

Council Minutes – January 24, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 24, 2012. 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 Manspeaker asked for a moment of silent meditation.

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

Councilmember Alcalá moved to suspend the Council Rules to add a Dance Hall License application to the consent agenda. The motion seconded by Councilmember Wolgast carried unanimously. (9-0-0)

Councilmember Alcalá moved to add the Dance Hall License application for Serendipity, L.L.C., to the consent agenda under Applications with conditional approval that all licensing requirements are met prior to February 3, 2012. The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

Councilmember Alcalá moved to reinstate the Council Rules. The motion seconded by Councilmember Archer carried unanimously. (9-0-0)

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Ryan Adams to the Topeka Board of Zoning Appeals to fill an unexpired term ending May 31, 2012 was presented.

MINUTES of the regular meeting of January 17, 2012 were presented.

An Open After Midnight License application for Serendipity, L.L.C., located at 820 N. Kansas Avenue was presented.

A Dance Hall License application for Serendipity, L.L.C., located at 820 N. Kansas

Avenue was presented.

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

A DEMOLITION REQUEST submitted by the Topeka Police Department Code Enforcement Unit for a property located at 1107 SW Taylor Street, located within the historical environs of the Holliday Park National Historic District was presented. The demolition request was deferred from the meeting of January 3, 2012. (CLGR11-25)

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

Councilmember Hiller confirmed the renovation estimates are close to the costs outlined by the Code Enforcement Unit; however, there are legal issues tied to the property. She reported there are individuals interested in renovating the property if the legal issues could be resolved.

Councilmember Hiller moved to deny the demolition permit request based on the determination there are prudent or feasible alternatives to the proposed demolition. The motion was seconded by Councilmember Manspeaker.

Councilmember Alcala spoke in support to deny the demolition permit request and asked if any neighbors would object to the renovations.

Councilmember Hiller stated she is not aware of any objections by neighborhood residents.

Mayor Bunten commented on the poor appearance of the structure and the uncertainty of property ownership.

Councilmember Hiller stated she knows the heirs to the property and believes the structure could be rehabilitated.

Councilmember Alcala raised a point of order and stated the Council should only discuss the demolition permit request, not the civil issues relating to the property.

Maura Dingman, neighborhood resident stated four other structures on the same block have been renovated and she believes this structure could also be renovated. She stated in her opinion a vacant lot would cause more trouble for the area than the renovation would. She encouraged the Council to deny the demolition request.

Mayor Bunten questioned if the heirs to the property would be willing to sell the property since they have shown no interest in spending money to renovate the property.

Maura Dingman stated the potential buyer does not want the responsibility of the property's legal issues that have occurred due to neglect. She stated the Council's responsibility is to determine if there is a prudent or feasible alternative to the demolition and she believes there are other options to consider.

Mayor Bunten stated he would support denying the demolition permit request because the neighborhood supports renovation of the property.

Councilmember Ortiz asked if a representative from the Historic Holliday Park Neighborhood Improvement Association (NIA) was present to speak to the issue.

Maura Dingman stated she is a member of the Historic Holliday Park NIA and speaks on behalf of the neighborhood residents located near the property.

Councilmember Manspeaker spoke in support of denying the demolition permit request and stated he believes the renovation would preserve the history of the area.

The motion to deny the demolition permit request based on the determination there are prudent or feasible alternatives to the proposed demolition carried unanimously. Mayor Bunten voted "yes." (10-0-0)

ORDINANCE NO. 19695 introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Section 3.40.030, establishing a service fee levy for 2012

relating to the Capital City Downtown Business Improvement District and specifically repealing said original section placed on first reading January 17, 2012 was again presented.

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

Mayor Bunten asked how the service fee would be determined.

Pam Simecka, Acting Budget and Finance Director stated downtown businesses sign an agreement each year based on the square footage specified by Downtown Topeka, Inc. (DTI); the City sends a statement to the businesses and collects the fees which are then deposited in a separate fund for the business improvement district revenues.

Councilmember Manspeaker asked if the City allocates other funds to DTI; who appoints members to the Business Improvement District Committee; and what is DTI's main purpose and scope of business.

Pam Simecka stated the City allocates funding to DTI for grants, promotions and marketing, as well as, maintaining the flower beds in the downtown area; the Mayor appoints members to the Business Improvement District Committee and the Council approves those appointments; and the Committee makes decisions on how revenues are spent.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted "yes." Councilmembers Manspeaker and Gray voted "no." (8-2-0)

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

AN ORDINANCE introduced by Councilmember Denise Everhart adding a new Article, Article 6, in Chapter 2.140, Benefits, to the Code of the City of Topeka establishing an Employees' Group Health Insurance Plan and an Employees' Group Health Insurance Fund for payment of such healthcare benefits and providing for administration of the Plan and the Fund,

including creating a Health Care Advisory Committee placed on first reading January 17, 2012 was again presented.

Councilmember Everhart gave the staff report and commented on the financial deficiencies the City faced in 2012 surrounding the Employee Group Health Insurance Plan and Fund. She stated she believes the employees and management should be involved in the health insurance fund decisions and wellness programs.

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

Heather Stults-Lindsay, Union Coalition of Health Insurance member encouraged the Council to support the ordinance because it would allow employee representation on health insurance benefits, ensure future security of the health insurance fund, and ensure employee well-being and safety. She stated employees want the ability to make recommendations for health insurance benefits and provide successful management of health insurance funds.

Councilmember Manspeaker spoke in support of the ordinance due to the financial deficiencies in the health insurance fund. He stated employees serving on the Healthcare Advisory Committee would have the ability to raise the red flag if needed; have a better concept on how the funds are spent and how changes could be made.

Daniel R. Stanley stated the Healthcare Advisory Committee would provide suggestions and changes to the City Council for approval.

Councilmember Gray spoke in support of the ordinance and commended Councilmember Everhart for drafting the document. He stated he appreciates the fact the Council would be held accountable for the final decision.

Councilmember Archer thanked Councilmember Everhart for drafting the ordinance and stated he believes this is the first step towards accountability and fairness for employee health

insurance. He expressed concern with some of the concepts outlined in the ordinance and requested clarification.

Councilmember Archer made a substitute motion to refer the ordinance to the Policy and Finance Committee. The motion was seconded by Councilmember Ortiz.

Councilmember Ortiz asked why a work session was not scheduled to discuss the issue prior to the Council meeting and why the Benefits and Wellness Advisory Committee was changed. She stated there are many questions she needs answered before making a decision on the issue.

Jacque Russell, Human Resources Director stated she believes the Benefits and Wellness Advisory Committee was established in 2004 and meets on a quarterly basis. She reported employees could review Committee meeting minutes on the City's intranet.

Councilmember Alcalá thanked Councilmember Everhart for drafting the concept; however, he believes some of the document language should be clarified. He stated the ordinance should also define HIPAA violations if documents are made available to the Committee. He expressed concern with the following:

- He referenced the statement, "contribution shall not exceed 105% of the premium cost for other similarly situated employees." on page 3, Line 70 of the ordinance and asked who would pay for the additional increase.
- He referenced Healthcare Advisory Committee subsection (b) on page 6, beginning on Line 124, "To the fullest extent practicable, Committee meetings shall be held during normal business hours and each member shall be excused from the performance of other duties in order to attend such meetings or to otherwise conduct authorized Committee business." He asked who would authorize Committee members to conduct Committee business.
- He referenced Healthcare Advisory Committee subsection (e) on page 7, beginning on Line 143, "The Committee will participate in the RFP process for selection of the Plan administrator(s) and benefits coverage." He stated participation in the RFP process should be defined.
- He questioned if information could be completed by April 1st of each year as outlined on page 7, Line 150 of the ordinance.
- He referenced Section 9, "This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions

of this ordinance.” on page 8, Line 173 of the ordinance. He stated he believes the statement could create another layer of confusion without a definition.

Daniel R. Stanley stated he has a specific concern that claim information provided by the April 1st deadline could be premature and not realistic because the information is usually not available until mid year.

Councilmember Everhart reported any surplus or interest generated by the health insurance fund would stay with the fund to keep it stable.

Councilmember Manspeaker asked if the Legal Department has reviewed the ordinance.

Dave Starkey, City Attorney stated the Legal Department has reviewed the ordinance for formality and legality; however, there are a number of concerns with the language and some provisions may be confusing and need further clarification.

Councilmember Archer questioned how affordable and adequate health insurance would be defined and if the ordinance would bring entitlement to employees.

Councilmember Everhart stated the intent of the ordinance was to provide information, not a plan, as the City Council would make the final decision on Committee recommendations.

Daniel R. Stanley stated a key issue when hiring new employees is the healthcare benefits and compensations.

Councilmember Alcalá asked if there were any restrictions in this ordinance to keep the City from migrating to the State healthcare plan.

Daniel R. Stanley stated the ordinance is unclear about this because the State healthcare program is developed by others. He noted staff is researching the State healthcare plan.

Dave Starkey stated the State healthcare plan is one option to research and the Committee could design a plan as well compare costs. He stated those options could be specified in the ordinance.

Councilmember Harmon asked if the Legal Department could provide a memorandum to the Council specifying the issues that need to be addressed. He commended Councilmember Everhart for drafting the ordinance and stated the issue is too important to risk failure and hopes the Council's concerns could be addressed.

Dave Starkey stated the Legal Department would provide the Council with a list of concerns and possible solutions; however, the final recommendation would come from the Policy and Finance Committee.

Councilmember Ortiz asked how many employees opted out of health care benefits in 2012 because of the increase in costs.

Jacque Russell stated she is waiting on the information from Blue Cross Blue Shield of Kansas.

Councilmember Ortiz reported it was her understanding many employees opted out of health care coverage because of the increase in cost and expressed concern with the City making sure they provide the best healthcare plan possible for employees.

Councilmember Alcala requested Councilmembers be notified of potential risks or concerns before presenting an ordinance to the Governing Body.

Councilmember Hiller stated she appreciates Councilmember Everhart proposing the ordinance and the Legal Department's assessment of the document. She suggested the document include a fiscal note and encouraged the Council to generate a document that is meaningful and useful to staff and employees. She questioned the monthly Healthcare Advisory Committee meeting requirements outlined in the ordinance including the need to specify the amount of time staff would be involved if serving on the Committee. She expressed concern with the document combining policy with procedure and the need to clarify specifics. She commented on the following technicalities of the ordinance:

- The mechanics of the deposit of funds as outlined in the Contributions section on page 4.
- The new Healthcare Advisory Committee functions as outlined in the Healthcare Advisory Committee subsection (a) on page 5. She stated the functions seem to basically be an internal audit function.
- Nonunion employee representatives need to be included in the monthly Committee meetings as outlined in the Healthcare Advisory Committee subsection (a) on page 5.
- The ten (10) day advance meeting notice requirement as outlined in the Healthcare Advisory Committee subsection (c) on page 6 needs to be researched to determine if the amount of days are sufficient.
- The April 1 deadline regarding Committee recommendations as outlined in the Healthcare Advisory Committee subsection (f) on page 7 seems to be acceptable at this time, however, if the overall internal budget process changes they may need to change the deadline.

Councilmember Everhart raised a point of order and stated proposed amendments could be discussed at the Policy and Finance Committee meeting.

The Chair ruled in favor of the point of order.

Councilmember Alcalá challenged the ruling of the Chair. He stated he is not aware of any Council Rule, City Charter or Roberts Rules of Order violation that has been made by Councilmember Hiller. He asked the City Attorney for a legal opinion on the matter and noted as an elected official Councilmember Hiller has a right to express her opinion.

Dave Starkey, City Attorney stated he was not aware of any rules that would limit discussion on the subject matter at this time.

The motion, shall the decision of the Chair be sustained, failed. Councilmembers Hiller, Alcalá, Ortiz, Manspecker, Archer, Gray and Harmon voted “no.” (2-7-0)

Councilmember Hiller continued her comments on the following technicalities of the ordinance:

- The number of employees that must be present for a Committee vote to carry forward to the Council for consideration as outlined in the Healthcare Advisory Committee subsection (f) on page 7 needs to be specified.
- She suggested including a statement in the Healthcare Advisory Committee subsection (f) to prevent a lock vote or small attendance prohibiting change relating to contributions unless presented to the Council first.

Councilmember Manspeaker stated he believes the issue should be addressed by the Policy and Finance Committee quickly because it is an important issue for City employees. He commended Councilmember Hiller for researching the issue and making suggested changes.

Councilmember Wolgast expressed concern with the Legal Department not forwarding their concerns to the Council.

Dave Starkey stated the Legal Department did review the ordinance and approved it as to form and legality; therefore, if the Council does pass the ordinance in the current form, it would be implemented and enforced. He noted the referral would help clarify some of the issues.

Councilmember Everhart expressed her appreciation to the Council and Legal Department for their input on the matter. She stated she understands it is an important issue that requires some policy decisions; however, the purpose of the ordinance was to give management and employees the opportunity for stability and the best choices for health insurance coverage.

The substitute motion to refer the ordinance to the Policy and Finance Committee carried. Councilmember Everhart voted “no.” (8-1-0)

A RESOLUTION introduced by Interim City Manager Daniel R. Stanley, authorizing initiation of condemnation proceedings to acquire a temporary construction easement to install a sewer line leading to the Northland 1 Pump Station was presented. The resolution was deferred from the meeting of January 17, 2011.

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

Councilmember Alcala spoke in opposition to the resolution and stated the property owner disagrees with the proposal and encouraged the City to find an alternative route.

Braxton Copley, Office of Utilities and Transportation Director reported the alternative route would be very costly and change the flow of the sewer line alignment from north to south.

He stated all negotiations have been successful with all other property owners in the area and by acquiring the temporary easement it allows the City to safely excavate in the easement.

Councilmember Harmon asked what the additional costs of re-routing the sewer line would be and if the easement would revert back to the property owner once construction is completed.

Robert Kennedy, Engineering Department Right-of-Way Agent stated he does not have estimates for re-routing the project. He reported the City would have to remove some trees on the property; however, the property would be returned to the owner once construction is complete. He noted there is a huge inconsistency between the City and the property owner regarding the valuation of trees.

Councilmember Everhart asked if there would be any improvements made to the pump station if the resolution is not approved.

Braxton Copley stated the project is necessary and would relocate an aging pump station and sewer main which flows under the creek. He reported staff would have to discuss an alternative route which would require the City to acquire additional property interests for both permanent and temporary easements to access sewer lines for the project; if the alignment could be changed; and request additional funding from the Council.

Councilmember Hiller stated re-routing the sewer lines could be very time consuming and expensive.

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Harmon failed. Mayor Bunten voted “yes.” Councilmembers Alcala, Ortiz, Everhart, Manspeaker and Gray voted “no.” (5-5-0)

Daniel R. Stanley, Interim City Manager requested to withdraw item 5E, an ordinance relating to the Northland I Pump Station Improvement Project T-291002.00 from the Council agenda.

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

A RESOLUTION introduced by Councilmember Bob Archer, as Chair of the City Council's Policy and Finance Committee, to reduce the City's self-imposed annual General Obligation bonded indebtedness cap of \$9 million to \$7.5 million for Capital Improvement Budgets (CIB) and Capital Improvement Projects (CIP) effective for 2012 and years thereafter was presented.

Councilmember Archer gave the staff report.

Councilmember Archer moved to amend the resolution by deleting the word "2012" and inserting the word "2013" on Lines 8 and 30. The motion seconded by Councilmember Gray carried. Councilmember Everhart voted "no." (8-1-0)

Councilmember Archer moved to approve the resolution as amended. The motion was seconded by Councilmember Gray.

Councilmember Everhart spoke in opposition to the resolution and stated the Council already has the option to approve projects below the current general obligation bond cap. She questioned what the Council would do differently if the resolution was approved. She reported the City has not raised the mill levy in the past several years and the primary source of financing projects comes from bonds. She noted the Zoo is dealing with deficiencies listed in the USDA report which could require projects and updates to maintain the Zoo's AZA accreditation; improvements need to be made to California Avenue; as well as, the construction of a Fire Station in Council District No. 9.

Councilmember Archer stated the Council should focus on the future of Topeka and start to live within its means and set priorities. He noted the Policy and Finance Committee unanimously approved the resolution.

Councilmember Wolgast commended Councilmember Archer on drafting the resolution; however, there are infrastructure projects that need to be done that otherwise would be very costly for the City and delayed longer than necessary.

Councilmember Alcala stated he concurs with Councilmember Everhart and noted there are critical projects that need to be addressed as soon as possible.

Councilmember Manspeaker expressed concern with lowering the cap and the effect it would have on the City's purchasing power. He stated he is not convinced the City could become debt free and still be able to pay for major infrastructure projects.

Councilmember Hiller made a substitute motion to defer the resolution until the Council is presented with the Capital Improvement Budget and Capital Improvement Projects. The motion died due to a lack of a second.

The motion to approve the resolution as amended failed. Councilmembers Hiller, Everhart, Wolgast, Manspeaker and Harmon voted "no." (4-5-0)

APPROVAL to extend the original employment contract terms for Daniel R. Stanley, Interim City Manager until April 1, 2012 was presented. (*Contract No. 41867*)

At 8:15 p.m., Councilmember Everhart moved to go into executive session for a time period not to exceed 30 minutes to discuss personnel matters of non-elected officials and include the City Council and Mayor. The motion seconded by Councilmember Hiller carried.

Councilmembers Ortiz, Archer and Gray voted "no." (6-3-0)

At 8:43 p.m., the Council meeting reconvened into open session and Mayor Bunten announced no action had been taken during the executive session.

Councilmember Alcala moved to approve the employment contract. The motion was seconded by Councilmember Archer.

Councilmember Hiller moved to go into an executive session for a time period not to exceed 10 minutes to discuss personnel matters of non-elected officials and include the City Council, Mayor and Interim City Manager. The motion seconded by Councilmember Everhart failed. Councilmembers Alcala, Ortiz, Wolgast, Manspeaker, Archer, Gray and Harmon voted “no.” (2-7-0)

The motion to approve the employment contract carried. Councilmembers Hiller and Everhart voted “no.” (7-2-0)

ORDINANCE NO. 19696 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of January 2, 2012, through January 8, 2012, and enumerating said expenditures therein was presented for first and final reading.

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

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

NO Retail Cereal Malt Beverage License Applications were presented.

A FINAL PLAT for Stratham Subdivision by Herrman’s Excavating, Inc., on property located on the west side of SW Burlingame Road, approximately 700 feet south of SW 42nd Street, was presented. (P11/16)

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

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

RESOLUTION NO. 8402 introduced by Interim City Manager Daniel R. Stanley, in accordance with Section 18.70.030(c)(17) of the Topeka Municipal Code approving a Conditional Use Permit to continue a demolition landfill on property currently zoned “R-1” Single Family Dwelling District and located adjacent to the west side of the Kansas Turnpike and U.S. Highway 75, primarily between SW 45th Street extended and SW 49th Street in the City of Topeka, Kansas, was presented. (CUII/3)

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

No ex parte communications were declared.

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

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, concerning the adoption of the International Energy Conservation Code by creating Chapter 14.80 of the City of Topeka Code as well as amending Topeka Municipal Code Section 2.40.010 and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, providing a non-exclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka which replaces the franchise ordinance codified at City Code Appendix B, Article 6, that expires December 31, 2011 was presented for first reading.

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, repealing Chapter 11.05, Forestry, in its entirety and adding a new Chapter 12.65, Forestry, to the Code of the City of Topeka concerning the City Forester was presented for first reading.

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

Daniel R. Stanley, Interim City Manager announced Community Crime Strategy Public Forums would be held January 25, 2012 at 1:00 p.m. and 6:30 p.m. at the Law Enforcement Center located at 320 S. Kansas Avenue, Classroom A.

Councilmember Hiller expressed concern with the proposed Employee Health Insurance Plan ordinance and the Legal Department's opinion on the matter. She stated she hopes when the Council approves policies, the policies are clear, concise, and interface with all other City policies in regards to how they would function within City operations.

Councilmember Alcalá announced on January 31, 2012 a Committee of the Whole meeting to discuss setting goals for the City Council, as well as, a Policy and Finance Committee meeting to discuss the proposed Employee Health Insurance Plan ordinance would be held.

Councilmember Everhart thanked the Legal Department for reviewing the proposed Employee Health Insurance Plan ordinance and addressing policy questions relating to the matter.

Councilmember Manspeaker commended the volunteers who are assisting with the homeless count on January 25, 2012.

Councilmember Archer thanked the Legal Department for providing guidance to the Council in regards to the proposed Employee Health Insurance Plan ordinance.

Mayor Bunten reported he would be sending budget suggestions to the Council and City Manager for their review and consideration. He encouraged the Council to do the same so budget priorities could be established early.

Ben Tenpenny appeared to speak under public comment.

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:05 p.m.

Brenda Younger
City Clerk