

Council Minutes – August 4, 2015

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 4, 2015. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Clear, Ortiz, Schumm, De La Isla, Jensen, Schwartz, Coen and Harmon -9. Mayor Larry E. Wolgast presided -1.

AFTER THE MEETING was called to order, Councilmember Schumm gave the invocation.

A PRESENTATION and update on the Kansas Avenue Project was provided by Doug Whitacre, Public Works Director.

Mayor Wolgast asked how the City plans to inform businesses along South Kansas Avenue.

Doug Whitacre, Public Works Director, reported they are addressing communication issues that have happened in the past with downtown businesses and the City will work to provide as little disruption as possible as they move forward with improvements.

Councilmember Hiller asked when construction on the pocket parks would begin and if there were pictures of the proposed parks available for the public to view.

Vince Frye, Executive Director, Downtown Topeka Inc., reported they anticipate construction of pocket parks to begin within the next couple of weeks. He stated pictures of the pocket parks are available on the City's website at www.topeka.org; at DTI's business office located at 515 S. Kansas Avenue as well as there are pictures being displayed in some of the downtown business storefront windows.

Jim Colson, City Manager, requested to withdraw Council agenda item 4E, denial of a tort claim submitted by Cindy and Cecil Garland from the consent agenda.

Councilmember Clear requested to withdraw Council agenda item 4C, a resolution granting a noise exception for The Brass Rail from the consent agenda.

Upon hearing no objections, Mayor Wolgast announced Council agenda items 4C and 4E would be withdrawn from the consent agenda.

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 Debbie Besenyi to the Civil Service Commission to fill an unexpired term ending May 1, 2019, was presented.

RESOLUTION NO. 8707 introduced by City Manager Jim Colson, granting various neighborhood organizations exceptions to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8708 introduced by Councilmember Michelle De La Isla, granting Abigail's Grill and Bar 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 July 21, 2015, was presented.

Open After Midnight License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Flamingo Bar & Grill	2335 NW Clay Street
Moonlight Adult Store	4732 SW Topeka Boulevard
La Fiesta Authentic Mexican Restaurant	1017 NE Seward

Councilmember Harmon moved to approve the consent agenda as amended. The motion seconded by Councilmember Schwartz carried. Mayor Wolgast voted "yes." Councilmembers Schumm and Coen voted "no." (8-2-0)

ORDINANCE NO. 19961 introduced by Councilmember Elaine Schwartz, concerning firework regulations with respect to special events, amending City of Topeka Code Section 8.35.070 and repealing original section was presented.

Councilmember Schwartz stated the ordinance was drafted at the request of Christ the King Catholic Church located at 5973 SW 25th Street for their upcoming anniversary celebration and noted other cities in Kansas allow these types of celebrations throughout the year.

Mary Feighny, Interim City Attorney, reported approval would exempt special events from the current date and time restrictions as listed in the Topeka Municipal Code concerning the discharge of consumer fireworks for non-profit religious, educational or community service organizations.

Councilmember Coen moved to adopt the ordinance. The motion was seconded by Councilmember Schwartz.

Councilmembers Jensen and Hiller asked why the language in the ordinance was limited to non-profit organizations.

Councilmember Schumm spoke in opposition of the ordinance and stated the July 4th Holiday provides sufficient time for residents to discharge fireworks.

Steven Cavanaugh, Christ the King Catholic Church Legal Counsel, appeared and spoke in support of the ordinance.

Mary Feighny stated if the ordinance was approved then she would recommend the Governing Body revisit the issue within six months to consider if other organizations should be included.

Councilmember Clear asked if there would be enforcement issues.

Councilmember Ortiz asked if the City could require permits to be issued for a specific time period.

James Brown, Topeka Police Chief, stated if the procedure as outlined by the Topeka Fire Marshal was followed, major issues should be avoided.

Jim Colson, City Manager, stated the permit process would allow the City to impose such requirements as specific time periods.

The motion to adopt the ordinance carried. Councilmembers Clear, Schumm and Harmon voted “no.” (6-3-0) (*Pursuant to Topeka Municipal Code Section A2-24(a)(ix) the Mayor did not vote on this ordinance because of his right to exercise veto authority.*)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, De La Isla, Jensen, Schwartz and Coen -6. Noes: Clear, Schumm and Harmon -3.

DISCUSSION and overview of the City of Topeka 5 Year Consolidated Action Plan for 2016-2020 was presented.

Sasha Stiles, Department of Neighborhood Relations Director, provided an overview of federal grant funding in relation to the five-year Consolidated Action Plan for consideration in conjunction with the City of Topeka 2016 Operating Budget on August 11, 2015. She discussed the purpose and objectives of the Consolidated Action Plan as well as Department of Neighborhood Relations Objectives, Citizen Participation and Program Funding Priorities.

Mayor Wolgast asked how the Plan would assist in addressing homeless veteran issues.

Sasha Stiles stated there are currently some programs in place to assist homeless veterans; however, more research needs to be done in terms of what more could be done.

Councilmember Hiller stated the Veterans Administration (VA) has a substantial program already in place and suggested staff look to the VA for guidance as they move forward.

Joseph Ledbetter stated there was a need for more homeless veteran programs. He also stated landlords need to properly care for properties throughout the city and the City needs to involve the community, local organizations and contractors in these issues to find resolutions and improve economic development in the community.

DISCUSSION of Council-initiated proposal relating to e-cigarettes was presented.

Councilmember Schwartz stated she was approached by citizens to introduce the e-cigarette proposal. She distributed handouts relating to how other cities address the issue and statistics concerning e-cigarettes.

Mayor Wolgast stated the proposed ordinance would prohibit e-cigarettes in current non-smoking facilities.

Councilmembers requested more research on the health effects of e-cigarettes as well as opinions from individuals in the medical field and those who manufacture e-cigarettes.

Upon consensus of the Governing Body, Mayor Wolgast announced an ordinance regarding e-cigarettes would be drafted for consideration on a future Council agenda.

DISCUSSION of Council-initiated proposal relating to towing vehicles was presented.

Councilmember Schwartz stated citizens have requested they research the possible enforcement of impounding uninsured vehicles. She spoke in support of the issue and the impact it has had on reducing accidents and making streets safer in other cities.

Governing Body members discussed the following issues:

- What would happen to individuals with no insurance as well as those individuals who have insurance and could provide proof of insurance at a later date
- How many individuals are repeat offenders
- Who would absorb impound fees if proof of insurance was provided
- What is the number of cars impounded in other cities that have implemented this law
- Is there technology in place for police officers to use in the field to determine if insurance is legitimate before a citation is issued
- The challenges the ordinance could pose to low-income individuals and families
- The importance of following the law and carrying proof of insurance at all times
- If this is a big problem in Topeka and if there are additional solutions to the problem

James Brown, Topeka Police Chief, stated the proposed ordinance states if there is no proof of insurance, a citation would be issued and it would be at the discretion of the police officer if the vehicle would be impounded. He reported there were approximately 2,200 citations in 2014 relating to no insurance violations with approximately 1,100 resulting in fines.

Vic Miller, Municipal Court Administrative Judge, distributed a handout relating to the number of citations issued in 2014. He reported the proposed ordinance would set a minimum fine of \$300 for the first citation, increasing in amount as the number of citations increase. He stated he was unsure of the number of repeat offenders; however, he could provide the information to the Governing Body at a later date. He noted other cities have withdrawn similar ordinances based on the time officers had to wait for a tow truck to arrive.

Jim Colson stated the terms of towing services would be negotiated in the service contract which would include responsibility of towing service costs.

Upon consensus of the Governing Body, Mayor Wolgast announced an ordinance regarding towing vehicles would be drafted for consideration on a future Council agenda.

DISCUSSION of Council-initiated proposal relating to public nudity was presented.

Councilmember Coen stated public nudity continues to be an issue throughout the city. He reported the proposed ordinance would prohibit nudity on sidewalks, streets and any public right-of-way.

Councilmember Hiller requested they consider including the term “public view” in the ordinance.

Luther Ganieany, Assistant City Attorney, stated there is no City ordinance or State of Kansas statute that addresses indecent exposure or public nudity; however, there are laws which address lewd and lascivious behavior.

Upon consensus of the Governing Body, Mayor Wolgast announced an ordinance regarding public nudity would be drafted for consideration on a future Council agenda.

DISCUSSION of Council-initiated proposal relating to aggressive panhandling was presented.

Councilmember Schumm stated aggressive panhandling has become an increased problem throughout the city.

Councilmember Harmon asked if the proposed ordinance addresses pedestrians soliciting while standing in medians.

Councilmember Hiller suggested researching the meaning of “private property” and if the term should be included in the ordinance.

Mary Feighny, Interim City Attorney, stated medians would be encompassed in street right-of-way and addressed in the Standard Traffic Ordinance of Kansas Cities; and panhandling on private property would be controlled by the property owner.

Upon consensus of the Governing Body, Mayor Wolgast announced an ordinance regarding aggressive panhandling would be drafted for consideration on a future Council agenda.

DISCUSSION of Council-initiated proposal relating to amplified music was presented.

Councilmember Schumm stated he has received many complaints from constituents regarding amplified noise. He stated the proposed ordinance would reduce the distance of noise from 100 feet to 50 feet to give officers more latitude; increase fines for repeat offenders; and includes stipulations to remove the stereo system.

Councilmembers questioned how the proposal would be different from the current ordinance; if it would be enforceable; would it include the sound of loud motorcycles; and if the City would be liable in terms of violating the constitutional right of free speech.

Councilmember Schumm stated in regards to enforcement the consequences of the second and third offenses were stricter with the intent of behavior correction and not just punitive fines.

Vic Miller, Municipal Court Administrative Judge, reported the proposal would require offenders to appear in court for all citations, including the first offense which is not required in the current ordinance. He stated the police officer’s testimony would be the deciding factor of

evidence and he would suggest establishing a timeframe in regards to tolerance and the number of citations allowed.

Mary Feighny, Interim City Attorney, explained the definition of “amplified sound systems” and stated it would not encompass motorcycle sounds. She noted evidence in these types of cases can prove to be challenging.

Councilmember Schumm asked how Kansas City, Kansas (KCK) enforces the issue.

James Brown, Topeka Police Chief, reported KCK preferred a distance of 50 feet because an officer could positively identify a vehicle at that distance as well as the increased fines have had a significant positive impact on the problem.

Upon consensus of the Governing Body, Mayor Wolgast announced an ordinance regarding amplified noise would be drafted for consideration on a future Council agenda.

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

Brenda Younger, City Clerk, provided a brief overview of the August 11, 2015 Council agenda.

Jim Colson, City Manager, announced 67 neighborhoods would be participating in the 32nd annual National Night Out Against Crime on August 8, 2015, and the event kickoff would be held at the Law Enforcement Center at 5:00 p.m. He commended City departments, citizens and community organizations for coordinating events throughout the city. He recognized Topeka Police Chief James Brown for his newly appointed position as the Command Senior Enlisted Leader for the Kansas National Guard and noted Chief Brown is the first airman to receive the honor.

Governing Body members commended Topeka Police Chief James Brown for his great accomplishment of being appointed the Command Senior Enlisted Leader for the Kansas National Guard.

Councilmembers encouraged the community to participate in the various National Night Out Against Crime events hosted throughout the city.

Councilmember De La Isla thanked Hi-Crest Fellowship Bible Church for conducting programs that provide essentials for local families in the Hi-Crest area. She also thanked the Topeka Police Department for the positive impact they are having on Hi-Crest residents through diligent work and increased presence in the neighborhood.

Councilmember Schwartz announced Visit Topeka's visitor map displayed on their website as this week's "gem" of Topeka.

Councilmember Ortiz referenced a newspaper article printed in the Topeka Capital Journal concerning allegations relating to Topeka Municipal Court operations. She asked Vic Miller, Municipal Court Administrative Judge, to address the allegations.

Vic Miller, Municipal Court Administrative Judge, provided a handout and spoke to the allegations outlined in an article printed in the Topeka Capital Journal on August 1, 2015.

Joseph Ledbetter and Ryan McElroy appeared to speak under public comment.

Councilmember Clear moved to recess into executive session for a time period not to exceed 15 minutes to discuss non-elected personnel and to include the Governing Body, City Manager, Interim City Attorney and staff. The motion seconded by Councilmember Ortiz carried unanimously. (10-0-0)

At 8:58 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced that no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:58 p.m.

Brenda Younger
City Clerk