

Council Minutes – May 22, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 22, 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 and Gray -8. Mayor William W. Bunten presided -1. Absent: Councilmember Harmon -1.

AFTER THE MEETING was called to order, Reverend Eugene Shoemaker, Central Presbyterian Church gave the invocation.

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

Councilmember Wolgast requested to add a resolution appointing Pam Simecka as Interim City Manager; and an ordinance authorizing the sale, consumption and possession of alcoholic liquor at the Run for the Money event.

Upon hearing no objections, Mayor Bunten announced the resolution would be added to the Council agenda under New Business as item 6C, and the ordinance would be added to the Council agenda under First Readings as item 8B.

Councilmember Alcalá moved to suspend the Council Rules to reconsider the tort claim appeal for Randy Wheat from the meeting of May 15, 2012. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

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

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8430 introduced by Councilmember Karen Hiller granting the Slash and Bash Film Festival an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8431 introduced by Councilmember John Alcala granting Sacred Heart-St. Joseph 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 Bill Beachy to the Human Relations Commission for a term ending May 31, 2014 was presented.

MINUTES of the regular meeting of May 15, 2012 were presented.

Open After Midnight License renewal applications for the Boobie Trap Bar located at 1417 SW 6th Avenue, and the Rumba Club located at 816 N. Kansas Avenue, were presented.

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

ORDINANCE NO. 19735 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) placed on first reading May 15, 2012 was again presented.

Randy Speaker, Deputy City Manager gave the staff report.

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

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

ORDINANCE NO. 19736 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 placed on first reading May 1, 2012 was again presented. The ordinance was withdrawn from the Council meeting of May 8, 2012.

Randy Speaker, Deputy City Manager gave the staff report.

John Stadler, B&B Sign Company stated the ordinance would provide churches the opportunity to move their signage into the modern age and limit the amount of vandalism to signs. He encouraged the Council to support the ordinance and noted illumination would not be any brighter than other signs that have been tested.

Jancy Pettit distributed a picture of the future sign her church plans to install if the ordinance is approved. She expressed her appreciation to the Topeka Planning Commission and City staff for their hard work in drafting the new standards.

Tobias Schlingensiepen stated he was very pleased with the process and noted there is a great need to update sign regulations.

Councilmember Alcalá requested staff clarify the amendments to the ordinance. He stated there are many small buildings within Council District No. 2 and expressed concern with the proximity of brighter signs to other properties. He noted there was an appeal process in place for those people who wish to apply.

David Thurbon, Planning Department Director stated the Board of Zoning Appeals handles the appeal process; however, if the Council approves the ordinance, the Board would no longer provide an appeal process. He reported the Board of Zoning Appeals has approved approximately four appeals within the past five years.

Councilmember Alcalá expressed concern with the update creating problems within Council District No. 2 due to the close proximity of the signs to homes; not including a protest

period provision in the ordinance; and the signs not complimenting the character of some neighborhoods.

David Thurbon stated the type and size of sign would depend on where the church is located. He suggested the Council amend the ordinance to only allow illuminated signs on major arterial streets.

Mayor Bunten stated he concurs with Councilmember Alcala's concerns.

David Thurbon stated the amendment would only allow LED lighted signs, no flashing or graphics, and internal illumination would not exceed 25% of the sign face.

Mayor Bunten questioned if the changes would apply to a home being used as a church.

David Thurbon stated churches are required to be within 300 feet of a major street and meet all applicable building codes and parking.

Dave Starkey stated the ordinance outlining the proposed amendments as recommended by the Planning Department was included in the Council packet, which is the same ordinance the Council should adopt as amended.

Councilmember Alcala questioned if the amendments would be classified as a significant change.

David Thurbon stated the newly proposed amendments were revised after the ordinance was presented for First Reading on May 15, 2012; therefore, the newly proposed amendments need to be approved.

Councilmember Wolgast moved to approve the newly proposed amendments as recommended by the Planning Department distributed in the Council packet. The motion seconded by Councilmember Manspeaker carried unanimously. (9-0-0)

Councilmember Hiller asked Councilmember Alcala to explain his concerns.

Councilmember Alcala stated some residents within Council District No. 2 live within 10 to 15 feet from a church and are concerned the internal illumination will become an issue. He stated he would not support the ordinance because he believes it is a matter of opinion.

Councilmember Hiller asked if internal illumination would be brighter than a flood light.

John Stadler stated a sign appears brighter when the light is pointed towards the person; however, it is not any brighter from a distance. He stated Code Compliance would be called if there were signs that do not follow proper regulations, which then have to be corrected or removed.

Councilmember Alcala stated Code Compliance has reviewed some signs in Council District No. 2; however, his main concern relates to the lack of a protest period provision if neighbors oppose the location of a sign.

Councilmember Wolgast acknowledged some churches have already worked with the Topeka Planning Commission on some sign fixtures; however, he believes the amendments benefit the City as a whole.

Councilmember Wolgast moved to adopt the ordinance as amended. The motion seconded by Councilmember Manspeaker carried unanimously. Councilmember Alcala voted “no.” Mayor Bunten voted “yes.” (8-1-0)

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

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 placed on first reading May 15, 2012 was again presented.

Randy Speaker, Deputy City Manager gave the staff report.

Teresa Miller expressed concern with increasing water rates for North Topeka residents who are on fixed incomes. She also expressed concern with the Soldier Township following suit with the City of Topeka and raising their water rates as well.

Councilmember Alcala stated he believes the North Topeka Drainage District (NTDD) water rate amount equals what City residents pay for City water. He noted the water fees help offset improvements in North Topeka.

Braxton Copley, Office of Utilities and Transportation Director reported the NTDD was formed under State law by action of the Shawnee County Commission to maintain creek channels and flood control. He stated the City provides some maintenance to the North Topeka levy unit and have partnered with NTDD for a feasibility study. He stated a discount is provided as part of the water rate ordinance to individuals that live within the drainage district. He read the Stormwater Proposed Rate Adjustment for North Topeka Drainage District residents.

Joseph Ledbetter stated he was speaking on behalf of a client and expressed the following concerns:

- The language and terms of the ordinance relating to stormwater run off and gravel requirements
- If people would be able to pay the increase in water rates due to existing poverty and recent job losses within the community
- Stormwater rates being arbitrarily applied
- Why are water rates being raised when the 2012-2016 Capital Improvement Program outlines the use of bonds for all stormwater improvements
- The need to define exact square footage of buildings and/or structures and how it is calculated on impermeable and permeable surfaces
- How much maintenance is the fund providing and what are the specifics on the personnel

- He suggested a productivity study be explored on personnel and improvements to clarify the water rate increases

Councilmember Alcalá questioned if it is fair to extend Mr. Ledbetter's time to speak because he is representing a client.

Dave Starkey stated he is unaware of any circumstances that would prohibit the Council from extending Mr. Ledbetter's time in speaking to the issue.

Councilmember Manspeaker asked how stormwater rates are calculated for residential and non-residential customers.

Braxton Copley stated residential properties are based on three (3) rates which include less than 1,500 square feet, 1,501 to 3,500 square feet, and over 3,500 square feet; and non-residential properties are determined by total impervious area divided by 2,018 square feet which determines how many equivalent residential units (ERU).

Councilmember Archer requested to receive a twenty (20) year history of water rate increases and the improvements made with the funds generated from the rate increases.

Randy Speaker stated staff is currently researching the request and would provide the information to the Council when completed.

Councilmember Alcalá stated he concurs with Councilmember Archer and would like to see what has been accomplished with past water rate increases. He noted he understands the urgency for a decision because of federal regulations; however, he would prefer the item be deferred until he receives the requested information so he could make an informed decision, as well as, the entire Council should be present to vote on the issue.

Councilmember Wolgast moved to defer the ordinance for three weeks. The motion was seconded by Councilmember Ortiz.

Mayor Bunten stated the City's infrastructure is in desperate need of repair and in his opinion they should not delay any longer. He noted the Interim City Manager presented a revised water rate proposal to the Council to begin fixing the City's water systems and noted the issue would continue to get more expensive as time goes on.

Councilmember Hiller stated she believes it would be appropriate to request information to allow the Council to make an informed decision; however, it would be most cost efficient to combine the repair of the water systems with street repairs.

The motion to defer the ordinance for three (3) weeks carried. Mayor Bunten voted "no." (8-1-0)

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 considered at the May 15, 2012 Council meeting and no action was taken.

Randy Speaker, Deputy City Manager gave the staff report.

Dave Starkey, City Attorney gave a brief description of the claim and stated the Legal Department concluded there was no substantial evidence of negligence by the City so the claim was denied and an appeal was filed accordingly.

Councilmember Alcalá stated in fairness to the claimant he would prefer the whole Council be present to consider the tort claim.

Councilmember Alcalá moved to defer the tort claim for two weeks. The motion seconded by Councilmember Manspeaker carried. Councilmember Everhart voted "no." (7-1-0)

RESOLUTION NO. 8432 introduced by Interim City Manager Daniel R. Stanley, to develop and implement policies and procedures to ensure the City's compliance with IRS regulations and GASB standard 54, was presented.

Pam Simecka, Interim Budget and Financial Services Director gave the staff report.

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

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

<u>Business Name</u>	<u>Address</u>
California BP	2740 SE California Avenue
The Goose Express	2909 SE Fremont Street
I-70 BP	1000 SW Wanamaker Road
Kelly Express	1001 SW Wanamaker Road
Kicks 66	3300 SW Gage Boulevard
Lakeview 66	3000 SE Croco Road
Mike's Market	2620 NE Sardou Avenue
Oakmart BP	2518 NE Seward Avenue

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

RESOLUTION NO. 8433 introduced by Deputy Mayor Larry Wolgast concerning the designation of an Interim City Manager was presented.

Councilmember Wolgast gave the staff report.

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

Mayor Bunten expressed his appreciation to Mrs. Simecka for her commitment to helping the Council and City staff work through the budget process.

Councilmember Ortiz thanked Mrs. Simecka for providing clear detailed budget information to the Council and staff.

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) placed on first reading May 15, 2012 was again presented. (*PUD12/3*)

Randy Speaker, Deputy City Manager gave the staff report.

Mayor Bunten spoke in opposition to the ordinance and stated there are many colleges within the City that people could utilize to receive an education. He stated he opposes another large sign being installed along I-70 and believes other colleges will make the same request if the sign is approved. He encouraged the Council to consider Topeka as the gateway to the Great Plains and asked if the signage language is a requirement of the applicant to locate to Topeka.

David Thurbon, Planning Department Director stated Rasmussen College relies on drive-by traffic for exposure to the public due to the majority of their courses being offered online; however, the PUD (Planned Unit Development) zoning would allow for a larger sign.

Councilmember Everhart spoke in opposition to the ordinance because she does not believe a larger than normal sign would be necessary.

Mayor Bunten suggested if the Council shares his concerns, then they should send the ordinance back to the Planning Commission with the explanation that they oppose the signage language.

Councilmember Wolgast moved to refer the ordinance back to the Planning Commission with the explanation that the Council is opposed to the signage language within the ordinance. The motion seconded by Councilmember Everhart carried. Mayor Bunten voted “yes.” Councilmembers Alcala, Ortiz and Gray voted “no.” (6-3-0)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, concerning cereal malt beverages, amending City of Topeka Code Section 9.15.020 and specifically repealing said original section, as well as, creating new Section 5.55.025 was presented for first reading.

AN ORDINANCE introduced by Councilmember Sylvia Ortiz authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for a special event pursuant to K.S.A. 41-719(a)(2) and K.S.A. 41-2645(e)(1) was presented for first reading.

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

Randy Speaker, Deputy City Manager reported the National Hot Rod Association (NHRA) race event held May 19-20, 2012, was a very successful event and well attended by the community.

Councilmember Ortiz expressed concern with the closing of the Avondale East Elementary School and requested a pedestrian crossing signal be installed on SE Adams Street between SE 29th and SE 37th Streets for students who would be attending Ross Elementary in the fall. She also expressed concern with the elementary school sitting vacant in a high crime area and suggested the building be utilized as an area clothing bank and a Topeka Police Department community hub.

Councilmember Wolgast expressed get well wishes to the Daniel R. Stanley family and expressed his appreciation to Mr. Stanley for the leadership he has provided the Council and the City of Topeka. He thanked Pam Simecka for serving as Interim City Manager and the many volunteers helping to clean up the Topeka Cemetery for the Memorial Day weekend.

Councilmember Gray reported 1,800 Civil War veterans were buried at the Topeka Cemetery and encouraged citizens to volunteer to help place flags at the cemetery on May 26, 2012.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:38 p.m.

Brenda Younger
City Clerk