

Council Minutes – September 17, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 17, 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 -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember Harmon -1.

AFTER THE MEETING was called to order, Councilmember Schmidt asked for a moment of silent meditation.

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

Councilmember Ortiz moved to add a resolution to the consent agenda granting a noise exception to Church of God of Prophecy. The motion seconded by Councilmember Campos II carried unanimously. (8-0-0)

Mayor Wolgast announced the resolution would be added to the consent agenda as item 4F.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Jim Ogle to the Topeka Metropolitan Transit Authority for a term ending September 17, 2017, was presented.

BOARD APPOINTMENT recommending the appointment of Andy Vogel to the Topeka Metropolitan Transit Authority for a term ending September 17, 2017, was presented.

RESOLUTION NO. 8553 introduced by Councilmember Sylvia Ortiz, granting Randy Wheat an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

MINUTES of the regular meeting of September 10, 2013, was presented.

RESOLUTION NO. 8554 introduced by Councilmember Sylvia Ortiz, granting Church of God of Prophecy an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

Councilmember Schmidt moved to approve the consent agenda as amended. The motion seconded by Councilmember De La Isla carried unanimously. (8-0-0)

ORDINANCE NO. 19849 introduced by Councilmember Chad Manspeaker, amending City of Topeka Code Section 2.55.040, and specifically repealing said original section, concerning the duties and responsibilities of the Human Relations Commission placed on first reading September 10, 2013, was again presented.

Councilmember Manspeaker referenced City Code concerning the duties and responsibilities of the Human Relations Commission (HRC) and stated approval would not stop prejudice it would only protect all people from prejudice. He reported the HRC is charged with supporting efforts to eliminate prejudice because of race, religion, creed, color, sex, disability, national origin, age or ancestry, and promoting goodwill, cooperation and conciliation within the City and noted the ordinance would add sexual orientation and gender identity to the Commission's efforts.

Councilmember Manspeaker moved to adopt the ordinance. The motion was seconded by Councilmember Schmidt.

Shaun Kelly spoke in support of the ordinance and stated he believes it is the job of the City Council to protect all citizens of Topeka. He noted the Lesbian, Gay, Bisexual and Transgender (LGBT) community deserves the same protection as all other citizens in Topeka and would hate to see a tragic event like Matthew Shepard happen before a change is made.

Vicki Chronister-George spoke in support of the ordinance because she believes ending discrimination is the ethical and sensible thing to do to help people become more open-minded and expressive.

Bill Lucero spoke in support of the ordinance and provided a brief history of the basis of sexual orientation and the events that have transpired in the City of Topeka. He stated the ordinance is not about affirming a gay lifestyle or agenda; however, it is a necessary step to end discrimination. He encouraged the Council to adopt the ordinance because it is the right thing to do.

Pat Gros spoke in support to eliminate discrimination and make Topeka a capital city that is not discriminatory and treats all citizens equally.

Harry Bishop spoke in opposition to the ordinance and asked the Council not to approve the ordinance because he believes it would burden the community by removing the barriers of sinful lifestyles.

Maryanna Quilty spoke in support of the ordinance which would allow the HRC to educate all citizens on equality. She encouraged the Council to adopt the ordinance.

Jerri Collins spoke in support of the ordinance and discussed her personal experiences that she has endured throughout her life and the negative impact it has had on her life path. She encouraged the Council to adopt the ordinance.

Lewis Dolton spoke in opposition to the ordinance and listed how the LGBT population is protected through the U.S. Constitution; therefore, he believes approval would only provide the LGBT population with special privileges.

Davis Hammet spoke in support of the ordinance and stated he believes approval would stand for equality in the community and every citizen deserves respect. He clarified approval would not be a vote for rights but a simple gesture of love and compassion.

James Hermesch spoke in opposition of the ordinance and stated American history is not founded on these values and approval would have a negative impact on business in the community. He encouraged the Council to vote no on the issue.

Jim Lord spoke in opposition of the ordinance. He asked the Council to determine what they are trying to accomplish and if approval of the ordinance would bring harmony to the community. He questioned who determines whose rights should prevail over another person's. He stated he does not believe it would do away with prejudice in the community and could generate unnecessary litigation. He encouraged all citizens to reach out to one another and love each other.

Michelle Warnow spoke in support of the ordinance and asked the Council to protect the rights of her children to let them grow and learn and be part of a community that offers equal rights to all people.

Ronald Schmalzried spoke in opposition of the ordinance and stated he feels prejudices cannot be controlled through legislation and should not dictate how the greater population should live. He suggested the Council put the question to a public vote and let the people of the community decide on the issue.

Stephanie Mott spoke in support of the ordinance and stated it would allow the HRC to provide the necessary education to the community. She encouraged all citizens to educate themselves on all diversities of people to be able to accept everyone.

Viv Mag spoke in support of the ordinance and stated everyone has the right to be protected. She stated the LGBT community deserves the protection that the HRC can provide to them.

Cynthia Dieker spoke in support of the ordinance. She stated she could not believe people are still being discriminated against at this point in nation's history. She asked for equal and fair treatment of all people.

Cecil Washington spoke in opposition to the ordinance and stated he does not believe the Council is approaching the issue correctly. He noted his daughter is a member of the LGBT community; however, he believes all people should be protected under the law and not separated by sexuality.

Councilmember Schwartz reported she has received overwhelming response to the issue and understands how important it is for many people in the community. She noted many cities across the nation where an HRC has been established include the statement, "all people are protected" in the mission and vision statement; therefore, she would like to propose an amendment to the language of the ordinance.

Councilmember Schwartz made a substitute motion to amend the ordinance to indicate opposing discrimination against all people and a belief that all individuals should be considered only on the basis of their qualifications and not any other factor. The motion was seconded by Councilmember Ortiz.

Councilmember Ortiz asked the City Attorney to provide a legal opinion on the substitute motion. She also asked why the HRC has not been meeting.

Chad Sublet, City Attorney, stated the duty of the HRC is to educate and outreach to eliminate discrimination and prejudice against all people based on housing, employment, access

to public services, accommodations, and judged purely on qualifications and not classifications. He stated the substitute motion would eliminate all the classifications discussed and provide the necessary resources for the HRC to educate and provide outreach to all citizens of Topeka.

Lorean Williams, Human Relations Commission, stated the duty of the Commission is to educate and provide outreach to the community on behalf of every class of citizen. She reported the HRC is waiting on appointments to the Commission so that a quorum is present at meetings.

Councilmember Manspeaker questioned if the substitute motion speaks to every member of society.

Chad Sublet stated the substitute motion would allow the HRC to conduct outreach regarding discrimination of any class of citizen which would include those classes discussed and others yet to be determined.

Councilmember Manspeaker expressed concern with the U.S. Constitution that was written to protect all men; however, he believes it is loosely based and there is a need to identify specific classes because it has been proven in a federal court of law that discrimination happens to certain classes of people.

Mayor Wolgast reported it was recently determined through evaluation of the overall appointment process that HRC appointees are not allowed to continue to serve on the commission when their term expires even if there is no one to fill the vacant position. He noted three appointments have been submitted and there are more openings for those interested in serving on the commission.

Councilmember Everhart stated she concurs with Councilmember Manspeaker and believes the language amendment provides no direction and needs to specify certain classes of people.

Councilmember Schmidt stated there is a reason for these classes and the need to specify because of prejudice. He spoke in opposition to the substitute motion and noted there would still be discrimination.

The substitute motion to amend the ordinance to indicate opposing discrimination against all people and a belief that all individuals should be considered only on the basis of their qualifications and not any other factor failed. Councilmembers Hiller, Campos II, Everhart, De La Isla, Manspeaker and Schmidt voted “no.” (2-6-0)

Councilmember Schwartz reported her constituents were strongly opposed to the change in the ordinance and thought her amendment would create a consensus. She spoke in opposition of the ordinance because she believes the issue would go to petition and cost the City unnecessary expense.

Councilmember Manspeaker stated he has been very transparent about the ordinance and discrimination is prevalent; however, it will not affect how people conduct their business or faith. He encouraged the Council to support the ordinance.

Councilmember De La Isla reported she received numerous emails from her constituents regarding the issue, consulted with a historian and her faith and in doing all that research, regardless of what prevails, the real question is, “if discrimination exists.” She provided the definition of discrimination and compassion and stated approval of the ordinance would indicate a strong stance against prejudice. She stated the Council has a responsibility to stand up for equal rights for all people to be able to seek acceptance and be heard. She thanked the people who attended the Council meeting and spoke to the issue.

Councilmember Campos II stated that every Councilmember was elected by their constituents to represent everyone and treat everyone equally no matter what. He asked the

community to open their hearts and not allow a certain group of people to define the City of Topeka.

Councilmember Hiller thanked everyone who had the courage to speak on the issue and Councilmember Manspeaker for keeping the issue simple. She noted September 17, 2013, is the anniversary of the signing of the U.S. Constitution and many have experienced the stages of protecting different classes of people throughout the years; however, she believes it should be made clear that the Council's intent is to make sure everyone is treated equally.

The motion to adopt the ordinance carried. Councilmembers Ortiz and Schwartz voted "no." (6-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Everhart, De La Isla, Manspeaker and Schmidt -6. Noes: Ortiz and Schwartz -2. Absent: Harmon -1.

A PROJECT BUDGET in the amount of \$2,500,000, ORDINANCE NO. 19850 and A NOTICE OF INTENTION introduced by City Manager Jim Colson, authorizing Improvement Project No. T-281032.00, for rehabilitation of the Layne Pump Station at the Water Treatment Plant, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operation funds, authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to issue and sell revenue bonds of said City to make such improvements which constitutes improvements to the municipally owned water, water pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, pursuant to K.S.A. 10-101 and 10-1201, et seq., and all amendments thereto, authorizing issuance of general obligation bonds to pay the costs of the project which further constitutes a general improvement to the City's sanitary and/or

stormwater and sewage disposal system pursuant to City of Topeka Code Section A12-1, and authorizing the borrowing of funds from the KDHE SRF Loan to pay the cost thereof placed on first reading September 10, 2013, was again presented.

Doug Whitacre, Public Works Director, reported the improvement project would repair the primary pump station that supplies water to the entire city and is 60 years old. He also reported if the pump station is not rehabilitated the structure would risk not providing water to the entire city, life safety and health issues for homes and businesses. He recommended approval to the project budget and ordinance so that repairs could be made so the structure would function properly.

Councilmember Campos II asked if the City has the cash to pay for the project costs because constituents expect the City to pay with cash when possible due to the 1% increase of fees.

Doug Whitacre stated there is not enough cash to fund the project; however, cash is used to pay for watermain breaks.

Jim Colson, City Manager, stated the City's goal is to match investment to the lifecycle of the product and he is committed to reviewing projects and researching the best way to fund projects.

Councilmember Ortiz moved to approve the project budget and notice of intention and adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt and Mayor Wolgast -9. Absent: Harmon -1.

ORDINANCE NO. 19851 introduced by City Manager Jim Colson, imposing a real estate lien, pursuant to K.S.A. 12-808c, upon certain lots and pieces of ground in Shawnee County, Kansas, to pay the cost for utility services where such payments to the City have not been made due to neglect, failure or refusal to pay placed on first reading September 10, 2013, was again presented.

Doug Whitacre, Public Works Director, reported approval would authorize a lien on properties that have not paid City utility bills for water, wastewater, stormwater and fireline services both inside and outside the city limits. He distributed an amendment to the ordinance striking out the property owners that have paid since the ordinance was presented before the Council. He noted 89% of the funds received from 2012 are up from 14% when sent through the collection agency.

Councilmember Ortiz asked if interest is charged on the amounts and how the process is conducted.

Pam Simecka, City Controller, stated the City can only charge direct service charges during a normal procedure conducted on an annual basis with each situation evaluated.

Councilmember Campos II asked if the City collects on liens in bankruptcy.

Pam Simecka stated the lien stays with the property.

Councilmember De La Isla moved to adopt the ordinance. The motion seconded by Councilmember Campos II carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt and Mayor Wolgast -9. Absent: Harmon -1.

APPROVAL of a Real Estate Purchase Agreement between the City of Topeka and Martha E. Miller for the purchase of property located south of 131 SE 29th Street in the amount of \$3,000 for Drainage Improvement Project T-151016.00, and specifically authorizing Mayor Larry E. Wolgast, to execute the agreement was presented. (*Contract No. 43140*)

Doug Whitacre, Public Works Director, reported approval would authorize the purchase of 131 SE 29th Street for Drainage Improvement Project T-151016.00. He stated the floodway would allow the City to do an open trench which is less expensive; however, replacement would require some demolition of buildings and structures. He noted the green space would be utilized for detention and water quality enhancement.

Mayor Wolgast stated the area floods frequently and needs to be restored and businesses removed.

Bob Kennedy, Engineering Right-of-Way Acquisition, stated the real estate purchase is the most cost effective way to resolve the issue.

Councilmember Everhart moved to approve the real estate purchase agreement. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

APPROVAL of a Real Estate Purchase Agreement between the City of Topeka and the James D. Henderson Living Trust, for the purchase of property located at 131-133 SE 29th Street in the amount of \$180,000 for Drainage Improvement Project No. T-151016.00, and specifically authorizing the Mayor Larry E. Wolgast, to execute the agreement was presented. (*Contract No. 43141*)

Councilmember De La Isla moved to approve the real estate purchase agreement. The motion seconded by Councilmember Everhart carried unanimously. (8-0-0)

NO Retail Cereal Malt Beverage License applications were presented.

RESOLUTION NO. 8555 introduced by Councilmember Karen Hiller, approving the issuance of a special event retailer's permit for Lupita's Mexican Restaurant for the duration of a special event known as Jazzin' It Up Downtown was presented.

Councilmember Hiller reported approval would authorize a special event retailer's permit to Lupita's Mexican Restaurant on September 21, 2013, for the Jazzin' It Up Downtown event.

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Everhart carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

RESOLUTION NO. 8556 introduced by City Manager Jim Colson, in accordance with Section 18.70.030(c)(3) of the Topeka Municipal Code, approving a Conditional Use Permit to allow for a vehicle surface parking lot on property zoned "R-1" Single-Family Dwelling District and located at the northeast corner of SW 10th Street and SW Urish Road in the City of Topeka, Kansas, was presented. (CUI3/3)

Jim Colson, City Manager, reported approval would allow Fellowship Bible Church and Wanamaker Elementary School to utilize the area for off-site parking.

Councilmember Hiller spoke in support of the resolution and stated she likes the fact that both entities are sharing the parking lot and saving on paved surfaces and runoff issues. She asked if the City has or would provide any guidance or encouragement to entities that may benefit from sharing a parking area.

Bill Hoover, City Planner, stated shared parking sites between two entities is a perfect scenario. He reported the southeastern portion of the site has been used as an overflow paved parking area since 2004 for the Wanamaker Elementary School and the western portion of the site has been used as an unpaved temporary overflow parking area for Fellowship Bible Church since 2008. He noted Fellowship Bible Church is on a 13-acre parcel and is in the initial process

of expanding their sanctuary and classrooms; however, development is severely constrained west of the existing church building because the parking area is located near a large stream buffer area and flood zone.

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

AN ORDINANCE introduced by City Manager Jim Colson, relating to the vacation of platted access restriction on the east line of property at 3167 SE 10th Avenue, City of Topeka, Shawnee County, Kansas, was presented for first reading.

AN ORDINANCE 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 between SE 25th Street and SE 27th Street, east of SE California Avenue from “C-2” Commercial District, “C-4” Commercial District, “M-2” Multiple-Family Dwelling District, “R-1” Single-Family Dwelling District, “PUD” Planning Unit Development District (“M-2” use group) ALL TO “PUD” Planned Unit Development District (“C-2” Commercial and “C-4” Commercial use groups) was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, relating to Topeka Metropolitan Transit Authority; granting a franchise to operate a bus system within the limits of the City of Topeka, prescribing the terms thereof and relating thereto, pursuant to the provisions of K.S.A. 12-2001, et seq., and specifically repealing Ordinance No. 16640 was presented for first reading.

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

Councilmember Schmidt thanked the Council for supporting the ordinance relating to the Human Relations Commission and stated he respects the opinions expressed by everyone and believes it is a positive sign for the City and its citizens to have a civil debate on the issue.

Councilmember Hiller thanked the Council for approving the ordinance relating to the Human Relations Commission. She announced the 8th Annual Aaron Douglas Art Fair would be held on September 21, 2013, from 10:00 a.m. to 5:00 p.m. at the southwest corner of SW 12th and Lane Streets.

Councilmember Campos II announced Movies on the Capital Lawn event would begin September 21, 2013, with a showing of the movie "City Slickers." He expressed concern with transparency of City business specifically regarding the proposed contract between Stormont-Vail Healthcare and the Topeka Police Department. He stated he has been dismayed with the consistent pattern over the last year of finding out City information through the media.

Councilmember Ortiz stated she believes Councilmembers should have the opportunity to express their views about certain issues during the Presentation portion of the meeting if done so respectfully. She encouraged the community to visit the alligator exhibit at the Topeka Zoo before it closes on September 30, 2013.

Mayor Wolgast stated Councilmembers could make statements in regards to any issue they wish during Presentations; however, he does not believe it is appropriate to engage in debate during that time.

Councilmember Everhart expressed concern with how the recent contract announcement between Stormont-Vail Healthcare and Topeka Police Department was received by the Council. She stated it was her understanding the agreement has a number of benefits to the City and requested an update on the issue.

Councilmember Manspeaker thanked the Council for their support of the ordinance regarding the Human Relations Commission and stated discussions on the issue were conducted in a very positive and productive way. He expressed concern with Topeka Fire Department management employees continuing to receive overtime pay.

Councilmember Schwartz reported she participated in a webinar on the Conceal and Carry law sponsored by the League of Kansas Municipalities and stated it was very informative. She suggested Councilmembers obtain a map of the subdivisions in their districts and encourage increased neighborhood involvement.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:34 p.m.

Brenda Younger
City Clerk