

## Council Minutes – April 1, 2014

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 1, 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, Councilmember Manspeaker asked for a moment of silent meditation.

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

A PRESENTATION of the 2014 Legislative Update was given by Whitney Damron, City Lobbyist.

Whitney Damron distributed a handout and reported the Kansas Legislature is in the last week of the Regular Session with First Adjournment scheduled for April 4, 2014. He stated the Senate and House have been focused on trying to pass an education bill to comply with the Kansas Supreme Court decision in the *Gannon v. State* school finance case which declared the State's formula unconstitutional on equity and ordered the State to properly fund Capital Outlay and Local Option Budget of \$129 million. He highlighted the major interests to the City of Topeka such as Machinery and Equipment (House Bill 2463); Mortgage Registration Fee (Senate Bill 298); Cities; qualifications for rehabilitation of abandoned properties (House Bill 2075); Authorizing Department of Administration to sell Landon and Eisenhower State Office Buildings (Senate Bill 423); Municipal Elections (House Bill 2141); Franchise Fees (Senate Bill 428); Annexation (Senate Bill 418, House Bill 2736); Firearms (House Bill 2473); Eligible Infrastructure costs for TIF and CID; bond repayment tax revenue pledge requirements (House Bill 2086) and Consolidation (House Bill 2185).

Mayor Wolgast inquired about House Bill 2473, concerning firearms.

Whitney Damron stated the bill would be debated in the next session and he would send a memorandum to the Governing Body explaining the amendment.

Councilmember Schmidt inquired about Senate Bill 304, concerning municipal communications network and private telecommunications investment safeguards act and asked if there were any proposed revisions.

Whitney Damron stated Senate Bill 304 has received national media coverage and a massive outpouring of objection because of the lack of profitability.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8603 introduced by City Manager Jim Colson, concerning the City of Topeka's participation in the State of Kansas Municipal Investment Pool and rescinding City of Topeka Resolution No. 8566 was presented.

RESOLUTION NO. 8604 introduced by City Manager Jim Colson, naming banks and savings institutions that are designated as depositories for all City of Topeka accounts and authorizing signatories and rescinding City of Topeka Resolution No. 8565 was presented.

RESOLUTION NO. 8605 introduced by Councilmember Karen Hiller, granting Cumulus Broadcasting an exception to the provisions of City of Topeka Code Section 9.45.170 concerning noise prohibitions was presented.

BOARD APPOINTMENT recommending the reappointment of Scott Tummons to the Topeka Metropolitan Transit Authority for a term ending April 30, 2018 was presented.

MINUTES of the regular meeting of March 18, 2014, were presented.

Open After Midnight License applications were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
6 <sup>th</sup> Street Back Door	610 SW Wayne Street
Abigail's	3701 SW Plaza Drive
American Legion Capitol Post 1	3800 SE Michigan Street
American Legion Capitol Post 400	3029 NW U.S. Highway 24
Blue Moose	3030 SW Wanamaker Road
Breakers Sports Bar & Grill	5215-5235 SW 28 <sup>th</sup> Court
The Dugout	1545 SW Fairlawn Road
Henry T's Bar & Grill	1521 SW 21 <sup>st</sup> Street
Jeremiah Bullfrogs	2940 SW Wanamaker Road
Jeremiah Bullfrogs II	4115 SW Huntoon Street
McDonald's	1201 SW Gage Boulevard
McDonald's	1640 SW Wanamaker Road
McDonald's	2933 SW Wanamaker Road
McDonald's	5525 SW 21 <sup>st</sup> Street
Quinton's Bar & Deli	4121 SW Huntoon Street
Rumba Club	1020 SW Western Avenue
Topeka Country Club	2700 SW Buchanan Street
Walmart #1802	1501 SW Wanamaker Road
Walmart #2131	1301 SW 37 <sup>th</sup> Street
Walmart #5441	2600 NW Rochester Road

Councilmember Schmidt moved to approve the consent agenda. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

RESOLUTION NO. 8606 introduced by Deputy mayor Sylvia E. Ortiz, cancelling the Council meetings for August 5, 2014; September 2, 2014; November 4, 2014; and November 11, 2014; and establishing a Council meeting for November 25, 2014, was presented.

Councilmember Ortiz reported approval would provide notice that Council meetings would not be held in observance of certain holidays, primary election day and general election day, while complying with the code requirement that no fewer than two (2) Council meetings be held in a month.

Councilmember Hiller expressed concern with the natural flow of Tuesdays within a month and noted there could be a three and four week gap between Council meetings. She questioned if the schedule would have an effect on the budget process and how it could impact discussions.

Jim Colson, City Manager, stated they intent to bring the budget forward prior to the end of July to provide time for scheduled vacations; however, the Council always has the right to schedule more Council meetings if needed.

Mayor Wolgast stated the Governing Body could schedule a Council meeting at any time if there is an issue that needs to be addressed.

Councilmember Ortiz stated the Council meeting schedule was carefully considered and she is confident issues can be resolved within the schedule as presented.

Councilmember Ortiz moved to approve the resolution. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

RESOLUTION NO. 8607 introduced by Councilmember(s) Harmon, Schmidt, Schwartz, Manspeaker, De La Isla, Everhart and Hiller establishing the position of the Topeka City Council with respect to certain actions taken by Councilman John Campos II on March 8, 2014, pertaining to 746 NE Arter Avenue, in Topeka, Kansas, was presented.

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

Councilmember Campos II reported that City Councilmembers and the Mayor were not aware of the actions he took and they were not privy to the information that he was going to clean the property. He stated he appreciates the comments of his colleagues in regards to the resolution. He made the following statement:

"Various City departments were aware of the condition of the property and he acted as Councilmember of Council District No. 2 to clean the yard. He organized his community to take decisive action, as a Councilmember he went to the door, introduced himself, and asked if they would be willing to help him clean the property. He stated what they ultimately did was beautify

the neighborhood by rallying together saving taxpayers over \$1000 in abatement costs and he is proud of that. He stated there is a rich history in Council District No. 2 and Neighborhood Improvement Associations (NIA) have taken decisive action of going into various properties in various types of conditions, commercial and residential, some with permission and some with not, to keep the community clean in both Oakland and North Topeka. He stated the one thing that bothered him was that for nearly two months the property fell to the side, was not reviewed, was not adequately checked by Code Compliance officers and he wonders if the competency of Code Compliance officers is adequate. He stated the property is located near Sardou which is one of main streets in the community and connects to Billard Airport. He is baffled that Code Compliance officers did not view the entire property and only took pictures of the front of the property. He stated he believes that when they left the property they abandoned the entire issue all together. He noted when he was first elected to the Council he continually heard sound bites from the City Manager stating, “they want to go above and beyond” and although he does not fault the City Manager directly, he believes the matter fell short under the City Manager’s administration and management. He reported he has a meeting with the City Manager to address these issues and others throughout Council District No. 2, as well as, the city as a whole. He stated he looks forward to the discussion and working closely with the City Manager to address code issues and keep the Topeka community pretty and a great place to live.”

Councilmember Manspeaker stated there are certain rights people are entitled to in a democracy and one of those key rights is due process whether they as Councilmember like what a person has done to their property or not. He stated the reality of the situation is that Councilmember Campos II may believe he saved taxpayers \$1000 in abatement costs; however, the cost of wasted effort by City staff pales in comparison. He stated the reality of the situation

is that it was a bad deal and the reason the Council will not stand behind Councilmember Campos II is because he alone was wrong. He reported the situation was not caused by Code Compliance officers not doing their job, they are required to work the process the way the law forces them to and they must follow certain channels. He stated he has properties in Council District No. 6 that he would love to see cleaned up; however, as a member of the Governing Body he must respect the law and each person serving on the Governing Body should do the same or they should not be serving as an elected official.

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

DISCUSSION only relating to the Topeka City Council Rules and Procedures was presented.

Chad Sublet, City Attorney, stated there are many proposed changes which would amend charter ordinances and ordinary ordinances and reported the Topeka City Council Rules and Procedures were last revised in 2005. He referenced the redlined version of the Topeka City Council Rules and Procedures and stated he would review each section.

*Section 1 Authority – Lines 101 to 106*

The Governing Body had no questions.

*Section 2 General Rules – Lines 108-233*

Councilmember Ortiz asked about Section 2.5(b) and how it pertains to the City Manager and his current employment agreement.

Chad Sublet stated the revised language reflects the language outlined in the City Manager’s current employment agreement.

Councilmember Schwartz expressed concern with Section 2.1 *Meetings to be Public*, Line 115 to 120, addressing the use of electronic telecommunication devices by persons attending a Council meeting. She stated she believes this is a good question to debate and suggested only requiring people to mute electronic devices when entering Council meetings.

Mayor Wolgast stated “Council Meetings” could be added to the sign outside the Municipal Court room addressing the use of electronic devices while in session.

Councilmember Hiller distributed her suggested amendments to the Topeka City Council Rules and Procedures. She stated she proposes clarifying the language in Section 2.1 to apply to all persons in the room to shut off audio and electronic devices, not just the audience, to reflect current practices.

*Section 3 Types of Meetings – Lines 235-279; 242-252*

Councilmember Ortiz asked why the City Manager would need to call a Special Meeting.

Jim Colson, City Manager, stated there could be an economic development project issue or action that may need attention during a long break between Council meetings which could be considered for a Special Meeting.

Councilmember Campos II asked what the definition of an emergency meeting would be.

Jim Colson stated a natural disaster would be a good example of a reason to conduct an emergency meeting.

Councilmember Hiller stated she is unsure why a City Manager needs the ability to call a Special Meeting. She also stated all open meetings require 24 hour notice.

Councilmember Campos II suggested language be included that would allow for a less than 24 hour notice in case of emergencies.

Councilmember Schmidt stated he concurs with Councilmember Campos II and knows the intent of a 24 hour notice is good; however, there must be a demonstrated attempt to contact all Councilmembers which could take up to 24 hours with the exception of extreme cases.

Councilmember De La Isla stated she understands the concerns expressed; however, timelines and procedures put a strain on staff to have to follow specific protocol during extreme emergencies. She stated that she believes they can count on the professionalism of staff and noted they may not be able to respond immediately during those emergency conditions.

Councilmember Schwartz stated she concurs with Councilmember Schmidt and believes language should be included to address special sessions and what they are based on.

Jim Colson stated he agrees with the concerns expressed and believes a simple solution would be to include language that would address the 24 hour notice requirement along with emergency meetings.

Chad Sublet noted Section 8.8 of the Council Rules and Procedures includes language to provide at least 24 hour notice in advance of any committee meeting.

Councilmember Hiller questioned if a work session would be considered a Committee of the Whole meeting or a Special Meeting. She addressed Section 3.2 "Special Meetings" and suggested only elected officials call a meeting; however, the City Manager can arrange for a meeting. She noted 24 hour notice is critical for notice to the full Council and Mayor, as well as, for public notice requirements; however, in extreme circumstances, parties can do whatever they need to gather the Council and a majority can suspend the Council Rules if necessary to attend to emergency business.

Chad Sublet stated the new format allows discussion of agenda items during the context of a regular Council meeting which would give the Governing Body the ability to call a fourth

meeting if necessary. He noted Lines 267-273 address executive sessions which are governed under State statute.

*Section 4 Chair and Duties – Lines 283-287*

Councilmember Hiller stated Sections 4.3 and 9.2 are redundant and should be combined to apply to everyone in the room.

Chad Sublet stated the sections were developed over time and could be combined if the Council chooses to do so.

*Section 5 Agendas – Lines 345-463*

Councilmember Hiller stated she believes there is a conflict between Sections 5.1 and 5.2. She proposed an amendment to continue to allow the City Manager to remove items that are new to a council agenda, as well as, items that the City Manager is in full control of; however, it would clarify if an item that has a date certain to return to a council agenda or that is sent over by a committee can be rerouted or deferred only by the Council. She suggested an amendment to Section 5.4 to allow testimony and declare ex parte communication at the Council level because she believes it is a successful method for reviewing the recommendations of the Planning Commission and deciding on an issue.

Mayor Wolgast questioned if the City Attorney should address this section.

Councilmember Schwartz asked what the intent of the language was because it is very helpful to hear from property owners at times to assist the Council in making a decision.

Chad Sublet stated the Council sits as a quasi-judicial body; therefore, ex parte communication has to be directed to the Legal Department through the proper channels. He noted hearings by the Governing Body would require providing notice to opposing parties which

would have an effect on how Council meetings are conducted; however, he understands the Council would prefer to hear both sides of an issue.

Councilmember Hiller stated she believes it would be clearer to add the language and let it be declared.

Chad Sublet stated the section is based on State law and Supreme Court rulings.

Councilmember Everhart stated she believes the language is clear that no hearings on zoning matters are to be conducted at Council meetings; however, it would not prohibit people trying to correspond with the Governing Body; therefore, the Governing Body should be careful and follow the necessary legal steps.

Councilmember Hiller suggested deleting the words “and violations of laws and ordinances are excluded from the agenda” from Section 5.5a because most public comment is about ordinance violations.

Chad Sublet noted the issue was addressed through a slight change in the order of the language (where the term “ordinances” was placed within the section).

*Section 6 Rules of Order – Lines 539-696*

Mayor Wolgast stated he struggles with this section and it would be helpful if the Governing Body is collectively informed on the procedures and motions.

Councilmember Schwartz questioned the use of friendly amendments.

Chad Sublet stated amendments would be considered the same as friendly amendments.

Councilmember Hiller suggested deleting Line 669-672 which states, “Discussion and debate of the original motion may be continued between members of the city council and city manager, until the Mayor or any other councilmember calls for the question” because it would clarify confusion as to whether a call for the question is needed before every vote. She noted it

also applies to any motion, not just original motions, and prohibits further redundant conversation before the vote but does allow any previously unspoken points to be made.

Chad Sublet stated Section 6.2(j) clearly defines “calling the question” which ends all debate and discussion; however, the call of the question shall not be implemented until all members of the Council have had an opportunity to speak to the original motion.

Councilmember Schmidt asked if debating an amendment or substitute motion would apply to the “original motion” and questioned if changing “original” to “current” would clarify the issue.

Chad Sublet stated this could be clarified through revised language.

Councilmember Schwartz questioned the deletion of Line 695 “Recesses.”

Mary Feighny, Deputy City Attorney, stated Roberts Rules of Order gives the Mayor implied powers to call “recess” of meetings.

*Section 7 Ordinances and Resolutions – Lines 700-795*

Councilmember Schmidt stated he prefers to keep Section 7 (6.2) starting on Line 705, “Funding: All ordinances authorizing an expenditure of money shall include the exact source of the funds to be expended.”

Councilmember Hiller stated she concurs with Councilmember Schmidt and prefers staff identify the fiscal impact or note on any agenda item. She commented on Lines 710-712 and believes the statement “No ordinances or resolution or other documents shall be prepared by the city attorney or designee upon request unless requested by the city manager, the mayor or any councilmember” should be kept in because she believes it is critical that the mayor and councilmembers have full access to Legal for drafting of proposed ordinances and resolutions, as well as, proposed amendments. She also suggested Section 7.1(b) Lines 714-717 remain, “The

council shall not consider any ordinance, resolution or other item sponsored by a councilmember(s), the mayor or the city manager unless it has first been distributed to the council at least five (5) days prior to a 6:00 PM council meeting” because the five (5) day rule is critical for informed decisions and transparency of local government.

Councilmember Schwartz stated she concurs with Councilmember Hiller and believes this language is necessary to have a transparent government.

Councilmember Everhart questioned where emergency documents would be addressed. She expressed concern the fiscal note requirement on all agenda items may prevent an item from being brought forward and wants to make sure there are no restrictions.

Councilmember Hiller stated she concurs with Councilmember Everhart and does not want any delays in getting last minute additions to the Council agenda for issues such as noise exceptions; however, any agenda item of a larger scope should not be voted on until there has been time to review and consider the item. She suggested an exception for items with no administrative and fiscal impact under \$5,000 be allowed to pass the same day presented.

*Section 8 Committees – Lines 798-1012*

Councilmember Schmidt asked if Section 8.7 Line 951 “Alternate Members of Committees” would allow for a proxy or alternate councilmember to be appointed if a governing body member cannot attend a meeting.

Councilmember Schwartz commented on Section 8.2(c) Line 821 “Standing Committees” and suggested serving a two-year term on assigned committees.

Councilmember Schmidt questioned comprising each standing committee with five (5) members instead of three (3) to allow members to communicate or discuss without violating KOMA regulations.

Councilmember Ortiz stated she prefers the standing committees include three (3) members because it would be difficult to require five (5) members to attend a committee meeting when some councilmembers work full-time. She also stated she enjoys being able to switch committees because it provides an opportunity to serve in other areas.

Councilmember Schmidt stated if there are five (5) members in a standing committee, three (3) would still be considered a quorum which could provide a better avenue for discussion and participation and allow the ability to discuss matters with other committee members.

Councilmember Hiller suggested amending Section 8.2(d) Lines 834-835 to state, “The mayor shall serve as a non-voting, advisory member of all committees comprised of all members of the council” which would reflect current practice. She also suggested amending Section 8.10 Lines 991-995 to state, “Minutes shall be reviewed and approved by the committee before the presentation to the council. Such approval may be electronic or verbal.” She stated this change would allow the committee to review and approve minutes without a meeting.

Councilmember Schwartz questioned how many cities televise committee meetings and costs associated with the practice.

Councilmember Campos II stated he concurs with Councilmember Schwartz and expressed concern with the budgetary impacts of televising committee meetings.

Mayor Wolgast stated there are also logistics to consider.

Suzie Gilbert, City Communications and Marketing Director, stated staff as the ability to record any meeting and play it back at any time which is considerably less tedious.

Councilmember Ortiz spoke in support of pre-recording committee meetings and televising them at a later date because many of her constituents watch the meetings.

*Section 9 Citizen Input – Lines 1015-1042*

Chad Sublet stated Section 8.3 Lines 1038-1042 “Written Communication” is not needed anymore.

Councilmember Hiller made the following suggestions:

- Amend Section 9.1 Line 101 by inserting the statement, “Standard practice shall be that questions and discussion are not allowed. Any questions asked by the person addressing the council or by councilmembers or any discussion shall be allowed at the sole discretion of the meeting chair and shall be handled through the meeting chair” to reflect current practice.
- Strike Section 9.2 in its entirety because Sections 4.3 and 9.2 are redundant and can be combined to one section.
- Amend Section 9.3 Line 1038 by inserting the words “or by electronic mail” after “direct mail” and striking the statement “or by addressing the city clerk and copies will be distributed to the councilmembers.” She noted she believes this section is important to keep in the Council Rules because it is an invitation to the public to communicate with the Governing Body.
- Add Section 9.4 “Verbal Communication: Interested parties or their authorized representatives may address the council by verbal communication in regard to any matter concerning the city’s business or over which the council has control at any time. Messages left with council staff or the city clerk with requests for forwarding will be forwarded to requested councilmembers or all councilmembers, the mayor and the city manager.” She noted this would cover current practice regarding verbal communication.

Councilmember Campos II referenced recent considerations by the Citizen Government Review Committee in regards to the Mayor playing a larger role in formulating the budget and chairing Budget Committee meetings.

Councilmember Ortiz spoke in support of the Deputy Mayor continuing to chair the Budget Committee meetings.

Mayor Wolgast asked what is needed to move forward with the amendments to the Topeka City Council Rules and Procedures. He encouraged the Governing Body to wait until they received the Citizen Government Review Committee’s recommendations and consider them at that time.

Chad Sublet stated staff would prepare the amended language and present the revised Topeka City Council Rules and Procedures for first consideration at the Council meeting of April 8, 2014, and as an action item on April 15, 2014.

NO Retail Cereal Malt Beverage License applications were presented.

AN ORDINANCE 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 along the west side of SW Indian Hills Road approximately 1,300 feet south of SW 21<sup>st</sup> Street from “PUD” Planned Unit Development District (“M-1” use group) TO “R-1” Single-Family Dwelling District was presented for first reading. (Z14/1)

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

Councilmember Hiller stated she is pleased with the new format for the December 2013 and January 2014 financial reports and yearend balance sheets and looks forward to discussing it further on a future Council agenda. She reported she attended the MARS, Inc., Grand Opening celebration on March 27, 2014, and noted MARS is a first class organization. She announced Stormont Vail Healthcare has partnered with the Mayo Clinic and she is very proud of the development as Stormont Vail is the only medical facility in Kansas that has accomplished this designation. She commented on a City news release regarding Jingga, the Topeka Zoo’s 3-year-old Sumatran Tigress pregnancy and stated she is very excited about the news.

Jim Colson, City Manager, stated the new format for yearend balances would be presented to the Council for discussion at the April 15, 2014, Work Session.

Councilmember Campos II welcomed MARS, Inc., to Topeka. He encouraged the community to attend the First Friday Art Walk on April 4, 2014. He stated the City's Housing and Neighborhood Development Division (HND) has begun the SORT Target Area application process. He encouraged all property owners within the Oakland and North Topeka neighborhoods to obtain an application packet from HND and apply for individual SORT Target Area funds.

Councilmember Ortiz welcomed MARS, Inc., to Topeka and stated the grand opening celebration received national recognition. She thanked MARS, Inc., for choosing Topeka and reported many citizens have thanked her for her role in approving the development. She stated MARS, Inc., is a first class organization and Topeka is very lucky to have them.

Councilmember De La Isla thanked the Likins-Foster Neighborhood Improvement Association for a great meeting and encouraged residents to participate in future NIA meetings. She stated residents could contact William "Shay" Foley at 266-8556 or 969-5324 for more information. She commended the Silverbackks, a volunteer group who assists the homeless and less fortunate for their efforts in the community.

Jerry Morgan appeared to speak under public comment.

Councilmember Ortiz moved to recess into executive session for a time period not to exceed 30 minutes to discuss potential litigation and to include the City Manager, City Attorney, Governing Body, Phil Wolfe, City Bond Counsel and Jeff White, City Financial Advisor. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

At 8:55 p.m., Mayor Wolgast announced the executive session was adjourned with no action taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:00 p.m.

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Brenda Younger  
City Clerk