

Council Minutes – June 12, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 12, 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 Alcalá gave the invocation.

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

A PRESENTATION on the City of Topeka Fireworks process was presented by Greg Bailey, Topeka Fire Chief. He provided an update on the dates and times fireworks are allowed to be discharged within the city limits of Topeka, as well as, Fire Inspectors would distribute flyers, posters and information slips to firework retailers outlining allowable dates of when people are allowed to discharge fireworks.

Councilmember Hiller commended the Chief for the packet of information being provided to citizens and his efforts in working with the County. She asked if the City has enough posters to provide to the County for their vendors to inform citizens of City discharge dates. She also suggested using as many social media outlets as possible.

Greg Bailey stated he could provide two (2) posters per vendor and information sheets to reproduce. He reported he has been visiting with local media and they have agreed to broadcast the discharge dates and times to help educate the public.

Councilmember Manspeaker commended the Chief for his efforts in dispatching the information throughout the community; however, he is opposed to a law that is almost impossible to enforce. He stated he believes it is unnecessary to use police officers for enforcement purposes.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8436 introduced by Councilmember Larry Wolgast, granting Boss Hawgs 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 re-appointment of Chuck Smelter to the Board of Mechanical Examiners for a term ending June 30, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Tom Cain to the Board of Mechanical Examiners for a term ending June 30, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Jim Daniel to the Topeka Metropolitan Transit Authority Board for a term ending June 30, 2016 was presented.

BOARD APPOINTMENT recommending the re-appointment of Blanche Parks to the Washburn University Board of Regents for a term ending June 30, 2016 was presented.

MINUTES of the regular meeting of June 5, 2012 were presented.

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

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, concerning utility rates, amending City of Topeka Code Sections 13.05.020 through 13.20.680 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. The ordinance was deferred from the meeting of May 22, 2012.

Pamela S. Simecka, Interim City Manager gave the staff report.

Councilmember Gray questioned what the City would do with the additional revenue (\$600,000 to \$800,000) to be generated from miscalculations; why the City is asking for increased fees; and what are the projected revenue figures.

Councilmember Manspeaker asked if there are funds set aside for a Riverfront Authority staff person listed within the budget; what is the Wanamaker Wetlands project; and how much has the project cost thus far. He referenced a cost service analysis conducted in 1992 which was a basic analysis of City services and the costs to provide them. He asked if the analysis has been updated. He questioned if staff has researched how other communities handle water rates for best practices.

Braxton Copley, Office of Utilities and Transportation Director stated there would not be a surplus in revenue and he is not aware of a Riverfront Authority staff person listed in the department budget. He reported the cost service analysis conducted in 1992 was revised in 2004 and was based on the cost of services and is regionally composed of best management practices for water quality. He noted the Wanamaker Wetlands is a proposed project on an identified tract of land for wildlife habitat restoration as a benefit to water quality and used as a basin for water filtration before discharge in the Kansas River. He also noted a preliminary design study has been completed on the project with the Army Corps of Engineers. He stated he does not have the project costs at this time but would provide those to the Council. He also reported that staff did not research other communities regarding how to handle water rates based on best practices.

Teresa Miller stated she believes citizens could not handle the water rate increases because most people are already struggling to pay their bills.

Councilmember Harmon asked if it was possible to divert utility funds to the general fund; what is the purpose of the PILOT (Payment In Lieu Of Taxes) fees; and are PILOT fees disclosed in the budget.

Pamela S. Simecka stated the utility funds could be incorporated into the general fund. She reported the PILOT fees and administrative fees are done to treat the utilities as if they were a private entity and are fully disclosed within the budget.

Mayor Bunten questioned PILOT fees being transferred to the general fund, and general funds being transferred to the Public Works operating budget.

Helen Simmons spoke in opposition to an increase in water rates and stated she believes the City has mismanaged utility funds or they would not be in this situation. She noted the federal government provides sufficient time to plan for mandated regulations.

Joseph Ledbetter spoke in opposition to the water rate increases and noted there were approximately \$6.5 million spent on stormwater and \$3.5 million on staff. He reported it was discovered \$53,000 in stormwater revenue was not being billed; therefore, more transparency and accountability is needed. He distributed documents relating to a Kansas Open Record Act request he submitted and stated he believes the billing system very outdated and may be the reason why staff costs are so high. He also distributed a handout relating to Topeka Stormwater employees and commented that he has requested position descriptions; stormwater utility details on the financial breakdown of individual and contractual services; maintenance; purchased services; and other costs outlined in the handout. He stated he believes many citizens want these issues addressed before an increase in water rates is voted on by the Council. He noted he has reviewed the letters from the Environmental Protection Agency and he believes they do not require millions of dollars for improvements but simply to update City ordinances.

Councilmember Gray asked about the properties that were adjusted in the billing system regarding stormwater fees; if there is a policy in place to correct under charges or overages and if so, how are they rectified.

Braxton Copley reported the billing system issues were brought to staff's attention over a year ago and the City began an audit and review at that point. He stated approximately 4,000 properties have been reviewed to date and 50 properties have been corrected. He noted once staff was put on notice about the discrepancies, action was taken to correct and start billing from

the time the error was recognized. He also noted that he believes one or two properties were overcharged; however, he will provide that information to the Council.

Councilmember Wolgast reported there is a new billing system listed on the Water Utility Revised Project List for \$3,000,000 and asked Mr. Copley to explain the new system. He stated it was his understanding the Horticulturist position is funded by Water Operating funds and relates to the fact of stormwater and water quality for city creeks and locations along Jackson Street.

Braxton Copley stated he understands the water billing system is very outdated and he would prefer to have a system that works in conjunction with the CityWorks and the Lawson programs and noted the system would be purchased over a three to five-year period. He reported the expertise of the Horticulturist is to help plan and manage best practices of water quality features and assist in community outreach education.

Councilmember Hiller questioned the public report that has been drafted regarding operating under a 75 to 100 year plan; where staff is in the process; and what is the cost of paying with cash versus bonds for utility improvements.

Braxton Copley stated he agrees it is better to know what is in the system so you can adequately plan for maintenance and repairs. He noted it is a very large task to come up with asset management; however, staff has been working on it. He stated the 75-100 year plan was started approximately one year ago and is approximately 10% to 15% complete; however, it will take about three to four years to conclude. He reported a \$1.8 million project paid with cash would be equal to \$1 million of bonded indebtedness if financed through revenue bonds for thirty years at 5% interest for utility improvements.

Councilmember Everhart stated the previous Interim City Manager expressed concern with the Environmental Protection Agency (EPA) and asked what are the specific issues of concern.

Braxton Copley reported the City received an EPA violation notice in 2010 that required the City to have backup power sources for pump stations and make improvements to the Shunga Pump station. He stated the EPA has stepped up the combined sewer overflow (CSO) regulation where the City has the greatest exposure. He noted it is now a matter of when the EPA will have more pointed discussions with the City.

Councilmember Gray stated he believes the EPA gave Kansas City ten years to correct their violations; therefore, he believes staff should not use the EPA as a valid reason for water rate increases.

Councilmember Manspeaker asked how many miles of combined sewer overflow does the City have and where is it located; if the City has been served an EPA violation to date; what type of customer would be served by transmission lines; and what sizes of pipe make up the City's sewer system. He referenced the City of Lawrence water meter billing policy and stated he believes the City should follow suit. He suggested conducting a water service survey before the Council makes a decision on the water rate increases.

Braxton Copley stated there are six (6) combined sewer points which is approximately 5% of the City's sewer system or 40 miles of piping; the greatest amount of combined sewer overflows located near older parts of the City, which include the hospitals and the Oakland area from 10th Street north. He reported there is no formal demand from the EPA that would rise to a level of violation; however, the City is on notice for issues like the Adams and Eastside interceptors that are 80 to 100 years old. He noted transmission main pipes are generally 12 inches in diameter or less; and larger than 12 inches in diameter for distribution; however, there

are some transmission mains up to 48 inches in diameter; which move water from the treatment plants to towers, and in between, and are the backbone of the transmission system which is approximately 100 miles of piping. He stated the installation costs depends on the customer; for example, an industrial customer could be true to the size of the pipeline because of the steady demand as opposed to a residential customer who is hard to gauge and may need to be upgraded to keep up with demand.

Councilmember Wolgast stated he researched what occurs when the EPA makes a ruling and noted when a City is given notice of violation there is no way to control the significant rate increases at that point. He suggested the Council make the effort and increase water rates gradually because the infrastructure is outdated and needs to be repaired.

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

Councilmember Hiller stated she believes it would be more cost effective to pay for improvements with cash for the required bonded projects if the rate increase is approved and when possible as the City develops the 75 to 100 year plan.

Braxton Copley stated paying with cash would have been possible with the first water rate increase proposal; however, the revised rate proposal would allow all projects to be completed but a large portion would have to be financed through revenue bonds.

Councilmember Hiller made a substitute motion to amend Line 95 of the ordinance by increasing \$1.00 per month to every Single-family residence rate section for 2012 Stormwater Rates. The motion died due to a lack of a second.

Councilmember Harmon made a substitute motion to amend the ordinance as distributed and delete on Line 95 all proposed increases for stormwater rates. The motion died due to a lack of a second.

Braxton Copley stated Councilmember Harmon's proposal would reduce stormwater revenues by approximately \$3.68 million over the course of three (3) years.

Councilmember Manspeaker made a substitute motion to amend the ordinance to allow residential water utility rates to remain the same and commercial/industrial water utility rates to increase in 2012 through 2015 as outlined in the ordinance distributed. The motion died due to a lack of a second.

Mayor Bunten encouraged the Council to make a decision on the water rate increases because he believes the proposal is reasonable and would only increase households approximately \$1.73 a month or \$10 a year. He noted the Governing Body had to address the street repair issues and now it is time to address the water infrastructure issues because lines are breaking due to age and the cost to repair is immense. He stated it is the City's obligation to repair them and its part of the Council's job to take criticism from their constituents because it is never easy to make tough decisions.

Councilmember Hiller stated she does not prefer to raise the water rates for citizens; however, she believes the City must feed the system for prevention and repairs in order to save money for taxpayers in the long term and eliminate bonded indebtedness in the future.

The motion to adopt the ordinance failed. Councilmembers Alcalá, Ortiz, Everhart, Manspeaker, Archer, Gray and Harmon voted "no." Mayor Bunten voted "yes." (3-7-0)

APPROVAL of a lease agreement for City property located at 3601 Skyline Park to Topeka Cellular Telephone Company d/b/a Verizon Wireless for placement of Verizon's wireless communication equipment on top of the communications tower was presented.

(Contract No. 42186)

Pamela S. Simecka, Interim City Manager gave the staff report.

Councilmember Wolgast moved to approve the lease agreement. The motion seconded by Councilmember Gray carried unanimously. (9-0-0)

A Retail Cereal Malt Beverage License application for White Lakes 66 located at 931 SW 37th Street, was presented.

Councilmember Manspeaker moved to approve the Retail Cereal Malt Beverage License application as presented. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

AN ORDINANCE introduced by Interim City Manager Pamela S. Simecka, amending City of Topeka Code Section 8.35.070 concerning fireworks and specifically repealing said original section was presented for first reading.

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

Pamela S. Simecka, Interim City Manager reported she denied the Topeka Police Department’s request to conduct a summer training class to fill vacant positions because she estimates they will exceed their budget by approximately \$800,000 in 2012. She stated she would review the Police Department’s budget with the new permanent City Manager and determine if the Police Department would be closer to their target budget in October to conduct a training class at that time.

Councilmember Manspeaker stated it was his understanding from the previous City Manager the \$900,000 in vacancy credits would be reinstated back into the Police Department’s budget. He reported by the end of December the Police Department would be down 30 additional officers with no replacements. He expressed the importance of keeping training classes on schedule for the Police Department and noted that public safety should be the Council’s number one priority.

Councilmember Everhart stated she concurs with Councilmember Manspeaker. She clarified that the previous Interim City Manager gave the Police Chief his approval to include the vacancy credits in the Police Department's budget and canceling the summer training class for incoming officers would create a huge delay in the hiring process.

Pamela S. Simecka stated the vacancy credits were included in the 2012 City budget and no budget amendments have been made to remove them to date. She stated it is her duty as Interim City Manager to direct departments to maintain their approved annual budgets and enforce the restrictions the Council has set; however, the Council has the authority to direct her otherwise.

Councilmember Ortiz asked how many police officers would be graduating; how soon would the new police officers be on the streets; how many police officers would be retiring and when; and how many police officers are on military leave and when would they return.

Mayor Bunten stated he concurs with Councilmember Manspeaker and stated they need to find a way to address the issue of public safety. He questioned what the ending balance in the general fund would be and how it is anticipated they should address the issue if the Police Department is allocated \$900,000 from the general fund.

Councilmember Manspeaker asked if allocating \$900,000 from the general fund ending balance to the Police Department's operating budget would be a sound financial decision; and if the \$400,000 payment to the Kansas Police and Firefighters Fund contributed to the Police Department exceeding their budget.

Pamela S. Simecka stated she believes it would not be in the best interest of the City to allocate funds to the Police Department from the general fund ending balance; however, it is a policy decision to be made by the Council. She reported it was her understanding the KP&F payment was only \$200,000 and this was due to the rate increase enacted by the State Legislature

after the 2012 City budget was approved, which also has an effect on the Fire Department's operating budget.

Councilmember Everhart requested a work session be scheduled with the Police Chief to discuss the Police Department's budget issues.

Councilmember Ortiz stated she concurs with Councilmember Everhart and would like to discuss the matter further with the Police Chief.

Councilmember Alcala requested all information requested by Councilmember Ortiz be provided to the Council in writing.

Councilmember Hiller asked if the previous Interim City Manager authorized the Police Department to exceed their budget by \$900,000.

Pamela S. Simecka stated it was her understanding that Mr. Stanley told the Police Chief not to worry about exceeding the Police Department's approved budget for 2012.

Councilmember Hiller asked how many Police Department positions were filled last year; how many police officers changed positions and/or were promoted last year; and what were the salaries of those position changes and/or promotions last year.

Pamela S. Simecka distributed a proposed budget schedule. She stated next week the Council needs to determine what the City should contribute for employee health insurance coverage. She suggested the Council discuss the 2013 budget in Budget Committee meetings before and after regular Council meetings, in place of Council Work Sessions.

Councilmember Wolgast stated the Council could start with the proposed budget schedule to see how it progresses and make changes where necessary.

Councilmember Hiller asked how the Council should submit their budget questions to staff.

Pamela S. Simecka requested the Council send their budget questions directly to her via email.

Councilmember Ortiz reported the Fire Department has authorized burning permits until June 30, 2012, and the Jackson Spray Park is now operational. She commented on the poor condition of City-owned property located at 412 SW Van Buren and stated it is difficult to ask citizens to maintain their properties if the City is not leading by example. She requested the property be stabilized as soon as possible.

Councilmember Manspeaker stated his opposition to the utility rate increases does not reflect his unwillingness to find a compromise to the problem. He stated he believes a cost assessment evaluation of what the City is doing currently, as well as, what needs to be done in the future should be conducted before a rate increase decision is made by the Council. He stated he understands the City's infrastructure is a serious issue; however, they must find a way to make the repairs that the citizens can afford. He stressed the importance of doing the right thing the first time which may require a change in the City's organization. He commended Ms. Simecka for her efforts and stated he appreciates her honesty and keeping politics out of important decisions.

Tanner Davis and Teresa Miller appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:07 p.m.

Brenda Younger
City Clerk