

Council Minutes – January 22, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 22, 2013. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Everhart, Wolgast, Manspeaker, Gray and Harmon -6. Mayor William W. Bunten presided -1. Absent: Councilmember Ortiz -1. Council District No. 2 and Council District No. 7 are vacant.

AFTER THE MEETING was called to order, Councilmember Harmon asked for a moment of silent meditation.

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

Jim Colson, City Manager, requested the Council move to suspend the Council Rules to add approval of a settlement regarding the case filed against the Topeka Zoo by the Animal and Plant Health Inspection Service to the Council agenda under New Business.

Councilmember Gray moved to suspend the Council Rules to add the settlement as stated by the City Manager and reinstate the Council Rules. The motion seconded by Councilmember Everhart carried unanimously. (6-0-0)

Mayor Bunten announced the settlement would be placed on the Council agenda under New Business as item 7F.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Leon Graves to the Topeka Landmarks Commission for a term ending January 31, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Spencer Duncan to the Topeka Sustainability Advisory Board for a term ending January 31, 2015, was presented.

BOARD APPOINTMENT recommending the appointment of Amanda Smith to the City of Topeka ADA Advisory Council for a term ending January 31, 2015, was presented.

MINUTES of the regular meeting of January 15, 2013, was presented.

Councilmember Everhart moved to approve the consent agenda. The motion seconded by Councilmember Harmon carried unanimously. (6-0-0)

A NOTICE OF PUBLIC HEARING

A PUBLIC HEARING relating to vacation request V12E/4 by the City of Topeka, Kansas, to vacate the remaining green space easement at 4422 SW Lakeside Drive and the properties in Misty Harbor Estates Subdivision No. 4 along SW 44th Terrace between SW Lakeside Drive and SW Misty Harbor Drive, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 19787 introduced by City Manager Jim Colson, relating to the vacation of a platted green space easement running along the southerly 4 feet of the property at 4422 SW Lakeside Drive and the southerly 40 feet of 7 properties located on the south side of SW 44th Terrace, between SW Lakeside Drive and SW Misty Harbor Drive, City of Topeka, Shawnee County, Kansas placed on first reading January 15, 2013, was again presented.

(V12E/4)

Bill Fiander, Planning Department Director, gave a brief description of the property. He stated a green space easement does not allow any type of fencing to be constructed within it. He stated the Planning Department recommends approval which would allow six of the seven property owners to retain the fences that have been constructed within the green space easement and apply for a fence permit through the City's Development Services Division.

Mayor Bunten opened the public hearing for the purpose of considering any comments concerning the vacation of a green space easement in Misty Harbor Estates Subdivision.

No one appeared to speak.

Upon hearing no objections or comments, Mayor Bunten announced the public hearing would be closed.

Councilmember Wolgast moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted “yes.”

(7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Everhart, Wolgast, Manspeaker, Gray, Harmon and Mayor Bunten -7. Absent: Ortiz -1.

A NOTICE OF PUBLIC HEARING

A PUBLIC HEARING relating to vacation request V12S/5 by the City of Topeka, Kansas, to partially vacate the platted street public rights-of-way in the 1200 block of SW Byron Street, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 19788 introduced by City Manager Jim Colson, relating to the vacation of platted street public rights-of-way on properties located in the 1200 block of SW Byron Street which would vacate both the north 10 feet and the south 10 feet of the 80-foot SW Byron Street rights-of-way, City of Topeka, Shawnee County, Kansas placed on first reading January 15, 2013, was again presented. (V12S/5)

Bill Fiander, Planning Department Director, gave a brief background of the vacation request. He stated the existing right-of-way is 80 feet wide which is 20 feet wider than normal and all nine homes fronting along the 1200 block of SW Byron Street have very shallow front yards.

Mayor Bunten opened the public hearing for the purpose of considering any comments concerning the vacation of a street right-of-way in the 1200 block of SW Byron Street.

No one appeared to speak.

Upon hearing no objections or comments, Mayor Bunten announced the public hearing would be closed.

Councilmember Harmon moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. Mayor Bunten voted “yes.”

(7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Everhart, Wolgast, Manspeaker, Gray, Harmon and Mayor Bunten -7. Absent: Ortiz -1.

ORDINANCE NO. 19789 introduced by City Manager Jim Colson, amending Topeka Municipal Code Section 3.40.030 establishing a service fee levy for 2013 relating to the Capital City Downtown Business Improvement District placed on first reading January 15, 2013, was again presented.

Pam Simecka, Budget and Finance Department Director gave a brief background of the cost increases. She stated the Capital City Downtown Business Improvement District Advisory Board recommended the following changes to the Business Improvement District:

1. Eliminate the exemption for businesses with fewer than 1,000 square feet establishing a flat rate of \$60 annually for these businesses.
2. Increase the assessed fee for businesses over 1,000 square feet from .0525 to .0605 annually.
3. Raise the maximum assessment from \$12,000 to \$13,000 annually.

Councilmember Gray asked if there were any downtown businesses that would be exempt from the fees.

Pam Simecka stated she believes hotels would be exempt from the fees because much of the square footage is used for room rentals and not for the operation of the business; however, she would have to confirm this information and report back to the Council.

Councilmember Gray inquired about Jayhawk Towers and asked if it would be exempt from fees.

Vince Frye, Downtown Topeka, Inc., President and Chief Executive Officer, reported the Jayhawk Towers property is required to pay the fee.

Councilmember Gray moved to adopt the ordinance. The motion seconded by Councilmember Wolgast carried unanimously. Mayor Bunten voted “yes.” (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Everhart, Wolgast, Manspeaker, Gray, Harmon and Mayor Bunten -7. Absent: Ortiz -1.

ORDINANCE NO. 19790 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of December 1, 2012, through December 28, 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 \$19,593,056.39.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Everhart carried unanimously. (6-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Everhart, Wolgast, Manspeaker, Gray and Harmon -6.

A PETITION, A PROJECT BUDGET in the amount of \$497,600 and RESOLUTION OF ADVISABILITY AND AUTHORIZATION NO. 8485 introduced by City Manager Jim Colson, authorizing Improvement Project T-281062.00 which provides for water service installation to Kanza Education Science Park as more specifically described herein was presented.

Jeff Hunt, Assistant City Engineer, gave a brief background of the Water Main, Sanitary Sewer and Street Improvement Projects at the Kanza Education and Science Park. He stated the projects are public improvement projects that would be funded 100% by the Improvement District through special assessments over a ten year period. He reported construction would begin in late summer of 2013, and completed by the end of 2014.

Councilmember Manspeaker inquired if there are any residential properties within the Improvement District.

Jeff Hunt stated none of the properties located within Kanza Education and Science Park are residential.

Angela Sharp, Bartlett & West Engineers, stated the U.S.D. No. 501 Superintendent, Board and staff, have been researching ways to engage their students and improve their learning experience as the infrastructure improvement projects move forward. She reported a quick assessment was conducted between comparable properties and a conservative estimate based on office usage for the property which is being viewed as labs and other uses. She noted the properties are estimated to generate a possible \$3.5 million of annual property taxes, less the allowed rebate for the first ten years.

Councilmember Hiller moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Manspeaker carried unanimously. Mayor Bunten voted “yes.” (7-0-0)

A PETITION, A PROJECT BUDGET in the amount of \$696,800 and RESOLUTION OF ADVISABILITY AND AUTHORIZATION NO. 8486 introduced by City Manager Jim Colson, authorizing Improvement Project T-401039.00 which will provide sanitary sewer

installation to Kanza Education Science Park as more specifically described herein was presented.

Councilmember Hiller moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Manspeaker carried unanimously. Mayor Bunten voted “yes.” (7-0-0)

A PETITION, A PROJECT BUDGET in the amount of \$4,492,200 and RESOLUTION OF ADVISABILITY AND AUTHORIZATION NO. 8487 introduced by City Manager Jim Colson, authorizing Street Improvement Project T-601030.00 for the Kanza Education and Science Park as more specifically described herein was presented.

Councilmember Hiller moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Manspeaker carried unanimously. Mayor Bunten voted “yes.” (7-0-0)

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

APPROVAL of settlement regarding City of Topeka, Animal Welfare Act Docket No. 12-0109, and payment of civil penalty in the amount of \$45,000 was presented.

Shelly Starr, City Chief of Litigation, reported a consent agreement was negotiated by the Legal Department and the City Manager for a complaint filed by the United States Department of Agriculture in December 2011. She stated the agreement consisted of the following:

1. The City admits the violations alleged in the complaint and the violations cited as the result of inspections in January and July 2012, without admitting any violation was willful.
2. The City will pay a civil penalty of \$45,000 on or before February 15, 2013.
3. The City agrees to a cease and desist order.

Councilmember Everhart inquired about the dates of the violations.

Shelly Starr stated the complaint filed against the Zoo cited violations between December 2006 through 2011, and 50 of those violations were against the Animal Welfare Act. She reported the extent of the fines could have reached nearly \$450,000.

Councilmember Wolgast asked if the violations occurred before Mr. Brendan Wiley, Topeka Zoo Director, was employed by the City.

Shelly Starr stated violations regarding animal deaths were the most concerning; however, those transpired before Mr. Wiley was hired. She reported the City is agreeing to pay \$5,000 for each of the nine animal death violations for a total of \$45,000.

Councilmember Wolgast moved to approve the settlement regarding City of Topeka, Animal Welfare Act Docket No. 12-0109, and payment of civil penalty in the amount of \$45,000. The motion seconded by Councilmember Gray carried unanimously. (6-0-0)

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Section 2.95.020, concerning term limits for Sustainability Advisory Board members and specifically repealing said original section was presented for first reading.

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

Jim Colson, City Manager, introduced Bill Fiander as the new Planning Department Director and noted Mr. Fiander has worked hard in implementing departmental policies that improve customer service. He announced the City Clerk's office has installed a "public access" computer that provides an opportunity for the public to view all documents and information posted to the City's website. He stated the customer service enhancement better connects citizens to their government, supports the City Clerk's vision in providing easy access to all records of the City of Topeka, and his promise as City Manager, to improve transparency in City

government. He invited the community to attend the Topeka Police Department's Quarterly Crime Strategy Briefing at the Law Enforcement Center on January 23, 2013, at 1:00 p.m. He announced Dave Starkey, City Attorney, would retire on April 2, 2013, and commended Mr. Starkey for his great service to the City.

Councilmember Hiller commended the Living the Dream volunteer organization in sponsoring nine events celebrating the Dr. Martin Luther King, Jr., legacy. She stated the events were well attended by the community and offered a variety of activities for all ages.

Councilmember Gray commended David Bevens, Community Information Manager, and Jim Colson, City Manager, for communicating with residents about the SW 21st Street and SW Urish Road improvement project. He thanked Mr. Colson for having the Christmas lights removed from the downtown area. He reported he has communicated with James Beard, a Topeka resident who experienced a break-in at his residence. He stated he is concerned with Mr. Beard's safety and believes there may be extenuating circumstances regarding the Police Department's actions in the matter. He requested the City Manager follow-up with Mr. Beard.

Mayor Buntin commended the Living the Dream event organizers for hosting the Scholarship and Awards Banquet held at the Ramada Inn on January 19, 2013. He stated the event was well attended and Reverend Samuel Billy Kyles was a wonderful keynote speaker.

NO FURTHER BUSINESS appearing the meeting was adjourned at 6:48 p.m.

Brenda Younger
City Clerk