

Council Minutes – August 21, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 21, 2012. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -8. Mayor William W. Bunten presided -1. Absent: Councilmember Alcala -1.

AFTER THE MEETING was called to order, Councilmember Everhart gave the invocation.

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

Pamela S. Simecka, Interim City Manager requested to withdraw item 8B, an ordinance amending zoning on property located on the south side of SW 37th Street for one week because a protest petition has been filed and the full Council must be present to vote on the item. She also requested to withdraw item 4H, Minutes from the regular meeting of August 14, 2012 from the consent agenda and place them on next week's agenda.

Upon hearing no objections, Mayor Bunten announced the items would be placed on the August 28, 2012 Council agenda.

Councilmember Gray moved to remove item 4A, a Workers' Compensation Settlement for Stephanie Workman and item 4B, a Workers' Compensation Settlement for Robert Hamilton from the consent agenda for separate discussion. The motion seconded by Councilmember Archer carried. Councilmember Manspeaker voted "no." (7-1-0)

Mayor Bunten announced items 4A and 4B would be placed on the Council agenda under New Business as items 7I and 7J respectively.

Councilmember Harmon asked if the workers' compensation settlements are time-sensitive.

Jacque Russell, Human Resources Director stated the settlements are somewhat time-sensitive as the claims have already been delayed during the budget process; however, no legal action is pending at this time and the delay should not have an affect on the legal rights of the City.

THE CONSENT AGENDA was presented as follows:

DENIAL OF CLAIM in the amount of \$2,500,000 by Laura V. Lopez-Aguirre, individually and on behalf of her minor children and as Administrator of the Estate of Julio C. Aguirre, deceased, was presented.

BOARD APPOINTMENT recommending the appointment of Doug Hubbell to the Board of Plumbing Examiners for a term ending August 31, 2014 was presented.

RESOLUTION NO. 8452 introduced by Councilmember Sylvia Ortiz granting Tania Ramirez an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8453 introduced by Councilmember Sylvia Ortiz granting Curtis Pitts an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8454 introduced by Councilmember Sylvia Ortiz granting Randy Wheat an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

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

A NOTICE OF PUBLIC HEARING

A PUBLIC HEARING relating to vacation request V12A/2 by Dillon Real Estate Company, Inc., as property owner, to vacate the platted alley public rights-of-way to be replaced by a utility easement.

ORDINANCE NO. 19753 introduced by Interim City Manager, Pamela S. Simecka relating to the vacation of platted alley rights-of-way on property extending from NW Topeka Boulevard to NW Harrison Street and located between properties at 1106 and 1114 NW Topeka Boulevard, City of Topeka, Shawnee County, Kansas placed on first reading August 14, 2012 was again presented. (V12A/2)

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

Mayor Bunten opened the public hearing.

Teresa Miller expressed concern with the applicants closing the Harrison Street alley access to the Kwik Shop. She stated the traffic flow is very heavy in the area and the elimination of the alley access would be dangerous.

Mike Berry, attorney for the applicant reported the applicant plans to keep the Harrison Street alley entrance open and purchase the adjacent car lot to improve traffic flow to the area.

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

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

ORDINANCE NO. 19754 introduced by Interim City Manager Pamela S. Simecka, repealing Ordinance No. 19151 which designated Deputy City Manager Randy Speaker to act as

City Manager and execute contracts on behalf of the City during any temporary absence or disability of the City Manager placed on first reading August 14, 2012 was again presented.

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

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

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

ORDINANCE NO. 19755 introduced by Interim City Manager Pamela S. Simecka, amending City of Topeka Code Section 2.110.010, concerning imposition of warrant fees to existing court costs and fees and specifically repealing said original section placed on first reading August 14, 2012 was again presented.

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

Councilmember Everhart asked staff to clarify the intent of the ordinance.

Victor Miller, Municipal Court Judge reported approval of the ordinance would impose a fee to existing court costs for any person who fails to appear in court, whether they are convicted or not, as well as, offset the expense of staff time and resources used to issue bench warrants when people fail to appear in court.

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

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

RESOLUTION NO. 8455 introduced by Councilmember Denise Everhart granting an exemption from the annexation requirement of City of Topeka Code Section 13.10.120(a) so that

water service can be provided to the property of Loretta L. Tetuan, at 3001 SE 45th Street, which is located outside City limits but within Shawnee County, Kansas was presented.

Councilmember Everhart gave the staff report and stated the owner has signed consent to annexation.

Councilmember Everhart moved to approve the resolution. The motion was seconded by Councilmember Ortiz.

Councilmember Hiller asked if the property was located adjacent to the Rock Fire development and questioned why the City has not annexed the area.

Councilmember Ortiz asked if the property owner would pay 100% of the costs associated with connecting to City water.

David Thurbon, Planning Department Director reported the property is located near areas slated to be annexed, and when there is a sizable area to annex it will be presented to the Council for approval. He stated the property owner would pay 100% of the normal connection fees.

The motion to approve the resolution carried unanimously. (8-0-0)

A PROJECT BUDGET in the amount of \$1,047,917 and RESOLUTION NO. 8456 introduced by Interim City Manager Pamela S. Simecka, authorizing Zoo Improvement Project No. T-301041.00, which provides for a Quarantine Facility for apes and large carnivores as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented.

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

Councilmember Harmon moved to approve the project budget and resolution. The motion seconded by Councilmember Wolgast carried unanimously. (8-0-0)

A PROJECT BUDGET in the amount of \$300,000 and RESOLUTION NO. 8457 introduced by Interim City Manager, Pamela S. Simecka authorizing Improvement Project No. T-841023.00 which provides handicapped accessible curb cuts and sidewalk ramps at selected intersections throughout the City, as more specifically described herein was presented.

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

Councilmember Ortiz asked if there was a schedule the City follows in regards to repairs and how they are determined or prioritized.

Bernie Cosby, Engineering Department stated the repairs would start in the areas outlined in the resolution. He noted staff reviews and determines priority areas when the City receives a complaint.

Councilmember Manspeaker asked if the sidewalk repairs would be paid with half-cent sales tax revenues.

Councilmember Harmon asked if repairs would include new or replacement of old curb cuts or sidewalks.

Pamela S. Simecka stated staff has determined repairs to busy intersections take priority because they are utilized the most by citizens; however, if a complaint warrants an urgent repair, the City makes the repair as soon as possible.

Bernie Cosby stated the project includes all new sidewalks, curb cuts and ramps.

Councilmember Harmon questioned if half-cent sales tax revenues could legally be used for this project.

Dave Starkey, City Attorney stated he has determined the project is considered repairs and is required by the Americans for Disabilities Act; therefore, the use of half-cent sales tax revenues is appropriate.

Mayor Bunten questioned the City's policy regarding requests for repairs and how they are prioritized. He stated the City has spent millions of dollars as mandated by the Federal government to make certain repairs and he believes the City should be allowed to determine the best areas to make ADA repairs according to citizens needs, not as mandated by the Federal Government.

Councilmember Manspeaker stated he believes the Federal Government has the best interest of the citizens in mind and believes citizens with or without disabilities need safe accessible sidewalks.

Councilmember Hiller stated fair housing and accessibility is important. She requested an update on how the City has progressed in terms of completing the ADA Accessibility Plan as mandated by the Federal Government.

Councilmember Hiller moved to approve the project budget and resolution. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

RESOLUTION NO. 8458 introduced by Pamela S. Simecka, Interim City Manager relating to and authorizing Project No. T-281058.00 which provides for a study to evaluate the Kansas River Weir as more specifically described herein was presented.

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

Mike Calwell, Friends of the Kaw representative reported that he has assisted with 14 new access points along the Kaw River. He encouraged the Council to approve the resolution outlining the proposed changes to improve safety of the weir area.

Teresa Miller spoke in support of the resolution; however, she stated the river would still be very dangerous and citizens should still be cautious.

Councilmember Archer asked who would pay for the study and how the City would benefit by conducting the study.

Braxton Copley, Office of Utilities and Transportation Division Director stated the project would be paid for by Utility Operating funds and/or private funds. He reported the study would define the scope of alternative remedial measures that are feasible and the preliminary estimates of the cost to construct the weir.

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

ORDINANCE NO. 19756 introduced by Interim City Manager Pamela S. Simecka, allowing and approving City expenditures for the period of June 30, 2012, through July 27, 2012, and enumerating said expenditures therein was presented for first and final reading.

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

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

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

NO Retail Cereal Malt Beverage License applications were presented.

A FINAL PLAT for Dreamland Subdivision, located on the west side of SE Rice Road about 200 feet north of SE 6th Avenue within the City of Topeka, Shawnee County, Kansas, was presented. (P12/8)

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

Councilmember Hiller moved to approve the final plat. The motion seconded by Councilmember Harmon carried unanimously. Mayor Buntten voted “yes.” (9-0-0)

A FINAL PLAT for Capital Ridge Center Subdivision located at the northwest corner of SW 21st Street and SW Arvonias Place within the City of Topeka, Shawnee County, Kansas, was presented. (P12/5)

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

Angela Sharp, Bartlett & West Engineers spoke in support of the final plat and appeared to answer questions.

Councilmember Hiller commended staff and the Topeka Planning Commission for discussing and working through the planning issues prior to presenting the request to the Council for consideration. She stated it appears the process is working very well.

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

APPROVAL of a Workers’ Compensation Settlement for Stephanie Workman, former Parks and Recreation Department employee, in the amount of \$70,000 for permanent partial impairment of her back from injuries suffered when constructing a brick wall in Gage Park on October 15, 2010 was presented.

Councilmember Gray moved to defer the workers’ compensation settlement for one week to allow more time for the two Councilmembers that were not able to attend the work session to receive the necessary information to make an informed decision. The motion seconded by Councilmember Archer carried. Councilmembers Hiller, Ortiz and Manspeaker voted “no.” (5-3-0)

APPROVAL of a Workers’ Compensation Settlement for Robert Hamilton, former Water Distribution employee, in the amount of \$74,000 for permanent partial impairment of his left

lower extremity from injuries suffered from walking through deep snow to locate water mains on January 10, 2012 was presented.

Councilmember Gray moved to defer the workers' compensation settlement for one week to allow more time for the two Councilmembers that were not able to attend the work session to receive the necessary information to make an informed decision. The motion seconded by Councilmember Archer carried. Councilmembers Ortiz and Manspeaker voted "no." (6-2-0)

ORDINANCE NO. 19757 introduced by Interim City Manager Pamela S. Simecka, 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 SW 21st Street and SW Arvonía Place from "RR-1" Residential Reserve District TO "PUD" Planned Unit Development District ("C-1" uses, including residential above the ground floor) placed on first reading August 14, 2012 was again presented. (*PUDI2/4*)

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

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

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

AN ORDINANCE introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time and the special event permit pursuant to K.S.A. 41-719(a)(2) and K.S.A. 41-2645(e)(1) for the Brews, BBQ and Blues Fest to be held on September 8, 2012 was presented for first reading.

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

Pamela S. Simecka, Interim City Manager thanked the Council for giving her the opportunity to serve as the Interim City Manager. She stated she looks forward to serving as the Financial Director beginning August 27, 2012.

Councilmember Hiller expressed concern with the City4 sound system for the Council meetings. She stated she understands there are many limitations; however, she would encourage staff to educate the Governing Body on how to work with the equipment.

Councilmembers Ortiz, Wolgast, Manspeaker, Gray and Harmon thanked Pamela S. Simecka for her service and stated she did a great job serving as Interim City Manager and providing them with professional expertise.

Councilmember Harmon reported he has received complaints from business owners located along SW Ashworth Place regarding the seven water main breaks that have taken place over the last month. He asked staff to provide an update on the situation.

Pamela S. Simecka stated staff would send an update to Councilmember Harmon.

Mayor Bunten commended Pamela S. Simecka for an outstanding job while serving as Interim City Manager. He encouraged the Councilmembers that did not support the water rate increase proposal to draft a different proposal to address the serious problem of repairing the City's infrastructure.

Patrick Mullen appeared to speak under public comment.

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

Brenda Younger
City Clerk