

Council Minutes – August 27, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 27, 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, Manspeaker, Schwartz, Schmidt and Harmon -9. Mayor Larry E. Wolgast presided -1.

AFTER THE MEETING was called to order, Pastor Terry Brillhart, Grace Community Church, gave the invocation.

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

Jim Colson, City Manager, requested to pull item 4E, Minutes of the regular meeting of August 20, 2013, from the consent agenda.

Councilmember Manspeaker moved to pull the Minutes of the regular meeting of August 20, 2013, from the consent agenda. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

Councilmember Ortiz moved to add a resolution granting a noise exception to Gema Lazcano to the consent agenda. The motion seconded by Councilmember Campos II carried unanimously. (9-0-0)

Councilmember Campos II moved to add a resolution granting a noise exception to Habitat for Humanity to the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

Councilmember Harmon moved to pull item 4B, a resolution granting a noise exception to Boss Hawg's from the consent agenda for further discussion. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

Mayor Wolgast announced the resolution granting a noise exception to Gema Lazcano would be placed on the consent agenda as item 4G, the resolution granting a noise exception to Habitat for Humanity would be placed on the consent agenda as item 4H, and item 4B would be removed from the consent agenda and placed on the Council agenda under New Business as item 6D.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Connie Spencer to the Jayhawk Area Agency on Aging Board of Directors for a term ending October 31, 2014, was presented.

RESOLUTION NO. 8540 introduced by Councilmember Karen Hiller, granting PT's Coffee an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8541 introduced by Councilmember Sylvia Ortiz, granting Kansas Black Expo an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8542 introduced by Councilmember Sylvia Ortiz, granting Gema Lazcano an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8543 introduced by Councilmember John Campos II, granting Habitat for Humanity an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

Councilmember Ortiz moved to approve the consent agenda as amended. The motion seconded by Councilmember Campos II carried unanimously. (9-0-0)

ORDINANCE NO. 19843 introduced by City Manager Jim Colson, amending City of Topeka Code Sections 18.30.010, 18.35.010, 18.35.040 and 18.35.220 and specifically repealing said original sections, all concerning the administrative minor plat approval process placed on first reading August 20, 2013, was again presented. (ASR13/1)

Bill Fiander, Planning Department Director, reported the ordinance would expand administrative authority over subdivision plat approvals that are minor in nature including the creation and vacation of easements and rights-of-way, requiring fewer subdivision plats to be approved by the Planning Commission and Governing Body. He stated approval would also ensure real estate taxes and special assessments are not delinquent on properties being platted or re-platted.

Mayor Wolgast asked for an example of a minor plat.

Bill Fiander stated one of the criteria to determine a minor plat is that no dedication of land for public purposes is required including but not limited to public parks, open spaces or rights-of-way. He reported if the plat requests a new road or dedication it would be presented before the Council for approval, and there are nine criteria that decide whether plats or re-plats may be approved administratively upon the joint approval of the planning director and the public works director without submission to or approval by the Planning Commission or City Council.

The nine criteria are listed below:

1. No new street right-of-way shall be proposed or required to serve the lots or tracts resulting from a subdivision.
2. The subdivision includes the total contiguous tract of land owned or under control of the subdivider(s).
3. A drainage study has been completed and approved for the proposed plat.
4. The plat includes no more than five lots or tracts of land.
5. No dedication of land for public purposes is required including but not limited to public parks, open spaces or rights-of-way.
6. All new lots or tracts front onto existing street right-of-way which is improved to City specifications.

7. No extensions of water or sewer mains are required to serve the lots or tracts.
8. Existing easements for utilities are not altered, removed or realigned unless expressly agreed to in writing by the utility.
9. The plat is consistent with the City of Topeka Metropolitan Plan.

Councilmember Ortiz asked how the process would be handled if there is a protest petition submitted by a property owner.

Bill Fiander stated there is no protest process for plats; however, if the property owner and the City do not agree on the plat, it becomes a major plat which would be presented before the Council. He noted there are provisions in the subdivision regulations that cover disapproval of plats.

Councilmember Campos II questioned if the process allows a subdivision to be platted even if roads need to be established, and if so, is the Planning Department currently handling the process administratively.

Bill Fiander stated if the property owner wants to subdivide the land it would not preclude the development of roads through the plat process. He reported the City's intent is to ensure development is completed and roads allow sufficient rights-of-way for utilities. He stated the minor plat process was established approximately five years ago and approval of the ordinance would update City code to allow the change in process.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Campos II carried unanimously. Mayor Wolgast voted "yes." (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt, Harmon and Mayor Wolgast -10.

A FINAL PLAT for Bailey Subdivision No. 2 located at 4112, 4120 and 4124 NE Seward Avenue and the tract of land north of 4124 NE Seward Avenue that adjoins the city limits within the City of Topeka three-mile extraterritorial jurisdiction was presented. (P12/11)

Bill Fiander, Planning Department Director, reported the property is located within the City's three-mile extraterritorial jurisdiction and outside the City's Municipal Service Area and lies partially within the Secondary Urban Service Area. He stated the applicant has consented to annexation with recording of the final plat and all properties included in the final plat are currently serviced by City of Topeka water. He also stated the City's Water Division has indicated it will continue to serve the area provided the water needs of the salvage yard operation are no greater than what was formerly required by the individual sites. He reported the existing watermain along NE Seward Avenue can still only provide the area with minimal water service and no fire protection until larger watermains are extended within the area. He stated the site is already serviced by individual septic and lateral field systems and the Shawnee County Health Agency has indicated there have been no issues with the septic tanks or lateral fields as they currently exist.

Councilmember Hiller stated the Topeka Planning Commission approved the plat over a year ago. She questioned why it has taken so long to come before the Council.

Bill Fiander stated the approval was delayed because it was subject to certain conditions which have now been met.

Angela Sharp, Bartlett & West Engineers, stated Shawnee County has approved the final plat subject to the condition that the intensity of the property would not increase.

Councilmember Ortiz moved to approve the final plat. The motion seconded by Councilmember Campos II carried unanimously. Mayor Wolgast voted "yes." (10-0-0)

ORDINANCE NO. 19844 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of June 29, 2013, through July 26, 2013, and enumerating said expenditures therein was presented for first and final reading.

Pam Simecka, City Controller, reported approval would authorize City expenditures in the amount of \$14,391,295.98.

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

Councilmember Campos II encouraged Councilmembers to review the expenditures and take a stronghold on the City's spending. He stated he would no longer approve City expenditures until there are changes made to the approval process.

Mayor Wolgast noted the City Manager would be presenting information on the City expenditure process in the near future.

Jim Colson, City Manager, stated staff has identified two financial reports that will be presented to the Council including one monthly report and one quarterly report specifying expenditures on a departmental basis.

The motion to adopt the ordinance carried. Councilmember Campos II voted "no."
(8-1-0)

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

NO Retail Cereal Malt Beverage License applications were presented.

A RESOLUTION introduced by Councilmember 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 stated she has received complaints from area residents regarding the loud music and the representatives of Boss Hawg's have informed her that events would take place on every other Saturday instead of every Saturday during the month of October.

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

Councilmember Ortiz stated she would prefer to have specific dates for events requesting noise exceptions.

Councilmember De La Isla stated the establishment was in the planning process of securing music bands when they made the request and needed flexibility for scheduling purposes.

Councilmember Hiller suggested amending the resolution to allow for two Saturdays in the month of October instead of every Saturday.

Mayor Wolgast suggested the Council pull the resolution and submit a new resolution listing specific dates.

Councilmember Hiller made a substitute motion to amend the resolution to approve two Saturdays within the month of October. The motion died due to a lack of a second.

Councilmember De La Isla made a substitute motion to defer the resolution until September 10, 2013. The motion seconded by Councilmember Hiller carried unanimously. (9-0-0)

RESOLUTION NO. 8544 introduced by City Manager Jim Colson, in accordance with Section 18.70.030(c)(11) of the Topeka Municipal Code, approving a Conditional Use Permit to allow for a public utility structure on property zoned "R-1" Single-Family Dwelling District and located at the dead-end intersection of NW Menninger Road and NW Green Hills Road was presented. (CU12/3)

Jim Colson, City Manager, stated approval would allow the City of Topeka to rebuild and relocate a failing sanitary sewer pump station in the same area and locate the facility outside the Soldier Creek floodway.

Bill Fiander, Planning Department Director, reported the City has acquired a 10,000 square foot easement on a portion of a nine acre property that is owned by the State of Kansas. He stated because the pump station is located in a floodway, the City must get the approval of the Army Corps of Engineers to make the necessary improvements. He noted the Planning Department and Topeka Planning Commission recommend approval of the conditional use permit.

Mayor Wolgast asked how the project would proceed if the permit is approved.

Bill Fiander stated upon approval the City would precede with the bid requests for construction of the project.

Councilmember Campos II asked if there was any collaboration with the North Topeka Drainage District (NTDD) and if the City is required to obtain their approval before acting on the project.

Bill Fiander stated property owners within the area were notified and no comments were submitted.

Chad Sublet, City Attorney, stated he does not believe approval of the NTDD is required; however, he would research the project requirements and report back to the Council.

Councilmember Campos II stated he received several phone calls concerning the project and stated many constituents reported a lack of coordination and communication with the City.

Mayor Wolgast reported a public meeting was held on June 4, 2013, at the Shawnee County North Community Center.

Councilmember Harmon asked if the interceptor has already been installed.

Councilmember Campos II asked if the gravity main would be installed under the creek.

Don Rankin, Utilities Infrastructure Director, reported the following:

- The proposed pump station location is outside the zoning requirement for any NTDD jurisdiction; however, the City has had numerous communications with NTDD representatives.
- The project would require the force main to be extended and the gravity main shortened for the location.
- The pump station south of NW Menninger Road would be moved along the gravity main alignment to the northwest and hooked up to the existing gravity main and extend the force main to connect into the existing one.
- The gravity main is currently installed under Soldier Creek and would remain that way.

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

AN ORDINANCE introduced by City Manager Jim Colson, authorizing Improvement Project No. T-831000.00, which provides for the design of corrective measures for four levee units, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka and specifically repealing Ordinance No. 19293 was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, authorizing the issuance of \$9,800,000 aggregate principal amount of General Obligation Bonds, Series 2013-B of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, K.S.A. 12-110c, K.S.A. 12-6a01 et seq., and Charter Ordinance No. 89 of the City, all as amended was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, authorizing the issuance of \$5,000,000 aggregate principal amount of Taxable General Obligation Bond, Series 2013-C (Employee Separation Benefit Funding), of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, the home rule authority granted to the cities of the state of

Kansas by Section 5 of Article 12 of the Kansas Constitution, and Home Rule Ordinance No. 19841 of the City, all as amended was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Section 2.70.030 and specifically repealing said original section, concerning the functions of the Public Building Commission was presented for first reading.

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

Mayor Wolgast commented on the Commemoration of the 50th Anniversary of the March on Washington honoring Martin Luther King, Jr., on August 28, 2013, and expressed the importance of public officials providing the leadership to protect community diversity and equality.

Councilmember Schwartz commented on the editorial written in the Topeka Capital Journal newspaper on August 25, 2013, regarding the City Council's decisions on the 2014 budget and raising the mill levy. She stated she has contacted the League of Kansas Municipalities to look into government properties that are exempt from paying property taxes. She announced she has contacted Springfield, Illinois, a capital city comparable to Topeka's population, for the purpose of researching how their City government operates.

Councilmember Schmidt commended the Governing Body for working through the challenging budget process and thanked the City Manager and staff for presenting the Council with complete information. He stated he has learned a great deal throughout the budget process and looks forward to continuing his service as a councilmember. He also stated that he believes it is the job of the Governing Body to examine and measure the City's structure and public

services to ensure all options have been reviewed. He encouraged everyone to instill civic pride to help build a brighter future and generate new opportunities for growth and development.

Councilmember Hiller stated she looks forward to working on the challenges facing the City next year.

Councilmember Campos II stated he concurs with Councilmember Schmidt and noted the budget process was a great learning experience for him as well. He referenced a flier distributed in his neighborhood announcing a street improvement project being constructed in front of the store property located on S. Kansas Avenue between SW 29th and 37th Streets. He encouraged the Governing Body to remain vigilant on street project time lines due to the effect it has on businesses. He invited the community to attend NOTO's First Friday Art Walk event located at 935 N. Kansas Avenue on September 6, 2013, sponsored by Habitat for Humanity. He stated he is looking forward to a change in how the Governing Body meets every week and encouraged Councilmembers to look at ideas and perspectives of others when considering the meeting schedule.

Councilmember Ortiz asked when the Council would be updated on the *Friends of Bethany Place v City of Topeka, Grace Cathedral and The Episcopal Diocese of Kansas, Inc.*, court case. She invited the community to the Kansas Black Expo event on August 30 through September 1, 2013, at Cushinberry Park located at 335 SE 15th Street and Brown v Board of Education National Historic Site located at 1515 SE Monroe. She also invited the public to attend the 23rd Annual Intertribal PowWow at Lake Shawnee on August 30 through September 1, 2013.

Chad Sublet, City Attorney, stated he plans to present a report to the Council within the next week as he anticipates the court ruling to be announced quickly.

Councilmember Everhart thanked the City Manager and staff for diligently following up on the petition from area residents submitted to the City Clerk at the August 6, 2013, Council meeting, regarding a vacant convenience store and carwash located at SE 29th and Minnesota Streets, requesting the City of Topeka take action to require the owner to demolish the building.

Councilmember De La Isla commended the City Manager on his one-year anniversary of working for the City of Topeka. She stated she concurs with Councilmember Schmidt and believes more work needs to be done consistently. She encouraged the community to attend Habitat for Humanity's First Friday Art Walk events and art displays on September 6, 2013, at 935 N. Kansas Avenue.

Councilmember Manspeaker stated he concurs with Councilmember Schmidt and expressed his appreciation of the statements made regarding the budget and moving forward. He encouraged the Governing Body, as well as, City employees to look where the City could save on resources. He expressed concern with Topeka Fire Department management still being paid overtime and the public's disappointment that it is still happening. He encouraged the City Manager and administrative staff to cease overtime pay immediately.

NO FURTHER BUSINESS appearing the meeting was adjourned at 6:52 p.m.

Brenda Younger
City Clerk