

Council Minutes – December 18, 2012

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 18, 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.

Jim Colson, City Manager, offered his condolences to the families of Topeka Police Corporal David Gogian and Topeka Police Officer Jeff Atherly who lost their lives in the line of duty, December 16, 2012. He stated the entire community is saddened by the recent tragic events here and across the nation. He commended all the agencies involved in the tragic event for their bravery and support including the Topeka Police Department, Shawnee County Sheriff's Department, Shawnee County District Attorney's Office, and the Kansas Bureau of Investigation.

AFTER THE MEETING was called to order, Pastor Barry Feaker, Topeka Rescue Mission gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Robert Bugg to the Topeka Housing Authority Board of Commissioners for a term ending December 31, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Gary Yager to the Topeka Housing Authority Board of Commissioners for a term ending December 31, 2016, was presented.

BOARD APPOINTMENT recommending the appointment of Amber Bonnett to the Topeka Landmarks Commission for a term ending December 31, 2015, was presented.

BOARD APPOINTMENT recommending the re-appointment of Dan Rowe to the Board of Building and Fire Appeals for a term ending December 31, 2014, was presented.

BOARD APPOINTMENT recommending the re-appointment of Keith Finney to the Board of Building and Fire Appeals for a term ending December 31, 2014, was presented.

BOARD APPOINTMENT recommending the re-appointment of Steve Mohan to the Board of Building and Fire Appeals for a term ending December 31, 2014, was presented.

BOARD APPOINTMENT recommending the re-appointment of Jim Grunewald to the Board of Electrical Appeals for a term ending December 31, 2014, was presented.

BOARD APPOINTMENT recommending the re-appointment of Dave Krug to the Board of Electrical Appeals for a term ending December 31, 2014, was presented.

BOARD APPOINTMENT recommending the re-appointment of William Brown to the Board of Electrical Appeals for a term ending December 31, 2014, was presented.

BOARD APPOINTMENT recommending the re-appointment of Shawn Smith to the Board of Electrical Appeals for a term ending December 31, 2014, was presented.

MINUTES of the regular meetings of December 11, 2012, was presented.

An Open After Midnight License application for Palladium Night Club located at 1465 SE Washington Street, was presented.

Dance Hall License applications were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
American Legion Post 400	3029 NW Highway 24
The Den	1116 NW Lower Silver Lake Road
J&J Gallery Bar	917 N. Kansas Avenue
Kansas Expocentre	One Expocentre Drive
Mr. Lucky's	2335 NW Clay

Sasnak
Serendipity
Jeremiah Bullfrogs Bar & Grille II
Los Charros

1834 N. Topeka Boulevard
820 N. Kansas Avenue
4115 SW Huntoon
4111 SW Gage Center

Brenda Younger, City Clerk reported that Jeremiah Bullfrogs Bar & Grille II located at 4115 SW Huntoon and Los Charros located at 4111 SW Gage Center, were tenants of Lindemuth, Inc., which has filed bankruptcy and owes delinquent real estate taxes on the buildings in which the businesses are located. She stated that City ordinance requires denial and/or revocation of a business license when there are delinquent real estate taxes on the property and Council Agenda Item 5C addresses this problem by creating an exception when the license applicant is a tenant and has no control over the payment of delinquent real estate taxes. She requested the Council move to approve the Consent Agenda as presented, including dance hall license applications for Jeremiah Bullfrogs Bar & Grille II located at 4115 SW Huntoon; and Los Charros located at 4111 SW Gage Center contingent upon the approval of Council agenda item 5C, an ordinance concerning business licenses and real estate taxes.

Councilmember Harmon moved to approve the consent agenda as presented, including dance hall license applications for Jeremiah Bullfrogs Bar & Grille II located at 4115 SW Huntoon; and Los Charros located at 4111 SW Gage Center contingent upon the approval of Council agenda item 5C, an ordinance concerning business licenses and real estate taxes. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

ORDINANCE NO. 19782 introduced by City Manager Jim Colson, concerning possession of a firearm during certain misdemeanors, creating City of Topeka Code Section 9.40.045 placed on first reading December 11, 2012, was again presented.

Dave Starkey, City Attorney, stated approval would allow for suspects to be charged with the additional violation of possessing a firearm while committing certain misdemeanor crimes.

Councilmember Gray 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, Alcala, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -9.

ORDINANCE NO. 19783 introduced by City Manager Jim Colson, concerning the prohibition of smoking in public places, amending City of Topeka Code Sections 8.20.020, 8.20.030, 8.20.070, 8.20.080, 8.20.110, 8.20.120 and 8.20.130 and specifically repealing said original sections, as well as, repealing in its entirety Section 8.20.140 placed on first reading December 11, 2012, was again presented.

Dave Starkey, City Attorney, stated approval would amend current City ordinance to comply with State statutes by removing certain provisions that are invalid because they are not as strict as the Kansas Indoor Clean Air Act. He reported the ordinance would also amend the penalty provision by making a violation punishable through Municipal Court instead of administrative.

Councilmember Harmon moved to adopt the ordinance. The motion seconded by Councilmember Hiller carried. Councilmembers Archer and Gray voted “no.” (7-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Everhart, Wolgast, Manspeaker and Harmon -7. Noes: Archer and Gray -2.

ORDINANCE NO. 19784 introduced by City Manager Jim Colson, amending City of Topeka Code Section 5.05.090 concerning business licenses and real estate taxes and specifically repealing said original section placed on first reading December 11, 2012, was again presented.

Jim Colson, City Manager, stated the current City ordinance requires denial or revocation of a business license when there are delinquent real estate taxes on the property; however,

approval would create an exception when the license applicant is a tenant and has no control over payment of delinquent real estate taxes.

Councilmember Hiller requested clarification of the intent of the ordinance. She asked if approval would cause the City to lose their leverage in requiring property owners to pay property taxes.

Marco Gonzalez, owner of Los Charros Mexican Restaurant, asked the Council to support the ordinance because his business has been put on hold as a result of his landlord not paying the property taxes on the building he leases. He stated he has no control over the situation.

David Holstead, attorney representing Jeremiah Bullfrogs Bar & Grille II, reported property taxes would be paid on the properties before they enter foreclosure; however, by filing bankruptcy it slows the process down and makes it more difficult. He stated approval of the ordinance would insure the businesses remain operational and jobs are not lost. He reminded the Council the situation was created through no fault of the business owners.

Councilmember Gray spoke in support of the ordinance. He stated he believes if the ordinance is not approved it would have a negative cascading effect to these businesses.

Councilmember Gray moved to adopt the ordinance. The motion was seconded by Councilmember Harmon.

Councilmember Alcalá stated he understands the concerns that have been raised and would suggest the ordinance be amended by adding a new “circumstance” under Section D as item (5) beginning on line 36 to state, “Any rent being made payable to the order of the owner of the establishments and Shawnee County to cover the cost of taxes.”

Councilmember Alcalá made a substitute motion to amend the ordinance by adding a new “circumstance” under Section D as item (5) to state, “Any rent being made payable to the order of the owner of the establishments and Shawnee County to cover the cost of taxes.” The motion was seconded by Councilmember Hiller.

Dave Starkey questioned the intent of the amendment and stated in his opinion the amendment language would not be applicable to Section D of the ordinance.

Councilmember Alcalá stated the intent is to avoid the same situation in the future.

Jim Colson asked Councilmember Alcalá if he would agree to adding the words “if feasible” to the language amendment. He noted automatic approval would not be possible since there are provisions that provide the City the right to deny a license.

Councilmember Alcalá stated he believes the term “if feasible” would be too broad.

Dave Starkey requested the word “premises” be used instead of “establishment” and “Shawnee County Treasurer” be used instead of “Shawnee County” to keep the language consistent throughout the ordinance.

Councilmember Alcalá agreed to the language amendments as stated by the City Attorney. The second concurred.

Councilmember Everhart stated she would support the substitute motion because she understands the intent; however, she questions if the Council has the authority to impose this type of directive on tenants when lease agreements are governed by State laws.

David Holstead stated the issue depends on the nature of the lease; however, the obligation of the property manager is to make sure funds are distributed properly.

Councilmember Alcalá asked the City Attorney to provide an opinion on the matter.

Dave Starkey stated the amendment could possibly violate certain lease agreements and in most cases the tenant would not have control over where the payment of funds would be distributed.

Councilmember Alcala withdrew the substitute motion. The second concurred.

Councilmember Harmon stated he understands the intent of Councilmember Alcala's amendment; however, it would have no bearing on bankruptcy cases. He requested the Council approve or deny the ordinance at this time and direct Legal staff to review the language at a later date to address Councilmember Alcala's concerns.

Dave Starkey noted dance hall licenses expire on December 31, 2012, and delaying consideration of the ordinance could have a negative effect on business operations. He stated the Legal Department would be willing to review the language at a later date.

The motion to adopt the ordinance carried. Councilmember Manspeaker voted "no."
(8-1-0)

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

ORDINANCE NO. 19785 introduced by City Manager Jim Colson, amending City of Topeka Code Section 2.15.090, concerning redistricting and specifically repealing said original section and Ordinance No. 19779 placed on first reading December 11, 2012, was again presented.

Jim Colson, City Manager, reported approval would add Precinct 4 to Ward 13 in Council District No. 8. He stated Precinct 4 is currently unpopulated; however, the Shawnee County Election Commissioner has requested that the Council include this precinct in the event people move into the area.

Councilmember Hiller 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.

A FINAL PLAT for Berroth Subdivision located at the southeast corner of NW West Street and NW 5th Street extended in the City of Topeka, Shawnee County, Kansas was presented. (P12/13)

Councilmember Alcalá moved to approve the final plat. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

ORDINANCE NO. 19786 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of November 3, 2012, through November 30, 2012, and enumerating said expenditures therein was presented for first and final reading.

Jim Colson, City Manager, stated approval would authorize expenditures in the amount of \$14,889,769.38.

Councilmember Wolgast 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, Alcalá, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -9.

RESOLUTION NO. 8484 introduced by City Manager Jim Colson, authorizing and adopting for the City of Topeka, Kansas, the 2013-2017 Capital Improvement Program and the 2013-2014 Capital Improvement Budget was presented.

Jim Colson, City Manager, stated approval would establish the two-year Capital Improvement Budget and the five-year Capital Improvement Program.

Councilmember Hiller stated she would support the resolution even though she has concerns with some of the new projects included in the Capital Improvement Program. She encouraged the Council and staff members to continue to thoroughly discuss all new projects before including them in the program.

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

APPROVAL of a three-year labor agreement between the City of Topeka and the International Association of Fire Fighters (IAFF) Local Union No. 83 was presented.
(*Contract No. 42563*)

Jim Colson, City Manager, reported the term of the agreement is from 2013 to 2015, and provides guidelines for management and employees in the bargaining unit.

Councilmember Alcalá moved to approve the labor agreement. The motion was seconded by Councilmember Archer.

Councilmember Ortiz asked if the agreement includes wage increases for battalion chiefs. She stated it was her understanding battalion chiefs have not received a pay raise since 2008.

Jacque Russell, Human Resources Director, stated the agreement would provide guidelines for management and employees in bargaining union positions only. She stated battalion chiefs and shift commanders receive wage increases consistent with other management positions. She reported management received a 1.5% percent wage increase in 2011.

Councilmember Ortiz requested the Council review next year's budget and include funding that would support wage increases for battalion chiefs. She requested staff review salary trends within the Fire Department and provide her an update on their findings.

Jim Colson stated he concurs with Councilmember Ortiz. He expressed the importance of reviewing salary compression throughout the organization to insure the City of Topeka remains competitive and has quality people running the organization.

The motion to approve the labor agreement carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

APPROVAL of a three-year labor agreement between the City of Topeka and Water Department AFSCME, Local Union No. 1294 was presented. (*Contract No. 42564*)

Catherine Walter, Assistant City Attorney, stated the term of the agreement is from 2013 to 2015 and provides guidelines for management and employees in the bargaining unit. She reported the agreement would provide for wage increases in 2013, and wage re-openers in 2014 and 2015.

Councilmember Hiller moved to approve the labor agreement. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

Retail Cereal Malt Beverage License applications were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Dickey’s	609 NW U.S. Highway 24
Grover’s	1217 SW Gage Boulevard
Hooter’s	6100 SW 10 th Street
Kwik Shop #757	2619 SW 21 st Street
Sasnak	1834 N. Topeka Boulevard

Councilmember Wolgast moved to approve the retail cereal malt beverage license applications as presented. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

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

The Governing Body expressed their condolences to the families of Topeka Police Corporal David Gogian and Topeka Police Officer Jeff Atherly, as well as, the families involved in the tragic event at Sandy Hook Elementary School in Newtown, Connecticut. Members of the Governing Body expressed their appreciation to the community for attending the candlelight vigil held for the fallen police officers on December 17, 2012. They noted the event was a great testament of how the Topeka community joins together and supports each other in times of need.

Nancy Johnson appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:08 p.m.

Brenda Younger
City Clerk