

## **Council Minutes – October 11, 2016**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 11, 2016. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Clear, Ortiz, Emerson, De La Isla, Jensen, Schwartz and Coen -7. Mayor Larry E. Wolgast presided -1. Absent: Councilmembers Hiller and Harmon -2.

AFTER THE MEETING was called to order, Pastor Andy Whitaker Smith, Crestview Methodist Church, gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8821 introduced by Councilmember Sylvia Ortiz, granting El Shaddai Templo de Alabanza 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 October 4, 2016, was presented.

Councilmember Jensen moved to approve the consent agenda. The motion seconded by Councilmember Coen carried unanimously. Mayor Wolgast voted “yes.” (8-0-0)

RESOLUTION NO. 8822 introduced by Interim City Manager Doug Gerber, relating to the appointment of three council members to the Metropolitan Topeka Planning Organization (MTPO) Policy Board and repealing Resolution No. 8491 was presented.

Doug Gerber, Interim City Manager, stated approval would change the appointment of councilmembers to the MTPO Policy Board from April to January in odd-numbered years.

Councilmember De La Isla moved to approve the resolution. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Wolgast voted “yes.” (8-0-0)

RESOLUTION NO. 8823 introduced by Interim City Manager Doug Gerber, establishing a procedure for the selection of two council members to serve as voting members of the Joint Economic Development Organization (JEDO) and rescinding Resolution No. 7206 was presented.

Doug Gerber, Interim City Manager, reported approval would change the selection of two council voting members to the JEDO Board from April to January.

Councilmember Clear moved to approve the resolution. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (8-0-0)

ORDINANCE NO. 20029 introduced by Interim City Manager Doug Gerber, concerning insurance proceeds for building loss claims, amending City of Topeka Code Sections 8.80.010, 8.80.020, 8.80.040 and 8.80.050 and repealing original sections was presented.

Doug Gerber, Interim City Manager, stated approval would allow the City to benefit from a new state law requiring insurance companies to remit to the City a percentage of insurance proceeds for damage to buildings caused by any casualty.

Councilmember Coen moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Clear, Ortiz, Emerson, De La Isla, Jensen, Schwartz, Coen and Mayor Wolgast -8. Absent: Hiller and Harmon -2.

ORDINANCE NO. 20030 introduced by Interim City Manager Doug Gerber, relating to the designation of street names, more specifically authorizing a memorial designation for the segment of SE Bellview Avenue, lying between SE 23<sup>rd</sup> and 25<sup>th</sup> Streets as “Bishop Dr. Aletha J. Cushinberry Memorial Parkway” was presented. (SNC16/2)

Doug Gerber, Interim City Manager, stated approval would add two street signs to memorialize SE Bellview Avenue between SE 23<sup>rd</sup> and SE 25<sup>th</sup> Streets in honor of the late Bishop Dr. Aletha J. Cushinberry.

Dale Cushinberry and Larry Cushinberry spoke in support of the designation honoring Bishop Dr. Aletha J. Cushinberry.

Councilmember Ortiz thanked the church for all they have done for the Highland Park community.

Councilmember Emerson moved to adopt the ordinance. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Clear, Ortiz, Emerson, De La Isla, Jensen, Schwartz, Coen and Mayor Wolgast -8. Absent: Hiller and Harmon -2.

ORDINANCE NO. 20031 introduced by City Manager Jim Colson, concerning dangerous dogs, amending City of Topeka Code Section 6.05.080 and repealing original section was presented.

Chuck Kitt, Chief of Prosecution, stated approval would include the amendments to Topeka Municipal Code Sections 6.05.010 and 6.05.080 as proposed by the Public Health and Safety Committee clarifying the circumstances under which a dangerous dog may be destroyed.

Councilmember Ortiz questioned if there was an exemption for animals classified as a working dogs that attacked a human for protection purposes. She reported the Committee did not recommend the ordinance include specific breeds because any dog could be considered a dangerous dog.

Councilmember Clear asked how the ordinance would be applied to an incident where a dog attacks another dog or animal on a public sidewalk.

Councilmember Schwartz questioned how a situation would be handled if an Animal Control Officer attempts to pick up a dog that has attacked a human and the owner was not home or refused to surrender the dog; and if owners would be responsible for the cost of destruction or harm to an individual or another animal.

Councilmember Harmon entered the room.

Councilmember Jensen asked where in City code, does it address dogs that are trained to be aggressive.

In response, Chuck Kitt reported the following:

- The amendment requires the court to destroy a dog if (1) the dog owner has been convicted of possessing a dangerous dog; and (2) the dog attacks either a human or a domestic animal and the attack results in death or great bodily harm. If there is no death or great bodily harm and the dog has previously been determined to be a dangerous dog the court has the discretion to order the dog be destroyed if the owner has been convicted of possessing a dangerous dog.
- Each case depends on the facts and circumstances presented in regards to exceptions and convictions.
- Individuals have privacy rights on their own property; therefore, Animal Control would have to obtain proper legal documents to take control of the dog.
- City Code allows the City to seek restitution on behalf of the victim in the case of a misdemeanor and State law regulates dog fighting and/or dogs trained to be aggressive.

Amanda Krogman spoke in support of the ordinance and asked the Governing Body to consider including specific breeds in the ordinance.

Al Lovall spoke in opposition of specifying breeds in the ordinance and expressed concern with dog fighting in the area and the lack of overall regulation of the act.

Joseph Ledbetter expressed concern with the repeat pack behavior by dogs of different breeds throughout the city. He stated he believes the language in the ordinance is not strong enough as too many lives have been lost to pitbull attacks.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Clear carried unanimously. Mayor does not vote as it is a home rule ordinance. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Clear, Ortiz, Emerson, De La Isla, Jensen, Schwartz, Coen and Harmon -8. Absent: Hiller -1.

DISCUSSION regarding the request to annex land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, located approximately 400 feet north of SW 45<sup>th</sup> Street and approximately 2,300 feet west of SW Burlingame Road, within unincorporated Shawnee County, Kansas, and adjacent to the City of Topeka corporate limits was presented. (A16/2)

Bill Fiander, Planning Department Director, reported the request would annex a 15-acre tract of land intended for a 40-lot single-family home subdivision in the City of Topeka.

Councilmember Jensen expressed concern with annexing land when it remains difficult for the City to maintain its current infrastructure. He requested a financial breakdown of street maintenance costs for the future and suggested a line item in the budget to address a solid financial plan to maintain the area.

Mayor Wolgast stated as a City we have to take the initiative to make housing available within city limits and support planned development.

Councilmember De La Isla stated she concurs with Mayor Wolgast and Councilmember Jensen because she believes there is a need to create an incentive package to support growth within the City.

Doug Gerber, Interim City Manager, stated staff believes what the City collects now whether in utility or tax revenue will offset future costs; however, staff would prepare a cost benefit analysis for the Misty Harbor annexation project for the Governing Body.

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

Brenda Younger, City Clerk, provided an overview of the October 18, 2016, Council agenda.

Doug Gerber, Interim City Manager, announced Topeka Municipal Court would host “Clean Slate Day” on October 14, 2016, from 9:00 a.m. to 3:30 p.m. He congratulated Mayor Wolgast for serving as the Board President of the League of Kansas Municipalities. He reported the Wanamaker corridor would begin road improvements nightly on October 15, 2016, which will close portions of SW Wanamaker from SW 10<sup>th</sup> to 17<sup>th</sup> Streets from 9:00 p.m. to 9:00 a.m. He congratulated Team Topeka for receiving first place at the Mid-America Snow Rodeo 2016. He introduced new City Engineer Brian Faust. He thanked the Governing Body for appointing him as Interim City Manager and is honored to serve the capital city of Kansas.

Councilmember Coen encouraged all Governing Body members to attend the League of Kansas Municipalities Conference each year as it is a great networking opportunity.

Councilmember Clear announced the Topeka Symphony and Jackson Street Lofts are partnering to present Frugal House at Jackson Street Lofts on October 14-16, 2016, as a benefit for the Topeka Symphony Orchestra and Youth Ensembles.

Councilmember Ortiz thanked East Topeka South and East Topeka North for a successful clean up event. She also thanked Sasha Haehn, Department of Neighborhood Relations Director, and staff for their efforts in organizing the Hi-Crest Neighborhood Clean Up event on October 15, 2016.

Jason Geier, Municipal Court Administrative Judge, announced that citizens with outstanding fines and arrest warrants issued for missed court dates will have an opportunity to right their record with the Topeka Municipal Court’s “Clean Slate Day” on October 14, 2016. He stated

other services will be offered at the event including free legal counsel, potential employers and other services to assist individuals.

Councilmember Jensen encouraged all Governing Body members to attend the League of Kansas Municipalities events and noted it is a great educational opportunity. He commended Municipal Court for being proactive on many programs other cities are not yet utilizing in their communities. He suggested the City work with other organizations and leaders across the community to take a deeper look at a solution for blighted buildings.

Councilmember Schwartz thanked everyone for prayers and thoughts during her recovery. She stated this week's "gem" of Topeka is the Topeka Police Department. She thanked the City's Information Technology Department for the new City of Topeka website which offers many improved customer service options.

Joseph Ledbetter appeared to speak under public comment.

Councilmember Jensen moved to recess into executive session for a time period not to exceed 20 minutes to discuss attorney-client privilege matters and include the Governing Body, Interim City Manager, City Attorney and staff. The motion seconded by Councilmember Clear carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

At 7:50 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember De La Isla moved to recess into executive session for a time period not to exceed 40 minutes to discuss non-elected personnel matters and include the Governing Body, Human Resources Director and City Attorney. The motion seconded by Councilmember Emerson carried unanimously. Mayor Wolgast voted "yes." (9-0-0)

Councilmembers De La Isla and Jensen left the room.

At 8:30 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember Emerson moved to recess into executive session for a time period not to exceed 20 minutes to discuss property acquisition and include the Governing Body, Interim City Manager and City Attorney. The motion seconded by Councilmember Coen carried unanimously. Mayor Wolgast voted “yes.” (7-0-0)

At 8:50 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:53 p.m.

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Brenda Younger  
City Clerk