

Council Minutes – February 12, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 12, 2013. 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, Everhart, Wolgast, Manspeaker, Collazo, Gray and Harmon -9. Mayor William W. Bunten presided -1.

AFTER THE MEETING was called to order, Reverend Dr. Scott Kenefake, Central Congregational Church, gave the invocation.

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

Councilmember Manspeaker moved to suspend the Council Rules to add a resolution opposing House Bill 2069 to the Council agenda. The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

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

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of February 5, 2013, was presented.

Councilmember Manspeaker moved to approve the consent agenda. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

A NOTICE OF PUBLIC HEARING

A PUBLIC HEARING for Dillon Real Estate Company, Inc., as property owner, to vacate a public utility easement and replace it with a City sewer easement on property extending between 1106 and 1114 NW Topeka Boulevard, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 19792 introduced by City Manager Jim Colson, relating to the vacation of a public utility easement on property extending from NW Topeka Boulevard to NW

Harrison Street and located between properties at 1106 and 1114 NW Topeka Boulevard, City of Topeka, Shawnee County, Kansas, placed on first reading February 5, 2013 was again presented.

Mayor Bunten moved to open the public hearing and asked if there was anyone present who would like to speak to the matter.

Randy Dodds, appeared to speak and stated the proposed alley location is located beside his garage at 1103 NW Harrison Street. He expressed concern with the condition of the alley once the fuel pump facility expands and traffic increases, as well as, the environmental effect the expansion will have on his property.

Bill Fiander, Planning Director, stated the Council approved the vacation of a platted alley at this location and retained the public utility easement on August 21, 2012. He reported Kwik Shop Convenience Store, located at the corner of NW Topeka Boulevard and Morse Street, submitted a site plan showing the proposed expansion of their fuel pump facility to be directly located south of the utility easement. He noted approval of the ordinance would replace the public utility easement and grant the City of Topeka a sewer easement, the only remaining utility in the easement. He displayed the site plan in relation to Mr. Dodd's property and stated the fuel pumps would be located approximately 70 feet from his residence, and meets all building and environmental code requirements.

Mayor Bunten asked if there was anyone else present that would like to speak to the matter. No one appeared.

Councilmember Manspeaker moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Collazo carried unanimously. Mayor Bunten voted "yes." (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Brown, Ortiz, Everhart, Wolgast, Manspeaker, Collazo, Gray, Harmon and Mayor Bunten -10.

A PROJECT BUDGET in the amount of \$5,976,392, ORDINANCE NO. 19793 and NOTICE OF INTENTION introduced by City Manager Jim Colson, authorizing Improvement Project No. T-291023.00 for secondary digester lid replacements at the Oakland Wastewater Treatment Plant, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operation funds, authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to issue and sell revenue bonds of said City to make such improvements which constitutes improvements to the municipally owned water, water pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, pursuant to K.S.A. 10-101 and 10-1201 et seq., and all amendments thereto, authorizing issuance of general obligation bonds to pay the costs of the project which further constitutes a general improvement to the City's sanitary and/or stormwater and sewage disposal system pursuant to City of Topeka Code Section A12-1, and authorizing the borrowing of funds from the KDHE SRF Loan to pay the cost thereof placed on first reading February 5, 2013 was again presented.

Jim Colson, City Manager, stated the project would replace three secondary digester lids at the Oakland Wastewater Treatment Plant and the project is currently included in the adopted 2013 Capital Improvement Budget.

Councilmember Harmon asked if the bonds would be repaid with Enterprise funds.

Pam Simecka, Budget and Finance Director, stated the bonds would be repaid through the Utility Operating fund.

Councilmember Wolgast moved to approve the project budget and adopt the ordinance and notice of intention. The motion seconded by Councilmember Gray carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Brown, Ortiz, Everhart, Wolgast, Manspeaker, Collazo, Gray, Harmon and Mayor Bunten -10.

A PROJECT BUDGET in the amount of \$1,239,307, ORDINANCE NO. 19794 and NOTICE OF INTENTION introduced by City Manager Jim Colson, authorizing Improvement Project No. T-281039.01 for the rehabilitation of flood protection relief wells approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operation funds, authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to issue and sell revenue bonds of said City to make such improvements which constitutes improvements to the municipally owned water, water pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, pursuant to K.S.A. 10-101 and 10-1201, et seq., and all amendments thereto, authorizing issuance of general obligation bonds to pay the costs of the project which further constitutes a general improvement to the City’s sanitary and/or stormwater and sewage disposal system pursuant to City of Topeka Code Section A12-1 placed on first reading February 5, 2013 was again presented.

Jim Colson, City Manager, stated the project would rehabilitate 11 existing flood protection relief wells at the Water Treatment Plant in accordance with the U.S. Army Corps of Engineers directives and requirements. He noted the project is currently included in the adopted 2013 Capital Improvement Budget.

Mike Teply, Public Works Director, stated he received a question relating to the necessity of the improvement due to drought conditions. He reported the improvements are necessary even in drought conditions and are a directive from the U.S. Army Corp of Engineers who are in agreement with the City to maintain part of the levy system.

Councilmember Gray asked when the wells were constructed.

Mike Teply reported nine of the wells were built in 1958 and 1959, and the additional wells were built in 1980. He stated the wells were tested and the results determined they were ineffective and needed rehabilitation or replacement.

Councilmember Wolgast moved to approve the project budget and adopt the ordinance and notice of intention. The motion seconded by Councilmember Manspeaker carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Brown, Ortiz, Everhart, Wolgast, Manspeaker, Collazo, Gray, Harmon and Mayor Bunten -10.

APPROVAL of the Certificate of Appropriateness for the demolition of property located at 1600 SW Harrison Street designated as a local Historic Landmark pursuant to Topeka Municipal Code Section 18.255.120 was presented.

Jim Colson, City Manager, stated approval would allow the demolition of property located at 1600 SW Harrison.

Teresa Miller spoke in opposition to the demolition of the building. She expressed concern with the deterioration of the building and does not understand why the City allowed the building to get in such bad condition. She noted after the building was purchased the City should have made sure it was being taken care of or refurbished. She also expressed concern with the demolition procedure and believes it needs to be changed. She referenced the McKinley

Elementary School located at 925 North Taylor, and stated she is trying to prevent the building from being demolished and City compliance procedures do not help, they only hinder the preservation of historic landmarks. She requested the procedures be changed.

Councilmember Manspeaker stated he concurs with Ms. Miller and believes McKinley Elementary School should be preserved.

Councilmember Gray questioned if the owners have shown any intent to demolish or refurbish the building; what are the costs associated with the demolition; and could the demolition costs be recouped by the City.

Bill Fiander, Planning Director, stated the City has not been able to contact or locate the property owner. He reported there are two issues involved with the demolition case, (1) is a code compliance issue and relates to the building being an unsafe structure and (2) the building was designated as a historic landmark 5 years ago when the owner was eager to refurbish the building; however, over time the building has been neglected, and replacement value of structure is over 30% of the appraised value of the building. He noted the public hearing process requirement has been met and the historic integrity of the building has been lost and was not able to be restored.

Pam Simecka, Budget and Finance Director reported the collection of the costs associated with a demolition is very low, approximately 30%. She stated the property owner would be billed the cost of demolition; if the property owner does not pay the cost to demo then those costs are applied to the property tax roll; and if the property is sold in a public auction then all the costs associated with the property are reimbursed from the purchase price of the property.

Councilmember Wolgast asked the Fire Department to provide the background on the building.

Greg Bailey, Fire Chief, reported there was recently a structure fire on property located at 1600 SW Harrison, and it was clear at that time, the structure was unsafe. He stated the Fire Department fully supports the demolition of the building and noted the vacant building houses transients and is nearly impossible to keep secure.

Councilmember Harmon questioned if the property would be subject to property taxes since it would be considered a church.

Patty Burkholder, City Code Enforcement Manager, reported the building is no longer considered a church in regards to property taxes. She noted the 2012 property taxes have not yet been paid.

Councilmember Harmon asked the City Attorney to provide direction to the Council on how to proceed with a motion.

Dave Starkey, City Attorney, cited Topeka Municipal Code Section 18.255.120 and stated the City Council finds and declares as a matter of public policy that the identification, designation, protection, enhancement, preservation and use of historic assets is a public necessity and is required in the interest of the culture, prosperity, education and welfare of the public.

Preservation of historic assets will:

- (a) Protect, enhance and perpetuate historic, distinctive and important elements of the city's cultural, social, economic, political, archaeological and architectural history;
- (b) Safeguard the city's historic and cultural heritage as embodied and reflected in such historic assets;
- (c) Stabilize and improve property values in such locations of historic assets and thus strengthen the economy of the city;
- (d) Promote and encourage restoration, rehabilitation, and maintenance of historic properties, neighborhoods and districts and thus combat blight and decay;
- (e) Foster civic pride in the beauty and noble accomplishments of the past;

(f) Protect and enhance the city and its attractions to tourists and visitors and provide support and stimulus to business and industry; and

(g) Promote the use and adaptive reuse of historic assets for the culture, education, enjoyment and economic welfare of the city's citizens and visitors.

Councilmember Everhart stated she was not satisfied with evidence that has been provided and would not support the demolition of the building.

Councilmember Gray stated he believes the building was labeled as a historic landmark at the local level in order to receive local funding. He noted the building has not been designated on the State or Federal level.

Councilmember Hiller stated she believes there are feasible alternatives to the demolition of the building and noted the demolition would not happen until 2014 because there are no funds available in the 2013 budget for demolitions. She proposed the demolition request be tabled for six months to allow time to determine if there are feasible alternatives to the demolition.

Councilmember Hiller moved to defer the Certificate of Appropriateness for the demolition of property located at 1600 SW Harrison Street for six months. The motion was seconded by Councilmember Manspeaker.

Councilmember Manspeaker encouraged the Council to support the deferral because there are significant budget issues, he believes there are feasible alternatives to the proposal, and there is great historical value to the property.

Councilmember Collazo spoke in favor of the demolition and stated he believes the building is in deplorable condition. He questioned the replacement cost verses the value of the property, and if there was a way to secure the structure for the next six months.

Patty Burkholder, City Code Enforcement Manager, stated the replacement cost figures were compared to the value of the property listed by the Shawnee County Appraiser. She reported the replacement cost of \$660,000 exceeds the property value by 30%; initially there was

some contact with the owners; however, they have now disconnected their phones and all certified mail was returned to the City unclaimed; structurally the building is substandard; the City has secured the building seven times in the last year; and there is biohazard in the building.

Councilmember Wolgast stated he has observed the building slowly deteriorate over the past several years and it is now in bad shape. He reported the walls have greatly deteriorated; the protective panel over the windows and doors are constantly being breached; and overgrowth of the vegetation on the property occurs every summer. He stated he strongly supports historic preservation whenever possible; however, this case is difficult because the hazard is so great it outweighs any possibility of restoration. He encouraged the Governing Body to look at the building and consider the neighbors, as well as, the entire neighborhood because it is their responsibility to protect all properties in the city, not just one.

Councilmember Manspeaker reported there are approximately 13 properties that were carried over to be demolished in 2013 because there was insufficient funding in 2012. He stated the City must be realistic with the demolition funds by making all demolitions priority throughout the city. He noted he would continue to vote against the demolition of historical buildings that can be refurbished.

Councilmember Hiller stated she believes the building is a very solid structure made of concrete and steel. She questioned if the wooden floors and debris were removed if it would help make the building more secure for the next 6 months while they consider other alternatives.

Councilmember Gray called the question.

Mayor Bunten commented on the condition of the building.

Councilmember Manspeaker raised a point of order and stated the question has been called and debate should cease.

Mayor Bunten ruled the motion to call the question was in order.

Dave Starkey, City Attorney Starkey stated according to Roberts Rules of Order if there is a member of the body that would like to make a comment they may do so, debate does not immediately cease if comments are made according to the rules.

Mayor Bunten stated the structure of the building would be the same in 6 months and it is apparent that no one wants to refurbish the building. He noted the Council must increase the demolition fund budget to accommodate the need throughout the city. He encouraged the Council to approve the demolition request.

The motion to defer the Certificate of Appropriateness for the demolition of property located at 1600 SW Harrison Street for six months carried. Councilmembers Ortiz, Wolgast, Collazo and Gray voted “no.” (5-4-0)

A FINAL PLAT for Brewster Place Subdivision No. 6, located at the SW corner of SW 29th Street and SW Central Park Avenue in the City of Topeka, Shawnee County, Kansas was presented. (*P11/15*)

Jim Colson, City Manager, gave the staff report. He stated the development would consist of a two-lot subdivision with a medical clinic located on the north lot and an adult living and nursing care facility located on the south lot.

Angela Sharp, Bartlett & West Engineers, appeared for questions and asked the Council to support the final plat.

Councilmember Wolgast moved to approve the final plat. The motion was seconded by Councilmember Manspeaker.

Councilmember Harmon stated he serves on the Brewster Place Foundation Board and would abstain from voting on the final plat.

The motion to approve the final plat carried. Councilmember Harmon abstained. Mayor Buntun voted “yes.” (9-0-1)

RESOLUTION NO. 8488 introduced by City Manager Jim Colson, supporting the City of Topeka’s application for funding from the Kansas Department of Transportation to fund the final phase of the Washburn/Lane Pedestrian Lighting project, as more specifically described therein was presented.

Mike Teply, Public Works Director, stated approval would authorize staff to submit an application to the Kansas Department of Transportation to obtain a grant for the Washburn/Lane Pedestrian Lighting Project. He clarified approval would not approve a project budget at this time; however, if the resolution is approved City staff would present a project budget in the amount of \$141,850 at a later date.

Councilmember Manspeaker asked who would provide the private contributions in the amount of \$23,500.

Councilmember Hiller reported private funding would come from Stormont-Vail Healthcare, St. Francis Hospital and many other small businesses in the area.

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Brown carried unanimously. (9-0-0)

RESOLUTION NO. 8489 introduced by City Manager Jim Colson, supporting the City of Topeka’s application for funding from the Kansas Department of Transportation to implement the Topeka Bikeways Master Plan, as more specifically described herein was presented.

Jim Colson, City Manager, stated approval would authorize staff to submit an application to the Kansas Department of Transportation to obtain a funding for construction of Phase 1 of the Topeka Bikeways Master Plan project.

Councilmember Manspeaker asked if the project required any funding from the City.

Mike Teply, Public Works Director, stated the City would be required to match 20% of the \$1.4 million or \$280,000 plus an additional \$85,000 for project design costs.

Ralph Krumins spoke in support of the application. He stated the goal of the project is to improve the quality of life; reduce motor vehicle infrastructure; provide a safe way for bicyclists to travel through the city; and reduce the overall obesity rate within the community by promoting good health and exercise. He noted private funding is underway with more fundraising planned in the future.

Councilmember Harmon asked if the Capital Improvement Program (CIP) needs to be amended if the resolution is approved.

Pam Simecka, Budget and Finance Director, stated the Bikeways Plan project is included in the Capital Improvement Program and funds would most likely be allocated from Complete Streets or Bikeway designated funds from the General Fund.

Councilmember Hiller recognized the work of the Bikeway Committee for their time spent on planning and fundraising for the project.

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Collazo carried unanimously. (9-0-0)

RESOLUTION NO. 8490 introduced by City Manager Jim Colson, authorizing the City of Topeka to submit the application for funding on behalf of Railroad Heritage, Inc., from the Kansas Department of Transportation to fund the Railroad Park at the Great Overland Station Museum was presented.

Jim Colson, City Manager, stated approval would authorize City staff to submit an application for funding on behalf of Railroad Heritage, Inc., to the Kansas Department of

Transportation for the Railroad Park located at the Great Overland Station Museum. He stated the project would preserve and rehabilitate three historic railroad cars and an authentic Santa Fe Train Depot.

Councilmember Gray asked if the Railroad Heritage Inc., receives private funds.

Beth Fager, Campaign Director for the Great Overland Station, stated Railroad Heritage, Inc., is a private, not-for-profit organization.

Councilmember Manspeaker moved to approve the resolution. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

RESOLUTION NO. 8491 introduced by City Manager Jim Colson, relating to the appointment of two councilmembers to the Metropolitan Planning Organization and repealing Resolution No. 7453 was presented.

Councilmember Wolgast stated City of Topeka Resolution No. 7453 was unclear of the term limits of Councilmembers and the proposed resolution would clarify the length of service. He reported Councilmembers would serve for two years, and elections would occur in April of odd-numbered years.

Councilmember Wolgast moved to approve the resolution. The motion was seconded by Councilmember Manspeaker.

Councilmember Ortiz stated she would not support the resolution because she believes it is not necessary. She expressed concern with the possibility of a Councilmember not being able to fill the two-year term.

Councilmember Wolgast stated the position would be filled in the same manner as before if there is a resignation.

Councilmember Hiller expressed appreciation for the clarification.

The motion to approve the resolution carried. Councilmember Ortiz voted “no.” (8-1-0)

RESOLUTION NO. 8492 introduced by City Manager Jim Colson, authorizing initiation of condemnation proceedings to acquire temporary easement and permanent public right-of-way easement interests for the following public purposes: to construct and widen SW 21st Street to 5 lanes with curb and gutter, sidewalks and storm drainage between SW Wanamaker and SW Urish Road, Project No. 70198-02, Part B was presented.

Mike Teply, Public Works Director, stated approval would allow the City Engineer to construct a list of properties to be included for condemnation proceedings

Councilmember Gray moved to approve the resolution. The motion seconded by Councilmember Collazo carried unanimously. Mayor Buntten voted “yes.” (10-0-0)

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

RESOLUTION NO. 8493 introduced by Councilmember Chad Manspeaker declaring the City Council’s opposition to HB 2069 was presented.

Councilmember Manspeaker thanked the Council for allowing the resolution to be added to the Council agenda. He read the following sections of HB 2069 as proposed:

- Section 1. No city, county or local government unit shall enact or administer any ordinance, resolution, law, economic development initiative, program or grant which requires an employer to: (c) pay compensation at any rate higher than the minimum wage
- Section 2. The administration, enactment or enforcement of any city ordinance which conflicts with section 1, and amendments thereto, is hereby declared to be void and against the public policy of this state.
- Section 3. The administration, enactment or enforcement of any county resolution which conflicts with Section 1, and amendments thereto, is hereby declared to be void and against the public policy of this state required by state or federal law.

He reported the Bill would have an impact on the City, because the City does not have prevailing wages. He stated he believes the State is interfering with City government, and the

City of Topeka Governing Body needs to be clear and express their opposition as a collective body.

Councilmember Gray spoke in support of the resolution and stated he believes House Bill 2069 is an overreach of the State into local government. He encouraged Councilmembers to support the resolution.

Councilmember Manspeaker moved to approve the resolution. The motion was seconded by Councilmember Everhart.

Mayor Bunten questioned if the City included a prevailing wage requirement in contracts.

Dave Starkey, City Attorney stated City of Topeka contract language complies with Davis-Bacon Wage Rates in Kansas.

Jim Colson, City Manager, stated he believes the City is taking a step in the right direction by declaring their opposition to HB 2069 and working directly with the City's lobbyist to establish a specific standard for contractors conducting business with the City.

Councilmember Wolgast spoke in support of the resolution and believes it is an appropriate stance for the City to take at this time.

The motion to approve the resolution carried unanimously. (9-0-0)

AN ORDINANCE introduced by City Manager Jim Colson, authorizing the initiation of condemnation proceedings to acquire both temporary and permanent public easement interests for the following public purposes: to construct and widen SW 21st Street to 5 lanes with curb and gutter, sidewalks and storm drainage between SW Wanamaker and SW Urish Road, Project No. 70198-02, Part B, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, relating to the vacation of a public alley lying between 1528 SW Central Park Avenue and 1015-1017 SW 15th Street in the City of Topeka, Shawnee County, Kansas, was presented for first reading. (V12A/1)

AN ORDINANCE introduced by City Manager Jim Colson, providing a non-exclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka which replaces the franchise ordinance codified at City Code Appendix B, Article 6, that expires December 31, 2012, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, authorizing the City of Topeka, Kansas, to issue its Housing and Health Care Improvement Revenue Bonds, Series 2013 (Brewster Place Project) in the principal amount not exceeding \$10,000,00 for the purpose of financing the costs of constructing, renovating, equipping, and improving certain residential and health care facilities located on the Brewster Place Campus in the City; currently refunding the City's outstanding Series 2004 Brewster Place Project Revenue Bonds; authorizing the execution of a fifth supplemental indenture by and between the City and CoreFirst Bank and Trust, Topeka, Kansas, as trustee; authorizing the execution of a fifth supplemental lease by and between the City and the Congregational Home, A Kansas Not-For-Profit Corporation; and authorizing and approving certain additional documents and actions in connection with the issuance of said bonds was presented for first reading.

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

Jim Colson, City Manager, referenced a newspaper article printed February 11, 2013, in the Topeka Capital Journal Newspaper relating to open record requests made by the Capital Journal to the City of Topeka. He reported he met with Capital Journal representatives to

identify how to address the particular issue and was disappointed the article did not reflect the open dialog or attitude the City has had over the years with the Capital Journal in relation to filling open record requests. He stated he works hard on a day to day basis to develop and improve partnerships with the community to increase their trust and improve transparency of local government. He apologized for not handling the situation differently and stated he would work to continue to improve the process as they move forward.

Councilmember Hiller thanked the City Manager for his comments and appreciates the City's direction in moving forward in dealing with transparency and community trust.

Councilmember Brown thanked Councilmember Manspeaker for drafting the resolution regarding House Bill 2069. He also commended the City Manager for his comments regarding the Capital Journal newspaper article on open record requests.

Councilmember Manspeaker reported there is a vacancy on the Joint Economic Development Organization Board and suggested the Council consider an appointee and scheduling a meeting date for the Joint Economic Development Organization. He stated he believes transparency is an important priority and appreciates the comments made by the City Manager; however, he encouraged the Governing Body to be vigilant when conducting business for the community and provide information as requested.

Councilmember Gray commended the City Manager for his statements concerning open record requests and stated he believes Mr. Colson is trust-worthy and a man of his word.

Ted Mize appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:39 p.m.

Brenda Younger
City Clerk