

City Council Minutes – April 25, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 25, 2006. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -8. Mayor Bunten presided. -1. Absent: Councilmember Alcalá -1.

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

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

Councilmember Duffy moved to suspend the Council rules to add a resolution to the agenda granting Washburn University an exception to the City of Topeka noise prohibitions. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

Councilmember Duffy moved to reinstate the Council rules. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

Norton N. Bonaparte, Jr., City Manager noted that the resolution would be placed on the agenda as item 6F, under New Business.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the appointment of Samuel J. Carkhuff to the Metropolitan Topeka Airport Authority for a term that would expire on November 30, 2006 was presented.

RESOLUTION NO. 7789 introduced by Councilmember Clark Duffy granting House of Barbecue, an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

MINUTES of the Regular Meeting of April 18, 2006 were presented.

Open After Mid-Night License applications bearing the approval of the Chief of Police were presented for the following:

<u>Business</u>	<u>Address</u>
After Dark Video	903 N. Kansas Avenue
After Dark Video	905 N. Kansas Avenue
Azteca Night Club	1201 S.E. 6 th Street
Excel Kansas	4720 S.W. Topeka Boulevard
Some Like It Hot	4732 S.W. Topeka Boulevard
Static Bar	5243 S.W. 28 th Court
Twilighter	816 N. Kansas

Councilmember Ortiz moved to approve the consent agenda. The motion seconded by Councilmember Preisner 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, April 25, 2006, at 6:00 P.M. for the purpose of hearing any and all complaints that may be made as to the validity and fairness of the assessments on file in the Office of the Clerk, on all lots, parcels and pieces of ground liable for the cost of improvement, same being Street Improvement Project No. 60572, Phase 2, authorized by Resolution No. 7522, adopted and approved September 14, 2004.

ORDINANCE NO. 18626 introduced by City Manager Norton N. Bonaparte, Jr., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Street Improvement Project No. 60572, Phase 2, with pavement, curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60572, Phase 2, as defined and described in Resolution No. 7522, adopted and approved September 14, 2004 and specifically repealing City of Topeka Ordinance No. 18576 placed on first reading April 18, 2006 was again presented.

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

Councilmember Ortiz moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

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

AN ORDINANCE introduced by Councilmembers Clark Duffy, John Nave and Jeff Preisner regarding bonfire or rubbish fire, and repealing and amending City of Topeka Code Sections 70-104 and 70-165 and specifically repealing said original sections placed on first reading April 18, 2006 was again presented.

Councilmember Duffy stated that the ordinance clarifies the law relating to the issuance of burning permits by the Fire Chief. He explained that the Uniform Fire Code (UFC) authorizes the Fire Chief to issue burning permits, and current city code does not. He stated that the proposed ordinance would allow open burning to take place with the authorization of the Shawnee County Health Agency, regulated by the Federal Clean Air Act. He also stated the Fire Department would deal with safety issues only.

Howard Giles, Fire Chief explained the process of issuing permits and how it is administered. He distributed a packet of information that included a city map of active burning permit addresses, a list of the items that are permitted to burn, and a permit application.

Councilmember Haynes stated that he would like clarification on the legality of the Fire Chief issuing burning permits in the City of Topeka.

Brenden Long, City Attorney stated that is not unlawful for the Fire Chief to authorize burning permits in the City of Topeka. He explained that the confusion stems from conflicting language in the city code and the Uniform Fire Code.

Councilmember Kennedy asked what distance is required between open burning and a structure, if there is a complaint process for violations, and how many accidental structure fires have been set where permits were issued.

Chief Giles stated that a distance of 25 to 50 feet is required between open burning and a structure. He explained that a person should call 911 to issue a complaint if there is health or safety concern, otherwise, they should call the fire department directly. He stated that he knew of no structure fires where permits were issued, and 104 structures have been damaged due to unauthorized burning since 2003.

Councilmember Haynes asked who enforces air quality regulations. He also asked if the Fire Department has met with the Shawnee County Health Agency to discuss a plan of action regarding the monitoring of air quality in the City of Topeka. He stated that he has received a large number of requests by the public to implement stricter regulations for the City.

Chief Giles stated that they have not yet met with the Shawnee County Health Agency, which regulates the air quality restrictions. He explained that the required regulations are listed on the application form and reviewed with the applicant by the Fire Inspector prior to the permit being issued. He noted that there is a very low level of noncompliance by citizens, however, he has noticed an increase in the level of smoke in the air, in and around the City.

Greg Bailey, Fire Marshal appeared for questions. He reviewed the ten regulations applicable to receiving a permit.

Councilmember Haynes asked how the Fire Department would suggest solving the problem.

Chief Giles stated that ultimately it is each individual's responsibility to consciously make an effort to comply with health and safety regulations. He also stated that additional city disposal sites and an increase in public awareness and education would be helpful.

Councilmember Blackburn asked if the Fire Department makes a return visit to insure people are following burning regulations. He also asked how many permits are issued in one year, how long they are valid, and the salary range of Fire Inspectors.

Chief Giles stated that they do not revisit the site unless they receive a complaint. He also stated that the permit could be used throughout the year, and the salary range for a Fire Inspector in between \$40,000 and \$50,000 a year.

Councilmember Duffy referenced City of Topeka Code Section 70-162, Open Air and stressed the importance of monitoring air quality in Shawnee County.

Councilmember Harmon asked what affect the ordinance would have on the current permits if it is adopted.

Chief Giles stated that all active burning permits would no longer be valid.

Councilmember Ortiz stated that a lot of burning takes place in District No. 3. because there is a large amount of shrubs and tree limbs that need to be cleaned up, and it is the most cost effective method. She asked the Council to consider the entire city as a whole, and the affect it would have on the people who are on a fixed income with no transportation. She stated that she would not support the ordinance because she is not aware of any problems caused by open burning.

Yolanda J. Marshall, Frank Kirtdoll, John Moyer, Michael Newman, Pat DeLapp and Albert Hesse spoke in opposition to the ordinance. The following points were raised regarding open burning in the City of Topeka; most cost effective way to clean up the city, helps eliminate excess dumping of trees and shrubs throughout the city, burning permits should be regulated by the Uniform Fire Code, additional forestry disposal sites should be made available to the public, and grills on covered patios should be banned.

Councilmember Preisner questioned the actual cost savings of allowing open burning. He stated that the cost to haul the debris would be minimal compared to the cost that is entailed by the Fire Department to conduct inspections.

Ed Kalas, Shawnee County Health Agency distributed a handout relating to the Kansas Air Quality Regulations and Open Burning. He stated that two separate inspections would take place, one with the Shawnee County Health Agency, which deals with health issues, and one with the Topeka Fire Department, which deals with safety issues.

Councilmember Kennedy stated that she believes if air quality is being compromised than open burning should be banned from the City of Topeka.

Bob Sherburne spoke in opposition to the ordinance and stated that he believes that open burning should remain the responsibility of the citizens.

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

Councilmember Blackburn stated that he would like a covenant included in the City Code to make citizens personally responsible for open burning. He also asked the Mayor if the Clean Up Task Force Committee could pick up tree limbs, and if people could sign up for cleanup assistance.

Mayor Bunten stated that the neighborhood cleanup program targets certain neighborhoods and only takes place four weekends a year.

Councilmember Kennedy stated that she has received a large number of requests from citizens regarding the elimination of open burning in the City of Topeka. She also stated that she believes stricter health regulations should be implemented, and additional free dump days offered at the forestry disposal site.

Mayor Bunten noted that Shawnee County Waste Management recently offered free pick up of trash, brush, tree limbs, tires, and waived their fees for one day.

Councilmember Blackburn moved to amend the ordinance to offer four free dump days at the City forestry disposal site. The motion was seconded by Councilmember Nave.

Norton N. Bonaparte, Jr., asked how much revenue is generated from the forestry site on a daily basis.

Terry Bertels, Acting Parks and Recreation Director stated that on an average the forestry site generates \$300 to \$500 a day.

Councilmember Nave stated that he believes there is a serious health and safety issue related to open burning in the City of Topeka. He commended Councilmember Blackburn for the amendment and stated that it is a start to a working solution.

Brenden Long stated that City Code Section 150-51 that deals with Open Air Regulations should be amended instead of the ordinance because the ordinance only deals with UFC regulations.

Councilmember Blackburn withdrew the amendment. The second concurred.

Councilmember Harmon asked how the permit process could be strengthened if the ordinance fails.

Chief Giles stated that a regulation addressing health concerns should be included as a part of the permit process approval.

The motion to approve the ordinance failed. Councilmembers Nave, Duffy, Blackburn and Preisner voted "no". (4-4-0)

A PROJECT BUDGET in the amount of \$983,000 and ORDINANCE NO. 18627 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No.

12060-01, which provides for the replacement of a bridge on SW 29th Street over South Branch Shunganunga Creek near Randolph Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading April 18, 2006 was again presented.

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

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

Mayor Bunten asked if it was necessary to replace the entire bridge.

Bernie Cosby, Engineering Department stated that the bridge has deteriorated to a point beyond repair and must be replaced. He also stated that the plan includes provisions that would provide for the Shunga Trail to extend to the south, and continue under the bridge.

Councilmember Haynes questioned the increase in total bonded indebtedness with the project, and asked for an explanation of the City's debt policy.

Jim Langford, Budget and Finance Director stated that the increase is a result of the provisions that allow an extension of the trail. He noted that it would be a good time for the Council to review the City's debt policy and establish where they want to be prior to preparing the 2007 budget.

Norton N. Bonaparte, Jr., City Manager stated that they would review the City's debt policy in a work session.

The motion to approve the project budget and adopt the ordinance carried unanimously. (8-0-0)

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

A PROJECT BUDGET in the amount of \$600,000 and ORDINANCE NO. 18628 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30255, which provides for resurfacing and maintenance of roadways and parking lots primarily in Gage Park, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading April 18, 2006 was again presented.

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

Councilmember Ortiz moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

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

A ZONING PETITION and AN ORDINANCE introduced by City Manager Neil Dobler 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 2824 NW Rochester Road in the City of Topeka, Kansas from "R-1" Single Family Dwelling District TO "PUD" Planned Unit Development placed on first reading February 14, 2006 was again presented. (*PUD06/2*)

A FINAL PLAT for North Park Village Subdivision located at 2824 NW Rochester Road within the corporate limits of the City of Topeka was presented. (*P06/5*)

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

Councilmember Duffy moved to approve the zoning petition, adopt the ordinance and approve the final plat. The motion was seconded by Councilmember Blackburn.

Councilmember Blackburn asked if a meeting was conducted between the residents and the developer as requested by the Council.

Bill Fiander, Planning Department confirmed that a meeting was held. He stated that the drainage issue was discussed and it was decided that area drainage should be redirected. He also stated that the proposal was revised to move the non-buildable setback and greenspace easement from 25 to 30 feet around the entire parameter of the property. He stated that the project should not affect the City moving forward with the sewer project.

Brenden Long, City Attorney suggested that the motion to approve be subject to the suggested changes to the final plat.

Councilmember Duffy withdrew the motion to approve. The second concurred.

Councilmember Duffy moved to approve the zoning petition and adopt the ordinance. The motion was seconded by Councilmember Blackburn.

Councilmember Blackburn stated that he does not believe this particular project would hinder current traffic issues, however, he would not support any future development until traffic issues are improved.

Councilmember Kennedy stated that she would not support the project because of the amount of telephone calls and emails that she has received in opposition to the project.

Exparte communications was declared by each Councilmember via email, telephone conversations, verbal and written correspondence.

The motion to approve failed. Councilmembers Kennedy, Ortiz, Nave, Haynes and Harmon voted "no". (3-5-0)

A PROJECT BUDGET in the amount of \$9,400 and RESOLUTION NO. 7790 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. 30039-03 which provides for the application of epoxy sealer to the floor of the Discovering Apes

area and the Gary K. Clarke Education Center as more specifically described herein was presented.

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

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

RESOLUTION NO. 7791 introduced by City Manager Norton N. Bonaparte, Jr., setting the public hearing for Sanitary Sewer Improvement Project No. 40933-01 was presented.

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

Councilmember Ortiz moved to approve the resolution. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

ORDINANCE NO. 18629 introduced by City Manager Norton N. Bonaparte, Jr., allowing and authorizing City expenditures for the period of April 3, 2006, through April 9, 2006, and enumerating said expenditures herein was presented for first and final reading.

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

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

A RESOLUTION introduced by Councilmembers Clark Duffy, John Nave, Jeff Preisner and Brett Blackburn relating to the implementation of the Topeka/Shawnee County Comprehensive Metropolitan Plan 2025 and health care coverage for individuals, small businesses and entrepreneurs was presented.

Councilmember Preisner moved to refer the resolution to the Policy and Finance Committee. The motion seconded by Councilmember Duffy carried unanimously. (8-0-0)

CONTRACT NO. 36353 between the City of Topeka and Bill Casper Golf, L.L.C., to provide Golf Course Maintenance Services for the Cypress Ridge Golf Course was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report. He stated that Bill Casper Golf, L.L.C. was the best response to the RFP. He also clarified that Shawnee County did not submit a RFP because they were interested in both the operations and maintenance of the golf course.

Councilmember Preisner moved to approve the agreement. The motion was seconded by Councilmember Haynes.

Councilmember Haynes stated that he did not understand how the City could anticipate increased use of the golf course without making some capital improvements. He also asked for clarification on the County's proposal.

Mike Teply, Assistant Public Works Director explained that if the agreement is approved they anticipate that the City would incur less expense in 2006 based on the projected use. He stated that they hope revenue would improve in 2007 and 2008 but could not guarantee it.

Councilmember Haynes stated that he has several questions regarding the County's proposal and would like them answered in committee. He stated that he would abstain from voting until he knows the intentions of the County. He also stated that he is not sure the golf course would be productive without capital improvements.

Councilmember Kennedy asked what caused the decline in the golf course and when did it begin.

Terry Bertels stated that a number of factors have resulted in the current condition of the golf course including; a decrease in enterprise due to a sewer project, limited staff, fairway and

tee conditions. He also stated that he believes that a noticeable decline in the golf course began approximately six years ago.

Mike Teply stated that he believes the sewer project in 2003 significantly affected the golf course.

Councilmember Preisner stated that major improvements are not needed. He encouraged the Council to take the opportunity to improve the course at no extra cost.

John Knight, Shawnee County representative stated that he believes capital improvements must be made to bring the golf course back. He explained that the County is offering to operate, maintain and make immediate improvements by renovating the entire golf course.

Councilmember Haynes asked what improvements the County would make.

Mr. Knight stated that he could not specify what improvements or the cost without getting necessary input from the people directly involved. He listed a number of possible improvements including; new greens and tees, a new clubhouse, new parking lots, continuing the cart path and inserting sand bunkers. He stated that the revenue made from the golf course should cover the cost of improvements.

Councilmember Haynes asked how long it would take the County to put together a proposal.

Mr. Knight stated that it would only be a matter of days before they could negotiate an agreement with the City and implement a master plan by the fall of 2006. He explained that the proposal would be presented as one big package, and would need to be bonded right away.

Councilmember Haynes moved to defer the agreement for two weeks to allow Shawnee County time to provide a proposal to the City Manager that includes operation and maintenance

of the golf course, and also allow the City Manager enough time to make a recommendation to the Council. The motion was seconded by Councilmember Ortiz.

Councilmember Preisner stated that the maintenance issues could not wait because of the upcoming prime golf season and the problem must be addressed now. He stated that he would not support the motion because they need to move forward with the proposal immediately.

Councilmember Duffy stated that it was his understanding that the County believes the golf course does not need any major improvements, just maintenance and operations. He stated that the County did not initially submit an RFP, therefore, he believes it would be unethical to reject a legitimate sealed bid at this time.

Jay Oyler, Contracts & Procurement Director gave a brief overview of the response to the RFP from Shawnee County. He stated that the County was not interested in maintenance only, and the Bill Casper Golf agreement is before the Council because it is the best response received to the RFP.

Mr. Knight confirmed that the County is interested in both operations and maintenance of the golf course.

Councilmember Preisner stated that the task force did not state that huge capital improvements needed to be made. He explained that they stated that only simple maintenance is needed to make the golf course prosper again.

The motion to defer the agreement for two weeks failed. Councilmembers Nave, Haynes, Blackburn, Preisner and Harmon voted "no". (3-5-0)

The motion to approve the agreement carried. Councilmembers Kennedy and Ortiz voted "no". Councilmember Haynes abstained. (5-2-1)

RESOLUTION NO. 7792 introduced by Councilmember Clark Duffy granting Washburn University an exception to the provisions of the City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

Councilmember Duffy moved to approve the resolution. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

A CHARTER ORDINANCE introduced by Councilmember Jeff Preisner exempting the City of Topeka from the provisions of K.S.A. 25-2113 in accordance with the provisions of Article 12, Section 5 of the Constitution of the State of Kansas was presented for first reading.

A CHARTER ORDINANCE introduced by Councilmember Brett Blackburn relating to the City of Topeka's governing body, amending Topeka City Code Sections A2-21, A2-24, A2-25, A2-29 and A2-30, and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Councilmembers Brett Blackburn, Lana Kennedy and Sylvia Ortiz amending City of Topeka Code Sections 50-41, 50-48, and 50-60 concerning the code of procedure for municipal court, and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Councilmember Brett Blackburn, amending City of Topeka Code Section 142-355 concerning parking of vehicles on non-paved surfaces, and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a platted water line easement and a platted drainage and utility easement located at 5841 SW 21st Street, City of Topeka, Shawnee County, Kansas was presented for first reading.

(V06E/3)

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

Norton N. Bonaparte, Jr., City Manager gave an update on information requested by Councilmembers at last week's Council meeting. He stated that the media boxes are operable in the City Council Chambers. He also stated that because J.W. Benning has already been issued a ticket, staff could not intervene. He noted that Mr. Benning would have the opportunity to explain to the Judge that he believes the ticket was issued inappropriately, and express his concerns.

Councilmember Kennedy announced that she received an anonymous letter of complaint from a Zoo employee. She stated that she would relay the letter to the City Manager and would like a report back on the matter as soon as possible.

Councilmember Ortiz stated that the third weekend for Project Takeover/Makeover 2006 would begin at Topeka High in the west parking lot on Saturday, April 29th at 9:00 a.m.

Councilmember Harmon commended the City Council staff for their hard work and reminded everyone that "Administrative Professionals Day" is April 26, 2006.

Councilmember Blackburn stated that he would be happy to provide the Council with additional background information on the ordinances he is sponsoring on the May 2, 2006 Council Agenda, if needed.

Councilmember Preisner stated that he received an update on the Optimization Study from the City Manager. He also stated that the deadline for the Fire Station Location Study is June 16, 2006. He asked the Council to begin considering how they want to implement the Optimization Study in the 2007 budget, and if they also want to include the Fire Station Location Study in the budget.

Lawrence Wheeler and William Gomez appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:50 p.m.

Iris Walker
City Clerk