

Council Minutes – April 12, 2016

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 12, 2016. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Ortiz, Clear, Schumm, De La Isla, Jensen, Schwartz and Coen - 8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember Harmon -1.

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

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

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of April 5, 2016, was presented.

APPROVAL of Open After Midnight License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Abigail's	3701 SW Plaza Drive
American Legion Post 1	3800 SE Michigan Avenue
American Legion Post 400	3029 NW US 24 Highway
Blue Moose	3030 SW Wanamaker Road
Bob's Car Wash	2733 SE California Avenue
Bob's Car Wash	3158 SE 6 th Avenue
Brass Rail Tavern	401 NE Emmett Street
Burger Stand at College Hill	1601 SW Lane Street
California BP	2740 SE California Avenue
Denny's #7268	1500 SW Wanamaker Road
Denny's #7269	3210 SW Topeka Boulevard
Flamingo Bar & Grill	2335 NW Clay Street
Fraternal Order of Eagles #4319	2941 SE Fremont Street
Goose Again	5630 SW 29 th Street
Haag's Express	1001 SW Wanamaker Road
Henry T's	1521 SW 21 st Street
Holiday Square Phillips	2901 SW Topeka Boulevard
Kicks 66	3300 SW Gage Boulevard
Last Pocket	5009 SW 29 th Street
Lazy Toad	5331 SW 22 nd Place, #2
Quinton's Bar & Deli	4121 SW Huntoon Street
Serendipity	820 N. Kansas Avenue
Specks Bar & Grill	2105 SW Mission
Tailgators	2025 SW Urish Road #108
The Barn Grill	2121 SW Belle Avenue

<u>Business Name</u>	<u>Address</u>
The Dugout	1545 SW Fairlawn Road
The 20s	2910 SW Oakley Avenue, Ste D
Topeka Performing Arts Center	214 SE 8 th Avenue
Uncle Bo's	420 SE 6 th Avenue
Wild Horse Saloon	3249 SW Topeka Boulevard

Councilmember De La Isla moved to approve the consent agenda. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

ORDINANCE NO. 19991 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of January 30, 2016, through February 26, 2016, and enumerating said expenditures therein was presented.

Jim Colson, City Manager, reported approval would authorize City expenditures in the amount of \$21,911,469.55.

Councilmember De La Isla moved to adopt the ordinance. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

The ordinance was adopted on roll call vote as follows: Hiller, Clear, Ortiz, Schumm, De La Isla, Jensen, Schwartz, Coen and Mayor Wolgast -9. Absent: Harmon -1.

APPROVAL of a two-year labor agreement between the City of Topeka and the Water Division of AFSCME Council 72, Local 1294, was presented. (*Contract No. 45069*)

Jacque Russell, Human Resources Director reported approval would provide for a two year labor agreement for the City’s Water Division as well as provide guidelines for management and employees in the bargaining unit.

Clint Patty, Chief Negotiator, spoke in support of the agreement and encouraged the Governing Body to approve the labor contract.

Councilmember Schumm moved to approve the labor agreement. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

ORDINANCE NO. 19992 introduced by City Manager Jim Colson, concerning employment contracts and severance payments, amending City of Topeka Code Section 2.25.090 and repealing the original section was presented. (*Deferred from the meeting of April 5, 2016*)

Lisa Robertson, City Attorney, reported approval would continue to require governing body approval for employment agreements with department heads and severance agreements with employees; however, it would clarify that such approval is not required for short term contracts with employees from other governmental entities. She distributed a handout outlining four proposed language amendments to the ordinance and provided a brief overview for each proposal.

Councilmember Clear requested to add the words “or city” to Option 4 proposal after “employed by another governmental entity”. She also asked if the word “employment” would cover the term “consultant.”

Lisa Robertson stated the term “consultant” would be covered in a separate section of the code under the City’s Procurement Policy.

Councilmember Jensen expressed concern with the Governing Body interfering with the City’s Human Resources policies or hiring process; however, he is in favor of remaining informed of large decisions.

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

Councilmember Clear moved to amend the ordinance as proposed in Option 4 to state, “2.25.090 ~~Approval of employment and severance~~ Agreements: Department heads, short-term assistance from employees of other governmental entities; severance. (a) ~~All employment contracts with department heads or appointive officers or employees shall be approved by the~~

~~city council prior to signature by the city manager.~~ Approval by the governing body shall ~~not~~ be required prior to the city manager signing any for employment contracts with any individual of 90 days or less duration or with employees not designated as a department heads, including any individual employed by another governmental entity or city to provide assistance on a short-term basis. Such contracts shall not be subject to the procurement ordinances, TMC Chapter 3.30. (b) No severance or other payments beyond those ~~earned or otherwise~~ authorized by state or federal law, city ordinance or contract shall be made to a current or former ~~appointive city officer, department head or employee~~ without prior ~~city council~~ authorization by the governing body.”

The motion was seconded by Councilmember Schwartz.

Councilmember Jensen spoke in opposition to the amendment because he believes it is not a duty of the Governing Body and there are procedures in place for the employment of department heads.

Councilmember Hiller spoke in opposition of the amendment because she believes the situation should be analyzed to determine what went wrong. She stated communication has broken down between the City Manager and Governing Body members and if standard hiring procedures are skipped there should be measures put in place so that the Governing Body is notified. She distributed a proposed amendment (Option 5) that states, “2.25.090 Approval of employment and severance agreements. (a) ~~All employment contracts with department heads or appointive officers or employees shall be approved by the city council prior to signature by the city manager.~~ Approval by the governing body shall ~~not~~ be required prior to the city manager signing any for employment contracts that does not follow the department of human resources’ process for recruitment and selection. (b) No severance or other payments beyond those ~~earned or otherwise~~ authorized by state or federal law, city ordinance or contract shall be made to a

current or former appointive city officer, department head or employee without prior city council authorization by the governing body.”

Councilmember Schwartz distributed handouts relating to communication issues between the City Manager and Governing Body and would like to see it improve.

Councilmember Schumm stated the Governing Body needs to separate the issue by determining how to proceed towards improving communication between the City Manager and Governing Body or require approval of employment contracts for department heads.

Councilmember De La Isla stated she concurs with Councilmembers Jensen and Hiller in that the Governing Body’s role is to establish policy and the hiring of employees is the duty of the City Manager. She commented on communication being important; however, it is not to be governed as a policy.

Councilmember Clear stated she believes the situation did not follow the normal hiring process; therefore, she believes there is a need to revise the ordinance.

Councilmember Ortiz stated she agrees there should be something in place so that the issue does not happen again and spoke in support of Option 4.

Councilmember Harmon entered the room.

Councilmember Schumm spoke in opposition of the amendment because he believes the amendment is requiring approval by the Governing Body before the City Manager hires a department head.

Councilmember Hiller stated City Code already includes language that requires Council approval of employment contracts for department heads.

Councilmember Clear commented on the need for improved communication and approval of employment contracts for department heads.

Councilmember Schumm questioned the term “short-term” and noted he believes the ordinance is not clear and needs further clarification.

Councilmember Coen expressed his appreciation for Councilmember Clear’s intent of the amendment; however, he questioned whether the language was presented for the purpose of clarifying City Code or to address the recent situation. He commented on the recent issues leading up to the proposed ordinance and the importance of rebuilding public trust.

Councilmember Clear offered a friendly amendment to clarify the term “short-term” to be six (6) months. The second concurred.

Councilmember Hiller spoke in opposition of the need to define “short-term.”

The motion to amend the ordinance as proposed in Option 4 to state, “2.25.090 ~~Approval of employment and severance~~ Agreements: Department heads, short-term assistance from employees of other governmental entities; severance. (a) ~~All employment contracts with department heads or appointive officers or employees shall be approved by the city council prior to signature by the city manager.~~ Approval by the governing body shall ~~not~~ be required prior to the city manager signing any for employment contracts with any individual of 90 days or less duration or with employees not designated as a department heads, including any individual employed by another governmental entity or city to provide assistance on a short-term basis. Such contracts shall not be subject to the procurement ordinances, TMC Chapter 3.30. (b) No severance or other payments beyond those ~~earned or otherwise~~ authorized by state or federal law, city ordinance or contract shall be made to a current or former ~~appointive city officer, department head or employee~~ without prior ~~city council~~ authorization by the governing body” failed. Mayor Wolgast voted “no.” Councilmembers Hiller, Schumm, De La Isla, Jensen and Harmon voted “no.” (4-6-0)

Councilmember De La Isla moved to amend the ordinance as proposed in Option 5 as stated by Councilmember Hiller. The motion seconded by Councilmember Jensen.

Councilmember Harmon asked if Option 5 should reflect the statement “Such contracts shall not be subject to the procurement ordinances, Chapter 3.30 TMC.”

Lisa Robertson stated she would prefer the statement be included in the language amendment.

Councilmember Harmon offered a friendly amendment to include the statement “Such contracts shall not be subject to the procurement ordinances, Chapter 3.30 TMC.” at the end of subsection B.

Councilmember De La Isla agreed to the friendly amendment. The second concurred.

Councilmember Schumm questioned if the Governing Body currently reviews the Human Resources Department hiring process.

Jacque Russell, Human Resources Director, reported the Governing Body does not currently review or approve the hiring process; however, the process is outlined in the Administrative Policies.

Councilmember Schumm stated since the hiring process is managed administratively and could change at any time he would suggest tabling the ordinance until the consequences of the language amendments are fully understood.

The motion to amend the ordinance as proposed in Option 5 as stated by Councilmember Hiller carried. Mayor Wolgast voted “yes.” Councilmembers Clear and Schumm voted “no.” (8-2-0)

Mayor Wolgast asked the City Attorney to explain why the ordinance is being presented before the Governing Body.

Lisa Robertson, City Attorney, reported the ordinance was presented in return for dismissal of a lawsuit. She stated there were no requirements by the plaintiff to adopt certain language only that it was presented to the Governing Body for consideration.

Councilmember De La Isla stated she believes the discussion this evening supports transparency and that the agreement to present the ordinance before the Governing Body is a compromise of the situation and the opportunity to resolve the issue.

Councilmember De La Isla moved to adopt the ordinance as amended. The motion seconded by Councilmember Jensen carried. Mayor Wolgast voted “yes.” Councilmembers Clear and Schumm voted “no.” (8-2-0)

The ordinance was adopted on roll call vote as follows: Hiller, Ortiz, De La Isla, Jensen, Schwartz, Coen, Harmon and Mayor Wolgast -8. Noes: Clear and Schumm -2.

CONSIDERATION of an extension of time for submission of a Transient Guest Tax Development Agreement for Constitution Hall was presented.

Lisa Robertson, City Attorney, reported approval would grant Constitution Hall’s request for an extension of time within which to submit to the Governing Body a development agreement for Transient Guest Tax funding.

Councilmember Jensen moved to approve the request for an extension of time. The motion was seconded by Councilmember De La Isla.

Councilmember Jensen made a substitute motion to amend the request to include a one-time extension of 180 days, with the requirement to report an update to the Governing Body every two months. The motion was seconded by Councilmember Coen.

Grant Glenn, Friends of Free State Capitol, Inc., spoke in support of the 180 day extension and asked for clarification on the type of report requested.

Councilmember Jensen stated a simple email to the Governing Body would suffice.

Mayor Wolgast asked City staff to determine a policy for reports.

Councilmember Coen stated his support of the extension; however, he is disappointed that Constitution Hall, Downtown Plaza and Historic Jayhawk Theater were not ready to move forward with their projects. He commented on the need to reallocate the funding if the projects are not ready at the end of the 180 day extension.

Councilmember De La Isla stated the applicants were ready with their projects with the expectation that the funding would come in; however, the change in agreement requirements made it more difficult for the applicants to meet the deadline.

Councilmember Schwartz expressed the importance of working through the new process and spoke in support of the projects.

Councilmember Ortiz spoke in support of the extension and stated she believes a report every two months would not be necessary.

Councilmember Hiller spoke in support of the projects and process for the applicants.

Councilmember Ortiz made a friendly amendment to remove the requirement to report an update to the Governing Body every two months.

Councilmember Jensen agreed to the friendly amendment. The second concurred.

The substitute motion to amend the request to include a one-time extension of 180 days carried. Mayor Wolgast voted “yes.” Councilmember Harmon voted “no.” (9-1-0)

CONSIDERATION of an extension of time for submission of a Transient Guest Tax Development Agreement for the Downtown Plaza was presented.

Lisa Robertson, City Attorney, reported approval would grant representatives for the Downtown Plaza's request for extension of time within which to submit to the Governing Body a development agreement for Transient Guest Tax funding.

Councilmember Jensen moved to approve the request for an extension of time. The motion was seconded by Councilmember Schwartz.

Councilmember Jensen made a substitute motion for a one-time 180 day extension. The motion was seconded by Councilmember Schwartz.

Vince Frye, Downtown Topeka Inc., Executive Director, spoke in support of the 180 day extension and reported the agreement requirements would be completed.

Councilmember Hiller made a friendly amendment to remove the one time extension requirement. She expressed concern with the one-time extension because she believes it would restrict the project.

Councilmember Jensen agreed with the friendly amendment. The second concurred.

The substitute motion to amend the request to include an extension of 180 days carried. Mayor Wolgast voted "yes." Councilmember Clear, Ortiz, Schumm and Harmon voted "no."
(6-4-0)

CONSIDERATION of an extension of time for submission of Transient Guest Tax Development Agreement for the Historic Jayhawk Theater was presented.

Councilmember De La Isla moved to approve the request for extension. The motion was seconded by Councilmember Schwartz.

Councilmember Jensen stated he would abstain from voting on the item because he is a member of the Board of Directors.

Councilmember Hiller made a substitute motion to amend the request for a one-time extension of 180 days with no reporting requirement. The motion was seconded by Councilmember Schwartz.

Jeff Carson, Jayhawk Theater Board of Directors President, spoke in support of the 180 days extension.

The substitute motion to amend the request for a one-time extension of 180 days with no reporting requirement carried. Mayor Wolgast voted “yes.” Councilmember Harmon voted “no.” Councilmembers Schumm and Jensen abstained. (7-1-2)

Councilmember De La Isla moved to approve the one-time extension of 180 days with no reporting requirement. The motion seconded by Councilmember Schwartz carried. Mayor Wolgast voted “yes.” Councilmember Harmon voted “no.” Councilmember Jensen abstained. (8-1-1)

DISCUSSION regarding consideration of Transient Guest Tax Development Agreement submitted by the Evel Knievel Museum, Inc., was presented.

Lisa Robertson, City Attorney, reported an agreement has been negotiated and if approved, Transient Guest Tax funding would commence in 2016 and continue for 12 years for a total of \$300,000 for the purpose of constructing an Evel Knievel Museum.

Mike Patterson, Evel Knievel Museum Founding Board Chair, spoke in support of the agreement and expressed appreciation to the City for the private-public partnership.

Councilmember Schumm questioned lines 222-225 of the agreement which states, “19. Availability of Funds. The parties to this Agreement understand that Allocated Funds are subject to the Budget and Cash Basis laws and that the amount of Allocated Funds may be reduced to correspond to lower-than-expected Transient Guest Tax revenues and require annual

appropriation.” and asked if revenues would be restored if the funding falls short the previous year.

Lisa Robertson stated that was the intent of the statement.

Governing Body members extended their appreciation of the project and the completion of the agreement including all the requirements.

DISCUSSION relating to an update on the SW Woodbury South Court Drainage Project was presented.

Doug Gerber, Deputy City Manager, reported the project was initiated to address flooding problems on SW Woodbury South Court; however, during the design development the estimated construction costs exceeded the authorized budget. He stated staff has revisited the design options and evaluated the flood prone properties; therefore, staff has discussed the purchase of all three properties with the owners and they have agreed to sell. He noted total acquisition costs are estimated at \$486,750 plus \$100,000 for demolition of the three structures versus the project construction costs of \$916,000.

Jim Colson, City Manager, reported the project is a prime example of how staff continues to look for better solutions and adapt to change.

Jason Peek, Public Works Director, reported during most rainfall events the channel in the area of SW Woodbury South Court overflows causing substantial flooding for the three subject properties. He stated staff has evaluated the situation and determined the best approach to mitigate the problem was to purchase and demolish the flood prone properties costing a total of \$586,750 compared to the costs of the project construction at \$916,000. He noted all property owners agreed this was the best plan and are willing to sell their properties; therefore, the agreements will be presented at the April 19, 2016, Council meeting.

Councilmember Harmon stated the drainage project is a much needed improvement in this area and commended City staff for their creative thinking and doing what is right. He commented on the flooding issues along SW 6th Street and SW Fairlawn Road and suggested the City consider installing storm drains in the area to help localize the flooding.

Jason Peek reported all street improvement projects are designed to address any flooding issues.

Councilmember Jensen expressed concern with maintenance of the area.

Councilmember Hiller expressed concern with the deterioration of the street due to the flooding.

Doug Gerber reported the City would have no issues maintaining the area and providing proper maintenance of the street.

DISCUSSION for the purpose of providing an update on the Special Structures Unit (SSU) was presented.

Richard Faulkner, Property Maintenance Division Director, provided a brief overview of statistics relating to vacant and abandoned structures in the city of Topeka. He reported a Special Structures Unit (SSU) was created to address the problem by supporting existing initiatives as well as how the SSU could work independently and address vacant and abandoned structures. He noted targeted neighborhoods in intensive care areas of the city that meet certain criteria would receive the primary attention of the SSU as well as vacant and abandoned properties close to schools, parks, community centers and public facilities.

Mayor Wolgast expressed his appreciation for the report and information. He expressed his disappointment with the veto of Senate Bill 84 which was designed to make it easier for cities to address abandoned structures.

Councilmember Ortiz expressed concern with occupied homes that would be slated for demolition.

Richard Faulkner reported the City works with outside agencies for the relocation or placement of citizens as needed.

DISCUSSION of the proposed 2017-2021 Capital Improvement Plan and 2017-2019 Capital Improvement Budget was presented.

Doug Gerber, Deputy City Manager, highlighted the process beginning in the fall of 2015 which included continued discussions at various Council meetings in March and April, the CIP Open House conducted in March, a CIP Bus Tour in April and the improved online presence through the CIP Storybook maps and budget portal. He noted the 2017-2021 CIP and 2017-2019 CIB would be presented for Governing Body consideration at the April 19, 2016, Council meeting.

Jason Peek, Public Works Director, provided a brief overview of the CIP proposed street projects or streets under construction as well as Citywide Half-Cent Sales Tax street projects.

Councilmember Hiller expressed her appreciation to City staff for providing the requested information and encouraged staff to continue improving the process in tracking projects.

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

Brenda Younger, City Clerk, gave a brief overview of the April 19, 2016, Council agenda.

Jim Colson, City Manager, reported the City of Topeka received a strong AA rating for bond sales and remains in a positive position.

Councilmember Ortiz announced the next Curb Your Clutter event would occur on April 15-16, 2016, for the following neighborhoods East Topeka North, East End, East Topeka South,

Monroe, Jefferson Square, Highland Acres, Historic North Topeka East, Oakland, Central Highland Park and Hi-Crest. She also announced a Community Baby Shower sponsored by the KIDS Network of Kansas, Inc., and Heartland Healthy Neighborhoods is scheduled for April 16, 2016, at the East Avondale NET Reach Center; an informational meeting sponsored by Housing and Credit Counseling, Inc., would be held on April 26, 2016, to discuss the housing education program, tenant and housing rights at the Holliday Building located at 620 SE Madison starting at 9:30 a.m.; and a food pantry event sponsored by Community Resources Council and Harvesters in partnership with Westar Energy would occur on April 15, 2016, at the Avondale East NET Reach Center from 3:00 p.m. to 4:00 p.m.

Councilmember Schumm announced GO Topeka is offering a Windshield Tour with each councilmember and commented on GO Topeka's interest in local neighborhoods. He also announced the Anti-Crime Summit for Council District No. 4 would be held on April 26, 2016, at 5:30 p.m. at the Highland Park High School Cafeteria and encouraged residents to attend.

Councilmember De La Isla stated she would not be attending the April 19, 2016, Council meeting and the housing education program meeting sponsored by Housing and Credit Counseling, Inc., on April 26, 2016.

Councilmember Jensen announced his contact information is 785-422-0018 and is included on the City's website at www.topeka.org.

Councilmember Schwartz thanked governing body members for all the work on the allocation of Transient Guest Tax funds and the anticipated development in the next two years which would move Topeka towards the future. She announced this week's "gem" of Topeka is the great local businesses in Topeka.

Councilmember Coen announced the Meadow Crest Neighborhood Association would meet April 26, 2016, at 7:00 p.m. at Crestview United Methodist Church. He encouraged everyone to support the local businesses at the SW 21st Street and SW Belle Avenue shopping center.

Councilmember Hiller announced an Anti-Crime Summit for Council District No. 1 would be held on April 16, 2016, from 9:30 a.m. to 12:00 Noon at the Law Enforcement Center.

Mayor Wolgast announced the grand opening of the Bartlett & West Pocket Park at SW 9th Street and South Kansas Avenue is scheduled for April 18, 2016, at 10:30 a.m. He also announced Visit Topeka is hosting a survey asking what the public would like to see in a downtown plaza on their website at www.visittopeka.com and encouraged everyone to participate in the survey.

J. Tuckness, Minister Ray Robinson and Pam Ensley appeared to speak under public comment.

Councilmember Ortiz moved to recess into executive session for a time period not to exceed 15 minutes to discuss potential litigation and to include the Governing Body, City Manager, Deputy City Manager, City Attorney and staff. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

At 9:22 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember Jensen moved to recess into executive session for a time period not to exceed 30 minutes to discuss attorney-client privileged information and to include the Governing Body, City Manager, Deputy City Manager, City Attorney and Finance Director. The motion seconded by Councilmember Coen carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

At 9:52 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:52 p.m.

Brenda Younger
City Clerk