

## **Council Minutes – July 16, 2013**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, July 16, 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, De La Isla, Manspeaker, Schwartz, Schmidt and Harmon -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember Everhart -1.

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

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

A PRESENTATION on the 2012 City of Topeka Financial Audit was provided by Jeff White, Interim Budget Director, Columbia Capital Management, L.L.C. He reported the City's external auditors delivered a "clean" opinion and for the first time in a number of years, the City completed the Comprehensive Annual Financial Report (CAFR), including audited financial statements, for the fiscal year ending December 31, 2012, in a timely fashion. He stated the transmittal letter and the Management Discussion and Analysis (MD&A) outlines a key change in the 2012 FY CAPR which is the transfer of the City's former parks program to Shawnee County. He reported the external auditor's management letter provided the City guidance in areas needed for change and improvement, most of which have or will be resolved with relatively simple procedural changes. He expressed his confidence in the responsible management of public resources based on the quality of the City's accounting and financial reporting and commended Finance Department staff members for their hard work in completing the audit. He provided brief comments on audit preference, process improvement, entry errors and changing accounting standards.

Mayor Wolgast commended staff for providing a clear snapshot of the City's financial reporting processes and providing a mechanism for the Governing Body to reference in moving ahead with budgetary recommendations. He commended Tina Loyd, Finance Department, and Pam Simecka, City Controller, for their hard work in helping complete the audit.

Councilmember Hiller commended staff for providing the report. She stated the report will be a great reference tool in making financial decisions.

Mayor Wolgast requested to pull items 4A, 4B and 4C, Board Appointments for the Community Corrections Advisory Council from the consent agenda for further review of the appointment process. He stated he seeks to work cooperatively with the Council and believes the Governing Body is a team that works together. He asked the City Attorney's office to review the process to see if it meets all state statutes and City ordinances and when the review is complete, the process will be presented to the Council for participation in nominating and appointing individuals who apply to serve in the community on various boards and commissions. He stated a list of appointments to be filled in the next 60 to 90 days will be posted on the City's website with a link to the form for self-nomination to those interested in serving their community.

Councilmember Ortiz thanked Mayor Wolgast for being sensitive to the Councilmembers needs; however, due to the many vacant appointments at this time, certain boards cannot vote on their annual budget until the vacancies are filled. She expressed concern with the Juvenile Corrections Advisory Board funding cuts and noted any delay in the appointment process could have a negative effect on the organization.

Councilmember Ortiz moved to withdraw items 4A, 4B and 4C, Board Appointments to the Community Corrections Advisory Council from the consent agenda for further discussion. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of July 9, 2013, were presented.

An Open After Midnight License application for Quinton's Bar and Deli located at 4121 SW Huntoon Street, was presented.

Councilmember De La Isla moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Manspeaker carried unanimously. (8-0-0)

ORDINANCE NO. 19830 introduced by City Manager Jim Colson, amending City of Topeka Code Sections 18.10.020, 18.10.050, 18.20.020, 18.25.010, 18.25.070, 18.25.080, 18.25.095, 18.55.190 and specifically repealing said original sections, as well as, creating new Section 18.25.135, all concerning electronic message center sign regulations placed on first reading July 9, 2013, was again presented. (ACZR12/4)

Bill Fiander, Planning Department Director, reported the proposed ordinance would fill a void in the City's sign regulations as electronic message center signs are currently not regulated in non-residential zoning districts. He stated Planning Department staff researched 23 other community sign regulations to see how they monitored electronic message center signs in commercial areas and four Question & Answer Sessions were held at public hearing meetings to discuss the issue. He noted the Topeka Planning Commission and City of Topeka Planning Department support the ordinance and recommend approval.

Councilmember Schwartz asked if the Greater Topeka Chamber of Commerce has commented on the issue.

Bill Fiander reported the Topeka Chamber of Commerce supports the proposed ordinance.

Councilmember Manspeaker questioned why the proposed ordinance was being presented and noted he has not received any complaints from the community.

Bill Fiander stated the two main reasons the ordinance has been presented is to improve the aesthetics and safety of the community. He noted staff has received a handful of complaints regarding the issue.

Mayor Wolgast reported he has received some complaints from constituents.

Councilmember Ortiz stated businesses have made great investment in advertising signs and asked if a grand-father clause would be included in the ordinance for signs that are currently too big or do not comply with the new regulations.

Bill Fiander stated he is not aware of any signs that would be out of compliance if the ordinance is approved; however, a grand-father clause is included in the ordinance for larger-size signs. He noted the brightness and movement of the electronic message center signs would have to be reprogrammed to comply with the ordinance.

Mayor Wolgast spoke in support of the ordinance and stated it is important to the community. He listed several communities comparable in size to the City of Topeka and reported most of the cities do not allow the type of signage used in the Topeka area. He also noted several public meetings have been held to provide opportunities for the industry to voice their concerns and work towards a resolution.

Councilmember Ortiz asked if there was anyone opposed to the new sign regulations.

Bill Fiander stated there were some businesses that believe the City should not restrict electronic sign movement; however, a compromise was reached and the proposed ordinance was drafted.

Kip Slattery, Luminous Neon, Inc., thanked City staff for drafting the regulations and expressed appreciation for reaching out to the industry to find a compromise to satisfy both parties. He spoke in support of the ordinance.

Councilmember Hiller stated she has received many complaints about the electronic message center signs and expressed appreciation to City staff for engaging the industry in the process.

Councilmember Hiller moved to adopt the ordinance. The motion seconded by Councilmember Schmidt carried. Mayor Wolgast voted “yes.” Councilmember Manspeaker voted “no.” (8-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, De La Isla, Schwartz, Schmidt, Harmon and Mayor Wolgast -8. Noes: Manspeaker -1. Absent: Everhart -1.

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Sections 18.10.010, 18.10.020, 18.15.030, 18.15.060, 18.25.060, 18.25.220, 18.25.230 and 18.25.260, specifically repealing said original sections, as well as, creating Section 18.25.215, all concerning the regulation of temporary signs placed on first reading July 9, 2013, was again presented. (*ACZR12/2*)

Bill Fiander, Planning Department Director, reported the current temporary sign regulations make it difficult for businesses to determine what signs are permitted and enforce some types of temporary signs such as feather flags. He noted Planning Department staff researched 19 other community sign regulations to see how temporary signs are monitored and requested input from local sign companies on the proposed sign changes. He also noted the Planning Department held two Questions & Answer sessions that were open to the public. He

stated the ordinance would add graphics to the Code, as well as, clarifies banners, free-standing signs and feather flags; however, the size standards did not change.

Councilmember Schwartz asked if the Greater Topeka Chamber of Commerce supports the ordinance. She also asked if there was discussion regarding a \$40 permit fee that would cover the costs of the permit process.

Bill Fiander reported the stakeholder group did not have a discussion regarding feather flags and most of the Question & Answer sessions were regarding the notification process. He stated staff did not do a cost analysis; however, there is a permit fee and process even if there are exceptions allowed. He noted he would most likely recommend a permit process for any exceptions made for every type of sign.

Councilmember Manspeaker asked how many businesses have feather flag signs and to describe what is a special event sign.

Bill Fiander reported there were approximately 30 businesses that displayed feather flag signs at the time staff took inventory in the winter season; and most temporary type signs could be used to display a special event for two, 30-day periods; however, a special event is not clearly defined in current City Code making it tough to enforce.

Councilmember Schmidt asked for clarification regarding feather flag signs and how long they could be displayed.

Bill Fiander stated any free-standing signs can be displayed for two, 30-day periods that fit the size restrictions; however, most of the current feather flags being displayed would be too tall.

Councilmember Hiller expressed appreciation for the information that has been presented; however, in her opinion, the proposed ordinance effectively bans flags, contractor

signs and feather flags, and the timeline seems to be unnecessary. She stated many people have expressed their support of feather flag signs. She distributed proposed amendments to the ordinance and suggested the ordinance be remanded back to the Planning Commission to consider adding language to allow flags, contractor signs and feather flags, as well as, allow language for long-term and short-term display.

Councilmember Hiller moved to refer the ordinance back to the Planning Commission for further study in flags, contractor signs and feather flags and to make other minor corrections. The motion was seconded by Councilmember Schmidt.

Garry Kahre, Downtown Merchants Advertising Association, expressed concern with signage for downtown merchants and noted there are no setbacks for them to display signs. He stated merchants want to create an area of activity, creativity and festivity and view feather flags as a way to enhance businesses. He provided an example of artistic flags and stated they did not object to the idea of flags being generic in nature. He requested the Council consider setting aside the downtown district area to allow use of feather flags for permanent or ongoing advertising, especially during construction phases.

Councilmember Schmidt stated there are times when feather flags become weathered and frayed. He asked if a permit fee would be agreeable by association members to ensure a professional looking sign would always be displayed.

Garry Kahre stated he would have to get a consensus from the association on their thoughts regarding an additional permit fee.

The motion to refer the ordinance back to the Planning Commission for further study in flags, contractor signs and feather flags and to make other minor corrections carried. Mayor Wolgast voted “yes.” Councilmembers De La Isla and Manspeaker voted “no.” (7-2-0)

NO Retail Cereal Malt Beverage License applications were presented.

RESOLUTION NO. 8531 introduced by City Manager Jim Colson, authorizing the serving of complimentary alcoholic liquor and cereal malt beverages for the First Friday Art Walk event sponsored by ArtsConnect, Inc., was presented.

Mary Feighny, Assistant City Attorney, reported House Bill 2199 was passed by the Kansas Legislature which allows premises that are not licensed to sell alcohol and cereal malt beverages to provide complimentary alcohol and/or cereal malt beverages at events sponsored by a non-profit organization promoting the arts if the governing body approves the event.

Mayor Wolgast asked if Governing Body approval of an event would add an additional step to the special event process.

Mary Feighny stated approval of the resolution would be indefinite; however, the event has to be sponsored by ArtsConnect, Inc.

Sarah Fizell, ArtsConnect, Inc., spoke in support of the resolution and appeared to answer questions.

Councilmember Campos II expressed concern with how underage drinking laws would be regulated if the resolution is approved.

Sarah Fizell stated ArtsConnect would be required to notify the Kansas Alcohol Beverage Control Division of any events taking place and the businesses participating in the events would still be required to abide by all underage drinking laws.

Councilmember Hiller thanked ArtsConnect, Inc., for all their work in moving forward with the new law.

Councilmember Ortiz expressed concern with not having a time duration outlined in the resolution.

Mary Feighny stated the Council has the option to amend the duration of time outlined in the resolution.

Councilmember Ortiz moved to amend Section 1 of the resolution to limit the serving of complimentary alcoholic liquor and/or cereal malt beverage on the unlicensed premises of businesses by the business owner or agent at the First Friday Art Walk event sponsored by ArtsConnect, Inc., a nonprofit organization promoting the arts, to be held on the first Friday of each month, commencing on August 2, 2013, through August 8, 2014, between the hours of 5:30 p.m. and 8:30 p.m. The motion seconded by Councilmember Schwartz carried unanimously. (8-0-0)

Councilmember Ortiz stated she fully supports ArtsConnect; however, the proposed amendment was made to stipulate a date certain in the event other organizations make a similar request.

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

BOARD APPOINTMENT recommending the appointment of Charlene Nards to the Community Corrections Advisory Board for a term ending June 30, 2015, was presented.

Councilmember Campos II moved to approve the board appointment. The motion was seconded by Councilmember Manspeaker.

Councilmember Harmon questioned if the state statute regarding mayoral appointments would apply to the board appointment.

Mary Feighny, Assistant City Attorney, stated the appointment was a statutory appointment to be made by the Governing Body; therefore, the state statute Councilmember Harmon was referring to would not apply.

Councilmember Hiller stated she had been working with the previous mayor to get a systematic process in place so that all Councilmembers could contribute and nominate good quality people to serve.

Mayor Wolgast reminded the Council that they are considering the appointment of Charlene Nards.

Councilmember Hiller expressed concern with the appointment process and noted the entire process takes approximately 90 days to complete.

Councilmember Manspeaker raised a point of order and stated the Council is considering an appointment at this time, not the appointment process. He stated he understands the process can be confusing at first; however, over time it becomes easier to understand and appears to be working.

Councilmember Hiller made a substitute motion to delay the board appointment 90 days, to allow time for the Council to further discuss the board appointment process. The motion was seconded by Councilmember Harmon.

Councilmember Manspeaker stated that he believes further discussion is not necessary because the appointment process is transparent and allows any Councilmember to nominate anyone whether they live in that Council person's district or not. He stated the responsibility of the Council is to nominate someone who can bring good qualities to the board or commission and the Mayor does a fine job of screening the candidates accordingly.

The substitute motion to delay the board appointment 90 days to further discuss the board appointment process failed. Councilmembers Campos II, Ortiz, De La Isla, Manspeaker and Schmidt voted “no.” (3-5-0)

The motion to approve the board appointment carried unanimously. (8-0-0)

BOARD APPOINTMENT recommending the re-appointment of Lazone Grays to the Community Corrections Advisory Board for a term ending June 30, 2015, was presented.

Councilmember Manspeaker moved to approve the board appointment. The motion was seconded by Councilmember De La Isla.

Councilmember Schwartz expressed concern with the appointment of Mr. Grays and asked if background checks are conducted on appointees.

Mayor Wolgast stated background checks are conducted on all applicants.

Councilmember Ortiz asked what purpose the Community Corrections Advisory Council serves.

Mary Feighny, Assistant City Attorney, stated the Community Corrections Advisory Council is composed of a variety of people throughout Shawnee County that advise others on correctional system activities and process.

Mayor Wolgast stated many different entities throughout the County support the Community Corrections Advisory Council corrections process and programs.

Councilmember Hiller spoke in support of the appointment and stated Mr. Grays provides good contributions to the Council.

The motion to approve the board appointment carried. Councilmembers Campos II and Ortiz voted “no.” (6-2-0)

BOARD APPOINTMENT recommending the appointment of Ed Collazo to the Community Corrections Advisory Board for a term ending June 30, 2015, was presented.

Councilmember Campos II moved to approve the board appointment. The motion seconded by Councilmember De La Isla carried. Councilmember Campos II voted “no.” (7-1-0)

Jim Colson, City Manager, requested to pull Council agenda item 7I, under First Readings, an ordinance apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, in the area of Lauren’s Bay Estates for Street Improvement Project No. 60632-01.

Upon hearing no objections, Mayor Wolgast announced the ordinance would be withdrawn from the Council agenda.

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Section 9.15.020 and specifically repealing said original section, concerning possession and consumption of alcoholic liquor and cereal malt beverages was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for Waterline Improvement Project No. T-281036.00, located in Horseshoe Bend Subdivision Nos. 2 and 3, as defined and described in Resolution No. 8449, adopted and approved on July 24, 2012, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for Sanitary Sewer Improvement Project No. T-401026.00 located in Horseshoe Bend Subdivision Nos. 2 and 3, as defined and described in Resolution No. 8447, adopted and approved on July 24, 2012, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for Street Improvement Project No. T-601024.00, located in Horseshoe Bend Subdivision Nos. 2 and 3, as defined and described in Resolution No. 8448, adopted and approved on July 24, 2012, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, apportioning and levying a special assessment on certain lots and pieces of ground in Shawnee County, Kansas, for Sanitary Sewer Project No. T-401025.00, located at NW Halfday Lane, as defined and described in Resolution No. 8338, adopted and approved on May 24, 2011, was presented for first reading.

AN ORDINANCE introduced by Jim Colson, City Manager, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, in the area of Horseshoe Bend Subdivision Nos. 2 and 3 for Sanitary Sewer Improvement Project No. T-401026.00, as defined and described in Resolution No. 8447, adopted and approved July 24, 2012, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for Sanitary Sewer Improvement Project No. T-401027.00, located at 1148 SW Jewell as defined and described in Resolution No. 8329, adopted and approved on May 3, 2011, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for Sanitary Sewer Improvement Project No. T-401029.00, located in North Park

Addition as defined and described in Resolution No. 8374, adopted and approved on August 23, 2011, was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for Street Improvement Project No. T-601001.00, located on SW Frazier Avenue between 3<sup>rd</sup> and 4<sup>th</sup> Streets as defined and described in Resolution No. 8258, adopted and approved on May 25, 2010, was presented for first reading.

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

Jim Colson, City Manager, announced the Kansas Attorney General's Office, Kansas Sunshine Coalition for Open Government, Kansas Press Association and Kansas Newspaper Foundation is sponsoring a free training session on the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA) on July 24, 2013, at 1:30 p.m. at the Memorial Hall Auditorium located at 120 SW 10th Avenue, 2nd Floor.

Councilmember Manspeaker stated he has received many complaints from constituents regarding the sound quality of City Council meetings. He expressed concern with the lack of transparency in regards to citizens not being able to hear what is being discussed and requested the problem be fixed as soon as possible. He also expressed concern with potential serial communication violations in the form of emails being sent between Councilmembers. He reported the Kansas Open Meetings Act has three elements to consider, (1) interactive discussion; (2) by and between at least a majority of the body; and (3) matters relating to the functions of the body. He asked that the Governing Body not include him when replying to all members of the Governing Body in email communications.

Councilmember Schwartz encouraged the Governing Body to attend the Kansas Attorney General's KOMA and KORA training on July 24, 2013. She noted that she believes the regulations were not intended to stifle communication between elected officials. She referenced a Topeka Capital Journal newspaper article regarding board nominations and appointments and stated her intent was not to suppress discussion between the Governing Body or project negative media.

Councilmember Hiller stated she plans to attend the KOMA and KORA training being offered on July 24, 2013, and encouraged the Council to research and find ways to communicate with each other instead of ways not to communicate with each other. She also requested to schedule a future Work Session discussion on Council Rules and Procedures.

Councilmember Ortiz stated she believes everyone should use common sense regarding KORA and KOMA regulations at any given time. She thanked Police Chief Ron Miller for his assistance in a missing person case last week which had a great outcome. She invited the community to participate in Taco Casa's 50th Anniversary celebration at 1423 SW 6th Avenue on July 17, 2013.

Councilmember De La Isla commended City staff for a successful 2012 Financial Audit. She noted her personal experience with financial audits and stated the report shows that the City is moving in the right direction.

Mayor Wolgast commended the Governing Body for respectfully moving forward with City business even though there may be differences in opinions.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:33 p.m.

---

Brenda Younger  
City Clerk