

Council Minutes – December 13, 2011

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

AFTER THE MEETING was called to order, Pastor Suz McIver, Director of Volunteer Services for Midland Care and Police Chaplain 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 Murl Riedel to the Topeka Landmarks Commission for a term ending December 31, 2014 was presented.

BOARD APPOINTMENT recommending the appointment of Michelle Cuevas-Stubblefield to the Topeka Planning Commission for a term ending December 31, 2014 was presented.

BOARD APPOINTMENT recommending the appointment of Shawn Geil to the Topeka Sustainability Advisory Board to fill an unexpired term ending February 28, 2013 was presented.

MINUTES of the regular meeting of December 6, 2011 were presented.

Dance Hall License applications were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
The Den	1116 NW Lower Silver Lake Road
Jeremiah Bullfrog's	4115 SW Huntoon
Kansas Expocentre	One Expocentre Drive
Ruffneck's	917 N. Kansas Avenue
Skinny's	4016 SW Huntoon

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

ORDINANCE NO. 19678 introduced by Councilmembers Karen Hiller, Sylvia Ortiz and Richard Harmon, sitting as the Public Hearth 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.

Councilmember Harmon distributed amendments to the ordinance. He stated he believes narrowing the dates that allow the sale of fireworks would be unfair to the vendors that have already ordered their products. He also noted Shawnee County would still allow nine (9) days for firework sales so they would be accessible to any person within the city. The amendments were as follows:

- Delete the statement “on July 4th from 8:00 a.m. to 11:59 p.m.” and insert the statement “(i) Between the hours of 8:00 a.m. and 10:00 p.m. on July 2 and July 3 of each year. (ii) Between the hours of 8:00 a.m. and 11:00 p.m. on July 4 of each year.” on Line 52
- Delete the word “permissible” and insert the word “consumer” on Line 85
- Delete the words “as described in the Uniform Fire Code” on Line 97
- Delete the words “June 27th” and “July 2nd” and insert the word “June 27” on Line 108
- Delete the word “4” and insert the word “5” on Line 109
- Delete the word “Uniform” and insert the word “International” on Line 110
- Delete the word “permissible” on Line 111
- Delete the statement “attach a flier to each sale advising the discharge of fireworks is lawful in the City of Topeka only on July 4th from 8:00 a.m. to 11:59 p.m.” and insert the statement “give each purchaser of fireworks at the time of sale a written notice stating the following: “The discharge of fireworks is lawful in the City of Topeka on July 2 and July 3 from the hours of 8:00 a.m. to 10:00 p.m. and on July 4 from 8:00 a.m. to 11:00 p.m. Discharge on any other day or during any other times is unlawful.”

Councilmember Gray expressed concern with the enforcement of discharging fireworks on the six (6) days the fireworks are for sale but unlawful to discharge.

Councilmember Harmon encouraged citizens to respect the law; however, it is an inevitable problem and enforcement would always be an issue.

Councilmember Manspeaker noted Shawnee County would maintain the current timeline for the sale of fireworks to be nine (9) days total within the county limits.

Councilmember Gray stated he would support the amendments because the dates allowing the sale of fireworks would remain the same supporting anticipated revenue by vendors and the City.

Councilmember Harmon moved to amend the ordinance as removed from the Policy and Finance Committee consistent with the amendments distributed. The motion was seconded by Councilmember Wolgast.

Councilmember Alcalá made a substitute motion to amend Line 55 to delete the words “11:00 p.m.” and insert “12:00 midnight”. The motion seconded by Councilmember Gray carried. Councilmembers Manspeaker and Harmon voted “no.” (7-2-0)

Councilmember Alcalá made a substitute motion to amend Line 53 to add the date “July 1”. The motion seconded by Councilmember Archer carried. Councilmembers Hiller, Manspeaker, Gray and Harmon voted “no.” (5-4-0)

Councilmember Hiller made a substitute motion to amend Line 145 and insert the statement “Discharge of fireworks which do not make an audible effect which is considered loud by the neighbors and which do not rise above 12 feet into the air will not be considered a violation of this ordinance at any time, provided they are discharged on property owned by or legally controlled by the person discharging said fireworks.” The substitute motion died due to a lack of a second.

Jason Marietta, Jake's Fireworks reported he assisted with the crafting of the State of Kansas Fireworks Act and noted safety is their No. 1 concern. He stated he believes the amendment would force citizens to discharge fireworks in unsafe areas; limits peoples ability to celebrate on a weekend; and be almost impossible to enforce. He suggested the time period be shortened by two days eliminating July 27th and July 5th. He asked the Council to consider regulations in neighboring states and reported Oklahoma allows discharge of fireworks beginning June 15th and Missouri allows discharge beginning June 20th.

John Cavender, Cavender Fireworks stated safety is their main concern and requested the time period to sell and discharge fireworks run in conjunction with Shawnee County. He also stated he believes enforcement would be very tough.

Dr. Janice Barton spoke in favor of celebrating Independence Day and discharging fireworks only on July 4th. She stated in her opinion the fireworks cause noise pollution and debris. She reported those attending the public hearing supported a reduction in discharge time and disagrees that people will not obey the law. She expressed concern with fireworks frightening animals forcing owners to sedate their animals to keep them safe.

Susan Goodwin stated she concurs with Dr. Barton. She stated it was her understanding from the committee meetings there would be a reduction in the amount of days a person could sell or discharge fireworks. She stated this is a city and people should not be allowed to discharge fireworks for an extended period of time.

Brent Brown stated he supports the ordinance as amended.

Bruce Bower expressed concern with the increase of animal intake at the humane society during the month of July. He stated the extended firework season increases the holding time for

all rescue animals received at the Human Society and disrupts the adoption of animals. He asked the Council to consider how fireworks affect animals and children.

Teresa Miller expressed concern with the nine (9) day time period to discharge fireworks and stated she believes three (3) days would be a sufficient amount of time to celebrate the holiday. She stated in her neighborhood the majority of the people breaking the law are adults not children and reduction in the days to sell and discharge fireworks would ease enforcement for the Police Department. She suggested distributing safety information through Neighborhood Improvement Association newsletters and media outlets.

Rusty Watson stated the July 4th neighborhood celebrations have united his neighborhood and the majority of residents enjoy the holiday events. He stated he supports the current ordinance; however, if the days are reduced then he would suggest six (6) days to make certain a weekend day would always be included in the discharge timeline.

Councilmember Alcalá raised a point of order. He clarified his amendments should also be applied to Line 119 by inserting the date “July 1,” and Line 121 by inserting the time “12:00 midnight” of the ordinance.

Upon hearing no objections, Mayor Bunten announced the amendments would include Lines 119 and 121 of the ordinance.

Councilmember Hiller stated if the amendments fail, she would be willing to amend the discharge timeline to seven (7) days.

Mayor Bunten stated the motion was to adopt the amendments.

Councilmember Archer clarified that the action of the Council would be to adopt Councilmember Harmon’s and Councilmember Alcalá’s amendments.

The motion to adopt the ordinance as amended carried. Councilmembers Manspeaker and Gray voted “no.” (7-2-0)

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

A FINAL PLAT for Shadow Hill Company, a Kansas partnership as owner and Menard, Inc., as contracted purchaser/developer of property located east of SW Kingsrow Road extended between SW 21st Street and SW 17th Street extended was presented. (P11/5)

Randy Speaker, Deputy City Manager gave the staff report.

Angela Sharp, Bartlett & West Engineers appeared to answer questions.

Councilmember Gray moved to approve the final plat. The motion seconded by Councilmember Wolgast carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

RESOLUTION NO. 8398 introduced by Interim City Manager Daniel R. Stanley, declaring the entire boundary of the City of Topeka and rescinding City of Topeka Resolution No. 8304 was presented.

Randy Speaker, Deputy 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.” (10-0-0)

ORDINANCE NO. 19679 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of November 14, 2011, through November 27, 2011, and enumerating said expenditures therein was presented for first and final reading.

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:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Hooters	6100 SW 10 th Street
Lupita's	732 S. Kansas Avenue

Councilmember Wolgast 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)

RESOLUTION NO. 8399 introduced by Interim City Manager Daniel R. Stanley, in accordance with Section 18.70.030(c)(11) of the Topeka Municipal Code approving a Conditional Use Permit to establish a public utility structure for a sanitary sewer pump station on property currently zoned "R-1" Single Family Dwelling District and located at 333 NE Spruce Lane in the City of Topeka, Kansas was presented. (CUII/2)

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Alcalá received an email from an opponent of the conditional use permit. He stated they live in close proximity to the pump station which emits an odor; however, the Army Corps of Engineers would not allow the City to rebuild the pump station in the same location.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted "yes." (10-0-0)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, repealing Section 3.25.120 of the Code of the City of Topeka concerning the Golf Course Improvement Fund was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, creating Article 4 of Chapter 12.35 concerning driveway approaches by the addition of City of Topeka Code Sections 12.35.110, 12.35.120, 12.35.130 and 12.35.140 was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Section 9.15.020, concerning alcohol in parks and public places and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, designating real property more specifically described herein as an historic landmark and presently zoned “O&I-2” Office and Institutional District and located at 1109 S. Topeka Boulevard in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading.

(HL11/02)

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 by providing for certain changes in zoning on property located on the west side of SW Burlingame Road, approximately 700 feet south of SW 42nd Street, from “R-1” Single Family Dwelling District TO “I-1” Light Industrial District was presented for first reading. *(Z11/28)*

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

Councilmember Hiller asked if there would be recognition given to City Parks and Recreation employees. She thanked employees for caring about the City's parks and community programs. She stated she understands the transition is still being worked out; however, she is concerned with the Parks and Recreation budget cuts being proposed by the County and suggested they gather public input on the issue. She stated she believes in the long-term the consolidation would result in a bigger and better Parks and Recreation Department once issues have been resolved.

Randy Speaker, Deputy City Manager stated when asked, the Parks & Recreation Department employees stated they would prefer not to have a recognition ceremony; however, he would ask them again.

Councilmember Alcala announced the North Topeka (NOTO) Art District is conducting art classes for children on Saturdays during the holiday season.

Councilmember Ortiz requested the City Manager send a letter to St. Francis Hospital representatives regarding the status of the land donation in Council District No. 9 for a new fire station.

Randy Speaker stated he recently requested an update from a member of the Hospital Board and would forward the information to the Council as soon as he receives it.

Councilmember Wolgast asked if a timeline has been established in regards to the request for proposal process for the City Manager position. He noted Mr. Stanley's contract expires at the end of January 2012.

Councilmember Alcala stated he spoke with Mr. Stanley and he is willing to extend his contract for a short period of time to allow the Council time to complete the hiring process. He reported he hopes to hire a City Manager by March 2012, and would be willing to schedule an

organizational meeting to discuss the request for proposal process and how the Council plans to move forward with the hiring process.

Councilmember Manspeaker stated he reviewed the half-cent sales tax road maintenance funding allocations for 2011 and noticed in the report there were many discrepancies in the projects planned. He asked for a thorough report of the projects that were accomplished to date and if goals were met.

Councilmember Gray commended Councilmember Manspeaker for reviewing the half-cent sales tax revenue fund. He reported the Red Stocking Breakfast raised \$20,000 to benefit children.

Ronald Lassiter appeared to speak under public comment.

Councilmember Alcala 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 7:35 p.m.

Brenda Younger
City Clerk