

Council Minutes – October 11, 2011

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 11, 2011. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Mayor William W. Bunten presided -1. Absent: Councilmember Alcala -1.

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

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

Councilmember Archer moved to suspend the Council Rules to add a resolution authorizing the Interim City Manager to enter into negotiations with Shawnee County officials regarding the prosecution of domestic battery cases. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

Councilmember Archer moved to add the resolution to the Council agenda under New Business as item 6C. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

Councilmember Archer moved to reinstate the Council Rules. The motion seconded by Councilmember Everhart carried unanimously. (8-0-0)

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8386 introduced by Councilmember Sylvia Ortiz, granting Randy Wheat an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8387 introduced by Councilmember Karen Hiller, granting ArtsConnect 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 October 4, 2011 were presented.

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

ORDINANCE NO. 19651 introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Section 9.05.080, concerning the 2011 Uniform Public Offense Code and specifically repealing said original section as well as Section 5.135.010 in its entirety placed on first reading October 4, 2011 was again presented.

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

Councilmember Archer moved to adopt the ordinance. The motion was seconded by Councilmember Gray.

Amber Versola expressed concern with the current situation relating to the prosecution of domestic battery cases. She stated elected officials have placed the victims in the middle and she believes it will not end well. She noted she understands the City's stance; however, the Shawnee County District Attorney is not required to prosecute these cases. She also stated she believes repealing the ordinance is not an effective resolution to the situation.

Matthew Agnew encouraged the Council to disapprove the ordinance because it is crucial to protect citizens and keep them safe. He stated the City should prioritize the City's budget and prosecute the domestic battery cases because the situation is unacceptable.

Councilmember Alcala entered the room.

Claudine Dombrowski spoke in opposition of repealing the ordinance. She stated she does not understand why the City is able to fund various nonessential operations but refuses to find funding to provide safety for domestic battery victims.

Margaret Ahrens distributed a statement from the League of Women Voters of Topeka-Shawnee County. She reported the League supports City-County consolidation efforts to prosecute domestic battery cases.

Joe Cheray stated she believes Shawnee County has the resources and ability to keep victims safe and separated from offenders. She encouraged the Council to do the right thing to protect the community.

Kathryn Wood stated this issue impacts the entire community and underestimates the need to handle these cases in an effective manner. She noted the current economic environment influences an increase risk of violence and repealing the ordinance would send a dangerous message of accountability to the rest of state and nation. She asked the Council to think about ways to handle the situation in the best way possible.

Councilmember Manspeaker asked if the Council could draft a memorandum of understanding between the Shawnee County District Attorney's office and the City.

Daniel R. Stanley stated it is the City's goal to draft a document outlining the terms of understanding on the issue with the District Attorney.

Councilmember Alcala stated his support to repeal the ordinance through 2012 because he knows the City is not equipped to handle these types of cases.

Councilmember Hiller stated her commitment to get the best possible services for families and victims of domestic battery. She also stated she believes the Shawnee County District Court is the best venue for prosecuting such crimes.

Kathryn Wood reported most people are frustrated the public is not involved in the decision and victims are concerned for their safety. She stated the issue needs to be resolved as soon as possible.

Matthew Richter spoke in opposition of repealing the Uniform Public Offense Code (UPOC) ordinance and suggested utilizing a mediator to find a solution.

Councilmember Everhart stated the City would not have to repeal Domestic Battery from the UPOC ordinance in order to negotiate with the Shawnee County District Attorney.

Councilmember Harmon asked why municipalities adopt the UPOC because State laws are still effective if the UPOC is repealed. He stated he is unsure how the City can force the District Attorney's office to prosecute these cases because it is a statutory office funded by the County.

Councilmember Gray asked how much transition time was allotted in 2002 for former Shawnee County District Attorney, Robert Hecht to start prosecuting misdemeanor domestic battery cases. He expressed his dissatisfaction in the way District Attorney Chad Taylor has handled the situation.

Craig Spomer, Chief of Prosecution stated State laws would still be enforced if the Council repeals the ordinance. He reported an agreement was reached in 2002 between the District Attorney and the City concerning the prosecution of misdemeanor domestic battery cases because the County had the resources to do so, and there was a transitional period of approximately two years. He noted City staff is capable of prosecuting these cases; however, the City would need several months to transition.

Councilmember Wolgast expressed disappointment in the situation and stated it should have been settled weeks ago to protect the citizens of the City.

Councilmember Everhart stated she concurs with Councilmember Wolgast and would prefer to continue negotiations with the District Attorney as opposed to repealing Domestic Battery from the City's UPOC ordinance.

Councilmember Everhart made a substitute motion to table the ordinance. The motion was seconded by Councilmember Harmon.

Mayor Bunten reported citizens believe the City is decriminalizing domestic abuse; however, all testimony proves these cases are best handled in District Court. He spoke in support of repealing Domestic Battery from the UPOC ordinance because he believes it would strengthen the City's position to resolve the issue with the District Attorney and provide more negotiating power.

The substitute motion to table the ordinance failed. Mayor Bunten, Councilmembers Hiller, Alcala, Ortiz, Manspeaker, Archer and Gray voted "no." (3-7-0)

Councilmember Harmon made a substitute motion to strike the words "3.1.1. (Domestic Battery)" from Line 19 of the ordinance. The motion was seconded by Councilmember Everhart.

Daniel R. Stanley spoke in opposition of the substitute motion and stated he believes by repealing Domestic Battery from the UPOC ordinance it would allow the City to achieve a resolution quickly. He noted state statutes relating to the prosecution of domestic battery crimes would still be in effect and would not change if the ordinance is repealed.

Councilmember Hiller spoke in opposition of the substitute motion. She stated she has tried to discuss the issue with Shawnee County Commissioners and has not been unsuccessful.

The substitute motion to strike the words "3.1.1. (Domestic Battery)" from Line 19 of the ordinance failed. Mayor Bunten, Councilmembers Hiller, Alcala, Ortiz, Manspeaker, Archer and Gray voted "no." (3-7-0)

Councilmember Archer thanked the City Manager for his hard work in researching a solution to the issue. He spoke in support of adopting the ordinance and stated he hopes it would resolve the issue.

Councilmember Hiller stated negotiations need to move forward to bring a resolution to the matter.

Councilmember Everhart asked for clarification as to why the City would repeal domestic battery cases, and turn around and pay the County to prosecute domestic battery cases. She questioned the need to offer money to the District Attorney's office if they would essentially have to prosecute the misdemeanor domestic battery cases if the ordinance is repealed.

Councilmember Manspeaker asked the City Manager when he discussed the issue with the District Attorney. He stated there is no guarantee the District Attorney would act appropriately once the Council repeals Domestic Battery from the UPOC ordinance, as well as, he is concerned with the City setting a precedence by providing the District Attorney with additional funding when there is funding already in place to prosecute domestic battery cases until 2012.

Daniel R. Stanley reported he discussed the issue with the District Attorney at the end of September; however, there is still no guarantee the District Attorney will do the right thing. He stated he hopes the County would step up to their responsibilities and resume prosecution of domestic battery cases. He noted the Council has the option to remove the funding provision.

Councilmember Harmon called the question.

The motion to adopt the ordinance carried. Mayor Buntin voted "yes." Councilmembers Everhart, Wolgast and Harmon voted "no." (7-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Manspeaker, Archer, Gray and Mayor Buntin -7. Noes: Everhart, Wolgast and Harmon -3.

ORDINANCE NO. 19652 introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Sections 10.15.010, 10.15.020 and 10.20.170 and creating Section 10.20.127 and Section 10.05.080, all concerning the adoption of the Standard Traffic

Ordinances 2011 and specifically repealing said original sections, as well as, Section 10.20.200 and Article 4 of Chapter 10.20 in their entirety placed on first reading October 4, 2011 was again presented.

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

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Manspecker, Archer, Gray, Harmon and Mayor Bunten -10.

Mayor Bunten requested to consider agenda item 6C next because Councilmember Alcalá is ill and needs to leave as soon as possible.

RESOLUTION NO. 8388 introduced by Councilmember Bob Archer, authorizing the City Manager to enter into negotiations with Shawnee County officials concerning the prosecution of domestic battery cases was presented.

Councilmember Archer gave the staff report.

Councilmember Harmon reported the City Manager has clearly entered into negotiations with the District Attorney to prosecute domestic battery cases through various emails. He suggested deleting all references made to funding in the resolution, encouraging an agreement between the City Manager and the District Attorney without exchanging funds; however, if funds are needed then the City Manager could make a funding request to the Council for authorization.

Councilmember Harmon moved to strike verbiage on Line 24 beginning with the word “with” and strike Line 25 in its entirety. The motion seconded by Councilmember Everhart carried. Councilmembers Alcalá, Manspecker and Archer voted “no.” (6-3-0)

Councilmember Archer noted the District Attorney is aware the City is willing to pay \$125,000 because it is outlined in the resolution.

Councilmember Hiller stated the process could be done more cost effectively and encouraged Councilmembers to share any necessary information with the City Manager that may be helpful in negotiations.

Councilmember Harmon moved to approve the resolution as amended. The motion seconded by Councilmember Gray carried unanimously. (9-0-0)

Councilmember Alcala left the meeting.

ORDINANCE NO. 19653 introduced by Interim City Manager Daniel R. Stanley, concerning controlled substances, amending City of Topeka Code Sections 9.50.010, 9.50.020, 9.50.030, 9.50.040, 9.50.050, 9.50.060 and 9.50.070 and specifically repealing said original sections placed on first reading October 4, 2011 was again presented.

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

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

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

ORDINANCE NO. 19654 introduced by Councilmember Denise Everhart, amending City of Topeka Code Section 5.90.100 concerning private security guard license fees and specifically repealing said original section placed on first reading October 4, 2011 was again presented.

Councilmember Everhart gave the staff report.

Kiley Rice, Fraternal Order of Police representative spoke in support of the ordinance.

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

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

ORDINANCE NO. 19655 introduced by Councilmember Karen Hiller designating a portion of the Crosby Place Parking Garage as temporarily exempt from the provisions of K.S.A. 41-719(c) and Topeka Municipal Code Section 9.15.020(d) placed on first reading October 4, 2011 was again presented.

Councilmember Hiller gave the staff report.

Councilmember Hiller 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, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Absent: Alcalá -1.

ORDINANCE NO. 19656 introduced by Deputy Mayor John Alcalá authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for NOTO's BBQ and Blues event on October 23, 2011, and to designate the public parking lot at Veteran's Park as exempt from the provisions of K.S.A. 41-719(c) and TMC 9.15.020(d) placed on first reading October 4, 2011 was again presented.

Councilmember Ortiz gave the staff report.

Councilmember Ortiz moved to adopt the ordinance. 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, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -9. Absent: Alcalá -1.

NO Retail Cereal Malt Beverage License applications were presented.

A FINAL PLAT for Homestead Addition Subdivision located east of I-470 Highway, between SW Drury Lane and SW 17th Street, in the City of Topeka, Shawnee County, Kansas was presented. (P10/25)

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

Angela Sharp, Bartlett and West Engineers appeared for questions.

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

ORDINANCE NO. 19657 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 generally bound on the west by I-470, on the east by SW Arrowhead Road (extended), on the south by SW 17th Street, and on the north by SW Drury Lane from “R-1” Single Family Dwelling District and “O&I-2” Office and Institutional District ALL TO “PUD” Planned Unit Development District (“O&I-2” use group, with limited “C-1” and “C-2” use group uses) placed on first reading October 4, 2011 was again presented. (PUD10/11)

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

No exparte communications were declared.

Councilmember Harmon 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, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -9. Absent: Alcala -1.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, authorizing Improvement Project No. T-841016.00 which provides for alley repair at various locations throughout the City, as more specifically described herein was presented for first reading.

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

Daniel R. Stanley, Interim City Manager requested to add a settlement proposal concerning Shirley Llizo to the October 18, 2011 Council agenda.

Councilmember Wolgast moved to add a settlement proposal for Shirley Llizo to the October 18th Council agenda. The motion seconded by Councilmember Archer carried unanimously. (8-0-0)

Councilmember Hiller expressed concern with the proposed pay rates of Parks and Recreation Department employees being transferred to Shawnee County. She requested Terry Bertels, Topeka Parks and Recreation Director or John Knight, Shawnee County Parks and Recreation Director provide the Council with an update on the consolidation.

Daniel R. Stanley stated they would schedule a work session and provide an update to the Council.

Councilmember Ortiz expressed concern with the increased workload of the City Clerk's office staff. She requested the City Manager consider allowing the part-time City Council office assistant to work additional hours while the Council Assistant is out on medical leave. She reported the Fire Department Open House event was a great success and encouraged the City to continue educating the community on Fire Safety.

Councilmember Everhart expressed concern with the City-County Parks and Recreation Department Consolidation Board appointees. She stated appointees have expressed concern with the need for meetings to be open to the public.

Councilmember Manspeaker expressed the importance of all appointees attending the Parks and Recreation Consolidation Board meetings.

Councilmember Archer thanked Fire Chief Bradshaw and IAFF Union members for hosting a great Open House event at the Fire Administration building.

Councilmember Gray commented on the great feedback he has received from Kevin Rooney concerning the City-Council Parks and Recreation Department consolidation. He stated he is relieved the Council was able to come to some sort of resolution regarding the domestic battery issue.

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:04 p.m.

Brenda Younger
City Clerk