

City Council Minutes – March 21, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 21, 2006. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcalá, Ortiz, Nave, Duffy, Blackburn, Preisner and Harmon -8. Mayor Bunten presided -1. Absent: Councilmember Haynes -1.

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

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the appointment of Beth Quigley to the Topeka Housing Authority Advisory Board for a term that would expire on December 31, 2006 was presented.

Open After Mid-Night License applications bearing the approval of the Chief of Police and City inspectors for Deep Pockets, located at 4310 SW 21st Street; and VIP Lounge, located at 5235 SW 28th Court, were presented.

MINUTES of the Regular Meeting of March 14, 2006 were presented.

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

NOTICE OF PUBLIC HEARING

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, March 21, 2006, at 6:00 P.M. in conjunction with vacation request V06E/1 by Robert A. Brown to vacate a portion of a ten-foot utility easement located at 5501 SW 19th Street.

ORDINANCE NO. 18596 introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a portion of a ten-foot wide utility easement located at 5501 SW 19th Street, City of Topeka, Shawnee County, Kansas placed on first reading March 14, 2006 was again presented. (V06E/1)

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

Councilmember Haynes entered the Council Chambers.

Councilmember Preisner moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

A PROJECT BUDGET in the amount of \$478,000 and ORDINANCE NO. 18597 introduced by City Manager Neil Dobler, authorizing Improvement Project No. 30257-00, which provides for the design and construction of a building addition to the Crestview Community Center as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading March 14, 2006 was again presented.

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

Councilmember Blackburn moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

A PROJECT BUDGET in the amount of \$787,800 and ORDINANCE NO. 18598 introduced by City Manager Neil Dobler, authorizing Improvement Project No. 30172-04, which provides for the design and construction of new heating, ventilation, and air conditioning

(HVAC) systems for both Oakland and Hillcrest Community Centers as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading March 14, 2006 was again presented.

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

Councilmember Ortiz asked if air conditioning becomes an option, how will they determine which community center would receive it.

Terry Bertels, Acting Parks & Recreation Director stated that if funds were available, it would be provided for both centers, or for neither center.

Councilmember Kennedy asked if the project could be paid out of cash instead of through general obligation bonds.

Jim Langford, Budget and Finance Director stated that it would have to be the Council's decision to deduct the money from the general fund. He stated that it would reduce the general fund by \$800,000, which is a considerable amount.

Councilmember Alcala expressed his concern about the programming at the centers. He stated that it should be reviewed periodically to get the greatest participation.

Councilmember Duffy stated that he believes that the number of participates is lower than usual because the community centers have been closed periodically due to upgrades. He also commented on the energy audit being conducted by Chevron, and the use of the funds that would be generated from the energy savings.

Councilmember Preisner moved to approve the project budget and adopt the ordinance. The motion was seconded by Councilmember Alcala.

Councilmember Haynes stated that he recalled that the Council was going to construct a plan to reduce the City's bonded indebtedness by providing cash for some projects, instead of using general obligation bonds.

Jim Langford, Budget and Finance Director stated that the only plan he is aware of is through the Capital Improvement Program. He explained that the program sets a limit on the amount of funds that can be used over a five-year period for each area or department.

The motion to approve the project budget and adopt the ordinance carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 18599 introduced by City Manager Neil Dobler, relating to the National Electrical Code, amending City of Topeka Code Section 26-341 and 26-343, and specifically repealing said original sections placed on first reading March 14, 2006 was again presented.

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

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

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

A FINAL PLAT for Kaw Valley Plaza Subdivision No. 3 located at 635 NW US 24 Highway within the City of Topeka, was presented. (P05/1)

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that the plat was deferred from the meeting of March 14, 2006.

Councilmember Alcala stated that he received a call and understands that the two parties are close to agreement. He asked if the plat could be deferred for an additional week to allow for an agreement to be reached.

Kent Lindenmuth, developer for the site stated that both parties have reached an agreement.

Ben Swinnen, counsel for the applicant stated that he met with Mr. Lemon and they have come to an agreement. He stated that the new agreement would insure that the same number of parking spaces would remain available for the Animal Clinic.

Councilmember Alcala moved to approve the final plat. The motion was seconded by Councilmember Nave.

Councilmember Preisner stated that he supports the project and overall development of the area, however, at this time he will not support any additional development in the area until the traffic study is complete.

Councilmember Blackburn stated that he supports the project but would abstain from voting because he believes the intersection is inadequate and cannot handle any more traffic.

Councilmember Nave expressed concern with the south side of the intersection off of Tyler Street. He asked if the State is participating in the project, and if not, have they been asked.

Neil Dobler, Public Works Director stated that he believes the State has not been asked. He explained that the State has reviewed the plat and will make final approval of the entrances into the site from US Highway 24. He also stated that the City would have control of the access from Tyler Street, which needs to be upgraded. He noted that a new traffic study would have to be conducted following the completion of the new Wal-Mart Store.

Councilmember Alcala stated he understands that the intersection will need to be upgraded as more development is completed, however, at this time an increase in traffic should not cause any major traffic safety issues.

The motion to approve the final plat carried. Councilmembers Duffy and Preisner voted "no". Councilmember Blackburn abstained. (6-2-1)

ORDINANCE NO. 18600 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving city expenditures for the period of February 27, 006, through March 5, 2006 and enumerating said expenditures herein was presented for first and final reading.

Councilmember Blackburn stated that he would abstain from voting on items that pertain to his company.

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

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Preisner and Harmon -8. Abstained: Blackburn -1.

A COMMUNICATION requesting the Council to approve the balance of the WPC Fact-finder's recommendations and letter of clarification was presented.

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

Neil Dobler, Public Works Director noted that there were four components covered in the Fact finder's letter of clarification. He stated that Column F, the competency-based pay plan raised the most questions. He also stated that because WPC has been fully ascribed to the competency-based pay plan since 2001, they have agreed to the fact finder's recommendations to accept the plan, and move forward.

Councilmember Duffy gave an explanation of his motion. He stated that it was Column B and Column D in the handout, and if necessary he would explain the 2.1 percent raise for employees in the competency-based pay plan. He also stated that he has two fundamental issues with Management's position, (1) WPC employees would receive a 12 percent pay increase and, (2) employees who chose not to improve their skill level would receive a higher pay raise than those who did.

Councilmember Duffy moved to provide a 2.1 percent COLA increase for all employees, and provide the \$18,907.20 for the skill level increases. The motion was seconded by Councilmember Nave.

Councilmember Blackburn stated that he concurs with Councilmember Duffy. He also stated that he supports the motion because it is very important to reward those employees who work to improve their skills.

Neil Dobler stated that both sides have agreed to Columns B, C and D.

Councilmember Haynes stated that he would support the fact finder's recommendations.

Councilmember Alcalá stated that he would like confirmation from the Union that they agree to the terms.

Jerry Powell, Union Representative stated that the Union agrees to the terms. He also clarified that they do not disagree with the competency-based pay plan, they just want to insure that the City of Topeka WPC employees receive the proper step increases so they are on the same pay level as other people in the area.

Councilmember Ortiz asked if the terms would place them on an equal pay scale.

Councilmember Blackburn asked if they were getting both, a merit and longevity based step.

Neil Dobler stated that the agreement would place the City of Topeka WPC employees on the same pay scale as others in the area. He also stated that they would receive both merit and longevity based steps.

The motion to provide a 2.1 percent COLA increase for all employees, and provide the \$18,907.20 for the skill level increases carried. Councilmembers Nave, Haynes, Preisner and Harmon voted "no". (5-4-0)

Councilmember Blackburn stated that he hopes they are not setting a precedent for other departments.

A COMMUNICATION from Shawnee County requesting approval to waive the building permit fees for three projects located at Lake Shawnee was presented.

Norton N. Bonaparte, Jr., City Manager requested to pull the item off the agenda due to legal matters.

Braxton Copley, Assistant City Attorney explained that the current ordinance does not allow the Council to waive permit fees for property that is tax exempt.

Councilmember Nave moved to refer the communication to the Economic and Community Development Committee. The motion was seconded by Councilmember Blackburn.

Councilmember Alcala made a substitute motion to defer the communication for two weeks. The motion was seconded by Councilmember Ortiz.

Councilmember Blackburn asked if the permit fees were waived, would the inspections be waived as well.

Braxton Copley stated that City inspection authority would remain intact because the property is located in the Municipal Service Area.

The motion to defer the communication for two weeks carried unanimously. (9-0-0)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., relating to the implementation of a code of ethics policy for the City of Topeka, its elected officials, appointees and employees, was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that the resolution was recommended by the Diversity Committee.

Councilmember Duffy stated that he is currently working on an ordinance with several other Councilmembers that incorporate the resolution's intent. He explained that the new ordinance would allow them to carry out the full intent of the Diversity Committee, and settle possible legal issues.

Councilmember Duffy moved to refer the resolution to the Public, Health and Safety Committee. The motion was seconded by Councilmember Preisner.

Councilmember Ortiz stated that she was not on the Council in 2004 when the policy was initiated. She also stated that she has several questions that need to be addressed in committee, including implementation.

Councilmember Alcala stated that they need to consider including a policy that would prohibit the Council or Administrative staff from trying to get citations/parking tickets waived.

Councilmember Duffy stated that they are working on a way to make it enforceable.

Councilmember Kennedy made a substitute motion to refer the resolution to the Economic and Community Development Committee. The motion seconded by Councilmember Ortiz carried. Councilmembers Nave and Harmon voted "no". (7-2-0)

RESOLUTION NO. 7774 introduced by John Alcala relating to the placement of a plaque in honor of Karen Harkness at Kossover Tennis Center was presented.

Councilmember Alcalá stated that Ms. Harkness was an outstanding tennis player. He explained that her family has donated a generous amount to the Kossover Tennis Center and would like to have the plaque displayed to honor her memory.

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

Bob Keeshan, representative for the Tennis Association appeared in support of the resolution. He also thanked the Council for their support of the Tennis Association.

Councilmember Duffy commended the Tennis Association for their contributions to the community.

Councilmember Harmon made a substitute motion to refer the resolution to the Policy and Finance Committee. The motion was seconded by Councilmember Haynes.

Braxton Copley, Assistant City Attorney stated that the question could be raised of whether a limited public forum was being accepted.

Councilmember Alcalá stated that he would not support putting the resolution in committee because the Council should not create a policy around one issue.

Mayor Bunten stated that the request was only to place a plaque with appropriate words to remember Karen Harkness, not to create policy. He encouraged the council to support the resolution and not place it in committee. He stated that a policy could be established at a later date.

The motion to refer the resolution to the Policy and Finance Committee failed. Councilmembers Kennedy, Alcalá, Ortiz, Nave, Haynes and Duffy voted "no". (3-6-0)

The motion to approve the resolution carried unanimously. (9-0-0)

Councilmember Alcalá moved to reconsider item 6B, a communication to approve the balance of the WPC Fact-finder's recommendations and letter of clarification. The motion seconded by Councilmember Haynes carried. Councilmember Duffy voted "no". (8-1-0)

Councilmember Alcalá asked for clarification of the motion.

Neil Dobler, Public Works Director stated that the motion was to approve Column B and Column E.

Councilmember Alcalá moved to approve Columns B, C, D and F. The motion seconded by Councilmember Ortiz.

Councilmember Duffy stated that he would oppose the motion because the objective is to have a skilled-based work force. He explained that the amount of the increase for some would not be included in the competency based plan.

Councilmember Haynes stated that he believes they should think about going against the recommendation of the fact finder whether it is for, or against the City.

Councilmember Blackburn stated that he would not support the motion because it is either merit based or longevity based. He also stated that he is not obliged to agree with the fact finder.

The motion to approve Columns B, C, D and F carried. Councilmembers Duffy and Blackburn voted "no". (7-2-0)

A COMMUNICATION by Jerry L. Penner requesting to operate a salvage yard on a 1.41-acre parcel located at 417 SE 13th Street was presented.

Norton N. Bonaparte, Jr., City Manager stated that staff recommends disapproval and there is a memorandum in the packet explaining why.

Councilmember Ortiz moved to disapprove the communication. The motion was seconded by Councilmember Alcala.

All Councilmembers declared exparte communications except Councilmember Duffy and Councilmember Preisner, who had none.

The motion to disapprove carried unanimously. (9-0-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the installation of backflow prevention devices, amending City of Topeka Code Section 26-446 and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30262, which provides for the purchase and installation of three play structures as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE CITY COUNCIL, were presented.

Norton N. Bonaparte, Jr., City Manager publicly thanked surrounding area fire departments for assisting the City with the fire at the Forestry disposal site.

Mayor Buntten thanked city employees and surrounding area fire departments for their hard work and diligence in extinguishing the fire.

Councilmember Kennedy thanked all of the fire departments and city employees involved in helping with the fire. She stated that she received a postcard from the Kansas Department of Corrections relating to a Kansas Re-Entry Policy Update for offenders and she would like to know more about it. She also expressed her concern with the new policy allowing sex offenders to be released into the community.

Councilmember Blackburn stated that he would like to know if there would be an acceleration of sex offenders released in the community as a result of the new policy. He stated that he would like to have a discussion with staff regarding the possibility of constructing a bridge over Soldier Creek. He explained that the bridge would connect Rochester Road to Topeka Boulevard and help offset the heavy traffic flow at the highway intersection. He also asked for an update on the downtown parking study.

Councilmember Kennedy stated that she would like to have two work sessions per month to go over agenda items and processes. She stated that she believes it would be helpful to have additional time to discuss agenda items.

Councilmember Alcala stated that he is working directly with the Public Works Director to come up with a solution for water run off and traffic improvements in the Rochester Road and Topeka Boulevard area.

Councilmember Preisner stated that he also received a postcard regarding the Kansas Re-Entry Policy. He explained that he has updated the City Manager and staff and has requested that they collect additional information on the policy. He noted that he has also contacted Senator Brownback for additional information. He stated that following thorough research of the policy he will sponsor a document that would either completely exclude the City of Topeka from the policy, or keep sex offenders from being dumped into the community.

Councilmember Duffy commented on Senate Bill 575, relating to a Riverfront Authority Board, and stated that each of the powers in the bill is within the powers of the City. He also asked for clarification on the purpose of the bill.

Mayor Buntten stated that Senate Bill 575 would create a countywide authority with three people appointed by the County, and three by the Mayor.

Councilmember Haynes noted that they previously adopted an ordinance that provided for two work sessions monthly. He stated that he hopes the council would reconsider and provide four work sessions monthly.

Councilmember Ortiz stated that Councilmember Blackburn would have had the information on the downtown parking study but the person working on it became ill.

Councilmember Blackburn asked if they had any power to protect the Council and taxpayer interests with eminent domain legislation. He also asked if the City would have the ability to give their input on the Riverfront Authority Board process.

Councilmember Nave asked staff if the drainage problem between 31st Street and 32nd Street, between California and Colorado could be resolved. He stated that the problem must be addressed before the upcoming rainy season to avoid the same problems that occurred last year.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:16 p.m.

Iris Walker
City Clerk