

## Council Minutes – May 7, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 7, 2013. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Campos II, Ortiz, De La Isla, Manspeaker, Schwartz, Gray and Harmon -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember Everhart -1.

AFTER THE MEETING was called to order, Mayor Wolgast 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:

RESOLUTION NO. 8514 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.

RESOLUTION NO. 8515 introduced by Councilmember Sylvia Ortiz, granting Faustino Soto an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8516 introduced by Councilmember Karen Hiller, granting Cumulus Broadcasting 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 April 23, 2013, was presented.

Open After Midnight License renewal applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
6 <sup>th</sup> Street Back Door	610 SW Wayne Street
Bob's Car Wash	2733 SE California Avenue
Bob's Car Wash	3162 SE 6 <sup>th</sup> Street
Boobie Trap Bar	1417 SW 6 <sup>th</sup> Street
The Den	1116 NW Lower Silver Lake Road

<u>Business Name</u>	<u>Address</u>
El Azteca	1201 SE 6 <sup>th</sup> Street
El Maguey	2160 SW Wanamaker Road
Ichabod Laundra Bar	1501 SW 21 <sup>st</sup> Street, Suite 109
Los Portales	1116 SE 6 <sup>th</sup> Street
Quinton's Bar & Deli	4121 SW Huntoon Street
Rumba Club	816 N. Kansas Avenue
Topeka Country Club	2700 SW Buchanan Street
Woodvalley Racquet Club	2909 SW 37 <sup>th</sup> Street

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

DEMOLITION PERMIT REQUEST for the church sanctuary located at 700 SE Lime Street in the City of Topeka, Shawnee County, Kansas, pursuant to City of Topeka Code Section 18.255.030 was presented.

Jim Colson, City Manager, reported the demolition request was deferred from the meeting of April 23, 2013. He stated the Planning Department recommends the demolition permit request be denied; however, if the Governing Body approves the request they must determine that there are no feasible and prudent alternatives to demolition and the demolition proposal includes plans to minimize harm to the historic property in question.

Kay Scarborough, United Methodist Church District Superintendent, stated they have recently been contacted by people who are interested in purchasing the property. She requested the Governing Body defer the demolition permit request for one month to allow time to consider other alternatives.

Sarah Bremer-Parks commended church representatives for their willingness to explore alternatives to demolition. She expressed concern with the demolition notification process and preservation and requested the Governing Body examine the process and make the necessary adjustments where needed to improve the process.

Councilmember Campos II reported that he attended the public meeting held two weeks ago and noted it was well attended by the local residents. He requested the Governing Body allow additional time for church representatives and interested parties to explore alternatives for the property.

Councilmember Campos II moved to defer the demolition permit request until June 4, 2013. The motion was seconded by Councilmember Gray.

Councilmember Manspeaker questioned the need to defer the request. He noted the Governing Body has the option to approve the Planning Department's recommendation to deny the demolition permit request.

Councilmember Campos II encouraged the Council to defer the demolition permit request and noted the applicant would prefer not to have to repeat the application process.

Councilmember Ortiz reported she attended the public meeting and there was a lot of discussion regarding alternatives to demolition. She stated she believes the alternatives that were proposed would be beneficial to all parties involved.

The motion to defer the demolition permit request until June 4, 2013, carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

ORDINANCE NO. 19814 introduced by City Manager Jim Colson, amending City of Topeka Code Section 10.20.080 concerning the right-of-way of emergency vehicles during escorted funeral processions and specifically repealing said original section placed on first reading April 23, 2013, was again presented.

Chad Sublet, City Attorney, reported approval would ensure emergency responders have the right-of-way when encountering an escorted funeral procession while responding to an emergency.

Councilmember Gray asked how the amendment differs from current City Code.

Chad Sublet stated recent review of the code section revealed that escorted funeral processions have the right-of-way over all other vehicles; therefore, the amendment would clarify and ensure emergency responders are in compliance with the law when taking over the right-of-way when encountering an escorted funeral procession.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, De La Isla, Manspeaker, Schwartz, Gray and Harmon -8. Absent: Everhart -1.

ORDINANCE NO. 19815 introduced by City Manager Jim Colson, creating Chapter 18.270 of the Topeka Municipal Code concerning Neighborhood Conservation Districts placed on first reading April 23, 2013, was again presented. (ACZR12/3)

Jim Colson, City Manager, stated the Neighborhood Conservation District is completely voluntary and designed to be used as a tool to protect the design integrity of neighborhoods.

Bill Fiander, Planning Department Director, stated a Neighborhood Conservation District serves to promote compatible new construction, alterations and demolitions within the district's built environment in order to strengthen and build on those desirable physical features already existing. He gave a brief overview of the Neighborhood Conservation District (NCD) process and recommended approval of the ordinance.

Councilmember Ortiz asked if there was an appeal process.

Bill Fiander stated applicants would have the ability to appeal the Planning Department Director's determination to the Board of Zoning Appeals as outlined in Topeka Municipal Code Section 2.45.070.

Councilmember Hiller spoke in support of the concept and stated she appreciates the public hearing and notification process requirements. She questioned the following:

- (1) She referenced Section 6, item (a) (9) of the ordinance, beginning on line 135 which states, “Any City-adopted Neighborhood Plan that contains the criteria set forth in section (a) shall be deemed to meet the requirements of this section.” She asked if item (9) would allow neighborhood associations that are already established to create a Neighborhood Conservation District without following the notification requirement. She noted most neighborhood plans are created without requiring a direct notification process.
- (2) She questioned how the City would monitor “Tree Preservation” one of the proposed design standard elements governing the physical characteristics and features of property within the proposed district.
- (3) She asked how a Neighborhood Conservation District would apply to private and public utility structures.

Bill Fiander provided the following response:

- (1) The intent of item (9) is to avoid duplication in the process. Direct notification would not be required if there is evidence that during the neighborhood plan process all property owners within the proposed district have been notified, in writing, of at least two public information meetings within six months prior to the date of the application.
- (2) “Tree Preservation” would be monitored through the sample inventory requirement of the neighborhood’s unique characteristics to be included within the proposed NCD application.
- (3) The majority of small utility structures are exempt from the zoning code and the district overlay would deal more with power stations and pump stations which require building permits and should be dealt with when the neighborhood drafts their design guidelines.

Councilmember Schwartz asked what areas would develop and benefit from a Neighborhood Conservation District and how was the concept initiated.

Bill Fiander reported there are a number of different types of neighborhoods that could benefit from establishing a Neighborhood Conservation District including, neighborhoods that are well established and have historic character but do not want to go through the historic designation process; neighborhoods that may have proposed development that does not fit the character of the neighborhood; or a subdivision with a distinctive character. He stated the

Neighborhood Conservation District model has been a concept that a number of cities have implemented.

Councilmember Manspeaker reported the Westboro Neighborhood is interested in pursuing a Neighborhood Conservation District to protect their properties and others want to pursue it to protect property values. He stated that he believes by establishing a Neighborhood Conservation District it would provide a democratic process for neighborhoods to follow, as well as, provide an effective tool to help protect property values.

Teresa Miller, North Topeka West Neighborhood Improvement Association, expressed concern with the notification process and noted some residents do not follow current City Code regarding building permit requirements. She also stated she believes a Neighborhood Conservation District would create more responsibilities for Neighborhood Improvement Associations.

Councilmember Manspeaker stated a Neighborhood Improvement Association would not have binding authority. He noted a Neighborhood Improvement Association would have to implement a Neighborhood Conservation District, otherwise, it would require approval by 51% of the property owners in the defined area.

Councilmember Harmon moved to adopt the ordinance. The motion seconded by Councilmember Manspeaker carried. Councilmembers Campos II and Gray voted “no.” Mayor Wolgast voted “yes.” (7-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, De La Isla, Manspeaker, Schwartz, Harmon and Mayor Wolgast -7. Noes: Campos II and Gray -2. Absent: Everhart -1.

ORDINANCE NO. 19816 introduced by City Manager Jim Colson, concerning petitions for vacating streets, alleys or public reservations, amending City of Topeka Code Section 12.60.010 and specifically repealing said original section placed on first reading April 23, 2013, was again presented.

Bill Fiander, Planning Department Director, stated the ordinance would amend and clarify City Code regarding procedures for vacating streets, alleys and public reservations so it is consistent with new Planning Department procedures. He noted it would include initiating the application with the Planning Department instead of the City Clerk, and require staff to contact reviewing agencies instead of the applicant.

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

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, De La Isla, Manspeaker, Schwartz, Gray and Harmon -8. Absent: Everhart -1.

ORDINANCE NO. 19817 introduced by Councilmember Karen Hiller, authorizing the sale, consumption and possession of alcoholic liquor at specified locations and times for the Speedfest Concert on May 16, 2013, pursuant to K.S.A. 41-719(a)(2) and K.S.A. 41-2645(e)(1) placed on first reading April 23, 2013, was again presented.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Campos II carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, De La Isla, Manspeaker, Schwartz, Gray, Harmon and Mayor Wolgast -9. Absent: Everhart -1.

A PROJECT BUDGET in the amount of \$946,000 and RESOLUTION NO. 8517 introduced by City Manager Jim Colson, authorizing Improvement Project T-121000.01, which

provides for the replacement of a functionally obsolete existing bridge on SW 49<sup>th</sup> Street over the Tributary South Branch of Shunganunga Creek, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented.

Mike Teply, Public Works Director, stated the existing structure is over 50 years old with a timber deck on steel stringers and is no longer capable of carrying legal loads and commercial traffic has increased with the construction of SW Wenger Drive to the west, serving the Target and Home Depot Distribution Centers. He reported the project would be funded through the Kansas Department of Transportation Federal Fund Exchange Program with no matching funds required from the City.

Mayor Wolgast questioned if there were plans to improve SW 49<sup>th</sup> Street.

Mike Teply stated he believes the street improvements for SW 49<sup>th</sup> Street were in the City's long range plan.

Councilmember De La Isla moved to approve the project budget and resolution. The motion seconded by Councilmember Schwartz carried unanimously. (8-0-0)

A RESOLUTION introduced by City Manager Jim Colson, amending Article 10 of the Personnel Code concerning grievances was presented.

Jim Colson, City Manager, gave the staff report and stated the resolution would allow more flexibility and eliminate costs of an arbitrator.

Catherine Walter, Assistant City Attorney, stated the proposed amendments would replace an outside arbitrator with a three person review committee that would hear both sides, present a report and recommendation to the City Manager who would make the final decision.



Councilmember Ortiz expressed concern with the amendment and stated an outside arbitrator would remain impartial to the employee when making a decision. She asked if the amendment applies to all City employees.

Catherine Walter stated the amendment would only apply to supervisors and managerial employees and exclude contracted employees under union contracts.

Councilmember Manspeaker spoke in opposition to the amendment and stated he believes supervisors and managerial employees should not have the right to an arbitrator.

Jacque Russell, Human Resources Director, stated the amendment would include approximately 200 employees classified as supervisor, management or professional confidential staff that follow the City of Topeka Personnel Rules and Regulations and are not covered under a bargaining unit.

Jim Colson suggested the resolution be referred to the Policy and Finance Committee for further review and discussion.

Councilmember Manspeaker moved to refer the resolution to the Policy and Finance Committee. The motion was seconded by Councilmember Gray.

Councilmember Campos II expressed concern with the amendment because he believes it would not support good employee morale. He stated he wants to make certain the City works as a cohesive body which includes every employee within the City of Topeka.

The motion to refer the resolution to the Policy and Finance Committee carried.  
Councilmember Ortiz voted “no.” (7-1-0)

No Retail Cereal Malt Beverage or Scrap Metal Dealers License applications were presented.

A CHARTER ORDINANCE introduced by City Manager Jim Colson, amending Charter Ordinance, codified at Topeka Municipal Code Section A2-52 concerning designation of acting city manager was presented for first reading.

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 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 was presented for first reading. (Z13/3)

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 3213 SE 10<sup>th</sup> Street and 3233 SE 10<sup>th</sup> Street (Southeast corner of SE 10<sup>th</sup> and SE Wittenberg Road), from “R-1” Single-Family Dwelling District TO “I-1” Light Industrial District was presented for first reading. (Z13/4)

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 210 SE 29<sup>th</sup> Street from “O&I-2” Office & Institutional District TO “C-4” Commercial District was presented for first reading. (Z13/5)

AN ORDINANCE introduced by City Manager Jim Colson, authorizing the issuance of \$30,000,000 aggregate principal amount of General Obligation Refunding Bonds, Series 2013-A of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, K.S.A. 10-427, et seq., all as amended was presented for first reading.

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

Jim Colson, City Manager, announced the Alligator Frenzy - A Bayou Adventure Exhibit at the Topeka Zoo would open on May 9, 2013, with a ribbon-cutting ceremony being conducted at 10:00 a.m. He also announced the City and the Topeka Landmarks Commission would host the City's third public meeting to develop Topeka's Historic Preservation Plan at the Cyrus K. Holliday building, Holliday Conference Room, located at 620 SE Madison on May 8, 2013, at 6:00 p.m.

Mayor Wolgast referenced the new Bing web search engine commercial that was filmed at various locations throughout Topeka. He stated the commercial provided a great opportunity to highlight Topeka in a positive manner. He commented on recent low-income housing projects made available through the American Recovery and Reinvestment Act of 2009 and stated the projects create an important and vital opportunity in the community for low-income households. He requested a work session be scheduled to discuss the Governing Body Retreat that was conducted on May 4, 2013.

Councilmember De La Isla reminded citizens to share the roadway and be cautious of bicyclists.

Councilmember Schwartz thanked the City Manager for planning the Governing Body Retreat on May 4, 2013, and commended City staff for being attentive to Council District No. 7 constituent issues.

Councilmember Campos II announced the Fiesta Mexicana Royalty Food Sale located at the Marlo Cuevas Balandran Activity Center, 216 NE Branner Street, began on April 15, 2013. He stated the Sale would continue through June 30, 2013, from 11:00 a.m. to 7:00 p.m. every

Monday through Saturday; and from 8:00 a.m. to 2:00 p.m. every Sunday. He also reminded citizens to be mindful of bicycle safety on the roadways.

Councilmember Ortiz recognized public service employees for their dedication and service and stated the Topeka Transit bus system is offering free rides the week of May 6, 2013, to all public service employees.

Joseph Ledbetter and Jeff Scott appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:29 p.m.

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Brenda Younger  
City Clerk