

## **Council Minutes – February 18, 2014**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 18, 2014. 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, Schmidt and Harmon -9. Mayor Larry E. Wolgast presided -1.

AFTER THE MEETING was called to order, Pastor Eugene Shoemaker, Topeka Police Department Chaplain and Central Presbyterian Church, gave the invocation.

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

An update on the South Kansas Avenue project was presented by Stan Meyers, Topeka Project Manager and Wendy Wells, U.S. Bank and Downtown Topeka Foundation Vice-Chair.

Stan Meyers gave an overview of the design, construction and communication strategy with downtown business owners which is critical as the project moves forward. He distributed an aerial map of the project perimeters along S. Kansas Avenue between 6<sup>th</sup> and 10<sup>th</sup> Streets and stated it was determined the three lane configuration along S. Kansas Avenue would be the most efficient plan. He reported several public meetings have been held, as well as, meetings with utility companies and downtown business owners to ensure concerns are addressed. He stated plans have been approved, advertised and are out for bid and announced a pre-bid meeting is scheduled for February 26, 2014, and hopes to see many contractors attend although the meeting is not mandatory. He announced an informational open house is also scheduled for February 26, 2014, hosted by Architect One from 4:00 p.m. to 6:00 p.m. to answer questions and display drawings. He noted staff has been working with the “Diggin Downtown” team marketing and branding strategy to help business owners during the construction period informing the community that downtown will still be open and celebrating the rejuvenation.

Wendy Wells distributed a handout outlining the timeline, agreement with the City, recent activities and schedule of construction start date. She thanked the Governing Body for their partnership with the private sector that includes major pledges made by nine private organizations, as well as, smaller donations which total approximately \$2.2 million. She also distributed a map showing pocket parks and pavilions under design at this time along S. Kansas Avenue, and stated the construction schedule of the private pedestrian enhancements would mirror the City's construction schedule.

Mayor Wolgast thanked Mr. Meyers and Ms. Wells for their presentation. He also thanked the Downtown Topeka Foundation for the work they have done to raise the private donations.

Councilmember Manspeaker asked if there were specifications on the type of signage that would be placed in the pocket parks and pavilions in regards to sponsorship.

Stan Meyers stated each pocket park would have a theme and the type of signage is still being considered.

Wendy Wells stated the design team is ensuring that all signage is tasteful and tactful and may include plaques depicting a historical story of certain corporations and how they began. She gave an example of U.S. Bank's pocket park which would be situated directly in front of the bank; therefore, would not need large signage because of its location to the business.

Councilmember Manspeaker questioned who would be responsible for the maintenance of the pocket parks and pavilions.

Jim Colson, City Manager, stated the Downtown Topeka Foundation would provide payment to the City to oversee the maintenance on the properties which was the intent of the agreement to protect the City from a difficult situation where funding might be an issue. He stated he would research the agreement further and provide the details more thoroughly to Councilmember Manspeaker.

Mayor Wolgast commented on the pocket parks designs and hopes they would be designed to withstand the elements.

Councilmember Campos II asked if any funds were donated from the Latino or African American community.

Wendy Wells stated there is a very comprehensive list of private donations; however, she believes some small donations were received.

Councilmember Schwartz expressed appreciation to the Downtown Topeka Foundation for raising funds. She asked if the foundation would continue their work once the project is finished and reach out to other areas in the community that may need rehabilitation.

Wendy Wells stated she envisions another round of fundraising and as long as the energy is still favorable, the foundation could continue their work in the community.

Councilmember De La Isla thanked the Downtown Topeka Foundation for their work on the project and stated she was concerned about downtown merchants enduring the construction phase; however, she is encouraged by the communication strategies discussed and is excited for great things to happen downtown.

Councilmember Hiller thanked City staff, Downtown Topeka Inc., and the Downtown Topeka Foundation for their efforts and leadership in the process. She cautioned that construction guidelines should be considered because it is a critically important aspect and proved to be successful with the Capitol Federal renovation project.

Councilmember Hiller moved to add a resolution, approving a special event known as the St. Patrick's Day Parade Street Party to the Council agenda. The motion seconded by Councilmember Schmidt carried unanimously. (9-0-0)

Mayor Wolgast announced the resolution would be added to the Council agenda under New Business as item 6D.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Margo Rangel to the Topeka Human Relations Commission for a two year term ending February 28, 2016, was presented.

BOARD APPOINTMENT recommending the appointment of Deborah Swank to the Topeka Sustainability Advisory Board for a two year term ending February 28, 2016, was presented.

BOARD APPOINTMENT recommending the appointment of Olivia Marshall to the Topeka Sustainability Advisory Board to fill an unexpired term ending February 28, 2015, was presented.

BOARD APPOINTMENT recommending the re-appointment of Darcella Goodman to the Topeka Human Relations Commission for a two year term ending February 28, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Richard Beardmore to the Board of Mechanical Examiners for a two year term ending January 31, 2016, was presented.

BOARD APPOINTMENT recommending the appointment of Stephen Ridgeway to the Board of Mechanical Examiners for a two year term ending January 31, 2016, was presented.

MINUTES of the regular meeting of February 11, 2014, were presented.

Councilmember Ortiz moved to approve the consent agenda. The motion was seconded by Councilmember Everhart.

Councilmember Campos II asked how many vacancies were left on the Topeka Human Relations Commission.

Mayor Wolgast stated the appointments on this evening's agenda would complete the commission.

Councilmember Campos II inquired if the nominees are required to answer any questions relating to conflicts of interest on the application.

Mary Feighny, Deputy City Attorney, stated the board appointment application attempts to weigh any conflicting interests.

Mayor Wolgast stated the applicants are asked a series of questions on the application regarding their relationship with the City of Topeka.

The motion to approve the consent agenda carried. Councilmember Campos II voted “no.” (8-1-0)

ORDINANCE NO. 19888 introduced by City Manager Jim Colson, concerning the elimination of zoning designation “E” Multiple-Family Dwelling District, amending City of Topeka Code Section 18.50.030 and specifically repealing said original section, as well as, Chapter 18.115 in its entirety placed on first reading February 11, 2014, was again presented. (ACZR11/7)

Bill Fiander, Planning Department Director, reported approval would eliminate the “E” Multiple-Family Dwelling District by converting the properties to “M-3” Multiple-Family Dwelling District which is more appropriate of the two zoning districts based on surrounding land uses and zoning patterns.

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

Councilmember Manspeaker questioned the proposed deletions in the ordinance and stated it seems there are more zoning districts being eliminated.

Bill Fiander stated the City’s Legal Department reviewed the ordinance and noted there were several references to County zoning districts which are no longer needed.

Mary Feighny, Deputy City Attorney, confirmed most of the deletions in the ordinance were done to clarify the language.

The motion to adopt the ordinance carried unanimously. Councilmember Manspeaker voted “no.” Mayor Wolgast voted “yes.” (9-1-0)

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

A PROJECT BUDGET in the amount of \$750,000 and RESOLUTION NO. 8592 introduced by City Manager Jim Colson, relating to and authorizing Project No. T-161001.00 which provides for the Certification of Topeka Levee System as more specifically described herein was presented.

Doug Whitacre, Public Works Director, reported approval would authorize inspection and analysis of the levees to determine deficiencies, rehabilitation and maintenance efforts needed to certify the levees to the U.S. Federal Emergency Management Agency standards. He stated the project would be funded from the Storm water Utility Operating Fund and is included in the 2013 Capital Improvement Budget. He noted it is anticipated that there will be various improvements and/or repairs necessary to obtain the final certification of the levees to meet FEMA standards.

Councilmember De La Isla spoke in support of the project because she is concerned for the people who could be affected by the floodplain.

Mayor Wolgast stated the certification would remove the requirement for homeowners to acquire flood insurance in that area.

Councilmember Campos II stated there is much support in the Statehouse for the levee projects throughout the State and he thanked City staff for their presentation.

Councilmember Campos II moved to approve the project budget and resolution. The motion was seconded by Councilmember Harmon.

Councilmember Harmon asked if the \$750,000 provides the certification to FEMA or the analysis to determine where the deficiencies are located along the levees.

Doug Whitacre stated the project would certify sections of the levee and identify deficiencies; then address the design and improvements needed to meet all U.S. Army Corps of Engineers requirements. He noted he has talked with the Corps about funding and there could be some additional work; however, the City would certify as many levee sections as possible first. He stated the remapping would require a significant number of City residents to acquire flood insurance; however, if the levees are certified this would not be the case. He clarified the project would help identify and certify the levee sections that are in good condition.

Councilmember Harmon asked if the project could be funded through all three utility funds; storm water, water and wastewater.

Doug Whitacre stated the levee system falls under storm water protection because it protects the community from storm water runoff.

Councilmember Campos II asked if the City is bound by State statute to fund the project through the storm water utility fund; if deferring the project would affect the project in any way because he would like to allow additional time for staff to provide more information on the City's overall water pressure; if this is the first step in the certification process to be considered for the levee project; and what happens if the Council does not approve the project. He stated it was suggested Hallmark Cards Production Center may have moved out of the City because of flood requirements and expressed concern that the same may happen to others.

Mary Feighny, Deputy City Attorney, stated the City is not statutorily bound to use the Storm Water Utility fund; however, she would research if City Code restricts the type of project funded through the other utility funds.

Doug Whitacre stated deferring the project would keep it from moving forward and if the Council does not approve the project, FEMA could remap all businesses and residences within the area and place them in the flood plain which would then in turn require the homeowners to purchase flood insurance. He noted this project is separate from the U.S. Army Corps of Engineers and they do not certify levees; therefore, FEMA guidelines are used.

Mayor Wolgast stated he believes Hallmark Cards Production Center's flood insurance had the possibility of an increase; therefore, this project would certify those areas that could be required to purchase flood insurance if a remapping were to occur.

Councilmember Campos II asked if the \$750,000 would go towards the City's match of approximately \$8 million for the Water Resources Development Act (WRDA) improvements to the City's levee system.

Doug Whitacre stated staff would coordinate with the U.S. Army Corps of Engineers to ensure the levee improvements made would tie into the Corps requirements, and the funds would correspond to the City's match for funding so that everyone works together to make one repair to any certain area.

Councilmember Everhart stated she understands the project needs to move forward because it is critical to the community. She questioned if using all three utility funds would be wise because she believes it may cause an increase to water utility customers.

Councilmember Schwartz spoke in support of the project because she supports the entire City and its residents.

Councilmember Hiller stated she is looking forward to the report on utilities and supports using cash to pay for projects when possible. She expressed concern with the expense and reason why this project needs to be done because she believes the City has already done the improvements.

Doug Whitacre stated the U.S. Army Corps of Engineers inspected the levee system and noted deficiencies; therefore, improvements must be made to the City's levee system which is over 40 miles in order to keep the levees certified to hold a 100 year flood.

Mayor Wolgast asked if Soldier Creek was included in the project.

Doug Whitacre stated the Topeka Levee System consists of six levee units located on the Kansas River and two tributaries; Soldier Creek and Shunga Creek.

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

RESOLUTION NO. 8593 introduced by City Manager Jim Colson, setting forth the City of Topeka's intention to acquire one (1) rescue truck apparatus, pursuant to K.S.A. 12-110c was presented.

Greg Bailey, Topeka Fire Department Chief, reported approval would authorize the purchase of a new fire rescue truck apparatus which would replace Truck Company No. 11 purchased in 2000 which has over 57,000 miles and is in need of replacement as repairs have exceeded \$135,816 and light towers on the truck have not worked for over a year because of the cost to replace them.

Councilmember Schwartz expressed concern with the use of larger trucks for emergency calls, driving through road repairs and detours and asked if smaller trucks have been considered.

Greg Bailey stated size specifications of larger trucks are certainly considered and the Topeka Fire Department is informed of every detour and alternative route, as well as,

communicating with local townships for a timely response. He noted smaller vehicles are currently being considered; however, their options are not as simple.

Mayor Wolgast asked Chief Bailey to describe a fire truck apparatus.

Greg Bailey stated the truck company and rescue apparatus has salvage and overhaul equipment, as well as, light and air capabilities. He reported the truck carries air compressors used to refill air-pacs when firefighters are on scene, as well as, high-powered lights which are used to help light a scene.

Councilmember Ortiz moved to approve the resolution. The motion was seconded by Councilmember Campos II.

Councilmember Hiller thanked Chief Bailey for his presentation and City staff for reducing the bond financing period to ten years.

Councilmember Campos II asked how much wear and tear occurs on fire trucks that continually travel over railroad tracks.

Greg Bailey stated he would discuss the information with Fleet Services and report the information to Councilmember Campos II.

Councilmember Harmon stated efficient services are important; however, the fire truck apparatus is very expensive and wonders if there is a less expensive alternative. He expressed concern when he sees larger fire vehicles parked at local grocery stores and has had numerous constituents express their concern as well.

Greg Bailey stated he is fully aware of public perceptions and encourages firefighters to plan their day ahead of time and coordinate stops on the way back to the fire station after an emergency call. He assured the Governing Body that he takes full responsibility that resources are not misused.

Councilmember Manspeaker stated he believes it is important that firefighters have contact with the community; however, he noted fire department vehicle lifespans should be reviewed to see if they could be extended.

Councilmember Ortiz stated it is important to educate the public and help them understand what is needed to provide public services to a community. She noted the Fire Department takes good care of their vehicles and spoke in support of the resolution.

The motion to approve the resolution carried. Councilmembers Manspeaker and Schwartz voted “no.” (7-2-0)

No retail cereal malt beverage or scrap metal dealers license applications were presented.

RESOLUTION NO. 8594 introduced by Councilmember Karen Hiller, approving a special event known as the St. Patrick’s Day Parade Street Party was presented.

Councilmember Hiller reported approval would allow the sale, consumption and possession of alcoholic liquor in the barricaded portion of SW 8<sup>th</sup> Avenue between S. Kansas Avenue and Jackson Street for the St. Patrick’s Day Parade Street Party on March 15 and 16, 2014.

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Campos II carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

ORDINANCE NO. 19889 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 at 1402 NW Lower Silver Lake Road from “C-2” Commercial District TO “R-1” Single-Family Dwelling District placed on first reading February 11, 2014, was again presented. (Z14/2)

Bill Fiander, Planning Department Director, reported approval would allow conversion of a 1,050 square foot single-story office building constructed in 1940 into a single-family residence

on property located at 1402 NW Lower Silver Lake Road. He stated the Topeka Planning Commission and Planning Department recommended approval of the zoning change.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Campos II carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt, Harmon and Mayor Wolgast -10.

ORDINANCE NO. 19890 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 approximately two miles east of SW Topeka Boulevard and ¼ mile north of SE 77<sup>th</sup> Street, along the east side of SE California Avenue from “I-1” Light Industrial District TO “RR-1” Residential Reserve District placed on first reading February 11, 2014, was again presented. (Z13/9)

Bill Fiander, Planning Department Director, reported approval would allow for the extraction, processing and storage of top soil and a demolition landfill in conjunction with the conditional use permit (CU13/6), the companion document to this zoning request. He stated the property is a 67-acre site located approximately two miles east of SW Topeka Boulevard and ¼ mile north of SE 77<sup>th</sup> Street, along the east side of SE California Avenue, and adjacent to the southern edge of Topeka Regional Airport.

Councilmember Hiller moved to adopt the ordinance. The motion was seconded by Councilmember Campos II.

Councilmember Campos II asked how long it would take to fill the landfill hole. He expressed concern that this area would be the first thing visitors see flying in to Topeka Regional Airport and spoke in opposition of the zoning change.

Bill Fiander stated it could take approximately 10 to 20 years to fill in the hole, depending on how much business is generated.

The motion to adopt the ordinance carried. Councilmembers Campos II and Everhart voted “no.” Mayor Wolgast voted “yes.” (8-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, De La Isla, Manspeaker, Schwartz, Schmidt, Harmon and Mayor Wolgast -8. Noes: Campos II and Everhart -2.

RESOLUTION NO. 8595 introduced by City Manager Jim Colson, in accordance with Section 18.65.030(c) of the Topeka Municipal Code, approving a Conditional Use Permit to allow for a demolition landfill and the extraction, processing, storage, and sale of top soil on property zoned “RR-1” Residential Reserve District and located approximately two miles east of SW Topeka Boulevard/Old U.S. 75 Highway and ¼ mile north of SE 77<sup>th</sup> Street, along the east side of SE California Avenue in the City of Topeka, Kansas was presented. (CU13/6)

Bill Fiander, Planning Department Director, reported approval would permit the property located two miles east of SW Topeka Boulevard and ¼ mile north of SE 77<sup>th</sup> Street along the east side of SE California Avenue for soil extraction and storage operation only allowed either in Heavy Industrial or by a Conditional Use Permit in Residential Reserve District zoning.

Councilmember Hiller stated the property has very restricted uses because it is within an air hazard zone from its proximity to Topeka Regional Airport.

Bill Fiander confirmed the property owner does not have many zoning options because the property is located in an air hazard zone. He reported storm water runoff would be handled and treated prior to leaving the site as required by the City and indicated in the Storm water Management Report through Best Management Practices. He noted the property has a special type of soil that is in high demand for construction sites. He stated Planning Department staff

recommends approval of the proposal in conjunction with the rezoning request (Z13/9), subject to:

1. Use and development of the site in accordance with the Conditional Use Permit site plan and operational statement for Schmidlein Excavating, LLC.
2. Approval of the Storm water Management Report by the City of Topeka Department of Public Works prior to the Conditional Use Permit proceeding to City Council for approval.
3. Adding to the end of first sentence under “Operating Practices”, “...as approved by the City of Topeka Department of Public Works in the Storm water Management Report.”
4. Add the following Flood Plain Note: “According to “FIRM” Map Community Panel Number (insert appropriate number) effective (insert appropriate date) this tract is in flood zone (insert appropriate zone i.e., “C”), area of (insert appropriate degree of flooding i.e., minimal etc.)”
5. Depict Type II stream buffer that is 50 feet on both sides of the creek’s centerline and add Type II stream buffer notes accordingly regarding allowed uses within the buffer.

Councilmember Hiller asked if there are screening requirements for the property.

Bill Fiander stated there is a five foot berm on the perimeters of the property.

Councilmember Campos II asked if the City has any safeguards in place for the material filling the hole so it will not sink and contaminate underground streams.

Bill Fiander stated there are conditions on the site plan that certain materials cannot be used to fill it, as well as, regulations and inspections from the Kansas Department of Health and Environment.

Councilmember Schwartz moved to approve the resolution. The motion seconded by Councilmember Schmidt carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

AN ORDINANCE introduced by Councilmember Karen Hiller concerning riding bicycles on sidewalks, amending City of Topeka Code Section 10.35.010 and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, concerning municipal court procedures for expungement and finger printing, amending City of Topeka Code Sections

2.110.660, 2.110.670 and 2.110.680 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, congratulated Brendan Wiley, Topeka Zoo Director, for being named one of the 25 Most Influential Kansans by the social networking website MyLife.com. He stated Mr. Wiley has done a great job with the Topeka Zoo and thanked him for his service for the community.

Councilmember Manspeaker expressed concern with recent State legislature decisions and stated he believes it reflects badly on Topeka. He reported in the next few months, he plans to present resolutions to the Council addressing same sex benefits, gender identity and establishing domestic registry; sending a clear message to State legislators that Topeka is not a City that supports hate or discrimination.

Councilmember Schwartz announced City Hall Day at the Capitol is scheduled for February 19, 2014, and encouraged the Governing Body to attend. She expressed concern that the State and City do not have a good working partnership and is hopeful to talk with legislators about many issues. She thanked Bill Fiander, Planning Department Director, and City staff for attending a meeting about historic tourism and answering questions. She thanked City staff for attending a meeting regarding the widening of SW 37<sup>th</sup> Street and providing information to the public and answering questions.

Councilmember Hiller welcomed the Kansas Association of Contractors to Topeka and stated they have an office located at 800 SW Jackson, Suite 100.

Councilmember Campos II thanked Councilmember Manspeaker for his comments on behalf of the Lesbian, Gay, Bisexual and Transgender community. He invited the public to

attend and provide input at the Citizen Government Review Committee public hearings on February 20, 2014, at the Topeka-Shawnee County Public Library at 1:00 p.m. and 7:00 p.m.

Councilmember Ortiz commended Brendan Wiley, Topeka Zoo Director, for being named one of the 25 Most Influential Kansans by the social networking website MyLife.com.

Councilmember Ortiz moved to recess into executive session to discuss non-elected personnel matters and to include the Deputy City Attorney, City Manager and Governing Body for a time period not to exceed 20 minutes. The motion seconded by Councilmember Campos II carried unanimously. (9-0-0)

At 7:55 p.m., Deputy Mayor Ortiz adjourned the executive session and stated no action had been taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:55 p.m.

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Brenda Younger  
City Clerk