

**Council Minutes – May 14, 2013**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 14, 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, Everhart, De La Isla, Manspeaker, Schwartz, and Harmon -8. Mayor Larry E. Wolgast presided -1. Council District No. 8 - vacant.

AFTER THE MEETING was called to order, Councilmember Everhart 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. 8519 introduced by Councilmember John Campos II, granting Sacred Heart-St. Joseph Parish an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8520 introduced by Councilmember Chad Manspeaker, granting The Loft at College Hill 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 May 7, 2013, was presented.

Open After Midnight License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Topeka Hookah House	1507 SW 21 <sup>st</sup> Street
Joletta's	600 NW Paramore Street

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

ORDINANCE NO. 19818 introduced by City Manager Jim Colson, authorizing the issuance of \$20,335,000 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 placed on first reading May 7, 2013, was again presented.

Dennis Lloyd, Columbia Capital, reported seven bids were received through the competitive sale process and Robert W. Bair & Company was awarded the bid offering a 2.3% interest rate. He stated the City would achieve an estimated net present value savings of \$1.3 million over an 18 year term which represents a 6.25% net present value savings.

Councilmember Hiller asked why the decision was made to refinance only certain bonds and not others.

Phil Wolfe, Nichols & Wolfe Chartered, stated its best not to take potential refunds if the bond market is not profitable and Columbia Capital thought it best to address certain maturities and wait for favorable opportunities on others.

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Schwartz carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

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

RESOLUTION NO. 8518 introduced by City Manager Jim Colson, prescribing the form and details of General Obligation Improvement and Refunding Bonds, Series 2013-A of the City of Topeka, Kansas, in the aggregate principal amount of \$20,335,000, the issuance of which were authorized by the City pursuant to its ordinance adopted and approved May 14, 2013; and authorizing certain other documents and actions in connection with the issuance of the bonds was presented.

Councilmember Harmon moved to approve the resolution. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

APPROVAL of a Real Estate Report introduced by City Manager Jim Colson, for the disposal of City of Topeka surplus property (excess right-of-way) located at the northwest corner of SW 20<sup>th</sup> Street and South Kansas Avenue was presented.

Robert Kennedy, City Engineering Right-Of-Way Agent, gave the staff report. He stated an adjoining property owner has expressed interest in acquiring the surplus property and noted the property is smaller than the minimum size requirement for development according to City zoning regulations. He stated the property would be disposed of through private negotiated sale as outlined in the provisions of Topeka Municipal Code Section 3.30.340(d).

Councilmember Ortiz asked if there were any structures currently located on the property.

Robert Kennedy stated the property is vacant at this time, and when it is sold, the City will be relieved of property maintenance, upkeep costs and it would return to the property tax rolls.

Councilmember Wolgast stated the surplus property is currently used as part of a flea market business that is located at 1929 S. Kansas Avenue.

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

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

<u>Business Name</u>	<u>Address</u>
6 <sup>th</sup> Street Quick Stop	1107 SW 6 <sup>th</sup> Avenue
Casey’s #2261	600 SE Rice Road
Casey’s #2312	4441 SE California Avenue
Downtown Amoco	600 SE Quincy Street
East Quick Stop	3100 SE 6 <sup>th</sup> Street

<u>Business Name</u>	<u>Address</u>
HyVee #1658	2951 SW Wanamaker Road
HyVee Gas	6011 SW 29 <sup>th</sup> Street
Kwik Shop #705	1114 NW Topeka Boulevard
Kwik Shop #713	5700 SW 21 <sup>st</sup> Street
Kwik Shop #720	102 SW 37 <sup>th</sup> Street
Kwik Shop #729	1700 SW Topeka Boulevard
Kwik Shop #740	2277 SW 10 <sup>th</sup> Street
Kwik Shop #757	2619 SW 21 <sup>st</sup> Street
Kwik Shop #780	2520 SW 6 <sup>th</sup> Street
Kwik Shop #781	4500 SW Topeka Boulevard
Kwik Shop #788	1414 SW 17 <sup>th</sup> Street
Kwik Shop #789	746 NE Wabash Avenue
Larry's Short Stop	3834 SW Topeka Boulevard
Tilton's Oakland Market	1905 Seward Avenue
Walmart #1802	1501 SW Wanamaker Road
Walmart #2131	1301 SW 37 <sup>th</sup> Street
Walmart #5441	2600 NW Rochester Road
Woody's Express	101 NE Highway 24

Councilmember Hiller moved to approve the Retail Cereal Malt Beverage License applications as presented. The motion seconded by Councilmember Everhart carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

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 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 placed on first reading May 7, 2013, was again presented. (Z13/3)

Chad Sublet, City Attorney, reported many questions have been asked by the Governing Body regarding the zoning issue and exparte communications. He briefly described exparte communications and stated the Governing Body sits as a quasi-judicial body and is limited by the Kansas Supreme Court regarding zoning matters and exparte communications. He stated the

Governing Body should base their determination on the zoning case pursuant to the information that was presented in the agenda packet by the Planning Commission and the Planning Department. He noted Neighborhood Improvement Associations have discussed the issue, as well as, public hearings have been conducted to give the public an opportunity to voice their concerns. He reported the Planning Commission and Planning Department recommends “C-2” Commercial District zoning.

Councilmember Ortiz asked if Councilmembers should be present at Neighborhood Improvement Association meetings when the issue is being discussed or respond to any emails they may receive regarding the issue.

Chad Sublet stated all emails should be forwarded to Legal staff for response to the applicant, avoiding exparte communications, while keeping everyone involved informed on the matter. He noted Councilmember Ortiz must determine if her decision is solely based on the information presented to her in the Council packet or if she has been dissuaded by the emails she has received.

Councilmember Ortiz stated she has received emails regarding the zoning issue and excused herself from Neighborhood Improvement Association meetings in the past.

Councilmember Everhart asked if the Governing Body could provide information on the date the issue would be presented to the Council.

Chad Sublet stated this type of information could be provided because it has no sustenance.

Bill Fiander reported the request is to rezone a vacant 1.54 acre parcel from “R-1” Single-Family Residential to “C-2” Commercial District allowing neighborhood commercial uses of moderate intensity. He gave a brief summary of the zoning case and stated the request is

consistent with the land use policies and principles of the Topeka Land Use and Growth Management Plan 2025. He noted street improvements to SW 37<sup>th</sup> Street between SW Burlingame Road and SW Gage Boulevard are scheduled to take place in 2014 and 2015 as part of the approved Capital Improvement Program.

Mayor Wolgast reported the street improvements are currently in the engineering study stages to determine how wide the street should be expanded.

Councilmember Harmon expressed concern with the Council packet information presented on May 7, 2013, with the First Reading of the ordinance compared to the Council packet information presented with the current agenda (May 14, 2013) with the Final Reading of the ordinance. He stated the current information only reflects the “C-2” Commercial District zoning recommendation and does not include the “PUD” Planned Unit Development District zoning recommendation.

Bill Fiander clarified the Planning Commission recommended the “C-2” Commercial District zoning for the area.

Chad Sublet stated the Council always has the option to amend any district zoning recommendation to what they believe the evidence supports at the time it is being considered.

Mayor Wolgast clarified the Governing Body could adopt the Planning Commission’s recommendation of “C-2” Commercial District zoning or amend their recommendation and approve “PUD” Planned Unit Development District zoning.

Councilmember Harmon stated he understands the two options being offered by the Planning Department. He asked if there was any discussion at the Planning Commission meeting regarding the “PUD” Planned Unit Development District zoning option.

Bill Fiander stated the “PUD” zoning option was considered; however, there was not much verbal discussion on the matter.

Councilmember Harmon expressed concern with how the zoning case was presented to the Governing Body for consideration. He stated because they sit as a quasi-judicial body they are required to base their decision on the information they have received and it would be difficult at this time to determine which option is best when there is no evidence that the “PUD” District zoning option was ever discussed by the Planning Commission.

Councilmember Harmon moved to remand the ordinance back to the Planning Commission for the purpose of revising the minutes to include discussion of the “PUD” Planned Unit Development District zoning option if it was considered. The motion was seconded by Councilmember Ortiz.

Councilmember Everhart expressed concern that the motion would appear the Governing Body is taking a position on the zoning case.

Chad Sublet clarified the Governing Body is required to provide a statement specifying the basis for their decision to approve or deny the recommendation requiring a simple majority vote of the Governing Body, a minimum of 6 votes.

Councilmember Harmon stated he concurs with Councilmember Everhart and requested guidance from the City Attorney. He noted it was not his intent to make the situation worse; however, the Governing Body has not been presented with any evidence that the “PUD” Planned Unit Development District zoning option was thoroughly discussed by the Planning Commission.

Chad Sublet suggested the Governing Body remand the ordinance back to the Planning Commission to discuss all appropriate zoning recommendations.

Councilmember Hiller suggested staff review the Planning Commission meeting tape to determine exactly what was discussed, and if the “PUD” District zoning option was not discussed then she believes the zoning case should be reconsidered.

Chad Sublet stated he anticipates that the concerns expressed by the Council will be resolved quickly due to the litigation involved with the zoning case.

Councilmember Harmon asked City staff if they believe the “PUD” District zoning option was discussed by the Planning Commission at the April 15, 2013, Planning Commission meeting.

Bill Fiander stated he believes citizens spoke about issues relating to the “PUD” District zoning option; however, staff will need to review the meeting tape to make sure the discussion is reflected accurately in the minutes.

Jim Colson, City Manager, suggested the Governing Body table the zoning case for one week to determine if the information is available.

Chad Sublet requested City staff review the tape and ensure the meeting minutes are accurate.

Mayor Wolgast suggested the Governing Body remand the zoning case back to the Planning Commission to explain the background and basis of the “C-2” Commercial District zoning recommendation.

Councilmember Harmon agreed and the second concurred.

The motion to remand the ordinance back to the Planning Commission for an explanation of the background and basis of the “C-2” Commercial District zoning recommendation carried.

Councilmember Everhart voted “no.” Mayor Wolgast voted “yes.” (8-1-0)



ORDINANCE NO. 19819 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 placed on first reading May 7, 2013, was again presented. (Z13/5)

Bill Fiander, Planning Department Director, gave the staff report. He stated approval would allow additional parking in association with a 22,400 square foot expansion of the Dillon’s grocery store. He also stated the Planning Department staff is supportive of the request as the zoning is in conformance with the land use principles and polices of the Topeka Land Use and Growth Management Plan 2025, and the City’s future land use map for the location of commercial uses.

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Schwartz carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

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

ORDINANCE NO. 19820 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 placed on first reading May 7, 2013, was again presented. (Z13/4)

Bill Fiander, Planning Department Director, gave the staff report. He stated approval would allow for the development of an employee parking lot and maintenance building in

association with the applicant's adjacent facility located at 3167 SE 10<sup>th</sup> Street. He noted staff is supportive of the request as the rezoning is in conformance with the land use principles and policies of the Topeka Land Use and Growth Management Plan 2025, and the City's future land use map for the location of future industrial uses.

Councilmember Ortiz spoke in support of the rezoning and stated she believes Reser's Fine Foods is an asset to the local economy.

Councilmember Manspeaker asked for clarification regarding the stormwater runoff being treated onsite prior to entering the City's water system; and the improvements being made to Wittenberg Road leading into the parking lot.

Bill Fiander stated the applicant has indicated stormwater runoff would be retained onsite and treated for quality prior to entering the City water system through an inlet in the northwest corner of the property; however, the City Engineer would review and approve the Stormwater Management Plan at the platting and site development plan stage. He also stated Development Services has indicated SE Wittenberg Road would need to be improved to parking lot surfacing standards up to the parking lot's point of access on Wittenberg Road, and full street standards would be the developer's responsibility with no costs to the City.

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

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Harmon and Mayor Wolgast -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 the rear of

1725 NW Topeka Boulevard from “R-1” Single-Family Dwelling District TO “I-1” Light Industrial District was presented for first reading. (Z13/6)

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

Jim Colson, City Manager, introduced Doug Whitacre, the new Public Works Director. He gave a brief background of Mr. Whitacre's work experience and stated Mr. Whitacre plans to focus on comprehensive planning and effective communication.

Doug Whitacre, Public Works Director, thanked the Governing Body for the opportunity to serve the City of Topeka.

Mayor Wolgast distributed a list of board vacancies including City of Topeka Americans with Disabilities Act Advisory Council, Jayhawk Area Agency on Aging Board of Directors and Topeka Sustainability Advisory Board. He encouraged the community to consider serving on a board and asked those who are interested in serving to contact their Councilmember; self-nominate via the City's website at [www.topeka.org](http://www.topeka.org) or contact the Mayor's office at 785-368-3895 for more information.

Councilmember Schwartz stated she has been inspired by the number of residents in Council District No. 7 that are interested in establishing Neighborhood Improvement Associations.

Councilmember Hiller reminded citizens that the month of May is “Bike Month.” She announced a Ride with the City Manager would be held on May 16, 2013, at City Hall located at 215 SE 7th Street, at 1:00 p.m.; and the Prairie Packers Family Ride would be held on May 25, 2013, at SE 10th Street and SE Carnahan, at 9:00 a.m. She also announced the U.S. National Park Service is sponsoring the Brown to Brown Historical Tour, a bike tour that explores

Topeka's historical sites. She encouraged the community to participate in Visit Topeka's Bingo Contest, exploring Topeka's attractions, fun activities and unique events from May 3, 2013 through July 31, 2013. She noted citizens should contact Visit Topeka, Inc., at 785-234-1030 for more information.

Councilmember Ortiz reminded citizens there are many activities and events happening throughout the community including the NHRA Drag Races scheduled May 10-12, 2013, at Heartland Park Topeka, as well as, various high school and college graduations. She stated the new Alligator Frenzy-A Bayou Adventure Exhibit that recently opened at the zoo is a great addition and has been well received by the community.

NO FURTHER BUSINESS appearing the meeting was adjourned at 6:53 p.m.

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Brenda Younger  
City Clerk