

Council Minutes – June 11, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 11, 2013. 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 and Harmon -6. Mayor Larry E. Wolgast presided -1. Absent: Councilmembers Manspeaker and Schwartz -2. Council District No. 8 – vacant.

AFTER THE MEETING was called to order, Councilmember De La Isla gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

APPROVAL of a Workers' Compensation Settlement for Greg Sevigny, Engineering Technician III, in the amount of \$11,500 for permanent partial impairment of his back for injuries suffered on September 14, 2005, while at a construction site was presented.

MINUTES of the regular meeting of June 4, 2013, were presented.

An Open After Midnight License application for Scooterz Saloon located at 555 S 39th Street, was presented.

Councilmember Campos II, moved to approve the consent agenda. The motion seconded by Councilmember Harmon carried unanimously. (6-0-0)

ORDINANCE NO. 19823 introduced by City Manager Jim Colson, amending City of Topeka Municipal Code Sections 13.10.010, 13.10.410 through 13.10.460, concerning private fire hydrants and specifically repealing said original section, as well as, creating new Section 13.10.415 placed on first reading June 4, 2013, was again presented.

Larry Wilms, City Water Department Engineer, reported it is the City's responsibility to maintain public fire hydrants; therefore, the proposed ordinance would allow the City to gather a

more complete inventory of the private fire hydrants located throughout the city, as well as, maintain the units.

Mayor Wolgast asked if private hydrants are a requirement of the Topeka Municipal Code.

Larry Wilms stated it is not a City Code requirement; however, insurance provisions require extra fire hydrants for many larger properties such as Menards and the Mars Chocolate North America Plant.

Councilmember Hiller referenced a claim appeal submitted by Arab Shrine Temple for damage from a break in the fire service line that did not have a backflow meter installed. She questioned whether there should be a backflow meter requirement included in the ordinance. She also asked if the proposed ordinance would address fire suppression lines that do not have fire hydrants.

Larry Wilms stated the proposed ordinance would not address fire suppression lines as it is the responsibility of the property owner to maintain.

Don Rankin, Utilities Infrastructure Division Director, stated City Code requires a private business to maintain their own fire suppression lines because it is for their own specific needs. He noted if there is a private fire hydrant connected directly to the City's system then a backflow meter would not be required; however, if there is a private fire suppression system, a backflow device is required.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. (6-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla and Harmon -6. Absent: Manspeaker and Schwartz -2. Council District No. 8 - Vacant.

ANNEXATION EXEMPTION WAIVER requesting exemption from the annexation requirement of City of Topeka Code Section 13.10.120(c) for connection to the City water system outside the City limits for a tract of land generally located in the 3400 block of SW Indian Hills Road within unincorporated Shawnee County, Kansas, was presented.

Bill Fiander, Planning Department Director, stated the property is located in the 3400 block of SW Indian Hills Road which is outside city limits but within the City's planned growth area and Municipal Services Area. He reported the smaller 4-acre lot was purchased after the annexation requirement was established in City Code in 2007, and in order for the Council to grant the exemption, they must find that the applicant did not create the hardship by their own actions. He noted staff is reviewing and updating development, infrastructure and annexation policies with respect to future growth areas of the City's Comprehensive Plan to better regulate these types of issues. He reported Planning Department and Public Works Department staff recommends the annexation exemption request be denied and cautioned that approval may set precedence for future annexation waiver requests; however, if the Council approves the waiver request, staff is recommending the approval include the following stipulations:

- The owner records annexation consent for the entire property.
- The property is platted.
- Connection to sanitary sewer in compliance with the Shawnee county Wastewater Management Plan (or apply for a waiver in conjunction with the plat).

Mayor Wolgast asked if the annexation exemption was reviewed by the Topeka Planning Commission.

Bill Fiander stated the annexation exemption request was reviewed by the Planning Department and Public Works Department, and both departments recommended denial of the annexation exemption request based upon their findings and analysis established in administrative guidelines.

Councilmember Hiller thanked staff for providing the waterline map to help clarify the property's location in connection to the City's waterlines.

Councilmember Hiller moved to deny the annexation exemption request. The motion was seconded by Councilmember Everhart.

John Hutton, Attorney for the applicant, requested the Council suspend the Council Rules to allow his client to speak to the issue.

Councilmember Ortiz moved to suspend the Council Rules to allow the applicant to speak. The motion seconded by Councilmember Hiller carried unanimously. (6-0-0)

Dargal Clark, applicant, waived his right to speak, and asked if his attorney, John Hutton could provide comments to the Governing Body on his behalf.

Upon hearing no objections, John Hutton, attorney for the applicant, stated that Mr. Clark bought the property already divided into a separate lot (4-acre tract) and the existing waterline he is requesting to connect to runs through the easement of his property. He distributed a handout regarding the City's Planned Future Land Use Pattern for the Topeka Metropolitan Area dated February 24, 2004, and discussed the definition of "smart growth" and Goal 5.5 which states, "Development decisions should be based on a variety of site and location factors, and not on actual or perceived advantages or disadvantages of developing projects in one jurisdiction or another." He stated urban services and facilities should be established in a planned growth area and he agrees with many of the principles. He requested the Council approve the annexation exemption request and stated the applicant would pay all costs associated with any connection fees, charges, and construction at no expense to the City.

Councilmember Everhart asked if denial of the waiver would prevent the applicant from developing the property.

Bill Fiander reported the applicant plans to build a home on the property and must have approval to obtain water service.

Councilmember Harmon stated the staff report indicated the applicant proposed to install a septic system; however, the report also indicates the property is required to connect to a sanitary sewer system upon development. He asked staff to clarify and outline what the requirements are regarding connection to the sanitary sewer system.

Bill Fiander stated the property would connect to the Shawnee County sanitary sewer system; therefore, the City's annexation rules for sewer connection would not apply. He further explained the property is within the primary service area for sanitary sewer as adopted by the Shawnee County Wastewater Management Plan, and would be required to be connected to sanitary sewer upon development with no septic system being allowed unless a waiver is granted by the City of Topeka.

Councilmember Hiller questioned if the applicant's property would be the only property in the area not connected to City water service.

Bill Fiander stated all surrounding properties are connected to City water service.

Councilmember Hiller withdrew the motion to deny the annexation exemption request. The second concurred.

Councilmember De La Isla moved to approve the annexation exemption waiver request with the stipulations of platting the property; connection to the sanitary sewer in compliance with the Shawnee County Wastewater Management Plan; and the owner records consent to annex for the entire property. The motion was seconded by Councilmember Hiller.

Councilmember Hiller expressed her appreciation for allowing testimony to clarify the situation and understands the Planning Department's point of view; however, if all properties surrounding the applicant's lot are connected to City water service then the applicant should be

allowed to connect as well. She stated she believes approval would not set precedence for future waiver requests.

The motion to approve the annexation exemption waiver request with the stipulations of platting the property; connection to the sanitary sewer in compliance with the Shawnee County Wastewater Management Plan; and the owner records consent to annex for the entire property carried unanimously. (6-0-0)

Mayor Wolgast clarified it is not the intent of the Governing Body to deny or stifle public comment. He stated Topeka City Council Rules and Procedures require citizens to notify the City Clerk's Office by 5:00 p.m. the day of the Council meeting if they wish to speak to an item on the agenda ensuring a structured and orderly Council meeting.

Retail Cereal Malt Beverage License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
California BP	2740 SE California Avenue
Goose Express	2901 SE Fremont Street
Holiday Square 66	2901 SW Topeka Boulevard
I-70 BP	1000 SW Wanamaker Road
Kicks 66	3300 SW Gage Boulevard
Lakeview 66	3000 SE Croco Road
Oakmart BP	2518 NE Seward Avenue
Tammy's on the Go	3325 SW Gage Boulevard
Topeka Fuel Center	1320 SW 6 th Avenue
Villa West Express	2855 SW Wanamaker Road
White Lakes 66	931 SW 37 th Street

Councilmember Ortiz moved to approve the Retail Cereal Malt Beverage License applications as presented. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted "yes." (7-0-0)

RESOLUTION NO. 8522 introduced by City Manager Jim Colson, in accordance with Sections 18.75.030(c)(1) and 18.75.030(c)(4) of the Topeka Municipal Code, approving a Conditional Use Permit to allow for a public use facility and community center on property

zoned “R-2” Single-Family Dwelling District and located at 455 SE Golf Park Boulevard in the City of Topeka, Shawnee County, Kansas, was presented. (CU13/1)

Bill Fiander, Planning Department Director, reported the zoning request would allow Unified School District No. 501 (Topeka Public Schools) to open Avondale East Elementary School as a community center to serve neighborhood residents, as well as, lease a portion of the school to the Community Resources Council for various non-profit groups. He stated the Topeka Rescue Mission would be a major sub-tenant and use the property for their new NET Reach Program. He reported the Planning Department received no opposition to the request and recommends approval.

Mayor Wolgast stated approval of the request is vital to the neighborhood due to the school closing and the difficulties the area faces. He commended the Hi-Crest Neighborhood Improvement Association for their hard work in making the change happen.

Councilmember Ortiz commended the Hi-Crest Neighborhood Improvement Association for not giving up on the issue and supporting the request. She stated the proposed use of the facility would be a great asset to the community and the outreach programs will provide much needed services to the area.

Councilmember Ortiz moved to approve the resolution. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (7-0-0)

RESOLUTION NO. 8523 introduced by City Manager Jim Colson, in accordance with Sections 18.70.030(c)(2) of the Topeka Municipal Code, approving a Conditional Use Permit to allow for a public use facility on property zoned “PUD” Planned Unit Development (mixed commercial, office and residential) and located ½ mile east of SW Wanamaker Road and SW 6th Avenue was presented. (CU13/2)

Bill Fiander, Planning Department Director, reported approval would allow for the construction of City of Topeka Fire Station No. 13 (12,828 sq. ft.) which would include living area, kitchen, offices and training stair tower. He stated the request is consistent with the land use policies and principles of the Topeka Land Use and Growth Management Plan -2025 and the Topeka Planning Commission recommends approval.

Councilmember Wolgast stated several questions were raised at the public meeting held on April 24, 2013, concerning the condition of SW 6th Avenue. He stated residents are concerned with how the additional traffic flow of heavy fire trucks would accelerate the degradation of the pavement. He stated he is hopeful the City would consider improving SW 6th Avenue in the near future and suggested the street project be funded with sales tax revenue funds, if the sales tax initiative is extended.

Councilmember Harmon moved to approve the resolution. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Wolgast voted “yes.” (7-0-0)

ORDINANCE NO. 19824 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 at the southeast intersection of SE Scorpio and SE Virgo Avenues from “M-1” Two-Family Dwelling District TO “R-1” Single-Family Dwelling District placed on first reading June 4, 2013, was again presented. (Z13/7)

Jim Colson, City Manager, stated approval would allow the properties to be used only for the construction of new single-family dwellings.

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Wolgast voted “yes.” (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Harmon and Wolgast -7. Absent: Manspeaker and Schwartz -2. Council District No. 8 - Vacant.

ORDINANCE NO. 19825 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 at 2038 SW Gage Boulevard from “C-4” Commercial District and “R-1” Single-Family Dwelling District with a Special Use Permit for a Vehicle Surface Parking Lot and a Children’s Park ALL TO “C-2” Commercial District placed on first reading June 4, 2013, was again presented.

(Z13/8)

Jim Colson, City Manager, stated approval would allow the east half of the property to be used for commercial building expansion.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Harmon and Wolgast -7. Absent: Manspeaker and Schwartz -2. Council District No. 8 – Vacant.

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

Jim Colson, City Manager, reminded citizens the South Kansas Avenue Project Open House would be held on June 12, 2013, from 4:00 p.m. to 7:00 p.m., at the bank building located at SW 8th and Jackson Streets. He noted the discussion would include project details, traffic sequences and how the project would affect area businesses.

Councilmember De La Isla expressed her appreciation to the Governing Body for approving the rezoning of the Avondale East Elementary School. She commended those involved in creating community partnerships and remaining committed to making the community better.

Councilmember Hiller commented on the grant awarded to the City of Topeka from the Kansas Department of Transportation to help implement Phase 1 of the Topeka Bikeways Master Plan in the amount of \$1.4 million. She expressed her appreciation to the people who have worked hard to make the project happen and continue to move it forward.

Councilmember Campos II, stated many community centers and schools are now offering free hot breakfasts and lunches to youth ages 17 and younger. He requested the meal schedule be posted on the City's website. He reminded citizens the Fiesta Mexicana Royalty Food Sales are continuing through June 30, 2013, at the Marlo Cuevas Balandran Activity Center located at 216 NE Branner Street.

Councilmember Everhart announced the Kaw Valley Amateur Radio Club Annual Field Day would be held on June 22-23, 2013. She reported the 24-hour event is an emergency communications exercise and would take place at the Wildlife Parking area located at SW Wanamaker Road and SW 3rd Street. She stated she would provide additional information on the event at next week's Council meeting.

Frank Hoge, Katrina Bayless, Frank Meade and Joseph Ledbetter appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:12 p.m.

Brenda Younger
City Clerk