

**Council Minutes – May 5, 2015**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 5, 2015. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Clear, Ortiz, Schumm, De La Isla, Jensen, Schwartz, Coen and Harmon -9. Mayor Larry E. Wolgast presided -1.

AFTER THE MEETING was called to order, Marjorie Van Buren, Topeka Friends Place gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8685 introduced by Councilmember Sandra Clear, granting Kaw Valley Bank an exception to the provisions of City of Topeka Code Section 9.45.170, concerning noise prohibitions was presented.

RESOLUTION NO. 8686 introduced by Deputy Mayor Karen Hiller, granting The Lofts @ College Hill an exception to the provisions of City of Topeka Code Section 9.45.170, concerning noise prohibitions was presented.

MINUTES of the regular meeting of April 21, 2015, was presented.

Open After Midnight License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Office Lounge	124 SW 8 <sup>th</sup> Avenue
Topeka Performing Arts Center	214 SE 8 <sup>th</sup> Avenue

Councilmember De La Isla moved to approve the consent agenda. The motion seconded by Councilmember Jensen carried unanimously. (10-0-0)

APPROVAL of a Real Estate Report and method of disposal for real property located at 13<sup>th</sup> and Kansas Avenue was presented. (Contract No. 44338)

Sasha Stiles, Department of Neighborhood Relations Director, reported approval would authorize the sale of five lots located at 13<sup>th</sup> Street and South Kansas Avenue by competitive bid. She stated all City departments have indicated they have no interest in the property and it has been declared surplus property.

Councilmember Hiller moved to approve the real estate report and method of disposal of property by competitive bid. The motion seconded by Councilmember Schwartz carried unanimously. (10-0-0)

CHARTER ORDINANCE NO. 115 introduced by City Manager Jim Colson, amending City of Topeka Code Section A9-2 and repealing said original section concerning the Topeka Metropolitan Transit Authority (TMTA) was presented.

Jim Colson, City Manager, reported approval would continue the current mill levy cap of 4.2 mills for 2016.

Rodd Miller, TMTA Board, provided a packet outlining the services provided by TMTA. He stated TMTA has received 4.2 mills since 2011. He reported the 2016 TMTA proposed operating budget was \$175,000 less than last year.

Councilmember Ortiz stated she believes TMTA has done a great job. She commended TMTA for thinking “outside the box” and encouraged them to continue providing great services to the citizens of Topeka.

Susan Duffy, TMTA General Manager, stated TMTA plans to provide system updates to citizens located throughout the city to explain the changes starting August 1, 2015. She reported the new system has been improved and modernized with flexible routes. She invited Governing Body members to ride the bus system and inform constituents about the services offered by TMTA.

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

Councilmember Schumm made a substitute motion to amend the charter ordinance beginning on line 14 by deleting the statement “2016. For 2016 and subsequent years, the levy may not exceed three (3) mills.” providing for a permanent mill levy cap of 4.2 mills. The motion was seconded by Councilmember Jensen.

Councilmember Hiller spoke in support of the amendment and stated TMTA has done a wonderful job in leveraging services and dollars.

Chad Sublet, City Attorney, reported the amendment would remove the levy limit not to exceed three (3) mills from the charter ordinance language and replace it with 4.2 mills to reflect the general practice of approving 4.2 mills annually.

The substitute motion to amend the charter ordinance beginning on line 14 by deleting the statement “2016. For 2016 and subsequent years, the levy may not exceed three (3) mills.” providing for a permanent mill levy cap of 4.2 mills carried unanimously. (10-0-0)

The motion to adopt the charter ordinance as amended carried unanimously. (10-0-0)

The charter ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Schumm, De La Isla, Jensen, Schwartz, Coen, Harmon and Mayor Wolgast -10.

RESOLUTION NO. 8687 introduced by City Manager Jim Colson, in accordance with Section 18.60.010 of the Topeka Municipal Code, approving a Conditional Use Permit to allow for the re-modeling and re-building of a legal non-conforming billboard on property currently zoned “C-4” Commercial District and located at 1700 SW Topeka Boulevard in the City of Topeka, Kansas, was presented. (CU15/1)

Bill Fiander, Planning Department Director, reported approval would allow the applicant to relocate the billboard located at 1700 SW Topeka Boulevard including a 20 foot setback from the property line. He stated the remainder of the property would be occupied by a new Kwik Shop gas station and convenience store that was being rebuilt and expanded.

Councilmember Ortiz moved to adopt the resolution. The motion seconded by Councilmember De La Isla carried unanimously. (10-0-0)

RESOLUTION NO. 8688 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.

Doug Gerber, Administrative and Financial Services Department Director, reported approval would be necessary to amend changes in staff and working titles to update forms.

Councilmember Ortiz moved to approve the resolution. The motion seconded by Councilmember Schumm carried unanimously. (10-0-0)

RESOLUTION NO. 8689 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.

Doug Gerber, Administrative and Financial Services Department Director, reported approval would be necessary due to changes in staff and working titles to complete daily duties. He noted the resolution must be updated on an annual basis as required by state statute.

Councilmember Jensen moved to approve the resolution. The motion seconded by Councilmember Schwartz carried unanimously. (10-0-0)

A RESOLUTION introduced by City Manager Jim Colson, authorizing the City Manager to continue with the process of implementing the amended Heartland Park Redevelopment

Project Plan and the issuance of additional STAR Bonds in the amount of \$5,000,000 was presented.

Jim Colson, City Manager, stated the City has developed the Heartland Park Redevelopment District Plan over a long period of time with the specific intent of focusing on the City's best interest for the long-term, address the financial challenge from a debt service perspective as well as possibly reenergize the local economy. He noted there have been many negative impacts to the racing facility such as a number of sanctions in the sport of racing and a significant global recession in 2008. He stated he and City staff would continue to operate the City in the best interest of its citizens and make the best decisions possible to move forward.

Chad Sublet reported the following:

- Approval would allow the City Manager to proceed with the implementation of the amended project plan and the sale of additional STAR Bonds according to City of Topeka Ordinance No. 11915.
- The estimated revenue range of \$4.8 million to \$5.5 million was based on the loans and/or mortgages on the property which continues to generate interest costs since the beginning (June 2014).
- The process to date has included many public meetings, discussions and information posted on the City's website.
- He stated the agreement between the City of Topeka and the National Hot Rod Association (NHRA) entered into July 24, 2014, would be considered invalid because it was contingent on the City acquiring the property title and release to Heartland Park.
- He confirmed there was a current contract between NHRA and the current operator of Heartland Park for the NHRA Drag Race events scheduled in May 2015.
- Preliminary Contractual terms have been drafted; however, the actual agreement would be a complex management and operating contract which would take more than two weeks to outline. Contractual terms are listed below:
  1. Ten (10) year leases with options of five (5) year terms.
  2. \$300,000 payment to the City for the initial lease.
  3. There would be an option to purchase the facility when the bonds are paid off.
  4. Shelby Development would be required to invest \$5 million with annual investments and audits.
  5. Performance obligations with the City's ability to default in the favor of the City.
  6. Significant property development.
  7. Shelby Development would have no obligations to assume the debt of Jayhawk Racing, Inc.

- No mortgages and/or liens would be placed on Heartland Park without approval by the Governing Body.
- Negotiations continue with Shelby Development to be defined and reviewed by outside legal counsel and Shelby Development representatives were in attendance if the Governing Body had specific questions.

Councilmember Ortiz questioned the timeline of events and asked if the Governing Body would decide on the final operating agreement. She stated she understands the \$5 million was an estimated amount at the beginning; however, since that time she has become uncomfortable with approving an amount without final details. She asked if the Walmart store on SW 37<sup>th</sup> Street was included in the redevelopment district, if other businesses could be removed from the district, and what improvements were made with the funds allocated to Jayhawk Racing, Inc.

Jim Colson reported the following:

- The Governing Body would make a decision on the final operating agreement and review would be required by outside legal counsel.
- He understands it would be better to have a final contract; however, contractual provisions could only be delivered at this time.
- Language in the final contract would specifically protect the City and include business points and financials of the deal, performance matrixes and levels of recourse.
- He stated this was as far as staff could go in the process until the Governing Body moves forward with an approval.
- He stated there was a viable operator interested in operating the track.
- He spoke with the Kansas Department of Commerce and Walmart did not want to be included in the redevelopment district which was in the City's best interest because the average of sales tax collected was based on the five Walmarts located throughout the community having a negative impact on the City if included in district. He stated, in retrospect the map should have been adjusted to exclude the business; however, Walmart was never included in the financial estimates.

Chad Sublet reported the following:

- The Memorandum of Understanding approved by the Governing Body ranged from \$4.8 million to \$5.5 million with a current debt amount of \$5.42 million and \$5.429 million by July 1, 2015 as interest accumulates.
- Once the Kansas Department of Commerce has defined a redevelopment district the established businesses could not be removed and individual business sales tax numbers could not be disclosed.
- The NHRA would be fronting the required expenses associated with the 2015 NHRA Drag Races.

- Annual public audits on improvements are required with STAR Bond projects.

Doug Gerber, Administrative and Financial Services Department Director, gave a brief overview of the improvements made to Heartland Park.

Councilmember Ortiz spoke in opposition of the resolution and expressed the importance of finalizing the details prior to approval. She asked when the Request for Proposals was received and if Shelby Development submitted a proposal.

Councilmember Ortiz moved to defer the resolution for six months (November 5, 2015) until after the City Manager has provided an agreement with an operator. The motion was seconded by Councilmember Schwartz.

Jim Colson stated he could not provide a timeline for an executed agreement; however, he would work expeditiously to draft an agreement. He reported past experience has proven agreements of this complexity take time to finalize and noted he has not yet engaged outside legal counsel.

Councilmember Harmon asked for an estimate of legal costs to prepare an agreement with an operator.

Chad Sublet stated he could not speculate at this time what the estimated costs would be to secure outside legal counsel.

Councilmember Jensen spoke in opposition of the deferral because he believes postponing action would only increase costs.

Councilmember Clear asked who served on the review committee for the Request for Proposals.

Chad Sublet stated the team consisted of himself, Doug Gerber, Administrative and Financial Services Department Director; Jim Colson, City Manager; and Jay Oyler, Contracts and Procurement Division Director.

Councilmember Hiller stated the current debt continues to accumulate rapidly and it would be pointless for either party to spend money on drafting an agreement until the bonds are approved and the Kansas Department of Commerce supports the plan. She spoke in opposition of the deferral because she believes it would not help matters. She expressed appreciation to Shelby Development for attending the meeting and City staff for their hard work on the issue. She stated she understands the concern to have at least some fundamentals in place and asked if the approval of the bonds would be contingent on drafting an agreement and moving forward.

Chad Sublet stated approval of the bonds and drafting an agreement should be handled as two separate issues by the Governing Body. He reminded Governing Body members there were still many steps to be taken in regards to the Kansas Department of Commerce and the Kansas Attorney General's office. He reiterated the general terms presented were not legally-binding or enforcing.

Councilmember Schumm spoke in opposition to the deferral and reminded the Governing Body that Core First Bank & Trust was also involved in the Heartland Park issue and has generously extended foreclosure on property that has been legally theirs since February 1, 2015. He expressed his opposition of the City being involved in the matter.

Councilmember Schwartz spoke in opposition of the resolution because she believes there has not been enough public input on the issue; however, if the issue was deferred costs would continue to increase and it would prolong the issue.

Councilmember Jensen stated \$53 million adds a lot to the local economy and he believes not approving the plan would negatively affect many economic faucets of the city.

Jim Colson stated these types of issues are historically very complicated and there was a need to investigate and evaluate how to draft an agreement that protects the City's interests.

The motion to defer the resolution for six months failed. Councilmembers Hiller, Clear, Schumm, De La Isla, Jensen, Schwartz, Coen, Harmon and Mayor Wolgast voted "no." (1-9-0)

Councilmember Schwartz asked what the annual bond payment would be and if it could be paid from another funding source. She asked for clarification if property taxes could be collected if the racetrack becomes privately owned.

Doug Gerber reported the annual debt service payment would be \$1 million, the current district generates \$200,000, and payments are allocated from debt service funds which are primarily a property tax based fund. He clarified that any City owned property would be exempt from property taxes.

Chad Sublet stated Half-Cent Retailers' Sales Tax revenues are to be spent on the projects listed in the ballot question. He reported the City would find a way to address the debt service issue if the Governing Body does not approve the resolution.

Councilmember Schumm asked for clarification on the timeline to have a signed contract.

Chad Sublet stated it could take approximately two weeks to finalize a contract.

Doug Gerber stated the Request for Proposals were received on December 12, 2014, and one of the responses received was from Shelby Development.

Councilmember Hiller stated often when a facility closes it remains closed causing lost revenue. She reported the State would require the facility to stay within its use as a racing entity for the STAR Bonds to continue financing the property. She asked for clarification on if Half-

Cent Retailers' Sales Tax revenues could be used for the improvements because it would be considered economic development.

Chad Sublet reported if the property were to go into foreclosure status the City would still have to pay the debt service over the next 10 years.

Jim Colson stated utilizing Half-Cent Retailers' Sales Tax revenues for the facility has not been a focus of discussion and from the beginning there have been other ways of handling the matter; however, he believes this was the best option for the City. He reiterated staff would proceed with the directive given by the Governing Body and operate in the long-term best interest of the City.

Councilmember Schwartz noted Core First Bank & Trust could foreclose on Heartland Park and a private owner could purchase the facility, adding it to the property tax rolls. She spoke in opposition of the plan and asked what Jayhawk Racing, Inc., has paid to date towards the current debt service.

Doug Gerber reported the audit completed in July 2014 verified contributions in the amount of \$214,000 paid by Jayhawk Racing, Inc., towards the current debt service of \$6.8 million.

Councilmember Coen stated business deals need to be airtight and he believes public perception was that the Governing Body does not know what they are doing and tax dollars are being wasted. He commented on the process that he believes has crippled the City Council and delayed regular City business. He expressed concern with many aspects of the process including not seeing the financials of Jayhawk Racing, Inc., and why utilities have not been disconnected. He asked if the City had a business plan in place for the new owner to run and operate the track because he believes the current option passes a lot of the risk to taxpayers.

Councilmember Jensen referenced the comments made by the public throughout the process. He stated all have been based on the previous actions of the current operator as well as Governing Body members have compared the new owners to prior failures which he believes has been unfair. He stated he would not have supported the plan if Jayhawk Racing, Inc., would have remained the owner of Heartland Park Topeka.

Kraig Bailey stated he has visited Topeka over 20 times in 2014; however, due to Heartland Park being closed this year, he has been spending his money at other racing facilities. He noted Heartland Park provides jobs to the local community and believes the track should be open year round to host many different types of racing events. He defined the need to have a committed owner that could turn the facility around and generate revenue for the City and State.

Suzanne Mears expressed concern with basing the future of Heartland Park on the current operator. She stated she believes the facility could generate a large amount of revenue with an owner who was capable and sustainable.

Bryan Cohn stated he represents 15,000 race enthusiasts across the Midwest and asked the Governing Body to remember Heartland Park was a permanent entity and if it closes, it may not open for many years or sell for purposes to benefit Topeka.

Chuck Hanna stated the racetrack has been mismanaged and poorly promoted over the years; however, there still seems to be great opportunity to succeed, benefiting young people and the community in general.

Chuck Leivan stated Topeka citizens would still pay half or the majority of the debt service and the only people that would make money are those individuals that finance the bonds. He spoke in opposition of the resolution and stated he supports the private sector purchasing the

facility because he believes it would be more complicated to borrow even more money against the current debt service.

Gary Voderschmidt stated he has been involved with the racetrack since its inception and believes the revenue would boost Topeka's economy and give people something to do. He encouraged the Governing Body to approve the resolution and allow the new operator of the racetrack the opportunity to succeed.

Rob Parks, NHRA representative, expressed the importance of keeping the track open and stated Heartland Park was a top notch facility in the Midwest. He stated no one could predict the future of national events; however, there should be a solid operator in place to increase revenues. He spoke in support of the Shelby Development plan for Heartland Park and suggested they should offer driver-teaching tracks, open 365 days a year.

Elyse McKinnon encouraged the Governing Body to approve the resolution and finance the operation of the racetrack with STAR Bonds because she would rather spend her tax dollars in Topeka than at other racing facilities.

Nick Scott stated a foreclosure would not guarantee Heartland Park would reopen as a racetrack. He encouraged the Governing Body to approve the resolution to bring economic activity back to Topeka.

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

Councilmember De La Isla stated most people are seeking a better understanding of the matter; however, there have been repeated conversations with the public along with many public meetings. She spoke in support of the STAR Bond district expansion because as an economic development engine it would generate a positive outcome for the community and eliminate a

burden on taxpayers. She noted sales taxes and property taxes are tied to residents; however, transient guest taxes are not. She commented on receiving emails from constituents that were mostly in favor of the matter and the need to think outside the box to make the establishment successful. She expressed concern with the use of economic development dollars (sales tax) because she believes it would create distrust with citizens because they were told those funds would be spent in another manner.

Mayor Wolgast spoke in support of the resolution and stated he believes the proposal protects citizens in the future.

Councilmember Schumm reported the majority of his constituents oppose the plan and he represents the citizens. He expressed concern with the current debt service and believes the citizens of Topeka would become accountable and would lose their trust in City government if the plan moves forward.

Councilmember Jensen stated the issue has become an extremely complex situation; however, the risk should be measured in terms of the amount of economic impact the racing facility brings to the community. He spoke in support of the resolution and stated he would not risk adversely affecting small businesses in the community.

Councilmember Clear spoke in opposition of the resolution. She stated her constituents have expressed opposition to the Heartland Park Redevelopment District plan and she represents the citizens.

Councilmember Hiller reported the majority of her constituents understand the issue better because she has contacted them and addressed their concerns. She thanked everyone for their input on the issue and the people from out of town for appearing and expressing their support of Heartland Park. She stated there are many people that see immediate potential for growth in the

area with a strong diversity of event opportunities. She noted it has been a high priority for citizens that the City would not raise property taxes to cover the costs associated with Heartland Park. She spoke in support of the resolution and commented on the proposals submitted for the future of Heartland Park and the good contractual framework set to move forward.

Councilmember Ortiz spoke in opposition to the draft of contractual terms because she believes there was no guarantee the City's financial interest was protected and there was not enough information to make an informed decision on the issue.

Councilmember Schwartz stated she believes Heartland Park should be privately owned.

The motion to approve the resolution failed. Councilmembers Clear, Ortiz, Schumm, Schwartz, Coen and Harmon voted "no." (4-6-0)

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

Councilmember Hiller thanked City staff for their hard work on the Heartland Park Redevelopment District plan. She stated she was hopeful the private sector would turn the plan around.

Councilmember Clear announced Concerts in the Park would begin on June 1, 2015, at the Garfield Park Gazebo located at 160 N. Quincy Street at 7:00 p.m.

Councilmember Ortiz commented on the First Friday Art Walk on May 1, 2015, which included good food and entertainment as well as the Eagle Cruise Night on May 2, 2015.

Councilmember De La Isla commented on the discussion regarding the Heartland Park Redevelopment District and stated it was a great discussion that included very diverse views. She noted with the Heartland Park issue now decided, the Governing Body could focus on other important areas and serve the community.

Councilmember Jensen thanked City staff and Governing Body for the hard work in the Heartland Park issue. He also thanked City staff for helping him get acclimated to his position on the City Council.

Councilmember Schwartz commented on the Take Over/Make Over events and community involvement to make Topeka a better place to live. She announced Shawnee County was moving forward with plans for the aquatic park in Southwest Topeka.

Councilmember Schumm moved to recess into executive session for a time period not to exceed 15 minutes to discuss a workers' compensation settlement and to include the Governing Body, City Manager, City Attorney, Human Resources Director and staff. The motion seconded by Councilmember Hiller carried unanimously. (10-0-0)

At 8:50 p.m., Mayor Wolgast announced the executive session was adjourned with no action taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:51 p.m.

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Brenda Younger  
City Clerk