

Council Minutes – October 21, 2014

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 21, 2014. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Brown, Ortiz, Everhart, Manspeaker, Schwartz, Schmidt and Harmon -8. Mayor Larry E. Wolgast presided -1. Absent: Councilmember De La Isla -1.

AFTER THE MEETING was called to order, Councilmember Ortiz gave the invocation.

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

A PRESENTATION on the Residential Open Burn was provided by Michael Martin, City of Topeka Fire Marshal. He gave a brief overview of the residential open burn permit process and inspections the Topeka Fire Department performs. He stated the Fire Department is reviewing whether to issue year-long permits in 2015 with a focus on education in the community and oversight by fire inspectors. He reported the Fire Department would have the ability to track yearly permits to know if there have been any complaints or revocations and give people the opportunity twice a year to attend clinics for fire safety education.

Councilmember Harmon expressed concern with past burning permits in Council District No. 9 and how citizens were upset with the frequency and intensity of smoke and burning of certain materials. He asked if the new policy would prevent these types of incidents in the future.

Fire Marshal Martin reported the Fire Department uses every opportunity to educate the public by working with citizens to educate them on approved open burning items before a citation would be issued. He noted the Fire Department has the right to stop any open burning at any point and time.

Councilmember De La Isla entered the room.

Councilmember Ortiz asked if people could apply for a permit still and if there have been any problems with open burning this year. She thanked the Topeka Fire Department for their service to the community and supports the open burning permit process.

Fire Marshal Martin stated citizens could apply until November 30, 2014, when the open burning season ends. He reported the season has gone well so far and the Fire Department will continue to investigate concerns and educate the community on a regular basis.

At 6:15 p.m., Councilmember Harmon moved to recess into executive session for a time period not to exceed 20 minutes to discuss potential litigation and to include the Governing Body, City Manager, City Attorney and Director of Administration and Financial Services. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

At 6:35 p.m., the Council reconvened into open session with no action taken.

Councilmember Harmon moved to recess into executive session for a time period not to exceed 20 minutes to continue discussion on potential litigation and to include the Governing Body, City Manager, City Attorney and Director of Administration and Financial Services. The motion seconded by Councilmember Brown carried. Councilmember Manspeaker voted “no.” (8-1-0)

At 6:55 p.m., the Council reconvened into open session with no action taken.

Councilmember Harmon moved to recess into executive session for a time period not to exceed 10 minutes to continue discussion on potential litigation and to include the Governing Body, City Manager, City Attorney and Director of Administration and Financial Services. The motion seconded by Councilmember Brown carried. Councilmembers De La Isla and Manspeaker voted “no.” (7-2-0)

At 7:05 p.m., the meeting reconvened into open session and Mayor Wolgast announced there was no action taken.

Councilmember Manspeaker moved to suspend the Council Rules to add a resolution relating to documents purporting to be a petition and proposed ordinance filed with the City Clerk on October 8, 2014, to the Council agenda. The motion was seconded by Councilmember Schwartz.

Councilmember Hiller stated she would not support adding the resolution to the Council agenda because she believes the public should be informed on the issue and allow input.

Councilmember Schmidt requested the resolution be read in its entirety.

Jennifer Goodrich, Assistant City Clerk, read the following resolution as presented:

A RESOLUTION introduced by Councilmember Chad Manspeaker relating to Document Purporting to be a Petition and Proposed Ordinance filed with the City Clerk on October 8, 2014.

WHEREAS, on October 8, 2014, documents purporting to be a petition and proposed ordinance were filed with the City Clerk seeking to repeal Ordinance No. 19915 (the Heartland Park Ordinance); and

WHEREASE, the documents request that the governing body either: (1) pass the ordinance repealing the Heartland Park Ordinance within 20 days; or (2) call a special election to submit to the electorate the proposed ordinance repealing the Heartland Park Ordinance; and

WHEREAS, the Election Commissioner has determined that the purported petition contains 3,587 valid signatures; and

WHEREAS, the City Attorney has recommended that the City pursue a declaratory judgment action requesting a determination from the district court whether the petition is valid.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS, that in light of the significant opposition by Topeka residents to the Heartland Park Ordinance, the City Attorney is directed not to pursue any litigation challenging the purported petition and/or proposed ordinance including any declaratory judgment action.

The motion to suspend the Council Rules to add a resolution relating to documents purporting to be a petition and proposed ordinance filed with the City Clerk on October 8, 2014, to the Council agenda failed. Councilmembers Hiller, Brown, Ortiz, De La Isla, Schmidt and Harmon voted “no.” (3-6-0)

Councilmember Manspeaker moved to suspend the Council Rules to add a resolution calling a special election to submit the proposed repeal of Ordinance No. 19915 (the Heartland Park Ordinance) to the electorate pursuant to K.S.A. 12-3013 to the Council agenda. The motion was seconded by Councilmember Schwartz.

Councilmember Ortiz requested the resolution be read in its entirety.

Jennifer Goodrich, Assistant City Clerk, read the following resolution as presented:

A RESOLUTION introduced by Councilmember Chad Manspeaker calling a special election to submit the proposed repeal of Ordinance No. 19915 (the Heartland Park Ordinance) to the electorate pursuant to K.S.A. 12-3013.

WHEREAS, on October 8, 2014, a petition and proposed ordinance were filed with the City Clerk, pursuant to K.S.A. 12-3013, seeking to repeal Ordinance No. 19915 (the Heartland Park Ordinance); and

WHEREAS, the Election Commissioner has determined that there are 3,587 valid signatures which constitutes more than the number of signatures required by K.S.A. 12-3013; and

WHEREAS, as there are sufficient signatures, K.S.A. 12-3013 requires that the governing body either: (1) pass the ordinance repealing the Heartland Park Ordinance within 20 days after the attachment of the City Clerk's certificate to the petition (October 15, 2014); or (2) call a special election to submit to the electorate the proposed ordinance repealing the Heartland Park Ordinance; and

WHEREAS, the governing body is not pursuing a judicial declaration of the petition's validity, including but not limited to whether the Heartland Park Ordinance is either an administrative ordinance or an ordinance that is subject to referendum under K.S.A. 12-17, 169(b)(2).

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS, that in light of the number of electors who have indicated a desire to vote on whether to repeal the Heartland Park Ordinance, the governing body calls a special election to submit the proposed ordinance to the vote of the electors of the City of Topeka.

The motion to suspend the Council Rules to add a resolution calling a special election to submit the proposed repeal of Ordinance No. 19915 (the Heartland Park Ordinance) to the electorate pursuant to K.S.A. 12-3013 to the Council agenda failed. Councilmembers Hiller, Brown, Ortiz, De La Isla, Schmidt and Harmon voted "no." (3-6-0)

Councilmember Hiller moved to suspend the Council Rules to add a discussion item to the Council agenda regarding Heartland Park Topeka. The motion seconded by Councilmember Brown carried. Councilmember Ortiz voted “no.” (8-1-0)

Councilmember De La Isla left the room.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Craig Strever to the Board of Mechanical Examiners Appeals for a term ending October 31, 2016 was presented.

RESOLUTION NO. 8655 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 14, 2014, was presented.

Councilmember Harmon moved to approve the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

ORDINANCE NO. 19927 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of August 30, 2014, through September 26, 2014, an enumerating said expenditures therein was presented.

Jim Colson, City Manager, reported approval would authorize City expenditures in the amount of \$13,691,981.59.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Brown carried unanimously. (8-0-0)

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

A PROJECT BUDGET in the amount of \$1,400,000 and RESOLUTION NO. 8656 introduced by City Manager Jim Colson, authorizing Improvement Project T-601041.00 which provides for neighborhood infrastructure improvements in two target areas, the Historic North Topeka East and Oakland neighborhoods, as more specifically described herein was presented.

Brad Rieff, Deputy Director of Housing and Neighborhood Development, gave a brief overview of the Stages of Resource Targeting (SORT) areas included in the neighborhood plans adopted by the Council earlier this year. He reported approval would authorize neighborhood infrastructure improvements including street, alley and sidewalk repairs in the Historic North Topeka East target area and improvements to the Chase Track and Little Oakland Park in the Oakland target area.

Councilmember Brown moved to approve the project budget and resolution. The motion seconded by Councilmember Hiller carried unanimously. (8-0-0)

DISCUSSION of the Land Use and Growth Management Plan (LUGMP) 2040 an element of the City's Comprehensive Plan was presented.

Bill Fiander, Planning Department Director, stated the LUGMP was first adopted by the City in 2003 as part of the City's Comprehensive Plan and a major update was initiated in 2012 through the EPA's Sustainable Communities two-day workshop. He reported the Topeka Planning Commission and Planning Department staff formed a technical advisory team to build upon the recommendations from the workshop and make changes to the plan. He noted there were several stakeholder engagements, public meetings and online input to draft the plan and gain additional feedback. He displayed a video presentation of the LUGMP and stated the final draft would be presented to the Council for consideration in November of this year.

Mayor Wolgast commended Planning Department staff for their work on the LUGMP 2040. He stated he looks forward to developing incentives in Service Tier 1 (existing vacant or redeveloped property within the city).

Councilmember Manspeaker commended Planning Department staff on their forward thinking and believes it is the right time to make it a priority for future growth/urban development on properties within the city.

DISCUSSION of the Heartland Park Topeka STAR Bond District, was presented.

Councilmember Hiller reported she has received numerous comments from constituents expressing concern with Heartland Park and the facts surrounding the protest petition. She requested an explanation of the challenges and options so the public could better understand the decision by the Council to issue bonds for the expansion of the Heartland Park STAR Bond District.

Jim Colson, City Manager, stated decisions made over the last 30 years have made a serious negative impact on City finances. He reported if the City continues the current arrangement with Heartland Park they will have an \$8.5 million deficit which would have to be paid through property taxes. He stated the current proposal would fully satisfy the \$8.5 million outstanding debt, as well as, the reversionary interest based on reallocating actual taxes collected from State to the City to pay for the STAR Bonds.

Doug Gerber, Director of Administration and Financial Services, reiterated the City will have to find a way to fund the \$8.5 million deficit in the City's budget; therefore, if the STAR Bond District is expanded based on actual numbers it would generate approximately \$16.4 million which equates to a 10 to 1 ratio return on investment because the reallocation of State revenues to the City would fill the funding gap beginning in 2015 and ending in 2025.

Chad Sublet, City Attorney, stated in order to create a STAR Bond District; a plan is required and has to be agreed to by all parties involved including the State of Kansas Department of Commerce, which has been accomplished. He stated the \$16.4 million would be new revenues allocated to the City; whereas, the \$1.6 million would come from existing sales tax revenues to address the debt service. He reported it is unclear at this point if there is a valid protest petition; however, Lathrop & Gage, L.L.P., a third party has evaluated the petition and listed their concerns including the residential language used is unconstitutional and the petition circulated did not have the ordinance attached to clearly outline the issue; therefore, it has been recommended the petition is not legally valid.

Jim Colson reported there have been several comments relating to the City taking over Heartland Park Topeka which is neither the case nor the intent of the Governing Body or City staff. He stated the City has engaged in preliminary discussions to determine the feasibility of Heartland Park Topeka and is concerned that any delays could jeopardize future racing events. He stated he hopes the issue will result in an expedient declaration by a judge to establish a determination regarding the petition.

Councilmember Hiller questioned how viable it would be to have a successful racing facility in close proximity to the Kansas Speedway.

Jim Colson stated this issue has been a primary focus in conversations and reported three people have expressed an interest in the facility.

Councilmember Schwartz asked about the \$8 million hole in the City's finances and how the original study conducted for Heartland Park Topeka would have covered this gap. She also questioned if the City could sue the people who wrongly predicted how Heartland Park Topeka revenues would result.

Jim Colson stated he could not speak to the predictions in the 2006 study; however, the new proposal is based on historical data of the existing sales tax revenues collected currently and includes no new planned developments in the bond district.

Chad Sublet stated feasibility studies are generally based on the economic climate at that time and there has to be a burden of proof that the people who drafted the study knowingly mislead the parties involved.

Councilmember Schmidt summarized the STAR Bond District process and stated the plan has been agreed to by the Kansas Department of Commerce and numbers are based on performance and not projection. He noted the protest petitioner did not dispute the numbers and publicly agreed with them.

Jim Colson stated he agrees with Councilmember Schmidt's summary of the process and noted the benefit in this process is that the revenue numbers have been verified and validated to be correct.

Councilmember Brown asked for comments on the \$160 million economic activity associated with Heartland Park Topeka as it currently exists and if it were to cease what that would mean for Topeka.

Doug Gerber stated the \$160 million amount was generated and suggested by an independent third party that this would be the impact on the Topeka community brought on by Heartland Park Topeka events.

Councilmember Manspeaker asked what has been the rate of repayment by Heartland Park from year to year; and if the yearly repayment has ever been met. He expressed concern with the challenges of adding more debt to the existing debt and the Governing Body's obligation to

protect the City and its interests. He stated he believes there are more options to explore because he does not agree that this is the best deal for the taxpayers.

Doug Gerber reported the yearly repayment terms have never been met and in 2013 the STAR bond revenues generated approximately \$203,000.

Jim Colson stated he understands there is additional debt to resolve (reversionary interest on the property); however, the proposal is based on taxes already being generated and provides for incremental growth moving forward.

Chad Sublet stated he has read the 2005 feasibility study which was based completely on future development for a multi-use facility built around Heartland Park and continued growth in the economy. He reiterated that the difference with the new proposal is that each parcel was examined for sales tax revenues already being generated; therefore, if Heartland Park is performing the same now as it has with no betterment, the \$16.4 million would be repaid. He noted the majority of the district includes businesses along Topeka Boulevard and not Heartland Park.

Councilmember Harmon asked how long the City has held the property title to Heartland Park Topeka.

Chad Sublet stated the City has held the property title to Heartland Park since the Lario Brothers took it over in 1988; however, there is a number of liens on the racetrack and the reversionary interest has been granted to Mr. Ray Irwin.

Councilmember Harmon asked if he is accurate when stating the \$8 million shortfall seems to have two options to fill the gap, (1) increase property taxes to cover the shortfall; or (2) request the State cover the shortfall by expanding the district and reallocating the revenues to pay off the STAR Bonds.

Doug Gerber stated Councilmember Harmon is correct and reported the City has the option to expand the STAR Bond District to generate an additional \$1 million of property taxes every year. He clarified the proposal is basically asking three million Kansans to participate in the reallocation rather than 130,000 citizens in Topeka.

Councilmember Schmidt asked how much money is being generated currently by Heartland Park Topeka. He stated he knows there are certain risks associated with any proposal; however, in order for this proposal to be less favorable than what is already in place, the expanded district would have to have a recession for the next 10 years and lose over 50% of economic activity every year. He noted it would be grossly irresponsible to compare this proposal to the one in 2006 and believes it is the best possible path for the situation.

Doug Gerber reported approximately \$18 million (\$16.4 million in revenues and \$1.6 million in property taxes) is being generated. He stated Councilmember Schmidt is correct in his explanation; however, in the proposal the reversionary interest would be cleared as well.

Councilmember Schwartz asked when they anticipate a ruling on the protest petition.

Chad Sublet stated they are hoping for an expeditious decision; however, they do not have a date certain at this time. He reported the issue would be brought back before the Council for discussion in regards to moving forward with the judgment.

Councilmember Schmidt asked if there is a possibility of a lawsuit if the City does not move forward with expanding the district.

Chad Sublet reported the City received a letter from Frieden, Unrein & Forbes, L.L.P., stating they would take action if the City moves forward with a special election or takes action with the protest petition because representatives of Frieden, Unrein & Forbes, L.L.P., have also determined the protest petition is invalid. He noted it would cost taxpayers approximately

\$168,000 to \$212,000 to hold a special election. He clarified if the City is sued to make election results invalid, it would also breach the contract.

Councilmember Hiller stated Ordinance No. 19915 specifies time lines; therefore, if the City has to take other directions pertaining to the outcome of the protest petition, they would have to act swiftly.

Chad Sublet reported the Memorandum of Agreement specifies the deal has to be completed by February 1, 2015; therefore, if the proposal fails CoreFirst Bank and Trust would move forward with foreclosure proceedings.

Councilmember Manspeaker noted the determination made by Lathrop & Gage, L.L.P.'s of the protest petition is an opinion and the ruling made by the judge would be based on facts.

Chad Sublet stated Councilmember Manspeaker's statement is correct.

Councilmember Hiller expressed her appreciation with the discussion and information presented this evening. She announced there would be a Question and Answer session regarding the Heartland Park Topeka issue on the Topeka Capital Journal newspaper website at www.cjonline.com to answer questions from the public.

Joanne Peavler commented on the protest petition and stated she believes it should be a democratic process and not an administrative decision on expanding the STAR Bond District. She stated by helping circulate the protest petition she learned more about how the community feels about the issue and believes the confidence of the community is low in regards to local government at this time.

Leo Haffner commented on City policy and believes the proposal is setting a horrible precedent. He stated he believes it is not the government's responsibility to create economic

activity but to support it. He asked the Governing Body to rethink their options and the risks involved.

Chris Imming stated he understands the City's responsibility to do what needs to be done; however, he believes a good faith effort was made by citizens who signed the protest petition and they are ready to move forward as soon as the judge provides a ruling.

Councilmember Manspeaker commended the circulators for engaging in democracy and learning about the process.

Councilmember Schmidt commended everyone involved for having the City's best interest in mind. He stated the legal ruling is needed to protect all the parties involved, as well as, recognize if the petition is legitimate and legal.

Mayor Wolgast commended everyone for the informational discussion.

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

Councilmember Brown stated the North Topeka West Neighborhood Improvement Association President has mailed a SORT Targeting Priorities questionnaire out to residents and encouraged them to fill it out and mail it back by October 24th to get as much feedback as possible for the neighborhood's priorities.

Bonita Johnson appeared to speak under public comment.

At 9:10 p.m., Councilmember Schmidt moved to recess into executive session for a time period not to exceed 10 minutes to discuss potential litigation and to include the Governing Body, City Manager, City Attorney and Director of Administration and Financial Services. The motion seconded by Councilmember Everhart carried unanimously. (8-0-0)

At 9:20 p.m., the Council reconvened into open session with no action taken.

Councilmember Manspeaker moved to recess into executive session for a time period not to exceed five minutes to continue discussion on potential litigation and to include the Governing Body, City Manager, City Attorney and Director of Administration and Financial Services. The motion seconded by Councilmember Brown carried unanimously. (8-0-0)

At 9:25 p.m., the Council reconvened into open session with no action taken.

Councilmember Everhart moved to recess into executive session for a time period not to exceed 15 minutes to discuss labor negotiations and to include the Governing Body, City Manager, City Attorney, Assistant City Attorney and Director of Administration and Financial Services. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

At 9:40 p.m., the meeting reconvened into open session and Mayor Wolgast announced there was no action taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:45 p.m.

Brenda Younger
City Clerk