

Council Minutes – September 24, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 24, 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, Councilmember Schmidt asked for a moment of silent meditation.

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

Jim Colson, City Manager, requested to withdraw agenda items 4J and 7J from the Council agenda. He reported item 4J, a tort claim submitted by Mike Proverse has been settled; and City staff members need more time to discuss item 7J, a resolution concerning the Riverfront Park with Shawnee County representatives.

Upon hearing no objections, Mayor Wolgast announced the tort claim and resolution would be withdrawn from the Council agenda.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Marie Carter to the City of Topeka ADA Advisory Council for an unexpired term ending January 31, 2015, was presented.

BOARD APPOINTMENT recommending the appointment of Theresa Packard to the City of Topeka ADA Advisory Council for a term ending September 30, 2015, was presented.

BOARD APPOINTMENT recommending the appointment of Sherry McGowan to the City of Topeka ADA Advisory Council for a term ending September 30, 2015, was presented.

BOARD APPOINTMENT recommending the appointment of Marijo Mastroianni to the City of Topeka ADA Advisory Council for a term ending September 30, 2015, was presented.

BOARD APPOINTMENT recommending the appointment of Don Moses to the City of Topeka ADA Advisory Council for a term ending September 30, 2015, was presented.

BOARD APPOINTMENT recommending the appointment of Keri Strahler to the City of Topeka ADA Advisory Council for a term ending September 30, 2015, was presented.

BOARD APPOINTMENT recommending the appointment of Carrie Ridley to the Topeka Sustainability Advisory Board for a term ending September 30, 2015, was presented.

RESOLUTION NO. 8557 introduced by Councilmember John Campos II granting Tonantzin Society an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8558 introduced by Councilmember John Campos II granting April Ervin an exception to the provisions of City of Topeka Section 9.45.150, et seq., concerning noise prohibitions was presented.

DENIAL of claim by Phillip Cheatham seeking \$800,000,000 in damages for alleged constitutional violations was presented.

DENIAL of claim by Milton Lee seeking \$2,000,000 in damages for alleged constitutional violations and the infliction of mental harms was presented.

DENIAL of claim by Michelle and Melissa Eklund in the amount of \$6,854.51 for alleged damage to their property due to a water main break located near 307 SW Elmwood was presented.

MINUTES of the regular meeting of September 17, 2013, was presented.

Open After Midnight License applications were presented for the following:

BUSINESS NAME

The Carwash
The Carwash
Jay Jay's

ADDRESS

1814 SW 10th Street
720 SW Gage Boulevard
435 S. Kansas Avenue

Councilmember De La Isla moved to approve the consent agenda as amended. The motion seconded by Councilmember Schmidt carried unanimously. (9-0-0)

A NOTICE OF PUBLIC HEARING

A PUBLIC HEARING in conjunction with vacation request V13RA/1 by Reser's Fine Foods requesting to vacate a platted access restriction located along the east property line of 3167 SE 10th Avenue, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 19852 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, placed on first reading September 17, 2013, was again presented. (V13RA/1)

Bill Fiander, Planning Department Director, reported access was restricted at the time the Plant was developed in 1994 due to residential properties located across the street. He stated approval would allow the property owners to construct a driveway entrance off of SE Wittenberg Road that would eliminate a dead-end parking lot in front of their building.

Mayor Wolgast opened the public hearing and asked if anyone was present that would like to speak to the matter. No one appeared.

Councilmember Ortiz moved to close the public hearing and 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.

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)

Jim Colson, City Manager, stated the ordinance was presented to the Council on July 16, 2013, and was remanded back to the Planning Commission for further review.

Bill Fiander, Planning Department Director, reported the amendment is designed to improve enforcement and make the temporary sign regulations more user-friendly. He stated the current regulations and definitions are vague and make some types of signs (such as feather signs) unenforceable, as well as, also making it difficult for businesses to determine what temporary signs are permitted. He noted the Council remanded the ordinance back to the Planning Commission to consider three items which included (1) property improvement signs (2) allowance of official flags and (3) exception of height limit to allow feather flags with exception of allowing them downtown. He provided a brief update of the Planning Commission's meetings and recommendation of approval by a vote of 8-1-0 of the proposed ordinance on July 16, 2013. He stated the Planning Commission accepted item (1) property improvement signs, as well as, item (2) allowance of official flags; however, they rejected item (3) exception of height limit to allow feather flags with exception of allowing them downtown.

Councilmember Hiller expressed concern with the regulations and stated there is still much work to be done on the sign ordinance. She asked if the Planning Commission discussed banners on fences because it does not appear this regulation is enforced in the ordinance. She also questioned why the duration of temporary signs was changed to 30 days when many events

advertise 30 to 90 days prior to the event. She also stated she believes the majority of the feather flags currently displayed throughout the city would be considered long-term and allowable by the definition of a ground sign.

Bill Fiander stated he agrees the overall sign code needs further review and would not be allowed by most other communities. He reported the Planning Commission recommended that banner signs could be placed on the face of a building (limited to 25% of the surface area of the building face) keeping the standard intact. He stated the special event duration was open to interpretation, and what is technically considered a special event is a matter of negotiation. He noted he does not believe the majority of feather flags would be classified as ground signs.

Councilmember Everhart expressed concern with the amendments. She stated there are a lot of feather flags in Council District No. 4 and she believes some of the signs could be identified under both sign definitions.

Bill Fiander stated the intent was to address a specific standard such as, a sign displayed on a permanent pole, or a temporary sign that could be removed from the ground.

Mayor Wolgast asked how the feather flag issue was initiated.

Bill Fiander stated the issue arose when the City discovered enforcement of sign regulations was difficult, and following review of the code by the Legal Department the Planning Commission was advised to change the sign regulations.

Gary Kahre, downtown business owner, reported he initially requested to set aside the downtown district to allow feather flags; however, he is concerned with the upcoming construction of S. Kansas Avenue over the next two years. He referenced a petition signed by 70 downtown businesses and stated 80% of the merchants are asking for an exception to be

considered. He noted there are some that need to control the use of feather flags; however, he questions why local government is exempt from the regulations.

Kelly Kimbel, downtown business owner, stated feather flags are an effective advertising tool for businesses and expressed concern with her interactions with City staff regarding the issue. She noted most feather flags are in good shape and the majority of businesses are willing to purchase a permit to display feather flags.

Councilmember Schwartz asked if the City has received complaints about feather flags from citizens or business owners.

Bill Fiander stated the City has received complaints concerning feather flags and other temporary signs; however, the complaints center more around enforcement issues because there is only one person assigned to inspect a 60 mile radius.

Councilmember Everhart spoke in opposition of the ordinance and stated the sign regulations need to be reviewed because she feels the changes do not address the issues and a number of people will be affected. She stated she understands why staff has brought this issue forward; however, she receives many more complaints relating to weeds and other code violations.

Councilmember Hiller distributed a package of pictures displaying signs that are illegal or not addressed in the ordinance that are currently displayed throughout the city and suggested staff address the violations if they are concerned with the clutter or condition of signs displayed in the city. She distributed amendments to the ordinance on lines 266-271 relating to height requirements in residential districts; lines 272-275 relating to height requirements in non-residential districts; lines 276-279 relating to the duration of displaying a sign for an event; lines

283-284 relating to the duration and number of signs displayed for an event; and line 305 relating to obstruction of traffic.

Mayor Wolgast asked if Councilmember Hiller's amendments address the concerns of downtown merchants.

Councilmember Hiller stated the amendments would address concerns expressed by downtown merchants. She suggested the Council defer the ordinance to allow the Legal Department time to review her proposed amendments and the document as a whole.

Councilmember Ortiz moved to defer the ordinance for two weeks. The motion was seconded by Councilmember Hiller.

Jim Colson suggested deferring the ordinance at least four weeks to allow time to engage the public in the language review process.

Councilmember Ortiz accepted the request to defer the ordinance for four weeks. The second concurred.

Mayor Wolgast commended City staff and the Topeka Planning Commission for their efforts and hosting many public meetings to revise the language.

Councilmember Hiller reported that many discussions have already taken place with local businesses.

Councilmember Schmidt questioned if it would be easier for all parties involved if the height requirement language is removed entirely.

Mayor Wolgast requested the Legal Department consider Councilmember Schmidt's language amendment when reviewing the document.

Councilmember Schwartz questioned the language of lines 283-284 concerning election signs. She asked if there is more than one sign at a location if it is addressed separately or as one violation.

The motion to defer the ordinance for four weeks carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

ORDINANCE NO. 19853 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 placed on first reading September 17, 2013, was again presented.

Mary Feighny, Assistant City Attorney, reported approval would extend the franchise agreement with Topeka Metropolitan Transit Authority (TMTA) for 20 years and allow them to maintain and operate a bus transportation system within city limits.

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

APPROVAL of a one-year Labor Agreement between the City of Topeka and the Water Division, Council 72, Local 1294, Kanas Public Employees Union, AFSCME, AFL-CIO was presented. (*Contract No. 43155*)

Carol Foreman, Labor Relations Attorney, appeared for questions.

Councilmember Campos II moved to approve the labor agreement. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.”

Councilmember Schwartz voted “no.” (9-1-0)

A Retail Cereal Malt Beverage License application for Short Stop III located at 2044 NW Tyler Street was presented.

Councilmember Schmidt moved to approve the Retail Cereal Malt Beverage License application as presented. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

ORDINANCE NO. 19854 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) placed on first reading September 17, 2013, was again presented. (*PUD13/1*)

Bill Fiander, Planning Department Director, reported the proposal has been vetted over a seven month process including discussions between neighborhood residents, City staff members and Wal-Mart representatives. He stated Wal-Mart has agreed to pay for all improvements and traffic signal updates including the widening SE California from four lanes to five lanes; adding pedestrian crosswalks, bus shelters and bike racks which would help improve traffic in the area; as well as, a nine foot berm of evergreens and black chain-link fence for surrounding residents.

Councilmember Everhart stated the Wal-Mart Commercial Center is a welcomed addition to the east side of Topeka.

Councilmember Hiller commended all the people involved in the negotiations and working together to solve all the things that are usually overlooked in large developments.

Councilmember Manspeaker stated he is uncertain of the proposed Wal-Mart because Wal-Mart has numerous issues relating to low wage rates which cause the need for subsidization and unfavorable working conditions. He also stated he understands the need for a grocery store on the east side of Topeka and the creation of 200-250 jobs; however, he believes they could cause local grocery stores to close and other corporations serve their communities and employees much better. He spoke in opposition of the ordinance and noted he is not sure Topeka would benefit from another Wal-Mart.

Councilmember Ortiz spoke in support of the ordinance and stated the business is much needed and would benefit many low-to-moderate income families in this area. She noted many big corporations will not move to east Topeka because there is usually more infrastructure needed.

Councilmember Schwartz spoke in support of the ordinance and stated Wal-Mart would create more jobs and the building would beautify the area.

Councilmember Schmidt spoke in opposition of the ordinance. He stated he believes the type of jobs created would require subsidizing and are not sustainable to provide a living for citizens. He stated he understands there is a need in east Topeka for more jobs; however, these jobs are not economically beneficial to the community as a whole.

Councilmember Campos II spoke in support of the ordinance and stated approval would increase the social economics of the area and generate many construction jobs to build the new store.

Councilmember Manspeaker noted the majority of the contractors used to build Menards were from the Kansas City area and Wal-Mart would likely do the same.

Councilmember Everhart stated this has been a good discussion and understands the concern relating to fairness in wages; however, this is not the issue they are considering. She noted the U.S. Congress should do a better job of controlling fair labor practices and the Council needs to address the underserved area of Topeka. She also stated there is a need for jobs and the ability to walk to a facility to shop; therefore, she asked the Council not to derail this desperately needed project and support the ordinance.

Councilmember De La Isla stated she concurs with Councilmember Everhart and is excited for the new Wal-Mart which is in close proximity to Highland Park High School and will provide many jobs for the community. She reported she does not agree with the company's labor standards; however, she would support the ordinance because it is a wonderful opportunity and goes towards the greater good of the community.

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried. Mayor Wolgast voted "yes." Councilmembers Manspeaker and Schmidt voted "no." (8-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Campos II, Ortiz, Everhart, De La Isla, Schwartz, Harmon and Mayor Wolgast -8. Noes: Manspeaker and Schmidt -2.

AN ORDINANCE introduced by City Manager Jim Colson, granting to Westar Energy, Inc., an electric franchise including the right to construct, operate and maintain electric transmission, distribution and street lighting facilities within the corporate limits of the City of Topeka, Kansas, and specifically repealing Ordinance No. 18297 was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, concerning concessions and admission fees at the Topeka Zoo, amending City of Topeka Code Sections 11.35.010, 11.35.040, 11.35.050, 11.35.060 and 11.35.80 and specifically repealing said original sections, as well as, repealing Section 11.35.070 was presented for first reading.

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

Jim Colson, City Manager, recognized the City of Topeka Rail event on September 18, 2013, revealing a stretch of trolley track located under the street near N. Kansas Avenue and SE 8th Street. He stated the event was a great opportunity for visitors to experience the city's history when trolley transportation was vital to downtown. He encouraged the community to attend the annual Topeka Zoobilee event on September 28, 2013.

Councilmember Hiller reported the Economic and Community Development Committee recommended the allocation of the 2014 General Fund and Community Development Block Grant Youth and Social Service Grants be funded at the same level as 2013, on September 23, 2013. She requested the action made by the Committee be placed on the October 1, 2013, Council agenda.

Councilmember Ortiz thanked the Economic and Community Development Committee for expediting the allocation of the 2014 Youth and Social Service Grant recommendations.

Councilmember Everhart announced the opening of a new restaurant, J. Lanes Steak and BBQ, located at 3800 SE Michigan and noted a mystery dinner theater would be held on Thursday evenings.

Councilmember Manspeaker reminded the Council they have been elected to lead citizens and provide the opportunity and assistance needed to support healthy economic growth. He encouraged the community to attend the Topeka Zoobilee event on September 28, 2013, to help fund improvements to the Zoo. He expressed concern with Topeka Fire Department management employees continuing to receive overtime pay.

Councilmember Schwartz commented on the many events that take place throughout the community that attract visitors to Topeka including the Topeka Zoobilee and Jazzin' It Up Downtown events. She reported Doug Whitacre, Public Works Director, would provide maps of all neighborhoods located in each district for Councilmembers upon request. She invited the public to attend the Coffee and Commentary social at PT's Coffee located at 5660 SW 29th Street on September 26, 2013, at 7:00 p.m. She thanked City staff members for posting the announcement on the City's website and noted she would host the event in collaboration with Councilmember Hiller.

Bob Schneider, Rosetta Prall, David Cullip and Joseph Ledbetter appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:42 p.m.

Brenda Younger
City Clerk