

**Council Minutes – April 13, 2010**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 13, 2010. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9. Mayor Bunten presided -1.

AFTER THE MEETING was called to order, Morris James, Associate Pastor of El Shaddai Ministries Church of God in Christ gave the invocation.

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

Councilmember Hiller moved to suspend the Council Rules to add an ordinance concerning the sale, consumption and possession of alcoholic liquor at a specific time and location to the Council agenda under First Readings. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

Mayor Bunten announced that the ordinance would be placed on the Council agenda under First Readings as item 7C.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of April 6, 2010 were presented.

Open After Midnight License applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
After Dark Video	2315 NW Topeka Boulevard
The Den	1116 NW Lower Silver Lake Road
Frances O’Dooley’s Irish Pub	1930 SW Westport Drive #100
Gage Bowl North	200 East Highway 24
The Office	124 SW 8 <sup>th</sup> Street
Ruffnecks Bar	917 N Kansas Avenue
Sinsations	4720 SW Topeka Boulevard
Some Like It Hot	4732 SW Topeka Boulevard
Speck Bar & Grill	2105 SW Mission

BUSINESS NAME

Theatre Club of Topeka  
Topeka Performing Arts Center

ADDRESS

3028 SW 8<sup>th</sup> Street  
214 SW 8<sup>th</sup> Avenue

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

ORDINANCE NO. 19407 introduced by City Manager Norton N. Bonaparte, Jr., concerning public traffic hazards, amending City of Topeka Code Sections 130-551 through 130-556 and specifically repealing said original sections placed on first reading April 6, 2010 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Preisner moved to adopt the ordinance. The motion was seconded by Councilmember Archer.

Councilmember Hiller asked why the City would implement a different fee, height limit, and abatement process for property maintenance abatement issues when there are regulations already in place. She stated that she disagrees with the proposed increase in the height limit and encouraged the Council to remain consistent with policy decisions.

Mike Teply, Public Works Director stated that the new height limit was set with the intent to eliminate traffic safety issues that relate to property maintenance issues. He reported that in the past there have been instances when high vegetation or structures have interfered with the vision of drivers, creating traffic safety issues.

The motion to adopt the ordinance carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9.

RESOLUTION NO. 8247 introduced by City Manager Norton N. Bonaparte, Jr., authorizing the City Manager to implement a retirement incentive program for employees of the City of Topeka was presented.

Norton N. Bonaparte, Jr., City Manager reported that the City would offer two retirement options to retirement eligible employees that are covered by the Kansas Public Employees Retirement Program; the offer would not apply to members of the Kansas Police and Fire Retirement Systems; and all vacated positions would be evaluated to determine if the positions are essential to City operations. The options were presented as follows:

Option No. 1 would provide the retiree the same City offered single base group health insurance benefit or its equivalent as active employees for a period of 5 years from the date of retirement. The City would make the same contribution to the Employee Health Insurance Fund as it would have made if the employee had not retired. The retiree would also receive a payout of 50% of accrued sick leave not to exceed 520 hours, rather than the current 35%.

Option No. 2 would not offer a health insurance benefit, but would provide the retiree payout of 100% of accrued sick leave not to exceed 1040 hours, rather than the current 35%.

Councilmember Preisner moved to approve the resolution. The motion was seconded by Councilmember Swank.

Councilmember Hiller stated that she is extremely concerned with the City's financial situation and would like to make sure the offer is an appropriate package to attract retirement eligible employees. She asked how many employees are eligible for retirement; how many employees are over the age of 62 years; and if the City has considered offering a pre-taxed health reimbursement account. She expressed concern with each employee and their specific needs regarding health benefits. She stated that she believes the health incentive program may be preferred by employees; however, she wants to make certain all health care needs are considered.

Jacque Russell, Human Resources Director reported that approximately ninety employees are eligible for full or reduced retirement; however, she is not sure how many employees are 62 years of age or older. She stated that it is likely that a pre-taxed health reimbursement account for retirees would have high administrative costs to the individual because the account would be managed by an outside vendor since the City would no longer be the employer. She reported that the Human Resources Department could research the possibility of creating an account and determine what would be a viable option.

Catherine Walters, Assistant City Attorney stated that the retirement incentive program requires an amendment to the sick leave plan. She explained that staff did not want to finalize any numbers until the Council has approved the offer for sick leave payout and suspend the 35% limit to offer a higher amount.

Mayor Bunten asked if the incentives would be paid out of the general fund.

Norton N. Bonaparte, Jr., stated that the incentives would be paid from various funds depending on how the position of the retiree was funded in the City budget. He stated that by offering a retirement incentive it allows staff to balance what is the most cost effective for the organization, as well as, the most beneficial to KAPE employees.

Councilmember Alcala stated that he has not been provided with enough information to make a decision at this time and believes the resolution is too open-ended. He asked what the financial impact would be if all ninety employees accept the incentive package; if a financial cap has been set in regards to a buy out offer; and what are all the costs associated with implementing the retirement incentive program including the additional costs associated with filling vacant positions resulting from retirements.

Jacque Russell stated that the City plans to have the retirement incentive program open to retirement eligible employees for 45 days; however, the funding cap would be at the discretion of the City Manager. She noted that the average cost analysis figure was based on twenty employees taking advantage of the incentive at a payout of \$135,200 per year. She also stated that the City does not anticipate filling many of the positions which would require shifting of responsibilities and restructuring of the organization.

Catherine Walters stated that if the retirement incentive program is offered now the City could realize a cost savings within the next six months.

Councilmember Archer spoke in support of the resolution. He stated that he believes it would save money, as well as, implement the steps necessary to reduce employees through volunteer retirement keeping employee morale high.

Councilmember Woelfel asked if the retirement incentive could exclude critical positions if necessary. He stated that he believes this is an excellent approach to help resolve the financial issues of the City.

The motion to approve the resolution carried. Councilmember Alcala voted “no.”  
(8-1-0)

RESOLUTION NO. 8248 introduced by Councilmembers John Alcala and Sylvia Ortiz granting an exemption from the annexation requirements of City of Topeka Code Section 146-37, as amended, for the provision of water to certain specified property located in Shawnee County, Kansas was presented.

Councilmember Alcala gave the staff report.

Kris Tuck, applicant requested to be allowed to connect to the City water system which is located across the street from his property located on NE 43<sup>rd</sup> Street.

Jackie Williams, City Attorney stated that the applicants fall within the guidelines to qualify for an annexation exemption because the extension is needed to avoid unnecessary hardship that was not created by the applicant. He stated that in order to receive City water services outside of city limits consent to annexation is required.

Councilmember Wolgast expressed concern with setting precedence for similar situations in the future.

Councilmember Alcala stated that the ordinance was created to allow each case to be evaluated based on the facts of each situation. He noted that he could recall only a few exceptions granted within the last three years.

Councilmember Swank stated that she would be more comfortable if the consent to annexation requirement was outlined in the resolution as a condition of approval.

Mike Teply stated that the applicants must sign consent to annexation contingent upon Councils approval of the exemption.

Mr. Tuck stated that they would sign consent to annexation if the exemption is granted by the Council and they are allowed to connect to City water services.

Councilmember Ortiz moved to approve the resolution. The motion was seconded by Councilmember Alcala.

Councilmember Preisner asked who created the hardship; where the City waterline is located in regards to the property; would any building on the property be required to follow City building codes; and what rate would the applicant be charged for receiving City water services.

Mr. Tuck stated that in his opinion the ordinance creates the hardship. He reported that the property was sold to him by a private land owner and a realtor was not involved in the transaction.

Don Rankin, Water Division Superintendent stated that it would not be a requirement for buildings located on the property to follow City building codes; the waterline is located on the north side of NE 43<sup>rd</sup> Street directly across the street from the property; the hook up fee and all expenses incurred would be paid by the applicant; and the outside city limit water rate is 75% higher for property owners than those located within city limits.

Councilmember Harmon asked if the applicant could drill a water well on the property.

Mr. Tuck stated that he was told by well inspectors that there is a 50/50 chance of finding water; and it would cost \$1,000 per drill to check the water supply. He also stated there is a chance over time the well would run dry; therefore, this would be his last alternative. He reported that the bank appraisal states that rural water is available on the property.

Councilmember Harmon asked Mr. Tuck if he relied on the bank appraisal statement when purchasing the property.

Mr. Tuck stated that he did rely on the bank appraisal statement when he purchased the property. He also stated that he probably would not have purchased the property if he would have been aware of the potential water service issues.

Councilmember Hiller asked how the exemption would apply to future property owners in the area.

Mr. Tuck stated that the property was a twelve-acre plot divided into two sections with an existing house located in between the two sections that already received City water service. He reported that the property could not be developed any further because of the frontage limitations on the property.

Jill Tuck requested that the City make the annexation ordinance known to future property owners because in her opinion land is useless without water service.

Mayor Bunten stated that he does not understand why there is an issue with allowing the applicant to utilize City water service. He encouraged the Council to approve the applicant's request.

Councilmember Swank stated that she would support the resolution because the applicants have stated that they would sign consent to annexation.

The motion to approve the resolution carried. Councilmember Harmon voted "no."  
(8-1-0)

ORDINANCE NO. 19408 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of March 22, 2010, through March 28, 2010, and enumerating said expenditures therein was presented for first and final reading.

Norton N. Bonaparte, Jr., City Manager gave the staff report.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Archer carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at the northeast corner of SW Topeka Boulevard and SE 45<sup>th</sup> Street from PUD ("R-1" use group) TO PUD ("R-1" and "M-1" use groups) was presented for first reading. (Z00/34B)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located on

the north side of the intersection of SE 2<sup>nd</sup> Street and SE Chandler Avenue from “I-2” Heavy Industrial District, “M-1” Two Family Dwelling District and “R-1” Single Family Dwelling District ALL TO “I-1” Light Industrial District was presented for first reading. (Z10/3)

AN ORDINANCE introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for The Office on May 8, 2010 was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced that the City has initiated a new program to be aired on City4 titled “Topeka in a Minute,” a program structured to provide more information to citizens. He stressed the importance of citizens completing the 2010 census packets.

Councilmember Alcalá reported that if the bond money allocated to JEDO would have been refinanced when Shawnee County refinanced their bonds it would have increased JEDO's budget by \$1 million. He questioned the Home Rule Authority and if the County would be allowed to refinance bonds when it is the City's debt. He stressed the importance of researching the possibility and moving forward with the refinancing of the bonds to assist JEDO in receiving additional money, and noted that historically the refinancing of bonds peak in May. He stated that he distributed a resolution regarding the refinancing of bonds to the Legal Department for review. He expressed concern with tax revenues generated from the College Hill Redevelopment Project financed through Tax Increment Financing (TIF) Bonds with Washburn-Lane Parkway Renovation, L.L.C. He stated that the property tax revenues collected for the TIF Bonds have been well below the debt service due for the payment of bonds. He reported that the

City has been forced to make up differences of \$250,355 in August 2009; \$98,864 in February 2010; and anticipates \$73,032 in August 2010. He stated that city wide taxpayers will continue to carry the financial burden of making substantial bond and interest payments on the TIF project each year through 2025 if more revenue is not generated. He noted that the payment is a big ticket item to watch during the 2011 budget cycle. He requested that the City meet with Washburn-Lane Parkway Renovation, L.L.C., representatives to discuss their plans to finish the project; promote more retail area development; and generate more revenue.

Jackie Williams, City Attorney reported that staff needs additional time to research the refinancing of bonds for JEDO because there are a number of procedural questions that need answered before they can make a recommendation.

Councilmember Alcalá suggested contacting City and County bond counsels to obtain the necessary information to move forward with the refinancing of bonds. He reminded staff that time is of the essence if the City is to save the most money possible. He also questioned if motor fuel tax funds could be used to help finance the Kansas Avenue Revitalization Study.

Norton N. Bonaparte, Jr., stated that it was his understanding that motor fuel tax funds could be used to help pay for the study. He reported that \$25,000 would be provided through private funds; \$150,000 would be provided by the City; and an additional \$125,000 is needed before they could begin the study. He also stated that staff has began the preliminary review of Councilmember Alcalá's resolution relating to the refinancing of bonds; however, staff plans to meet with bond counsel and financial advisors before making a decision. He stated that he would report back to the Council on the bond issue in approximately two weeks.

Councilmember Alcala questioned K.S.A. 79-3425(c) in regards to the proper use of motor fuel tax funds. He stated that it was his understanding the funds could not be used for the Kansas Avenue Revitalization Study; however, the funds could be used for street repair.

Jackie Williams stated that his initial opinion is that motor fuel tax funds could be used for the study; however, the Legal Department would further review the statute again and report back to the Council.

Councilmember Alcala requested a written opinion from Legal counsel regarding the proper use of motor fuel tax funds. He also asked what the associated costs are regarding sign placement violations; if the City is actively enforcing the proper placement of signs; and why is the City exempt from placing signs in certain locations that are considered violations for others.

Mike Teply, Public Works Department Director stated that sign violations are investigated on a complaint basis and range in cost from \$35 to \$50. He reported that he would review the ordinance regulating sign placement with the Legal Department and report back to the Council.

Councilmember Ortiz requested that the American flag flying in front of the Topeka Performing Arts Center be replaced. She thanked all the citizens and organizations involved in the clean-up of City parks.

Councilmember Woelfel referenced an email he sent the City Manager outlining a test pilot plan that would reduce portions of Kansas Avenue to two lanes in the downtown area. He stated with the use of barricades and safety cones the Kansas Avenue revitalization theory could be tested at very little cost to the taxpayers.

Norton N. Bonaparte, Jr., stated that a final decision has not been made in regards to reducing Kansas Avenue to two lanes of traffic. He commended Councilmember Woelfel for the

idea of a test run; however, he believes that it is vital for a study to be conducted before a decision is made.

Councilmember Wolgast thanked Frito-Lay representatives for designating Topeka's facility as a lead facility. He stated that Frito Lay is an excellent corporate citizen that has invested millions of dollars in the Topeka plant. He reported that the Topeka facility has to meet stringent guidelines in energy and waste management which shows they are an outstanding community partner and employ over 800 employees.

Mayor Bunten announced that the first phase of the 2010 Take Over/Make Over project was a success and thanked all the citizens and Shawnee County Waste Management for their help in the event. He commended the members of the Methodist church community for their efforts in cleaning up City parks. He also stated that in the near future he plans to discuss Topeka City Council Rules and Procedures relating to preserving order and difference of opinions at Council meetings.

Councilmember Alcala moved to adjourn the City Council meeting. The motion seconded by Councilmember Woelfel carried unanimously. (9-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:27 p.m.

---

Brenda Younger  
City Clerk