

Council Minutes – May 15, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 15, 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, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Mayor William W. Bunten presided -1. Absent: Councilmember Everhart -1.

AFTER THE MEETING was called to order, Reverend Ty Sweeting, United Church of Christ and Police Department Chaplain gave the invocation.

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

A PRESENTATION on the Landmarks Commission was presented by Stacy Keller, Topeka Landmarks Commission Chair. She stated the purpose of the Commission was to advise the City Council on historic assets and safeguard architectural and cultural heritage of the community through the preservation of historic resources, landmarks and districts. She reported the Commission is considering three possible areas within the City of Topeka that could be developed into an historical district. She asked the Council to support a change in Transient Guest Tax (TGT) fund allocation guidelines and allow TGT funds be allocated towards historic preservation use.

Randy Speaker, Deputy City Manager requested to add an ordinance concerning utility rates to the Council agenda under First Readings.

Upon hearing no objections, Mayor Bunten announced the ordinance would be added to the Council agenda as item 8C.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Tom Woltkamp to the Board of Building and Fire Appeals for a term ending May 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Mike Wilson to the Board of Building and Fire Appeals for a term ending May 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Jeff Romine to the Board of Plumbing Examiners for a term ending May 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Neil Carlson to the Board of Plumbing Examiners for a term ending May 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Lorean Williams to the Human Relations Commission for a term ending May 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Ryan Adams to the Topeka Board of Zoning Appeals for a term ending May 31, 2015 was presented.

RESOLUTION NO. 8427 introduced by Councilmember Karen Hiller granting The Office and Celtic Fox an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

MINUTES of the regular meeting of May 8, 2012 were presented.

An Open After Midnight License renewal application for the 6th Street Back Door located at 610 SW Wayne Street was presented.

Councilmember Ortiz moved to approve the consent agenda. The motion seconded by Councilmember Archer carried unanimously. (8-0-0)

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.

Dave Starkey, City Attorney gave the staff report and provided the requested information by Councilmember Alcala relating to the number of similar claims processed in the past five (5) years that have been considered by the City Council.

Councilmember Alcala moved to approve the denial of the tort claim. The motion was seconded by Councilmember Wolgast.

Councilmember Alcala made a substitute motion to approve the tort claim in an amount not to exceed \$6,434.40, subject to validation of receipts by the City Attorney, for the cleanup and repairs to the residence located at 1003 SE Long. The motion was seconded by Councilmember Ortiz.

Councilmember Archer questioned how the facts surrounding Mr. Wheat's claim were different from similar claims presented and denied by the Council.

Councilmember Hiller stated staff determined at the May 8, 2012 Council Work Session, the City was not liable for damages, as well as, receipts have not been verified to confirm the proper amount to cover damages.

Dave Starkey, City Attorney reported it was his opinion that the City was not negligent in the matter; however, if the Council approves the claim, the motion made by Councilmember Alcala only authorizes payment not to exceed \$6,434.40.

Councilmember Ortiz asked if Mr. Wheat could respond to questions to clarify the events that transpired. She stated it was her understanding the City was not able to turn the water off promptly, causing damage to his property.

Mayor Bunten stated he would allow Councilmember Ortiz to ask questions directly related to the claim; however, he would caution the Council against engaging in a public discussion with the claimant.

Councilmember Alcala raised a point of order. He stated there are no restrictions in the Topeka City Council Rules & Procedures or Robert's Rules of Order that he is aware of relating to the rebuttal of individuals during a public meeting.

Dave Starkey stated he could not provide an answer without properly researching the Topeka City Council Rules & Procedures and Robert's Rules of Order; however, in his opinion all individuals should be allowed to speak to the matter.

Councilmember Alcala requested a legal opinion be provided to the Council in regards to the rebuttal of individuals during public meetings.

Councilmember Ortiz asked Mr. Wheat to clarify the events surrounding the water damage to his residence.

Randy Wheat reported due to a water main break, water continued to flow into his basement for nearly 45 minutes. He stated he fully understands the City worked hard to shut the water off; however, the water main break caused substantial damage to his residence and he believes the City is liable.

Braxton Copley, Office of Utilities and Transportation Director reported the water main break was reported at 5:30 p.m.; City water crews arrived within 45 minutes to make repairs; the valve located near SE 11th and Long Streets was stripped and could not be shut off manually; therefore, crews immediately placed a sump pump in Mr. Wheat's basement to begin removing water from basement. He stated Water Department employees responded in a correct manner and did a great job given the circumstances.

Councilmember Ortiz spoke in support of the claim. She stated there are many aging waterlines in the area and she believes City employees did what they could with the resources they had; however, Mr. Wheat suffered damages to his property and should be compensated.

Councilmember Archer asked if there was a regular inspection process in place that could have identified the valve problem.

Braxton Copley stated there is a valve inspection program in place to inspect the 15,000 valves in the City with a three year goal of inspecting 5,000 valves each year; however, he does not have any records showing staff had inspected the valve at this location.

Councilmember Alcalá clarified he was not criticizing staff's reactions to the situation. He stated he would support the claim because Mr. Wheat's residence caught the majority of the backflow from the broken water main.

The substitute motion to approve the tort claim in an amount not to exceed \$6,434.40, subject to validation of receipts by the City Attorney, for the cleanup and repairs to the residence located at 1003 SE Long failed. Councilmembers Hiller, Wolgast, Gray and Harmon voted "no." (4-4-0)

The motion to approve the denial of the tort claim failed. Councilmembers Alcalá, Ortiz, Manspecker and Archer voted "no." (4-4-0)

ORDINANCE NO. 19732 introduced by Acting City Manager Daniel R. Stanley authorizing the issuance of \$22,045,000 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 placed on first reading May 8, 2012 was again presented.

Randy Speaker, Deputy City Manager gave the staff report.

Pam Simecka, Acting Budget and Financial Services Director reported the City realized a present value savings of \$2.8 million over the life of the bonds or 12.3% par value refunded over the life of the bonds which is approximately \$185,000 annually until 2033.

Councilmember Hiller asked if the refinancing extended the life of the bonds.

Pam Simecka stated the life of the bonds stayed the same.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Gray carried unanimously. Mayor Buntun voted “yes.” (9-0-0)

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

RESOLUTION NO. 8428 introduced by Interim City Manager Daniel R. Stanley prescribing the form and details of Combined Utility Refunding Revenue Bonds, Series 2012-A of the City of Topeka, Kansas, in the aggregate principal amount of \$22,045,000 the issuance of which was authorized by the City pursuant to its ordinance passed and approved May 15, 2012; and authorizing certain other documents and actions in connection with the issuance of the bonds was presented.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Harmon moved to approve the resolution. The motion seconded by Councilmember Gray carried unanimously. Mayor Buntun voted “yes.” (9-0-0)

APPROVAL of denial of appeal of a solicitor license (mobile food service unit) for Mr. Ronald Lassiter, Jr., was presented.

Randy Speaker, Deputy City Manager gave the staff report.

JaLynn Copp, Assistant City Attorney provided a brief overview of the denial of the solicitor license. She stated the denial is based on non-disclosure of facts in the application, which is outlined in City Code as a basis for denial. She reported she met with Mr. Lassiter to explain the denial to him and the City received Mr. Lassiter’s letter of appeal on April 16, 2012.

Councilmember Gray referenced the facts that were not disclosed on the application. He asked if there is a clear definition of moral turpitude or felony, and questioned if applicants really understand what the words mean, as well as, how they should answer specific questions on the application.

Councilmember Hiller stated she concurs with Councilmember Gray and believes some of the questions on the application could be confusing to applicants.

JaLynn Copp stated there is no clear definition of moral turpitude outlined in City code; however, a theft would fall under the definition of honesty.

Councilmember Harmon asked if the ordinance could be amended to define moral turpitude and revise the application accordingly.

Councilmember Ortiz stated the Council should also consider changing the timeframe in regards to background checks for applicants.

Councilmember Alcala spoke in support of approving the solicitor license because the incidents happened many years ago and Mr. Lassiter has invested several thousand dollars in mobile food cart equipment to sustain his business.

Councilmember Alcala moved to approve the denial of the solicitor license. The motion was seconded by Councilmember Ortiz.

Councilmember Alcala made a substitute motion to approve the appeal of a solicitor license. The motion was seconded by Councilmember Gray.

Councilmember Hiller asked the applicant why he did not disclose the required information on the application.

Ronald Lassiter, Jr., reported it was his understanding he was not required to disclose the first conviction of crime because he received a diversion; he did not believe he had to disclose

convictions that took place over 10 years ago (in 2001); and he does not recall the events the Police Department was referring to in 2004.

Councilmember Ortiz spoke in support of approving the solicitor license because she believes in giving someone a second chance. She suggested revising the solicitor license application to clarify moral turpitude.

The substitute motion to approve the appeal of a solicitor license carried.

Councilmember Hiller voted “no.” (7-1-0)

A PROJECT BUDGET in the amount of \$4,000,000 and A RESOLUTION introduced by Interim City Manager Daniel R. Stanley, relating to and authorizing Improvement Project No. T-601020.02, which provides for street improvements to South Kansas Avenue between 7th Street and 9th Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Wolgast stated he would prefer the project be deferred two months to allow time for staff to clarify the project budget, as well as, re-engage the private sector in the process and allow them to provide input on the design. He expressed concern with the loss of excitement by the public for downtown revitalization, and he believes the design of the project is not what the community had in mind.

Councilmember Wolgast moved to defer the project budget and resolution for two (2) months. The motion was seconded by Councilmember Archer.

Councilmember Gray encouraged the Council to oppose the deferral. He stated in his opinion the issue should be resolved at this time as there is no feasible reason for a delay and the private sector has played a role in the process from the beginning.

Councilmember Archer spoke in support of deferring the project because he needs more information to make an informed decision on the issue. He questioned how much City funding would be dedicated directly to infrastructure and landscaping, and how much funding would be dedicated to sidewalk and curb repairs. He spoke in support of the private sector funding other aspects of the project.

Councilmember Manspeaker stated the streets along South Kansas Avenue were supposed to be repaired in 2010 and are still in desperate need of repair. He spoke in opposition to the deferral and stated he does not see the point in prolonging the issue any longer.

Councilmember Alcalá spoke in support of the deferral and requested further clarification of funding for infrastructure repairs and additional information to make an informed decision.

Councilmember Hiller stated she believes there is still a lot of excitement for downtown redevelopment and businesses are waiting for the City to make a commitment. She also requested clarification of the funding and expressed concern with the total project cost once it is completed. She offered to distribute to the Council and public a list of project issues she believes should be addressed before the project is approved.

Councilmember Harmon stated he believes a much more feasible timeframe for deferral would be six (6) months.

Councilmember Manspeaker spoke in opposition to the plan and stated he believes there is no mass support for the project. He suggested the Council consider a project that would benefit all Topekans and not just downtown.

Councilmember Gray commented on the condition of the streets in the downtown area and suggested a plan be presented to fix the existing infrastructure instead.

Councilmember Hiller commented on the Heartland Visioning process and stated there were thousands of people involved including many young professionals. She reported the original input was brought forward and incorporated to bring the community to this point of the plan.

Councilmember Wolgast reported the Council only had one week to review and understand the process and plan, which he believes is not enough time. He clarified the Council should clearly be informed on the City and the private sector's funding responsibilities. He noted public input was provided by diverse citizens from all Council districts.

Angela Kearney spoke in support of revitalizing downtown if it would be funded through the private sector. She stated she believes the Council should be informed before making a decision on the issue and have all questions answered. She reported there are many citizens who do not approve of the project and are ready to sign a petition putting the project to a ballot question for a public vote.

Joseph Ledbetter encouraged the Council to seek answers to their questions including how much private funding would be included and a date when those funds would be received. He commented on the massive job loss over the past several years and the need to address this serious issue for the community.

Judy Pfeifer commented on the vibrancy of Austin, Texas, and stated she believes Topeka could be the same way if the Council would just make the first move. She stated the plan is flexible and she would like to continue working on the project.

Teresa Miller commented on the downtown revitalization that took place in the 1980's which resulted in many lost businesses. She stated she was not impressed with the plan as presented with a price tag of \$1 million; curbs, gutters, sidewalks and streets downtown need to

be repaired by the City; and most people she has spoken with are not in support of downtown revitalization unless the private sector funds the project.

Mayor Bunten expressed dissatisfaction with the lack of understanding by the Council regarding the project. He reported the City would be spending funds on resurfacing South Kansas Avenue and infrastructure improvements underneath. He stated he understands deferring the project because it is important that all Councilmembers are present when voting on the project. He encouraged the Council to support downtown revitalization and take pride in the capitol city of Kansas.

The motion to defer the project budget and resolution for two (2) months carried. Councilmembers Manspeaker and Gray voted “no.” (6-2-0)

RESOLUTION NO. 8429 introduced by Deputy Mayor Larry Wolgast regarding the City Council’s 2013 budget priorities was presented.

Councilmember Wolgast gave the staff report.

Councilmember Wolgast moved to approve the resolution. The motion seconded by Councilmember Archer carried unanimously. (8-0-0)

ORDINANCE NO. 19733 introduced by Interim City Manager Daniel R. Stanley, allowing and approving City expenditures for the period of April 14, 2012, through April 27, 2012, and enumerating said expenditures therein was presented for first and final reading.

Randy Speaker, Deputy City Manager gave the staff report.

Councilmember Ortiz 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, Alcala, Ortiz, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Absent: Everhart -1.

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

<u>Business Name</u>	<u>Address</u>
6 th Quick Stop	1107 SW 6 th Avenue
Casey's #2261	600 SE Rice Road
Casey's #2312	4441 SE California Avenue
Downtown Amoco	600 SE Quincy Street
East Quick Stop	3100 SE 6 th Avenue
Gas 4 Less	2855 SW Wanamaker Road
Herman's Beef & Sausage House	823 NW Gordon Street
Hy-Vee #1658	2951 SW Wanamaker Road
Hy-Vee Gas	6011 SW 29 th Street
Larry's Short Stop	3834 S Topeka Boulevard
Murphy Express #8599	1531 SW Wanamaker Road
Prize Package	1420 SE 6 th Avenue
Quality Gas & Shop	1900 N. Topeka Boulevard
Tammy's on the Go	3335 SW Gage Boulevard
Tilton's Oakland Market	1905 NE Seward Avenue
Topeka Quick Stop	1020 NW Topeka Boulevard
Walmart #1802	1502 SW Wanamaker Road
Walmart #2131	1301 SW 37 th Street
Walmart #5441	2600 NW Rochester Road
Wood Oil Co	101 NE Highway 24

Councilmember Manspeaker moved to approve the Retail Cereal Malt Beverage License applications as presented. The motion seconded by Councilmember Gray carried unanimously. Mayor Buntun voted "yes." (9-0-0)

ORDINANCE NO. 19734 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 placed on first reading May 8, 2012 was again presented. (Z12/6)

Randy Speaker, Deputy City Manager gave the staff report.

The City Clerk asked if there were any exparte communications. None were declared.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

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

AN ORDINANCE introduced by Councilmember John Alcala authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for the Sacred Heart St. Joseph Parish Germanfest pursuant to K.S.A. 41-719(a)(2) and K.S.A. 41-2645(e)(1) 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 south of SW 6th Avenue along the west, south and southeast sides of the cul-de-sac of SW Governor View from “O&I-1” Office and Institutional District TO “PUD” Planning Unit Development District (“O&I-2” Office and Institutional District use group) was presented for first reading. (*PUD12/3*)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, concerning utility rates, amending City of Topeka Code Section 13.05.020 through 13.05.680 and specifically repealing said original sections as well as creating new Section 13.25.130 was presented for first reading.

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

Councilmember Hiller stated she has requested a copy of the Police report relating to the recent canine shooting on May 7, 2012.

Councilmember Alcala stated he is eager to receive the Police report on the canine shooting and believes mace should have been used on the animal.

Councilmember Ortiz congratulated all 2012 graduates. She commented on the large attendance at the Topeka Zoo's Safari Night event and commended Brendan Wiley, Zoo Director for thinking outside the box and providing new ideas to improve the Topeka Zoo.

Councilmember Wolgast commended the Council for engaging in discussion regarding the South Kansas Avenue improvement project and noted these types of discussions are necessary if they want to be a productive Council.

Councilmember Manspeaker spoke in opposition to the Heartland Visioning process and stated he believes downtown revitalization caters to private investors. He commented on the recent closing of Jostens and the huge job losses the community has sustained over the past several years.

Councilmember Archer requested information on all water rate increases that have been implemented over the past 20 years and what the funds were used for.

Councilmember Gray stated he believes the deferral of the South Kansas Avenue improvement project was an attempt to prolong protest petition efforts currently underway by citizens.

Joseph Ledbetter, Mary Blessington and Ann Wilson appeared to speak under public comment.

At 8:13 p.m., Councilmember Wolgast moved to recess into executive session for a time period not to exceed 15 minutes to discuss non-elected personnel in order to protect the privacy of the individual and include elected officials and Legal staff. The motion seconded by Councilmember Archer carried unanimously. (8-0-0)

At 8:17 p.m., Mayor Bunten announced the executive session was adjourned and no action had been taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:18 p.m.

Brenda Younger
City Clerk