

Council Minutes – December 6, 2011

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 6, 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, Manspeaker, Archer, Gray and Harmon -9. Mayor William W. Bunten presided -1.

AFTER THE MEETING was called to order, Pastor Katie Harder, First Lutheran Church gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Gary Yager to the Downtown Business Improvement District Advisory Board for a term ending December 31, 2013 was presented.

BOARD APPOINTMENT recommending the re-appointment of Jim Parrish to the Downtown Business Improvement District Advisory Board for a term ending December 31, 2013 was presented.

APPROVAL of Workers' Compensation Settlement for Water Pollution Control (WPC) employee, Donald Fincham, in the amount of \$24,868.58, for permanent partial impairment of his cervical spine from injuries suffered in a lifting incident of April 10, 2008 was presented.

MINUTES of the regular meeting of November 29, 2011 were presented.

A Dance Hall License application for Los Charros located at 4111 S.W. Gage Center, was presented.

An Open After Midnight License application for Blue Moose located at 3030 S.W. Wanamaker Road, was presented.

Councilmember Wolgast moved to approve the consent agenda. The motion seconded by Councilmember Archer carried unanimously. (9-0-0)

ORDINANCE NO. 19676 introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Sections 5.10.020 and 9.15.300, concerning alcohol sales and tax and specifically repealing said original sections placed on first reading November 29, 2011 was again presented.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Manspeaker carried unanimously. (9-0-0)

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

AN ORDINANCE introduced by Councilmembers Karen Hiller, Sylvia Ortiz and Richard Harmon, sitting as the Public Health and Safety Committee, amending City of Topeka Code Section 8.35.070 concerning fireworks and specifically repealing said original section placed on first reading November 29, 2011 was again presented.

Councilmember Ortiz gave the staff report and stated she has received numerous complaints over the years relating to the safety of the elderly and pets, as well as, damage to residential properties. She stated the nine day time period to discharge fireworks is too long and she encouraged the Council to find a compromise in reducing the number of days fireworks could be discharged. She noted a decision should be made before the firework vendors begin ordering supplies in January.

Greg Bailey, Fire Inspector reported some changes were made in 2008 regarding the “Safe and Sane” brand of fireworks; however, residents could still purchase more powerful

fireworks inside Shawnee County limits. He stated he understands the concern with the loss of revenue; however, he is more concerned with the safety of citizens.

Mayor Bunten stated the ordinance would amend the time period to discharge fireworks from nine days to one day within city limits.

John Marietta expressed concern with the proposed time period of three days to buy fireworks and one day to discharge fireworks. He stated he believes the community should be allowed a longer time period to celebrate the holiday. He stated he would support amendments that are reasonable for both the consumer and the retailer, and his vendors would be willing to distribute safety information to consumers.

Councilmember Ortiz stated the church groups she spoke with who sell fireworks as a fundraiser were willing to accept a three day time period.

Brent Brown stated he concurs with John Marietta and believes the four day time limit would have a substantial loss of revenue for fundraising groups. He spoke in support of reducing the time period by two days (eliminating June 27th and July 5th) and distributing safety education material to consumers.

Lonnie Basse thanked the Council for their time and openness to comments and suggestions. He stated the key issue is community safety and all firework vendors support this effort.

Councilmember Gray thanked Councilmember Ortiz for presenting the ordinance; however, he would not support the current amendments as presented because many small organizations use the sale of fireworks as fundraisers. He stated the amendments would reduce revenue; restrict free market; and be completely unenforceable.

Councilmember Manspeaker asked if there was a difference in the type of fireworks being discharged in regards to safety; and how enforceable would the ordinance be.

Greg Bailey stated there is not a significant difference in the fireworks labeled “Safe and Sane” and the more high-powered fireworks sold in the County. He reported the problem stems from consumers combining the different types of fireworks, creating a more dangerous product with a much more amplified sound.

Ron Miller, Police Chief stated the amendment would present an enforcement problem. He stated he supports the basic concept; however, the language is not specific on what court would process the destruction order and how it would be determined if a firework is considered illegal. He reported from June 27, 2011 to July 5, 2011 the Police Department responded to 436 firework complaints, of those complaints, 316 were reported during the legal time period to discharge fireworks, and the complaints were not given priority unless it involved an injury.

Councilmember Manspeaker expressed concern with the unintended financial consequences of lost revenue that may result in reducing the amount of days available to sale and discharge fireworks.

Councilmember Harmon moved to adopt the ordinance. The motion was seconded by Councilmember Ortiz.

Councilmember Alcala reported he has received many complaints from constituents; however, each neighborhood is different. He stated he would not support the ordinance because he feels it is too restrictive and there is no way to enforcement it. He encouraged vendors to increase their efforts in educating the public about firework safety.

Councilmember Hiller distributed amendments to the ordinance and suggested working with citizens in generating ideas for enforcement. She stated an additional \$100 fee would be manageable by all groups.

Councilmember Hiller made a substitute motion to amend the ordinance to delete the word “permissible” and insert the word “consumer” on line 80; delete the statement “on July 4th from 8:00 A.M. to 11:50 P.M.” on line 106; delete the word “27th” on line 53; delete the words “July 5th” on line 54; delete the word “2nd” and insert the paragraph “as follows: (i) Between the hours of 8:00 a.m. and 10:00 p.m. on June 28th, 29th, 30th, July 1st and July 2nd of each year. If any of these dates should fall on a Saturday, discharge will be allowed until 11:00 p.m. on that day. (ii) Between the hours of 8:00 a.m. and 11:00 p.m. on July 3rd and 4th of each year.” on line 55. The motion was seconded by Councilmember Wolgast.

Councilmember Ortiz stated the issue is not how consumers obtain fireworks or compliance by vendors, the issue is the manner in which the consumer is discharging fireworks and time frame.

Councilmember Wolgast stated he appreciates the comments regarding fireworks; however, he believes most complaints arise from the misuse of fireworks by the consumer. He expressed concern with the enforcement of the ordinance and noted it would be almost impossible.

David Starkey, City Attorney raised a point of order and stated the incorrect fire code is referenced on lines 93 and 105 of the ordinance. He requested the Council amend the ordinance to replace the word “Uniform” with the word “International” on lines 93 and 105 of the ordinance.

Councilmember Hiller accepted the suggested amendment as outlined by the City Attorney. The second concurred.

Councilmember Ortiz stated the process has been very informative and vendors are happy to educate the public about safety. She thanked the Public, Health and Safety Committee for their work on the ordinance.

Councilmember Everhart stated the majority of her constituents agree the time period should be shortened; however, she asked why the hours on some days are being extended.

Councilmember Hiller stated the hours were extended because it does not get dark until 9:00 p.m. which is realistically when people discharge fireworks.

Councilmember Ortiz stated she would support eliminating two days because it would be the first step in addressing the issue; however, she believes constituents would still prefer three days for sales and one day for discharge.

Councilmember Harmon stated he would not support the substitute motion to amend the ordinance because it does not address the concerns expressed by constituents.

Councilmember Hiller stated the ordinance is a concern for her constituents and she is open to discussion regarding a shorter time period for discharging fireworks.

The substitute motion to amend the ordinance to delete the word “permissible” and insert the word “consumer” on line 80; delete the statement “on July 4th from 8:00 A.M. to 11:50 P.M.” on line 106; delete the word “27th” on line 53; delete the words “July 5th” on line 54; delete the word “2nd” and insert the paragraph “as follows: (i) Between the hours of 8:00 a.m. and 10:00 p.m. on June 28th, 29th, 30th, July 1st and July 2nd of each year. If any of these dates should fall on a Saturday, discharge will be allowed until 11:00 p.m. on that day. (ii) Between the hours of

8:00 a.m. and 11:00 p.m. on July 3rd and 4th of each year.” on line 55 failed. Councilmembers Everhart, Manspeaker, Archer, Gray and Harmon voted “no.” (4-5-0)

Councilmember Harmon made a substitute motion to defer the ordinance until December 20, 2011. The motion was seconded by Councilmember Ortiz.

Councilmember Alcalá stated deferring the ordinance for two weeks may create issues for the vendors who want to start purchasing fireworks for the 2012 season. He made a friendly amendment to defer the ordinance for one week.

Councilmember Harmon accepted the friendly amendment. The second concurred.

The substitute motion to defer the ordinance for one week carried. Councilmembers Manspeaker and Gray voted “no.” (7-2-0)

ORDINANCE NO. 19677 introduced by Interim City Manager Daniel R. Stanley, concerning the Parks and Recreation and Golf Course Advisory Boards, amending City of Topeka Code Section 2.05.010 and specifically repealing said original section, as well as, repealing Sections 2.90.010 through 2.90.080 and Sections 11.30.050 through 11.30.120 placed on first reading November 29, 2011 was again presented.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Archer moved to adopt the ordinance. The motion seconded by Councilmember Gray carried unanimously. (9-0-0)

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

RETAIL Cereal Malt Beverage License Applications were presented for the following:

BUSINESS NAME
Tammy’s On The Go
Grover’s Smokehouse

ADDRESS
3335 SW Gage Boulevard
1217 SW Gage Boulevard

Councilmember Ortiz moved to approve the Retail Cereal Malt Beverage License applications as presented. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

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

Councilmember Ortiz commended Washburn Vocational Technical School for repairing a car and donating it to a family in need. She noted the school plans to donate four to five cars annually to families in need.

Councilmember Everhart thanked Randy Speaker, Deputy City Manager and the Public Works Department for their quick response in resolving the SE 37th Street improvement project issues.

Councilmember Manspeaker encouraged citizens to adopt a family this holiday season through the United Way Christmas Bureau program.

Councilmember Archer announced the Red Stocking Breakfast event to benefit children on December 10th at Carlos O’Kelly’s restaurant located at 3425 S. Kansas Avenue. He stated there would be a fun center for the children and celebrity servers.

Councilmember Gray announced he would be participating in the Red Stocking Breakfast event and encouraged Councilmembers to participate in the benefit.

Ted Mize appeared to speak under public comment.

Councilmember Alcalá moved to adjourn the Council meeting. The motion seconded by Councilmember Gray carried unanimously. (9-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:13 p.m.

Brenda Younger
City Clerk