

## **Council Minutes – September 13, 2011**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 13, 2011. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Alcalá, Ortiz, Everhart, Wolgast, Archer, Gray and Harmon -8. Mayor William W. Bunten presided -1. Absent: Councilmember Manspeaker -1.

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

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

Councilmember Gray recognized the members of Boy Scout Troop No. 11.

Daniel R. Stanley, Interim City Manager provided a statement relating to the recent public discussions concerning the prosecution of misdemeanor court cases, including domestic violence cases. He stated he understands Chad Taylor, Shawnee County District Attorney has the discretion not to prosecute misdemeanor court cases; however, Mr. Taylor has no authority to direct where the cases are prosecuted, and in what manner. He noted the cases are of great concern to him because they include cases of domestic violence which are extraordinarily sensitive and require family services. He reported there are approximately 1,200 to 1,900 cases annually with each taking between 3 and 18 months to prosecute successfully; cases are very costly because state statute requires a “must arrest” and “must incarcerate” for any case with probable cause of domestic violence costing the City \$72.00 per day to house a person at the Shawnee County Jail. He also stated domestic violence cases are considered a circle of violence and often are precursor to murder cases if not interrupted. He reported the City does not have sufficient funding, training or staffing to prosecute domestic violence cases. He provided a brief summary of Municipal Court case filings for FY2010 and FY2011, as well as, the standard

operations of Municipal Court and noted thus far, the Shawnee County District Attorney has returned 30 misdemeanor cases committed in city limits. He stated this is an immediate issue that must be addressed and he is working on options to present to the Governing Body to discuss in a work session next week.

Councilmember Gray asked why the initial date of December 31, 2011 was not upheld in regards to the City beginning to prosecute misdemeanor cases.

Daniel R. Stanley reported that he was informed by District Attorney Taylor the action was a direct result of severe budget cuts in the amount of over \$300,000 forcing him to realign priorities. He noted the District Attorney would follow through with the prosecution of approximately 400 misdemeanor cases that have been previously accepted by the District Attorney's office.

Councilmember Everhart stated it was her understanding that several other large cities prosecute misdemeanor cases. She asked staff to research how other cities handle the situation and present the information to the Council at the work session next week for discussion.

Councilmember Hiller commented on the types of services that have been developed by Shawnee County in order to successfully prosecute domestic violence cases including, prosecutors, family services and various court services for support and counseling.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Matthew Pettit to the Jayhawk Area Agency on Aging Advisory Council for a term ending September 13, 2014 was presented.

RESOLUTION NO. 8378 introduced by Councilmember Larry Wolgast, granting Tornado Alley Entertainment an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8379 introduced by Councilmember Larry Wolgast, granting Our Savior's Lutheran Church an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

MINUTES of the regular meeting of August 23, 2011 were presented.

An Open After Midnight License application was presented for El Maguey located at 2160 S.W. Wanamaker Road.

RESOLUTION NO. 8380 introduced by Councilmember John Alcalá granting HF Rubber Machinery, Inc., an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

Councilmember Wolgast moved to approve the consent agenda as amended. The motion seconded by Councilmember Everhart carried unanimously. (8-0-0)

ORDINANCE NO. 19634 introduced by Interim City Manager, Daniel R. Stanley, annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520c, as amended, general located at the southeast corner of SW Gary Ormsby Drive and SW US Highway 75 within unincorporated Shawnee County, Kansas and said land being annexed for all City purposes placed on first reading August 23, 2011 was again presented. (A11/1)

Daniel R. Stanley, Interim City Manager gave the staff report and stated there was an administrative amendment to the ordinance as discussed in the work session conducted prior to the Council meeting.

Councilmember Alcalá moved to adopt the ordinance as amended. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted "yes." (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Archer, Gray, Harmon and Mayor Bunten -9. Absent: Manspeaker -1.

ORDINANCE NO. 19635 introduced by Interim City Manager, Daniel R. Stanley, attesting to the increase in taxes levied for budget year 2012 necessary to finance public services for the City of Topeka placed on first reading August 9, 2011 was again presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Alcalá moved to adopt the ordinance. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Archer, Gray, Harmon and Mayor Bunten -9. Absent: Manspeaker -1.

ORDINANCE NO. 19632 introduced by Interim City Manager Daniel R. Stanley, authorizing the issuance of \$18,900,000 aggregate principal amount of Combined Utility Improvement and Refunding Revenue Bonds, Series 2011-A, of the City of Topeka, Kansas, under the authority of K.S.A. 10-116a and K.S.A. 10-1201 et seq., and all amendments thereto placed on first reading August 23, 2011 was again presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Alcalá moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Archer, Gray, Harmon and Mayor Bunten -9. Absent: Manspeaker -1.

ORDINANCE NO. 19633 introduced by Interim City Manager Daniel R. Stanley, authorizing the issuance of \$3,430,000 aggregate principal amount of General Obligation Bonds, Series 2011-B (special assessment improvements) of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, and K.S.A. 12-6a-01 et seq., all as amended placed on first reading August 23, 2011 was again presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Alcalá moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Archer, Gray, Harmon and Mayor Bunten -9. Absent: Manspeaker -1.

RESOLUTION NO. 8376 introduced by Interim City Manager Daniel R. Stanley, prescribing the form and details of Combined Utility Improvement and Refunding Revenue Bonds, Series 2011-A of the City of Topeka, Kansas, in the aggregate principal amount of \$18,900,000 the issuance of which was authorized by the City pursuant to its Ordinance No. 19632 passed and approved September 13, 2011; and authorizing certain other documents and actions in connection with the issuance of the bonds was presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Wolgast carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

RESOLUTION NO. 8377 introduced by Interim City Manager Daniel R. Stanley, prescribing the form and details of General Obligation Bonds, Series 2011-B (Special Assessment Improvements) of the City of Topeka, Kansas, in the aggregate principal amount of \$3,430,000 the issuance of which were authorized by the City pursuant to its Ordinance No. 19633 adopted and approved September 13, 2011; and authorizing certain other documents and actions in connection with the issuance of the bonds was presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

DENIAL of an alarm agent license appeal by Robert R. Geyer was presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

JaLynn Copp, Topeka Police Legal Advisor reported the denial of alarm agent license was based on the nondisclosure of a conviction, as well as, the nondisclosure of the conviction being expunged on the application form.

Councilmember Gray asked if Mr. Geyer has engaged in any criminal activity since 2002.

Councilmember Ortiz asked if the applicant was required to acknowledge if a conviction had been expunged.

Councilmember Hiller asked if Mr. Geyer would have been granted the license if he would have disclosed the information as requested.

JaLynn Copp stated there has been no criminal activity that has appeared on Mr. Geyer's record since 2002; an applicant must disclose if a conviction has been expunged; and she is not sure the applicant would have received approval if he disclosed the information because she is not involved in the final approval process. She noted it is very important for applicants to be truthful and disclose any information requested on the application.

Robert R. Geyer stated he was informed by his attorney he did not have to disclose the information in regards to the conviction being expunged, and that is why he did not disclose the requested information.

Councilmember Ortiz asked if Mr. Geyer's employer was aware he had been denied the license.

Mr. Geyer stated he is currently licensed in the tri-state area and his employer is aware of the license denial.

Councilmember Harmon moved to uphold the denial of the alarm agent license appeal. The motion seconded by Councilmember Ortiz carried. Councilmembers Hiller and Gray voted "no." (6-2-0)

APPROVAL of a Real Estate Purchase Agreement between the City of Topeka and Innovative Business Concepts, Inc., for property located at 2330 NW Furman Road in the amount of \$8,550 and authorizing Daniel R. Stanley, Interim City Manager to execute said agreement and William W. Bunten, Mayor to sign the Quit Claim Deed was presented.

*(Contract No. 41563)*

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Alcala moved to approve the real estate purchase agreement. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

APPROVAL of a Real Estate Purchase Agreement between the City of Topeka and Innovative Business Concepts, Inc., for property located at 2336 NW Furman Road in the amount of \$21,550 and authorizing Daniel R. Stanley, Interim City Manager to execute said agreement and William W. Bunten, Mayor to sign the Quit Claim Deed was presented.

*(Contract No. 41564)*

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Alcala moved to approve the real estate purchase agreement. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

RESOLUTION NO. 8381 introduced by Interim City Manager Daniel R. Stanley, amending Article 2 of the City of Topeka Personnel Code, relating to residency requirements for department heads was presented.

Daniel R. Stanley, Interim City Manager gave the staff report and stated removal of the residency requirement would broaden the candidate pool for the vacant positions of City Attorney and Budget and Finance Director. He noted two residency waivers have recently been granted by the City Council.

Councilmember Alcala moved to approve the resolution. The motion was seconded by Councilmember Archer.

Councilmember Alcala stated he would support the resolution because of the number of residency requirement waivers granted in the past by the City Council.

Councilmember Wolgast reported a number of people have expressed their support of the resolution. He stated he would support the resolution and is hopeful that by eliminating the residency requirement it eliminates the feeling of “us” verses “them” by city and county residents, as well as, employees.

Councilmember Archer spoke in support of the resolution due to the waivers that have been granted in the past, as well as, the policy change would expedite the hiring process.

Councilmember Harmon spoke in opposition to the resolution and stated he believes there are qualified candidates that live within city limits. He stated in his opinion, department heads have the responsibility to set a good example for their employees by following City policies, as well as, paying city taxes.

Daniel R. Stanley noted they have received qualified applicants that live within city limits.

Councilmember Everhart stated she concurs with Councilmember Harmon and would not support the resolution. She reported she has been contacted by a number of constituents and they do not understand the sudden blanket change in the residency requirement.

Councilmember Gray stated the resolution would be difficult to support because in his opinion, it compares to Council District residency requirements, encouraging department heads to take ownership and pride in the city.



Councilmember Hiller stated she would not support the resolution because she believes it sends a message to potential applicants that the City does not want them to reside in city limits. She noted most boards and commissions have residency requirements.

Councilmember Ortiz stated she would support the resolution because the policy needs to be consistent. She noted a residency requirement should not restrict a person from being promoted or hired by the City.

Councilmember Alcala made a substitute motion to defer the resolution for one week for the purpose of researching and presenting the circumstances of past waivers that have been granted by the Council. The motion seconded by Councilmember Ortiz failed. Councilmembers Everhart, Archer, Gray and Harmon voted “no.” (4-4-0)

Councilmember Hiller suggested including a grandfather clause that would allow a person to be hired by the City or promoted to management if they have established residency in Shawnee County.

Councilmember Alcala stated he would consider an amendment that would include a grandfather clause.

The motion to approve the resolution carried. Councilmembers Hiller, Everhart and Harmon voted “no.” (5-3-0)

RESOLUTION NO. 8382 introduced by Interim City Manager Daniel R. Stanley, describing the areas to be considered priorities for 2011 Planning Target Areas for future federal and city funding as may be allocated within the 2012 and 2013 City budgets was presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Ortiz asked how areas are determined if they are a priority and how are funds allocated to each target area.

Randy Speaker, Housing and Neighborhood Development Director stated the Citizen Advisory Council works in conjunction with Neighborhood Improvement Associations to identify priority areas based upon those with the most critical needs and funding is allocated every two years. He stated there would be no funding available until 2012.

Councilmember Alcalá expressed concern with determining or identifying critical areas based on outdated information.

Randy Speaker stated the information is updated every three years and partially based on census data collected from income-based households.

Councilmember Alcalá requested to schedule a work session to discuss all critical neighborhood areas, allocations, and updated information.

Councilmember Everhart stated there are areas that need to be assessed in Council District No. 4 and reported the Rolling Meadows Neighborhood Improvement Association has expressed concern with facing the future. She spoke in support of the resolution and to move forward in identifying priority areas in the community.

Councilmember Wolgast stated he understands the Hi-Crest neighborhood area has worked hard to be considered for funding and deserves a great deal of support.

Councilmember Alcalá spoke in support of the resolution and stated all Neighborhood Improvement Associations work hard to become eligible for funding; however, fairness should be reviewed and neighborhoods need to be addressed.

Mayor Bunten stated there is always a difference of opinion on which neighborhoods have the most critical needs; however, the Citizen Advisory Council selects two neighborhoods to concentrate on improving and getting the attention they need.

Councilmember Hiller questioned the process to determine which neighborhoods receive funding.

Randy Speaker reported the Citizen Advisory Council focuses on intensive care needs in at-risk neighborhoods. He stated he believes the process could be improved; however, neighborhoods have to show they want to be involved in the SORT process as well.

Councilmember Alcala stated not every neighborhood has the framework for a Neighborhood Improvement Association; however, those areas still need support to help improve the city as a whole.

Daniel R. Stanley stated there are many neighborhoods in need and he is discussing what is necessary to revitalize the city as a whole with the Mayor.

Councilmember Alcala asked if the City has considered reopening the Tool Lending Library.

Randy Speaker stated the City did not own the equipment or property; however, the City helped with funding.

Councilmember Ortiz requested to reestablish the enhancement program which was very successful in building Neighborhood Improvement Associations and involving citizens in their neighborhoods.

Councilmember Alcala moved to approve the resolution. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

ORDINANCE NO. 19636 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of August 1, 2011, through August 7, 2011, and enumerating said expenditures therein was presented for first and final reading.

Daniel R. Stanley, Interim City Manager gave the staff report.

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

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Archer, Gray and Harmon -8. Absent: Manspeaker -1.

ORDINANCE NO. 19637 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of August 8, 2011, through August 14, 2011, and enumerating said expenditures therein was presented for first and final reading.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Wolgast carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Archer, Gray and Harmon -8. Absent: Manspeaker -1.

ORDINANCE NO. 19638 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of August 15, 2011, through August 21, 2011, and enumerating said expenditures therein was presented for first and final reading.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Archer moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried. Councilmember Alcalá did not vote. (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Everhart, Wolgast, Archer, Gray and Harmon -7. Absent: Alcalá and Manspeaker -2.

APPROVAL of Retail Cereal Malt Beverage License application for Chatterbox located at 2121 SE 6<sup>th</sup> Street was presented.

Daniel R. Stanley, Interim City Manager gave the staff report.

Councilmember Wolgast moved to approve the retail cereal malt beverage license application as presented. The motion seconded by Councilmember Archer carried.

Councilmember Everhart voted “no.” Mayor Buntin voted “yes.” (8-1-0)

AN ORDINANCE introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for the Jayhawk Theater event to be held on October 1, 2011 was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, authorizing Improvement Project No. T-841019.00, which provides for ADA accessible curb cuts and sidewalk ramps at selected intersections throughout the city, as more specifically described herein was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley relating to and authorizing Project No. T-861004.00, which provides for construction of a railroad spur to Kanza Fire Commerce Park, as more specifically described herein was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, authorizing Project No. T-601025.00, which provides for construction of Innovation Parkway, as more specifically described herein was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC) by providing for certain changes in zoning on properties located east of the dead-end intersection of SW Arrowhead Road and SW 27<sup>th</sup> Street from “E” Multiple Family Dwelling District and “C-4” Commercial District ALL TO “M-2” Multiple Family Dwelling District was presented for first reading. *(Z11/11)*

AN ORDINANCE introduced by Interim City Manager, Daniel R. Stanley, amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC) by providing for certain changes in zoning on property located on SW Lane Street, the centerline of which is approximately 196 feet south of the intersection of

SW Lane Street and SW Huntoon Street from “E” Multiple Family Dwelling District TO “M-1” Two-Family Dwelling District was presented for first reading. *(Z11/12)*

AN ORDINANCE introduced by Interim City Manager, Daniel R. Stanley, amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC) by providing for certain changes in zoning on property located on the south side of SW 17<sup>th</sup> Street, midway between SW Van Buren and SW Harrison Streets, from “E” Multiple Family Dwelling District TO “M-1” Two-Family Dwelling District was presented for first reading. *(Z11/13)*

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC) by providing for certain changes in zoning on property located at 2933 SW Central Park Avenue from “M-2” Multiple Family Dwelling District TO “O&I-2” Office and Institutional District was presented for first reading. *(Z11/14)*

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, instituting a real estate lien upon certain lots and pieces of ground in Shawnee County, Kansas, to pay the cost of sewage collection and treatment where such payments to the City have not been made due to neglect, failure or refusal to pay, pursuant to K.S.A. 12-808c was presented for first reading.

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

Daniel R. Stanley, Interim City Manager expressed concern with the current fiscal environment of the City. He stated the Governing Body must develop, understand and defend the City’s core functions and concentrate on doing those functions well. He noted there would

be serious federal and state funding cuts over the next few years that will have a direct effect on the City's budget.

Councilmember Hiller referenced an email sent by Councilmember Alcalá in regards to follow-up of the Council retreat hosted by the previous City Manager. She stated she is okay with not proceeding further with the process; however, she would like the Council to meet for strategic planning and take a leadership role in the Heartland Visioning process to identify goals and core values prior to the next budget cycle.

Councilmember Alcalá stated he concurs with Councilmember Hiller regarding follow-up of the Council retreat; however, he does believe they need to review the charter ordinance outlining the current form of City Government and the Topeka City Council Rules and Procedures and make any necessary amendments. He reported a constituent continues to experience bug infestation from a neighboring property and requested Code Compliance follow-up with the property owner to see how the situation is being handled. He distributed a resolution requesting the installation of stop signs at the NE Laurent and NE Poplar Streets intersection to be placed on a future agenda.

Councilmember Ortiz stated she attended the Central Highland Park Neighborhood Improvement Association meeting and citizens expressed concern with installing ADA doors at the Hillcrest Community Center; and improving the barricades at the SE 28th and California Avenue construction site. She reported she has received numerous calls from constituents relating to the firework ordinance and plans to schedule a Public, Health and Safety Committee meeting to discuss the issue further. She commended Let's Help, Inc., for hosting a successful benefit concert September 3, 2011.

Councilmember Everhart expressed concern with the SE California Avenue and SE 37th Street improvement project. She requested an update on the project and stated she continues to receive complaints from area business owners and residents about the project.

Councilmember Archer thanked Burlington Northern Santa Fe Railroad for hosting an Open House event over the Labor Day weekend. He reported the event was interesting and educational for the public and he hopes it will become an annual community event.

Councilmember Gray stated he agrees with City Manager Stanley and believes the Council must identify the core functions and fiscal responsibilities of City operations, as well as, each City department needs to justify every penny being spent.

Councilmember Harmon asked if the Shawnee County Health Department has been notified of the bug infestation.

Councilmember Alcalá stated the Shawnee County and State of Kansas Health Departments have been notified of the bug infestation issue.

Councilmember Hiller reported she would provide a document of possible changes to the firework ordinance for the Public, Health and Safety Committee meeting when it is scheduled.

Councilmember Alcalá moved to adjourn the Council meeting. The motion seconded by Councilmember Archer carried unanimously. (8-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:54 p.m.

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Brenda Younger  
City Clerk