

## **Council Minutes – March 20, 2012**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 20, 2012. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Ortiz, Wolgast, Manspeaker, Archer, Gray and Harmon -7. Mayor William W. Bunten presided -1. Absent: Councilmembers Alcala and Everhart -2.

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.

Councilmember Hiller referenced the amendments to the Minutes of the meeting of March 13, 2012 as distributed by the City Clerk.

Councilmember Ortiz spoke in opposition to amending the Minutes and expressed concern with the record of the Council meeting being altered. She stated she would like an opportunity to review the recording of the Council meeting of March 13, 2012, to make sure the proposed amendments are accurate.

Councilmember Hiller stated the amendments were comprised by the City Clerk and reviewed by the City Attorney.

Mayor Bunten suggested the Minutes be removed from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced the Minutes would be removed from the consent agenda for separate discussion.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Scott Spacek to the City of Topeka ADA Advisory Council for a term ending March 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Michael Byington to the City of Topeka ADA Advisory Council for a term ending March 31, 2014 was presented.

APPROVAL of settlement offer for a claim involving a child falling into a sewer manhole in the amount of \$20,000 was presented.

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

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
American Legion Post 1	3800 SE Michigan
The Celtic Fox	118 SW 8 <sup>th</sup> Avenue
Diamond Joe's	5215-5235 SW 28 <sup>th</sup> Court
Fairlawn Plaza BP	2101 SW Fairlawn Road
Holiday Square BP	2901 SE 15 <sup>th</sup> Street
Panchos 2, L.L.C.	3506 SW Topeka Boulevard
Sixth Avenue Ballroom	117 SW 6 <sup>th</sup> Street
Wild Horse Saloon	3249 SW Topeka Boulevard

Councilmember Harmon moved to approve the consent agenda as amended. The motion seconded by Councilmember Manspeaker carried unanimously. (7-0-0)

MINUTES of the regular meeting of March 13, 2012 were presented.

Councilmember Hiller moved to amend the Minutes as distributed by the City Clerk based on the input from the City Clerk and City Attorney. The motion seconded by Councilmember Wolgast carried. Councilmember Ortiz voted "no." (6-1-0)

Councilmember Hiller moved to approve the Minutes from the meeting of March 13, 2012 as amended. The motion seconded by Councilmember Manspeaker carried. Councilmember Ortiz voted "no." (6-1-0)

ORDINANCE NO. 19712 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of February 20, 2012, through March 2, 2012, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Archer moved to adopt the ordinance. The motion seconded by Councilmember Manspeaker carried unanimously. (7-0-0)

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

RESOLUTION NO. 8405 introduced by Interim City Manager Daniel R. Stanley, setting the public hearing to consider the advisability of establishing a Community Improvement District (CID) for Holliday Square located at SW 29<sup>th</sup> Street and SW Topeka Boulevard, as more specifically described herein was presented.

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

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

Councilmember Hiller reported construction had already begun and questioned if procedurally, this was normal considering the applicant has not completed the approval process.

Daniel R. Stanley, Interim City Manager stated the developer is aware of the risks involved with these types of projects.

Vernon Jarboe, attorney representing the applicant encouraged the Council to approve the resolution. He reported the construction costs of the project would far outweigh the cost that will be recovered from the benefit district.

Jim Harppol, applicant appeared to answer questions and stated they are making progress with the much needed improvements to the shopping center.

Councilmember Harmon asked if the Core First Bank & Trust Company was a property owner in the proposed district.

Mr. Harppol reported they have a loan branch located in the shopping center.

The motion to approve the resolution carried unanimously. (7-0-0)

NO Retail Cereal Malt Beverage License applications or Scrap Metal Dealers License applications were presented.

A FINAL PLAT for LKQ Subdivision located at 5913 SW Topeka Boulevard within unincorporated Shawnee County, Kansas was presented. (P10/16)

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

Councilmember Wolgast referenced the confusion expressed at a Council meeting in regards to where LKQ was located. He distributed an aerial map to clarify the location of LKQ Industries and noted it would be fairly difficult to annex the large area outlined in the map located between city limits and LKQ.

Councilmember Wolgast moved to approve the final plat. The motion was seconded by Councilmember Ortiz.

Duane Hoover, applicant appeared for questions and asked the Council to approve the final plat.

Mayor Bunten asked if a lease agreement had been executed by the applicant granting permission to them to use right-of-way owned by the railroad. He noted the lease agreement was a stipulation outlined in the Planning Commission minutes.

David Thurbon, Planning Director stated a lease agreement as been executed.

Angela Sharp, Bartlett & West Engineers reported approval of the final plat is the final step in the process for LKQ.

The motion to approve the final plat carried unanimously. Mayor Bunten voted “yes.”  
(8-0-0)

A FINAL PLAT for Kanza Education and Science Park Subdivision located on property south of Interstate 70, north of SW 6<sup>th</sup> Street, west of SW MacVicar Avenue, and east of SW

Frazier Avenue, formerly part of the Topeka State Hospital Complex, all being within the City of Topeka, Kansas was presented. *(P11/14)*

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

Mayor Bunten commented on the amount of delinquent property taxes the developer owes. He reported the City's lobbyist approached the Legislature last year asking them to consider raising the interest rate charged on delinquent property taxes from 5% to 10% to discourage people from using the City as a loan officer by delinquent tax abusers.

Councilmember Manspeaker raised a point of order and stated the issue the Mayor is speaking to relates to Council Agenda item 6B, an ordinance relating to the MacVicar Development (PUD12/1).

Councilmember Hiller moved to approve the final plat. The motion was seconded by Councilmember Gray.

Angela Sharp, Bartlett & West Engineers requested the Council approve the final plat and stated the development offers a great learning experience for students.

The motion to approve the final plat carried unanimously. Mayor Bunten voted "yes."  
(8-0-0)

ORDINANCE NO. 19713 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 6<sup>th</sup> 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) placed on first reading March 13, 2012 was again presented. (*PUD11/5*)

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

Councilmember Gray questioned the location of the cemetery.

Angela Sharp, Bartlett & West Engineers stated the cemetery is located in an out parcel of the development and would be maintained by the State of Kansas.

Exparte communications were declared by Councilmember Gray.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. Mayor Bunten voted “yes.” (8-0-0)

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

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) placed on first reading March 13, 2012 was again presented. (*PUD12/1*)

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

Mayor Bunten expressed concern with the large amount of delinquent taxes owed by the developer and receiving approval by the Council to start a new development.

Councilmember Archer stated the majority of delinquent taxes are almost always paid when pursued.

Pam Simecka, Acting Budget and Finance Director reported the only reason the City would not receive payment for delinquent property taxes would be if the property was sold for less than the amount of taxes owed.

Councilmember Manspeaker stated he concurs with Mayor Bunten and Councilmember Archer; however, there are individuals who consistently use the delinquent tax process as a loan officer and it is not fair to the taxpayers to carry the financial burden.

Councilmember Ortiz stated she concurs with Councilmember Manspeaker and noted she has dealt with the same issue in her Council District and when threatened with disapproval the delinquent property taxes are paid.

Councilmember Harmon reported zoning issues deal with property rights and the unpaid property taxes in question do not directly relate to the property they are considering. He asked if it would be proper for the Governing Body to consider the history of the owner when considering zoning approval on this property.

David Starkey, City Attorney suggested the Council defer the item so staff could research the proper procedure to follow regarding approval.

Councilmember Harmon cautioned the Council in denying the request for the wrong reasons and noted the Council has dealt with a similar situation in the past.

Councilmember Harmon moved to defer the ordinance for two weeks. The motion seconded by Councilmember Manspeaker carried unanimously. Mayor Bunten voted “yes.”  
(8-0-0)

ORDINANCE NO. 19714 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 8<sup>th</sup> Avenue; and (Z12/4) 823 SW Mulvane Street placed on first reading March 13, 2012 was again presented. (Z12/2, Z12/3, Z12/4)

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

Exparte communications were declared by Councilmember Hiller.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted “yes.” (8-0-0)

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

ORDINANCE NO. 19715 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 placed on first reading March 13, 2012 was again presented. (ASR12/1)

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

Councilmember Manspeaker asked how rates were determined.

Daniel R. Stanley, Interim City Manager reported the developer pays the fee for the parkland acquisition based on property values in that district and the fees can only be applied to that district when parcels are sold.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Harmon carried unanimously. Mayor Bunten voted “yes.” (8-0-0)

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



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

Daniel R. Stanley, Interim City Manager announced there would be no Council Work Session on March 27, 2012.

Councilmember Hiller commented on the St. Patrick's Day events and stated she believes the events were fun, organized and well attended.

Councilmember Ortiz offered her condolences to former City Councilmember Betty Dunn for the loss of her husband.

Councilmember Wolgast requested the Council discuss the new budget process in the next couple of weeks.

Daniel R. Stanley stated he plans to answer questions and explain the process to the Council in the upcoming weeks.

Councilmember Manspeaker requested the Policy and Finance Committee review the ordinance concerning the Topeka Metropolitan Transit Authority's mill levy and report back to the Council before budget deliberations begin. He reported he is sponsoring a resolution on next week's Council agenda on housing tax credits. He stated the project is important to his district and asked Councilmembers to contact him with any questions or concerns they may have.

At 6:47 p.m., Councilmember Harmon moved to go into executive session for a time period not to exceed ten (10) minutes to discuss non-elected personnel matters and to include the City Council and Mayor. The motion seconded by Councilmember Gray carried unanimously. (7-0-0)

At 7:10 p.m., Councilmember Harmon moved to continue the executive session for an additional time period of ten (10) minutes to discuss non-elected personnel matters and to

include the City Council and Mayor. The motion seconded by Councilmember Gray carried unanimously. (7-0-0)

At 7:20 p.m., the Council reconvened into open session and Councilmember Harmon announced no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:20 p.m.

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Brenda Younger  
City Clerk