

## **Council Minutes – August 28, 2012**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 28, 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 Everhart gave the invocation.

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

Councilmember Hiller requested to pull item 4A, a resolution granting a noise exception to ESI, Live, Inc., for separate discussion.

Upon hearing no objections, Mayor Bunten announced item 4A would be removed from the consent agenda and placed on the Council agenda under New Business as item 6E.

Councilmember Ortiz moved to add a resolution granting Laurencia Campa a noise exception to the consent agenda. The motion seconded by Councilmember Manspeaker carried unanimously. (9-0-0)

Mayor Bunten announced the resolution would be placed on the consent agenda as item 4D.

THE CONSENT AGENDA was presented as follows:

Minutes of the regular meeting of August 14, 2012 and August 21, 2012 were presented.

A RESOLUTION introduced by Councilmember Sylvia Ortiz granting Laurencia Campa an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

Councilmember Alcala requested to pull the resolution from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced the resolution would be removed from the consent agenda and placed on the Council agenda under Unfinished Business as item 5E.

Councilmember Ortiz moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Wolgast carried unanimously. (9-0-0)

RESOLUTION NO. 8460 introduced by Interim City Manager, Pamela S. Simecka authorizing payment of \$35,000 to the League of Kansas Municipalities as a host sponsor of the League's 2012 annual conference to be held in the Capital City was presented. The resolution was deferred from the meeting of August 14, 2012.

Councilmember Manspeaker distributed the Transient Guest Tax Committee reports from the meeting of August 27, 2012. He stated he is apprehensive in spending transient guest tax funds and believes the expenditure is outside the scope of general use of TGT funds. He also expressed concern with the allocation of funds not being included in the 2012 budget.

Councilmember Wolgast moved to approve the resolution with the payment to be funded with the Transient Guest Tax funds accrued in the 2012 City budget. The motion was seconded by Councilmember Hiller.

Councilmember Wolgast moved to withdraw his motion. The second concurred.

Councilmember Manspeaker moved to adopt the Transient Guest Tax Committee reports from the meeting of August 27, 2012. The motion was seconded by Councilmember Hiller.

Councilmember Archer asked for an explanation regarding the Transient Guest Tax Committee report relating to the Historic Asset Tourism fund.

Councilmember Manspeaker reported the committee expressed concerns with the process and transparency issues; therefore, the recommendation would clarify the special fund and provide the opportunity to find financing to match federal, state and historic preservation grants.

The motion to adopt the Transient Guest Tax Committee reports from the meeting of August 27, 2012 carried unanimously. (9-0-0)

Councilmember Wolgast moved to approve the resolution with the payment to be funded with the Transient Guest Tax funds accrued in the 2012 City budget. The motion was seconded by Councilmember Hiller.

Mayor Bunten stated the annual conference attracts many visitors to the city making the expenditure a good investment.

Councilmember Everhart encouraged Councilmembers to support the allocation and stated the conference would benefit area hotels and restaurants. She requested they address the allocation process for the next conference so the request is handled properly.

Councilmember Manspeaker expressed concern with the event creating a deficit for the City in regards to the amount allocated by the City compared to the amount of revenue generated from the event.

Councilmember Hiller stated the allocation of funds is a great investment by the City because it helps provide a great opportunity to showcase the city by bringing over 800 delegates to the community.

The motion to approve the resolution with the payment to be funded with the Transient Guest Tax funds accrued in the 2012 City budget carried. Councilmembers Manspeaker and Gray voted “no.” (7-2-0)

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.

Jim Colson, City Manager gave the staff report.

Dave Starkey, City Attorney stated the background information regarding the settlement was provided to the Council in the executive session conducted prior to the Council meeting.

Councilmember Archer asked if an explanation could be provided to the public outlining the City's potential financial downfall if the settlement is not approved.

Councilmember Archer moved to recess into an executive session to discuss attorney-client privileges regarding items 5B and 5C, worker's compensation settlements for Robert Hamilton and Stephanie Workman for a time period not to exceed 20 minutes and to include the City Manager, Human Resources Director, Governing Body and Legal staff. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

At 6:50 p.m., Mayor Bunten reconvened the Council meeting into open session and announced no action had been taken.

Councilmember Manspeaker moved to approve Workers' Compensation Settlement for Robert Hamilton in the amount of \$74,000. The motion seconded by Councilmember Everhart carried. Councilmember Gray voted "no." (8-1-0)

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.

Jim Colson, City Manager gave the staff report.

Councilmember Manspeaker moved to approve the Workers' Compensation Settlement for Stephanie Workman in the amount of \$70,000. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

ORDINANCE NO. 19758 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 placed on first reading August 21, 2012 was again presented.

Councilmember Hiller gave the staff report.

Councilmember Hiller moved to amend line 13 of the ordinance by inserting the date, "September 7, 2012 from 9:00 p.m. to 11:59 p.m." after the word "on." The motion was seconded by Councilmember Harmon.

Councilmember Alcala asked if the amendment was a significant change to the ordinance.

Dave Starkey, City Attorney stated the amendment added another date and time to the event and would not change the meaning of the ordinance.

The motion to amend line 13 of the ordinance by inserting the date, "September 7, 2012 from 9:00 p.m. to 11:59 p.m." after the word "on" carried unanimously. (9-0-0)

Councilmember Hiller moved to adopt the ordinance as amended. The motion seconded by Councilmember Harmon carried unanimously. Mayor Bunten voted "yes." (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -10.

RESOLUTION NO. 8461 introduced by Councilmember Sylvia Ortiz granting Laurencia Campa an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

Councilmember Ortiz gave the staff report.

Councilmember Alcalá questioned if the applicant had been granted a noise exception recently and reported he received many complaints relating to an event located near the same area. He asked if the ordinance stipulates how many times per year a person could be granted a noise exception.

Dave Starkey, City Attorney stated he would research the ordinance and determine if the ordinance could be amended to include a stipulation and report his findings back to Councilmember Alcalá.

Councilmember Ortiz reported the previous applicant's address was 217 SE Rice Road and Ms. Campa's address is 117 SE Rice Road. She asked if there is a specified end time stated in City Code regarding noise exceptions.

Dave Starkey stated noise exception end times are generally midnight; however, ending times are deemed by the Council.

Councilmember Alcalá encouraged citizens to call the Topeka Police Department and report an event if the noise exception time has expired and the event activities are disturbing the peace.

Councilmember Ortiz moved to approve the resolution. The motion seconded by Councilmember Manspecker carried unanimously. (9-0-0)

RESOLUTION NO. 8459 introduced by City Manager Jim Colson, authorizing and directing the issuance of Temporary Notes, Series 2012-A of the City of Topeka, Kansas, in the

aggregate principal amount of \$16,540,000 for the purpose of providing funds to pay the cost of (I) renewing the Series 2011-A Temporary Notes of said City, dated September 20, 2011, and (II) paying certain additional costs of the improvements in said city was presented. (*City of Topeka Contract No. 42342*)

Jim Colson, City Manager gave the staff report.

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

Councilmember Archer asked for an explanation of the process and the City's ultimate goal in renewing the temporary bonds and paying for improvement projects.

Pam Simecka, Budget and Finance Director reported there are currently 25 projects in various phases of construction needing temporary financing for an additional year; and there is a need to increase funding to pay for additional work on specific projects, as well as, pay the interest costs for the 2011 Temporary Notes. She reported the City achieved an interest rate of 0.7178% which she believes is very positive.

Councilmember Harmon asked why there were four (4) park improvement projects listed for payment when the City and County consolidated the Parks and Recreation Departments last year.

Pam Simecka stated some park improvement projects are not yet complete and the decision was made by previous Interim City Manager Daniel Stanley, to finish all current park improvement projects the City started prior to the consolidation of departments. She noted only some would be completed by the end of 2012.

The motion to approve the resolution carried unanimously. Mayor Buntun voted "yes."  
(10-0-0)

RESOLUTION NO. 8462 introduced by City Manager Jim Colson, authorizing the City of Topeka's conveyance of ownership to the project to Hill's Pet Nutrition, Inc., was presented.

Jim Colson, City Manager gave the staff report.

Councilmember Alcalá asked if he voted on the resolution if it would be considered a conflict of interest because he is employed by Hills Pet Nutrition, Inc.

Dave Starkey, City Attorney stated in his opinion there is a substantial business interest and Councilmember Alcalá should abstain from voting on the resolution.

Councilmember Manspeaker moved to approve the resolution. The motion seconded by Councilmember Gray carried. Mayor Bunten voted "yes." Councilmember Alcalá did not vote. (9-0-0)

APPROVAL of a Demolition Permit Request submitted by City of Topeka Code Enforcement Unit, for properties located at 903 and 905 N. Kansas Avenue, and within 500 feet of the historical environs of the North Topeka Baptist Church, which is listed on the Register of Historic Kansas Places and the National Register of Historic Places was presented.

Jim Colson, City Manager gave the staff report.

Murl Riedel, Topeka Landmarks Commission gave a brief background of the property and stated the majority of structures located within the 900 block of N. Kansas Avenue are historic. He stated he understands the Council has a difficult decision; however, he would encourage the Council to choose historic preservation of the buildings.

Councilmember Gray stated he read the report and noted the property owner attempted to give the property away with no success; therefore, he believes there are no feasible alternatives and supports the demolition permit request.



Barry Feaker, Topeka Rescue Mission spoke in support of demolishing the structures or quickly finding someone willing to renovate them. He stated he believes it is way past time for the buildings to be dealt with.

Mayor Bunten reported he visited the structures and in his opinion there is no feasible way to repair the buildings.

Ruby Bradley, neighboring property owner encouraged the Council to support the demolition because the buildings are a health and safety hazard and they are damaging the character of neighboring structures. She stated she believes the North Topeka Arts District would prefer a safe environment and support the demolition.

Councilmember Wolgast moved to approve the demolition permit request based on the determination there are no feasible or prudent alternatives existing to the proposed demolition and that planning to minimize harm to the surrounding historic environs has been made. The motion was seconded by Councilmember Alcalá.

Councilmember Hiller spoke in support of the demolition; however, she would prefer to see a process in which neighbors to the property, as well as, the historic district and community are notified of the proposed demolition so that an effort is made to search for alternatives.

Councilmember Gray stated he concurs with Councilmember Hiller; however, in this case the property owner tried to give the property away and no one came forward.

Councilmember Wolgast commented on the Topeka Landmarks Commission's role in determining a demolition request and stated it is the Governing Body's role to determine if the demolition has any feasible or prudent alternatives to restore the structure.

Councilmember Manspecker concurred with Councilmember Hiller and suggested the Council establish a process of notifying people to show an effort has been made to search for

alternatives; however, he noted the Topeka Landmarks Commission has to follow state statutes to make their determination.

The motion to approve the demolition permit request based on the determination there are no feasible or prudent alternatives existing to the proposed demolition and that planning to minimize harm to the surrounding historic environs has been made carried. Mayor Bunten voted “yes.” Councilmember Manspeaker voted “no.” (9-1-0)

NO Retail Cereal Malt Beverage License applications were presented.

RESOLUTION NO. 8463 introduced by Councilmember Karen Hiller, granting ESI Live Inc., an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

Councilmember Hiller gave the staff report.

Councilmember Hiller moved to amend line 13 of the resolution to add the date, “September 7, 2012 from 9:00 p.m. to 11:59 p.m.” after the word “on.” The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

Councilmember Hiller moved to approve the resolution as amended. The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

AN ORDINANCE 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 on the south side of SW 37<sup>th</sup> Street approximately 400 feet west of SW Burlingame Road from “R-1” Single-Family Dwelling District TO “C-2” Commercial District placed on first reading August 14, 2012 was again presented.

Jim Colson, City Manager gave the staff report.

Councilmember Wolgast moved to refer the ordinance back to the Planning Commission with the recommendation to further study the traffic situation. The motion was seconded by Councilmember Manspeaker.

Councilmember Wolgast stated the retail establishments have significantly increased the traffic flow in this area and he believes a traffic study should be done to reflect the changes in commercial business.

Councilmember Gray stated he concurs with Councilmember Wolgast and noted more thorough research should be done because there are plans to construct a bike path in the area.

Councilmember Manspeaker asked if the project to widen SW 37<sup>th</sup> Street has been approved by the Council.

David Thurbon, Planning Department Director stated the widening improvement project for SW 37<sup>th</sup> Street has not been approved by the Council. He reported the project is not included in the ten (10) year plan and it would be several years before the project would begin.

Councilmember Alcala requested clarification on the recommendation provided by the Planning Department and asked if there is a traffic problem in the area.

David Thurbon stated the Planning Department and Planning Commission recommended approval on the zoning change because it is an appropriate pattern of development at an intersection of two arterial streets and adjacent to a major highway interchange. He stated staff did indicate a new driveway would not meet the 300 foot separation requirement between driveways along a minor arterial; however, the desired spacing (300 feet) would not be possible in this instance since the area is already predominantly developed. He noted the applicant has stated they anticipate 60-70 vehicles to enter daily; however, traffic incident reports for the area are minimal.

Councilmember Wolgast stated there are a number of problems with the zoning request and traffic safety. He reported he has discussed the issue with area residents regarding the traffic problems in the area and the poor vision for drivers to the east and west because of the highway interchange.

Councilmember Manspeaker stated he concurs with Councilmember Wolgast and the traffic issue should be addressed at SW 37<sup>th</sup> Street and Burlingame Road.

Councilmember Alcala stated he does not disagree with Councilmember Wolgast; however, he expressed concern with the Planning Department and Planning Commission recommending approval if there are major traffic safety issues that need to be addressed.

Councilmember Wolgast stated he has notified the Traffic Engineering Division of the traffic safety issues in the area many times.

Dave Starkey, City Attorney reminded the Council the item before them is a rezoning issue and the Council sits as a quasi-judicial body making a decision based on evidence presented to them and should not receive or participate in any ex parte communications on this matter or offer testimony, personal opinions or observations because it is not appropriate.

Councilmember Hiller suggested the Planning Commission clarify separation in considering a zoning issue versus construction of a particular business when presenting a report back to the Council on the matter. She requested traffic counts and business estimates be revisited for the area.

The motion to refer the ordinance back to the Planning Commission with the recommendation to further study the traffic situation carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

AN ORDINANCE introduced by City Manager Jim Colson, authorizing Improvement Project No. T-291023.00 for secondary digester lid replacement at the Oakland Wastewater Treatment Plant, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operation funds, authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to issue and sell revenue bonds of said City to make such improvements which constitutes improvements to the municipally owned water, water pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, pursuant to K.S.A. 10-101 and 10-1201, et seq., and all amendments thereto, authorizing issuance of general obligation bonds to pay the costs of the project which further constitutes a general improvement to the City's sanitary and/or stormwater and sewage disposal system pursuant to City of Topeka Code Section A12-1, and authorizing the borrowing of funds from the KDHE SRF Loan to pay the cost thereof was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, authorizing Improvement Project No. T-281039.01 for the rehabilitation of flood protection relief wells approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operation funds, authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to issue and sell revenue bonds of said City to make such improvements which constitutes improvements to the municipally owned water, water pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, pursuant to K.S.A. 10-101 and 10-1201, et seq., and all amendments thereto, authorizing issuance of general obligation bonds to pay the costs of the project which further constitutes a general improvement to the City's sanitary and/or stormwater

and sewage disposal system pursuant to City of Topeka Code Section A12-1 was presented for first reading.

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

Jim Colson, City Manager thanked the Council for the opportunity to serve as City Manager. He stated he looks forward to working with the Governing Body, citizens and businesses to achieve an optimal future for the city. He complimented Pamela S. Simecka for her service as interim City Manager and dealing with issues in a non-political manner.

Jim Colson, new City Manager was welcomed by each member of the Governing Body.

Councilmember Ortiz announced a Redistricting Commission Public Hearing would be held August 30, 2012, at 7:00 p.m. in the City Council Chambers located at 214 E. 8<sup>th</sup> Street. She encouraged citizens to attend the public hearing and voice their opinion regarding Council District boundaries. She also announced there would be no City Council meeting held September 4, 2012. She encouraged citizens to participate in the free smoke alarm program being offered through local fire stations and instructed citizens to call 368-4000 to schedule appointments for installation.

Councilmember Everhart encouraged residents to participate in the free smoke alarm program and commended the Topeka Fire Department for providing a presentation on the program at the Neighborhood Improvement Association meeting she recently attended.

Ted Mize, Raymond Foster, Paul Meierhenry appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:24 p.m.

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Brenda Younger  
City Clerk