

Council Minutes – May 8, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 8, 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, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Mayor William W. Bunten presided -1. Absent: Councilmember Ortiz -1.

AFTER THE MEETING was called to order, Pastor D.C. Clark, Shiloh Baptist Church gave the invocation.

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

A PRESENTATION of the final conceptual plan for South Kansas Avenue was presented by Marty Shukert and Dolores Silkworth, RDG Planning and Design with contributions to the streetscape plan by Hort, Terrill & Karst, P.A.; Latimer Sommers and Associates; and Cook, Flatt & Strobel Engineers. He stated the purpose of the conceptual plan was to identify a theme, as well as, provide a general display of improvements that support the theme with the intent of supporting the general concept of promoting downtown as a place where businesses could locate and prosper. He distributed copies of the South Kansas Avenue Streetscape Plan, dated May 8, 2012, to the City Council.

Councilmember Gray asked which businesses located along South Kansas Avenue from 6th to 8th Streets would be displaced during construction of the green spaces or mini plazas, and if there have been discussions with the businesses concerning a timeline or solution.

Dolores Silkworth stated there have been many discussions conducted with businesses located near the green spaces; however, nothing has been finalized at this time.

Mayor Bunten spoke in support of the plan and stated he looks forward to moving ahead with the project and believes the public strongly supports downtown revitalization.

Councilmember Hiller asked how the public could view the streetscape plan.

Dolores Silkworth stated the new streetscape plan could be viewed online at www.activatedtheavenue.com.

Randy Speaker, Deputy City Manager requested to withdraw item 5E, an ordinance concerning updates to zoning regulations (ACZR12/1) from the Council agenda due to technical details that need resolved.

Upon hearing no objections, Mayor Bunten announced the ordinance would be withdrawn from the Council agenda.

Dave Starkey, City Attorney requested the Council, as suggested by the City's Bond Counsel and Interim Finance Director to suspend the Council Rules to delete item 7A, an ordinance authorizing issuance of Combined Utility Refunding Revenue Bonds, Series 2012A from the Council agenda and substitute a new ordinance as item 7A. He read the new ordinance heading as follows, "AN ORDINANCE introduced by Acting City Manager Daniel R. Stanley, authorizing the issuance of \$21,795,000 aggregate principal amount of Combined Utility Refunding Revenue Bonds, Series 2012-A, of the City of Topeka, Kansas, under the authority of K.S.A. 10-116a and K.S.A. 10-1201 et seq., and all amendments thereto."

Councilmember Harmon moved to suspend the Council Rules to delete item 7A from the Council agenda and substitute the new ordinance as read by the City Attorney. The motion seconded by Councilmember Everhart carried unanimously. (8-0-0)

Councilmember Everhart moved to reinstate the Council Rules. The motion seconded by Councilmember Gray carried unanimously. (8-0-0)

Councilmember Alcalá moved to remove item 4A, denial of a tort claim for Randy Wheat from the consent agenda and place the tort claim on the Council agenda under New

Business as item 6C for further discussion. The motion seconded by Councilmember Gray carried unanimously. (8-0-0)

Councilmember Alcalá raised a point of order regarding properly following Council Rules & Procedures. He stated two separate motions should be made in regards to suspension of Council Rules & Procedure and a substitute motion.

The City Attorney stated he concurred with Councilmember Alcalá.

Councilmember Alcalá moved to reconsider the motion to suspend the Council Rules to delete item 7A from the Council agenda and substitute the new ordinance as read by the City Attorney. The motion seconded by Councilmember Harmon carried unanimously. (8-0-0)

Councilmember Harmon moved to suspend the Council Rules to delete item 7A, an ordinance authorizing issuance of Combined Utility Refunding Revenue Bonds, Series 2012A from the Council agenda. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

Councilmember Harmon moved to delete item 7A from the Council agenda and substitute the new ordinance as read by the City Attorney. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

Councilmember Harmon moved to reinstate the Council Rules. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of May 1, 2012 were presented.

A Dance Hall License renewal application for the American Legion Post 1 located at 3800 SE Michigan was presented.

RESOLUTION NO. 8425 introduced by Councilmember Karen Hiller, granting Cumulus Broadcasting an exception to the provisions of City of Topeka Code Section 9.45.170 concerning noise prohibitions was presented.

Councilmember Wolgast moved to approve the consent agenda as amended. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

ORDINANCE NO. 19729 introduced by Interim City Manager Daniel R. Stanley, pertaining to an amendment to the text and map of the Topeka Comprehensive Metropolitan Plan for the Neighborhood Element placed on first reading May 1, 2012 was again presented.
(CPA12/2)

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Manspeaker asked why there was an amendment made to the plan.

Bill Fiander, Planning Department Deputy Director reported the Planning Department updated the five vital signs that help create the map and the action steps relating to code enforcement and housing. He noted the map needed to be updated to reflect current neighborhood statistics at the present time, as well as, the progress that has been made to date.

Councilmember Wolgast commented on the Topeka Planning Commission's discussion regarding boarded houses and spoke in support of reviewing the policy to address the issues.

Councilmember Manspeaker asked if any certain neighborhoods were targeted or rankings were changed in the plan.

Bill Fiander reported the plan did not target a specific neighborhood; however, some neighborhoods did change in health status ranking. He reported the Jefferson Square and Quinton Heights Steele Neighborhoods declined from an at-risk to an intensive care status, while other neighborhoods improved. He stated the intensive care neighborhoods of Monroe, North

Topeka East, East Topeka North and Highland Crest West remained the same; and the downtown census blocks improved from intensive care to an at-risk status.

Councilmember Hiller clarified the intensive care and at-risk neighborhoods were ranked based on housing conditions and income range, not crime statistics. She commented on the neighborhoods located in Council District No. 1 and stated they have worked very hard to improve.

Bill Fiander stated he concurs with Councilmember Hiller. He reported the plan was implemented to provide Neighborhood Improvement Associations with the necessary information for residents to better understand the basis of health ranking in neighborhoods. He stated the plan would be posted to the City's website for easy access by neighborhood residents.

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

Teresa Miller expressed concern with the ranking of the North Topeka West Neighborhood Improvement Association and stated she believes the neighborhood should be ranked as intensive care, not at-risk. She also stated in her opinion, the plan should consider the condition of buildings, as well as, population to make certain neighborhoods are funded correctly.

Councilmember Manspeaker stated he concurs with Ms. Miller and noted the Monroe Neighborhood deals with the same situation. He expressed concern with neighborhood issues not being categorized correctly and funds not being allocated where they are needed the most.

Councilmember Alcalá asked Bill Fiander to further explain the health ranking system of neighborhoods.

Bill Fiander stated the neighborhood benchmarks do not take into account commercial or industrial land use and mainly consider residential property values and ownership; crime statistics are included in the vital signs but are not used to help determine funding amounts; and the population north or west of Topeka Boulevard is less dense. He reported at-risk neighborhoods are a priority for the City; however, they are not a high priority of the Stages of Resource Targeting (SORT) Program concept.

The motion to adopt the ordinance carried unanimously. Mayor Bunten voted “yes.”
(9-0-0)

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

DENIAL OF TORT CLAIM of Michael Quiett in the amount of \$200.00 for the cost of a new tent allegedly damaged by police officers on December 27, 2011 was presented.

Randy Speaker, Deputy City Manager gave the staff report.

Dave Starkey, City Attorney reported the claim was filed on December 27, 2011, and was presented to the City Council for consideration on April 24, 2012; the Topeka Police Department conducted an internal investigation and it was determined the City had no liability regarding the claim; therefore, he is recommending denial of the tort claim.

Ron Miller, Topeka Police Chief reported it was determined through an internal investigation there was no concrete evidence that police officers cut the tent in an effort to enter the tent. He stated police officers only looked inside the tent and did not enter the tent. He provided a brief overview of violent crime events that took place at that time and the events that transpired relating to the claim. He noted the claimant did not report damages to the tent until three (3) days after the alleged damage by police officers on December 30, 2011.

Councilmember Gray questioned the timeframe of events; he asked why Mr. Quiett requested the Police Department to come to his tent on December 28, 2011; what is the protocol when searching private property; and does the staff believe the arrest of Mr. Quiett resulted in a claim filed against the City.

Chief Miller reported police officers responded to a report by Mr. Quiett regarding a compressor located in the woods nearby his tent that Mr. Quiett believed to be stolen; and Mr. Quiett was arrested on a warrant relating to another issue.

Councilmember Gray asked if the police officers had permission or an imminent need to enter the private property where the tent was located.

Chief Miller reported the police officers entered the private property the tent was located on and did not have permission from the property owner to do so which is not unusual as it occurs several times a day when responding to citizen calls. He stated there is a general expectation of privacy in a tent because a search without a warrant would be presumed unreasonable; however, there are numerous exceptions to warrants and he believes there were exigent circumstances in this case.

Councilmember Wolgast moved to approve the denial of the tort claim. The motion seconded by Councilmember Archer carried unanimously. Councilmember Gray voted “no.” (7-1-0)

ORDINANCE NO. 19730 introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for Slash and Bash movie festival pursuant to K.S.A. 41-719(a)(2) and K.S.A. 41-2645(e)(1) placed on first reading May 1, 2012 was again presented.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Absent: Ortiz -1.

ORDINANCE NO. 19731 introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for Top City Thursdays Concert Series pursuant to K.S.A. 41-719(a)(2) and K.S.A. 41-2645(e)(1) placed on first reading May 1, 2012 was again presented.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Absent: Ortiz -1.

CHARTER ORDINANCE NO. 107 introduced by 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.

Randy Speaker, Deputy City Manager gave the staff report.

Michael Byington expressed the importance of providing access to viable public transportation services. He stated he believes as a community we must have a public transit system that should be included as part of the infrastructure and funded in the same manner.

Rodd Miller, TMTA Board member spoke in support of the charter ordinance and stated he looks forward to future discussions on determining a permanent solution for TMTA's funding and eliminate the need to address the mill levy cap annually.

Kevin Siek, Topeka Independent Living Resource Center spoke in support of the charter ordinance. He reported federal funding is questionable at this time, as well as, the State of Kansas is considering reducing transportation funding. He expressed the importance of receiving public input due to the much needed service and asked the Council to consider a mill levy cap of 4.5 mills to reinstate evening and weekend services.

Councilmember Alcalá moved to adopt the charter ordinance. The motion seconded by Councilmember Manspecker carried unanimously. Mayor Buntin voted "yes." (9-0-0)

The charter ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Everhart, Wolgast, Manspecker, Archer, Gray, Harmon and Mayor Buntin -9. Absent: Ortiz -1.

RESOLUTION NO. 8426 introduced by Councilmember Karen Hiller, supporting the resolution of the Metropolitan Topeka Planning Organization (MTPO) adopting the Topeka Bikeways Master Plan was presented.

Councilmember Hiller gave the staff report.

Councilmember Hiller moved to approve the resolution. The motion was seconded by Councilmember Harmon.

Councilmember Gray questioned the unknown financial impact to the City and asked if the funding for the plan was included in the approved Capital Improvement Program.

Councilmember Manspecker asked if approval of the resolution would obligate the City to finance the bikeways project.

Councilmember Hiller stated she understands the bikeways project has been determined to need millions of dollars to complete; however, there are a variety of efforts underway to raise private funds which have been very successful. She reported no City funds would be approved at this time and the resolution of support would be included in state and federal grant applications.

Councilmember Alcalá reported the resolution refers to the use of City staff and in his opinion this would be approving the use of City funds. He asked the City Attorney to clarify the intent of the resolution.

Dave Starkey, City Attorney stated he concurs with Councilmember Hiller's statement regarding intent of the resolution; however, there is a statement referencing staff time which could amount to a commitment of resources.

Teresa Miller spoke in opposition to the resolution and stated she believes it is premature. She stated in her opinion, north Topeka does not have room on the roadways for bicyclists without endangering the vehicle traffic. She reported North Topeka West Neighborhood Improvement Association residents disagree with spending money on bike trails and believes the City should use the funding to repair streets instead.

The motion to approve the resolution carried unanimously. Councilmember Gray voted "no." (7-1-0)

2012 Retail Cereal Malt Beverage License renewal applications were presented for the following:

Business Name

Dillons #47
Dillons #54
Dillons #58
Dillons #67
Dillons #87

Address

2815 SW 29th Street
800 NW 25th Street
1400 SW Huntoon Street
2010 SE 29th Street
5311 SW 22nd Place

<u>Business Name</u>	<u>Address</u>
Dillons #88	4015 SW 10 th Avenue
Kwik Shop #705	1114 NW Topeka Boulevard
Kwik Shop #713	5700 SW 21 st Street
Kwik Shop #720	102 SW 37 th Street
Kwik Shop #729	1700 SW Topeka Boulevard
Kwik Shop #740	2277 SW 10 th Avenue
Kwik Shop #780	2520 SW 6 th Avenue
Kwik Shop #781	4500 S Topeka Boulevard
Kwik Shop #788	1414 SW 17 th Street
Kwik Shop #789	746 NE Wabash Street
Walgreens #02846	2915 SW Gage Boulevard
Walgreens #02888	2110 NW Topeka Boulevard
Walgreens #03069	1001 SW Topeka Boulevard
Walgreens #03772	2901 SE California Avenue
Walgreens #04557	2121 SW Fairlawn Road
Walgreens #04782	3696 SW Topeka Boulevard
Walgreens #04981	3630 SW Wanamaker Road
Walgreens #07778	1001 SW Gage Boulevard

Councilmember Everhart moved to approve the Retail Cereal Malt Beverage License applications as presented. The motion seconded by Councilmember Wolgast carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

DENIAL OF TORT CLAIM for Randy Wheat in the amount of \$6,434.40 for cleanup and repairs to the residence located at 1003 SE Long as the result of a water main break which occurred on December 11, 2011 was presented. The tort claim was deferred from the meeting of May 8, 2012.

Councilmember Alcalá requested staff provide the Council the history of similar claims for the past five (5) years in regards to approval or denial.

Councilmember Alcalá moved to defer the denial of a tort claim for Randy Wheat for one week. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

AN ORDINANCE introduced by Acting City Manager Daniel R. Stanley authorizing the issuance of \$21,795,000 aggregate principal amount of Combined Utility Refunding Revenue

Bonds, Series 2012-A, of the City of Topeka, Kansas, under the authority of K.S.A. 10-116a and K.S.A. 10-1201 et seq., and all amendments thereto was presented for first reading.

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 at the northwest corner of SE 30th Terrace and SE Walnut Drive from “O&I-2” Office and Institutional District and “C-2” Commercial District ALL TO “M-2” Multiple Family Dwelling District was presented for first reading. (Z12/6)

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

Randy Speaker, Deputy City Manager reported in an effort to improve Water Department Customer Service, the customer service red phone has been removed from the lobby of the Cyrus K. Holliday building and customers will now have the option to speak directly to customer service representatives to address their water service needs. He also reported, at Councilmember Alcalá’s request, staff would be conducting time studies to review quarterly inspections of Water Department Customer Services.

Councilmember Hiller stated she has been approached by volunteers willing to help with the quarterly inspections of the Water Department Customer Service Center. She offered her condolences to the Daniel R. Stanley family. She encouraged the community to take advantage of area events this summer.

Councilmember Everhart commented on the Dornwood Baseball Park located in the Highland Park area and congratulated Highland Acres Neighborhood Improvement Association for their hard work in rehabilitating the park. She reported they established the Friends of

Dornwood organization and citizens could access their website at www.friendsofdornwood.org for more information.

Councilmember Archer offered his condolences to the Daniel R. Stanley family.

Councilmember Gray commented on the Miracle Ballfield at Gage Park and noted it is a great recreational asset to the community. He encouraged citizens to attend the new Penguin Plunge exhibit at the Topeka Zoo and area Cinco de Mayo events.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:44 p.m.

Brenda Younger
City Clerk