

Council Minutes – October 23, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 23, 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.

THE CONSENT AGENDA was presented as follows:

APPROVAL of Tort Claim of Avis Rent A Car System, L.L.C., in the amount of \$23,679.46 for damage to a vehicle as the result of a motor vehicle accident on June 22, 2012, was presented.

BOARD APPOINTMENT recommending the re-appointment of Doug Snook to the Board of Plumbing Examiners for a term ending October 31, 2014, was presented.

BOARD APPOINTMENT recommending the re-appointment of Robert Beaver to the Board of Mechanical Examiners for a term ending October 31, 2014, was presented.

RESOLUTION NO. 8478 introduced by Councilmember Chad Manspeaker, granting Shara Monhollon 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 October 16, 2012, was presented.

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

NOTICE OF PUBLIC HEARING

A PUBLIC HEARING to consider the adoption of a neighborhood revitalization plan.

ORDINANCE NO. 19771 introduced by City Manager Jim Colson, adopting a Neighborhood Revitalization Plan and designating a revitalization area all as provided for in K.S.A. 12-17, 114, et seq., Neighborhood Revitalization Act placed on first reading October 16, 2012, was again presented.

Bill Fiander, Interim Planning Department Director, summarized the plan and stated approval would renew the Neighborhood Revitalization Plan through 2017. He reported the basic concept of the program enables local taxing entities to offer tax rebates to property owners who improve their property within designated areas of the city under certain conditions. He noted past results have indicated the program is very successful in encouraging re-investment in the older and more distressed neighborhoods which also includes the downtown area. He added that 95% of any additional property taxes created by the new improvements would be rebated back to the property owner over a 10 to 15 year period.

Councilmember Manspeaker asked where Drake's Farm Subdivision and Kanza Business and Technology Park were located; and if Kanza Business and Technology Park would detract funding from the residential properties.

Bill Fiander reported Drake's Farm Subdivision is a residential subdivision which has been an eligible area in the program for the last 10 years and is located in North Topeka; and the Kanza Business and Technology Park is located on the State Hospital grounds at SW 6th Street. He stated the original State Hospital grounds were contiguous; however, over time the area was shrunk back, resulting in an island parcel that was proposed as a commerce park. He noted

U.S.D. 501 also owns property in this area and they have requested the land be included in the plan because they would like to develop the property for private purposes.

Councilmember Wolgast asked what is the definition for historic designation properties and how would it relate to the plan's criteria. He referenced downtown improvements and the possibility of making the improvements at a 95% rebate level; however, downtown is prioritized as an at-risk area at this time. He asked if Council approval of the plan would set the boundaries and conditions of the designations and how much would be granted.

Bill Fiander stated historically designated properties are listed on the State or National registry and listed as a historical landmark or within a historic district. He also stated downtown Topeka would make logical sense because it is a priority much like other intensive care areas located throughout the city being offered incentives. He stated the Council could approve how much each property gets back or deem what amounts are appropriate to be added to the program, as well as, include the downtown area in addition to the intensive care and at-risk areas.

Councilmember Everhart asked how the SE 29th Street and SE California Avenue area is classified within the plan because development has stalled and there are many vacant buildings in the area.

Bill Fiander stated the areas east of SE California Avenue and south of SE 29th Street are classified as outpatient areas, including the commercial properties. He reported any property that fronts the public street boundary of SE 29th and Adams Streets would be eligible for rebates because it is included in the proposed Neighborhood Revitalization Plan.

Marge Ahrens, League of Women Voters President, spoke in support of the plan and efforts to preserve, renovate and rebuild core city residential areas. She urged the Council to

continue the spread of revitalization and believes the City's Code Enforcement Unit plays an important role in the plan.

Mayor Bunten opened the public hearing and asked if anyone present would like to speak to the matter. No one appeared to speak.

Councilmember Everhart moved to close the public hearing. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Bunten voted "yes." (10-0-0)

Councilmember Alcala raised a point of order in regards to why the public would be allowed to speak without signing up to do so prior to the Council meeting as outlined in the Topeka City Council Rules and Procedures.

Dave Starkey, City Attorney, reported the public hearing is a statutory requirement, and in his opinion, the City could not bar the public from speaking to the issue if they choose to do so.

Councilmember Alcala requested staff inform the Council when changes are made to Council meeting proceedings.

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

NOTICE OF PUBLIC HEARING

A PUBLIC HEARING for vacation request V12A/3 by Topeka Rescue Mission requesting to vacate platted alley public rights-of-way on property located directly north of NE Curtis Street, approximately halfway between NE Quincy Street and NE Monroe Street, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 19772 introduced by City Manager Jim Colson, relating to the vacation of platted alley public rights-of-way on property located directly north of NE Curtis

Street, approximately halfway between NE Quincy Street and NE Monroe Street, City of Topeka, Shawnee County, Kansas, placed on first reading October 16, 2012, was again presented. (VI2A/3)

Bill Fiander, Interim Planning Department Director, reported there are utilities located in the right-of-way; however, the City would retain use of the alley.

Mayor Bunten opened the public hearing and asked if anyone present would like to speak to the matter. No one appeared to speak.

Barry Feaker, Topeka Rescue Mission, provided a brief description of how they plan to use the alley for bicycle and vehicle parking and a fenced-in children's play area.

Councilmember Archer moved to close the public hearing. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted "yes." (10-0-0)

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Bunten voted "yes." (10-0-0)

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

ORDINANCE NO. 19773 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 the northeast corner of NE Quincy Street and NE Curtis Street from "I-2" Heavy Industrial District TO "PUD" Planned Unit Development District ("X-2" Mixed Use District base zoning use group and also permitting a crisis center type II, churches and places of worship, boarding and lodging houses, group homes, farmers markets, pet shops/small animal clinics, and multi-family dwelling

of more than four units per building or more than twelve units per acre) placed on first reading October 16, 2012, was again presented. (*PUD12/5*)

Bill Fiander, Interim Planning Department Director, provided a brief background on the intake center. He reported plans have shifted and the current site for the intake center should be rezoned and have flexibility for setbacks.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

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

ORDINANCE NO. 19774 introduced by City Manager Jim Colson, amending City of Topeka Code Section 10.15.010 and specifically repealing said original section concerning the adoption of the 2012 Standard Traffic Ordinance placed on first reading October 16, 2012 was again presented.

Dave Starkey, City Attorney, reported there are no substantial changes except for the addition of provisions regarding the refusal of preliminary breath testing for Driving Under the Influence (DUIs).

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

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

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Section 9.05.080 and specifically repealing said original section, repealing Chapter 8.20 and Section 9.45.120 in their entireties, as well as creating Section 9.05.090 all concerning the

adoption of the 2012 Uniform Public Offense Code (UPOC) and amendments thereto placed on first reading October 16, 2012, was again presented.

Dave Starkey, City Attorney, reported there would be three substantial changes made to the 2012 UPOC. The changes are follows:

1. The smoking section was omitted because K.S.A. 21-6114 provides that any city may regulate smoking within its boundaries so long as the city's regulation is at least as strict as that imposed by the Kansas Indoor Clean Air Act; however, the City's Code Chapter 8.20 may not comply with that state requirement so this ordinance repeals the City Code sections pertaining to smoking and adopts the equivalent of the Kansas Indoor Clean Air Act as contained in Section 10.24.
2. The prostitution section was omitted because the law enforcement and prosecutors agreed the reason for adoption of City Code Section 9.45.120 no longer exists; therefore, the ordinance repeals the code section and the UPOC's provisions regarding prostitution are adopted.
3. The League of Kansas Municipalities inadvertently left out a provision regarding the transportation of a loaded firearm in an occupied vehicle and is important for the protection of law enforcement officers; therefore, this provision is being adopted in Section 2 of the ordinance.

Councilmember Harmon expressed concern with repealing the City's Clean Air Act because some State Legislature candidates are proposing to relax statewide restrictions.

Dave Starkey stated the City would be bound by State statute if the Council votes to repeal the City's Clean Air Act.

Councilmember Gray stated he supports the State Indoor Clean Air Act because it allows places such as the American Legion Posts the freedom to allow members the choice to smoke inside the establishment.

Councilmember Everhart questioned the inclusion of domestic battery provisions and stated she would oppose the ordinance if not included.

Dave Starkey stated domestic battery provisions are excluded because those types of offenses are prosecuted by the District Attorney and Council eliminated it from the UPOC in 2011.

Councilmember Hiller stated the Council did not want to relinquish some of the elements in the City's Clean Air Act when the State passed the Indoor Clean Air Act. She asked if staff reviewed what the City would give up specifically if the City's Clean Air Act is repealed.

Dave Starkey stated Legal staff compared the City ordinance and State statute to determine whether the City provision was stricter, and in some cases the State provisions were stricter, so it would be difficult to uphold the stability of the City's ordinance if challenged in court.

Councilmember Hiller asked what specific sections of the City's Clean Air Act would be repealed.

Dave Starkey stated the Legal Department could provide a side-by-side analysis of the City's Clean Air Act and the State Indoor Clean Air Act on whether the provisions are the same, or stricter than State regulations.

Councilmember Hiller noted many people worked very hard to get a City Clean Air Act adopted and she would prefer not to repeal any part of the Act.

Mayor Bunten stated the Council could pass an amendment at a later date if the State makes changes to the Indoor Clean Air Act.

Councilmember Harmon stated he would prefer not to have to revisit the issue at the City level.

Councilmember Harmon moved to defer the ordinance for three (3) weeks to allow staff time to provide information to the Council. The motion was seconded by Councilmember Wolgast.

Councilmember Gray expressed concern with the section pertaining to the transportation of a loaded firearm in a vehicle. He stated he would not support the ordinance because he believes it defeats the purpose of obtaining a Conceal and Carry Permit.

Councilmember Archer stated he concurs with Councilmember Gray.

Dave Starkey stated the provision included in the 2012 UPOC is the same as the 2011 UPOC; however, the provision was left out by the League of Kansas Municipalities when the new addition was published. He reported the League would be correcting the omission in the next version of the UPOC.

Councilmember Gray asked if there were exceptions to the provision if someone has a legal right to carry a handgun.

Craig Spomer, Chief of Prosecution, stated it was his understanding that there are exceptions in State statutes for conceal and carry permit holders.

The motion to defer the ordinance for three (3) weeks to allow staff time to provide information to the Council carried. Mayor Bunten voted "yes." Councilmember Manspeaker voted "no." (9-1-0)

ORDINANCE NO. 19775 introduced by City Manager Jim Colson, amending City of Topeka Code Sections 9.45.160, 9.45.170, 9.45.190 and 9.45.290 and specifically repealing said original sections, as well as, repealing in their entirety Sections 9.45.210, 9.45.230, 9.45.240, 9.45.250, 9.45.270 and 9.45.320 all concerning regulation of noise placed on first reading October 16, 2012, was again presented.

Dave Starkey, City Attorney, reported a decision was made by the Kansas Court of Appeals that certain provisions were found unconstitutional due to vagueness and they were

outdated. He stated the proposed ordinance would bring City provisions into compliance and update City noise regulations.

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

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

ORDINANCE NO. 19776 introduced by City Manager Jim Colson, creating City of Topeka Code Section 9.45.020 concerning intimidation of a witness or victim placed on first reading October 16, 2012, was again presented.

Craig Spomer, Chief of Prosecution, reported the proposed ordinance is modeled after State statute and would provide a legal tool for law enforcement and prosecutors.

Councilmember Everhart asked why staff is proposing the ordinance; how many potential cases have dealt with the issue; and would it improve the City's ability to protect witnesses or victims.

Craig Spomer reported he does not know the specific number of cases; however, over the past year, staff has noticed that intimidation incidents have increased. He reported on the State level, intimidation of a witness or victim is only addressed in felony cases which are tried in district court; however, the City could enforce the issue if the Council approves the proposal.

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

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

APPROVAL of use of property located at 417 SE 13th Street for storage of junk, iron, and dismantled vehicles was presented.

Bill Fiander, Interim Planning Department Director, gave a brief history of the property. He stated the property is located in the Monroe neighborhood and approval would grant a provisional use permit that would allow the applicant to develop an automobile salvage yard within an industrial area pending the following conditions are met:

1. Satisfactory inspection of the site and approval of a salvage yard permit by the Fire Department.
2. Allow no parking along the street or on the sidewalk (along SW 13th Street) as required by the City Traffic Engineer.
3. Construction of an eight-foot tall privacy fence along SW 13th Street.
4. The applicant must renew their salvage yard permit annually.

Councilmember Harmon reported the applicant was denied a salvage yard permit in 2008. He asked how the surrounding area has changed since that time.

Bill Fiander reported GreenPoint Construction Demolition Processing Center is located south of the property and zoned "I-2" Heavy Industrial. He noted the intensity of the area has changed and there are now fewer residential properties located in the area.

Councilmember Ortiz questioned if the property was involved in a court case.

Dave Starkey, City Attorney, stated the property was involved in several court cases because the property owner was denied a similar license which was challenged in District Court, overturned, appealed by the City of Topeka in the Kansas Court of Appeals, ending with the City's decision being upheld.

Councilmember Ortiz asked if there is a public hearing scheduled regarding the salvage yard license.

Bill Fiander stated there has been no public opposition that he is aware of; however, there are stipulations the property owner is required to adhere to before the salvage yard license would be approved.

Councilmember Hiller reported in 2008, the license was denied because the City was developing the Freedom Trail which was located adjacent to the property and fencing was an issue. She asked if privacy fencing along the adjacent trail could be included as a condition for approval.

Bill Fiander stated the current conditions would be included as part of the provisional use permit being proposed and the Council has the authority to amend the conditions as they see fit.

Councilmember Hiller moved to amend the proposal to require a privacy fence along any adjacent trail. The motion was seconded by Councilmember Ortiz.

Councilmember Gray asked who is responsible for the cost of constructing the privacy fence.

Bill Fiander stated the property owner would be liable for all costs associated with fencing.

The motion to amend the proposal to require a privacy fence along any adjacent trail carried. Councilmember Harmon voted “no.” Mayor Bunten voted “yes.” (9-1-0)

Councilmember Ortiz moved to approve the provisional use request as amended. The motion seconded by Councilmember Hiller carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

APPROVE staff recommendation to continue managing an elephant program at the Topeka Zoo was presented.

Jim Colson, City Manager, reported staff wants to make the right decision for the City of Topeka and the health and welfare of the elephants; there are no budget increases associated with staff recommendation; and there is no crisis within the current elephant program at the Topeka Zoo. He stated the recommendation would make significant improvements on the condition of the elephants and represents how the Zoo would be managed moving into the future.

Brendan Wiley, Zoo Director, reported the elephants have been put first and foremost throughout the process in evaluating their future at the zoo and in the community; staff has consulted with over 15 professionals who evaluated the elephants and the facility and not one suggested the need to move the elephants. He stated Tembo and Sunda are in good health and their habitat meets current standards. He recommended approval of a new elephant program that focuses on a living environment and involves a shift in elephant management philosophy from the current approach of maintaining the elephants to a new approach of managing an elephant habitat. He described the goal of this management philosophy is to provide enough activity and options for the elephants so they have to make choices on how they are going to spend their time, utilize strategies, variation of habitat arrangements, the use of interactive exploration, and training activities to engage both the elephants and zoo guests, hopefully moving towards future expansion of the facility, habitat and herd.

Mayor Bunten thanked Zoo management and staff for providing the Governing Body with detailed information on the elephants.

Councilmember Manspeaker questioned why the Council is being presented with the information because he believes it is an administrative decision not a policy decision for the Council to make. He expressed concern with the issue becoming political and being forced by influences outside of the community.

Councilmember Gray thanked Zoo staff for the presentation and expressed concern with the elephants becoming a political issue. He stated he fully supports the elephant program staying at the Topeka Zoo.

Councilmember Everhart expressed her appreciation to Zoo staff members for providing the necessary information to the Council to make an informed decision. She asked if transporting the elephants to another facility would risk their health.

Brendan Wiley stated transporting any animal always involves risk and staff would have to spend months training the elephants to prepare them for transportation if needed.

Charles Gibbons stated he believes elephants would become extinct if not for zoos and animal conservation efforts. He spoke in support of the elephant program staying at the Topeka Zoo and encouraged the Council to support expansion of the elephant program.

Dr. Stanley Teeter stated the zoo is a great community asset and provides better care for the elephants than they would receive in a herd environment.

Jeff Gabriel, Friends of the Topeka Zoo Board member, stated the elephant program provides a better understanding of elephants through observance and study of animal conservation for endangered and threatened species. He noted the program also provides a platform for respect to learn about all ecosystems.

Dr. Julie Swift, Friends of the Topeka Zoo, spoke in support of the elephant program remaining at the Topeka Zoo. She stated she is very impressed with the changes that have been made at the Zoo, as well as, the Zoo receiving their accreditation from the Association of Zoos and Aquariums (AZA).

Mark Newer expressed his support of Zoo management and staff and stated he believes they should be entrusted to make the final decision regarding the elephant program.

David and Sherryl Mohler spoke in support of the Zoo and elephant program and described their participation in Zoo activities. They distributed a handout depicting similar weather patterns observed at The Elephant Sanctuary in Hohenwald, Tennessee, as the Zoo in Topeka, Kansas.

Daryl Hoffman, elephant care professional who inspected the Topeka Zoo in August 2012, stated the elephants health is great for their age and Zoo staff is doing everything they can to support the welfare of the elephants. He reported the level of care provided to an animal defines a world class program not the size of the habitat.

Councilmember Gray moved to approve staff recommendation. The motion was seconded by Councilmember Wolgast.

Councilmember Hiller made a substitute motion to approve a resolution of support for the staff recommendation to continue managing the elephant program at the Zoo. The motion was seconded by Councilmember Manspeaker.

Councilmember Gray questioned the difference between a resolution of support from the Council and approving the staff recommendation.

Councilmember Hiller stated she believes the Council is responsible for setting policy and budget, and Zoo management is responsible for the collection and management of the zoo according to charter ordinances and the Zoo's AZA accreditation. She noted the public has expressed their desire on many occasions to have the Council vote on the issue.

The substitute motion to approve a resolution of support for the staff recommendation to continue managing the elephant program at the Zoo carried unanimously. (9-0-0)

NO Retail Cereal Malt Beverage License applications were presented.

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

Councilmember Hiller announced she attended the Community Resources Council Awards for Excellence Luncheon on October 22, 2012, and congratulated all honorees.

Councilmember Ortiz thanked Brendan Wiley, Zoo Director, and staff for providing the Council information and conducting public meetings to gather community input on the elephant program. She announced the Topeka Metropolitan Transit Authority is honoring active duty or retired veterans by providing free transportation to them during the month of November. She noted October is Fire Awareness Month and reminded the community a free smoke alarm program is being provided through the Topeka Fire Department and those interested should call 368-4000 to schedule an appointment for installation. She expressed the importance of smoke alarms during the winter due to the dangers of using different heating methods.

Councilmember Manspeaker asked why the Topeka Capitol Journal reporter has moved locations during the Council meeting. He referenced recent crimes that have occurred in Council District No. 6 and stated it is important for the community to understand how people get to this point. He stated it is important for the City to become progressive in addressing these issues with involvement from schools and neighborhood improvement associations to build communities around at-risk youths.

Jim Colson, City Manager, stated he has requested all media representatives sit with the audience to protect the integrity of conversations between Councilmembers during Council meetings.

Councilmember Gray thanked Zoo management and staff for providing information to the Council concerning the elephant program. He stated he is confident staff will make the necessary improvements to the elephant program.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:03 p.m.

Brenda Younger
City Clerk