

## **Council Minutes – September 11, 2012**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 11, 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, Don Davidson, Topeka Police Department Chaplain gave the invocation.

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

A PRESENTATION of the 2012 National Association of County Park and Recreation Officials Removing Barriers Initiative Award was presented by John Knight, Shawnee County Parks and Recreation Director, to the City of Topeka for the Gage Park Accessible Ball Diamond.

Councilmember Wolgast requested to add a resolution granting Boss Hawgs a noise exception to the consent agenda.

Upon hearing no objections, Mayor Bunten announced the resolution would be placed on the consent agenda as item 4E.

Councilmember Hiller moved to remove items 4A and 4B, workers compensation settlements for Kenneth Anderson and Stephen Belk to make technical corrections to the settlement amounts. The motion seconded by Councilmember Archer carried unanimously.

(8-0-0)

Mayor Bunten announced items 4A and 4B would be placed under New Business as items 6H and 6I respectively.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of August 28, 2012 was presented.

RESOLUTION NO. 8464 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.

Councilmember Wolgast moved to approve the consent agenda as amended. The motion seconded by Councilmember Gray carried unanimously. (8-0-0)

Jim Colson, City Manager requested to defer item 5B, a notice of intention, project budget and ordinance concerning the Oakland Secondary Digester Lid Replacement Project T-291023.00; and item 5C, a notice of intention, project budget and ordinance concerning Flood Protection Relief Well Rehabilitation Project T-281039.01 to the September 18, 2012, Council agenda to allow additional time to clarify project budget amounts with staff.

Upon hearing no objections, Mayor Bunten announced items 5B and 5C would be withdrawn from the Council agenda and added to the September 18, 2012 Council agenda.

Councilmember Hiller questioned if the resolution concerning the 2012-2016 Capital Improvement Program (CIP) and the 2012-2013 Capital Improvement Budget (CIB) should also be withdrawn from the agenda. She noted the two projects (Council agenda items 5B and 5C) that were deferred for one week are included in the resolution.

Pam Simecka, Finance Director recommended the Council move forward with the resolution because the amounts would not change for the two projects and the other amendments included in the CIP and CIB need to be approved to move forward with various projects.

A RESOLUTION introduced by City Manager Jim Colson, authorizing and adopting for the City of Topeka, Kansas, the 2012-2016 Capital Improvement Program and the 2012-2013 Capital Improvement Budget and rescinding Resolution No. 8404 was presented.

Pam Simecka, Finance Director gave the staff report and stated the amendment would include funding for the Oakland Secondary Digester Lid Replacement project and the Flood Protection Relief Well Rehabilitation project; increase funding for the Ape and Large Carnivore Quarantine Facilities project; and add \$1.5 million in the 2012 CIB for waterline replacement projects; and push \$1.4 million allocated for the levee system rehabilitation project to the 2015 CIP.

Councilmember Harmon asked if the line item specifying the waterline replacement projects was included in the CIP.

Pam Simecka stated the revised CIP listing the waterline replacement projects was not included in the Council packet information.

Councilmember Manspeaker asked why the levee system rehabilitation project was postponed.

Braxton Copley, Office of Utilities and Transportation Director stated project amounts are limited under the CIP each year so the levee system rehab was pushed to 2015 in order to make room for other projects. He reported there are no federal funds yet available; therefore, they believed the levee project was a safe project to postpone. He noted the CIP could be amended and projects could be moved around if the water appropriation act passes through the U.S. Congress and provides funding.

Councilmember Hiller questioned where the \$5,976,053 for the Oakland Secondary Digester Lid Replacement project would come from and asked why the project was not included

on the list; what projects are being delayed to accommodate the funding; are the Water Pollution Control funds invested; and why the City would not use cash to pay for the projects. She noted the City could potentially save \$1 million a year by not financing projects through temporary bonds.

Braxton Copley stated the lids had not failed by the time the CIB was prepared last year; however, once it failed engineering services were used to determine options for reconstruction. He reported the other two digester lids which are 30 years old were evaluated and the consultant made the recommendation to replace all of them because he does not believe it would be prudent to wait for another CIB cycle. He stated the digester lid project is a critical repair to infrastructure so the Solids Handling project would be shifted from 2015 to 2016 to make the accommodation. He also noted more projects would be shifted in the next CIB because there are other urgent issues needing to be addressed.

Pam Simecka reported City funds are invested in the Municipal Investment Pool at a rate of 2.3%. She noted the City prefers to stay conservative and maintain a cash balance for emergencies and bond issues. She stated she would provide some projections to Councilmember Hiller regarding the use of cash to pay for projects.

Jim Colson requested to withdraw the resolution and defer for one week to clarify budget amounts and answer Councilmembers questions.

Upon hearing no objections, Mayor Bunten announced the resolution would be withdrawn from the agenda and added to the September 18, 2012 Council agenda.

RESOLUTION NO. 8465 introduced by City Manager Jim Colson, naming banks and savings institutions that are designated as depositories for all City of Topeka accounts and authorizing signatories and rescinding City of Topeka Resolution No. 8370 was presented.

Jim Colson, City Manager gave the staff report.

Councilmember Harmon stated Community National Bank listed in the resolution has changed their name to Community Bank.

Councilmember Ortiz asked how many employees would be authorized to sign checks.

Pam Simecka stated currently the Finance Director and City Treasurer are authorized to sign checks and the resolution would add Tina Loyd, City of Topeka Account Manager and Amy Vail, City of Topeka Grant and General Accountant as backup signatories if needed.

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

RESOLUTION NO. 8466 introduced by City Manager Jim Colson, concerning the City of Topeka's participation in the State of Kansas Municipal Investment Pool and rescinding City of Topeka Resolution No. 8369 was presented.

Jim Colson, City Manager gave the staff report.

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

APPROVAL of a Real Estate Purchase Agreement between the City of Topeka and Rafael Unzueta for the sale of surplus property located at 631 SE Chandler in the amount of \$450 was presented. (*Contract No. 42354*)

Jim Colson, City Manager gave the staff report.

Councilmember Ortiz reported the piece of property is unique and would be very difficult to develop. She noted that illegal dumping has been an issue and approval of the contract would eliminate the problem and clean up the area.

Brad Reiff, Housing and Neighborhood Development Interim Director stated approval of the agreement would be the final step in the disposal process. He reported the property was formally declared surplus property by City staff and was appraised at \$350. He stated the property owner located to the north has offered \$450 for the acquisition of the property which would relieve the City from the responsibility of maintaining the property.

Councilmember Ortiz moved to approve the real estate purchase agreement. The motion seconded by Councilmember Gray carried unanimously. (8-0-0)

A PROJECT BUDGET in the amount of \$1,400,000 and RESOLUTION NO. 8467 introduced by City Manager Jim Colson, authorizing Improvement Project T-601029.00 which provides for neighborhood infrastructure improvements in Central Highland Park and Hi-Crest Neighborhoods, as more specifically described herein was presented.

Brad Reiff, Housing and Neighborhood Development Interim Director gave the staff report and stated Central Highland Park and Hi-Crest were identified in the SORT program as target areas that need infrastructure improvements. He noted the \$1.4 million would be funded by general obligation bonds and would include street reconstruction and new sidewalk construction.

Councilmember Wolgast stated he believes the projects are crucial improvements to the area that would provide safety to residents.

Councilmember Wolgast moved to approve the project budget and resolution. The motion was seconded by Councilmember Ortiz.

Councilmember Manspeaker asked if the entire 2012 neighborhood infrastructure budget was being applied to the two areas.

Brad Reiff stated the 2012 neighborhood infrastructure budget would be allocated to the two areas because resources are restricted to two target areas each year. He noted HND hosts public meetings to help neighborhoods through the application process and make recommendations on projects that would benefit the community.

Councilmember Ortiz encouraged neighborhoods to follow the process to receive SORT funding for assistance with improvements.

Councilmember Wolgast reported it was determined funding could be better utilized if only applied to two neighborhood areas annually.

Councilmember Hiller stated the SORT program is a competitive process and neighbors have to work together to be successful. She reported City staff works with neighborhoods to help construct a plan and decide which projects would make a difference to those areas.

Councilmember Harmon asked why general obligation bonds were being used instead of half-cent sales tax monies to fund the improvements.

Mike Teply, Development Coordination Director stated general obligation bonds are being used because these are primarily residential areas and the half-cent countywide retailers' sales tax monies are mainly applied towards improving major arterial streets.

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

A PROJECT BUDGET in the amount of \$3,800,000 and RESOLUTION NO. 8468 introduced by City Manager Jim Colson, for Improvement Project No. 70198-02B which provides for final design, right-of-way acquisition, and construction as described herein, to improve SW 21<sup>st</sup> Street from the existing five lane section west of SW Wanamaker Road to SW Urish Road was presented.

Jim Colson, City Manager gave the staff report.

Mike Teply, Development Coordination Director reported the project was included in the list of infrastructure improvement projects approved in August 2004 by Shawnee County voters for the 12 year half-cent countywide retailers' sales tax. He noted the project would widen SW 21<sup>st</sup> Street from SW Wanamaker Road to Urish Road and include curbs, gutters and sidewalks on both sides of the street, as well as, storm drainage facilities.

Councilmember Gray encouraged the Council to approve the project because of the amount of commercial business growth in the area and the accessibility to and from highway I-470.

Councilmember Gray moved to approve the project budget and resolution. The motion was seconded by Councilmember Archer.

Councilmember Manspeaker asked when SW 29<sup>th</sup> Street from SW Wanamaker Road to Urish Road and SW 17<sup>th</sup> Street from SW Wanamaker Road to Urish Road was completed.

Mike Teply reported SW 29<sup>th</sup> Street was completed in 2011 and SW 17<sup>th</sup> Street is under construction.

Councilmember Manspeaker expressed concern that there has not been a current traffic count for the area and SW 17<sup>th</sup> Street improvement project has not yet been completed. He questioned if the project is necessary.

Councilmember Ortiz commended Councilmember Gray for his comments; however, she stated she believes streets inside city limits are in need of improvements and should be looked at closely if the half-cent countywide retailers' sales tax is renewed.

Councilmember Gray stated the widening project on SW 29<sup>th</sup> Street was a major improvement for area residents because of the traffic growth and he believes the same is true for the SW 17<sup>th</sup> Street improvement project.



Councilmember Hiller noted the projects included in the half-cent countywide retailers' sales tax proposal in 2004 were all projects located on the edge of city limits; however, if the sales tax is renewed in the future the Council should take a closer look at the listed projects and what projects are located within city limits.

Councilmember Manspeaker expressed concern with the project and stated he believes it is not reasonable to pave roads that benefit County residents when City roads are in need of improvements.

Councilmember Wolgast stated he believes in retrospect he would have looked further into the projects approved in 2004; however, many of them are underway and concurs that many City streets need to be addressed.

Councilmember Archer asked what would happen if the Council disapproves the project.

Mike Teply stated any money not used would revert back to the City; however, it could cause legal issues.

Dave Starkey, City Attorney stated he would look into the matter and provide a legal opinion to the Council if the project is disapproved.

The motion to approve the project budget and resolution carried. Councilmembers Manspeaker and Harmon voted "no." (6-2-0)

DENIAL of Merchant Guard License Appeal by Gregory K. Irwin was presented.

Dave Starkey, City Attorney gave the staff report.

JaLynn Copp, Topeka Police Department Legal Advisor stated the application was received and Mr. Irwin stated he was convicted of false impersonation of a police officer by Johnson County District Court in April 2004. She stated he was denied the merchant guard license based on Topeka Municipal Code Section 5.90.140(a)(7).

Councilmember Ortiz asked if Mr. Irwin's denial was solely based on the false impersonation conviction.

Councilmember Gray asked if Topeka Police Chief Ron Miller has the discretion to approve or deny a merchant guard license.

JaLynn Copp stated the conviction is within ten (10) years and Police Chief Miller has the discretion to approve or deny a license based on factors listed in City Code.

Gregory Irwin, applicant gave a brief background of his employment from 1998 to the present and stated he disclosed the conviction on his application.

Councilmember Gray asked Mr. Irwin if he has the legal right to carry a weapon.

Gregory Irwin stated he has a conceal and carry permit; is licensed to sell Class 3 weapons by the U.S. Department of Alcohol, Tobacco and Firearms; and is currently licensed by the State of Kansas as a bail bondsman.

Councilmember Gray stated he respects Police Chief Miller's decision; however, he believes Mr. Irwin should be allowed to work as a security guard.

Councilmember Wolgast asked Mr. Irwin why he impersonated an officer.

Gregory Irwin stated he worked for the Maple Hill Police Department in a part-time capacity and also worked in the private sector at the time; however, the Brady Bill was in effect which limited the capacity of firearm magazines to private individuals and he used his police identification card to purchase the high capacity magazines for personal use and without the Police Chief's permission.

Councilmember Alcala asked what year Mr. Irwin was employed by Highland Park Apartment security and why he left that employment.

Gregory Irwin stated he was employed in 1999 for security services and left because it was at the time of his conviction. He reported he has requested Johnson County District Court expunge the charge and he anticipates the request to be granted within 60 to 90 days.

Dave Starkey reminded the Council to determine the appeal based strictly on the facts presented regarding the license denial and read Topeka Municipal Code Section 5.90.140(a)(7) which states “(a) The chief of police may deny an application, or suspend or revoke a license issued to: (7) Any person against whom a judgment or conviction for fraud, deceit or misrepresentation, or a conviction for theft has been entered within 10 years immediately preceding the date of application.”

Councilmember Harmon moved to approve the denial of the merchant guard license appeal for Gregory K. Irwin. The motion was seconded by Councilmember Wolgast.

Councilmember Hiller asked if ten (10) years applies to the event which happened 11 years ago or the conviction which happened a year later. She also asked if the conviction would have to be disclosed if the request to expunge is granted.

JaLynn Copp stated ten (10) years applies to the date of conviction and the conviction would have to be disclosed on the application even though it may be expunged.

The motion to approve the denial of the merchant guard license appeal for Gregory K. Irwin carried. Councilmembers Archer and Gray voted “no.” (6-2-0)

NO Retail Cereal Malt Beverage License applications presented.

APPROVAL of a Workers’ Compensation Settlement for Kenneth Anderson, equipment operator in the Street Maintenance Section, in the amount of \$21,900 for permanent partial impairment of his lower back from an injury sustained on September 4, 2009 when lifting a guardrail onto a trailer for an installation project was presented.

Councilmember Hiller moved to amend the workers compensation settlement from \$21,900 to \$21,609.11. The motion seconded by Councilmember Wolgast carried.

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

Councilmember Hiller moved to approve the workers compensation settlement as amended. The motion seconded by Councilmember Ortiz carried. Councilmember Gray voted “no.” (7-1-0)

APPROVAL of a Workers’ Compensation Settlement for Stephen Belk, Utility System Worker II in the Water Distribution Division, in the amount of \$19,993.28 for permanent partial impairment of his lower back sustained on September 6, 2011, when working a water main break was presented.

Councilmember Hiller moved to amend the workers compensation settlement from \$19,993.28 to \$24,000. The motion seconded by Councilmember Ortiz carried. Councilmember Gray voted “no.” (7-1-0)

Councilmember Hiller moved to approve the workers compensation settlement as amended. The motion seconded by Councilmember Ortiz carried. Councilmember Gray voted “no.” (7-1-0)

AN ORDINANCE introduced by City Manager Jim Colson, repealing City of Topeka Code Section 3.55.210, concerning the transfer of money to the arts fund was presented for first reading.

AN ORDINANCE introduced by Councilmember Chad Manspeaker, amending City of Topeka Code Section 3.25.100, concerning the historic asset tourism fund and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Section 5.10.300, concerning the renewal fee for scrap metal dealer registration and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, instituting a real estate lien upon certain lots and pieces of ground in Shawnee County, Kansas, to pay the cost for sewage collection and treatment where such payments to the City have not been made due to neglect, failure or refusal to pay, pursuant to K.S.A. 12-808c was presented for first reading.

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

Jim Colson, City Manager announced the Topeka Zoo was awarded accreditation by the Association of Zoos and Aquariums for an additional five (5) years. He noted a thorough review was conducted on the Zoo and is held to a higher degree by the AZA to achieve these results. He reported information on the recent findings and visit would be presented to the public on September 12, 2012.

Councilmember Hiller commented on the many events happening throughout the community and expressed appreciation to all the volunteers who help at each event. She reported State of Kansas has declined recreation funding from the federal government to extend bike trails and stated she is dismayed by the news. She requested the City Manager look into the situation and encourage the Governor to consider the matter further.

Councilmember Ortiz encouraged everyone to visit the penguins at the Topeka Zoo before they leave on September 30, 2012 and noted the exhibit has been a wonderful asset to the zoo. She reminded citizens to call the Topeka Fire Department at 368-4000 to schedule a free smoke alarm installation in their home.

Councilmember Wolgast reported Keep America Beautiful hosted the Volunteer Appreciation Luncheon on September 11, 2012 and honored City4 with the 2012 Beautification award in the government category and School Resource Officers in the schools category.

Councilmember Archer stated he attended the September 11<sup>th</sup> Commemorative Ceremony at the Children's Discovery Center and commended Mayor Bunten and City Manager Jim Colson for their speeches. He thanked Bob Evenson, Topeka Independent Business Association Chair for hosting the candidate forum at the Topeka Country Club.

Councilmember Gray reflected on the events surrounding September 11, 2001 and remembered those that lost their lives that day.

Mayor Bunten commended Topeka High School's Jr. ROTC participation in observance of the 9/11 ceremony held at the school.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:53 p.m.

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Brenda Younger  
City Clerk