

Council Minutes – October 2, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 2, 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 Manspeaker asked for a moment of silent meditation.

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

Councilmember Wolgast moved to add a Joint Memorandum of Agreement concerning healthcare cost-sharing to the October 9, 2012 Council agenda. The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

Councilmember Hiller moved to suspend the Council Rules and add a resolution granting Country Legends 106.9 radio station a noise exception to the consent agenda. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

Mayor Bunten announced the resolution would be added to the consent agenda as item 4F.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Dustin Crook to the Topeka Planning Commission for a term ending September 30, 2015 was presented.

DENIAL OF CLAIMS for severance pay in the aggregate amount of \$745,936.81 by former City Parks and Recreation employees, Bruce Andrews, John Bell, Lynn Bishop, Gena Brooks, Kathy Huseman, Clay Neal, William Riphahn, Terry Simpson, David Specht and Roger Wilcox was presented.

RESOLUTION NO. 8473 introduced by Councilmember Sylvia Ortiz, granting Luis Rivera an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

MINUTES of the regular meeting of September 25, 2012 was presented.

RESOLUTION NO. 8474 introduced by Councilmember Hiller, granting Country Legends 106.9 an exception to the provisions of City of Topeka Code Section 9.45.170 concerning noise prohibitions was presented.

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

ORDINANCE NO. 19765 introduced by City Manager Jim Colson, amending City of Topeka Code Section 2.145.030, 10.60.590, and 10.60.650, concerning administrative hearing procedures and specifically repealing said original sections placed on first reading September 25, 2012 was again presented.

Dave Starkey, City Attorney reported the City's contract for an administrative hearing officer has expired, providing an opportunity to improve the process. He stated the proposal would allow the City Manager to appoint an administrative hearing officer by removing the competitive bidding requirement; reduce costs; enhance efficiencies; and upgrade a manner of various activities. He stated it was anticipated an associate municipal judge would be appointed to carry out this function in addition to their current duties.

Councilmember Harmon questioned how an appeal would be handled if it was generated from the same associate municipal judge serving as the administrative hearing officer.

Dave Starkey stated some cases would be heard in Municipal Court; however, the majority of appeals would go through Shawnee County District Court.

Jim Colson, City Manager stated he would meet with applicants who are interested in the position and conduct an evaluation process that would determine the best applicant.

Councilmember Harmon stated he is reluctant to support the elimination of a process that serves in the best interest of taxpayers. He requested the process be reevaluated and the competitive bid process be reinstated if the new process was not successful.

Dave Starkey stated the proposal would allow the City Manager to have the ability to determine the best process instead of the City being locked into one process of competitive bidding.

Councilmember Everhart asked if the individual serving as the administrative hearing officer would have legal expertise.

Dave Starkey stated legal experience would be one of the requirements for the position.

Councilmember Wolgast stated he would support the proposal because it removes the restrictive nature of the process and creates more efficiency in operations.

Councilmember Gray asked if the proposal would authorize the transfer of wages (\$24,000) to the employee that would be assuming the administrative hearing officer duties.

Jim Colson stated the objective would be to provide flexibility; increase quality of service and reduce costs. He reported that he would determine the best financial situation for the City in regards to the use of the \$24,000 of salary savings.

Councilmember Hiller asked if the person selected to serve as the administrative hearing officer would be used for all hearings or if staff is considering utilizing more than one person to hear cases.

Dave Starkey stated he is not sure what has been planned for the future; however, there has been no criticism of the process to date, and the person serving in the position would be required to continue to exhibit a high level of professionalism.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried. Councilmember Manspeaker voted “no.” (8-1-0)

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

ORDINANCE NO. 19766 introduced by City Manager Jim Colson, amending City of Topeka Code Sections 5.40.100, 5.40.120, 5.90.110, 5.115.110 and 5.160.020, as well as creating Section 5.115.160, all concerning business licensing requirements and specifically repealing said original section placed on first reading September 25, 2012 was again presented.

Dave Starkey, City Manager reported staff reviewed all licenses listing conviction of crime of moral turpitude as a reason for denial as directed by the City Council. He stated the Legal Department, in collaboration with the Topeka Police Department, developed amendments that replace the crime of “moral turpitude” with license-specific crimes for massage parlors (person and sex crimes), transient merchant (person and property crimes) and tobacco/novelty items (tobacco crimes).

Councilmember Gray thanked staff for addressing “moral turpitude” in the City’s Code and stated he hopes clarifying the term will ease the process.

Councilmember Hiller spoke in support of the proposal. She stated it was her understanding the directive given to staff was more broad, as there seemed to be a need to clarify the requirement to report all convictions and judgments and what each meant. She requested staff review all application forms to make certain all language is clear so applicants understand what is being asked; review time periods and the details of different licenses in terms of policy by gathering input from staff, Council and organizations and/or people involved with each corresponding license; and continue to provide improved instruction of license appeals sent to the Council.

Councilmember Everhart stated she understands the need for clarification on convictions; however, she cautioned using the word “judgment” on applications because it could cause the City to become involved in civil suites.

Dave Starkey stated the word “judgment” is only used on the merchant guard license application and is information needed for this type of applicant.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Archer carried unanimously. (9-0-0)

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

NO retail cereal malt beverage license applications were presented.

AN ORDINANCE introduced by City Manager Jim Colson, 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 37th 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 21, 2012 was again presented. The ordinance was remanded back to the Planning Commission from the meeting of August 28, 2012. (Z12/8)

Jim Colson, City Manager reported the zoning case was remanded back to the Planning Commission for recommendation from the Council meeting of August 28, 2012. He stated approval would allow the property to be developed for “C-2” Commercial District uses.

Bill Fiander, Interim Planning Department Director provided a brief background of the zoning case and stated staff recommends approval of a “C-2” Commercial District zoning change request. He reported staff analysis of the typical use of a 4,000 square foot building would add approximately 200 daily trips on the roadway. He referenced the Traffic Impact

Analysis survey and noted the site is somewhat constrained due to drainage issues; however, land use principles have been met considering the comprehensive plan, and the timing of the development and adequate infrastructure is in place.

Councilmember Wolgast questioned when the traffic count for this area was completed and stated he believes it is outdated.

Bill Fiander stated the traffic count was conducted in 2007 and 2008 and the daily trips have decreased over time. He reported statistics show the count was 9,000 to 10,000 trips per day in 2004; and now there are approximately 8,655 trips per day with a roadway capacity of 12,000 per day.

Councilmember Harmon questioned the zoning of surrounding properties and asked how “C-2” and “C-4” Commercial Districts are different.

Bill Fiander stated “C-2” Commercial Districts allow for commercial residential zoning, whereas “C-4” Commercial Districts allow for more intense commercial zoning necessary for large commercial developments.

Mayor Bunten stated he would support the zoning change request because at least 50% of area residents support the zoning change request.

Councilmember Hiller spoke in support of the zoning change request and noted there are several cross roads located within the city that have similar situations where the roads are lined with ditches and heavily traveled. She stated it was her understanding, as well as, area residents that there would be no plans for residential use of the property now or in the future.

Councilmember Wolgast stated he believes City departments provided outdated information because the traffic study was conducted in 2007 and 2008, before there was any commercial development in the area. He noted since the traffic study was conducted the traffic has more than doubled in the area; therefore, he would not support the zoning change request.

Councilmember Harmon stated the Governing Body must make a decision based the *Golden* factors set out in the Kansas Supreme Court cases of *Golden v. City of Overland Park* and the *Taco Bell v. City of Mission*. He stated he would support both the Planning Department and Planning Commission recommendations; however, he would have preferred the entire intersection be zoned as “O&I-2” Office & Institutional District.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Hiller failed. Mayor Bunten voted “yes.” Councilmembers Wolgast, Archer and Gray voted “no.” (7-3-0)

AN ORDINANCE introduced by City Manager Jim Colson, 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 properties located in the 1100 block of SE Quincy Street between SE 11th and SE 12th Streets and precisely located at 1126 and 1104 SE Quincy Street, 221 SE 11th Street, 1111 and 1113 SE Monroe Street from “C-4” Commercial District, “M-3” Multiple-Family Dwelling District, “E” Multiple-Family Dwelling District, “O&I-2” Office and Institutional District ALL TO “D-1” Downtown District was presented for first reading. (Z12/9)

AN ORDINANCE introduced by City Manager Jim Colson, 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 1129 SE Quincy Street, at the northwest corner of SE 12th Street and SE Quincy Street from “M-3” Multiple-Family Dwelling District TO “D-1” Downtown District was presented for first reading. (Z12/10)

AN ORDINANCE introduced by City Manager Jim Colson, relating to the partial vacation of a platted green space easement running along the southerly 40 feet of property

located at 4422 SW Lakeside Drive, City of Topeka, Shawnee County, Kansas was presented for first reading. (VI2E/3)

AN ORDINANCE introduced by Councilmember Sylvia Ortiz, 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 Kent Nicolay Family Fundraiser was presented for first reading.

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

Jim Colson, City Manager reported Hallmark Cards would be closing their Topeka based facility that currently employs 500 people. He stated there would be a reduction in force; however, some would have the opportunity to work at other facilities.

Mayor Bunten stated it was his understanding some of the people employed at Hallmark Cards would be offered incentive packages for early retirement and some would be offered jobs at other plant locations in Leavenworth and Lawrence. He expressed his appreciation of Hallmark Cards being a part of the Topeka community for many years.

Councilmember Hiller reported the NOTO Blues & BBQ and the First Friday Art Walk were great events and well attended. She stated she was saddened by the news of Hallmark Cards closing their Topeka facility; however, she believes the Polk-Quincy viaduct replacement project played a major part in the decision. She noted the project is currently in the design phase and is a high priority for the Kansas Department of Transportation.

Councilmember Ortiz thanked the Council for supporting the smoke detector replacement program made available by the Topeka Fire Department.

Councilmember Manspeaker expressed concern with Hallmark Cards closing their Topeka facility and the loss of 500 jobs. He reported there have been 200 jobs lost from the U.S.

Postal Service North Topeka facility closing; and 350 jobs lost from Jostens, Inc., closing. He stated the large number of jobs that have been lost this year will have a major impact on the community. He encouraged the Council and community to start looking at why the local economic development system appears to be failing.

Councilmember Gray reported the Topeka-Shawnee County community has lost over 7,000 jobs in the private sector over the last ten years. He asked the taxpayers to consider if they are getting the most for their money regarding economic development.

Mayor Bunten stated the area economic development team has been successful and has been used as an economic development model program across the nation. He stated loss of businesses would always be a part of community development; however, the Topeka-Shawnee County area has recently gained several large companies including Home Depot, Bimbo Bakeries, Target and Mars, all companies that will help the community succeed and grow responsibly.

Councilmember Manspeaker and Councilmember Gray left the meeting.

Jim Colson announced the Topeka Zoo would conduct public hearings on October 9, 2012, and October 13, 2012, in an effort to gather public input on the elephants. He reported a plan has been outlined and would appreciate if the Council would consider providing input on if the City should keep the elephants and enhance the elephant exhibit; or move the elephants and replace the exhibit with different animals. He assured the Council he would do what is best for the elephants and provide them an informed recommendation to help make a decision.

Mayor Bunten stated he was interested in hearing citizen input regarding the elephants; however, he has to leave the Council meeting at 7:30 p.m. due to a prior commitment.

Gail Franklin, Aryenish Birdie, Jeff Narron, Chris Palmer, JoAnn Farb, Samantha Farb, Kate Larison, Mary Blessington, Liesel Kirk-Fink, Sabrina Bowker, Jim Ogle, Judy Carmen, Devon Listrom, Eleanor Harris and Ann Wilson appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:59 p.m.

Brenda Younger
City Clerk