

Council Minutes – October 20, 2015

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 20, 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, Pastor Greg Hammes, Most Pure Heart of Mary Catholic Church, gave the invocation.

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

A PRESENTATION on the Flood Risk Management Study Shunganunga Creek was presented by Eric S. Lynn, PE, PMP, U.S. Army Corps of Engineers Project Manager, Kansas City District. He gave a brief overview of the background and purpose of the study, defining flood risk levels, six conceptual alternative locations, alternative evaluation approach, preliminary economic analysis and future study activities. He reported three public informational meetings would be held for the following areas as well as a report and recommendations would be presented to the Governing Body on how best to implement a technically feasible, cost effective and environmentally and publically acceptable project:

- Area 1 – October 27, 2015, from 6:00 p.m. to 7:30 p.m. at McClure Elementary School gymnasium located at 2529 SW Chelsea Drive
- Areas 2, 4 and 6 – October 29, 2015, from 6:00 p.m. to 7:30 p.m. at the Cyrus K. Holliday Building located at 620 SE Madison
- Areas 3 and 5 – November 2, 2015, from 6:00 p.m. to 7:30 p.m. at LULAC Senior Center located at 1502 NE Seward

Doug Gerber, Deputy City Manager, stated the presentation of the Flood Risk Management Study Shunganunga Creek will be posted on the City's website at www.topeka.org on October 21, 2015.

Mayor Wolgast clarified the purpose of the study was to recommend a feasible, cost effective, environmentally and publically acceptable project, not to necessarily redraw the floodplain.

Councilmember Jensen asked for confirmation there would be no buy-out of private properties by the Federal government.

Eric Lynn stated the purpose of the study was to assess the conceptual flood risk management options following the 2007 flood. He reported the U.S. Army Corps of Engineers have discussed the possibility of buy-outs; however, the Federal government does not participate in buy-out programs, requiring the County or City to acquire properties. He noted when considering the most cost effective option there is one project area where it may make a better economic improvement to acquire property to move the levy back as it would alter the alignment; however, other alternatives are being discussed.

Mayor Wolgast asked when recommendations would be presented to the Governing Body.

Eric Lynn stated the evaluations and recommendations would be included in the report which should be complete within two years; however, he could present status reports at any point to the Governing Body to get feedback and include public input.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the reappointment of Theresa Packard to the City of Topeka ADA Advisory Council for a term ending October 1, 2017, was presented.

BOARD APPOINTMENT recommending the reappointment of Andrew Marso to the City of Topeka ADA Advisory Council for a term ending October 1, 2017, was presented.

BOARD APPOINTMENT recommending the reappointment of Don Moses to the City of Topeka ADA Advisory Council for a term ending October 1, 2017, was presented.

BOARD APPOINTMENT recommending the reappointment of Marijo Mastroianni to the City of Topeka ADA Advisory Council for a term ending October 1, 2017, was presented.

BOARD APPOINTMENT recommending the reappointment of Dennis Haugh to the Topeka Planning Commission for a term ending September 30, 2018, was presented.

BOARD APPOINTMENT recommending the reappointment of Brian Armstrong to the Topeka Planning Commission for a term ending September 30, 2018, was presented.

RESOLUTION NO. 8727 introduced by Councilmember Richard Harmon, granting Shara Monhollon an exception to the provisions of City of Topeka Code Section 9.45.170 concerning noise prohibitions, was presented.

MINUTES of the regular meeting of October 13, 2015, was presented.

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

A PUBLIC HEARING and ORDINANCE NO. 19970 introduced by City Manager Jim Colson, regarding vacation request V15E/2 by Unified School District No. 501 requesting the vacation of a public utility easement and public improvement easement between SW Randolph and SW Medford Avenues and SW 13th and SW 15th Streets, in the City of Topeka, Shawnee County, Kansas, to allow an addition to Randolph Elementary School that will consist of approximately 6,500 square feet of space and house a dual function gymnasium/storm shelter was presented. (V15A/2)

Bill Fiander, Planning Department Director, reported approval would accommodate an addition to Randolph Elementary School consisting of a dual function gymnasium/storm shelter addition at the southwest end of the existing school building. He stated to compensate for the

loss of the public improvement easement and turnaround, USD 501 would add an access drive to the existing parking lot that would allow vehicles to exit and enter the alley via the parking lot.

Councilmember Clear asked if there were any objections from area residents.

Bill Fiander reported a neighborhood informational meeting was conducted on September 9, 2015, by the applicant and notices were sent to surrounding property owners in the affected area. He stated there were no concerns regarding the actual easement vacation; however, comments were addressed pertaining to construction details such as hours, traffic closures, parking lot materials, fencing and landscaping.

Mayor Wolgast opened the public hearing and asked if there was anyone present who would like to speak to the matter. No one appearing, the public hearing was closed.

Councilmember De La Isla moved to adopt the ordinance. The motion seconded by Councilmember Jensen carried unanimously. Mayor Wolgast voted “yes.” (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.

ORDINANCE NO. 19971 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 amending the Master Planned Unit Development Plan for Wood Valley Racquet Club (C-2 Commercial uses) to allow expansions to the racquet club building and gymnastics studio and new off-street parking lots on property located at 2909 and 2925 SW 37th Street, City of Topeka, Shawnee County, Kansas, was presented. (*PUD04/9B*)

Bill Fiander, Planning Department Director, reported approval would allow the expansion of the Wood Valley Racquet Club up to 17,800 square feet and the gymnastics club up to 2,000 square feet with all required parking on-site. He stated a neighborhood informational meeting

was held on August 5, 2015, and concerns were addressed pertaining to the loss of open space, insufficient off-street parking and overflow parking along SW Wood Valley Drive.

Councilmember Schwartz reported she has not received any negative comments from her constituents regarding the zoning change.

Councilmember Schwartz moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried unanimously. Mayor Wolgast voted “yes.” (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.

ORDINANCE NO. 19972 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 amending and expanding the boundary of the Master Planned Unit Development Plan for Brewster Place Townhomes to include an additional 1.5 acres that is currently zoned “R-1” Single-Family Dwelling District was presented. (Z02/7B)

Bill Fiander, Planning Department Director, reported approval would allow Brewster Place to expand along SW Lincoln with a 14-unit, three-story senior housing residential structure and a 2,500 square foot maintenance building. He stated Brewster Place conducted a neighborhood meeting on August 26, 2015, and Planning Department staff listed conditions such as building design, landscaping and building within the residential character upon approval of the zoning changes.

Councilmember De La Isla moved to adopt the ordinance. The motion seconded by Councilmember Jensen carried. Mayor Wolgast voted “yes.” Councilmember Harmon abstained. (9-0-1)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Clear, Ortiz, Schumm, De La Isla, Jensen, Schwartz, Coen and Mayor Wolgast -9. Abstain: Harmon -1.

ORDINANCE NO. 19973 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 along the south side of SW Huntoon Street approximately 2,200 feet east of SW Wanamaker from “R-1” Single Family Dwelling District TO “O&I-2” Office and Institutional District was presented. (Z15/6)

Bill Fiander, Planning Department Director, reported approval would allow future development of a 2.4 acre site for office and institutional uses. He stated a neighborhood informational meeting was held on August 20, 2015, and there were no concerns expressed regarding the zoning change.

Councilmember Harmon moved to adopt the ordinance. The motion seconded by Councilmember Clear carried unanimously. Mayor Wolgast voted “yes.” (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. 8728 introduced by City Manager Jim Colson, relating to a new Southeast Topeka interchange was presented.

Doug Gerber, Deputy City Manager, reported City staff has revisited with the Kansas Turnpike Authority (KTA) and KTA would not fully fund the interchange concept study; however, they would like to continue with the plan to fund the study at 50%. He provided historical data regarding KTA funding of past projects and stated it was the consensus of the Governing Body to support Option No. 2 (SE 29th Street “Offset” Diamond) as presented by KTA.

Councilmember Clear asked if final approval of the project would be given to the Governing Body after the study was conducted.

Doug Gerber stated the interchange project could be discussed at any time; however, the project would be presented to the Governing Body during the Capital Improvement Plan (CIP) process.

Jim Colson, City Manager, stated the City was not obligated to move forward with the project once the study was done; however, information would be provided to make the determination at that time.

Councilmember Harmon questioned if completion of the study would exclude any additional discussion on an interchange in the southwest Topeka area.

Councilmember Jensen asked if there have been any discussions with KTA regarding turnpike off-ramps being free of charge for local residents.

Councilmember Clear asked when the interchange project would appear on the KTA 10-year plan.

Doug Gerber responded as follows:

- All interchange concept proposals are welcomed by KTA; however, some of the interchanges in the southwest area that have been considered are not located within city limits.
- The “no fee” turnpike off-ramp options have been discussed with KTA.
- The focus is on turnpike viability at this time and Governing Body approval would express interest in the interchange concept study and move the process forward.
- Approval of the resolution would not obligate the City in any way once the study is completed.

Joseph Ledbetter spoke in support of the interchange concept study and believes the residents in southeast Topeka would be better served with an interchange located in the area.

Councilmember Schumm thanked the Governing Body, KTA and City staff for their work on the issue as well as the public for their input. He stated he believes the study would provide

answers to the costs and traffic impact that a southeast interchange would mean to the area and looks forward to more public input as the issue moves forward.

Councilmember Schumm moved to approve the resolution. The motion was seconded by Councilmember Clear.

Councilmember Hiller thanked Councilmember Schumm for his leadership while discussing the issue and spoke in support of the interchange concept study. She expressed concern with ensuring the Master Street Plan would be drafted simultaneously while the interchange study is being completed to ensure there are funds available to address both. She stated she hopes the study would assist the Governing Body in determining economic development and how the turnpike exit would be incorporated in the area.

Councilmember Ortiz spoke in support of the interchange concept study and hopes it will help the quality of life in southeast Topeka.

The motion to approve the resolution carried unanimously. Mayor Wolgast voted “yes.”
(10-0-0)

RESOLUTION NO. 8729 introduced by Councilmembers Elaine Schwartz, Brendan Jensen and Jeffrey Coen sitting as the Transient Guest Tax Committee, allowing transient guest tax funding for a period of 12 years for Constitution Hall was presented.

Jim Colson, City Manager, stated City staff has worked diligently on the resolutions and taken into account discussions by the Governing Body at the last several Council meetings. He distributed the language amendments as proposed by Councilmember Hiller regarding the TGT funding allocations to Constitution Hall, the Downtown Plaza, Historic Jayhawk Theater and Evel Knievel Museum.

Lisa Robertson, City Attorney, read the following language amendments to all four

resolutions regarding the allocation of TGT funding to Constitution Hall, Downtown Plaza, Historic Jayhawk Theater and Evel Knievel Museum.

- Lines 36-40, “\$3,435,000 is met, whichever event is earlier; provided, however, that all terms and conditions of the above-referenced development agreement are fully and completely adhered to through the duration of the 12-year investment period. Section 2. The City’s goal with this funding commitment is to support a viable project that will produce an economic return at the conclusion of the investment.”
- Lines 47-48, “provisions addressing related to the use of TGT funds that address general principles, including, but not necessarily limited to, the following:”
- Lines 51-52, “(2) An operating plan for the project identifying strategy, budget and various performance metrics.”
- Lines 60-64, “The City and the legal entity responsible for the project fully acknowledge that the general principles set forth in this Resolution will be developed in much greater detail through specific language to be contained in the subsequently-executed development agreement, which will be the controlling document in relation to the project. The parties further will also acknowledge that grant funding may be reduced to correspond to lower than expected TGT revenues.”

Mayor Wolgast stated the amendments would set the guidelines discussed by the Governing Body.

Jim Colson stated the resolutions presented a challenge to ensure the applicants are granted a level of confidence to proceed with the projects and protect the City if a project is not completed. He reported development agreements would be presented before the Governing Body for consideration which would provide the specific tools needed for the applicants to proceed with each project.

Councilmember Jensen questioned if future governing body members could remove funding from the applicants.

Lisa Robertson stated if the applicants comply with all the terms in the development agreement they would continue to receive annual funding provided there are sufficient funds available.

Doug Gerber, Deputy City Manager, reported the Kansas Cash-basis Law provides for the funding and payment of all legal debts and obligations except present bonded indebtedness of all municipalities for the future conduct of the financial affairs of a municipality upon a cash basis.

Councilmember Schwartz asked if any of the organizations have reviewed Councilmember Hiller's amendments.

Jim Colson stated it is City staff's recommendation to approve the amendments if the Governing Body wishes to proceed with the allocations.

Governing Body members expressed their opposition to the amendments presented by Councilmember Hiller due to the timeliness of presenting the amendments and the option to include the amendments in the development agreement.

Councilmember Schumm asked what type of review the Governing Body would be allowed in reference to lines 36-40, "terms and conditions of the above-referenced development agreement are fully and completely adhered to through the duration of the 12-year investment period".

Jim Colson stated the Governing Body would have 100% voting rights of the development agreement.

Councilmember Hiller spoke in support of the TGT Committee and their work; however, she expressed concern with the legalities and requested City staff draft amendments to ensure the City is protected as well as the applicant.

Jim Colson stated he ensures staff has worked to have a consistent process and is comfortable with the original resolutions as well as Councilmember Hiller's amendments allowing the Governing Body to make a determination.

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

Councilmember Hiller made a substitute motion to amend the resolution as presented. The motion was seconded by Councilmember Clear.

Councilmember Harmon expressed concern with the applicants not being given enough time to review Councilmember Hiller's amendments.

The substitute motion to amend the resolution as presented failed. Councilmembers Clear, Ortiz, Schumm, De La Isla, Jensen, Schwartz, Coen, Harmon and Mayor Wolgast voted "no."
(1-9-0)

The motion to approve the resolution carried unanimously. Mayor Wolgast voted "yes."
(10-0-0)

RESOLUTION NO. 8730 introduced by Councilmembers Elaine Schwartz, Brendan Jensen and Jeffrey Coen sitting as the Transient Guest Tax Committee, allowing transient guest tax funding for a period of 12 years for Downtown Plaza was presented.

Councilmember Clear spoke in opposition of the Downtown Plaza proposal because she believes streets closures would still be needed for larger events as the plaza would not accommodate larger crowds.

Kurt Young, Topeka Lodging Association Executive Director, Vince Frye, Downtown Topeka Inc., and Rodger Fry, Topeka Lodging Association President, spoke in support of the overall allocating of funding and the importance of a downtown plaza.

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

Councilmember Jensen spoke in support of the resolution and stated many generations would benefit from improvements made to the downtown area and entertainment venues.

Councilmember Schumm spoke in support of a downtown plaza; however, he expressed concern with how the project funding and maintenance of the plaza would be managed. He noted he would be more comfortable incorporating Councilmember Hiller's amendments into the resolution.

Councilmember Hiller made a substitute motion to amend the resolution as presented. The motion was seconded by Councilmember Schumm.

Councilmember Schwartz asked if the individuals who have provided public comment this evening have had a chance to review Councilmember Hiller's amendments and if so, do they approve of them.

Vince Frye questioned the wording on line 62 of Councilmember Hiller's amendment, "in much greater detail" and asked how it would be measured within the development agreement. He spoke in support of Councilmember Hiller's amendments.

Kurt Young questioned the wording on lines 51-52, "(2) An operating plan for the project identifying strategy, budget and various performance metrics" and expressed concern with the language seeming to be open-ended. He spoke in support of Councilmember Hiller's amendments.

Rodger Fry spoke in support of Councilmember Hiller's amendments.

The substitute motion to amend the resolution as presented carried. Councilmembers Ortiz and Harmon voted "no." (8-2-0)

Councilmember Harmon stated he believes the downtown plaza has potential to be a signature development in the downtown area; however, he expressed concern with completing

South Kansas Avenue improvements first. He noted the project would take a significant financial undertaking and commitment which he believes has not been fully discussed; therefore, he would like Mayor Wolgast to consider developing a “blue ribbon committee” consisting of Shawnee County Commissioner Kevin Cook, Mayor Wolgast, Deputy Mayor Karen Hiller, Councilmember Schwartz, a Visit Topeka representative and a Downtown Topeka Inc., representative to work through the details, hopes and concepts as the project moves forward.

Councilmember Hiller spoke in support of a downtown plaza and stated she believes the project would have 18 months to submit a development agreement then the funds would be allocated.

Councilmember Jensen clarified approval of the resolution would not approve the construction of a plaza; however, it would identify the funds needed if a plan is approved by the Governing Body.

Councilmember Schwartz spoke in support of a downtown plaza and encouraged the Governing Body to recall the branding survey taken by Visit Topeka to define Topeka which included creating a downtown plaza.

Doug Gerber clarified the intent of estimated TGT fund revenues not coming in as projected would determine the amount of funding allocated to each project every year.

Councilmember De La Isla called the question.

Councilmember Hiller moved to approve the resolution as amended. The motion seconded by Councilmember Schumm carried. Mayor Wolgast voted “yes.” Councilmembers Clear, Ortiz and Harmon voted “no.” (7-3-0)

RESOLUTION NO. 8731 introduced by Councilmembers Elaine Schwartz, Brendan Jensen and Jeffrey Coen sitting as the Transient Guest Tax Committee, allowing transient guest tax funding for a period of 12 years for Historic Jayhawk Theater was presented.

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

Councilmember Jensen stated he would abstain from voting as he is a member of the Jayhawk Theater Board of Directors.

Jeff Carson, Jayhawk Theater Board of Directors President, spoke in support of the resolution.

The motion to approve the resolution carried. Mayor Wolgast voted “yes.” Councilmember Clear voted “no.” Councilmember Jensen abstained. (8-1-1)

RESOLUTION NO. 8732 introduced by Councilmembers Elaine Schwartz, Brendan Jensen and Jeffrey Coen sitting as the Transient Guest Tax Committee, allowing transient guest tax funding for a period of 12 years for Evel Knievel Museum was presented.

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

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

Mayor Wolgast announced there would be no City Council meeting October 27, 2015.

Jim Colson, City Manager, announced a public meeting would be held October 26, 2015, from 4:30 p.m. to 6:00 p.m. at the Washburn Tech Building A Conference Room to discuss the Arvonía/Huntoon/I-470 Traffic Study. He stated Bartlett and West would present draft findings, recommendations and cost estimates for improvements to the area bounded by Arvonía,

Huntoon, Wanamaker and 17th Street to accommodate the projected future growth of the area. He reported the Kansas Department of Transportation, the City of Topeka and the Metropolitan Topeka Planning Organization (MTPO) are partnering together on the project.

Mayor Wolgast stated Shawnee County Commissioner Kevin Cook has requested the Joint Economic Development Organization Board meet and discuss the City-County interlocal agreement. He reported a special meeting would be scheduled in early November.

Councilmember Schwartz announced this week's "gem" of Topeka is State, County and City government employees who work hard to provide services to the community.

Councilmember Hiller expressed her appreciation to Governing Body members for supporting the Transient Guest Tax funding allocations. She thanked Sgt. Julie Hoffmann, Topeka Police Department Community Policing, for assisting with the Crime Summit events and noted informational binders would be available at the Community Policing office, City Council office, City Department of Neighborhood Relations and on the City of Topeka Police Department network. She announced the City of Topeka would host quarterly Neighborhood Forums with the first forum scheduled on October 24, 2015, from 9:00 a.m. to 11:00 a.m. at the Washburn Tech School located at 5724 SW Huntoon. She encouraged residents to participate and to contact Monique Glauvé at (785) 368-4470 for more information.

Councilmember Ortiz congratulated City Manager Jim Colson and Municipal Court Administrative Judge Vic Miller for being nominated for the 2015 Community Resources Council Awards of Excellence. She encouraged residents to participate in the smoke alarm program sponsored by the Topeka Fire Department.

Greg Bailey, Topeka Fire Chief, stated the Fire Department is installing smoke detectors that are equipped with lifetime lithium batteries. He asked individuals who would like more

information or to participate in the program to contact the Topeka Fire Department at (785) 368-4000.

Councilmember Hiller left the room.

Councilmember Ortiz moved to recess into executive session for a time period not to exceed ten minutes to discuss employer/employee negotiations relating to a labor agreement and to include the Governing Body, City Manager, Deputy City Manager, Finance Director, Human Resource Director and City Attorney. The motion seconded by Councilmember Jensen carried unanimously. (9-0-0)

Councilmember Hiller entered the room.

At 8:30 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 15 minutes to discuss attorney-client privileged matters relating to potential litigation and to include the Governing Body, City Manager, Deputy City Manager, City Attorney and staff. The motion seconded by Councilmember Jensen carried unanimously. (10-0-0)

At 8:45 p.m., the Governing Body reconvened into open session and Mayor Wolgast announced no action was taken.

Councilmember Harmon moved to recess into executive session for a time period not to exceed five minutes to discuss potential litigation and to include the Governing Body, City Manager, Deputy City Manager, City Attorney and Police Chief. The motion seconded by Councilmember Clear carried unanimously. (10-0-0)

At 8:53 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.

Brenda Younger
City Clerk