

Council Minutes – August 18, 2015

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 18, 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, Councilmember Schumm gave the invocation.

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

A PRESENTATION on the City of Topeka 2nd Quarter Financial Report was provided by Brandon Kauffman, Chief Fiscal Officer.

Councilmember Hiller commended staff for providing the detailed report and asked if there were any concerns in regards to the City's level of debt at this time.

Mayor Wolgast noted sales tax revenues were reported lower than expected.

Brandon Kauffman stated staff would continue to monitor core revenues to ensure they are sustainable and report back to the Governing Body as needed.

Councilmember Clear moved to add a resolution granting Brass Rail Tavern a noise exception to the consent agenda. The motion seconded by Councilmember De La Isla carried unanimously. (10-0-0)

Mayor Wolgast announced the resolution would be placed on the Council agenda under the consent agenda as item 4J.

THE CONSENT AGENDA was presented as follows:

APPROVAL of a Workers' Compensation Settlement for Police Sergeant Robert Simmons in the amount of \$13,226.85 for the permanent partial impairment of his right shoulder for injuries suffered on January 31, 2013, was presented.

APPROVAL of a Workers' Compensation Settlement for heavy equipment operator Larry McBurney in the amount of \$17,500 for the permanent partial impairment of his right lower extremity for injuries suffered on April 12, 2010, was presented.

BOARD APPOINTMENT recommending the re-appointment of Stephanie Mott to the Topeka Human Relations Commission to fill an unexpired term ending August 31, 2017, was presented.

DENIAL of claim filed by Bettis Asphalt seeking \$88,176 in damages for increased costs and other damages incurred in connection with work performed at the Kanza Education and Science Park was presented.

RESOLUTION NO. 8709 introduced by Deputy Mayor Karen Hiller, granting Visit Topeka, Inc., an exception to the provisions of City of Topeka Code Section 9.45.150 concerning noise prohibitions was presented.

RESOLUTION NO. 8710 introduced by Deputy Mayor Karen Hiller, approving a special event known as the Kansas Mariachi Festival was presented.

RESOLUTION NO. 8713 introduced by City Manager Jim Colson, authorizing the serving of complimentary alcoholic liquor or cereal malt beverage for the First Friday Art Walk events to be held at various businesses as sponsored by ArtsConnect, Inc., from September 2015 through September 2016, was presented.

MINUTES of the regular meeting of August 11, 2015, was presented.

APPROVAL of an Open After Midnight License application for Bar N Grill located at 2121 SW Belle Avenue, Topeka, Kansas, was presented.

RESOLUTION NO. 8714 introduced by Councilmember Sandra Clear, granting Brass Rail Tavern 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. Councilmember Schumm voted “no.” (9-1-0)

ORDINANCE NO. 19963 introduced by City Manager Jim Colson, authorizing the issuance of \$55,265,000 aggregate principal amount of General Obligation Bonds, Series 2015A of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, K.S.A. 12-6a01 et seq., and Charter Ordinance No. 89 of the City, all as amended was presented.

Brandon Kauffman, Chief Fiscal Officer, stated approval would allow the City to convert capital improvement projects from temporary notes to permanent financing through general obligation bonds, and partially refinance Series 2009B, 2010A and 2010B for an estimated savings of \$166,000 a year. He reported the City conducted competitive sales of the bonds and the winning bids were awarded to Hutchinson, Shockey, Erley & Company for the General Obligation Bonds, Series 2015A in the amount of \$55,265,000 and the Temporary Notes, Series 2015A were awarded to Morgan Stanley in the amount of \$49,620,000. He noted the general obligation bonds are 15 year bonds which lowered the interest costs associated with most projects and the temporary notes would fund special assessment projects, fire station improvements, bridge improvements, street improvements and utility projects.

Councilmember Clear asked if Fire Station No. 13 was listed in the capital improvement projects to be included in the bond financing, and if so, would the City be legally obligated to complete the project.

Brandon Kauffman gave a brief overview of the bond process which includes Governing

Body approval of the Capital Improvement Plan (CIP) and Budget. He reported as CIP projects move forward the City identifies each project and determines whether the project should be financed through temporary or permanent financing based on the status of the project completion.

Jim Colson, City Manager, reported staff anticipates the deployment and optimization studies will be finalized and presented to the Governing Body in the near future for discussion. He noted the studies would provide recommendations regarding Fire Station Nos. 13 and 14.

Councilmember Ortiz questioned why the number of years to finance the bonds was reduced.

Brandon Kauffman stated by reducing the payment time by five years the City would achieve an overall savings of \$2.6 million.

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

The 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. 8711 introduced by City Manager Jim Colson, prescribing the form and details of General Obligation Bonds, Series 2015A of the City of Topeka, Kansas in aggregate principal amount of \$55,265,000 the issuance of which were authorized by the City pursuant to its ordinance adopted and approved August 18, 2015; and authorizing certain other documents an action in connection with the issuance of bonds was presented.

Councilmember De La Isla moved to approve the resolution. The motion seconded by Councilmember Clear carried. Mayor Wolgast voted “yes.” Councilmember Schwartz voted “no.” (9-1-0)

RESOLUTION NO. 8712 introduced by City Manager Jim Colson, authorizing and directing the issuance of Temporary Notes, Series 2015A (General Improvements) of the City of Topeka, Kansas, in the aggregate principal amount of \$49,620,000 for the purpose of providing funds to pay the cost of (i) renewing a portion of the Series 2014A Temporary Notes of said City, dated September 25, 2015, and (ii) pay a portion of the cost of certain improvement of said City was presented.

Councilmember De La Isla moved to approve the resolution. The motion seconded by Councilmember Coen carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

APPROVAL of an amendment to City of Topeka Contract No. 43903, the current three-year labor agreement for AFT Kansas Local 6406 effective through December 31, 2017, was presented. (*Contract No. 44544*)

Jacque Russell, Human Resources Director, reported the amendment would provide for a wage re-opener for years 2016 and 2017.

Councilmember Clear asked for clarification on the pay matrix increases.

Jacque Russell reported the pay matrix would increase by one-half percent across the board as well as in 2017 a pool of \$250,000 would be allotted to increase classifications (grades) that are identified as below market in a comparability study which should be completed by the end of 2015.

Councilmember Schumm moved to approve the labor agreement. The motion seconded by Councilmember Hiller carried. Mayor Wolgast voted “yes.” Councilmember Schwartz voted “no.” (9-1-0)

APPROVAL of a three-year labor agreement effective January 1, 2016, through December 31, 2018, between the City of Topeka and Teamsters Local No. 696, representing street maintenance employees was presented. (*Contract No. 44545*)

Jacque Russell, Human Resources Director, reported approval would provide a 1% increase across the board to the pay matrix in each year of the three year contract, and allows one step movement on anniversary dates for employees who are eligible based on performance evaluation ratings.

Councilmember De La Isla moved to approve the labor agreement. The motion seconded by Councilmember Clear carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

APPROVAL of a Real Estate Purchase Agreement between the City of Topeka and ACRS Investments, L.L.C., for the sale of surplus property located at approximately 1229-1235 S. Kansas Avenue, Topeka, Kansas, in the amount of \$5,600 was presented. (*Contract No. 44546*)

Sasha Stiles, Department of Neighborhood Relations Director, reported the properties located at 1229-1235 S. Kansas Avenue were acquired through the City’s voluntary demolition program between 1987 and 2009. She stated all City departments have declared the properties as surplus; therefore, the Governing Body authorized staff to accept competitive bids for the property on May 5, 2015. She stated one bid was received from the adjacent property owner, ACRS Investments, L.L.C., in the amount of \$5,600 for all five lots. She noted sale of the property would eliminate future maintenance costs and would return the property to the tax rolls.

Councilmember Hiller moved to approve the real estate purchase agreement. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

ORDINANCE NO. 19964 introduced by Councilmember Elaine Schwartz concerning the prohibition of electronic cigarettes, amending City of Topeka Code Sections 8.20.020, 8.20.070 and 8.20.080 and repealing original sections was presented.

Councilmember Schwartz reported approval would add electronic cigarettes to the prohibition of smoking in enclosed public places. She stated in order to give citizens and businesses time to comply the effective date will be November 1, 2015. The ordinance would include the following amendments to the City's Clean Indoor Air Ordinance No. 19315:

- Define electronic cigarettes
- Redefine "smoking" to include electronic cigarettes
- Create an exemption similar to the exemption for tobacco stores that sell electronic cigarettes, i.e., 'vape' shops
- Require businesses to post signs that prohibit smoking including electronic cigarettes.

Councilmember Schwartz moved to adopt the ordinance. The motion was seconded by Councilmember Coen.

Spencer Duncan spoke in opposition of the ordinance.

Amy Arnett-German, Zaire Platt, Mary Jane Hellebust, Michelle Voth, Kristi Pankratz, Eric Voth, Duane Olberding, Beth Marolf and Teresa Miller spoke in support of the ordinance.

Councilmember Schumm stated he appreciates the comments made; however, he would oppose the ordinance because he believes individuals should have the right to make their own health choices.

Councilmember Jensen asked if there have been discussions on banning flavors or providing tamper-proof vials to help eliminate the use of illegal drugs.

Councilmember Schwartz stated business owners have requested the City regulate e-cigarette use by the public; however, more discussion needs to take place in regards to regulation of e-cigarette vials.

The motion to adopt the ordinance carried. Councilmembers Schumm and Harmon voted “no.” (7-2-0) (*Pursuant to Topeka Municipal Code Section A2-24(a)(ix) the Mayor did not vote on this ordinance because of his right to exercise veto authority.*)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, De La Isla, Jensen, Schwartz and Coen -7. Noes: Schumm and Harmon -2.

ORDINANCE NO. 19965 introduced by Councilmember Jeffrey Coen, concerning public nudity and creating new City of Topeka Code Section 9.45.110 was presented.

Councilmember Coen reported approval of the ordinance would prohibit nudity on sidewalks, streets, alleys, public right-of-way, public parks and public trails.

Councilmember Coen moved to adopt the ordinance. The motion was seconded by Councilmember Schwartz.

Councilmember Coen distributed the following amendments to the ordinance:

- Line 14 strike the sentence, “on a sidewalk, street, alley, public right of way, public park or public trail” and insert the statement “in a public place”
- Line 16, insert the word “Definitions”
- Line 17, insert the number “(1)”
- Lines 24-33, insert the following definitions, “(2) “Public Place” means any location frequented by the public, or where the public is present or likely to be present including but not limited to, streets, avenues, highways, roads, waterways, stores, meeting facilities, or business and commercial establishments. (3) “Places set apart for nudity” means public places outside of the home where nudity or exposure is necessary and customarily expected; including, but not limited to, public restrooms, enclosed single-sex functional shower, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor’s offices and portions of hospitals set apart for this purpose.”
- Line 35, delete the word, “or”
- Lines 37-45, insert the sentences, “(3) Places set apart for nudity. (4) Any theater, concert hall, art center, museum or similar establishment that is primarily devoted to the arts or theatrical performances and in which nudity is incorporated into the art exhibit or theatrical performance and is not a mere guise or pretense used to exploit the conduct of being nude for profit or commercial gain. (5) Nudity incorporated into an education curriculum at an accredited university, technical school or institution whose classes may transfer to an accredited university or technical school.”

Following discussion, the Governing Body by unanimous consent agreed to include the following additional amendments:

- Line 29, replace the word “and” with “or” after the word “necessary”
- Line 35, replace the word “ten (10)” with “five (5)” in regards to a child’s age

Webb Garlinghouse spoke in opposition of the ordinance.

Harry Bishop and Teresa Miller spoke in support of the ordinance.

Governing Body members thanked Councilmember Coen for presenting the issue; they expressed their appreciation to the public for their comments; and expressed the importance of police officers using discretion and having the ability to recognize mental health issues when issuing citations.

Councilmember Harmon stated he would oppose the amendments as presented because the ordinance language was unclear and too broad specifically relating to “public place” as defined.

Councilmember Coen moved to approve the amendments to the ordinance. The motion seconded by Councilmember Schwartz carried. Councilmember Harmon voted “no.” (8-1-0)

The motion to adopt the ordinance as amended carried unanimously. (9-0-0) (*Pursuant to Topeka Municipal Code Section A2-24(a)(ix) the Mayor did not vote on this ordinance because of his right to exercise veto authority.*)

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

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

Jim Colson, City Manager, stated the next “Tweet Along” would be held at the Topeka Zoo on August 19, 2015, and invited the Governing Body to participate in the event highlighting

elephants. He announced a Friday Family Fun Night Carnival event would be held on August 21, 2015, from 6:00 p.m. to 7:30 p.m. at the Avondale East NET Center located at 455 SE Golf Park for Highland-Crest neighborhoods.

Councilmember Schumm stated organizers are looking for volunteers at the Friday Family Fun Night Carnival event and those interested in participating should contact Monique Glaude at 785-368-4470 for further details.

Councilmember Jensen thanked citizens for their feedback and stated if there are other city issues that people would like him to know about they could provide their feedback at www.brendanjensen.com.

Councilmember Schwartz announced the late Kansas Supreme Court Justice Kay McFarland as this week's "gem" of Topeka.

Councilmember Hiller reminded everyone of the public sessions regarding economic development hosted by Garner Economics, L.L.C., are scheduled for August 19, 2015, from 6:00 p.m. to 8:00 p.m. at the Kansas Expocentre Heritage Hall. She noted Garner Economics, L.L.C., would offer an opportunity for people to provide public input electronically by the end of the month for those that could not attend the public sessions.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:22 p.m.

Brenda Younger
City Clerk