

Council Minutes – May 10, 2016

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 10, 2016. 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, De La Isla, Jensen, Schwartz, Coen and Harmon - 8. Mayor Larry E. Wolgast presided -1. Council District No. 4 - Vacant.

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

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

Councilmember De La Isla requested to add a resolution granting a noise exception for Boss Hawg's to the consent agenda.

Councilmember Coen requested to add a resolution granting a noise exception for Speck's Bar & Grill to the consent agenda.

Upon hearing no objections, Mayor Wolgast announced the resolutions would be added to the consent agenda as items 4E and 4F respectively.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Jennifer Miller to the Topeka and Shawnee County Public Library Board of Trustees for a term ending May 1, 2020, was presented.

RESOLUTION NO. 8763 introduced by Councilmember Sandra Clear, approving a special event known as Moto in NOTO 3rd Fridays, was presented.

MINUTES of the regular meeting of May 3, 2016, was presented.

RESOLUTION NO. 8764 introduced by Councilmember Jeff Coen, granting Specks Bar & Grill an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions, was presented.

RESOLUTION NO. 8765 introduced by Deputy Mayor Michelle De La Isla, granting Boss Hawg's an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions, was presented.

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

DENIAL of Security Guard License Appeal submitted by Rory Neal was presented.

Luther Ganienany, Assistant City Attorney, gave the staff report and stated the denial was based on the fact the applicant has a felony conviction within the last 20 years; a prior conviction involving fraud; and misrepresentation and falsification of the application in failing to disclose information.

Rory Neal, applicant, stated he answered in the way he thought was appropriate. He reported he has obtained a State of Kansas Conceal and Carry License as well as secured two other security guard jobs in the past. He noted the incident occurred over 16 years ago.

Councilmember Ortiz spoke in support of the denial based on the fact Mr. Neal could have asked for guidance or clarification during the application process. She noted the Governing Body has worked hard to clarify the security guard license process and application.

Councilmember Ortiz moved to approve the denial of security guard license appeal. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

APPROVAL of a Lease Agreement Renewal with Cingular Wireless for use of Montara Water Tower (6900 SW Crestwood), was presented. (*Contract No. 45127*)

Lisa Robertson, City Attorney, reported approval would renew the current lease for an additional five years with an annual fee of \$24,000.

Councilmember De La Isla moved to approve the lease agreement renewal. The motion seconded by Councilmember Coen carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

AN ORDINANCE introduced by City Manager Jim Colson, concerning bicycles, roller skates, skateboards, repealing Topeka Municipal Code Sections 10.20.020 and 10.60.410, amending City of Topeka Code Section 10.35.010 and repealing original section, and creating new Sections 10.35.020 and 10.35.030, was presented.

Bill Fiander, Planning Department Director, reported approval would clarify areas reserved exclusively for bicyclists, roller-skaters, skateboarders and pedestrians as well as prohibit bicycles, roller-skates and skateboards on sidewalks, public parking lots/garages and pocket parks in certain areas.

Councilmember Coen stated he believes there are policies in place to address these types of issues. He requested the enforcement of vandalism be enhanced.

Brian Desch, Topeka Police Major, stated all vandalism reported to the police department is investigated; however, arrests are not made in most cases.

Councilmember Jensen expressed concern with the lack of enforcement by Topeka Police in the past.

Luther Ganienany, Assistant City Attorney, stated convictions depend on the degree of criminal damage to public property.

Chuck Kitt, Chief of Prosecution, reported the issues with enforcing vandalism include (1) criminal damage requires proof the individual knowingly caused the damage; and (2) if it is a frequent problem how do they attribute the damage to one person.

Lisa Stubbs expressed concern with skateboarding and how it damages property as well as public safety on sidewalks in the downtown area. She noted the City of Lawrence, Kansas, adopted the same type of ordinance 20 years ago for areas along Massachusetts Street.

Linda Windler expressed concern with the continued criminal damage in the downtown area. She spoke in opposition of the ordinance because it would not address the actions of individuals destroying property.

Merle Windler expressed support of implementing regulations in the downtown area; however, the ordinance language needs to clarify the type of actions prohibited and exclude the prohibition of bicycles, skates and skateboards.

Ralph Krumins stated he believes the ordinance may be redundant as there are policies already in place to address these types of issues.

Councilmember Hiller commented on two issues she believes need to be addressed (1) criminal damage to property which relates to assault through behavior; and (2) pedestrian safety as well as bicycle and skateboard safety. She suggested adding the words “intentional” or “careless” in regards to intent and asked if it would aid in enforcing a zero tolerance policy as well as the words “scooters” and “no stunts”; and require bicyclists and skateboarders to be at least three feet from a building for public safety. She stated she believes if the issues are resolved on Kansas Avenue then it may have an effect on the rest of the city.

Chuck Kitt stated the language could be amended to make these types of actions “reckless acts,” however; many times it is an accident making prosecution difficult or vague.

Councilmember De La Isla stated she understands the issue centers around public safety; however, it needs to be presented in a positive manner to promote Topeka as a mobile city by encouraging people to carry their skateboard or walk their bike in the downtown area for public

safety purposes. She suggested before they make language amendments to wait six months and verify with Downtown Topeka Inc., if the ordinance regulations are making a difference.

Councilmember Schwartz stated she understands both sides of the issue. She asked if an exception could be made for residents living downtown to be able to ride their bicycles and roller-skate. She agreed a six month trial should be conducted to determine how it affects the downtown area.

Councilmember Jensen spoke in support of the proposal and reviewing the issue in six months to address any outstanding situations and find a balance for all citizens.

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

Councilmember Clear suggested amending the language to include “exclude residents of the downtown area” or “bicycles with training wheels.”

Lisa Robertson stated the language amendment would add an extra layer of enforcement.

Councilmember Jensen stated he concurs with Councilmember Clear and suggested amending the language to include “children’s bikes and tricycles.”

Councilmember Harmon questioned if the ordinance should be reviewed by the Public Health and Safety Committee to allow public input and time to research the repercussions of the suggested language amendments.

Councilmember Harmon made a substitute motion to refer the ordinance to the Public Health and Safety Committee. The motion seconded by Councilmember Ortiz carried. Councilmember Coen voted “no.” (7-1-0) (*Mayor does not vote on this ordinance.*)

RESOLUTION NO. 8766 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 a “Day Care Center Type II” on property zoned “R-1” Single Family Dwelling District and located at 1833 SW Fillmore Street within the City of Topeka, Shawnee County, Kansas was presented. (CU16/3)

Bill Fiander, Planning Department Director, reported approval of the requested conditional use permit would allow a state-license preschool facility.

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

RESOLUTION NO. 8767 introduced by City Manager Jim Colson, in accordance with Section 18.60.010 of the Topeka Municipal Code, approving a Conditional Use Permit for an Outdoor Concert Facility on property zoned “C-4 Commercial” and located at 2134 N. Kansas Avenue within the City of Topeka, Shawnee County, Kansas, was presented. (CU16/4)

Jim Colson, City Manager, commended staff for addressing the challenges of the site and working with the owners in making the outdoor venue a positive asset for the community.

Bill Fiander, Planning Department Director, reported approval would permit B&B Backyard to operate a seasonal outdoor concert venue April through September during the weekends. He stated staff worked with the applicant to create a workable plan with a positive outcome.

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

APPROVAL of an Open After Midnight License Application for Bill’s Diner, Inc., located at 2134 N. Kansas Avenue, was presented.

Brenda Younger, City Clerk, reported approval would allow the establishment to operate after midnight and staff is recommending approval based on compliance of the conditional use permit for the property.

Councilmember Clear moved to approve the open after midnight license application. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

ESTABLISH May 17, 2016, as the date to conduct interviews for the appointment of a district representative for City Council District No. 4 was presented.

Councilmember De La Isla moved to approve May 17, 2016, as the date to conduct interviews. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (9-0-0)

ORDINANCE NO. 19998 introduced by City Manager Jim Colson, concerning governing body meetings, veto, veto override and vacancies, amending City of Topeka Code Sections 2.15.020, 2.15.070 and 2.15.080, and repealing original sections was presented.

Lisa Robertson, City Attorney, provided a brief overview of the changes in accordance with state law regarding meeting times, veto, veto override and vacancies.

Councilmember Jensen moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. (8-0-0) (*Mayor does not vote on this ordinance.*)

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

DISCUSSION concerning cutback parking and proposed ordinance revisions was presented.

Jason Peek, Public Works Department Director, reported the proposed ordinance would change approval for cutback parking from a resolution of the Governing Body to administrative approval by the City Engineer.

Councilmember Hiller stated she believes the proposal would be a positive change in the process because generally parking is not adequate when a residential property converts to business property.

DISCUSSION relating to cutback parking request at 1195 SW Buchanan Street was presented.

Jason Peek, Public Works Department Director, reported the Housing and Credit Counseling Inc., has requested a cutback parking project at 1195 SW Buchanan Street to be paid for at their own expense. He noted the parking would benefit the City by supporting the overall office and institutional uses on the block.

DISCUSSION regarding changes to the Topeka City Council Rules and Procedures was presented.

Lisa Robertson, City Attorney, reported the change to the Topeka City Council Rules and Procedures was a result of changes to State law. She provided an overview of the following changes:

- Governing Body Reference
- Quorum
- Appointments
- Amending Motions
- Majority Vote Required
- Council Committee Appointments
- Chair of Standing Committees
- Committee Actions
- Committee Minutes.

Councilmember Clear questioned the intent of the Citizen Government Review Committee recommendations relating to mayoral duties and deputy mayor duties.

Mary Feighny, Deputy City Attorney, reported in 2014 the Citizen Government Review Committee recommended the mayor serve as the head of the council as well as the chairperson of the Committee of the Whole. She stated the deputy mayor serves in the absence of the mayor.

Councilmember Ortiz spoke in opposition of the Citizen Government Review Committee recommendation to change the mayor and deputy mayor's duties. She stated she believes it is vital the deputy mayor is provided the opportunity to chair meetings and become familiar with the mayor's role in case the need arises.

Jim Colson, City Manager, stated staff will send a link to the Governing Body for the Citizen Government Review Committee Report outlining all recommendations.

Councilmember Hiller stated she agrees there are many duties required of the deputy mayor and distributed a document outlining the roles of the deputy mayor. She suggested creating a new section in the Topeka City Council Rules and Procedures to address forming working groups or task forces within Kansas Open Meetings Act (KOMA) regulations to explore and evaluate ideas before presenting them to the city manager, committee or governing body.

DISCUSSION for the purpose of establishing priorities for the 2017 budget on or before the third Tuesday of May 2016 was presented.

Deputy Mayor De La Isla reported on recent municipal budget events and social media surveys for the purpose of engaging the public in the budget process. She commended City staff for their work and thinking outside the box in regards to receiving public input on the budget.

Councilmember Hiller stated she appreciates the work on budget events, social media surveys and development of the priority list. She suggested coordinating the budget meetings to address the bullet points listed within the budget priorities list to answer questions and explore why these topics are important.

Councilmember Schwartz suggested listing infrastructure as the number one budget priority to reflect public opinion.

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

Brenda Younger, City Clerk, gave a brief overview of the May 17, 2016, Council agenda.

Jim Colson, City Manager, invited the community to participate in the Bicycle Trail Ride with Police Chief Brown and the Topeka Police Department Bike Patrol on May 24, 2016, leaving at 1:00 p.m. from the Holliday Building. He announced the Topeka Planning Department received \$42,000 from the Kansas Historic Preservation Grant fund for historic initiatives and training; and May 16-20, 2016 is National Public Works Week.

Councilmember Ortiz asked Oakland residents to be patient during street reconstruction and expressed her appreciation to City staff for the routine updates on the improvement projects. She announced the Fiesta Mexicana Royalty Food Sales are occurring May 9-June 25, 2016, at Our Lady of Guadalupe Catholic Church. She encouraged citizens to participate in the Topeka Fire Department Smoke Alarm Program.

Councilmember De La Isla commended staff on the public meeting to discuss budget priorities and encouraged continued engagement and education of the public in regards to municipal budget and operations. She reported she attended a ride-along with Greater Topeka Chamber of Commerce staff to discuss opportunities and improvements in Council District No. 5. She noted job training and creating a policy for demolitions and improving facades in Council District No. 5 will be a priority moving forward. She congratulated businesses honored and awarded at the 36th Annual Small Business Awards Recognition Program sponsored by the

Greater Topeka Chamber of Commerce and GO Topeka on May 10, 2016, and noted 93% of the businesses in Topeka are considered small business owners.

Councilmember Jensen commended City staff for working with businesses to make Topeka a thriving city.

Councilmember Schwartz stated this week's "gem" of Topeka is the people who relocate to Topeka from other cities and thanked "Topeka Transplants" for being a part of the community.

Councilmember Coen announced the World Champion Frisbee Disc golfers would host a clinic at Crestview Park from 4:30 p.m. to 5:30 p.m. free of charge for the public on May 11, 2016.

Councilmember Hiller encouraged the Governing Body to participate in the ride-along with the Greater Topeka Chamber of Commerce to view their Council District from an economic development perspective.

Councilmember Clear commended Topeka Police Officer Matt Wilson for his leadership in North Topeka and assisting in implementing changes.

LaTrisha Kris appeared to speak under public comment.

Councilmember Coen 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 De La Isla carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

At 8:36 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember Coen moved to recess into executive session for a time period not to exceed 30 minutes to discuss attorney-client privileged communications and to include the Governing

Body, City Manager, Deputy City Manager, City Attorney and Finance Director. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.”

(9-0-0)

At 9:06 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 9:06 p.m.

Brenda Younger
City Clerk