

Council Minutes – March 13, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 13, 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 Gray asked for a moment of silent meditation.

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

A PRESENTATION on the Neighborhood Health Map was presented by Bill Fiander, Planning Department Deputy Director. He reported the original health map was established in 2000 and updated in 2003 and 2007 and is used by the City to determine priorities for neighborhood planning and investment. He stated there are five vital signs in regards to health ratings of neighborhoods including poverty level, public safety, residential property values, single-family homeownership and boarded houses. He stated SORT Program neighborhoods and property values have improved because the City has invested in the areas. He reported there are new “At Risk” neighborhoods including the Quinton Heights Steele and Jefferson Square areas; and the Oakland, East End and west of SW Randolph areas remain healthy with the exception of the area near Mission, Seabrook and SW 21st Streets. He noted in order to improve neighborhood health the City must invest in a target area, have a strategic plan for the target investment, build new homes and infrastructure and make sure core citizens of the neighborhoods are involved in the process from start to finish.

Councilmember Harmon commended staff for the overall report. He stated there are still some intensive care neighborhoods in need and questions why SORT funds are not directed to

these neighborhoods. He asked if there was anything the Council could do to move intensive care neighborhoods forward into an “improved” neighborhood status.

Bill Fiander reported neighborhoods compete to receive SORT Program funding and must apply for those funds and there are some neighborhoods that do not apply for funding. He stated there needs to be a new way of thinking in regards to some neighborhoods in order to improve past practices regarding funding and resources.

Councilmember Ortiz stated the East Topeka North area received Community Development Block Grant funds and installed sidewalks near Scott Middle School on Market and Swygart Streets. She questioned why the improvements did not improve neighborhood ratings. She encouraged neighborhood representatives to apply for federal grants.

Bill Fiander stated the sidewalks were considered a small improvement to the area and generally it requires large improvements to change a neighborhood’s rating.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of March 6, 2012 were presented.

2012 Open After Midnight License renewal applications were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Blind Tiger	417 SW 37 th Street
Denny’s #7268	1500 SW Wanamaker Road
Denny’s #7269	3210 SW Topeka Boulevard
Dillons #87	5311 SW 22 nd Place
Dillons #88	4015 SW 10 th Street
Hot Pockets	1909 NE Seward
Kickstart Saloon	2521 N Kansas Avenue
Old Chicago	1231 SW Wanamaker Road
Quinton’s Bar & Deli	4121 SW Huntoon
Sk8away	815 SW Fairlawn Road
Taco Bell	101 SE 29 th Street
Taco Bell	1560 SW Wanamaker Road
Taco Bell	2013 N Topeka Boulevard

BUSINESS NAME

United Outlets

ADDRESS

4732 SW Topeka Boulevard

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

A DEMOLITION PERMIT REQUEST submitted by Hunter Glen, L.L.C., for properties located at 926, 928, 930 and 934 S. Kansas Avenue, located within the 500 foot historical environs established by the State of Kansas for the Memorial Building, the Gordon Building, and the Tinkham-Veale Building, all listed on the Register of Historic Kansas Places and the National Register of Historic Places.

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

Marvin Spees, Hunter Glen, L.L.C., Managing Partner reported the company purchased the property with the intent to build a hotel; however, the market failed and construction was delayed. He stated they have no intention of demolishing the buildings and turning the area into a parking lot and would be willing to put this promise in writing. He noted there is a person interested in the property for retail and residential uses.

Councilmember Gray questioned if Mr. Spees was denied a loan on the buildings due to the poor condition of the structures.

Mayor Bunten referenced several letters of disapproval from lenders and banks that would not finance the property. He asked Mr. Spees to comment on the cost of rehabilitating the buildings.

Marvin Spees confirmed that he was unable to receive a loan due to the poor condition of the structures. He reported the letters referenced by Mayor Bunten only addressed the cost of rehabilitating the old structures, not the cost of new construction.

Councilmember Archer moved to approve the demolition permit request based on the consideration of all the relevant factors that there is no feasible and prudent alternatives to the demolition and any potential harm to the district can be minimized by reviewing future building plans that may impact the district. The motion was seconded by Councilmember Wolgast.

Councilmember Wolgast asked if and when the new construction takes place, would it be functionally appropriate to the historic environs of the downtown area.

Marvin Spees stated the City would not approve a building permit that would not fit the character of the downtown area.

Councilmember Manspeaker asked Mr. Spees how much he pays in property taxes annually. He also questioned what purpose the Topeka Landmarks Commission serves.

Marvin Spees stated the property tax bill is approximately \$8,000 to \$9,000 bi-annually.

Daniel R. Stanley stated the Topeka Landmarks Commission has specific State statute guidelines to consider regarding the aesthetic role of a property.

Councilmember Gray stated he respects the Topeka Landmarks Commission opinion; however, the Commission has historically been inconsistent regarding approval or disapproval of properties. He stated he believes new construction would be the most beneficial option while maintaining the character of the downtown area.

Councilmember Everhart spoke in support of the demolition request and stated her decision was based on the information she has received determining there are no feasible or prudent alternatives to the demolition.

Councilmember Hiller stated she believes there were two issues as to why the demolition permit request was deferred from November 8, 2011; the Council wanted the historic structure survey to be completed and for RDG Planning & Design consultant to provide feedback on the

property. She stated she spoke with the Topeka Landmarks Commission and they believe the structures were not significant enough to be placed on the historic register and the Design Consultant believes the buildings should be replaced. She expressed concern with the property becoming vacant land and believes it does not fit the Capital District Project scope. She stated she would support the demolition permit request if the ultimate plan for the property was approved by the Topeka Landmarks Commission.

Councilmember Manspeaker stated he does not support the demolition request because there is no plan in place once the structures are demolished.

Councilmember Gray stated he is confident someone will develop the property due to the increased public interest in downtown improvements and new design plans, as well as, the large investments made by the City to help develop the downtown area.

Daniel R. Stanley stated it is not the intent of the property owner to make the property an “eye-sore.” He noted the City plans to invest a lot of money in the downtown area and he would encourage the Council to make it easier for people to want to invest in the downtown area. He asked the City Attorney to comment on the *Friends of Bethany Place Inc., vs. City of Topeka* court case.

Dave Starkey, City Attorney reported that in the case of *Friends of Bethany Place Inc., vs. City of Topeka* it was determined that the ultimate determination of the Council was not based on the evidence of feasible and prudent alternatives or the minimization of harm. He stated case law is something more than a suggestion to alternatives; which are solutions that can be reasonably accomplished or realistic. He stated State statute requires that after a finding has been made by the Topeka Landmarks Commission it is the Council’s responsibility to make a determination based on consideration of relevant factors and the Council must look at the

evidence which was provided in the Council packet, citizen comments, discussed law and what is required of the Council in making a determination.

Councilmember Alcala stated he would support the demolition permit request based on the information provided in the Council packet by staff and that there are no feasible or prudent alternatives to the demolition.

Councilmember Hiller asked the City Attorney to clarify if “alternatives” apply to now, as well as in the future, because the only future alternative presented was vacant land.

Dave Starkey stated he respectfully disagrees with the Topeka Landmarks Commission and believes it applies to existing structures. He stated if a proposal is drafted it would have to be approved by the Topeka Planning Commission, City of Topeka Planning Department, follow all applicable requirements and code requirements that apply to the particular area.

Councilmember Wolgast expressed concern with the request and believes it does not support a strong vibrant downtown or fit into the Capital District Project plans. He stated he would support the demolition permit with the anticipation there would be a building on the site within five years.

Councilmember Harmon stated he would support the demolition permit request based on the information provided in the Council packet, the testimony and comments provided and that there are no feasible or prudent alternatives to the demolition.

The motion to approve the demolition permit request based on the consideration of all the relevant factors, there is no feasible and prudent alternatives to the demolition and any potential harm to the district can be minimized by reviewing future building plans that may impact the district carried. Mayor Buntun voted “yes.” Councilmembers Hiller and Manspeaker voted “no.” (8-2-0)

ORDINANCE NO. 19710 introduced by Councilmembers 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, 2012 was again presented.

Councilmember Everhart gave the staff report.

Councilmember Everhart moved to amend the ordinance as outlined in the ordinance labeled as "Everhart's proposed amendments". The motion was seconded by Councilmember Alcala.

Dave Starkey, City Attorney reported Councilmember Everhart's proposed ordinance incorporates the original proposed ordinance, as well as, the Policy and Finance Committee's proposed amendments.

Mayor Bunten stated he did not receive a copy of the ordinance proposed by Councilmember Everhart. He asked Councilmember Everhart to provide an overview of her proposed amendments.

Councilmember Everhart stated her proposed ordinance was included in the Council Agenda Packet and was available to the public and Governing Body for review on March 5, 2012. She stated she would be happy to address any specific questions regarding the amendments and noted Clint Patty was also available for questions.

Clint Patty, Frieden, Unrein & Forbes, L.L.P., asked the Council to support Councilmember Everhart's amendments. He thanked City administration and Councilmember Everhart for developing an ordinance that is agreeable to all involved.

Councilmember Archer inquired on the status of the audit conducted on the health care fund by a private agency hired by Mr. Patty.

Clint Patty stated the final auditor's report was completed on March 12, 2012 and he is reviewing it with his client. He stated he would forward the report to the Council when he has authorization from his client to release it.

Councilmember Hiller asked if the typos have been corrected within the ordinance.

Catherine Walter, Assistant City Attorney stated on Line 169 the word "transit" should be "transmit" and on Line 155, the word "case" should be "cast." She reported Willis Business Associate representatives suggested implementation of development training; therefore, to accommodate the recommendation after the word "such meetings" on Line 137, the phrase, "unless a longer meeting is scheduled in advance by the Director of Human Resources." needs to be added.

Councilmember Everhart accepted the suggested amendments as stated by Catherine Walter, Assistant City Attorney. The second concurred.

Mayor Bunten expressed concern with the process bypassing the City Manager and not allowing him to make changes or recommendations if necessary. He stated he believes the City Manager should be allowed to provide his best recommendations that are safe and fiscally responsible for the City and its employees.

Daniel R. Stanley stated concerns or additional recommendations of the Committee would be presented to the City Manager to be forwarded to the Council for consideration; however, there is no required action by the Council.

Catherine Walter stated the ordinance simply provides a process to communicate to the City Manager and Governing Body information regarding employee group healthcare.

Councilmember Everhart called the question.

The motion to amend the ordinance to include “Everhart’s proposed amendments” carried unanimously. (9-0-0)

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

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

ORDINANCE NO. 19711 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of February 13, 2012, through February 19, 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 Manspeaker carried unanimously. (9-0-0)

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

Scrap Metal Dealers License Applications were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Advantage Metals Recycling	1628 NW Gordon
Bailey & Bailey Inc.	1921 NE Grantville
Langley Recycling of Topeka	503 SE Branner
Langley Recycling of Topeka	800 NW Tyler

Councilmember Ortiz moved to approve the Scrap Metal Dealers License applications as presented. The motion seconded by Councilmember Manspeaker carried unanimously. Mayor Buntun voted “yes.” (10-0-0)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending Topeka City Code Sections 3.25.050 and 18.40.130, concerning parkland acquisition specifically repealing said original section was presented for first reading. (*ASR12/1*)

AN ORDINANCE introduced 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 bounded by SW 6th Avenue, Interstate-70, SW MacVicar Avenue and SW Frazier to the south, north, east and west, respectively from “PUD” Planned Unit Development District and “R-1” Single Family Dwelling District ALL TO “PUD” Planned Unit Development District (“R-1” Single Family Dwelling District uses for sports recreational facilities and a secondary school; “M-1a” Limited Multiple Family Dwelling District uses; “O&I-3” Office and Institutional District uses, a secondary school and dormitory; a wind energy system with a maximum height of 160 feet; a public utility substation; a food service facility for meal preparation, catering, and a private guest and resident dining hall; and medical and research laboratories with limited manufacturing of bio-medical, medical, and pharmaceutical products; and “I-1” Light Industrial use group to allow governmental surplus warehousing, wholesaling and outdoor storage) was presented for first reading. (*PUD11/5*)

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 south of I-70 and west of 201 NW MacVicar from “PUD” Planned Unit Development District (“I-1” Light Industrial use group) ALL TO “PUD” Planned Unit Development District (“C-4” Commercial District) was presented for first reading. (*PUD12/1*)

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 certain designated properties: (Z12/2) 945 SW College Avenue; (Z12/3) 1811 and 1815 SW 8th Avenue; and (Z12/4) 823 SW Mulvane Street was presented for first reading. (Z12/2, Z12/3, Z12/4)

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

Daniel R. Stanley, Interim City Manager encouraged citizens to attend the Saint Patrick’s Day parade on March 17, 2012 starting at 12:00 p.m. along S. Kansas Avenue.

Councilmember Hiller encouraged citizens to attend the Saint Patrick’s Day parade and participate in the many events happening in the downtown area. She announced the opening of the new Visit Topeka, Inc., office located at 618 S. Kansas Avenue.

Councilmember Ortiz announced the college student scholarship deadline in the amount of \$1,009 provided by the Central Highland Park Neighborhood Improvement Association has been extended to April 9, 2012. She reported the only requirement is the student must be a senior at Highland Park High School. She also announced curb pick-up is scheduled for March 31, 2012 for many neighborhoods and residents can call the Housing and Neighborhood Development Department at 368-3711 for more information.

Councilmember Archer announced the Easter Seals Capper Foundation’s Blarney Breakfast fundraiser is scheduled for March 17, 2012 at the Texas Roadhouse restaurant and invited the community to attend.

Councilmember Gray encouraged citizens to attend the downtown events on March 17, 2012 for Saint Patrick’s Day. He stated he was informed by Shawnee County Commissioner

Buhler that the County Commission could not discuss zoning issues at JEDO Board meetings if the zoning case has already been discussed by the Commissioners at a Commission meeting. He asked the City Attorney to provide a legal opinion on the matter.

Dave Starkey, City Attorney advised Councilmember Gray to ask the Shawnee County Counselor to provide a legal opinion on the matter. He noted the City is not the acting legal counsel for the JEDO Board in 2012.

Councilmember Manspeaker expressed concern with zoning issues that have been considered by the Shawnee County Commission not being allowed to be discussed at JEDO Board meetings. He stated in his opinion it defeats the purpose of open public forum and discourages transparency of the Organization.

Mayor Bunten offered his condolences to the Charlie Hoag family.

Noel Bauta and Cylus Scarbrough appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:59 p.m.

Brenda Younger
City Clerk