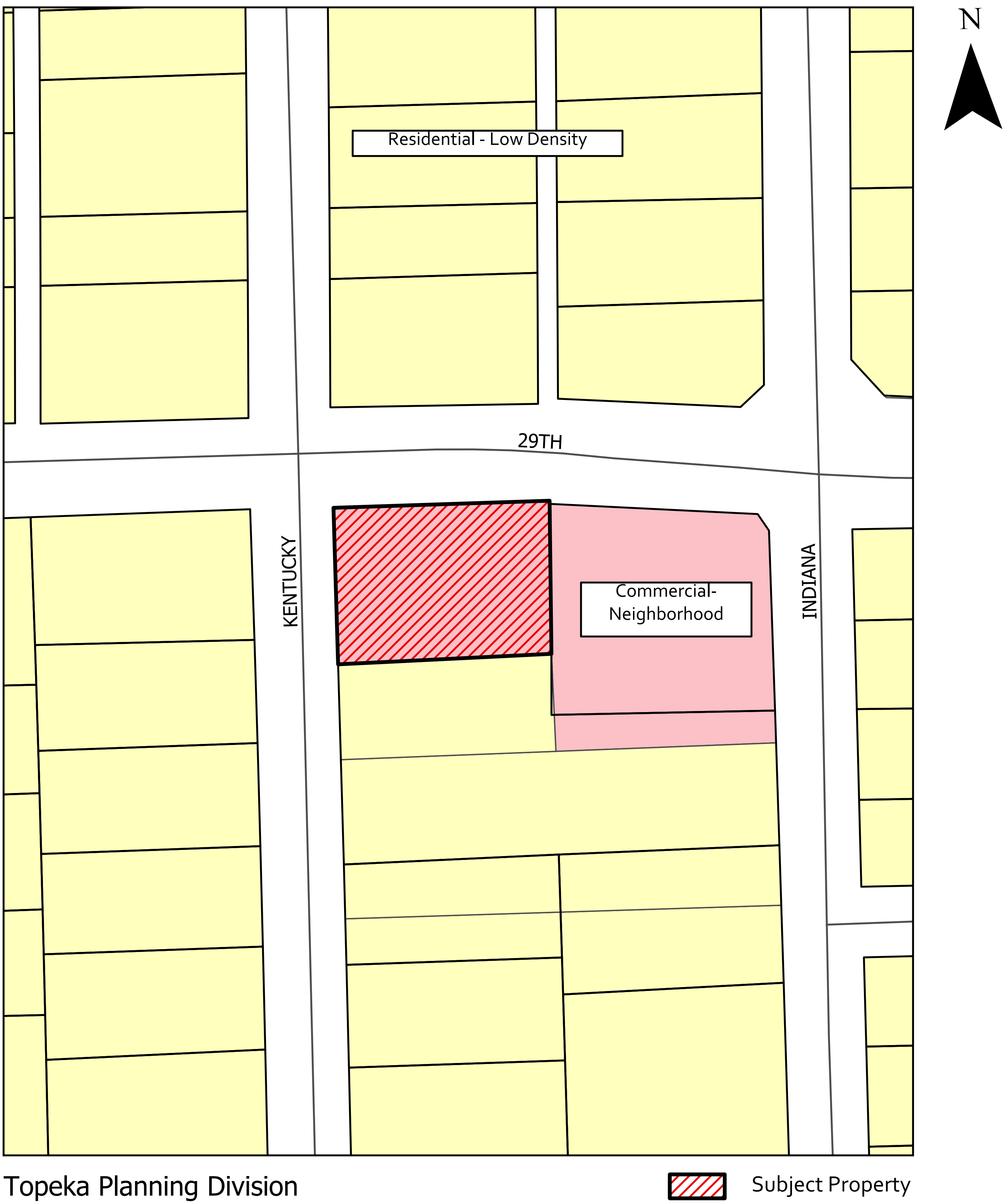


Topeka Planning Division

Subject Property

Zoning Map

PUD23/07 by DreamMakers LLC



Topeka Planning Division

Future Land Use Map

CITY OF TOPEKA
Planning Division
Holliday Building, 620 SE Madison St., Unit 11
Topeka, KS 66607
Dan Warner, AICP, Director
Tel: 785-368-3728
www.topeka.org

MEMORANDUM

To: File
From: William Sharp, Planner I
Date: November 8, 2023
RE: Neighborhood Information Meeting, PUD23/07

On November 1, 2023 at 5:30pm a neighborhood information meeting was held at 2900 SE Kentucky Ave for DreamMakers LLC regarding their PUD application.

Anthony Griffin attended on behalf of the applicant. William Sharp and Mike Hall attended the meeting on behalf of City of Topeka. The meeting was concluded at 5:50pm after having no guests attended beyond staff and the applicant.

City of Topeka
Council Action Form
Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Councilmember Spencer Duncan, Policy and Finance Committee Chairperson; and City Attorney Amanda Stanley**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Common Consumption**	**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:	**Discussions 12-12-23**	**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

DISCUSSION concerning the creation of Common Consumption Areas and designating area boundaries. *(The Policy and Finance Committee recommended approval by a vote of 2-0-0 on December 6, 2023.)*

(Proposed Common Consumption Areas "CCA" to be established are located in NOTO and Downtown Topeka. The defined areas allow for individuals to possess and consume alcoholic liquor outside of a licensed bar, restaurant, or other eligible establishment that is permitted to sell alcoholic beverages by the State of Kansas.)

VOTING REQUIREMENTS:

Discussion only. No action is required of the Governing Body.

POLICY ISSUE:

Whether or not to establish common consumption areas and designating area boundaries in the NOTO and Downtown areas of the city.

STAFF RECOMMENDATION:

Staff is making no recommendation.

BACKGROUND:

In 2022, the State of Kansas Legislature passed House Bill 2277 allowing a city or county to establish one or more common consumption areas by ordinance or resolution, designate the boundaries of any common consumption area, and prescribe the time during which alcoholic liquor may be consumed.

On October 27, 2023, the Policy and Finance Committee discussed establishing proposed common consumption areas in NOTO and Downtown Topeka. The areas were picked directly because businesses in both communities thought it would be the right district location for a common consumption area. No action was taken by the Committee.

The proposed Downtown CCA would encompass SW 4th between SW Jackson and SW Quincy on the north; SW 10th between SW Jackson and SE Quincy on the south; SE Quincy between SE 4th and SW 10th on the east; and SW Jackson between SW 4th and SW 10th on the west.

The proposed NOTO CCA would encompass Fairchild Street on the north, Norris Street on the south, Quincy Street on the east and Jackson Street on the west.

The possession and consumption of alcoholic liquor or cereal malt beverage is authorized provided that a common consumption permit has been issued to the City by the Director of Alcoholic Beverage Control (ABC) of the Kansas Department of Revenue in accordance with K.S.A. 41-2659. The city manager or designee is authorized to take all necessary actions relative to administering a CCA, including but not limited to, enacting regulations and executing all documents required to obtain a CCA permit on behalf of the City. The possession and consumption of alcoholic liquor or cereal malt beverage in each CCA shall be allowed only between the hours of 11:00 a.m. and 10:00 p.m. Sunday through Thursday and 11:00 a.m. to midnight on Friday and Saturday.

BUDGETARY IMPACT:

State Of Kansas requires a nonrefundable permit fee of $100 to accompany the application. It is anticipated there will other budgetary impacts related to signage requirements and increased police presence.

SOURCE OF FUNDING:

General Fund: Permit Fee

ATTACHMENTS:

Description

Ordinance
Policy and Finance Committee Report (Dec 6, 2023)
Policy and Finance Committee Dec 6, 2023 Meeting Minutes (DRAFT)
Policy and Finance Committee Meeting Minutes Excerpt (Oct 27, 2023)

(Published in the Topeka Metro News ______________________)

ORDINANCE NO. _____________

AN ORDINANCE introduced by Councilmember Spencer Duncan, concerning common consumption areas, creating Article V in Chapter 9.15 of the Topeka Municipal Code, amending § 9.15.010 and § 12.70.070 and repealing original sections.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

<u>Section 1</u>. That section 9.15.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

Unless otherwise defined in this chapter, the terms used in this chapter shall have the same meaning and definitions as defined in K.S.A. Chapter 41 and amendments thereto. As used in this chapter:

(a) "Beer" means beer as defined by K.S.A. 41-102 and amendments thereto, but containing not more than six percent alcohol by volume.

(b) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729 and amendments thereto, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

<u>(c) "Common consumption area" or "CCA" means a defined indoor or outdoor area not otherwise subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act where the possession and consumption of alcoholic liquor or cereal malt beverage is allowed pursuant to a common consumption area permit issued by the Director.</u>

<u>(d) "Director" means the director of alcoholic beverage control of the Kansas Department of Revenue.</u>

(~~c~~e) "Off-premises retailer" means a person who is licensed under the Kansas Cereal Malt Beverage Act and who sells or offers for sale any cereal malt beverage or beer in original and unopened containers that is not for consumption on the premises.

(~~d~~f) "On-premises retailer" means a person who is licensed under the Kansas Cereal Malt Beverage Act and who sells or offers for sale any cereal malt beverage or beer for consumption on the premises.

Section 2. That the Code of the City of Topeka, Kansas, is hereby amended by adding an article, to be numbered Article V, which said article reads as follows:

Article V. Common Consumption (City as permittee)

Section 3. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.360, which said section reads as follows:

Common consumption areas established; boundaries.

(a) The governing body hereby establishes the following common consumption areas ("CCA"):

(1) Downtown. The area encompassing SW 4th between SW Jackson and SW Quincy on the north; SW 10th between SW Jackson and SE Quincy on the south; SE Quincy between SE 4th and SW 10th on the east; and SW Jackson between SW 4th and SW 10th on the west.

(2) NOTO. The area encompassing Fairchild Street on the north, Norris Street on the south, Quincy Street on the east and Jackson Street on the west.

(b) Public streets or roadways within a CCA may be blocked from motorized traffic during the hours in which alcoholic liquor or cereal malt beverage is consumed.

Section 4. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.370, which said section reads as follows:

Hours.

The possession and consumption of alcoholic liquor or cereal malt beverage in each CCA shall be allowed only between the hours of 11 a.m. and 10 p.m. Sunday through Thursday and 11 a.m. to midnight on Friday and Saturday.

Section 5. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.380, which said section reads as follows:

State permit required.

Possession and consumption of alcoholic liquor or cereal malt beverage is authorized provided that a common consumption permit has been issued to the City by the Director in accordance with K.S.A. 41-2659, as amended.

Section 6. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.390, which said section reads as follows:

Authorized alcoholic liquor/cereal malt beverage containers.

All alcoholic liquor or cereal malt beverage removed from a premise licensed by the Director shall be served in a container that displays the licensee's name, logo or other identifying mark that is unique to the licensee. No alcoholic beverage removed from a licensed premises shall be in a glass container.

Section 7. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.400, which said section reads as follows:

Purchases outside of a CCA.

The possession or consumption of alcoholic liquor or cereal malt beverage purchased outside the boundaries of a CCA shall not be permitted inside the boundaries of a CCA.

Section 8. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.410, which said section reads as follows:

Purchases within a CCA.

No open container of alcoholic liquor or cereal malt beverage purchased within a CCA shall be removed from the boundaries of a CCA.

Section 9. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.420, which said section reads as follows:

Inappropriate conduct.

Inappropriate conduct shall not be permitted within the boundaries of a CCA. Any person engaging in inappropriate conduct may be subject to removal from the event. Inappropriate conduct includes, but is not limited to, fighting, harassment, destruction of property or committing any violation of City ordinances or state law.

Section 10. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.430, which said section reads as follows:

Compliance with regulations.

All licensees approved by the Director to participate in the CCA shall at all times comply with all City ordinances, state and federal laws regulating the purchase, sale and consumption of alcoholic liquor and cereal malt beverage.

Section 11. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.15.440, which said section reads as follows:

Authorization for CCA permit.

The city manager or designee is authorized to take all necessary actions relative to administering a CCA, including but not limited to, enacting regulations and executing all documents required to obtain a CCA permit on behalf of the City.

Section 12. That section 12.70.070, Alcohol and cereal malt beverage consumption, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Alcohol and cereal malt beverage consumption.

(a) Each applicant who intends to allow the sale and/or consumption of alcoholic liquor or cereal malt beverages at a special event shall request approval from the Governing Body pursuant to TMC 9.15.020.

(b) Subsection (a) shall not apply if the special event occurs within the boundaries of a common consumption area established pursuant to K.S.A. 41-2659.

Section 13. That original § 9.15.010 and § 12.70.070 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 14. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 15. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 16. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body on ____________________.

CITY OF TOPEKA, KANSAS

____
Michael A. Padilla, Mayor

ATTEST:

____
Brenda Younger, City Clerk

COMMITTEE REFERRAL SHEET
COMMITTEE REPORT

Name of Committee:	Policy & Finance
Title:	Common Consumption
Date referred from Council meeting:	
Date referred from Committee:	December 6, 2023
Committee Action:	MOTION: Chairman Duncan made a motion to approve the Common Consumption Ordinance. Committee member Naeger seconded. Motion approved 2-0-0. Committee member Valdivia-Alcalá was absent.
Comments:	
Members of Committee:	Councilmembers Spencer Duncan (Chair), Christina Valdivia-Alcalá, Hannah Naeger
Agenda Date Requested:	December 12, 2023

CITY OF TOPEKA

POLICY AND
FINANCE COMMITTEE

CITY COUNCIL COMMITTEE
MEETING MINUTES
CITY COUNCIL
City Hall, 215 SE 7th Street, Suite 255
Topeka, KS 66603-3914
Tel: 785-368-3710
Fax: 785-368-3958
www.topeka.org

Date: December 6, 2023
Time: 1:00pm
Location: Virtual Meeting via Zoom

Committee members Present: Spencer Duncan (Chair), and Hannah Naeger. Committee member Christina Valdivia-Alcalá was absent.

City Staff Present: Deputy City Attorney Mary Feighny

1) Call to Order
Chairman Duncan called the meeting to order at 1:00pm.

2) Approve November 14, 2023 Minutes
Chairman Duncan made a motion to approve the minutes. Committee member Naeger seconded. Motion approved 2-0-0. Committee member Valdivia-Alcalá was absent.

3) Common Consumption Ordinance
Chairman Duncan provided some background on the ordinance. This ordinance outlines Common Consumption districts for NOTO and Downtown Topeka. It also sets up a process for any other districts to be established in the future. If a district wants to be established in the future, there is language in the ordinance for how to go about that process. The goal today is to vote on the ordinance as it stands. He noted that staff had worked hard on the ordinance for many months. The business in those areas, as well as the public, have had opportunities to speak on the matter. Although he would like to see the ordinance move forward to the Governing Body, it is not planned for action to be taken on it this year. He would like to have it remain on the Governing Body agenda as a discussion item for the last two meetings in December, and at least the first week of January. It may move forward as an action item the second week of January. Chairman Duncan hopes that once it is on the Governing Body agenda, it will provide additional opportunities for the public to share any concerns they may have.

Committee member Naeger agreed with the plan, and shared that she also thought it was a great idea to give additional meetings, at the Governing Body level, to provide public comment on. She has not heard opinions as of this point, but anticipates there may be some. With the planned timeline, it also provides for transparency on the process for both the public, businesses, and Governing Body members.

Chairman Duncan felt there may be some additional concerns from other Governing Body members as well, and feels having it move forward as a discussion item for three meetings, before voting, will be helpful.

Chairman Duncan sought input from staff as to if they felt the timeline would be acceptable. Deputy City Attorney Mary Feighny stated the timeline was fine.

MOTION: Chairman Duncan made a motion to approve the Common Consumption Ordinance. Committee member Naeger seconded. Motion approved 2-0-0. Committee member Valdivia-Alcalá was absent.

4) Adjourn
Chairman Duncan commented that the committee had received an update on the ARPA funds. The document is not currently public, but is available to the public if requested. He noted the committee would take a deeper look at it in January, but felt the process was going well.

Chairman Duncan adjourned the meeting at 1:06 pm.

The video of this meeting can be viewed at:
https://youtu.be/0KeeqzNynx0?si=QPkui60vkamDgQNX

CITY OF TOPEKA

CITY COUNCIL
City Hall, 215 SE 7th St., Room 255
Topeka, KS 66603-3914
(785) 368-3710

Liz Toyne, Executive Assistant
E-mail: etoyne@topeka.org
www.topeka.org

EXCERPT

CLASSROOM A; LAW ENFORCEMENT CENTER Topeka, Kansas, Friday, October 27, 2023. The Policy & Finance Committee members met at 1:00 P.M., with the following Committee members present: Duncan (Chair), Valdivia-Alcalá, Naeger.

The following is an excerpt of the draft minutes from the meeting:

DISCUSSION by the Committee of the Common Consumption

Common Consumption

Chairman Duncan noted it was the City of Topeka that went to the State Legislature last year and requested the Common Consumption idea. Many other cities across Kansas also liked the suggestion and stood with Topeka in support. It was not a unanimous vote by the legislature, however the alcohol bill did pass. This gives cities the authority to create these common consumption areas. The proposed ordinance before the Committee today is the first draft of what such an ordinance might look like for Topeka. Chairman Duncan stated that he would like for the Committee to hold a listening session to allow community members to speak toward any concerns or suggestions that they have on the issue. He is not asking for action on this item at this time.

City Attorney Stanley stated that Staff had spent a lot of time listening to both the NOTO and Downtown businesses of what their vision of a common consumption would look like. She encouraged the Committee members to provide an opportunity to the business owners in both districts to meet and list their concerns, fears, or visions for the ordinance.

City Attorney Stanley reviewed page 1 of the definitions of common consumption. She noted that some of those definitions come from the State law. They are pretty clear that the “director” means the Department of Revenue. The City-specific things begin on page 2. One of the things staff heard pretty resoundingly from both the businesses in NOTO and Downtown, was that a common consumption zone is really only going to work if the City of Topeka is the permit holder. City Attorney Stanley noted that the original version of the ordinance required that a non-profit would have to be the sponsor of the permit. But if you look at somewhere like NOTO or Downtown, it becomes very cost prohibitive because there are considerations such as insurance and liability and identifying who would be willing to take it on for the other businesses. This current version makes more sense as the City already has additional liability protections, because the City has some legislative immunity. That is a legislative policy choice that the Governing Body made. The City also has the Tort Claims Act and other things, so it makes it much easier for the City of Topeka to be the permit holder.

The Downtown area would be the area encompassing SW 4th between SW Jackson and SW Quincy on the north; SW 10th between SW Jackson and SE Quincy on the south; SE Quincy between SE 4th and SW 10th on the east; and SW Jackson between SW 4th and SW 10th on the west.

The NOTO area would be the area encompassing Fairchild Street on the north, Norris Street on the south, Quincy Street on the east and Jackson Street on the west.

The descriptions of these areas would also be available online.

These areas were picked directly because that is what the businesses in both communities thought would be the right district for a common consumption area.

The next subsection says that public streets or roadways may be blocked. Although they do not have to be. This is the biggest piece that the City of Topeka asked to be changed, so that the City can have some discretion for the requirement. If it makes sense during a particular event to have the streets blocked, we can block them. But it is does not need blockades most of the time, the streets would not be required to be blocked.

Looking to page 3, the hours for the common consumption law states that it shall only be allowed between the hours of 11:00am and 10:00pm, Sunday through Thursday. And 11:00am through 12:00am (midnight) Friday and Saturday. City Attorney Stanley stated she thought the idea with this was to give consistence of hours across the board, so that everyone knows when liquor can be consumed under common consumption, and when it cannot.

It then goes on to say that the City has to apply for the state permit. This is only in effect if the City is granted a state permit, so the City would do that. From there, the specific requirements under state law that have to be included in the ordinance are listed. One such requirement states that in order to participate in the common consumption zone, the premise must be a licensed alcohol and beverage business licensed by the Department of Revenue. Alcohol has to be served in a container that displays the licensee’s name, logo or other identifying mark that is unique to the business. As these are all requirements from state law, the City’s ordinance has to include them. Additionally, alcohol cannot be removed in a glass container.

The other requirements such as purchasing, when you can buy it and when you cannot, follow.

Inappropriate Conduct is another section. The City wanted to make it very clear that if someone is acting inappropriately in a common consumption are, that the Topeka Police Officers can remove said person from the event, or from the area, for inappropriate conduct or violations of state law. It is also important for the City to make it clear to Alcohol Beverage Control (ABC) that the City understands we need to enforce laws and that we will do that, and that the City will comply with all rules and regulations from the Department of Revenue.

Page 5 gives the City Manager the authority to talk all necessary acts to allow the City to be the permit holder, execute any documents that the City may require and the section (a) shall not apply if there is a specific special event in that area at that time, then the special event rules would control for that.

Chairman Duncan reviewed a couple of pieces from the ordinance. He noted that, from a practical standpoint, as this ordinance establishes only these areas in Downtown and NOTO and said that, to staff or his knowledge, there are no other areas that have requested or expressed a desire to be included at this time. He noted that if it is private property, there would not be a need to go through the City's common consumption process for this. They would be able to get their own license and do whatever they wanted. He used a shopping center as an example, and if the consumption area was on their private property, they would not need the City to enact these.

Chairman Duncan also noted that if another area comes forward at any time, they would apply with the City, and the request would come before the Governing Body for approval.

Chairman Duncan also supports the hours being more wide open, rather than limited. There have been many conversations about different arrangements, and he felt it creates confusion for everyone, including the place that sells alcohol, if there are too many specific restrictions. So having a set standard of hours will provide consistency which will also make it easier for everyone to enforce (the consumer, the seller, and the police). He noted that signs would need to be posted once the zone has been created, to establish the end of those zones.

Chairman Duncan discussed the cups, and stated that the cups are to help vendors and consumers identify they have purchased the beverage from a business within the common consumption area. In other communities that have common consumption areas, there have not been any issues with the identifier for where it was sold. Outside of that, every other liquor law, street law, traffic law, etc. still apply. The common consumption zone only means people can walk from one establishment on one end of the zone to the other end, or back and forth between places.

Committee member Valdivia-Alcalá stated she would be supportive of this ordinance and also felt having some community input would be important. Chairman Duncan agreed, and stated that there had been some initial conversation and input with the businesses in the districts prior to the creation of this draft ordinance.

****

City of Topeka
Council Action Form
Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:	**Rachelle Mathews, Acting Chief Financial Officer**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**EIG Wanamaker LLC - Wanamaker Hills CID**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**007 Contracts and Amendments / 018 Other**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

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

(Approval will amend the development agreement approved by the Governing Body in 2019 for the CID located at SW 17th Street and Wanamaker Road.)

VOTING REQUIREMENTS:

Discussion only. Action requires at least six (6) votes of the Governing Body.

POLICY ISSUE:

Whether to amend the development agreement for the Wanamaker Hills CID located at SW 17th Street and Wanamaker Road

STAFF RECOMMENDATION:

Staff is making no recommendation.

BACKGROUND:

EIG Wanamaker, LLC owns the shopping center at the southeast corner of SW 17th Street and Wanamaker Road and is the beneficiary of a CID authorized by the Governing Body in 2019.

Due to the departure of Bed, Bath & Beyond the developer is requesting changes to the original development agreement. Those changes are outlined in the memo attached to this item.

BUDGETARY IMPACT:

The district is a sales tax funded "pay as you go" district; therefore there is no impact to the City's budget. Within the amendment the developer will increase their total investment from $31.4 million to $39.3 million for Phase I ($8.5 million more than original agreement), or from $33.9 million to $44.0 million for Phase II ($10.1 million more than original agreement). The 1% CID and commencing/ending date will remain unchanged. At the same time, the developer seeks to increase the maximum reimbursement amount from $6,046,550.00 to $8,960,023 for Phase I, or from $6,780,698.00 to $11,656,629 for Phase II.

SOURCE OF FUNDING:

Community Improvement District Sales Tax

ATTACHMENTS:

Description

Cover Memo - F. Mawyin, CFO - Wanamaker Hills CID Amendment (Dec 5, 2023)
Presentation
Proposed Development Agreement Amendment
Contract No. 47841 (May 19, 2023)

CITY OF
TOPEKA

Freddy Mawyin, Chief Financial Officer
Department of Administrative & Financial Services
City Hall, 215 SE 7th St., Topeka, KS 66603

fmawyin@topeka.org
Tel: 785-368-3970
www.topeka.org

To: Honorable Mayor Michael Padilla

Members of the Topeka City Council

Richard U. Nienstedt, Interim City Manager

From: Freddy Mawyin, Chief Financial Officer

Date: December 19th, 2023

Re: Amendment to Development Agreement – Wanamaker Hills Community Improvement District (CID)

Introduction: This memo serves to communicate and explain the recent amendment to the Development Agreement dated May 14, 2019, implementing the Wanamaker Hills Community Improvement District ("Existing Agreement"). This amendment is made between the CITY OF TOPEKA, KANSAS (the "City"), and EIG WANAMAKER, LLC (the "Developer").

Background: The original agreement, dated May 14, 2019, established the Wanamaker Hills Community Improvement District. The Existing Agreement included provisions for subsequent amendments, as outlined in Section 18.

In the original agreement, the developer proposed to purchase and renovate an existing shopping center at the southwest corner of SW 17th Street and SW Wanamaker road, with a total investment of approximately between $31.4 million to $33.9 million. the Developer and the City anticipate that the Project will provide significant economic benefits to the City, including paying real property taxes and generating retail sales tax revenues for the City and other entities collecting retail sales taxes.

Given that, a 1% CID was established to assist with funding cost of development of the project. The CID commencing date was January 1st, 2020 and ending date was December 31st, 2041. A maximum reimbursement amount was set at $6,046,550.00 plus interest accrued on borrowed money during the period of construction or, $6,780,698.00 if Developer completes the Phase 2 Improvements.

Purpose of Amendment: The Parties have mutually agreed to amend the Existing Agreement to further support the improvement, maintenance, and revitalization of commercial activity in the City. The amendment aims to create opportunities for redevelopment, attract stable commercial growth, promote the public interest, generate new jobs, enhance the City's tax base, and encourage additional investment by the Developer in the Project.

On April 23rd, 2023, Bed Bath & Beyond Inc (BBBY) filed for Chapter 11 bankruptcy, affecting tens of thousands of workers, and approximately 955 stores nationwide, including the one

CITY OF TOPEKA

Freddy Mawyin, Chief Financial Officer
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www.topeka.org

located in Topeka; this drastically affected the retail dynamic within the CID district. As of the writing of this memorandum, the store remains permanently closed.

Key Amendment:

1. Definitions Amendment:
    a. The "Maximum Reimbursement Amount" definition is revised to specify reimbursement limits for different phases, including Phase 2 Improvements and the Placed in-Service Date.
    b. The definition of "Placed in Service Date" is established as December 31, 2025.
    c. The definition of the "Project" is clarified to include detailed components and an investment range of approximately $39,300,000.00 to $44,000,000.00, plus financing costs.
2. Project Costs Amendment:
    a. Section 4, detailing Project Costs, is amended to provide flexibility for the Developer to adjust the amount of Project Costs among categories, with specific limitations on certain budget line items.
    b. CID Eligible Project Costs are detailed with reimbursement limits based on the timing of expenses and nature of the costs.
3. Replacement of Exhibit B:
    a. Exhibit B attached to this Amendment replaces the original Exhibit B in CONTRACT NUMBER 47841 upon execution of the Amendment.

Summary of Amendments: Within the amendment the developer will increase their total investment from $31.4 million to $39.3 million for Phase I ($8.5 million more than original agreement), or from $33.9 million to $44.0 million for Phase II ($10.1 million more than original agreement). The 1% CID and commencing/ending date will remain unchanged. At the same time, the developer seeks to increase the maximum reimbursement amount from $6,046,550.00 to $8,960,023 for Phase I, or from $6,780,698.00 to $11,656,629 for Phase II.

	2019	2023	Difference
Phase I - Developer Investment	$31.4M	$39.3M	$8.5M
Phase I - Max. Reimbursement	$6,046,550	$8,960,023	$2,913,473
Phase II - Developer Investment	$33.9M	$44.0M	$10.1M
Phase II - Max. Reimbursement	$6,780,698	$11,656,629	$4,875,931

Please review the attached Amendment for detailed information. If you have any questions or require further clarification, do not hesitate to contact me.

POLSINELLI®
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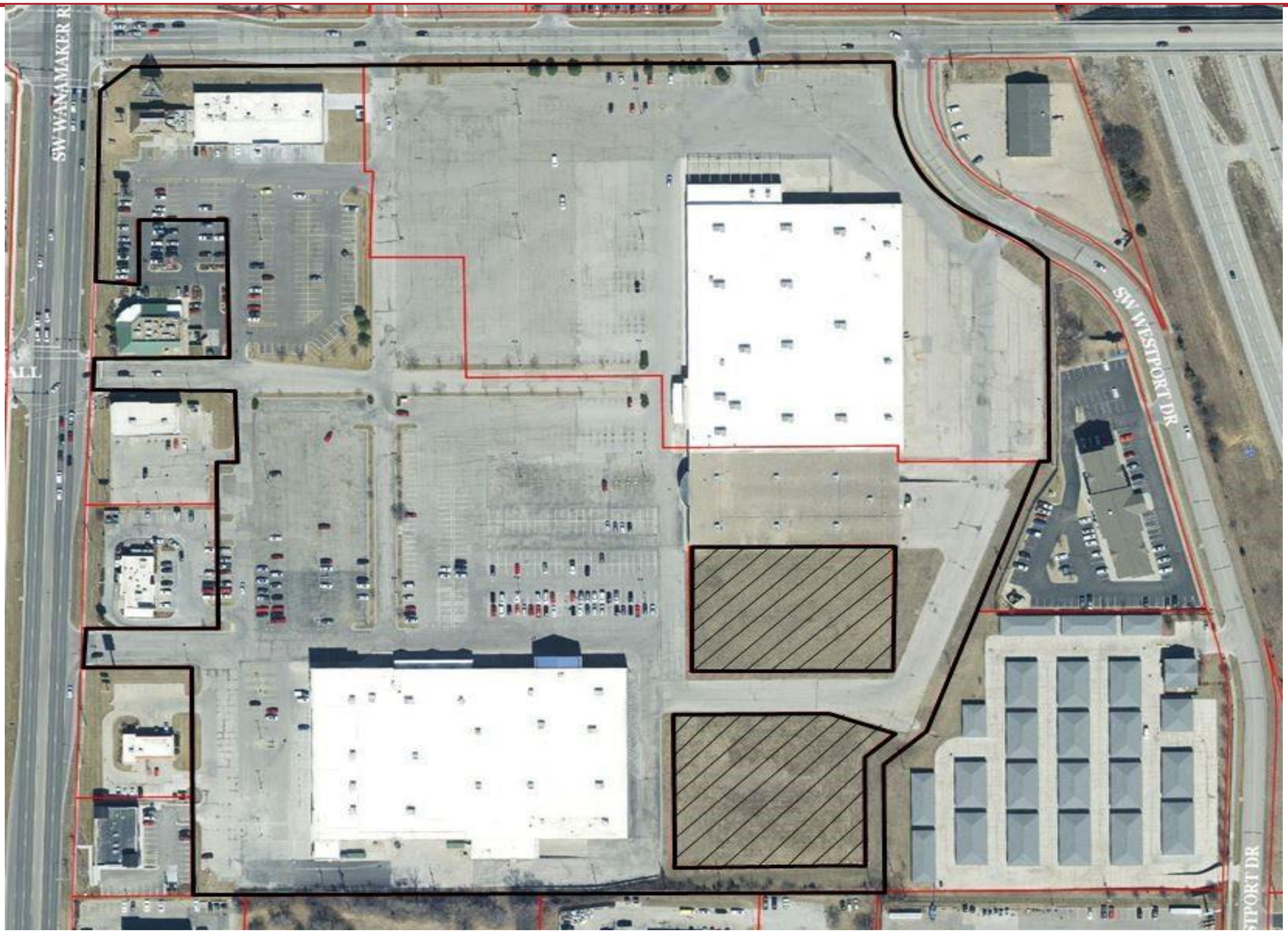
Wanamaker Hills Community Improvement District

December 12, 2023

Project Location



Renovation of K-Mart Shopping Center (Before)

Renovation of K-Mart Shopping Center (During Construction)

POLSINELLI. What a law firm should be.™

Renovation of K-Mart Shopping Center (After)

Bed Bath & Beyond Bankruptcy (2023)

Topeka Bed Bath & Beyond to close in coming "weeks and months"

FILE (MGN)

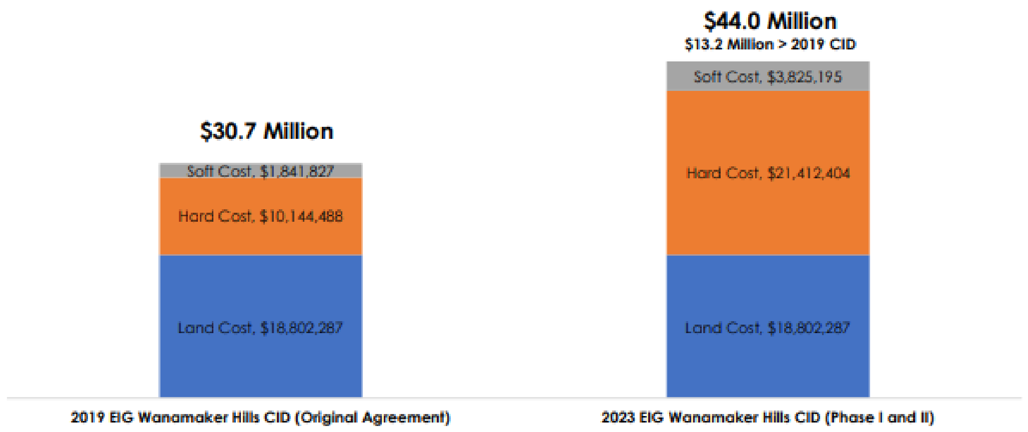
By Sarah Motter

Published: Feb. 9, 2023 at 12:17 PM CST

Replacing Bed Bath & Beyond

Benefits to the City of Topeka

Total Development Investment



Year	CID Year	City Sales Tax Revenue (w/o Bed Bath & Beyond, Slumberland, and HomeGoods starting in 2023)	City Sales Tax Revenue (w/ HomeGoods and other replacement tenants - Phase II not included)	City Sales Tax Revenue (w/ HomeGoods and other replacement tenants - Phase II included)
2020	1	$ 420,341	$ 420,341	$ 420,341
2021	2	$ 420,341	$ 420,341	$ 420,341
2022	3	$ 420,341	$ 420,341	$ 420,341
2023	4	$ 300,341	$ 360,341	$ 360,341
2024	5	$ 306,347	$ 480,341	$ 480,341
2025	6	$ 312,474	$ 568,841	$ 592,841
2026	7	$ 318,724	$ 580,217	$ 765,341
2027	8	$ 325,098	$ 591,822	$ 780,647
2028	9	$ 331,600	$ 603,658	$ 796,260
2029	10	$ 338,232	$ 615,731	$ 812,185
2030	11	$ 344,997	$ 628,046	$ 828,429
2031	12	$ 351,897	$ 640,607	$ 844,998
2032	13	$ 358,935	$ 653,419	$ 861,898
2033	14	$ 366,113	$ 666,487	$ 879,136
2034	15	$ 373,436	$ 679,817	$ 896,718
2035	16	$ 380,904	$ 693,413	$ 914,653
2036	17	$ 388,522	$ 707,282	$ 932,946
2037	18	$ 396,293	$ 721,427	$ 951,605
2038	19	$ 404,219	$ 735,856	$ 970,637
2039	20	$ 412,303	$ 750,573	$ 990,050
2040	21	$ 420,549	$ 765,584	$ 1,009,851
2041	22	$ 428,960	$ 780,896	$ 1,030,048
	Totals	**$ 8,120,966**	**$ 13,485,379**	**$ 16,959,943**

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AMENDMENT TO DEVELOPMENT AGREEMENT
WANAMAKER HILLS
COMMUNITY IMPROVEMENT DISTRICT (17^{TH} AND WANAMAKER)
DATED MAY 14, 2019 CONTRACT NUMBER 47841

Amendment, dated ___________ to Development Agreement dated as of May 14, 2019 implementing the Wanamaker Hills Community Improvement District ("Existing Agreement") between the CITY OF TOPEKA, KANSAS, a municipal corporation (the "City"), and EIG WANAMAKER, LLC, an Indiana Limited Liability Corporation (the "Developer") (collectively referred to as the "Parties").

WHEREAS, the Parties originally entered into the Existing Agreement on May 14, 2019 to implement the Wanamaker Hills Community Improvement District; and

WHEREAS, the Existing Agreement made provisions for subsequent amendments in Section 18; and

WHEREAS, the Parties desire to amend the Existing Agreement.

NOW THEREFORE, in order to continue to improve, maintain and revitalize commercial activity in the City by assuring opportunities for redevelopment and attracting sound and stable commercial growth, to promote the public interest, to create new jobs in the City, to enhance the tax base of the City and to induce the Developer to invest additional funds in the Project, the Parties agree to amend the Existing Agreement as follows:

1. Amendments

(a) Section 1 Definitions of Words and Terms is amended by replacing the following definitions as follows:

"Maximum Reimbursement Amount" shall mean a total not to exceed (1) $6,046,550 plus interest accrued on borrowed money used to fund such $6,046,550 to and including March 31, 2021, for costs incurred outside of Phase 2 Improvements through and including July 31, 2023; plus, (2) $2,913,473 plus interest accrued on borrowed money used to fund such $2,913,473 to and including the Placed in Service Date, for costs incurred outside of Phase 2 Improvements on and after August 1, 2023 but not later than the Placed in Service Date; plus, (3) $2,696,606 plus interest accrued on borrowed money used to fund such $2,696,606 to and including June 30, 2026, for Phase 2 Improvements, provided, however, such Phase 2 Improvements must (a) be evidenced in detail to the City or its advisors, including tenant name(s), not later than December 31, 2025, and (b) be fully open to the public in substantially the form evidenced to the City as provided in subsection (a) not later than June 30, 2026.

"**Placed in Service Date**" means December 31, 2025.

"**Project**" means the acquisition and renovation of an existing shopping center to include demolition, grading, parking lot/driveway improvements, building façade improvements, roofing, plumbing and mechanical improvements, tenant finish, and landscaping, including spending towards replacement tenant(s) to occupy space formally occupied by Bed, Bath and Beyond and securing other tenants within the area defined within ***Exhibit A*** with a total investment of approximately Thirty-Nine Million Three Hundred Thousand Dollars ($39,300,000.00) to Forty-Four Million Dollars ($44,000,000.00) plus the cost of financing.

(b) Section 4 Project Costs is amended by deleting the original provision and replacing it with the following:

(a) A description of the scope of the Project, the estimated Project Costs and the estimated CID Eligible Project Costs, as submitted by the Developer, are set forth on ***Exhibit B*** .

(b) The Parties agree that the amount of the Project Costs may be adjusted by the Developer among any of the stated categories, without the consent of the City, except as follows: specific budget line items under the "Land" and "Soft Costs" headings as set forth on ***Exhibit B*** may not be increased by the Developer.

(c) The CID Eligible Project Costs, other than CID Eligible Project Costs for the Phase 2 Improvements, incurred prior to August 1, 2023 shall only be reimbursed to a maximum of Six Million Forty-Six Thousand Five Hundred Fifty Dollars ($6,046,550.00) plus interest accrued on borrowed money to fund such amount to and including March 31, 2021. CID Eligible Project Costs, other than CID Eligible Project Costs for the Phase 2 Improvements, incurred on or after August 1, 2023 expended for replacement of tenant(s) for Bed, Bath and Beyond and securing other tenants for the Project shall be reimbursed to a maximum of Two Million Nine Hundred Thirteen Thousand Four Hundred Seventy-Three Dollars ($2,913,473.00) plus interest accrued on borrowed money used to fund such $2,913,473 to and including the Placed in Service Date. Therefore, the total reimbursement permitted for Project Costs incurred before, on, and after August 1, 2023 for CID Eligible Project Costs, other than CID Eligible Project Costs for the Phase 2 Improvements, shall total Eight Million Nine Hundred Sixty Thousand Twenty-Three Dollars ($8,960,023.00) plus interest accrued on borrowed money during the period of construction to the accrual dates provided in this subsection (c). The CID Eligible Project Costs for the Phase 2 Improvements, subject to the restrictions listed in the Maximum Reimbursement Amount definition, shall mean a total not to exceed $2,696,606 plus interest accrued on borrowed money used to fund such $2,696,606 to, and including, June 30, 2026. Therefore, the total reimbursement permitted for Project Costs incurred on and after the Effective Date of the Existing Agreement and to June 30, 2026 for CID Eligible Project Costs, including the Phase 2 Improvements, shall total Eleven Million Six Hundred Fifty-Six Thousand Six Hundred Twenty-Nine Dollars ($11,656,629.00) plus interest accrued on borrowed money during the period of construction to the accrual dates provided in this subsection (c).

(c) Exhibit B as attached to this Amendment shall replace the original Exhibit B in CONTRACT NUMBER 47841 upon execution of the Amendment.

2. **Continuation of Existing Agreement.** Except for the amendments made in this Amendment, the Existing Agreement remains unchanged and in full effect.

3. **Conflict.** In the event of any conflict or inconsistency between the provisions of the Existing Agreement and the provisions of this Amendment, the provisions of this Amendment shall govern and control.

4. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Amendment.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as the dates set forth opposite the signatures and represent that the individuals executing this Amendment on behalf of the Parties have the express authority to do so.

CITY OF TOPEKA, KANSAS

(SEAL)

By:________________________________
Richard U. Nienstedt, Interim City Manager

ATTEST:

By: ______________________________
Brenda Younger, City Clerk

EIG WANAMAKER, LLC
an Indiana limited liability company

By: ______________________________

Its: ______________________________

EXHIBIT B

Project Costs

(including CID Eligible Project Costs)

CID Development Budget			
Category	**Total**	**Private**	**CID**
LAND			
Acquisition Costs	$ 18,802,287	$ 18,802,287	$ -
SUBTOTAL ACQUISITION COSTS	**$ 18,802,287**	**$ 18,802,287**	**$ -**
HARD COSTS			
Building & Site Improvements			
Demolition/Asbestos & Concrete Testing	$ 212,291	$ -	$ 212,291
Shoring/Earthwork	$ 186,042	$ 50,000	$ 136,042
Concrete Footings & Slabs	$ 524,307	$ 95,000	$ 429,307
Building Facades & Improvements	$ 8,625,692	$ 4,801,018	$ 3,824,674
Building & Site Safety (e.g., Fire Protection)	$ 179,546	$ 79,546	$ 100,000
Utilities	$ 55,645	$ 15,000	$ 40,645
M/E/P	$ 1,487,822	$ 1,487,822	$ -
Landscaping	$ 35,010	$ -	$ 35,010
Signage	$ 198,000	$ -	$ 198,000
General Requirements & Staffing	$ 607,482	$ 357,482	$ 250,000
Construction Mgmt Fee	$ 455,674	$ 455,674	$ -
BUILDING CONSTRUCTION	**$ 12,567,511**	**$ 7,341,542**	**$ 5,225,969**
Tenant Improvements			
Landlord Work for Tenant Spaces	$ 5,317,664	$ 99,833	$ 5,217,831
Tenant Improvement Allowances	$ 2,226,630	$ 2,226,630	$ -
TENANT IMPROVEMENTS	**$ 7,544,294**	**$ 2,326,463**	**$ 5,217,831**
PARKING LOT AND RELATED UTILITIES	**$ 764,066**	**$ 50,000**	**$ 714,066**
HARD COST CONTINGENCY	**$ 536,533**	**$ 536,533**	**$ -**
HARD COSTS	**$ 21,412,404**	**$ 10,254,538**	**$ 11,157,866**
SOFT COSTS			
ARCHITECTURAL EXPENSES	**$ 591,507**	**$ 92,744**	**$ 498,763**
FINANCING FEES/COSTS	**$ 150,000**	**$ 150,000**	**$ -**
OTHER			
Leasing Commissions	$ 1,354,211	$ 1,354,211	$ -
Legal	$ 710,540	$ 710,540	$ -
Permits/Fees/Taxes/Insurance	$ 526,209	$ 526,209	$ -
CID Application and Administrative Fees	$ 310,576	$ 310,576	$ -
OTHER	**$ 2,901,536**	**$ 2,901,536**	**$ -**
SOFT COST CONTINGENCY	**$ 182,152**	**$ 182,152**	**$ -**
SUBTOTAL SOFT COSTS	$ 3,825,195	$ 3,326,432	$ 498,763
TOTAL DEVELOPMENT INVESTMENT	**$ 44,039,887**	**$ 32,383,258**	**$ 11,656,629**

CITY OF TOPEKA CONTRACT NO. 47841

DEVELOPMENT AGREEMENT

Between

THE CITY OF TOPEKA, KANSAS

and

EIG WANAMAKER, LLC

for implementation of the

WANAMAKER HILLS
COMMUNITY IMPROVEMENT DISTRICT

DATED AS OF MAY 14, 2019

April 26, 2019

DEVELOPMENT AGREEMENT
WANAMAKER HILLS
COMMUNITY IMPROVEMENT DISTRICT
(17th and Wanamaker)

This Development Agreement dated as of May 14, 2019 (the "Effective Date"), for implementation of the Wanamaker Hills Community Improvement District (the "Agreement") is entered into by and between the **CITY OF TOPEKA, KANSAS**, a municipal corporation (the "City"), and **EIG WANAMAKER, LLC**, an Indiana Limited Liability Company (the "Developer") (collectively referred to as the "Parties").

WHEREAS, the Developer has proposed to engage in the purchase and renovation of an existing shopping center to include demolition, grading, parking lot/driveway improvements, building façade improvements, roofing, plumbing and mechanical improvements, tenant finish, and landscaping, with a total investment of approximately Thirty-One Million Four Hundred Thousand Dollars ($31,400,000.00) to Thirty-Three Million Nine Hundred Thousand Dollars ($33,900,000.00) plus the cost of financing, all upon approximately 27.16 acres of land located at the Southeast corner of SW 17th Street and SW Wanamaker Road plus adjacent right-of-way; and

WHEREAS, the Developer has filed a petition with the City to establish the Wanamaker Hills Community Improvement District to impose a special One Percent (1%) sales tax within the boundaries of the CID to assist with funding the costs of development within the CID District; and

WHEREAS, the City, following a properly noticed public hearing, established the CID District by adoption of the CID Ordinance No. 20182 on May 7, 2019; and

WHEREAS, the Developer and the City anticipate that the Project will provide significant economic benefits to the City and other political subdivisions, including paying real property taxes to the City and other taxing subdivisions and generating retail sales tax revenues for the City and other entities collecting retail sales taxes; and

WHEREAS, entering into this Agreement serves the public purpose of enabling the Developer to proceed with the Project, thereby increasing economic development in the City and adding to the existing tax base within the City; and

WHEREAS, the City and the Developer desire to enter into this Agreement for the Project to provide the terms and conditions for payment and/or reimbursement of the Project Costs.

NOW THEREFORE, to improve, maintain and revitalize commercial activity in the City by assuring opportunities for redevelopment and attracting sound and stable commercial growth, to promote the public interest, to create new jobs in the City, to enhance the tax base of the City and to induce the Developer to undertake the Project, and in consideration of the premises and mutual covenants and agreement herein set forth, the City and the Developer do hereby covenant and agree as follows:

Section 1
Definitions of Words and Terms

In addition to words and terms defined elsewhere herein, capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the hereinafter defined Act. Unless the context shall otherwise indicate, words importing the singular number shall include the plural, and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

"Affiliate" means an entity in which management authority or majority ownership is possessed by George Huber and/or Robert Sutton, whether individually or through a trust or other entity in which either of these individuals possesses majority ownership or management authority.

"CID Act" means K.S.A. 12-6a26 *et seq.* as amended and supplemented from time to time.

"CID Commencement Date" means January 1, 2020.

"CID District" means the Wanamaker Hills Community Improvement District established by the City pursuant to the CID Ordinance, which contains within its boundaries the real property legally described and generally depicted in ***Exhibit A***.

"CID Eligible Project Cost" means the costs of the Project described in the column labeled "CID Eligible Project Costs" on ***Exhibit B***, which are eligible to be paid or reimbursed pursuant to the CID Act and in accordance with this Agreement; provided, however: (i) land acquisition costs shall not be a CID Eligible Project Cost; (ii) costs described in KSA 12-6a27(m)(2) through and including KSA 12-6a27(m)(8) shall not be CID Eligible Project Costs; and (iii) Developer fees and legal costs shall not be CID Eligible Project Costs. In addition to the costs described on ***Exhibit B***, interest accrued on borrowed money during the period of construction is a CID Eligible Project Cost and shall be reimbursable up to the rate of Five Percent (5%) on any CID Eligible Project Costs, approved by the City but unreimbursed. The "period of construction" for use in calculating the interest for the preceding sentence shall be defined (1) for Phase 1 as commencing on the date the first CID Eligible Project Cost is incurred for Phase 1 and completing upon the date the Certificate of Occupancy is issued for the final tenant to open in Phase 1 and (2) for Phase 2 as commencing on the date of the first CID Eligible Project Cost is incurred for Phase 2 and completing upon the date the Certificate of Occupancy is issued for the tenant in Phase 2. Appropriate documentation shall be provided to the City by the Developer in order to certify such interest costs as CID Eligible Project Costs.

"CID Ordinance" means Ordinance No. 20182 passed by the Governing Body of the City on May 7, 2019, authorizing the creation of the CID District and levying the CID Sales Tax, as amended from time to time.

"CID Sales Tax" means the One Percent (1%) special Community Improvement District Sales Tax levied within the District and collected pursuant to K.S.A. 12-6a31, as amended.

"CID Sales Tax Fund" means that fund held in the City's treasury into which proceeds of the CID Sales Tax are deposited. The City may designate a name for such fund on its books and records at its discretion.

"CID Taxpayers" means any individual or business located in the CID District and required to remit sales and use tax to the Kansas Department of Revenue (and its successors).

"CID Term" means a term commencing on the CID Commencement Date and ending on the date twenty-two (22) years following the CID Commencement Date (i.e., December 31, 2041). In no event shall any deposits be made to the CID Sales Tax Fund after the expiration of the CID Term.

"City" means the City of Topeka, Kansas.

"City Clerk" means the duly appointed City Clerk of the City of Topeka, Kansas.

"Department of Revenue" means the Department of Revenue of the State of Kansas and any successor.

"Developer" means EIG Wanamaker, LLC, an Indiana Limited Liability Company, and its successors and assigns.

"Excusable Delays" means the delays for performance set forth in Section 14(f) herein.

"Governing Body" means the governing body of the City.

"Maximum Reimbursement Amount" means either (1) Six Million Forty-Six Thousand Five Hundred Fifty Dollars ($6,046,550.00) plus interest accrued on borrowed money during the period of construction; or, (2) if Developer completes the Phase 2 Improvements, Six Million Seven Hundred Eighty Thousand Six Hundred Ninety-Eight Dollars ($6,780,698.00) plus interest accrued on borrowed money during the period of construction.

"Parties" means, collectively, the City and the Developer.

"Petition" means the petition requesting the creation of the Wanamaker Hills Community Improvement District filed with the City Clerk on March 13, 2019.

"Phase 2 Improvements" means the construction of additional building square footage and related site improvements not constructed as of the Effective Date intended for location of a future tenant in the northeastern portion of the CID District.

"Placed in Service Date" means March 31, 2021.

"Project" means the acquisition and renovation of an existing shopping center to include demolition, grading, parking lot/driveway improvements, building façade improvements, roofing, plumbing and mechanical improvements, tenant finish, and landscaping, with a total investment of approximately Thirty-One Million Four Hundred Thousand Dollars ($31,400,000.00) to Thirty-Three Million Nine Hundred Thousand Dollars ($33,900,000) plus the cost of financing.

"Project Costs" means all the costs and expenses of the Project expended by the Developer, as more specifically described in ***Exhibit B***, which are attached hereto and incorporated herein by this reference.

"Reimbursement Funds" means the CID Sales Tax Fund.

"Site Plan" means the site plan for the Project contained attached hereto and incorporated herein by this reference as ***Exhibit C***.

"State" means the State of Kansas.

Section 2
District Formation and Purpose

Pursuant to the CID Act, as well as the proceedings of the City, including the CID Ordinance, the City has authorized the creation of the CID District. The purpose of creating the CID District is to provide the Developer with an economic incentive to undertake the Project and to provide for further economic development of the City. The purpose of this Agreement is to outline the rights, duties and obligations of the Parties as they relate to the CID District and to provide for the reimbursement to the Developer of the CID Eligible Project Costs from the proceeds of the CID Sales Tax, in accordance with the further terms of this Agreement.

Section 3
Representations of the Parties

(a) The City is a municipal corporation organized under the laws of the State. The City is authorized pursuant to the CID Act to create the CID District and levy the CID Sales Tax, to enter into this Agreement and to perform the duties and obligations of the City contained herein. The Governing Body has taken all requisite action to pass the CID Ordinance, which creates the CID District and levies the CID Sales Tax. This Agreement constitutes a valid and binding obligation of the City in accordance with its terms and conditions.

(b) The Developer is a limited liability company duly organized and existing in good standing under the laws of the State of Indiana. The Developer has taken all requisite action under its organizational documents to authorize the execution of this Agreement and to perform the duties and obligations of the Developer contained herein. The Agreement constitutes a valid and binding obligation of the Developer in accordance with its terms. Throughout the term of this Agreement, the Developer agrees to maintain its status as such an entity, in good standing and authorized to do business in the State.

Section 4
Project Costs

(a) A description of the scope of the Project, the estimated Project Costs and the estimated CID Eligible Project Costs, as submitted by the Developer, are set forth on ***Exhibit B***.

(b) The Parties agree that the amount of the Project Costs may be adjusted by the Developer among any of the stated categories, without the consent of the City, except as follows: specific budget line items under the "Land" and "Soft Costs" headings as set forth on ***Exhibit B*** may not be increased by the Developer.

Section 5
Funding of Project

The Project Costs will be paid by, or on behalf of, the Developer and reimbursed as a pay-as-you-go-financing under the CID Act. The City will not advance any City funds for the payment of any Project Costs and will not provide any financing, including the issuance of any bonds or notes. Reimbursement to the Developer shall be made in accordance with Section 7 of this Agreement.

Section 6
Reimbursement of City Costs; Administration of CID Sales Tax

(a) As required by City policy, the Developer shall be responsible for paying all costs necessary to comply with state law, including but not limited to costs of legal publication notices, resolutions and ordinances. The Developer shall also reimburse the City for reasonable expenses associated with review and evaluation of the Petition and this Agreement by the City's financial advisor. Developer payments under this Section 6(a) shall be considered to be CID Eligible Project Costs. The Developer shall pay such costs as required under this Section 6(a) within thirty (30) days of invoice by the City but shall not be required to make such payments more than once per calendar month.

(b) Subject to, and as specified by, the terms and conditions of this Agreement, the City agrees to perform, or provide for the performance of, the administration of the reimbursement of the CID Eligible Project Costs. On or before August 1, 2019, the City shall provide notification to the Department of Revenue to commence the collection and reporting of the CID Sales Tax within the District in accordance with the provisions of the CID Act. The imposition of the CID Sales Tax shall commence on January 1, 2020, or as soon thereafter as the Department of Revenue begins the collection of the CID Sales Tax, and shall expire at the end of the CID Term. Notwithstanding this subsection (b), if no CID Eligible Project Costs remain unreimbursed, the City may repeal the CID Ordinance prior to the expiration of the CID Term if the Governing Body determines that the CID Sales Tax is no longer required to pay for such CID Eligible Project Costs.

(c) Pursuant to the CID Act, the City shall establish the CID Sales Tax Fund as a segregated fund within the treasury of the City, which shall be held and administered by the City in accordance with this Agreement and the Act. Revenues collected from the CID Sales Tax, and received by the City from the Department of Revenue during the CID Term, shall be deposited periodically in the CID Sales Tax Fund, but not less than monthly.

(d) The City shall impose and collect a fee for the administration of the CID Sales Tax. On the 15th day of each month (or the next business day if such day shall not be a normal business day of the City) of each year during the term of this Agreement, the City shall withdraw from the CID Sales Tax Fund an amount equal to Two Percent (2%) of the aggregate deposits to the CID Sales Tax Fund.

Section 7
Reimbursement Procedures

Reimbursement of CID Eligible Project Costs is conditioned upon the following:

(a) Not more frequently than once per calendar month, the Developer may submit to the Director of Financial and Administrative Services ("Director") a Certification of Expenditures (in substantially the form attached to this Agreement as ***Exhibit D***, which is attached hereto and incorporated herein by this reference) signed by the Developer, with supporting documentation identifying the CID Eligible Project Costs for which the Developer seeks reimbursement. The supporting documentation shall include: copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfers or other cash payments by the Developer for Project Costs, lien waivers or other evidence that no mechanic's liens exist with respect to the construction of the Project for which reimbursement is sought and such other documentation as the City shall reasonably request.

(b) Each Certificate of Expenditures shall contain a certification by the Developer that each Project Cost submitted for reimbursement is a CID Eligible Project Cost which has been incurred by the Developer, and that such expense has not been previously submitted for reimbursement from the same fund or subaccount, as applicable, hereunder. The City reserves the right to have its engineer or other agents or employees inspect all work associated with a submitted Certification of Expenditure, to retain an outside accountant, engineer or attorney to evaluate and assist with processing Certifications of Expenditures for compliance with this Agreement (with the reasonable costs of such outside accountant, engineer or attorney paid from the CID Sales Tax Fund, so long as the City provides notice to the Developer of the expense to be incurred at least fifteen (15) days prior to such expenditure), to examine the Developer's records relating to all CID Eligible Project Costs to be paid and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

(c) The City shall have fifteen (15) days after receipt of any completed and executed Certification of Expenditure to review and respond by written notice to the Developer; provided, however, that the City may, prior to the end of such fifteen (15) day period, advise the Developer if additional time is needed to review and respond to such Certificate, in which event the City shall respond by the extended date so indicated, which date shall not be more than thirty (30) days after the date of such notice. If, in the reasonable judgment of the officer or agent of the City charged with reviewing each Certification of Expenditure, the submitted documentation demonstrates that: (1) the payments requested in the Certification of Expenditure are for CID Eligible Project Costs; (2) the expense was incurred; (3) the Developer is not in default under this Agreement; (4) the ad valorem property taxes for property owned by the Developer within the city of Topeka are current; and (5) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditure, and, if there are sufficient funds available in the Reimbursement Funds as set forth herein, make, or cause to be made, reimbursement to the Developer at the time set forth in subsection (d) of this Section. If the City disapproves the Certification of Expenditure, the City shall notify the Developer, in writing, of the reason(s) for such disapproval within such fifteen (15)-day period (or such extended period as provided herein). The City will provide reasonable assistance to the Developer so that the Developer can take the steps necessary to rectify the reason for the City's disapproval and resubmit such Certificate of Expenditure for approval by the City. However, if only certain line items on the Certification of Expenditure are disapproved and others are approved, if there are sufficient funds available in the Reimbursement Funds as set forth herein, the City shall make, or cause to be made, reimbursement for the line items of the Certification of Expenditure approved by the City from Reimbursement Funds. The Developer agrees to make a good faith effort to submit thorough and complete Certifications of Expenditures. The Developer may appeal a denial of one or more items of a Certification of Expenditure in accordance with the administrative appeal process defined in the Topeka Municipal Code.

(d) Subject to the further terms of this Agreement, and to the extent moneys are available in the CID Sales Tax Fund, any requested reimbursement approved by the City pursuant to this Section 7 shall be paid to the Developer through the City's regular accounts payable process from the CID Sales Tax Fund; provided, however, that no deposits shall be made to the CID Sales Tax Fund after the expiration of the CID Term. All amounts deposited in the CID Sales Tax Fund prior to the expiration of the CID Term shall be used to reimburse the Developer for CID Eligible Project Costs, regardless if the reimbursement occurs after the expiration of the CID Term.

(e) Notwithstanding any other provision herein, the City shall not make any payments to the Developer for reimbursement of any cost pursuant to this Section exceeding the Maximum Reimbursement Amount.

Section 8
City and Other Governmental Permits

Before beginning construction of any aspect of the Project, the Developer shall, at its expense, obtain or cause to be obtained any necessary planning documents, permits or licenses that may be required by the City, Shawnee County or any other governmental agency having jurisdiction over the Project.

Section 9
Building Design Standards, Landscaping and Signage

The Parties acknowledge that the Developer received all required planning and permitting approvals for the Project from the City prior to the City's adoption of the Building Design Standards for Topeka Non-Residential Buildings. Despite the foregoing, the Developer agrees to work cooperatively with the City's Planning and Development Department to design components of the Project that adhere to the spirit and intent of the Building Design Standards for Topeka Non-Residential Buildings, which include that:

(a) Type A building design standards shall be required for all new construction and Type B building design standards shall be required for all newly-remodeled buildings and/or structures.

(b) The Developer shall work cooperatively with staff to adhere to the spirit and intent of the landscaping requirements of the Building Design Standards in compliance with existing leases and conditions with regard to any new construction and remodeled buildings or structures, as well as parking lots.

(c) Currently adopted sign code standards shall be applied for new signs, or any altered signs at the time of application for permitting.

Section 10
Reporting

(a) From and after the commencement of this Agreement, the Developer shall cause all CID Taxpayers that enter into leases with Developer following the Effective Date, at the request of the Director, not later than the 15th day of each month, to provide copies of any sales tax filings required to be submitted to the Department of Revenue for the next preceding month (or the next preceding quarter if such taxpayer is a quarterly filer). Provided the Developer can demonstrate that it made commercially reasonable efforts to ensure CID Taxpayer compliance with this Section 10(a), failure to obtain such compliance will not be considered a default of the Development under this Agreement. The Developer shall demonstrate it has made commercially reasonable efforts to ensure CID Taxpayers provide copies of such filings to the Director by imposing a requirement in any lease of property located within the CID District that is executed following the Effective Date that if the tenant is a CID Taxpayer it shall provide this information to the Director not later than the 15th day of each month for the next preceding month (or the next preceding quarter if such taxpayer is a quarterly filer).

(b) Not later than January 25th of each year, commencing January 25, 2020, and ending January 25, 2042, the Developer shall provide to the Director a reporting, as of December 31st of the next preceding year, of: (i) annual and cumulative Project Costs; (ii) Project Costs funded with sources other than reimbursements from the Reimbursement Funds; (iii) the remaining amount of unreimbursed CID Eligible Project Costs; and (iv) proof of insurance as provided in Section 11 herein. Such reporting shall be in the form of the Project Budget attached hereto as ***Exhibit B***. The Developer shall make commercially reasonable efforts to file all such reports with the City, but failure of the Developer to timely file such reporting shall not be a default of the Developer under this Agreement.

(c) The City shall use commercially reasonable efforts to collect, account for and remit the CID Sales Tax proceeds to the CID Sales Tax Fund upon receipt of such amounts from the Kansas Department of Revenue.

Section 11
Rights of Access

For purposes of insuring compliance with this Agreement, representatives of the City shall have rights of access to the Project, without charges or fees, during normal business hours during the period of Project construction, to inspect work performed or being performed in the construction of the Project. City representatives shall carry proper identification, insure their own safety and shall not interfere with construction activity unless such activity is apparently in violation of this Agreement, City codes, state or federal regulations, statutes or other law. The right of access granted by this Section shall be in addition to the City's rights to access the Project in the exercise of its proper authority to regulate, and provide for, public safety and to issue and enforce required licenses and permits.

Section 12
Insurance and Indemnification

(a) The Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent and/or intentional acts or omissions of the Developer, its contractors, subcontractors, agents or employees in the performance of this Agreement. The Developer shall give the City immediate written notice of any claim, suit or demand that may be subject to this provision. The City shall also give prompt notice to the Developer of any such claim, suit, or demand, and the City hereby agrees that it shall not defend, settle or otherwise resolve any such claim, suit, or demand without prior notice to the Developer. After receipt of such notice, the Developer shall defend, contest, or otherwise protect the City against any such matter, at the cost and expense of the Developer, utilizing counsel selected by the Developer. This section shall not apply to negligence or willful misconduct of the City or its officers, employees, or agents.

(b) Not in derogation of the indemnification provisions set forth herein, the Developer shall, at its sole cost and expense, throughout the term of this Agreement and during all phases of the development described herein, to the extent Developer holds fee title to property within the District, insure and keep insured any vertical structures built in the District against direct loss or damage occasioned by fire, flood and extended coverage perils through insurers with an AM Best rating of no less than "A" and/or a rating that is acceptable to the City without co-insurance. The insurance shall be for an amount that is not less than the full replacement cost of such structures.

(c) In the event of destruction or damage to any vertical structure owned by the Developer, the Developer shall restore the Project to a clean, safe, and sanitary condition within the time parameters and other terms or provisions identified in any lease agreement with any CID Taxpayer; provided, however, that in all events the Developer shall cause all damaged or destroyed property within the Project to be restored to a clean, safe and sanitary condition within a reasonable period of time after such damage or destruction, not to exceed Ninety (90) days. If the Developer has commenced work associated with restoring the damaged or destroyed property within the Project to a clean, safe, and sanitary condition within such 90 day period, but has been unable to complete this work, the Developer may request a 90-day extension from the City to continue and ultimately complete all restoration efforts within One Hundred Eighty (180) days. Further reasonable extensions may be requested by the Developer which may be approved by the City in its reasonable discretion, not to be unreasonably withheld. Notwithstanding the foregoing, nothing in this Section shall require the Developer to rebuild or reconstruct any component of the Project damaged or destroyed by casualty or other causes, so long as the Developer restores the Project to a clean, safe, and sanitary condition.

Section 13
Local, State and Federal Laws

The Developer agrees that it shall abide by, and the Project shall be completed in conformity with, all applicable federal, state and local laws and regulations.

Section 14
Nondiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the Project, the Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 15
Default and Remedies

(a) The failure or delay by either of the Parties to this Agreement to perform any term or provision of this Agreement required of such Party, shall constitute an event of default under this Agreement, subject to rights of cure, as specified below.

(b) Notice of an event of default shall be given by the Party claiming such default to the other Party and shall contain the basis of the claimed default.

(c) No legal proceedings against the claimed defaulting Party shall be instituted nor shall the claiming Party be entitled to damages if, within thirty (30) days from the receipt of a notice of claimed default, the claimed defaulting Party undertakes acts to cure, correct or remedy such claimed default, proceeds with due diligence to complete such cure, correction or remedy and such cure, correction or remedy is completed within sixty (60) days of the date such claimed defaulting Party received a notice of default. If the Party claimed to be in default cannot reasonably cure such claimed default within sixty (60) days, the claimed defaulting Party shall notify the other Party of such assertion with a proposed date to complete the cure; and default shall be suspended if the claimed defaulting Party commences curing the default within thirty (30) days after receipt of written notice thereof and diligently prosecutes the cure to completion within the time period set forth in the notice to the Party claiming the default.

(d) In the event the defaulting Party does not cure the event of default as set forth in this Section, the non-defaulting Party shall have the right:

(1) by mandamus or other suit, action or proceedings at law or in equity, to enforce the rights of the non-defaulting Party against the defaulting Party and to require and compel duties and obligations required by the provisions of the Agreement or by the laws of the State;

(2) by suit, action or other proceedings at law or in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the non-defaulting Party; or

(3) to take such other action as necessary to protect the interests of the City, including suspending reimbursements to the Developer from the CID Sales Tax Fund on a pro rata basis, which reimbursements may be reinstated following cure of the default.

(e) Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this Section, consequential damages shall include, but not be limited to, lost tax revenue or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party. Further, the parties acknowledge that construction of Phase 2 and tenant improvements within the Project are dependent upon market demand and that accordingly specific performance shall not be available to the City to require the Developer to construct Phase 2 or any specific tenant improvements.

(f) In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the Party such as, but not limited to: war; insurrection; strikes; labor shortages; market conditions; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; epidemics; quarantine restrictions; freight embargoes; unusually severe weather; government delays or prohibitions; administrative and permitting delays (which have not been caused by any act or omission of the Developer); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform ("Excusable Delays"). The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any Excusable Delay of the foregoing causes. The Developer shall provide notice to the City if and when any such Excusable Delays occur and the Developer may be granted such extensions based upon the period of such Excusable Delays.

(g) Specific Events of Default. In addition to other defaults that might occur pursuant to this Section, the Developer shall be considered to be in default if any of the following occurs:

(1) The Developer commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if the Developer takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

(2) If a petition is filed against the Developer under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the Developer under any other federal or state law in effect at the time relating to bankruptcy or insolvency, unless lacking in foundation.

(3) The Developer makes a general assignment for the benefit of creditors.

(4) If a trustee, receiver, custodian or agent of the Developer is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Developer is for the purpose of enforcing a lien against property in the CID District or for the purpose of general administration of such property for the benefit of the Developer's creditors.

(6) The Developer, its tenant or buyer with whom the Developer transacts with, fails to spend Seventeen Million Five Hundred Thousand Dollars ($17,500,000.00) on the Project (including any Project Costs certified for reimbursement from CID Sales Tax proceeds and costs expended by tenants of the Developer) by December 31, 2024, to be attested to in writing by the Developer not later than January 31, 2025.

(7) The Developer does not commence construction of the Project by December 31, 2019. Commencement of construction shall mean the issuance of a building permit or site construction permit for purposes of commencing the Project.

(8) The Developer fails to construct the Project components (except for tenant finish and the Phase 2 Improvements) contemplated in the Project Budget by the Placed in Service Date.

(9) On and before the fifth anniversary of this agreement, the Developer shall provide notice of all proposed tenants and third party operators of any Project component to the City, through its City Manager, if such tenants or third party operators are relocated from elsewhere within the corporate limits of the city of Topeka, ten (10) days prior to execution of a lease or agreement for same, respectively. The City Manager may then have an opportunity to provide his or her written objection to such tenant or third party

operator to Developer within such ten (10) day period, including a detailed description of the basis for such objection. If the City Manager does not issue such objection within the ten (10) day period, the City Manager's opportunity to object shall be deemed waived. In the event the City Manager issues such a notice of objection, the Parties shall meet to discuss such objection in order to reach resolution as to the proposed tenant or third party operator. In the event such resolution cannot be reached within ten (10) days following the City Manager's notice of objection to the Developer, the City Manager shall have the opportunity to place the issue as a discussion item on the next proceeding agenda of a regular meeting of the Governing Body, at which time the City Manager and the Developer shall appear before the Governing Body to discuss such objection in order to reach resolution regarding the same. In compliance with the foregoing, Developer has provided notice to the City Manager of the tenants described in ***Exhibit E***, each of which has entered into a lease or letter of intent with Developer prior to the Effective Date of this Agreement.

(10) The Developer fails to restore the Project to a clean, safe, and sanitary condition as required by Section 12(c) of this Agreement within One-Hundred Eighty (180) days of any damage or destruction of all or a portion of the Project (or within the period as extended by the terms of Section 12(c)).

(11) The Developer fails to make payments required by Section 6(a) of this Agreement in a timely manner.

(12) The Developer authorizes or permits to be included in the Project any of the impermissible end users included in ***Exhibit F*** hereto, unless approved by the City.

Section 16
Governing Law, Jurisdiction

(a) This Agreement shall be governed by, interpreted and enforced pursuant to the laws of the State.

(b) The Parties agree that any legal actions arising out of this Agreement will be instituted in the District Court of Shawnee County, Kansas or, in the case of federal jurisdiction, in the Federal District Court for the District of Kansas.

Section 17
Rights and Remedies Cumulative, Waivers

Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties shall be cumulative, and the exercise by one party of one or more such rights shall not preclude the exercise by it, at the same or different times, of any other rights or remedies specified herein. Any failure or delay by either party in asserting any of its rights and remedies as to any default hereunder shall not operate as a waiver of such default or of any rights or remedies specified hereunder, or deprive either party of its right to assert and enforce any such right or remedy.

Section 18
Amendments

This Agreement may be amended by the parties, which amendment shall be in writing and shall not cause the Agreement to be in violation of the Act.

Section 19
Transfer and Assignment

The Parties acknowledge that the Developer's expertise in constructing and managing like projects and its commitment to Topeka were material inducements to the City undertaking this Agreement. As such:

(a) The Developer may not assign this Agreement, or the rights, duties, and obligations hereunder without the prior written consent of the City. In determining whether to approve such an assignment, the City will similarly assess the proposed assignee's expertise in constructing and managing like projects and its commitment to Topeka; provided, however, that it shall be unreasonable to disapprove any such assignee if such assignee possesses the requisite financial qualifications and capabilities to perform the duties and obligations contained within this Agreement. The City's consent to any proposed assignment may not be unreasonably withheld.

(b) Notwithstanding the foregoing, the Developer may:

(1) assign or pledge its rights under this Agreement to any Affiliate by giving thirty (30) days' prior written notice to the City of its intent to proceed with such assignment or pledge; and/or

(2) collaterally assign or pledge its rights to payments due hereunder to its lender. The Developer shall provide written notice to the City of such assignment or pledge within one month of execution of the same, addressed to the Topeka City Manager, including a copy of any agreement evidencing such collateral assignment or pledge to such third party.

(c) Nothing herein shall prohibit (or require City approval to allow) the Developer from forming additional development or ownership entities to replace or joint venture with the Developer for the purpose of business and/or income tax planning; provided, however, that such additional development or ownership entities or joint ventures shall be an Affiliate.

Section 20
Notices, Demands, Communications Among Parties

Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement shall be in writing, addressed to the following:

(a) To the City at:

City of Topeka, Kansas
City Hall, Room 355
215 SE 7th Street
Topeka, Kansas 66603
Attn: City Manager

With a copy to:

City Clerk
City Hall, Room 166
215 SE 7th Street
Topeka, Kansas 66603

and

City Attorney
City Hall, Room 353
215 SE 7th Street
Topeka, Kansas 66603

(b) To the Developer at:

Bob Sutton
Equity Investment Group
127 W. Berry Street
Suite 300
Fort Wayne, Indiana 46802

With a copy to:

Bob Johnson
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

Such notice shall be deemed duly given or filed if the same shall be: (i) duly mailed by certified or registered mail, postage prepaid; or (ii) communicated via facsimile, with electronic or telephonic confirmation of receipt. All notices given by: (i) certified or registered mail, postage prepaid, shall be deemed duly given as of the date they are so mailed; and (ii) facsimile, with electronic or telephonic confirmation of receipt, shall be deemed duly given as of the date of confirmation of receipt. The Parties may from time to time designate, by giving notice as set forth above, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 21
Entire Agreement

This Agreement is executed in duplicate originals, each of which shall be considered an original. This Agreement, including the Exhibits hereto, constitutes the entire agreement and understanding of the Parties. This Agreement supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter of this Agreement.

Section 22
Electronic Transactions

The transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

Section 23
Severability

The invalidity or inability to enforce any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

Section 24
No Liability of City Officials or Employees

All liabilities under this Agreement on the part of the City and the Developer are solely corporate liabilities of the City and the Developer and no officer, director, employee, or agent of the City or the Developer shall have any personal or individual liability under this Agreement for anything done or omitted to be done by the City or the Developer hereunder.

Section 25
Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as the dates set forth opposite the signatures and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

(SEAL)

ATTEST:

By: Brenda Younger
Brenda Younger, City Clerk

CITY OF TOPEKA, KANSAS

By: Brent Trout
Brent Trout, City Manager

APPROVED AS TO FORM & LEGALITY
JUN 17 2019
M. Feighny
City Attorney's Office

EIG WANAMAKER, LLC
an Indiana limited liability company

By: ______________________

Its: CFO

67979535.8

EXHIBIT A

Legal Description and Boundary Map of CID District

TRACT I:
Lot 1, Block A, TOPEKA CROSSING SUBDIVISION NO. 2 in the City of Topeka, Shawnee County, Kansas.

TRACT II:
Lot 2, Block A, TOPEKA CROSSING SUBDIVISION NO. 2 in the City of Topeka, Shawnee County, Kansas.

TRACT III:
Lot 3, Block A, TOPEKA CROSSING SUBDIVISION NO. 2 in the City of Topeka, Shawnee County, Kansas, with the following exceptions:

EXCEPT Commencing at the Southwest corner of said Lot 3; thence on a bearing of North 01 degree 59 minutes 10 seconds West, along the West line of said Lot 3, a distance of 40.00 feet to the POINT OF BEGINNING; thence continuing on a bearing of North 01 degree 59 minutes 10 seconds West, along the West line of said Lot 3, a distance of 234.45 feet; thence on a bearing of North 88 degrees 00 minutes 50 seconds East, a distance of 199.21 feet; thence on a bearing of South 72 degrees 07 minutes 16 seconds East, a distance of 89.19 feet; thence on a bearing of South 45 degrees 16 minutes 47 seconds West, a distance of 52.75 feet; thence on a bearing of South 01 degree 59 minutes 10 seconds East, a distance of 168.35 feet; thence on a bearing of South 88 degrees 00 minutes 50 seconds West, a distance of 244.35 feet to the point of beginning,
AND ALSO EXCEPT Commencing at the Southwest corner of said Lot 3; thence on a bearing of North 01 degree 59 minutes 10 seconds West, along the West line of said Lot 3, a distance of 340.45 feet; thence on a bearing of North 88 degrees 00 minutes 50 seconds East, a distance of 20.82 feet to the POINT OF BEGINNING; thence on a bearing of North 01 degree 59 minutes 10 seconds West, a distance of 192.31 feet; thence on a bearing of North 88 degrees 00 minutes 50 seconds East, a distance of 260.00 feet to the point of beginning.

TRACT IV:
Lot 1, Block A, TOPEKA CROSSING SUBDIVISION in the City of Topeka, Shawnee County, Kansas.

TRACT V: The East 8.59 feet of the North 211.66 feet of Lot 2 and the South 26 feet of said Lot 2 and the North 26 feet of Lot 3, Block A, TOPEKA CROSSING SUBDIVISION in the City of Topeka, Shawnee County, Kansas.

TRACT VI:
Non-Exclusive Easements for the passage (including ingress/egress to public streets) and parking of vehicles and for the passage and accommodation of pedestrians over and across the Common Area (as defined in said instrument), including the parking, driveways, roadways and sidewalk areas as created in the Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements recorded December 3, 1992, in Book 2767, Page 792, subject, however, to the terms and provisions thereof.

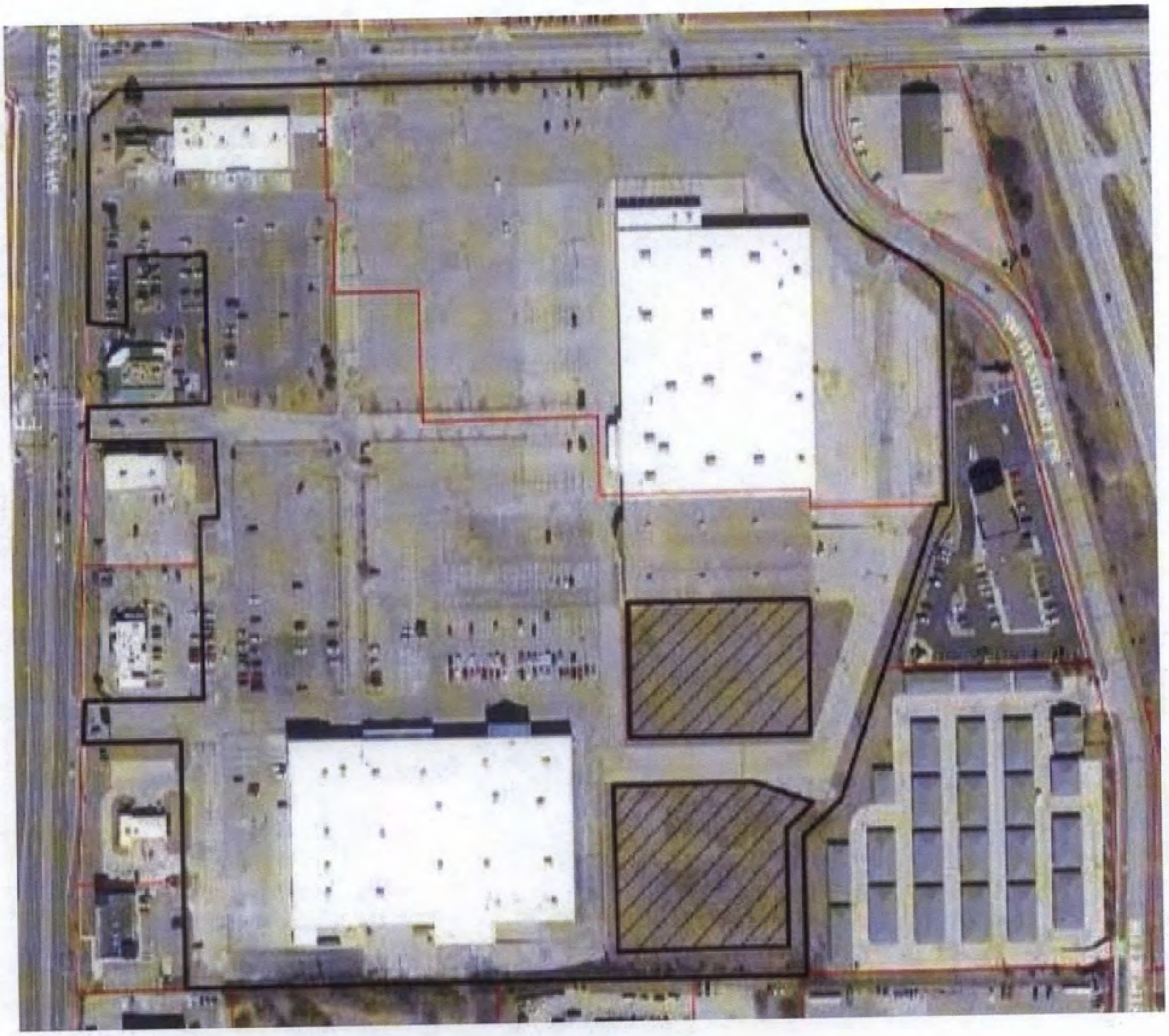

EXHIBIT B
Project Costs
(including CID Eligible Project Costs)

CID Development Budget			
Category	**Total**	**Private**	**CID**
LAND			
Acquisition Costs	$ 18,802,287	$ 18,802,287	$ -
SUBTOTAL ACQUISITION COSTS	**$ 18,802,287**	**$ 18,802,287**	**$ -**
HARD COSTS			
Building & Site Improvements			
Demolition/Asbestos & Concrete Testing	$ 207,291	$ -	$ 207,291
Shoring/Earthwork	$ 186,042	$ 50,000	$ 136,042
Concrete Footings & Slabs	$ 524,307	$ 100,000	$ 424,307
Building Facades & Improvements	$ 3,529,428	$ 799,754	$ 2,729,674
Building & Site Safety (e.g., Fire Protection)	$ 179,546	$ 79,546	$ 100,000
Utilities	$ 55,645	$ 15,000	$ 40,645
M/E/P	$ 1,487,822	$ 1,487,822	$ -
Landscaping	$ 35,010	$ -	$ 35,010
Signage	$ 198,000	$ -	$ 198,000
General Requirements & Staffing	$ 607,482	$ 357,482	$ 250,000
Construction Mgmt Fee	$ 455,674	$ 455,674	$ -
BUILDING CONSTRUCTION	**$ 7,466,247**	**$ 3,345,278**	**$ 4,120,969**
Tenant Improvements			
Landlord Work for Tenant Spaces	$ 2,206,900	$ -	$ 2,206,900
Tenant Improvement Allowances	$ 2,151,630	$ 2,151,630	$ -
TENANT IMPROVEMENTS	**$ 4,358,530**	**$ 2,151,630**	**$ 2,206,900**
PARKING LOT AND RELATED UTILITIES	**$ 264,066**	**$ -**	**$ 264,066**
HARD COST CONTINGENCY	**$ 434,963**	**$ 434,963**	**$ -**
HARD COSTS	**$ 12,523,806**	**$ 5,931,871**	**$ 6,591,935**
SOFT COSTS			
ARCHITECTURAL EXPENSES	**$ 250,000**	**$ 61,237**	**$ 188,763**
FINANCING FEES/COSTS	**$ 150,000**	**$ 150,000**	**$ -**
OTHER			
Leasing Commissions	$ 900,000	$ 900,000	$ -
Legal	$ 400,000	$ 400,000	$ -
Permits/Fees/Taxes/Insurance	$ 499,520	$ 499,520	$ -
CID Application and Administrative Fees	$ 310,576	$ 310,576	$ -
OTHER	**$ 2,110,096**	**$ 2,110,096**	**$ -**
SOFT COST CONTINGENCY	**$ 125,505**	**$ 125,505**	**$ -**
SUBTOTAL SOFT COSTS	$ 2,635,601	$ 2,446,838	$ 188,763
TOTAL DEVELOPMENT INVESTMENT	**$ 33,961,694**	**$ 27,180,996**	**$ 6,780,698**

EXHIBIT C

Approved Project Site Plan

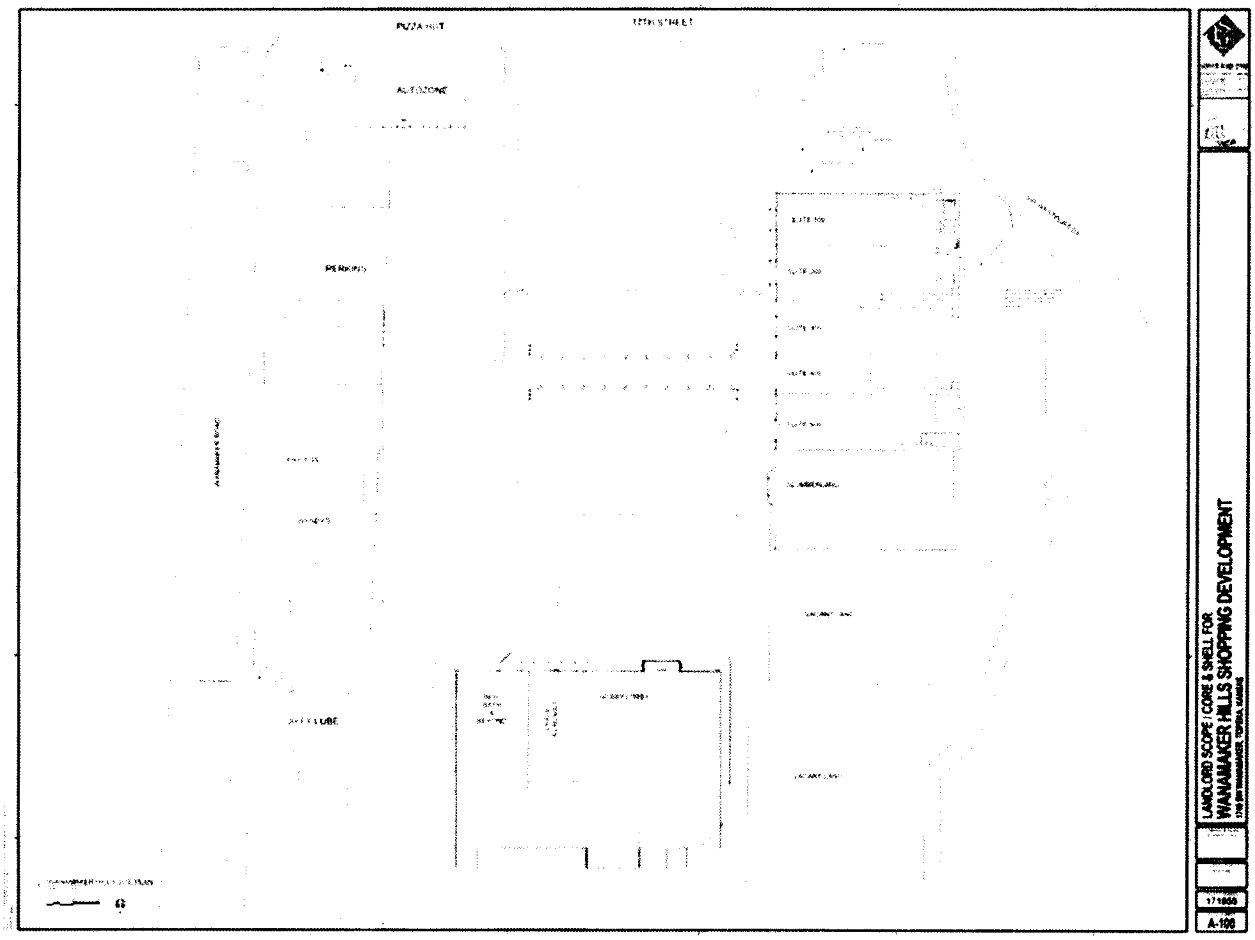

EXHIBIT D

CID Certificate of Expenditures

CERTIFICATION OF EXPENDITURES
WANAMAKER HILLS CID

Date:____________________

Certification #____________

City Clerk of the
City of Topeka, Kansas

In accordance with the Development Agreement for the Wanamaker Hills Community Improvement District dated __________, 20__, (the "Agreement"), between the City of Topeka, Kansas, (the "City"), and EIG Wanamaker, LLC, (the "Developer"), the Developer hereby certifies, with respect to all payment amounts requested pursuant to this Certificate to be reimbursed to the Developer, as follows:

1. All amounts are CID Eligible Project Costs (as defined in the Agreement) that are reimbursable to the Developer pursuant to the Agreement and the CID Act, (as defined in the Agreement).

2. All amounts have been advanced by the Developer for CID Eligible Project Costs (as defined in the Agreement) in accordance with the Agreement and represent the fair value of work, materials or expenses.

3. No part of such amounts has been the basis for any previous reimbursement under the Agreement from the Reimbursement Funds or request for reimbursement from the CID Fund (as defined in the Agreement).

4. All taxes and assessments currently due on any property owned by the Developer in the city of Topeka have been paid.

5. No uncured Events of Default under the Agreement currently exist.

The Developer further certifies that all insurance policies required to be in force under the Agreement are in full force and effect and that the Developer is in compliance, in all material respects, with all further terms of the Agreement.

The total amount of reimbursement requested by this Certificate is $__________, which amount is itemized on Attachment D-1 attached hereto and which Attachment D-1 includes ____ page(s), is incorporated herein by reference, has been initialed by the authorized representative of the Developer who signed this Certificate, and does not cause cumulative requests for reimbursement to exceed the Maximum Reimbursement Amount. Attached to Attachment D-1 are copies of the contract, invoice or other billing for the CID Eligible Project Costs or which the Developer seeks reimbursement, along with copies of checks, evidence of wire transfers or other evidence of payment by the Developer of such CID Eligible Project Costs and hereby certify that such copies are true and accurate copies of the original documents.

EIG WANAMAKER, LLC
an Indiana limited liability company

By: ______________________________
Name

____
Title

67979535.8

ATTACHMENT D-1
TO CERTIFICATION OF ELIGIBLE CID PROJECT COSTS
(EIG WANAMAKER, LLC)
PAGE 1 OF 3

ATTACHMENT D-1

CITY OF TOPEKA

FINANCIAL SERVICES
Jessica Lamendola
Director of Financial and Administrative Services
City Hall, 215 SE 7th Street, Suite 358
Topeka, KS 66603-3914
Tel: (785) 368-0919

Community Improvement District Reimbursement Request

Submit requests to: City of Topeka Director of Financial and Administrative Services
215 SE 7th Street, Suite 358
Topeka, KS 66603 or fax to: 785-368-3975

Wanamaker Hills CID

Submission Date: ____________

City Project Number: ____________

Request Number: ____________

Please visit the following link for CID policies and procedures: http://www.topeka.org/cid.shtml.
Reimbursement is contingent upon sales tax revenue received.
Minimum reimbursement is $1,000.00.
Please include supporting documentation (copies of invoices and checks).

Type *	Vendor Name	Invoice #	Invoice Date	Payment Date	Time period of work	Requested Amount
					Page 1 Total	$ -

Please use page 2 for additional items.

*** Note**
1 = Land Acquisition
2 = Site work
3 = Relocation/Renovation Costs
4 =Construction
5 = Financial & Administrative Costs

Certification: I certify that the above listed costs are eligible CID costs and were incurred as part of the CID project listed above. Costs have not previously been submitted and they reflect actual costs expended. There are also no outstanding or anticipated liens for the work.

Signature: ____________

Date: ____________

Phone number: ____________

Office Use Only:

Finance Approval:____________

Engineering Approval:____________

ATTACHMENT D-1

Page 2

Community Improvement District Reimbursement Request

Type *	Vendor Name	Invoice #	Invoice Date	Payment Date	Time period of work	Requested Amount
					Page 2 Total	$ -
				Grand Total		$ -

*** Note**

1 = Land Acquisition

2 = Public Infrastructure

3 = Relocation Costs

4 = Demolition

5 = Site Prep

6 = Legal and Third Party Reports

EXHIBIT E

Tenants with Executed Leases or LOIs within Center

1. AutoZone Parts, Inc., a Nevada Corporation
2. Bed Bath & Beyond, Inc., a New York Corporation
3. Hobby Lobby Stores, Inc.
4. NPC International, Inc., a Kansas Corporation (d/b/a Pizza Hut)
5. Slumberland, Inc., a Minnesota Corporation
6. Five Below, Inc., a Pennsylvania Corporation
7. Petco Animal Supplies Stores, Inc., a Delaware Corporation
8. ULTA Salon, Cosmetics & Fragrance, Inc., a Delaware Corporation
9. Old Navy, LLC, a Delaware Limited Liability Company
10. DSW Shoe Warehouse, Inc., a Missouri Corporation
11. Lamar Companies (billboard)

EXHIBIT F
Prohibited Tenants/End Users

Adult entertainment
Adult bookstore
Arcade*
Body piercing, other than ears
Car repair
Cellular or other telecommunications towers or facilities which are not stealth or fully integrated
Mobile home park
Mobile home sales
Pawn shop
Pay-day loan services
Permanent rooftop signage, except for any signage approved by the City**
Tattoo parlor

* This land use may be allowed as an accessory use if approved pursuant to City approval and such use is a subordinate use that is customarily and incidentally associated with the primary use, is located entirely within the structure of a primary use, and is not visible from and cannot be directly accessed from the exterior of the structure that contains the primary use.

** Temporary roof top signage may be allowed pursuant to the Topeka Municipal Code.

PLEDGE AND ASSIGNMENT
<u>RESPECTING COLLATERAL SECURITY</u>

THIS AGREEMENT is made this 11th day of February, 2020, and entered into by EIG Wanamaker, LLC (the "Borrower").

WITNESSETH:

WHEREAS, in connection with the delivery hereof, Protective Life Insurance Company (the "Lender") has made a loan to Borrower in the original principal amounts of $30,858,785.08 (the "Loan").

WHEREAS, the Loan is secured by the "Loan Documents" (as described in the First Modification to Loan Documents executed by Borrower in favor of Lender dated as of the date hereof).

WHEREAS, the Borrower is entering into this Agreement in order to induce the Lender to make the Loan and as additional security for the payment of all amounts due thereunder and for the performance of all obligations of the Borrower under the Loan Documents.

NOW, THEREFORE, in consideration of the premises, the Borrower hereby covenants and agrees with the Lender as follows:

Section 1. As additional security for the payment of all amounts evidenced and secured by the Loan Documents, the Borrower hereby pledges, assigns and transfers to the Lender, and grants to the Lender a security interest in and lien upon, the following described property (the "Collateral"):

> All rights to reimbursement under and pursuant to that certain Development Agreement (City of Topeka Contract No. 47841) by and between the City of Topeka, Kansas (the "City") and Borrower for implementation of the Wanamaker Hills Community Improvement District dated as of May 14, 2019, a copy of which is attached hereto as <u>Exhibit A</u>.

and all cash and non-cash proceeds thereof, all extensions, renewals and reinvestments thereof and all substitutions, exchanges, replacements and redeposits therefor. So long as no Event of Default hereunder shall have occurred, the Borrower shall have the right under a license hereby granted to collect, receive and retain all payments made to Borrower from the City with respect to the Collateral, provided the same are to be included in "Gross Revenues" for purposes of the Additional Interest Agreement executed by Borrower in favor of Lender.

Section 2. It is expressly understood that the acceptance by the Lender of this Agreement and the security interest created hereby shall not impose upon the Lender any obligation to make any extension of credit to the Borrower or Borrower other than as set forth in the Loan Documents and such as the Lender, in its sole judgment, shall deem prudent.

Section 3. The Borrower represents and warrants that Borrower has title to the Collateral, free of all liens and encumbrances, except the security interest created hereby, that Borrower has full power and authority to execute this Agreement, to perform Borrower's obligations hereunder and to subject the Collateral to the security interest and other rights created hereby and that no financing statement covering all or any part of the Collateral is on file in any public office.

Section 4. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if it takes such action for that purpose as the Borrower shall request in writing, but failure of the Lender to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of the Lender to protect or preserve any rights with respect to the Collateral against other parties, or to do any act with respect to the protection or preservation of the Collateral not so requested by the Borrower, shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral.

Section 5. The Lender may from time to time in its sole discretion (but shall have no liability for failure so to do), without notice to the Borrower, and without impairing or affecting the security interest created hereby, (a) acquire a security interest in any property in addition to the Collateral, or release any such interest so acquired, or permit any substitution or exchange for such property or any thereof; (b) upon the occurrence of an Event of Default, resort to the Collateral for payment of amounts secured by the Loan Documents, whether or not the Lender shall have resorted to any other collateral or proceeded against any other party primarily or secondarily liable under the Loan Documents; and (c) upon the occurrence of an Event of Default, exercise any rights of the Borrower with respect to any of the Collateral, including, without limitation, the following rights: (i) to record or register in, or otherwise transfer into, the name of the Lender or its nominee any part of the Collateral, without disclosing that the Lender's interest is that of a secured party; (ii) to pledge or otherwise transfer the Collateral, whereupon any pledgee or transferee shall have all the rights of the Lender hereunder, and the Lender shall thereafter be fully discharged and relieved from all responsibility and liability for the Collateral so transferred but shall retain all rights and powers hereunder as to all of the Collateral not so transferred; (iii) to exercise any and all rights of voting, conversion, exchange, subscription or other rights or options pertaining to any Collateral; (iv) to liquidate, demand, sue for, collect, compromise, receive and receipt for the Collateral or the cash or surrender value of any of the Collateral; and (v) to perform any contract and to endorse in the name of the Borrower any checks, drafts, notes, instruments or other documents which are Collateral or which are received in payment or on account of the Collateral or otherwise constitute proceeds of the Collateral.

Section 6. The Borrower severally waives (a) any further receipt for or acknowledgment of the Collateral now or hereafter deposited, or any statement of indebtedness; (b) the right to interpose any set-off or counterclaim of any nature or description in any litigation in which the Lender and the Borrower shall be adverse parties; (c) all rights of exemption under the Constitution or laws of Alabama or any other state as to personal property; and (d) demand, presentment, protest, notice of protest, notice of dishonor, suit against any party and all other requirements necessary to hold the Borrower.

Section 7. The occurrence of any of the following events shall constitute an Event of Default, as such term is used herein: (a) the occurrence of an "Event of Default" under the any of the Loan Documents; or (b) a default by the Borrower in the observance or performance of any obligation, covenant or warranty set forth herein for a period of thirty (30) days after receipt of written notice thereof by Lender.

Section 8. Whenever a default shall be existing, the Lender may, at its option and without demand or notice to the Borrower, (i) resort to the Collateral and all proceeds thereof for payment of any of the obligations secured hereby; (ii) terminate the license hereby granted to the Borrower to collect, receive and retain all dividends or interest paid with respect to the Collateral and (iii) exercise, in addition to the rights and remedies granted hereby, all rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law. The Borrower agrees to pay all costs of the Lender, including, without limitation, court costs and reasonable attorneys' fees, in the enforcement of any of the Lender's rights hereunder. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least five (5) days before such disposition, postage prepaid, addressed to the Borrower at the address shown below.

Section 9. This Agreement is in addition to and not in limitation of any other rights and remedies the Lender may have by virtue of any other instrument or agreement heretofore, contemporaneously herewith or hereafter executed by the Borrower or by law or otherwise. If any provision of this Agreement is contrary to applicable law such provision shall be deemed ineffective without invalidating the remaining provisions hereof. If and to the extent that applicable law confers any rights or imposes any duties inconsistent with or in addition to any of the provisions of this Agreement, the affected provision shall be considered amended to conform thereto. The Lender shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder. A waiver by the Lender of any right or remedy hereunder on any one occasion, shall not be construed as a bar to or waiver of any such right or remedy which the Lender would have had on any future occasion nor shall the Lender be liable for exercising or failing to exercise any such right or remedy. It is expressly understood and agreed that whenever the service of any notice upon the Borrower is required hereby or is otherwise required such notice may be sent to the Borrower by ordinary mail to the address shown at the end of this agreement, and if so mailed, such notice shall after five (5) days have expired from such mailing be deemed sufficient notice thereof. This Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto. This Agreement is executed in, and shall be construed in accordance with the laws of, the State of Alabama.

Section 10. This Agreement and the pledge and security agreement created hereby shall remain in effect until the payment in full of all amounts due under the Loan Documents, including any extensions, renewals, or modifications thereof, and the payment, performance and observance of all obligations secured hereby. Upon the termination of this Agreement, the Lender shall deliver the Collateral to the Borrower and shall execute and deliver all such releases and other documents as are necessary to effect the termination hereof upon the request of the Borrower and at the expense of the Borrower.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, this Agreement is being executed under seal by the undersigned on the date first above written.

"BORROWER:"

EIG WANAMAKER, LLC, an Indiana limited liability company

By: ______________________________
Anthony M. Zirille, its Chief Legal Officer

STATE OF INDIANA)

COUNTY OF ALLEN)

BE IT REMEMBERED, that on this 7th day of February, 2020, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Anthony M. Zirille, as Chief Legal Officer of **EIG WANAMAKER, LLC,** an Indiana limited liability company, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year above written.

Fern T. Wigner
Notary Public

A resident of Allen County, Indiana

My commission expires: July 20, 2023

[NOTARY SEAL]

NOTARY PUBLIC SEAL INDIANA

FERN T. WIGNER, Notary Public
Allen County, State of Indiana
My Commission Expires July 20, 2023
Commission Number 670520

City of Topeka

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603
www.topeka.org
December 12, 2023

DATE:	**December 12, 2023**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Public Comment Protocol**	**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

PUBLIC COMMENT PROTOCOL

VOTING REQUIREMENTS:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

Procedures for Addressing the Governing Body

In accordance with Governing Body Rules, the following protocols for public comment apply:

- Each person shall state his or her name and city of residence in an audible tone for the record.
- All remarks shall be addressed to the Governing Body as a whole -- not to any individual member.
- In order to provide additional time for as many individuals as possible to address the Governing Body, each individual signed up to speak will need to complete his or her comments within four minutes.

The following behavior will not be tolerated from any speaker:

- Uttering fighting words
- Slander
- Speeches invasive of the privacy of individuals (no mention of names) Unreasonably Loud Speech
- Repetitious Speech or Debate
- Speeches so disruptive of proceedings that the legislative process is substantially interrupted

Any speaker who engages in this type of behavior will be warned once by the presiding office (Mayor). If the behavior continues, the speaker will be ordered to cease his or her behavior. If the speaker persists in interfering with the ability of the Governing Body to carry out its function, he or she will be removed from the City Council Chambers or Zoom meeting room.

Members of the public, Governing Body and staff are expected to treat one another with respect at all times.

Zoom Meeting Protocol

- Make sure your Zoom name, email and/or phone number matches what was submitted to the City Clerk when you signed up for public comment. Any misnamed or unauthorized users will not be admitted to Zoom.
- Please keep your mic muted and your camera off until you are called by the Mayor to give your comment.
- If you are cut off during your comment time due to an internet connection or technical issue, you will need to submit your comments in writing to the City Clerk atcclerk@topeka.orgor 215 SE 7thStreet, Room 166, Topeka, KS 66603 for attachment to the minutes.
- If you break any of the public comment rules, you will receive one warning from the Mayor. If you continue any prohibited behavior, you will be removed from the Zoom meeting room and will not be allowed to rejoin.
- Public comment is limited to four minutes. You may receive an extension at the discretion of the Governing Body. The timer will be visible to you in the 'City of Topeka Admin' window on the Zoom app. Call-in users will hear one beep when a minute is remaining and then another beep when time has expired.
- Please do not share the Zoom login information with anyone. Any unauthorized users will not be admitted to the Zoom meeting room.

BUDGETARY IMPACT:

SOURCE OF FUNDING: