

Council Minutes – April 24, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 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 Harmon asked for a moment of silent meditation.

A PRESENTATION on the Bikeways Master Plan was provided by Martin Shukert, RDG Planning Consultants. He gave an overview of Topeka's bicycling environment; the market for bicycling in Topeka; the principles and structures of the bikeway network; infrastructure design concepts; route details and implementation; and support systems. He commended staff for their work on the plan and stated he appreciates the opportunity to work on such an exciting process for the City of Topeka.

Councilmember Hiller thanked City staff members and RDG Consultant representatives for their hard work in drafting the Bikeways Master Plan. She stated the plan is ready to implement and there are a variety of efforts underway to raise private funds and by the end of the summer it is their hope to have raised enough private funds to employ a Bikeways Master Plan coordinator for the next 3 years. She noted their first goal would be to complete the Route 1 pilot marking phase. She announced she would introduce a resolution on the May 8, 2012, Council agenda supporting the resolution of the Metropolitan Topeka Planning Organization (MTPO) adopting the Topeka Bikeways Master Plan. She noted the MTPO resolution recommends the City of Topeka appoint a bicycle advisory committee or an organization to assist in the implementation and funding of the Bikeways Plan.

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

Councilmember Alcala requested to remove item 4A, denial of a tort claim appeal for Eric Cortez from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced item 4A would be removed from the consent agenda and placed on the Council agenda under Unfinished Business as item 5D.

Councilmember Gray requested to defer item 4B, denial of a tort claim appeal for Michael Quiett from the consent agenda until questions relating to the incident could be answered by the Topeka Police Department.

Upon hearing no objections, Mayor Bunten announced item 4B would be deferred until further notice.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8419 introduced by Councilmember Sylvia Ortiz, granting Leonard Gonzales an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8420 introduced by Councilmember Richard Harmon, granting Jose Peppers Restaurant an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

BOARD APPOINTMENT recommending the appointment of Summer Ludwig to the City of Topeka ADA Advisory Council for a term ending April 30, 2014 was presented.

BOARD APPOINTMENT recommending the appointment of Spencer Duncan to the Topeka Sustainability Advisory Board to fill an unexpired term ending January 31, 2013 was presented.

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

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

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
El Maguey	2160 SW Wanamaker Road
Reeds Lakeside	2920 SE Croco Road
Tequila's Mexican Restaurant	2911 SW 29 th Street
Walgreens #02846	2915 SW Gage Boulevard
Walgreens #03069	1001 SW Topeka Boulevard

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

AN ORDINANCE introduced by the City Council Policy and Finance Committee amending City of Topeka Code Section A9-2 and repealing said original section concerning the Topeka Metropolitan Transit Authority placed on first reading April 17, 2012 was again presented.

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

Councilmember Archer stated the Topeka Metropolitan Transit Authority (TMTA) mill levy was discussed at the April 2, 2012, Policy and Finance Committee meeting and the Committee voted unanimously to approve a 4.2 mill levy cap for TMTA in 2013.

Councilmember Alcalá stated he would not support the charter ordinance at this time. He reported he has been notified of a potential Kansas Open Meetings Act (KOMA) violation by TMTA Board members on March 29, 2012 concerning the crafting of the former Executive Director's severance. He stated he strongly believes the action taken at the March 29, 2012, TMTA Board meeting was illegal and he plans to submit a written request to the City Attorney's Office asking them to determine if the action taken by TMTA Board members concerning the crafting of the former Executive Director's severance is null and void due to a KOMA violation,

as well as, he would be seeking the Council's support in drafting a request to the Shawnee County District Attorney to investigate if a KOMA violation occurred.

Councilmember Archer raised a point of information. He asked Councilmember Alcalá to clarify his intent regarding consideration of the mill levy.

Councilmember Alcalá stated he would oppose a mill levy increase at this time until it has been determined if a KOMA violation has taken place. He noted the mill levy increase would be funded with taxpayer dollars and in his opinion approval of a mill levy increase would be an irresponsible act by the Council due to the pending circumstances.

Councilmember Archer stated he concurs with Councilmember Alcalá.

Councilmember Alcalá moved to defer the charter ordinance until the City Attorney has determined if the action taken by TMTA Board members on March 29, 2012, concerning the crafting of the former Executive Director's severance is null and void due to a potential KOMA violation, and submit a request to the Shawnee County District Attorney to investigate if a KOMA violation has occurred by TMTA Board members. The motion was seconded by Councilmember Gray.

Mayor Bunten stated he believes any action taken by the Council in regards to a mill levy increase has no bearings on the TMTA Board meeting in question.

Councilmember Wolgast questioned if deferral of action would have an effect on budget process deadlines for TMTA and the City.

Dave Starkey, City Attorney noted if the charter ordinance was approved at this time then the effective date would be June 7, 2012.

Councilmember Archer stated he was told there was a budget timeline to follow and he believes it would take some time to research the issues being raised by Councilmember Alcalá.

He noted tax dollars would be used to fund the mill levy increase and the Council should be mindful when moving forward with the approval process.

Daniel R. Stanley asked for clarification from Councilmember Alcalá on what information he would like provided to him. He stated a mill levy increase would have an effect on the 2013 budget.

Councilmember Alcalá requested the City Attorney advise the Governing Body as to whether the actions taken by the TMTA Board members on March 29, 2012, concerning the crafting of the former Executive Director's severance would be null and void due to the illegal nature of the Board meeting.

Councilmember Hiller stated she would oppose deferral of action due to budget deadline requirements and the need for TMTA to be able to move forward with their 2013 operating budget.

Councilmember Gray stated he concurs with Councilmember Alcalá and would not support a mill levy increase at this time. He stated historically there has been public mistrust of TMTA management.

Councilmember Manspecker stated he concurs with Councilmember Alcalá. He noted the issues raised by Councilmember Alcalá had not surfaced when the Policy and Finance Committee voted to recommend a mill levy increase for TMTA.

Rodd Miller, TMTA Board Chairman stated the budget deadline as outlined by State Statute has to be finalized by July 1, 2012; therefore, the charter ordinance must be approved at this time to utilize a 4.2 mill levy cap in their 2013 operating budget.

Councilmember Alcalá questioned if TMTA could receive additional funding during budget deliberations as they have in the past.

Jim Daniel, TMTA Board member reported TMTA has previously operated successfully with less than a 4.2 mill levy cap. He stated he recognizes the Council's concerns; however, he believes TMTA Board members are aware of KOMA regulations and operate under their attorney's advice.

Councilmember Everhart asked if the requested mill levy increase was discussed at the same meeting the proposed illegal action occurred.

Jim Daniel stated the mill levy was not discussed at that meeting.

Councilmember Alcalá stated it was his understanding the same Board members that discussed the mill levy increase is the same members being questioned about the alleged KOMA violation.

Councilmember Wolgast stated the Council has a duty to approve a mill levy cap, as well as, being good stewards of taxpayer dollars. He spoke in opposition to deferring action and noted he believes the two issues are unrelated.

The motion to defer the charter ordinance until the City Attorney has determined if the action taken by TMTA Board members on March 29, 2012, concerning the crafting of the former Executive Director's severance is null and void due to a potential KOMA violation, and submit a request to the Shawnee County District Attorney to investigate if a KOMA violation has occurred by TMTA Board members carried. Councilmembers Hiller, Everhart, Wolgast and Mayor Buntin voted "no." (6-4-0)

ORDINANCE NO. 19726 introduced by Interim City Manager Daniel R. Stanley, concerning an amendment to the International Building Code regarding certificates of occupancy and sidewalks, amending City of Topeka Code Section 14.20.060 and specifically repealing said original section was placed on first reading April 17, 2012 was again presented.

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

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

ORDINANCE NO. 19727 introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Sections 14.55.010 and 14.55.060 through 14.55.270 concerning the adoption of and the amendments to the 2009 International Residential Code and specifically repealing said original sections, as well as, creating new Sections 14.55.280 through 14.55.620 placed on first reading April 17, 2012 was again presented.

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

Councilmember Hiller expressed her appreciation to staff and the Topeka Home Builders Association for working together regarding agreeable changes to the code. She asked how the changes would affect a local handyman or the average person who wants to complete their own home improvements.

Miriam Berke, Development Services Division Director stated the changes would impact new residential construction only and specify an improved method of attachment to support and improve the connection of decks to structures.

Councilmember Hiller asked if there were changes to the roofing guidelines.

Miriam Berke stated residents would be required to have a licensed roofing professional make the necessary repairs to their roof unless homeowners choose to make repairs themselves.

Mike Pressgrove, PDQ Construction and member of the Topeka Home Builders Association spoke in support of the ordinance. He requested the effective date be changed from

June 1, 2012 to July 1, 2012 to allow more time to inform and train contractors on the new requirements.

Councilmember Hiller asked if staff supports the amendment.

Miriam Berke stated staff would support a July 1, 2012 effective date.

Councilmember Hiller moved to amend line 1064 of the ordinance by changing the effective date from June 1, 2012 to July 1, 2012. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

Councilmember Hiller moved to adopt the ordinance as amended. The motion seconded by Councilmember Alcalá 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.

DENIAL OF TORT CLAIM of Eric Cortez in the amount of \$1,669.17 for repairs to his vehicle as the result of pothole damage which occurred on November 7, 2011 was presented.

Councilmember Alcalá moved to approve the tort claim in the amount of \$1,669.17 based upon the completion of the work and receipt received by the City. The motion was seconded by Councilmember Manspeaker.

Councilmember Hiller stated she was sympathetic with the issue; however, she would not support the tort claim based on past practice and because there was a policy in place regarding approval or denial of claims.

Councilmember Alcalá stated he believes the City is liable for damages because there are no routine inspection policies in place; therefore, the City could not claim they are being proactive in the repair of potholes or exercising ordinary care of streets.

Councilmember Everhart stated she shares Councilmember Alcala's concerns; however, she questioned if the City has the manpower or the funds to create an inspection team.

Councilmember Alcala stated Street Department supervisors or Code Compliance officers could inspect streets when they drive to jobsites and code compliance inspections.

Councilmember Ortiz stated she believes people do not submit pothole claims to the City because they know they will be denied. She requested that an inspection policy be implemented.

Councilmember Hiller requested the Interim City Manager or City Attorney provide an opinion on what an affirmative vote would mean in regards to setting precedence for future claims.

Dave Starkey, City Attorney stated City Code standards are the guidelines used by the City Attorney when considering approval of claims. He referenced the principal of law applicable to the claim including (1) to show substantial liability by the City for the defect by concluding the City knew of the defect, or (2) the failure to exercise ordinary care by the City. He reported he received no information from the Street Department that would conclude the City knew of the defect; therefore, the issue of ordinary care needs to be resolved by the Council by determining if it would be reasonable to hire an inspection team for the purpose of exercising ordinary care of city streets.

Mayor Bunten questioned why Mr. Cortez did not file the claim with his insurance company. He noted the City has approximately 2,000 miles of streets to maintain and potholes transpire very quickly on asphalt roads due to extreme weather patterns.

Councilmember Alcala stated auto insurance policies are not used for these types of situations which cause insurance premiums to increase. He stated he understands the Council is

required to make a determination on a case-by-case basis; however, there are no policies in place outlining a process.

Daniel R. Stanley stated research could be done to find the best defensible process for claim determination by the Legal Department; however, the Council would need to provide direction on preferable standards and a timeline to follow.

Councilmember Alcalá requested some type of inspection process, not based on complaints, be conducted on a quarterly basis.

Councilmember Hiller stated there has been a consistent standard of ordinary care up to this point which includes, if an area has been reported the City pays the claim.

The motion to approve the tort claim in the amount of \$1,669.17 based upon the completion of the work and receipt received by the City failed. Councilmembers Hiller, Everhart, Wolgast, Archer, Gray and Harmon voted “no.” (3-6-0)

RESOLUTION NO. 8421 introduced by Interim City Manager Daniel R. Stanley, setting forth the City of Topeka’s intention to acquire one (1) Engine Company No. 6 apparatus, pursuant to K.S.A. 12-110c was presented.

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

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Manspecker carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$1,700,000 and RESOLUTION NO. 8422 introduced by Interim City Manager Daniel R. Stanley, authorizing Improvement Project T-601028.00 which provides for neighborhood infrastructure improvements in Chesney Park and Ward Meade, as more specifically described herein was presented.

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

Councilmember Ortiz moved to approve the project budget and resolution. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

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

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Sections 18.10.010, 18.10.020, 18.25.060, 18.55.005 and 18.55.190 and specifically repealing said original sections, as well as, creating new Code Section 18.25.095, all concerning programmable electronic signs was presented for first reading. (ACZR12/1)

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

Daniel R. Stanley, Interim City Manager announced Municipal Court would host a Warrant Amnesty Program from April 23, 2012 through April 27, 2012 for the purpose of resolving outstanding bench warrants. He commended Municipal Court Judge Victor Miller for initiating the program and noted 130 people have taken advantage of the program to date.

Councilmember Hiller announced the Topeka Opportunity To Own (TOTO) Program sold their 400th house and noted it is one of the strongest housing programs in the nation. She commended the Housing and Neighborhood Department Division for their tremendous contributions to the program.

Councilmember Alcala stated he was glad to be back and thanked everyone for their get well wishes during his extended medical leave of absence.

Councilmember Ortiz expressed her appreciation to Ginny Burghart, City Council Assistant, for her service to the Council and noted April 25, 2012 is Administrative Professionals' Day.

Councilmember Wolgast commended Keep America Beautiful for organizing over 1,300 volunteers and removing 40 tons of trash from community neighborhoods. He stated the volunteer efforts show that citizens care about Topeka and want to contribute and make a difference.

Councilmember Manspeaker reported he recently worked with 40 to 50 volunteers in removing tires and trash from the Kansas State Historical Museum grounds.

Mayor Bunten commended Celeste Miller, Assistant to the Mayor, for her dedicated service to the City and the Mayor's office.

Sonny Scroggins and Stephanie Mott appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:01p.m.

Brenda Younger
City Clerk