

## **Council Minutes – December 20, 2011**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 20, 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, Councilmember Wolgast gave the invocation.

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

Daniel R. Stanley, Interim City Manager requested to withdraw item 6D, a resolution concerning a lease purchase agreement with Johnson Controls, Inc., from the Council agenda to evaluate other alternatives.

Upon hearing no objections, Mayor Bunten announced item 6D would be withdrawn from the Council agenda.

Councilmember Wolgast requested to add a labor agreement between the City of Topeka and the Fraternal Order of Police to the Council agenda.

Upon hearing no objections, Mayor Bunten announced the labor agreement would be added to the Council agenda as item 7D under New Business.

THE CONSENT AGENDA was presented as follows:

DENIAL OF TORT CLAIM of William Morphis for \$10,494.85 in damages to his 1994 Ford F-150 business truck, including a ladder rack and tool boxes, from a fallen tree limb at 900 SW Jewell on July 30, 2011 was presented.

WORKERS' COMPENSATION SETTLEMENT for former Water Pollution Control employee, John Adame in the amount of \$32,802.34 for permanent partial impairment of his

lumbar spine from injuries suffered in a pump station fall on November 15, 2005 was presented.

MINUTES of the regular meeting of December 13, 2011 were presented.

Dance Hall License applications were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
American Legion Post 400	3029 NW Highway 24
Lazy Toad	5331 SW 22 <sup>nd</sup> Place, Suite 2
Skivies	921 S. Kansas Avenue

Councilmember Ortiz moved to approve the consent agenda. The motion seconded by Councilmember Hiller carried. Councilmember Gray voted “no.” (8-1-0)

#### A NOTICE OF PUBLIC HEARING

A PUBLIC HEARING for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of 2011 operating budget funds.

ORDINANCE NO. 19680 introduced by Interim City Manager Daniel R. Stanley, approving and adopting certain amendments to the operating budget for the City of Topeka for the year 2011 and appropriating the amounts for the purpose as set forth therein was presented for first and final reading.

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

Councilmember Wolgast moved to amend the ordinance to allocate \$50,000 of Transient Guest Tax revenue funds to Visit Topeka, Inc., and \$50,000 of Transient Guest Tax revenue funds to Heartland Park. The motion was seconded by Councilmember Ortiz.

Councilmember Wolgast stated the Transient Guest Tax revenue fund amount was higher than estimated for 2011 and in order for the funds to be allocated to the agencies the Council must specify the entity and approve the allocation.

Mayor Bunten asked if Heartland Park was originally allocated \$300,000.

Councilmember Wolgast stated Heartland Park originally requested \$350,000 and received \$300,000. He noted an additional \$50,000 would bring them closer to what they originally requested.

Councilmember Ortiz stated the Transient Guest Tax Committee approved 2011 funding allocations in October.

Councilmember Archer questioned how the \$100,000 was originally allocated.

Pam Simecka, Acting Budget and Finance Director stated the \$100,000 of Transient Guest Tax revenue funds was unanticipated funding generated in 2011.

Councilmember Archer stated he understands the allocation would be an added bonus for the entities; however, the Council would not know how the money would be used.

Pam Simecka stated the contracts for Visit Topeka, Inc., and Heartland Park stipulate parameters for the use of Transient Guest Tax revenue funds, as well as, they are required to report performance measures to the City Council.

Councilmember Manspeaker asked what amount the entities requested in 2010 versus 2011.

Pam Simecka reported Heartland Park requested \$350,000 for 2012 and were granted \$300,000; and Visit Topeka, Inc., requested \$1,100,000 and received \$960,000 plus an additional bid fund amount of \$150,000. She noted the City's charter ordinance states that Transient Guest Tax funds must be used for economic development.

Councilmember Archer asked where the \$100,000 would be absorbed if the ordinance is not approved.

Pam Simecka stated the amount would carry over to the 2012 budget.

Councilmember Wolgast stated the Council approved funding for Visit Topeka (\$960,000) and Heartland Park (\$300,000) then discovered staff estimated more revenue than what was published in the Topeka Metro News the allocations had to be reduced by \$84,850 to equal the amounts published; therefore, these funding allocations would restore the original requested fund amounts for each entity.

Councilmember Manspeaker asked if staff or the Council have spoken with Visit Topeka, Inc., or Heartland Park representatives.

Pam Simecka stated she has spoken with Olivia Simmons, Visit Topeka, Inc., President and CEO.

Councilmember Alcalá stated he would prefer a representative from each entity report to the Council what the increase funds would be used for.

Councilmember Alcalá made a substitute motion to defer the public hearing and ordinance until January 10, 2012. The motion was seconded by Councilmember Gray.

Pam Simecka reminded the Council that under Kansas law budget amendments must be approved before the end of the year. She suggested the Council amend the 2011 budget to remove the \$100,000 allocation from the Transient Guest Tax Revenue fund.

Councilmember Alcalá made a substitute motion to withdraw the \$100,000 Transient Guest Tax allocation from the 2011 City Operating Budget amendment. The motion seconded by Councilmember Gray carried. Mayor Bunten voted "yes." Councilmembers Everhart, Wolgast and Manspeaker voted "no." (7-3-0)

Councilmember Ortiz moved to close the public hearing and adopt the ordinance as amended. The motion was seconded by Councilmember Archer.

Councilmember Everhart asked why the funds have additional expenditures above and beyond what was budgeted for the year.

Pam Simecka listed the following transfers, as well as, a summary of the additional revenue received:

- Alcohol & Drug Safety Fund - Municipal Court needed additional funding for office remodeling.
- Metro Transit Authority –Topeka Metropolitan Transit Authority received \$150,000 more in property taxes from the mill levy.
- Workers’ Compensation – The allocation would give authority to pay additional claims.
- Group Health Insurance – The allocation of \$1,000,000 from the general fund.
- Risk Reserve – An estimate of \$1.6 million pay out for 2011 claims and create the liability to pay claims.
- Unemployment Compensation – The layoffs in 2010 created higher claims to be paid.

The motion to close the public hearing and adopt the ordinance as amended carried.

Mayor Bunten voted “yes.” Councilmember Manspeaker voted “no.” (9-1-0)

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

ORDINANCE NO. 19681 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 placed on first reading December 13, 2011 was again presented.

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

Councilmember Alcalá 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, Alcalá, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -9.

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 placed on first reading December 13, 2011 was again presented.

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

Councilmember Manspeaker asked how the City would determine if a homeowner is responsible for the cost of repairs.

Braxton Copley, Office of Utilities and Transportation Director stated the general rule is the homeowner is responsible for the cost of the repair to their driveway unless a culvert has failed. He stated generally a driveway approach should not threaten the public roadway; however, if it poses a public trip hazard like a sidewalk then repairs should be made.

Councilmember Gray asked for the definition of a public trip hazard.

Braxton Copley stated the City Construction Division Inspectors allow for reasonable judgment when citing a property owner; however, if there is more than a one inch lift it is considered a public hazard.

Councilmember Alcalá asked if the City is having issues with property owners refusing to maintain their driveways.

Braxton Copley stated staff is attempting to clarify three major points, (1) culverts are part of the City's storm sewer water system and valley gutters are immediately in front of driveways which is part of the water collection system and is the City's responsibility to maintain; (2) driveway approaches are the homeowner's responsibility to maintain; and (3) general mowing maintenance of the culverts is the homeowner's responsibility and it is the City's responsibility to clear any obstructions.

Councilmember Alcala stated he would not support the ordinance because he would like more clarity on the issue.

Councilmember Manspeaker asked if the property owner would be responsible to repair the driveway approach if there is a City road project being done in front of the driveway. He noted the public improvement project in his neighborhood created major problems.

Braxton Copley stated the City would repair the driveway approach if there is an improvement project being done because it would allow the City to tie the new valley gutter, which may vary in height, into the driveway approach.

Councilmember Manspeaker asked if the Sowers Court issues would be resolved if the ordinance is passed.

Braxton Copley stated the ordinance would not have an effect on Sowers Court because the project was an administrative policy decision which determined how to properly tie in the elevation of valley gutters to driveway approaches.

Councilmember Alcala asked if it would be the homeowner's responsibility to repair gutters; and how would it be different if there were issues with the water meter and the City had to tear up the driveway.

Braxton Copley stated if there is a differential created in elevation the City would tie in the driveway approach when restoring the site after a waterline breaks which would include the sidewalk, driveway and gutter. He noted the height has to be modified by the City in order for it to be replaced; however, if the curb and gutter can be put back into place at the same elevation of the old curb and gutter the City would not replace the driveway approach.

Councilmember Hiller asked if the ordinance would include cutback parking.

Braxton Copley stated there is a separate City Code section that deals with cutback parking.

Councilmember Everhart noted property owners would be notified by the City if a problem was identified in the same manner as the 50/50 Sidewalk Program.

Councilmember Alcalá expressed concern with driveway approaches being addressed on complaint basis. He stated the entire neighborhood block would be inspected to make sure all properties are in compliance, and those properties that are not would be required to make the repairs, and there would be some property owners that could not afford to make the repairs.

Councilmember Everhart asked who would pay if the City could not collect on driveway approach improvements.

Braxton Copley stated the City could not enforce repairs to driveway approaches; however, if there was a drainage problem in the street the City would partner with the homeowner to share the cost of repairs.

Councilmember Alcalá noted there is already an ordinance in place addressing the repair of driveways involving safety hazards.

Dave Starkey, City Attorney stated generally the City has a duty to maintain all properties located within right-of-ways; however, he would like an opportunity to research the matter further and report back to the Council.

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

Councilmember Hiller expressed appreciation to City staff for clarifying the issue and spoke in support of the ordinance. She stated she would prefer the City eliminate complaint driven inspections.



The motion to adopt the ordinance failed. Councilmembers Alcalá, Ortiz, Everhart, Manspeaker and Gray voted “no.” (4-5-0)

ORDINANCE NO. 19682 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 placed on first reading December 13, 2011 was again presented.

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

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

ORDINANCE NO. 19683 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of November 28, 2011, through December 4, 2011, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Manspeaker moved to adopt the ordinance. The motion seconded by Councilmember Alcalá 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.

APPROVAL of a Real Estate Purchase Agreement between the City of Topeka and Fillmore Street Apartments, L.L.C., for the purchase of property located at 1325 SW Fillmore in the amount of \$65,000 and specifically authorizing the Mayor to execute the agreement.

*(Contract No. 41779)*

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

Councilmember Gray asked what the City's return investment would be if the agreement is approved.

Randy Speaker, Housing and Neighborhood Development Director reported the Kansas Department of Commerce Neighborhood Stabilization Program (NSP) income would go back to the Kansas Department of Commerce because all the project funds are covered by the NSP grant. He stated the City would receive the tax revenues from the properties when they are sold. He stated the neighborhood is a blighted area and has a high crime rate.

Councilmember Alcalá stated he believes taxpayers would carry the financial burden because funding allocated from the Kansas Department of Commerce is generated from the taxes paid by citizens.

Councilmember Harmon asked if the City would obtain a feasible property title, be required to pay the demolition cost; and be able to satisfy all other requirements.

Randy Speaker stated the title(s) would be given to the property owner(s) once the property is purchased. He reported it was his understanding all other requirements have been met.

Councilmember Hiller expressed her appreciation of the infill housing program and stated the College Park Neighborhood Improvement Association approves of the project.

Councilmember Hiller moved to approve the real estate purchase agreement. The motion seconded by Councilmember Wolgast carried. Councilmember Gray voted "no." (8-1-0)

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

BUSINESS NAME

Arturo's  
Dickey's  
Grover's

ADDRESS

105 SE 10<sup>th</sup> Street  
609 NW Highway 24  
1217 SW Gage Boulevard

Councilmember Manspeaker 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)

APPROVAL would authorize the City Manager to execute a two-year labor agreement between the City of Topeka and the Fraternal Order of Police beginning January 2012 through December 2013 was presented. (*Contract No. 41780*)

Councilmember Wolgast gave the staff report and outlined the following changes as requested by the City Council:

- One (1) pay step in 2012; and two (2) pay steps in 2013.
- The “Single-free” health insurance language would be removed from the agreement in 2013.
- No COLA for the years 2012 and 2013.
- The 2012 pay step would be absorbed by the Police Department operating budget; and the two (2) pay steps in 2013 would require additional funding for the Police Department operating budget.
- The labor agreement is for a two-year term.

Councilmember Wolgast moved to approve the labor agreement. The motion was seconded by Councilmember Manspeaker.

Councilmember Hiller spoke in support of the agreement and expressed appreciation to City staff for their negotiating efforts. She encouraged that new financial tracking mechanisms be put in place so the Police Department does not exceed their budget in the future.

Pam Simecka, Acting Budget and Finance Director reported two recruitment classes would be added to the Police Department this year, hopefully reducing the amount of overtime pay. She stated tracking mechanisms would help the Finance Department, as well as, the Police Department track overtime. She noted she hopes to deal with vacancy credits in the 2013 budget.

Councilmember Everhart spoke in support of the agreement and expressed appreciation to City staff for their negotiating efforts. She expressed concern with the reduced number of police officers on the streets effecting community safety. She asked if approval of the agreement would help or hinder the Police Department.

Ron Miller, Police Chief stated approval would not have an affect on department staffing because vacant positions must remain that way until 2013 to generate any necessary vacancy credits. He noted retirements would help offset the budget; however, staffing would remain short to help fund the labor agreement.

Councilmember Archer spoke in support of the contract. He encouraged cost saving measures to be put into place for the 2013 budget and emphasized the importance of not raising property taxes to accomplish what is needed financially for the Police Department.

Councilmember Manspeaker stated next year's budget should be reviewed along with problems in the community to balance the need to provide a safe community for citizens and stability to employees.

Mayor Bunten stated the City has to provide law enforcement that is proactive and staffed adequately to do the job. He reported the City of Topeka has increased the mill levy only a quarter of one mill over the past 15 years. He stated now is the time to make a commitment to staff all City departments adequately to provide the best customer service to citizens.

The motion to approve the labor agreement carried unanimously. (9-0-0)

ORDINANCE NO. 19684 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 42<sup>nd</sup>

Street, from “R-1” Single Family Dwelling District TO “I-1” Light Industrial District placed on first reading December 13, 2011 was again presented. (Z11/28)

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

Councilmember Alcalá asked why the Topeka Planning Commission recommended approval and the Topeka Planning Department recommended disapproval.

David Thurbon, Planning Department Director stated staff thought a Planned Unit Development (PUD) zoning would be more appropriate; however, they do support the project. He noted there was some opposition from the Central Church of Christ, owner of the property located directly across SW Burlingame Road.

Councilmember Wolgast spoke in support of the zoning change and stated the light industrial zoning is very appropriate to maintain the area and a tremendous improvement. He noted the church plans to build across the street.

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

Councilmember Manspeaker expressed concern with the range of uses associated with light industrial zoning and if Stratham Sales would follow through with the plan as outlined.

David Thurbon stated he is confident the applicant would build the distribution facility as planned; however, a PUD would have required more time and the applicant is ready to begin construction as soon as possible.

Councilmember Alcalá asked why the Planning Department did not originally recommend the PUD zoning to the applicant.

David Thurbon stated not all applicants consult with the Planning Department before submitting an application, and the Planning Department did recommend a PUD to the applicant.

Councilmember Hiller asked if the only objections were from the Central Church of Christ.

David Thurbon stated the church members were not in opposition of the project at the Planning Commission meeting; however, most of them would prefer to see a PUD zoning on the property instead of light industrial zoning.

Exparte communications were declared by Councilmembers Hiller, Alcalá, Ortiz, Everhart, Wolgast, Manspeaker, Archer and Gray.

The motion to adopt the ordinance 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, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -10.

ORDINANCE NO. 19685 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 placed on first reading December 13, 2011 was again presented. (HL11/02)

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

No exparte communications were declared.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Everhart 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, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -10.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, concerning adult care homes, single-family attached dwellings, and professional offices, amending City of Topeka Code Sections 18.55.010, 18.55.080, 18.55.130, 18.65.030, 18.70.030, 18.75.030, 18.80.030, 18.90.010, 18.90.030, 18.90.040, 18.95.010, 18.95.030, 18.95.040, 18.100.030, 18.100.040, 18.105.030, 18.105.040, 18.110.030, 18.180.030, 18.180.040, 18.185.040 and 18.185.050 and specifically repealing said original sections was presented for first reading. *(ACZR11/13)*

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 by providing for certain changes in zoning on property located at 1526 and 1530 SW Topeka Boulevard from “E” Multiple Family Dwelling District TO “O&I-2” Office and Institutional District was presented for first reading. *(Z11/22)*

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 at 1607 SW Topeka Boulevard from “E” Multiple Family Dwelling district TO “O&I-2” Office and Institutional District was presented for first reading. *(Z11/23)*

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 at 1600 SW Topeka Boulevard from “E” Multiple Family Dwelling District TO “O&I-2” Office and Institutional District was presented for first reading. *(Z11/24)*

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 at 1270 SW Topeka Boulevard from “E” Multiple Family Dwelling District TO “O&I-2” Office and Institutional District was presented for first reading. (Z11/26)

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

Daniel R. Stanley, Interim City Manager announced there would be no City Council meeting December 27, 2011 pursuant to Resolution No. 8300.

Councilmember Ortiz reported Collective Brands, Inc., corporate office donated \$500 worth of shoes to the Boys and Girls Club of Topeka, and Sutherland Furniture donated 40 beds to local families in need. She thanked Fire Chief Allen Bradshaw for his years of service to the community and congratulated him on his retirement.

Councilmember Everhart welcomed military troops home from Iraq. She asked the community to remember the service men and women who are still away from their families and serving our country.

Councilmembers and the Mayor thanked Chief Allen Bradshaw for his 36 years of service and wished him well during his retirement.

Bill Johnson, Rose Yaegar and 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 8:03 p.m.

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Brenda Younger  
City Clerk