

## **Council Minutes – February 28, 2012**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 28, 2012. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Alcala, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -9. Mayor William W. Bunten presided -1.

AFTER THE MEETING was called to order, Kansas National Guard State Chaplain (LTC) William D. Jenkins, and Pastor Tony Cash, Wanamaker Seventh Day Adventist Church gave the invocation.

A PRESENTATION of the Color Guard was presented.

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

A PRESENTATION of the Topeka Military Relations Committee 2012 Topeka Armed Forces Personnel of the Year awards was presented by David H. Fisher, Jr., Topeka Military Relations Committee Chairman and representatives of the Kansas Army National Guard, United States Army Reserve, United States Marine Corps, Kansas Air National Guard, United States Coast Guard and the United States Coast Guard Reserve.

Councilmember Hiller moved to suspend the Council Rules to add an ordinance authorizing the sale, consumption and possession of alcoholic beverages for The Office and The Celtic Fox to the Council agenda under First Readings as item 7A. The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

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

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Aaron Sims to the Citizen Advisory Council for a term ending February 28, 2015 was presented.

BOARD APPOINTMENT recommending the re-appointment of Margo Rangel to the Human Relations Commission for a term ending February 28, 2014 was presented.

BOARD APPOINTMENT recommending the appointment of Mark Tyree to the Topeka Landmarks Commission for a term ending February 28, 2014 was presented.

MINUTES of the regular meeting of February 21, 2012 were presented.

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

AN ORDINANCE introduced by Interim City Manager, Daniel R. Stanley, concerning utility rates, amending City of Topeka Code Sections 13.05.020 through 13.05.060 and Section 13.20.680 and specifically repealing said original sections, as well as, creating new Section 13.25.130 placed on first reading February 21, 2012 was again presented.

Daniel R. Stanley, Interim City Manager gave the staff report and stated staff invested a great deal of time into the study and analysis of options to address the issue. He reported many work session discussions have been conducted in an attempt to answer questions and form solutions for the City's aging infrastructure. He stated the Environmental Protection Agency (EPA) has been aggressively attempting to improve infrastructure in other cities similar to Topeka and noted the City's water lines are over 80 years old and in major need of repair. He stated he realizes the proposed water rate increase would not solve the water line issues; however, it would address Federal requirements and the implementation of larger projects.

Joseph Ledbetter spoke in opposition to the proposed water rate increase. He stated the overall economy is in poor shape and would continue to struggle for many years to come. He

reported that statistics show Topeka's poverty rate has risen 50% in the last ten years and he is concerned with how the increase would impact residents and small businesses. He questioned the billing system and the inconsistent payments of certain businesses based on his KORA research; the language in the ordinance regarding gravel stormwater runoff; how calculations are reached; and if notification would be provided to citizens regarding changes.

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

Councilmember Ortiz stated her Neighborhood Improvement Association has the same concerns expressed by Mr. Ledbetter and asked Braxton Copley to address them. She questioned how wastewater is billed and how the funds are used. She noted there is a lot of flooding in Council District No. 3.

Braxton Copley, Office of Utilities and Transportation Director distributed a handout outlining the proposed rate adjustment and reported it is based on the equivalent of residential units multiplied by the current fee or increased fee. He reported there is a provision for an appeal process; gravel runoff depends on the type of gravel and how it is packed or layered; and stormwater funds are used towards improvements throughout the City. He noted the City tries to identify flooded areas and develop projects to eliminate the flooding.

Councilmember Wolgast stated the Council needs to do what is right even though they are not in favor of increasing rates, the City's infrastructure needs to be addressed. He reported the American Society of Civil Engineers rated America's drinking water and wastewater and gave both a grade of D-. He stated he believes a rate increase is an appropriate step forward in starting to address the issue. He encouraged the Council to support the ordinance and help solve a growing community issue.

Councilmember Hiller stated City staff worked diligently to scale down and spread the rate increase to a very small amount of residents and focused more on the higher usage clients. She noted she does struggle with approving any type of rate increase; however, she believes it is necessary at this time.

Councilmember Harmon stated he believes City staff has sufficiently justified increases to address water main breaks and other water issues within the City; however, he opposes a 47% increase to stormwater rates because he believes it has not been justified. He expressed concern with the EPA taking action against Topeka regarding the Combined Sewer Overflows (CSOs).

Councilmember Harmon made a substitute motion to delete the 47% increase to stormwater on Line 95 of the ordinance. The motion died due to a lack of a second.

Councilmember Everhart commended the comments regarding the aging infrastructure and the Council's obligations; however, she is reluctant to support the water rate increases because the City Manager stated the increase would not solve the City's water infrastructure issues. She stated she would be interested in learning how the City of Wichita, Kansas addresses the issue long-term.

Daniel R. Stanley stated he brought the proposed water rate increases before the Governing Body for consideration because he believes it is absolutely necessary. He also stated he believes it is a minimal approach but given the tough economy the City is trying to hold harmless as many people as possible and still address problems faced every day. He reminded the Council that he asked the Governing Body for recommendations and goals for the 2013 budget, as well as, the future, and one of the top goals was infrastructure which comes with a cost. He reported there is no way he can draft an operating budget for years 2013 and 2014 that includes a cost free approach to infrastructure issues. He reported this is the best compromise

staff has to offer to address the City's aging water infrastructure and fully supports the proposed water rate increases.

Mayor Bunten stated the City dealt with street repairs through the sales tax incentive because it takes money to repair infrastructure. He spoke in support of the proposed water rate increases and asked the Council to submit their suggestions on how to improve infrastructure if they oppose the rate increase.

Councilmember Manspeaker stated he concurs with Mayor Bunten; however, he would like to defer the ordinance for a couple of months to research other solutions. He spoke in opposition to the proposed increase because he does not believe it is the best option.

Councilmember Alcala spoke in opposition of the water rate increase because he believes it is not the best funding source and is only a temporary fix. He expressed his appreciation to staff for their time and research; however, in his opinion, residents can not afford an increase.

Councilmember Manspeaker made a substitute motion to defer the ordinance for two months. The motion was seconded by Councilmember Ortiz.

Councilmember Alcala asked if staff or the Governing Body is being asked to find another solution to the proposal.

Councilmember Manspeaker stated he did not want to delay the issue any longer than necessary; however, the Council should provide the Interim City Manager with direction on how they would prefer to move forward with a resolution with the least impact on taxpayers.

Councilmember Wolgast asked for clarification on what the Council is asking staff to do.

Daniel R. Stanley reported these are the same options as presented in November 2011; however, the Council could delay the issue until 2016 and shift the half-cent sales tax from street repairs to infrastructure repairs or cut the proposed increased rate in half and explore utilizing

other funds. He requested the Council submit their ideas to him regarding what they see as potential options for discussion before they vote on the issue.

Councilmember Manspeaker stated he would like to see the payment structure leveled out for all residential and commercial customers.

Councilmember Manspeaker withdrew the substitute motion to defer the ordinance for two months. The second concurred.

Mayor Bunten expressed concern with the Governing Body not making decisions on important issues. He suggested referring the ordinance to the Policy and Finance Committee so they could research the matter and submit suggestions and/or amendments to the proposal. He noted whatever option is decided is going to cost money or they must choose not to fix the infrastructure.

Councilmember Alcalá stated he understands there are major infrastructure issues; however, he would prefer a well-defined plan financed through the Capital Improvement Program so the Council could see the actual costs of the improvements.

Councilmember Hiller stated the proposal for the water rate increase is based on water usage so it is the consumer's choice on how much they would pay and believes it is reasonably scaled.

The motion to adopt the ordinance failed. Councilmembers Alcalá, Ortiz, Everhart, Manspeaker, Archer, Gray and Harmon voted "no." Mayor Bunten voted "yes." (3-7-0)

ORDINANCE NO. 19706 introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Section 13.05.080, concerning the water and wastewater utility rate refund program and specifically repealing said original section placed on first reading February 7, 2012 was again presented.

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

Councilmember Alcalá asked what is the expiration date and if it applies to all increases or just up to the year 2008.

Pam Simecka, Acting Budget and Finance Director stated it expires September 5, 2012 and the increases that apply are up to the year 2008.

Councilmember Alcalá stated his intent in 2004 was to include all increases; however, he does not want the program to end because it is a good refund program for those that are eligible.

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

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

ORDINANCE NO. 19707 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 placed on first reading December 20, 2011 was again presented. (ACZR11/13)

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

Mayor Bunten reported he received input from citizens concerned with the zoning changes and believes it may not be the best situation for residential neighborhoods.

Bill Hoover, Planning Department stated people who live in an adult care or nursing homes are a small percentage of the community population and the facilities generate very low

traffic and activity in the neighborhood. He reported each facility is required to submit an application for a Conditional Use Permit (CUP) or Planned Unit Development (PUD) district zoning permit which must be approved by the City Council.

Councilmember Ortiz gave the Committee report and stated the Public, Health and Safety Committee voted unanimously in favor of the ordinance. She noted the State of Kansas allows up to 12 residents for each care facility; however, the City only allows up to eight (8) residents per facility.

Betty Carswell, adult-care or home plus care owner stated she currently has eight (8) residents living in her facility and invited the Council to tour the facility. She reported there is very little traffic; she is providing a great service and employment opportunities for the community; and abides by all State health care regulations.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Harmon carried unanimously. Mayor Bunten abstained. (9-0-1)

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

ORDINANCE NO. 19708 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of February 6, 2012, through February 12, 2012, 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 Alcala carried unanimously. (9-0-0)

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



NO Retail Cereal Malt Beverage License Applications were presented.

AN ORDINANCE introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for The Office and The Celtic Fox on March 17, 2012 pursuant to K.S.A. 41-719(a)(2) and K.S.A. 41-2645(e)(1) was presented for first reading.

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

Daniel R. Stanley, Interim City Manager announced they would discuss the Capital Improvement Program and Budget at the March 6, 2012 Work Session. He suggested the Council discuss the Kansas Avenue and US Highway 24 and Topeka Boulevard improvement projects separately if needed, and noted he would forward the Kansas Avenue project design estimates to the Council when he receives the document on March 2, 2012. He reported the 2011 Financial Report would be presented at the March 6, 2012 Council meeting so the Council is aware of the City's financial state before considering any additional large expenditures for the future. He announced the Employee Group Health Insurance ordinance would be discussed at the March 13, 2012 Work Session and stated the Kansas Avenue improvement project design estimates could also be discussed at the same Work Session if needed.

Councilmember Hiller questioned if they should contact Union representatives and let them know the Council anticipates a lengthy CIP and CIB discussion on March 6, 2012, and may defer the AFT Union Local No. 6406 Labor Agreement an additional week.

Councilmembers Alcalá and Ortiz offered their condolences to the Jack DeBacker family.

Councilmember Gray expressed dismay with Shawnee County Commissioners not yet appointing a new JEDO Board Chair and believes it is an obstruction of JEDO authority

regarding the use of JEDO funds. He reported County Commissioners would consider the issue on their March 6, 2012 agenda. He asked if Councilmember Archer, the 2011 JEDO Board Chair, has the authority to schedule a JEDO Board meeting.

Dave Starkey, City Attorney stated according to the JEDO Operating Rules Councilmember Archer will serve as the JEDO Board Chair until a new Chair is appointed. He reported historically a new Chair is appointed in May of each year.

Councilmember Alcala 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 7:50 p.m.

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Brenda Younger  
City Clerk