

Council Minutes – November 1, 2011

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 1, 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, Gray and Harmon -7. Mayor William W. Bunten presided -1. Absent: Councilmembers Alcalá and Archer -2.

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

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

THE CONSENT AGENDA was presented as follows:

DENIAL OF TORT CLAIM for Charles Griffin in the amount of \$500,000 for injuries suffered in lost wages and diminished future income resulting from and incurred and anticipated medical expenses required by a fall into an allegedly uncovered water meter box at 7430 SW 26th Court on January 19, 2010 was presented.

DENIAL OF TORT CLAIMS for Rebecca and her minor child, Shannon Esopi in the combined amount of \$761,017.21 (\$532,198.21 and \$228,819, respectively) for past and future medical expenses; pain and suffering; mental anguish; disfigurement; permanent disabilities; lost wages; and diminished earning capacity attributable to an accident in which they were passengers in a vehicle struck from behind by a City truck operated by a Water Division employee on July 29, 2009 was presented.

DENIAL OF TORT CLAIM for former Deputy Fire Chief Kathy Petty in the total amount of \$1,310,918 for alleged sex discrimination and retaliatory conduct in connection with the elimination of a Deputy Chief position as part of a budget-cutting reduction in force operation in 2010; and the failure to re-hire her to a position for which she felt qualified in 2011

was presented.

MINUTES of the regular meeting of October 25, 2011 were presented.

A Dance Hall License application for Tequila's located at 2911 SW 29th Street was presented.

Councilmember Wolgast moved to approve the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously. (7-0-0)

APPROVAL of a Settlement Proposal in the amount of \$132,500 from the City of Topeka and request for the City Council to authorize the settlement of Llizo vs. City of Topeka Case No. 11-2302 under the terms and conditions negotiated and agreed upon by the parties was presented.

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

Councilmember Harmon moved to approve the settlement proposal. The motion seconded by Councilmember Ortiz failed. Councilmembers Everhart, Manspeaker and Gray voted "no." (4-3-0)

CHARTER ORDINANCE NO. 104 introduced by Interim City Manager Daniel R. Stanley, repealing City of Topeka Code Section A5-16, A5-17, A5-18, and A5-19, as established by Charter Ordinance No. 1, all concerning abandoned cemeteries placed on first reading October 25, 2011 was again presented.

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

Councilmember Ortiz moved to adopt the charter ordinance. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted "yes." (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Everhart, Wolgast, Manspeaker, Gray, Harmon and Mayor Bunten -8. Absent: Alcala and Archer -2.

CHARTER ORDINANCE NO. 105 introduced by Interim City Manager Daniel R. Stanley, repealing City of Topeka Code Section A3-1, as established by Charter Ordinance No. 58, concerning consumption of alcoholic liquor on certain municipal property placed on first reading October 25, 2011 was again presented.

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

Councilmember Ortiz moved to adopt the charter ordinance. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted “yes.” (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Everhart, Wolgast, Manspeaker, Gray, Harmon and Mayor Bunten -8. Absent: Alcala and Archer -2.

CHARTER ORDINANCE NO. 106 introduced by Interim City Manager Daniel R. Stanley, repealing City of Topeka Code Section A15-4, as established by Charter Ordinance No. 28, concerning the cash basis law placed on first reading October 25, 2011 was again presented.

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

Councilmember Ortiz moved to adopt the charter ordinance. The motion seconded by Councilmember Wolgast carried unanimously. Mayor Bunten voted “yes.” (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Everhart, Wolgast, Manspeaker, Gray, Harmon and Mayor Bunten -8. Noes: Alcala and Archer -2.

A PROJECT BUDGET in the amount of \$2,947,500 and ORDINANCE NO. 19666 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 placed on first reading October 25, 2011 was again presented.

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

Councilmember Wolgast moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Everhart carried. Councilmember Manspeaker voted “no.” (6-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Everhart, Wolgast, Gray and Harmon -6. Noes: Manspeaker -1. Absent: Alcala and Archer -2.

A PROJECT BUDGET in the amount of \$2,153,640 and ORDINANCE NO. 19667 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 placed on first reading October 25, 2011 was again presented.

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

Councilmember Wolgast moved to approve the project budget and adopt the ordinance. The motion was seconded by Councilmember Ortiz.

Councilmember Gray asked why the project would need Council approval if the Kansas Department of Transportation (KDOT) and Mars Company, Inc., is fully funding the project.

Daniel R. Stanley stated the project would be jointly funded by KDOT and Mars Company, Inc., and approval of the agreement between the City and KDOT would be required to allow for the reimbursement of project costs. He noted the City would be responsible for the design and specifications of the project.

The motion to approve the project budget and adopt the ordinance carried. Councilmember Manspeaker voted “no.” (6-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Everhart, Wolgast, Gray and Harmon -6. Noes: Manspeaker -1. Absent: Alcala and Archer -2.

A DEMOLITION PERMIT APPEAL of the structures located at 209 and 211 SW 6th Avenue in the City of Topeka pursuant to City Code 80-4 was presented.

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

Councilmember Ortiz moved to approve the demolition permit appeal based on the determination there is no feasible and prudent alternatives to the proposed demolitions and that planning to minimize harm to the surrounding historic environs has been made. The motion was seconded by Councilmember Gray.

Councilmember Manspeaker asked what is the proposed use of the property.

David Thurbon, Planning Department Director stated the property would house a new Kansas Highway Patrol office.

The motion to approve the demolition permit appeal based on the determination there is no feasible and prudent alternatives to the proposed demolitions and that planning to minimize harm to the surrounding historic environs has been made carried unanimously. Mayor Buntun voted “yes.” (8-0-0)

A DEMOLITION PERMIT REQUEST submitted by Hunter Glen, L.L.C., for properties located at 926, 928, 930 and 934 S. Kansas Avenue, and within the 500 foot historical environs established by the State of Kansas for the Memorial Building, the Gordon Building, and the Tinkham-Veale Building, all listed on the Register of Historic Kansas Places and the National Register of Historic Places was presented.

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

Councilmember Gray spoke in support of the demolition permit request and stated the buildings have been vacant for some time and have not generated any revenue. He stated he believes the demolition would improve the appearance of the downtown area.

Councilmember Wolgast stated he believes unless there is a plan in place to improve the property the Council should not approve the demolition permit request for the sake of demolishing buildings.

Councilmember Gray reported the buildings are not of historical value; however, the buildings are located within historic environs. He stated it is irrelevant there are no plans in place by the property owner for improvements because that issue directly relates to property owner rights and should not effect the Council's decision on the request.

Councilmember Manspeaker stated it is important to protect the historical element of the downtown area and in his opinion, by demolishing the buildings it takes away from the historic character of the downtown area.

Daniel R. Stanley stated the role of the Council is to evaluate if there are any feasible and prudent alternatives to the demolition and planning was done to minimize harm to the surrounding historic environs. He noted Council approval would be required for all proposed improvements by the property owner at a later date.

Councilmember Hiller stated she supported the previous demolition request because the developer had demonstrated they have the best interest of downtown revitalization in mind; however, this property owner allowed the property to become vacant and rundown. She asked if the Council could conditionally approve the demolition request; or if the Council disapproves the demolition request would disapproval cause the Topeka Landmarks Commission recommendation to stand, allowing time for the downtown plan to take shape and provide an opportunity for the developer to participate in the plan.

Councilmember Harmon asked if the applicant would have cause for legal action against the City if the Council denies the demolition request infringing on the property owner's rights.

Catherine Walter, Acting City Attorney stated the applicant would have the option to file an appeal.

Councilmember Harmon moved to approve the demolition permit appeal based on the determination there is no feasible and prudent alternatives to the proposed demolitions and that

planning to minimize harm to the surrounding historic environs has been made. The motion was seconded by Councilmember Gray.

Vernon Jarboe, attorney for the applicant reported the property owner plans to demolish the buildings and plant grass on the property until he determines the best use for the property. He stated there is no feasible and prudent way to restore the buildings and the applicant believes there would be a better chance to rehabilitate the property if it is vacant of structures.

Councilmember Hiller stated she has not been provided with any evidence that the property owner has tried to find an occupant for the building or provide an alternative plan for the property.

Councilmember Gray noted the Council recently approved \$1 million for the improvement of the downtown area and does not understand why the Council would not approve the demolition request and support continued improvements to the downtown area.

Councilmember Manspeaker referenced the Topeka Landmarks Commission minutes and stated there have been many alternative property use ideas presented to the owner.

Councilmember Hiller noted she has not been provided with any paperwork outlining structural problems with the buildings.

Mayor Bunten reported the property owner has been unsuccessful in finding an occupant for the buildings, and as a rule, the Topeka Landmarks Commission denies most demolition requests located within historic environs. Mayor Bunten asked the City Attorney to clarify the voting requirements; and questioned if the item should be deferred to allow the entire Council to be present to vote on this important issue.

Catherine Walter stated approval of the demolition permit request would require a majority vote of the Governing Body present at the Council meeting.

Councilmember Ortiz made a substitute motion to defer the demolition request for one week. The motion was seconded by Councilmember Gray.

Councilmember Hiller reported over the past five years there have been eight demolition requests, and the Topeka Landmarks Commission has approved only two, demonstrating that the Commission thoroughly researches each request.

Councilmember Manspeaker expressed concern with deferring the demolition request and questioned if it was the result of a political stance instead of the need for the Council to make an informed policy decision.

The substitute motion to defer for one week carried. Councilmembers Hiller, Wolgast and Manspeaker voted “no.” Mayor Bunten voted “yes.” (5-3-0)

ORDINANCE NO. 19668 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of October 10, 2011, through October 16, 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 Everhart carried unanimously. (7-0-0)

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

No Retail Cereal Malt Beverage License Applications were presented.

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 1815 SW 9th Street from “M-1” Two Family Dwelling District TO “MS-1” Medical Service District was presented for first reading. (Z11/19)

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

Councilmember Hiller thanked Ted Mize and Bartlett & West Engineers, Inc., employee volunteers for painting the fire hydrants located west of SW Wanamaker between SW 24th and 29th Streets. She encouraged the community to attend the 2nd Annual Fiber Artists Bazaar at the First Friday Art Walk on November 4, 2011 at the Potwin Presbyterian Church.

Councilmember Ortiz reported the East Topeka South Neighborhood clean up event was a great success. She wished Councilmember Alcala well during his extended illness.

Councilmember Everhart expressed concern with ongoing street improvement issues on SE 37th Street and asked Public Works staff members to follow up on the matter.

Councilmember Manspeaker reported he rode with the Topeka Police Department Violent Crime Unit and commended them for their efforts in working to reduce violent crimes in the community.

Councilmember Gray stated he looks forward to continued discussion on the demolition request for buildings located at 926, 928, 930 and 934 S. Kansas Avenue at next week's Council meeting.

Mayor Bunten expressed concern with the importance of having the entire Governing Body vote on certain issues whenever possible to make certain all areas of the City are being represented.

Councilmember Ortiz moved to adjourn the Council meeting. The motion seconded by Councilmember Gray carried unanimously. (7-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 6:59 p.m.

Brenda Younger
City Clerk