

## **Council Minutes – September 23, 2014**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 23, 2014. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Brown, Ortiz, De La Isla, Manspeaker, Schwartz, Schmidt and Harmon -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember Everhart -1.

AFTER THE MEETING was called to order, Councilmember Brown 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 a Workers' Compensation Settlement for Randal Batman, Topeka Police Officer, in the amount of \$14,706 for permanent partial impairment of his right knee for injuries suffered on September 6, 2012, was presented.

DENIAL of claim by Jacob Slusser in the amount of \$1,500 for property damage that occurred to the claimant's vehicle was presented.

DENIAL of claim by Rodney Jordan seeking an unspecified amount for out-of-pocket medical expenses incurred after falling in a hole near SW 17<sup>th</sup> Street and SW Topeka Boulevard was presented.

RESOLUTION NO. 8650 introduced by Councilmember TJ Brown, granting Tonantzin Society an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8651 introduced by Councilmember Michelle De La Isla, granting Tornado Alley Entertainment 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 16, 2014, was presented.

An Open After Midnight License application for Hooters located at 6100 SW 10<sup>th</sup> Street was presented.

Councilmember De La Isla moved to approve the consent agenda. The motion seconded by Councilmember Brown carried unanimously. (8-0-0)

ORDINANCE NO. 19921 introduced by City Manager Jim Colson, reorganizing zoning ordinances, amending City of Topeka Code Section and repealing original sections was presented. (*ACZR14/1*)

Bill Fiander, Planning Department Director, provided a brief background of the proposed changes to the zoning matrix. He reported the ordinance reflects years of working with the development community and staff to consolidate the codes into a matrix format that is easily understood, clear, predictable and specific to today's view on zoning.

Mayor Wolgast commended the Planning staff for the updates and stated he believes it is a significant step forward for the City. He asked how the new matrix would affect the appeals process.

Bill Fiander stated the proposed changes would clarify terminology, give flexibility for zoning to be used in certain districts with requirements, less interpretation on the administration of the code for fewer appeals and less Planned Unit Development Districts (PUD).

Councilmember Hiller commended the Planning staff for the thorough process and the willingness to receive public input.

Councilmember Brown asked how the process was initiated and how Planning staff would keep the code updated in the future.

Bill Fiander stated the last comprehensive update was conducted in 1992 and since then updates have focused more on the “band aid” approach due to the code’s difficult layout. He reported staff received public input over the years where conflicts arose in the code that made it unclear and challenging, factors that were considered when reviewing each use district and rebuilding the matrix. He reported this type of review would be ongoing, as well as, the new matrix would make it easier to analyze and propose solutions.

Theresa Miller, North Topeka West Neighborhood Improvement Association President, spoke in support of the new matrix system. She stressed the importance of addressing past misconceptions of code interpretation as they move forward because there are many ways a person could interpret code.

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

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

ORDINANCE NO. 19922 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 at the end of SW Armstrong Avenue, approximately 500 feet south of SW 29<sup>th</sup> Street from “PUD” Planned Unit Development (M-2 uses) ALL TO “O&I-2” Office and Institutional District was presented.  
(Z14/8)

Bill Fiander, Planning Department Director, reported approval would amend the district zoning classification for two properties located at the end of SW Armstrong Avenue and the southern property at the end of SW 30<sup>th</sup> Terrace all being in the quadrant of SW 29<sup>th</sup> Street and SW Wanamaker Road. He noted the intent of the new owner (CBW Bank) is to construct a single office building on Lot 1 for information technology support.

Councilmember De La Isla 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, Brown, Ortiz, De La Isla, Manspeaker, Schwartz, Schmidt, Harmon and Mayor Wolgast -9. Absent: Everhart -1.

AN ORDINANCE introduced by Councilmember Michelle De La Isla, concerning public nudity, and creating new City of Topeka Code Section 9.45.110 was presented.

Councilmember De La Isla gave a brief summary of a situation where an individual was walking nude in close proximity of the Avondale West Elementary School legally and the concern expressed by her constituents. She stated the proposed ordinance was drafted after reviewing the ordinances adopted by the cities of Hutchinson and Wichita. She expressed concern with finding the balance of avoiding the infringement of an individual’s right to artistic expression and the exposure of children.

Chad Sublet, City Attorney, reported he was contacted by many Governing Body members about the issue with a wide range of opinions. He stated staff reviewed cities of similar size that have adopted a comparable ordinance which is used as a tool for law enforcement to engage a person in discussion to gauge their mental state. He stated the City of Hutchinson City Attorney reported there have been no issues since their ordinance went into effect and experienced no unintended consequences.

Webb Garlinghouse spoke in opposition to the ordinance. He reported he conducted research online and found less than six incidents in the last 12 years regarding public nudity. He stated that he believes the ordinance discriminates against women and encouraged the Council not to approve the ordinance.

David Bitters spoke in opposition to the ordinance and stated he believes it is a civil rights issue. He commented on other cultures in relation to nudity and he believes the government has no business dictating a dress code.

Ruth Schoonover spoke in support of the ordinance and stated she believes it is an important issue especially when children could be exposed to public nudity. She commented on the rights of every citizen to abide by standard decency and encouraged the Council to approve the ordinance.

Margaret Dunlap spoke in opposition of the ordinance and stated she believes the definitions are too broad and leave unintended consequences. She encouraged the Council to review the language further and clarify definitions in particular “public places.”

Councilmember De La Isla asked the City Attorney to expand on privacy in locker rooms and doctors’ offices.

Chad Sublet stated a “public place” means there are no expectations of privacy; and a patient in a doctor’s examination room has the expectation of privacy, as well as, there are HIPAA regulations in place to protect an individual’s rights.

Councilmember De La Isla moved to adopt the ordinance. The motion was seconded by Councilmember Schwartz.

Councilmember Harmon commented on the state statute regarding nudity and sexual arousal and asked if the City’s disturbing the peace law could regulate this issue. He also

questioned if the public nuisance ordinance would have any bearing on the matter and if the ordinance would fall under police power.

Chad Sublet stated he does not believe the law (disturbing the peace) would apply, as well as, state statute covers lewd and lascivious behavior. He noted the ordinance would fall under the authority of the Topeka Police Department and the Governing Body has the right to regulate the issue.

Councilmember Schmidt asked if staff received information on the number of arrests in the cities of Hutchinson and Wichita relating to the subject matter.

Chad Sublet reported the City of Hutchinson adopted their ordinance one year ago and no arrests have been made to date; and the City of Wichita adopted their ordinance approximately seven years ago with very few arrests made to date.

Councilmember Schwartz asked about sunbathing, hot tubs, and if other cities have experienced unintended consequences.

Chad Sublet reported an individual has to show that they have some expectation of privacy such as a fence surrounding a hot tub; the Cities of Hutchinson and Wichita have reported no unintended consequences; the ordinance would allow an officer to converse with an individual and determine the need for medical assistance; and the Topeka Police Department would have the discretion on which cases to prosecute.

Councilmember Brown stated he agrees with Mr. Garlinghouse and Mr. Bitter; however, he also believes it is a person's parental right to educate their child how they choose and it should not be forced by others actions.

Councilmember Ortiz asked how the operation of Lake Edun would be affected if the ordinance is approved.

Chad Sublet reported Lake Edun is located outside city limits; therefore, it is not regulated by City ordinances.

Councilmember Harmon made a substitute motion to refer the ordinance to the Public, Health and Safety Committee to work on narrowing the scope of the definitions in the ordinance and restrict the environs to daycare centers and schools. The motion seconded by Councilmember Manspeaker carried. Councilmembers Hiller, De La Isla and Schwartz voted “no.” (5-3-0)

A PROJECT BUDGET in the amount of \$5,200,000 and RESOLUTION NO. 8652 introduced by City Manager Jim Colson, authorizing Improvement Project No. T-701005.01 which provides for widening of SW 10<sup>th</sup> Avenue from SW Gage Boulevard to SW Fairlawn Road as more specifically described herein was presented.

Doug Whitacre, Public Works Director, gave a brief overview of Trafficway Improvement Project No. T-701005.01 which would widen SW 10<sup>th</sup> Street from SW Fairlawn Road to SW Gage Boulevard.

Councilmember Ortiz asked if sidewalks were included in the project.

Doug Whitacre stated the project would include new pavement, curb and gutter, sidewalks, street lighting and drainage systems.

Councilmember Schmidt moved to approve the project budget and resolution. The motion was seconded by Councilmember De La Isla.

Mary Lou Widenbach spoke in support of the project and stated she believes traffic will move much smoother and safer in the area once the project is complete. She expressed her appreciation to the City for considering the area for the project.

The motion to approve the project budget and resolution carried unanimously. (8-0-0)

APPROVAL of Amendment No. 2 to the current Labor Agreement between the City of Topeka and the Water Division, Council 72, Local 1294, Kansas Public Employees Union, AFSCME, AFL-CIO was presented. (*Contract No. 43902*)

Jim Colson, City Manager, reported approval would provide bargaining unit members with wage increases for 2015 and establish a new pay matrix for the bargaining unit and inclement weather pay provisions. He stated Doug Gerber, Director of Administration and Financial Services, has reviewed the economic terms of the agreement and compared the expected cost of the standing agreement for FY2014 and the recommended FY2015 budget has sufficient resources to accommodate the agreement as presented.

Councilmember Ortiz moved to approve Amendment No. 2. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

APPROVAL of a three-year labor contract for AFT Kansas Local 6406 effective January 1, 2015, through December 31, 2017 was presented. (*Contract No. 43903*)

Jim Colson, City Manager, reported approval would provide for changes to several contract terms and include a wage increase for the bargaining unit members in 2015 with wage reopeners in 2016 and 2017. He stated Doug Gerber, Director of Administration and Financial Services, has reviewed the economic terms of the AFT agreement and has compared the expected costs of the standing agreement in FY2014 and the recommended budget for FY2015 has sufficient resources to accommodate the agreement as presented.

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

DISCUSSION of proposed utility rate increases was facilitated by Doug Gerber, Administration and Financial Services Director. Mr. Gerber provided a brief background of



discussions with the Council and meetings with industrial, commercial and residential customers. He stated the City is facing many issues including aging infrastructure causing a high number of watermain breaks and revenue not meeting the demands; therefore, there is a need to adjust the City's rate structure. He provided a brief explanation of current water billing statements; rebate and credit programs; payment plans; courtesy adjustments and extensions; and how Topeka's water and wastewater rates compare to other cities of similar size. He also addressed the following topics:

- Total watermain breaks per year per 100 miles
- Locations of watermain breaks versus locations with newer watermains
- 2015-2017 needed capital improvements in water and wastewater which includes increased funding for waterline replacement plan

	2015	2016	2017
Water	\$8,227,138	\$9,502,208	\$8,404,500
Wastewater	\$2,625,107	\$5,102,724	\$5,000,000

- Annual Rate Increase History
  - Water Increase from 2009 to 2011 was 3%
  - Water Increase from 2012 to 2014 was 0%
  - Wastewater Increase from 2009 to 2011 was 4%
  - Wastewater Increase from 2012 to 2014 was 0%
- Current Rates, minimum charge and volume charge
- Water rates by meter size

Meter Size	Existing Rates	Proposed Base Charge (2015)
1" and Below	\$15.00	\$9.83
1 ½"	\$15.00	\$19.65
2"	\$15.00	\$31.45
3"	\$15.00	\$58.96
4"	\$15.00	\$98.27
6"	\$15.00	\$196.55
8"	\$15.00	\$314.47

- Wastewater rates by meter size

Meter Size	Existing Rates	Proposed Base Charge (2015)
1" and Below	\$14.85	\$9.12
1 ½"	\$14.85	\$18.24
2"	\$14.85	\$29.19
3"	\$14.85	\$54.73
4"	\$14.85	\$91.22
6"	\$14.85	\$182.44
8"	\$14.85	\$291.91

- Volume Rates by Customer Class

Customer Class	Existing Rates	Proposed Base Charge (2015)
Single Residential	\$3.58	\$3.79
Multi-Family	\$2.91	\$3.08
Commercial	\$2.64	\$2.80
Industrial	\$2.25	\$2.39
Irrigation	\$2.25	\$2.39
Wastewater	\$3.86	\$4.09

Mayor Wolgast asked Mr. Gerber to elaborate on commercial and industrial rates; what utility projects would be affected if the rate increases are not approved; how much additional funds would be raised in 2015 if the increase is approved; and what projects would the rate increase fund.

Doug Gerber stated staff is proposing a volume rate increase of 6% across the board and what has been presented is a hybrid charge for water rates by meter size. He explained the projects listed are included in the 2015 water budget; however, there is a \$10 million gap

between revenues and expenditures that needs to be addressed. He noted the water rate increases would provide approximately \$2 million for water projects.

Jim Colson, City Manager, stated the aging water infrastructure is a challenge the City has been facing for many years and deferred maintenance of infrastructure is a national problem. He reported staff has made a strategic decision to meet somewhere in the middle and come forward with a solution to address concerns.

Mayor Wolgast stated the City's water infrastructure is in serious need of improvements and he believes the City should show how the increases would support the improvements.

Councilmember De La Isla asked how many miles of water pipes the City has and how much piping would be fixed if the increase was approved. She encouraged the City to find creative ways to generate more revenue to repair waterlines if 1% annually is not sufficient. She commented on the number of watermain breaks throughout the city and noted it is difficult to raise rates; however, it is more difficult for residents and businesses to be without water.

Doug Gerber reported there are over 800 miles of water pipes and the current plan of repairing or replacing 1% or 8 miles of pipe a year would be allowed to continue if rate increases are approved.

Councilmember Ortiz asked how county residents would be affected by the proposed increases.

Doug Gerber stated if approved, the water rate increases would extend to county residents.

Councilmember Harmon questioned the funding earmarked for Kansas River Levee repairs and if there is a date certain when the Army Corps of Engineers may proceed with the project.

Doug Whitacre, Public Works Director, reported approximately \$800,000 a year has been earmarked for the WRDA (Water Resources Development Act) match and could only be used

for stormwater utility projects as it is collected from stormwater utility fees. He stated WRDA has been approved through the United States Congress; therefore, the program just needs to be funded to move forward.

Councilmember Hiller commended staff for the thorough Financial Analysis and Investment on the Cost of Use Study and made the following statements.

- (1.) She expressed concern with minimizing and protecting against other rate increases and believes constituents have stated they prefer the City calibrate on actual cost of users as much as possible.
- (2.) She asked how much funding the rate increases would provide for projects and how efficiently staff and equipment are used.
- (3.) She requested a copy of the report regarding what the Water Department has implemented to help make operations run more efficiently to show that sensible planning is taking place to justify the rate increase.
- (4.) She asked how much of the proposed increase would be spent on expansion projects outside of city limits versus existing infrastructure.
- (5.) She requested a review of the funds that could be allocated towards utility funds. She stated the request was in reference to the refinancing of utility bonds in April 2013 which provided a savings of \$3.2 million with staff's recommendation of allocating \$1 million of the savings to the general fund to relieve budget pressures.
- (6.) She encouraged staff to raise commercial rates slightly and adjusting residential rates slightly down or provide a set-aside for rate relief for low-income residential and increase commercial rates slightly.
- (7.) She suggested the City make a request to Shawnee County to consider decreasing the \$4 a month recycling rate as an offset to taxpayers, as well as, ask Shawnee County to agree to using the \$6 million in expected leftover Countywide Half-Cent Sales Tax to retrofit the river weir (\$1.9 million) and toward our mandated river levee improvement match (\$4.1 million) as the river is a shared asset and in order to minimize the prospect of rate increases in stormwater.

Theresa Miller expressed her appreciation for the presentation and asked the Council to review stormwater runoff fees and how it affects residential and business customers. She expressed concern with low-income households being able to afford the proposed increases.

Jeff Russell, Reser's Fine Foods General Manager, reported Reser's Fine Foods employs 1,100 full-time employees and 100 temporary employees and is only able to stay competitive with uninterrupted water flow. He expressed concern with the assumption in the cost of use

study and gave examples of other plants they compete with and their water rates. He stated he does not believe it is prudent to go to a cost basis but to fiscally spread costs over time. He commented on the City's need to improve infrastructure to support a solid supply of water and reduce watermain breaks. He stated his support of the rate increases as it would allow growth of the company and local economy.

Councilmember Schmidt asked how the watermain breaks compare to the national average because the City spent over \$10 million repairing broken watermains in 2013 and 2014 and believes the City does not have an average system so there is no comparison to other average cities. He stated he believes the initial investment of the 6% proposed increase would benefit the community by paying for improvements to last 50 years. He commented on the need to expand the rebate programs which could allow rates to stay reflective of the system and benefit low-income households. He spoke in support of the proposal and believes it is a fair increase; however, the increase should reflect the needs of the current infrastructure.

Doug Gerber stated the City has experienced less than 80 breaks per 100 miles of watermains.

Councilmember Brown provided an amendment to the proposal because he is concerned about households that have a higher water usage; therefore, his proposal would only affect the volume charge within the City. He thanked Doug Gerber and staff for helping him gather the information to draft his proposal. He stated many low end users would see a decrease for the first two years then a small increase. He noted a review of the rebate program is necessary to ensure its effectiveness and scope of utility assistance.

Councilmember Manspeaker stated he asked for a cost of service analysis which showed residential customers were paying more than commercial and business customers. He

encouraged the Council to review the original plan and increase rates for commercial and industrial customers instead of the current proposal. He reported his constituents want to know what the proposed rate increases would support. He expressed his dissatisfaction with allocating revenue from any proposed increases towards projects that would benefit companies located outside of city limits.

Mayor Wolgast noted that infrastructure projects for facilities located outside of city limits are paid for with economic development funds from the Joint Economic Development Organization.

Councilmember Ortiz spoke in support of the proposal and stated her constituents believe they should be charged for what they use.

Jim Colson thanked the Council and community for their input throughout this process and stated staff would make another presentation in October for further discussion and direction.

Councilmember Schmidt requested a breakdown be incorporated in Councilmember Brown's proposal of small, medium and large industrial class usages.

Councilmember De La Isla expressed her appreciation to staff and the Governing Body for the presentation and discussion on a sensitive subject and hopes to hear more input from the community.

**ANNOUNCEMENTS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL;**

Jim Colson, City Manager, commended Lamar Advertising for honoring fallen Topeka Police Corporal Jason Harwood and the Topeka Police Department on billboards located throughout the city. He invited the public to attend the Swearing in Ceremony for new Topeka

Police Chief James Brown on October 1, 2014, at the Law Enforcement Center located at 320 S. Kansas Avenue.

Councilmember Brown welcomed back Councilmember Ortiz and wished her family comfort during this difficult time.

Councilmember Ortiz thanked the Governing Body, staff and Union Local 83 for their support during her father's death. She announced the National Drug Take-Back Day is scheduled on September 27, 2014, and is coordinated by the Federal Drug Enforcement Administration which collects and safely destroys medications to prevent misuse of leftover drugs. She stated collection sites will take drop-offs between 10:00 a.m. and 2:00 p.m. at the Shawnee County Sheriff's Office, Mission Township Fire Department and the Topeka Police Department.

Councilmember De La Isla welcomed Mad Eliza's Bakery to the Brookwood Plaza Shopping Center.

Councilmember Manspeaker announced the Kansas Aviation Expo would be held September 22-26, 2014, at various locations with a stop at Forbes Field on September 23, 2014. He expressed concern with the public nudity ordinance and if it would infringe on an individual's constitutional rights, make the City vulnerable to lawsuits, limit free speech, artistic ability and cause unintended consequences.

Councilmember Schwartz announced the Topeka Zoo was voted the 2014 Best Family Entertainment in Topeka by the community in the 2014 Best of Topeka distributed by the Topeka Capital Journal Newspaper. She commended Topeka Zoo staff members and the great job they have done at the zoo. She reported she attended a conference regarding trauma by violence and encouraged the community to support local social services to help those in need.

She encouraged the Boy Scouts of America and social service organizations to ask public leaders to speak at their meetings to be informed on City business and provide input.

Councilmember Hiller announced the Aaron Douglas Art Fair would be held on September 27, 2014, at the Aaron Douglas Art Park located at SW 12<sup>th</sup> Street and SW Lane Street from 10:00 a.m. to 5:00 p.m. She reported the event would feature over 50 artists and encouraged the community to attend.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:19 p.m.

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Brenda Younger  
City Clerk