

Council Minutes – November 12, 2013

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 12, 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 Hiller asked for a moment of silent meditation.

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

A PRESENTATION on the process of the 2014 Capital Improvement Program (CIP) and Capital Improvement Budget (CIB) was provided by Jeff White, Financial Advisor. He reported the Council determines what projects to fund, including a number of revenue sources that are specific to what project funds could be allocated. He noted the process generally includes completing the annual operating budget and subsequently approving the CIP and CIB. He reported in other cities, the approval process for the CIP and CIB is typically completed before the annual operating budget is approved to allow the Council the opportunity to evaluate projects; determine the project funding source through cash or debt service; review the goals of the Council, the City's Comprehensive Plan and various neighborhood plans. He proposed moving the CIP ahead of the annual operating budget which would require a transition year. He suggested presenting the Council with the approved 2014 fiscal CIP in January 2014, make no revisions to the plan and moving forward with those projects, then quickly transition into discussing the 2015-2019 CIP which would allow the Council to review funding sources, establish a rating and ranking system of the projects, as well as, list timelines and funding. He noted this process would allow the Council to bring the 2015-2019 CIP to conclusion around the

time when the operating budget process would start which would provide clarity in funding the projects with bonds or cash.

Councilmember Hiller stated the CIB is based on a two-year budget plan and the CIP is based on a five-year project plan. She questioned if the two-year budget would sustain the proposed changes and if City staff is comfortable with the projects listed in the 2014 CIP remaining the same.

Jeff White stated he would propose a three-year CIB in accordance with the five-year CIP because most projects are completed within a construction cycle. He noted City staff agrees with the 2014 CIP as adopted by the Council.

Councilmember Manspeaker asked how the proposed rating method would fit into how the City is currently doing business.

Jeff White stated the City would move toward a more integrated process with the planning of what the City has done and continues to by including Public Works Department projects, as well as, more broadly fixing neighborhoods and integrating with the City's CIP development goals in improving the community as a whole.

Councilmember Manspeaker referenced a past project that exceeded the project budget and questioned what factors may contribute to this circumstance.

Jeff White stated there are a variety of reasons a project budget could change; however, City engineers are dedicated to providing an informed estimate.

Mayor Wolgast suggested providing the Governing Body with the 2014 CIP as soon as possible so project information could be reviewed and clarified during discussion.

Jeff White stated the 2014 CIP packet would be distributed early to the Governing Body for review and reminded the Council that the transition would just be a starting place for the new process.

Councilmember Schwartz stated she questioned the water fund ending balances during budget deliberations and asked if an explanation of those fund balances could be included in the packet to be distributed to the Governing Body.

Councilmember Hiller questioned if the Planning Department contributes to the review of the CIP because it was her understanding only the Public Works Department reviews the plan.

Bill Fiander, Planning Department Director, reported the Topeka Planning Commission has always reviewed the CIP as required by state law which stipulates the Planning Commission must review all CIP projects for consistency with the adopted Comprehensive Plan. He noted the purpose for reviewing the CIP has not changed.

Councilmember Hiller suggested changing the language in the CIP organizational chart to list the Topeka Planning Commission.

A PRESENTATION of the Charter Ordinance Review Committee Concept and Process was given by Mayor Wolgast. He suggested starting the process immediately because Topeka Municipal Code Section 2.13.040 requires the committee to convene initially on or before July 1, 2015, and at least once every ten years thereafter. He distributed a packet outlining the timeframe, City Code chapter outline and requirements, and a copy of Charter Ordinance No. 94. He stated the Citizen Government Review Committee appointments should be approved by December 17, 2013, which would give the committee 14 months to discuss and draft amendments and include on the ballot if necessary. He stated individuals interested in serving on the five person committee may self-nominate by submitting an application available on the City's website at www.topeka.org, as well as, the Council could submit their nominations to the Mayor's office.

Councilmember Harmon questioned if the Committee met in 2005; what process did they follow; who were the members and if they believe it is necessary to modify the process.

Councilmember Hiller requested information about the type of staffing provided at the time and identify within current staff who and how many people would be assisting the committee.

Mayor Wolgast noted Topeka Municipal Code Section 2.13.060 addresses additional assistance by City staff would be made available to the Committee.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Walter Schoemaker to the Topeka Board of Zoning Appeals for a term ending November 30, 2016, was presented.

BOARD APPOINTMENT recommending the re-appointment of Shaye Downing to the Topeka Housing Authority Board of Commissioners for a term ending December 31, 2017, was presented.

MINUTES of the regular meeting of November 5, 2013, were presented.

An Open After Midnight License application for Breakers Sports Bar & Grill located at 5215-5217 SW 28th Court, was presented.

Councilmember Schwartz moved to approve the consent agenda. The motion seconded by Councilmember Schmidt carried unanimously. (9-0-0)

ORDINANCE NO. 19858 introduced by City Manager Jim Colson, annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, generally located on the west side of Indian Hills Road approximately 1,340 feet south of the intersection of SW 21st Street and Indian Hills Road, within unincorporated Shawnee County, Kansas, and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading November 5, 2013, was again presented. (A13/2)

Bill Fiander, Planning Department Director, reported approval would allow 22 single lots with street right-of-way intended for single-family subdivision to be annexed and made part of

the City of Topeka, Council District No. 8. He stated the property owner has signed consent to annex and is being platted as Miller's Reserve. He reported the Planning staff recommends approval and the infrastructure needed within the new subdivision will be paid at the expense of the developer.

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: Hiller, Campos II, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt, Harmon and Mayor Wolgast -10.

A CHARTER ORDINANCE introduced by City Manager Jim Colson, amending Charter Ordinances codified at Topeka Municipal Code Sections A2-26, A2-30 and Section A2-55, all concerning council meetings, agendas and readings placed on first reading November 5, 2013, was again presented.

Mayor Wolgast clarified that all cities of the 1st class that were surveyed by staff process noise exceptions administratively, and there are still cities of the 1st class that maintain the "first readings" of ordinances. He reported approval of the charter ordinance would establish a calendar year schedule for Council meetings, instead of every two years, with a minimum of two meetings a month, and eliminate the "first readings" of ordinances. He noted if the charter ordinance was approved, the ordinance would be published for two consecutive weeks, with a 60 day protest period, becoming effective January 2014.

Councilmember Ortiz stated she appreciates the Mayor's research on the issue; however, she would prefer to keep the current Council agenda framework because it allows for transparency. She noted First Reading agenda items give people an additional week to research items and ask questions if necessary. She spoke in opposition of the charter ordinance and stated

the Governing Body should do what is best for Topeka and not rush business as it is presented to the Council.

Councilmember Schwartz asked if constituents could still comment on an ordinance if there is only one reading.

Mayor Wolgast stated the Council could revise the Topeka Council Rules and Procedures to reflect any changes in the Council agenda or meeting process.

Chad Sublet, City Attorney, stated the agenda procedure would not change because there would still be 12 days to view the agenda items as they are proposed before they are presented to the Council for vote.

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

Councilmember Manspeaker spoke in opposition of eliminating First Reading agenda items completely; however, he would be willing to try both options for a while to see which process works best for citizens. He expressed concern with not everyone having internet access to view agendas online; therefore, the Governing Body must work to remain consistent and transparent. He suggested referring the charter ordinance to the Policy and Finance Committee for further review.

Councilmember Campos II expressed concern with eliminating First Reading agenda items because there would not be the 12 to 13 day window of time for appropriate notification to allow public input before the Council makes a decision.

Councilmember Campos II made a substitute motion to refer the charter ordinance to the Policy and Finance Committee for review. The motion was seconded by Councilmember Ortiz.

Councilmember Schmidt stated he believes the charter ordinance would not change the process because according to Topeka Council Rules and Procedures an emergency ordinance could be adopted during the same meeting it was introduced.

Councilmember Hiller stated she appreciates the overall good discussion on the issue; however, she prefers to have the major issues addressed at least a week prior to presentation for Council vote. She stated she believes work sessions and First Readings allow awareness of issues before the vote and suggested the preliminary agenda, with attachments, be posted on the City's website so there is more time for review of agenda items. She stated she believes they do not need to change either ordinance to accomplish what they want because currently via resolution they establish a one-year Council meeting schedule. She referenced lines 62 through 66 of the charter ordinance which allows an additional week to consider major amendments to ordinances, and believes the memo requirement to add items to the agenda supports transparency by providing explanation to citizens and members of the Governing Body.

Mayor Wolgast stated he believes it would be helpful to review the process in Committee and provide recommended changes.

Councilmember Manspeaker commended the Mayor's efforts and welcomes any discussion at the Committee meeting on the proposed changes to the agenda and Council meetings.

The substitute motion to refer the charter ordinance to the Policy and Finance Committee for review carried. Councilmembers Hiller and Everhart voted "no." Mayor Wolgast voted "yes." (8-2-0)

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Sections 2.15.020 through 2.15.040, 2.15.070, 2.15.080, 3.55.060, 5.20.080 and Section

5.55.120 concerning meetings of the City Council and specifically repealing said original sections placed on first reading November 5, 2013, was again presented.

Mayor Wolgast reported approval would reduce the number of Council meetings from the first four (4) Tuesdays of each month to the first three (3) Tuesdays of each month, with the intent of utilizing the remaining meeting to conduct a more in-depth discussion on upcoming agenda items. He noted some Councilmembers have expressed interest in revising the meetings.

Councilmember Schmidt moved to adopt the ordinance. The motion was seconded by Councilmember De La Isla.

Councilmember Ortiz spoke in opposition of the proposed amendments. She stated that she believes the issue would resolve itself if the Council agenda and work sessions discussions were better managed by the City Manager and staff members.

Councilmember Manspeaker made a substitute motion to refer the ordinance to the Policy and Finance Committee for review and discussion. The motion was seconded by Councilmember Campos II.

Councilmember Manspeaker noted at times it is frustrating when Council agendas are small; however, the reduced amount of agenda items speaks to the efficiency of the way operations are being handled.

Mayor Wolgast stated that he believes the current agenda format precludes discussion; therefore, he would suggest Council meetings be less structured to encourage more open and productive communication.

Councilmember Hiller stated she believes it is not necessary for the Council to make any policy changes to the ordinance because the issue could be handled administratively. She inquired about the vision of the Citizen Government Review Committee and what the Policy and Finance Committee's scope or intentions are regarding the issue.

Councilmember Manspeaker stated the Policy and Finance Committee would examine the issue and make the best possible recommendations to the Governing Body.

Jim Colson, City Manager, expressed his support of further discussing the issues in Committee and noted staff would be prepared to follow through with any direction provided by the Governing Body.

Councilmember Everhart spoke in support of referring the charter ordinance to the Policy and Finance Committee for further discussion. She stated that she believes the structure of the Council agenda should be discussed and new ideas shared.

Councilmember Schmidt stated he believes a few items should be considered such as, flexibility in the Council meeting schedule; action agenda items versus discussion agenda items; and the elimination of cover memos for agenda items added at a meeting.

Councilmember Ortiz stated she believes the current Council agenda format keeps the Governing Body centered and focused on important issues.

Jim Colson stated he supports a consistent, uniform, efficient City and reported City staff would conduct a statistic review of Council agenda items spanning over the last several months and report back to the Council.

Councilmember Hiller suggested it would be helpful to also present the statistic review to the Policy and Finance Committee.

The substitute motion to refer the ordinance to the Policy and Finance Committee for review and discussion carried unanimously. (9-0-0)

ORDINANCE NO. 19859 introduced by Councilmember Denise Everhart, concerning exotic and wild animals, amending City of Topeka Code Section 6.05.060 and specifically repealing said original section placed on first reading November 5, 2013, was again presented.

Councilmember Everhart reported approval would allow Capuchin monkeys that are trained to assist disabled persons living with permanent mobility impairments within city limits. She noted the request came from a constituent in her Council District.

Rocky Nichols spoke in support of the ordinance and stated Brandon Moore requested the issue be presented before the Council for consideration. He provided information on the background and training the monkeys receive and noted more information could be found online at www.monkeyhelpers.org. He stated the monkeys assist disabled persons with daily routine tasks and noted there are safety precautions in place to insure public safety.

Councilmember Hiller spoke in support of the ordinance; however, she asked if there was a certain organization that specializes in training monkeys to assist disabled people that should be specified in Section 2 of the ordinance.

Rocky Nichols stated the ordinance was modeled after other states that have similar assistance programs for disabled people in the community. He noted the ordinance is worded specifically for a purpose.

Councilmember Ortiz raised a point of order. She stated there should be a motion to continue debate on the issue.

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

Chad Sublet, City Attorney, reported the Capuchin monkey is not owned by the individual but by the organization and that is what the language reflects in the ordinance.

Councilmember Manspeaker questioned the broad language of the ordinance and asked if a weight restriction should be included and if the term “monkey” should be narrowed to a specific species.

Chad Sublet stated line 55 of the ordinance addresses the definition of monkey species allowed.

Councilmember Schwartz asked if the monkey would pose a public safety hazard; if sufficient studies been conducted on the issue; and if the Humane Society of the United States has an opinion on the program. She referenced an email she received from the Humane Society of the United States and asked Mr. Nichols if he has spoken with Humane Society representatives.

Rocky Nichols reported he has not spoken with representatives from the Humane Society of the United States; however, other cities and states have similar policies which include very strict stipulations.

Chad Sublet stated research on the organization, as well as, the training and requirements have been researched. He also noted the organization conducts regular checks on the monkeys to make certain they are being treated humanely as required.

Councilmember De La Isla stated she is excited about the prospect of the program and noted the impact service animals have on medical and physical disability cases is tremendous. She also noted the mobility and interaction is remarkable and expressed appreciation to City staff for the research conducted on the program.

Councilmember Hiller expressed concern with the ordinance not specifically naming the organization.

Councilmember Schmidt spoke in support of the ordinance and stated it is important to note that Helping Hands Simian Aides for the Disabled, Inc., only places approximately 10 to 12 monkeys a year to disabled persons and there is no risk of an outbreak.

Councilmember Everhart encouraged the Council to support the ordinance and thanked the City Attorney's office for researching the program. She stated she is very confident the ordinance includes strict language to address public safety concerns.

Councilmember Campos II made a substitute motion to amend lines 57 through 60 of the ordinance to state, "The service monkey is owned and trained by a registered 501(c)3 non-profit organization, Helping Hands Simian Aides for the Disabled, Inc., that assists disabled persons living with permanent physical disabilities; and". The motion was seconded by Councilmember Hiller.

Councilmember Schmidt spoke in opposition of the substitute motion and stated he does not believe naming a specific organization to the ordinance was necessary.

The substitute motion to amend lines 57 through 60 of the ordinance to state, "The service monkey is owned and trained by a registered 501(c)3 non-profit organization, Helping Hands Simian Aides for the Disabled, Inc., that assists disabled persons living with permanent physical disabilities; and" carried. Councilmembers Everhart, Schmidt and Harmon voted "no." (6-3-0)

Councilmember Everhart moved to adopt the ordinance as amended. The motion seconded by Councilmember Schmidt carried unanimously. (9-0-0)

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

A FINAL PLAT for Audrey Acres Subdivision on property located halfway between SW 33rd Street and SW 37th Street, along the west side of SW Indian Hills Road outside the City limits, but all within the City's Municipal Service Area and three-mile extraterritorial jurisdiction, all lying within unincorporated Shawnee County, Kansas, was presented. (P13/18)

Bill Fiander, Planning Department Director, reported the purpose of the plat is to allow one new lot for a single-family residence without connection to sanitary sewer. He stated this would allow the property owner to have a septic system because it is considered a financial hardship to connect to City sewer at the cost of \$60,000. He noted the Planning Department recommends approval of the final plat and waiver.

Councilmember Campos II asked if the final plat also required approval from Shawnee County.

Bill Fiander stated Shawnee County has approved the final plat and waiver for the lot.

Councilmember Ortiz moved to approve the final plat and waiver. The motion seconded by Councilmember Campos II carried unanimously. Mayor Wolgast voted "yes." (10-0-0)

ORDINANCE NO. 19860 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of August 31, 2013, through September 27, 2013, and enumerating said expenditures therein was presented for first and final reading.

Jim Colson, City Manager, reported approval would authorize City expenditures in the amount of \$14,503,096.91.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember De La Isla carried. Councilmember Campos II voted "no." (8-1-0)

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

NO Retail Cereal Malt Beverage License applications were presented.

AN ORDINANCE introduced by City Manager Jim Colson, authorizing Improvement Project No. T-151003.01, which provides for drainage improvements to SW Woodbury South Court, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operation funds and

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 improvement 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 was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Section 10.15.010 and 10.15.020, specifically repealing said original sections, as well as, creating Section 10.20.230, all concerning the adoption of the Standard Traffic Ordinance and amendments was presented for first reading.

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Section 9.05.080, concerning adoption of the 2013 Uniform Public Offense Code and specifically repealing said original section was presented for first reading.

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

Jim Colson, City Manager, commented on Topeka's First Annual Veterans Day Parade on November 11, 2013, and stated the event was well attended and displayed great community support of veterans.

Mayor Wolgast stated he appreciated the discussion regarding the Citizens Review Committee, the Council Meeting Schedule and First Readings. He pointed out Topeka Municipal Code Section 2.15.020(c)(2) allows for the Mayor and Deputy Mayor to cancel a Council meeting due to lack of agenda items; therefore, with the concurrence of Deputy Mayor Ortiz, the November 26, 2013, Council meeting will be cancelled. He noted at this time there is only one item on the November 26, 2013, Council agenda which could be delayed to the December 3, 2013, Council agenda.

Councilmember Hiller commended the Topeka Fire Department, Shawnee County Emergency Management Team and Grist Company for handling the demolition of property located at 1600 SW Harrison Street in an expedient manner.

Councilmember Ortiz reported Penwell-Gabel Funeral Homes Crematory & Cemetery, would donate 850 white pine Christmas trees to area families in need this holiday season. She stated quantities are limited and families are encouraged to call (785) 295-9782 to reserve a tree which will be available for pick-up at the 6th Street and Gage Boulevard cemetery entrance on December 1, 2013, from 1:00 p.m. to 4:00 p.m. She also announced the Salvation Army is helping those in the community who may not have the privilege of owning a winter coat this year. She reported any size coat in good condition, as well as, blankets could be donated at all Scotch locations around Topeka for the 27th annual Scotch Share the Warmth Campaign and Coat Drive from October 21st through November 23rd. She noted Scotch would clean the coats free of charge and give them to the Salvation Army to distribute on December 7, 2013.

Councilmember De La Isla thanked Melissa Jarboe for organizing Topeka's First Annual Veterans Day Parade, a wonderful event well attended by the community. She thanked veterans for their service and stated thanks should be expressed to them on a daily basis. She also thanked Mayor Wolgast for communicating with Councilmembers on the proposed changes with the Council meeting schedule and procedure which she believes would make a more effective government.

Councilmember Manspeaker stated many of the community activities honoring veterans were well attended. He reported veterans have the highest rate of suicide, homelessness and hunger nationwide; however, as a community, Topeka needs to make sure their veterans get what is needed to have quality of life. He thanked the Topeka Fire Department for serving breakfast and taking the opportunity to have open discussion with the City Manager and himself.

Councilmember Schwartz stated she believes citizen input is the key to successful government decisions.

Earl McIntosh and Bruce Deile appeared to speak under public comment.

Councilmember Ortiz moved to recess into executive session for a time period not to exceed 20 minutes to discuss non-elected personnel and to include the Governing Body. The motion seconded by Councilmember Campos II carried. Councilmembers De La Isla and Manspeaker voted "no." (8-2-0)

Mayor Wolgast asked if Councilmember Ortiz intended to include the City Attorney to remain in the executive session.

Councilmember Ortiz stated she is only requesting the Governing Body remain in the executive session.

At 8:30 p.m., the Governing Body recessed into executive session.

During the executive session Councilmembers Manspeaker, De La Isla, Everhart, and Schmidt left the room.

At 8:49 p.m., Councilmembers Manspeaker, De La Isla, Everhart and Schmidt returned to the Council Chambers.

The Governing Body reconvened into open session and Deputy Mayor Ortiz announced no action had been taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:50 p.m.

Brenda Younger
City Clerk