

## **Council Minutes – November 18, 2014**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 18, 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, De La Isla, Manspeaker, Schwartz, Schmidt and Harmon -9. Mayor Larry E. Wolgast presided -1.

AFTER THE MEETING was called to order, Councilmember Everhart asked for a moment of silent meditation.

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

A PRESENTATION on the 2014 Construction Projects was provided by Doug Whitacre, Public Works Department Director. He provided an update on the 2014 construction projects that include SW Gage Boulevard (SW 29<sup>th</sup> Street to SW 33<sup>rd</sup> Terrace); SE 21<sup>st</sup> Street (SE Golden to SE Carnahan); North Topeka (area north and west of North Topeka Arts District - NOTO); Hi-Crest area (SE of Eisenhower Middle School to SE 37<sup>th</sup> and Adams); Sidewalks in Hi-Crest neighborhood (SORT Program); Bridges (10<sup>th</sup> Street/ Vitt Road and SW 49<sup>th</sup> Street); Kansas Avenue sidewalks, watermains, utilities and street overlay (6<sup>th</sup> to 10<sup>th</sup> Streets). He noted the projects not yet completed will continue in the spring of 2015 along with the beginning phases of the pocket parks and landscaping.

Councilmember Manspeaker stated he believes the S. Kansas Avenue project took longer than anticipated and asked if the contractors are bound to a completion date. He questioned the effect the cold weather would have on the concrete and asphalt.

Doug Whitacre reported the 800 block of S. Kansas Avenue took longer than anticipated due to needed repairs to the gas line and the project did not begin until June 1, 2014. He reported contractors would not pour the final two inches of concrete unless it is over 50 degrees; and the

sub-base will be protected by applying proper blanketing of the area to protect it from the harsh elements of the weather.

Councilmember De La Isla commended City staff for communicating and addressing issues with the merchants and providing immediate response to every single challenge. She noted a lack of communication and efficiency was considered a huge issue a year ago; however, the City has made great improvements in these areas since that time.

Mayor Wolgast stated he understands the project has been difficult for merchants along S. Kansas Avenue; however, the project has moved along very smoothly under the circumstances. He commended City staff and all those involved in efforts to keep downtown businesses successful.

A PRESENTATION on the 3<sup>rd</sup> Quarter Financial Report and Year End Projections was provided by Brandon Kauffman, City of Topeka Chief Fiscal Officer. He gave a brief overview of the 3<sup>rd</sup> Quarter Report and Projections which included total revenues for budgeted funds, ad valorem property tax collections and year end projections. He stated the General Fund versus Cash Balance Unencumbered/Unrestricted and Utilities Net Position versus Cash Balance Unencumbered/Unrestricted are important indicators for the City. He reported the General Fund would continue to see improvements through the guidance of the Governing Body working with executive staff. He reported staff is working towards a 15% goal for the ending fund balance as recommended by the Government Finance Officers Association (GFOA).

Nickie Lee, City of Topeka Budget Manager, reported on the 2014 Budget Amendments (Council Agenda Item 5A.) and noted State statutes allows the governing body to increase the originally adopted budget if the increase is financed with previously unbudgeted revenue or a cash balance. She summarized the proposed amendments to the 2014 budget as follows:

- Transient Guest Tax Fund (271) \$300,000
- Employee Separation Fund (284) \$1,500,000
- Historic Asset Tourism Fund (289) \$300,000
- Countywide Half Cent Sales Tax Fund (290) \$8,700,000
- Tax Increment Financing Fund (293/220) \$240,000

Councilmember Ortiz requested more information about the East Gate Tax Increment Financing (TIF) District including the location and what improvements have been made to the District.

Councilmember Hiller commended City staff on the overall report. She questioned if the contractual items include services purchased between departments; and if the stormwater fund includes the \$4.5 million accumulated for improvements to the Kansas River levy.

Brandon Kauffman stated the \$4.5 million was removed from the fund because it is restricted to a purpose; therefore, it is not included in the report; and services purchased between departments are included in the contractual items. He noted he would research the details of the East Gate TIF District and report back to the Council.

Jim Colson, City Manager, requested to withdraw item 5C, an ordinance adopting the Land Use and Growth Management Plan (LUGMP) 2040 from the Council agenda until further notice. He reported Shawnee County Commissioner Bob Archer requested additional time to gather public comment, as well as, it is the City's objective to provide ample opportunity for impacted parties to gain information and provide input on the LUGMP 2040.

Upon hearing no objections, Mayor Wolgast announced item 5C would be withdrawn from the Council agenda until further notice.

THE CONSENT AGENDA was presented as follows:

APPROVAL of a Tort Claim Appeal submitted by AT&T seeking compensation in the amount of \$26,433.41 for damage to a fiber optic cable was presented.

DENIAL of a Tort Claim submitted by Bonita Johnson seeking damages allegedly incurred in connection with the demolition of claimant's house was presented.

MINUTES of the regular meeting of October 21, 2014, was presented.

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

AUTHORIZING a public hearing for December 9, 2014, for the purpose of hearing and answering objections of taxpayers relating to the proposed amendments to the 2014 Operating Budget was presented.

Doug Gerber, Administrative and Financial Services Director, reported approval would authorize publication of the Notice of Public Hearing in the November 24, 2014, edition of the Topeka Metro Newspaper. He stated the amendment would increase the expenditure level of the 2014 adopted budget and be paid for by additional revenue collected or by fund balance. He noted the proposed amendments would occur to the Transient Guest Tax Fund, Historical Asset Tourism Fund, Employee Separation Fund, Countywide Half-Cent Sales Tax Fund and Tax Increment Financing Fund.

Councilmember Everhart moved to approve the public hearing of December 9, 2014 and authorize the publication of the public hearing notice in the Topeka Metro newspaper on November 24, 2014. The motion seconded by Councilmember Harmon carried unanimously. Mayor Wolgast voted "yes." (10-0-0)

APPROVAL of a one-year Labor Agreement between the City of Topeka and the Water Pollution Control Division Local Union was presented. (Contract No. 43993)

Catherine Walter, Assistant City Attorney, reported approval of the proposed contract for 2015 provides a 2.49% overall increase to the 2014 wages and benefits cost and would begin

January 1, 2015. She stated she provided a detailed summary of the changes to the Governing Body through email correspondence and would stand for questions.

Councilmember Brown moved to approve the labor agreement. The motion seconded by Councilmember Everhart carried unanimously. Mayor Wolgast voted “yes.” (10-0-0)

ORDINANCE NO. 19928 introduced by City Manager Jim Colson, allowing and approving City expenditures for the period of September 27, 2014, through October 31, 2014, and enumerating said expenditures therein was presented.

Jim Colson, City Manager, reported approval would authorize City expenditures in the amount of \$18,347,538.31.

Councilmember De La Isla moved to adopt the ordinance. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

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

ORDINANCE NO. 19929 introduced by City Manager Jim Colson concerning utility rates, amending City of Topeka Code Sections 13.05.020 through 13.05.050 and 13.20.680 and specifically repealing said original sections and repealing in its entirety Section 13.05.065 was presented.

Doug Gerber, Administrative and Financial Services Director, gave a brief overview of the discussions and public meetings that have been held over the last six months on utility rate increases. He stated the proposed ordinance would become effective January 1, 2015, and implement the 6/5/5 proposal rate increase which equates to 6% in 2015, 5% in 2016 and 5% in 2017.

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

Councilmember Hiller questioned if the three-year plan would provide enough funds to improve the City's water infrastructure.

Doug Whitacre, Public Works Director, stated the plan would allow the City to begin projects; continue maintenance; and address watermain break issues.

Councilmember Brown distributed an amendment to the ordinance. He reported his proposal would slightly lower residential utility rates and slightly increase commercial rates.

Councilmember Brown made a substitute motion to amend the ordinance as distributed. The motion was seconded by Councilmember Manspeaker.

Councilmember Schwartz asked how the amendment would compare to the 6/5/5 proposal and what impact would it have on large industrial utility users.

Councilmember Brown reported his proposal would lower residential utility rates from 6% to 5% and increase commercial rates from 6% to 6.5%.

Doug Gerber distributed a handout comparing the 6/5/5 proposal to Councilmember Brown's proposal.

Councilmember Schwartz spoke in opposition of Councilmember Brown's proposal. She stated the large industrial companies have agreed to the 6/5/5 proposal and the amendment would increase industrial rates even more.

Councilmember Hiller asked how the rates for multi-family users were estimated because the 6/5/5 proposal appears to radically increase multi-family utility rates.

Mayor Wolgast commended City staff for the work done on each proposal. He stated there is no easy solution to increase utility rates; however, he believes the 6/5/5 proposal would be a good compromise.

Councilmember Brown stated the intent of his proposal was to provide some relief to residential utility customers.

Councilmember Manspeaker spoke in opposition of any proposal to raise water rates as he believes the citizens of Topeka should not have to absorb the costs of larger companies when water mains need to be repaired throughout the city neighborhoods.

Councilmember Everhart asked for clarification on the 6/5/5 proposal and if residential utility rates would decrease by 2017.

Doug Gerber clarified there would be a general decrease in overall rates for small meter size customers; and an increase in the larger meter size users by 2017.

Councilmember Brown commended City staff for their hard work in trying to achieve a plan that would be accepted by the Governing Body and utility customers.

Curtis Sneden spoke in support of the 6/5/5 proposal because he believes it would be a fair and considerable approach to the utility infrastructure issues. He stated he understands the urgent need to make upgrades and repairs to the City's infrastructure; however, he believes all customers need to share the increase in rates.

Theresa Miller thanked Councilmember Brown for his proposal and commended him for his dedication in addressing citizen concerns. She expressed concern with the lack of participation by large companies in the debate to raise utility rates.

Jeff Russell expressed appreciation to City staff and the Governing Body for their support. He spoke in support of the 6/5/5 proposal; stated he believes it is time to generate needed

additional revenue to grow Topeka; and the proposal achieves a good consensus for the consumer and middle class households.

Joseph Ledbetter spoke in opposition of utility rate increases to industrial and residential customers. He stated he believes there should more town hall meetings conducted to discuss the issue further; address the lack of productivity by Water Department employees; replacement of water lines; and personnel cost control.

Councilmember Harmon expressed concern with utility rate relief for citizens and the need to effectively market the programs in place to help those who are not able to pay their utility bills. He commented on a utility rate program in Rapid City, South Dakota, that is sensitive to customers who cannot pay their utility bill. He requested a plan be presented within 60 days that specifies how current programs would be marketed; a similar outline for utility rates on how funds are being spent in the same manner as the countywide half-cent sales tax projects are listed to ensure utility dollars are being spent efficiently; and an internal optimization study to assess effective operation of the City's Water, Wastewater and Stormwater divisions.

Jim Colson stated Councilmember Harmon's request is consistent with his own and staff is working on a plan at this time.

Councilmember Ortiz suggested staff insert informational flyers in the utility bill to inform people of the various programs available. She questioned if the increase would address the low or no water pressure zones, as well as, the red water issues many citizens still experience. She also asked how projects would be prioritized to make it fair to all residents.

Councilmember Schmidt stated he concurs with Councilmember Harmon. He spoke in support of the 6/5/5 proposal and noted utility rates should be structured to meet infrastructure needs and provide effective service to the entire community.

Councilmember De La Isla stated she concurs with Councilmember Harmon and commended staff for being proactive in seeking ways to provide services efficiently. She announced the Community Resource Council provides the community with program assistance and encouraged citizens to contact the organization for more information. She stated she believes sufficient information has been given in regards to the proposed increase in utility rates and referenced a report provided by Bartlett & West Engineers that outlined current watermain line placement and replacement plans moving forward. She spoke in support of the 6/5/5 proposal and thanked Councilmember Brown for his hard work.

Councilmember Schwartz noted large companies do not want to pay for the utility rate increases; however, they do agree with the 6/5/5 proposal.

Councilmember Manspeaker stated increasing utility rates is always a political issue and he sympathizes with large companies and appreciates the jobs they bring to the community; however, citizens are not being paid enough wages from those same companies to cover an increase in utility rates.

The substitute motion to amend the ordinance as distributed by Councilmember Brown failed. Councilmembers Hiller, Ortiz, Everhart, De La Isla, Manspeaker, Schwartz, Schmidt and Harmon and Mayor Wolgast voted “no.” (1-9-0)

Councilmember Schmidt stated he believes the structure must be based on the needs and ability to move water from one location to another instead of the customer’s ability to pay.

The motion to adopt the ordinance carried unanimously. Mayor Wolgast voted “yes.” Councilmembers Manspeaker and Schwartz voted “no.” (8-2-0)

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

There were no retail cereal malt beverage or scrap metal dealer license applications.

DISCUSSION for the purpose of providing an update on the Heartland Park Redevelopment District and the issuance of additional Sales Tax And Revenue (STAR) Bonds was facilitated by Jim Colson, City Manager. He stated the City felt confident when the proposal was introduced that all issues had been communicated in detail; however, as the process moved forward it became apparent that this was not the case and he takes full responsibility of the breakdown in communication. He offered his absolute respect to all individuals that have been involved in the process from the beginning and he understands it has been a challenging issue for the community. He reported there is a potential for an appeal of the court's decision; however, it is important to continue to move forward with the process and keep the best interest of the City in mind for the long-term. He clarified that currently the City loses \$1 million annually on Heartland Park and the current proposal would allow the City to break even each year; there would be no new taxes imposed on citizens or business owners in the area only the reallocation of State sales tax funds; and the City has no plans to manage Heartland Park. He noted the next step in the process would be to issue a Request for Proposal for the management of Heartland Park, as well as, a lease agreement explaining the operational and financial capacity and a description of the facility, including the 700 acres surrounding the facility available for development.

Councilmember Schmidt asked what legal basis the City has to hold an election.

Chad Sublet, City Attorney, stated the City could uphold a question; however, the outcome would not be a legally-binding election. He reported the City has agreed to a Memorandum of Understanding (MOU); therefore, there could be potential issues if the City moves forward with

an election because there is no vow of legal authority to hold a binding election at this point based on Judge Hendricks' decision.

Councilmember Manspeaker asked for clarification on the ruling and if the City Manager had the authority to file the lawsuit.

Chad Sublet stated Judge Hendricks' decision was based on the following: (1) case law illustrated in his opinion that non-action is ratification; (2) it was public knowledge that a lawsuit was going to be filed and why; and (3) the ordinance introduced by Councilmember Manspeaker asking the City to stop moving forward on the issue was defeated 6-3-0; therefore, based on the statements of the Council, non-actions and defeat of the motion all ratified the action of the City Manager and his authority to move forward.

Councilmember Hiller expressed appreciation for the comments made by the City Manager and community involvement throughout the process. She asked the following questions, (1) if the City borrows more money how could they be sure they would not owe \$17 million instead of \$8.5 million; (2) is it possible to wait until the Request for Proposal is advertised and new management is selected before the City signs the bonds; and (3) is there time for additional citizen input during the final process.

Jim Colson stated the plan is not based on the success of Heartland Park it is based on the current sales tax funds collected within the STAR Bond district at this time; and there is always time to meet with citizens to provide additional information.

Chad Sublet stated the Memorandum of Understanding has an effective date of February 1, 2015, which must be met; therefore, it would be best if the Request for Proposal and the issuance of the STAR Bonds run parallel in regards to the process.

Councilmember De La Isla stated she believes it has been a very difficult and long process for the Governing Body because they have not been able to share information with the public due to the legal ramifications. She commented on the misconceptions of how the process has been handled and how she tries to alleviate concerns expressed by the public. She stated she is confident the City has implemented the best option for the citizens of Topeka.

Chad Sublet stated he concurs with Councilmember De La Isla in that there were elements from day one of the process that could not be discussed due to potential legal action.

Theresa Miller expressed concern with the petition process and stated over 4,000 citizens trusted the City and County, and now the trust is gone. She questioned if there was someone within the racing community that would want to purchase the racing facility; and if part of the acreage could not be developed because it has been contaminated from various salvage yards over the years.

Councilmember Harmon stated there have been many questions regarding the issue and he takes full responsibility of being one of the persons that are at fault with the situation as he was a member of the Governing Body in 2005 and 2006. He provided background on the current STAR Bond District for Heartland Park which had overwhelming support of the citizens and Governing Body in 2005 and 2006; however, the bond district was too small and the recession in 2008 happened at no fault of City staff, the Shawnee County Counsel or Judge Hendricks. He spoke in support of the proposal and stated he believes it is the best compromise at this point.

Councilmember Ortiz stated she concurs with Councilmember Harmon as she too was a member of the Governing Body in 2005 and 2006; however, she believes all members of the Council are trying to make the best decision for the taxpayers and the City.

Councilmember Schmidt stated this has been the most frustrating issue for him as a Councilmember and suggested examining why information did not get to the citizens. He expressed appreciation to the City Manager and other Councilmembers for their comments on the issue and reminded citizens the petition was not to take the issue to a vote but to repeal City of Topeka Ordinance No. 19915.

Councilmember Hiller commended City staff for their hard work during the process. She reminded citizens all documents and live public meetings relating the Heartland Park proposal have been posted on the City's website at [www.topeka.org](http://www.topeka.org).

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

Brenda Younger, City Clerk, provided an overview of the November 25, 2014 Council agenda.

Mayor Wolgast acknowledged the citizens of Topeka and Shawnee County and stated their votes displayed the feelings of the community in regards to the Countywide Half-Cent Sales Tax extension. He commended military personnel for volunteering with local agencies in the community and helping to inspire others.

Councilmember Manspeaker congratulated LuAnn Lewis and Bridget Wilson on being the first same sex couple to wed in the city of Topeka which he believes is a huge step in equality for the community. He reported the College Hill Neighborhood Improvement Association discussed concerns with the recent passing of the Countywide Half-Cent Sales Tax vote. He stated many citizens in his Council District have voiced their displeasure of how their neighborhoods are being left behind in terms of growth and progress and he believes as public officials, the Governing Body should be held accountable to ensure all communities are treated equally.

Councilmember Schwartz reported she attended a benchmark session which highlighted “Project Boomerang” an outreach program in Tulsa, Oklahoma, geared towards high school seniors for the purpose of enticing them to stay and live in the Tulsa community. She encouraged the Governing Body to consider implementing a similar program in the Topeka community.

Councilmember Harmon referred to the recent 15 year extension of the Countywide Half-Cent Sales Tax. He stated he believes the Topeka-Shawnee County economic development model needs to be re-examined to determine if it is still viable, as well as, a review of the model every five years. He asked who he should direct his request to or if the Council should draft a resolution to provide directive to the necessary parties.

Jim Colson stated he would research the matter and report back to the Council.

Mayor Wolgast stated the Joint Economic Development Organization (JEDO) has entered into a contract with a firm to review the priorities for economic growth.

Jim Colson stated the Growth Organization of Topeka Board members have discussed the issue and would be meeting again to discuss how to proceed in the future.

Councilmember Manspeaker expressed concern with the Growth Organization of Topeka monitoring the effectiveness of programs they implement and manage. He asked Governing Body members to consider how they could effectively improve the local economy.

Councilmember Hiller stated she prefers in the near future a new interlocal agreement be drafted and include new language that would address the responsibilities of JEDO, looking after best practices and strategic planning. She commented on utility assistance programs for low-income households and suggested it be discussed further in an Economic and Development Committee meeting which could be initiated by the Committee Chair or a resolution proposed by

the Council. She commended voters for a great turnout on November 4, 2014, and the volunteers at each polling location. She announced the SORT Program applications have been received and are being processed at this time. She reported the Community Action Council would determine which two neighborhoods would receive funding.

Councilmember Brown thanked Councilmember Harmon for his comments regarding economic development. He announced the Topeka Neighborhood Task Force is scheduled to meet November 19, 2014, at 6:00 p.m. at the Cyrus K. Holliday building located at 620 SE Madison Street. He stated the 28<sup>th</sup> Annual Share the Warmth coat giveaway between Scotch Cleaners and The Salvation Army is still in need of coats and community volunteers to assist the Salvation Army's Women's Auxiliary in the sorting of the coats prior to distribution and as personal shoppers on the day of distribution. He noted people should contact Major LeeAnn Burkett at (785)233-9648 for more information. He announced orders are being accepted for free home-delivered meals from the 47<sup>th</sup> Annual Topeka Community Thanksgiving Dinner, which will be held from 12:00 p.m. to 2:00 p.m. on November 27, 2014, at the Kansas Expocentre's Agriculture Hall. He noted people wishing to place orders may do so by calling (785) 295-3998 through November 21, 2014.

Joseph Ledbetter and Lazone Grays appeared to speak under public comment.

Councilmember Ortiz 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, Administrative and Financial Services Director and City Attorney. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

At 9:10 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, Administrative and Financial Services Director and City Attorney. The motion seconded by Councilmember De La Isla carried unanimously. (9-0-0)

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

Councilmember De La Isla moved to recess into executive session for a time period not to exceed 15 minutes to continue discussion on potential litigation and to include the Governing Body, City Manager, Administrative and Financial Services Director and City Attorney. The motion seconded by Councilmember Everhart carried unanimously. (9-0-0)

At 9:35 p.m., the Council reconvened into open session with no action taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:40 p.m.

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Brenda Younger  
City Clerk