

City Council Minutes – May 2, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 2, 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, Haynes, Duffy, Blackburn, Preisner and Harmon -9. Mayor Bunten presided. -1.

AFTER THE MEETING was called to order, Councilmember Kennedy gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the re-appointment of Richard Thornburg and the appointment of Dr. Mark Saylor to the Parks and Recreation Advisory Board for a term that would expire on July 31, 2010 was presented.

A COMMUNICATION recommending the re-appointment of Henry McClure to the Topeka Board of Zoning Appeals for a term that would expire July 31, 2009 was presented.

A COMMUNICATION asking the Council to endorse an application by the Jayhawk Area Agency on Aging, Inc., to the State Department of Commerce for community service tax credits was presented.

MINUTES of the Regular Meeting of April 25, 2006 were presented.

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

Business

Anytime Fitness
Bavarian Inn
Boobie Trap Bar
Denny's
Denny's

Address

1919 S.W. Gage Boulevard
712 S.W. 2nd Street
1417 W. 6th Street
1500 Wanamaker Road
3210 S.W. Topeka Boulevard

<u>Business</u>	<u>Address</u>
Goose One	3203 S.W. 10 th Street
Goose One	3203 S.W. 10 th Street
Goose Too Sports Bar & Grill	5630 S.W. 29 th Street
The Perfect Spot	520 N.W. Elm Row Avenue
Tewz Enuff	1465 S.E. Washington
Topeka Performing Arts Center	214 S.E. 8 th Avenue
Walgreens #02846	2915 S.W. Gage Boulevard
Walgreens #03069	1001 S.W. Topeka Boulevard
Wood Valley Racquet Club	2909 S.W. 37 th Street

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

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, May 2, 2006, at 6:00 P.M. in conjunction with vacation request V06E/3 by Mini-Warehouse, Ltd., to vacate a platted 15-foot wide water line easement and a 12-foot wide platted drainage and utility easement located at 5941 SW 21st Street.

ORDINANCE NO. 18630 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 placed on first reading April 25, 2006 was again presented. (V06E/3)

Jim Langford, Acting City Manager during the City Manager's absence gave the staff report.

John Hamilton representative for the applicant appeared to answer questions.

Councilmember Preisner moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Haynes carried. Councilmember Duffy voted "no". (8-1-0)

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

CHARTER ORDINANCE NO. 95 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 placed on first reading April 25, 2006 was again presented.

Councilmember Preisner stated that the charter ordinance is a cleanup measure resulting from the passage of House Bill 2083 by legislature in 2004.

Councilmember Preisner moved to adopt the charter ordinance. The motion seconded by Councilmember Nave carried. Councilmembers Alcalá and Ortiz voted "no". (8-2-0)

The charter ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Nave, Haynes, Duffy, Blackburn, Preisner, and Mayor Bunten -8. Noes: Alcalá and Ortiz -2.

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 placed on first reading April 25, 2006 was again presented.

Councilmember Blackburn stated that the ordinance limits the power of the Mayor to largely a ceremonial role, and does not give him the authority to vote. He stated that it defines the governing body as the City Council. He distributed an amendment to the ordinance relating to the Mayor's functions, powers and duties; compensation of the Mayor and Councilmembers; and the powers of the governing body, all of which could only be amended or repealed if put to a vote of the people.

Councilmember Blackburn moved to amend the ordinance as distributed. The motion was seconded by Councilmember Kennedy.

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

Councilmember Alcalá stated that he believes the people knew what they were voting on and to change the process would be unfair. He also stated that he believes the charter ordinance is directed towards the Mayor.

Councilmember Haynes asked if a substitute motion is in order.

Councilmember Alcalá raised a point of order and stated that he believes there were significant changes made to the charter ordinance and that is why he wanted to refer it to committee.

Councilmember Blackburn withdrew the motion to amend.

Councilmember Alcalá moved to refer the charter ordinance to the Policy and Finance Committee. The motion was seconded by Councilmember Ortiz.

Councilmember Preisner distributed an amendment to the charter ordinance and asked the City Attorney to explain it.

Brenden Long, City Attorney stated that the Mayor would not have the right to vote on ordinary resolutions and ordinances. He explained that the Mayor would remain a member of the governing body and could vote on charter ordinances, however, the Mayor would not have veto power on charter ordinances. He stated that any changes to the duties of Councilmembers and the Mayor would require a vote of the electorate.

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

Councilmember Alcala moved to amend line 115 to reflect an effective date of the next mayoral election. The motion was seconded by Councilmember Ortiz.

Councilmember Blackburn stated that he would not support the amendment because it targets individuals and he believes that is bad public policy.

Yolanda Marshall thanked Councilmember Alcala for his comments and stated that she knew what she was voting for when she voted on the City Manager form of government.

Bob Sherburne stated that he believes the governing body should consist of the Mayor and nine Councilmembers.

Frank Kirtdoll stated that he believes that the City cannot charter out of Kansas Statutes and general laws.

The motion to amend line 115 of the charter ordinance failed. Councilmembers Kennedy, Nave, Haynes, Duffy, Preisner, Blackburn and Harmon voted "no". (2-7-0)

Councilmember Duffy asked for clarification of Charter Ordinance No. 94 relating to Council and Mayor powers. He also asked what is intended by the phrase, "subject to express limitations" as stated in the Charter Ordinance.

Brenden Long stated that "express limitations" would be defined as the authorities and powers outlined in the charter ordinance for the Mayor, City Manager, Councilmembers or governing body.

Councilmember Duffy suggested sending the ordinance to committee to clarify some of the responsibilities.

Councilmember Alcala stated that he would oppose the motion to amend and support sending the document to committee.

Brenden Long, City Attorney noted that any vote to approve or amend a charter ordinance would require seven affirmative votes.

The substitute motion to amend failed. Councilmembers Kennedy, Alcala, Ortiz and Duffy voted "no". (6-4-0)

Councilmember Alcala called the question.

The motion to refer the charter ordinance to the Policy and Finance Committee carried. Councilmember Haynes and Mayor Bunten voted "no". (8-2-0)

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 placed on first reading April 25, 2006 was again presented.

Jim Langford, Acting City Manager gave the staff report.

Councilmember Blackburn stated that the recommendation generated from the task force suggested that the changes would make the City's process run smoother.

Councilmember Ortiz stated that she believes the ordinance would speed up the process.

Councilmember Alcala stated that he is concerned that they would be giving four different departments the power to invade people's property. He explained that he has a problem with Code Compliance, Animal Control and the Public Works Director having the ability to issue search warrants because they have not received the training that law enforcement officers have. He encouraged the Council not to support the ordinance.

Brenden Long, City Attorney stated that the process to get a search warrant would be the same. He explained that the only difference is the Municipal Court Judge would have the

authority to issue the search warrant whereas currently, search warrants are sought through the District Court Judge.

Councilmember Ortiz questioned why a parking control officer and animal control officer would need a search warrant.

Brenden Long stated that an Animal Control officer could possibly need a search warrant regarding an animal cruelty case. He explained that the reference made to a “parking control officer” in the ordinance relates to the issuance of violations not search warrants.

Councilmember Haynes asked if there would be additional cost to the City if the Municipal Court Judge assumed the responsibility.

Steve Ebberts, Municipal Court Judge stated that he does not anticipate any additional cost to Municipal Court. He explained that the request for search warrants would need to go through the City Attorney’s office for review before consideration by a Municipal Court Judge.

Councilmember Duffy stated that he shared Councilmember Alcalá’s concerns about giving authority to staff that is not properly trained.

Councilmember Alcalá noted that the ordinance states these warrants could be obtained orally or by fax, and that is not currently the case.

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

Councilmember Haynes stated that for the benefit of the public the issuance of search warrants needs to be separate from the City.

Frank Kirtdoll, Pat DeLapp and Reverend K.E. Hill spoke in opposition to the ordinance. The following points were raised; State law restricts search warrants from being issued by Municipal Court, a search warrant is for a criminal act in progress only, the Bill of Rights

protects a person from illegal search and seizure, and the public's interest and the Council's interest should be one and the same.

The motion to refer the ordinance to the Economic and Community Development Committee carried. Councilmember Alcala and Duffy voted "no". (7-2-0)

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 placed on first reading April 25, 2006 was again presented.

Jim Langford, Acting City Manager gave the staff report and stated that the amendment was a recommendation made by the Development Services Committee.

Councilmember Blackburn explained the ordinance and stated that the amendment would delete the provision that allows for vehicles or machinery to be parked on the backyard of a residential lot for more than six months.

Councilmember Alcala stated that he would not support the ordinance because the older neighborhoods have narrow streets, and if parking is not allowed in the back yard there are going to be problems with emergency vehicles trying to get down the streets. He also stated that some people could not afford to concrete or gravel an area for parking.

Councilmember Ortiz stated that she would not support the ordinance. She explained that she lives on a narrow street with large ditches on both sides and has to park her vehicles in the back yard. She also expressed concern with vehicles blocking emergency vehicle access.

Councilmember Kennedy stated that she believes it is an issue that only relates to certain areas of the city. She suggested that people who must park in the backyard obtain a permit so Code Compliance can track the six-month time period.

Councilmember Nave stated that it would require some tough decisions by the Council, but they need to decide how they are going to assist the Mayor and the Neighborhood Improvement Associations in cleaning up the city, or they will continue to receive complaints.

Councilmember Alcalá stated that they need to set restrictions that can be enforced by Code Compliance. He explained that the restrictions should include vehicles that are inoperable, and are not tagged or insured. He stated that the restrictions would enable Code Compliance to remove the vehicle as a nuisance.

Councilmember Alcalá moved to refer the ordinance to the Policy and Finance Committee. The motion was seconded by Councilmember Ortiz.

Councilmember Duffy made a substitute motion to refer the ordinance to the Economic and Community Development Committee. The motion was seconded by Councilmember Alcalá.

Councilmember Kennedy stated that she received an email from an individual who served on the committee and asked that the ordinance not be adopted because of the hardship it would create for some people. She also stated that her main concern is with vehicles that are inoperable. She asked for a report on the number of inoperable vehicles reported in the City of Topeka.

Frank Kirtdoll stated that the City should not pass a law based on certain individual problems, they should address those certain problems through Code Compliance.

Bob Sherburne stated that the Council cannot fix all of the problems. He stated that he believes that the back yard is private and residents should be able to store vehicles in their yards if they desire.

The motion to refer the ordinance to the Economic and Community Development Committee carried. Councilmember Blackburn left the meeting. (6-2-0)

A PROJECT BUDGET in the amount of \$257,197 and ORDINANCE NO. 18631 introduced by City Manager Neil Dobler, authorizing Improvement Project No. 14115, which provides for the removal of the existing traffic signals, installation of stop signs on Kansas Avenue, replacing sidewalk and ramps as needed, and creating a cul-de-sac on Central Avenue at the location of North Kansas Avenue and Gordon Avenue and Central Avenue, as more specifically described herein, all pursuant to Section A12-1 of the City of Topeka Code placed on first reading March 7, 2006 was again presented.

RESOLUTION NO. 7793 introduced by City Manager Neil Dobler authorizing initiation of condemnation proceedings to acquire property for Improvement Project No. 14115, for traffic signal removal and installation of stop signs and the creation of a cul-de-sac on Central Avenue at the location of North Kansas Avenue, North Gordon Avenue and Central Avenue was presented.

Jim Langford, Acting City Manager gave the staff report.

Councilmember Alcalá moved to approve the project budget, adopt the ordinance and approve the resolution. The motion seconded by Councilmember Nave carried. Councilmember Haynes voted "no". (7-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Nave, Duffy, Preisner and Harmon -7. Noes: Haynes -1. Absent: Blackburn -1.

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

Jim Langford, Acting City Manager gave the staff report.

Councilmember Duffy stated that the Policy and Finance Committee recommended “Do Not Pass” by a vote of 2-0-0 on April 17, 2006. He explained that following discussion by the committee it was decided that they did not want to set a precedence of waiving building fees, which would cause the City to lose a significant amount of revenue.

Councilmember Duffy moved to adopt the committee report. The motion seconded by Councilmember Preisner carried. Councilmember Kennedy and Ortiz voted "no". (6-2-0)

RESOLUTION NO. 7794 introduced by Councilmember Clark Duffy establishing a recreational pathway between Topeka, Kansas and Lawrence, Kansas was presented.

Councilmember Duffy explained the resolution and asked the Council for their support.

John Purvis, Kanza Rail-Trails Conservancy stated that he would like the Council to explore the possibility of linking the two communities with the recreational pathway. He asked that the Council support their efforts as a governmental entity. He stated that they are not requesting monetary support, however, the City would be a stakeholder in the project because of the connection to the Landon Trail.

Larry Rhodes spoke in support of the project. He stated that he has been involved with the project since the 1980's and explained that they are asking for support from all governmental entities along the trail.

Andrea Patrick, member of the Kanza Rail-Trails Conservancy Board of Directors spoke in support of the resolution.

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

RESOLUTION NO. 7795 introduced by Deputy Mayor Jeff Preisner canceling Council meetings July 4, 2006, December 26, 2006, and January 2, 2007 and establishing a meeting on January 30, 2007 was presented.

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

RESOLUTION NO. 7796 introduced by City Manager Norton N. Bonaparte, Jr., designating an Acting City Manager and rescinding City of Topeka Resolution No. 7632 was presented.

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

A COMMUNICATION by Vanguard Corporation, and Jack and Darlene Meier requesting a waiver to the provisions of the Shawnee County Wastewater Management Plan for property located on the northeast corner of NW 17th Street and NW Menoken Road in the City of Topeka was presented.

Councilmember Preisner moved to approve the communication. The motion was seconded by Councilmember Alcalá.

Rick Schmidt representative for the applicant explained the request.

Dave Ireland appeared on behalf of Jack and Darlene Meier and encouraged the Council to approve the request. He stated that it would allow the applicant to complete the sale of the property, placing it on the City tax roll.

The motion to approve the communication carried unanimously. (8-0-0)

A FINAL PLAT for Sun Valley Subdivision No. 3 located on the northeast corner of NW 17th Street and NW Menoken Road in the City of Topeka, Kansas was presented. (P05/14)

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

ORDINANCE NO. 18632 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 10, 2006, through April 16, 2006, and enumerating said expenditures herein was presented for first and final reading.

Councilmember Alcalá moved to 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, Alcalá, Ortiz, Nave, Haynes, Duffy, Preisner and Harmon -8. Absent: Blackburn -1.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the project budget and authorizing as amended Improvement Project No. 29096-02 which provides for improvements to the Ash Street pump station, and specifically repealing those sections of City of Topeka Ordinance No. 18109 in conflict with this Ordinance was presented for first reading.

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located 427-429 S. Kansas Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading. (HL05/3)

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located at 919 S. Kansas Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading. (HL05/4)

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., designating real property more specifically described herein as a historic landmark and presently zone “C-5” Commercial District and located at 301-305 S. Kansas Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading. *(HL06/1)*

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 3130 SE 21st Street in the City of Topeka, Kansas from “R-1” Single Family Dwelling District TO “PUD” Planned Unit Development District (“I-1” Light Industrial District, “RR-1” Residential Reserve District and “OS-1” Open Space District) for concrete business office/shops and an extended stay recreational vehicle park was presented for first reading. *(PUD06/3)*

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located on the northeast corner of SE California Avenue and SE 45th Street within unincorporated Shawnee County, Kansas and adjacent to the City of Topeka Corporate limits, and said land being annexed for all City purposes and specifically repealing City of Topeka Ordinance No. 18606 was presented for first reading. *(A06/5)*

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

Jim Langford, Acting City Manager informed Councilmember Kennedy that the City Manager is investigating the anonymous letter of complaint sent by a Zoo employee and would be submitting a report to the Council soon. He also announced that there would be a work

session to establish budget priorities held on May 8, 2006 at 5:00 p.m. in the Holliday Conference Room.

Mayor Bunten announced that participants of Project Takeover/Makeover 2006 would meet at the Topeka High west parking lot at 8:00 a.m. on Saturday, May 6, 2006.

Councilmember Ortiz stated that she is still receiving a large number of telephone calls regarding the pick up of shrubs in District No. 3. She noted that they are people who have signed up for the service.

Mayor Bunten explained that they did not anticipate the large amount of trash that had to be picked up and then sorted from the shrubs and tree limbs, putting them behind schedule. He stated that they are trying to address the problem as quickly as possible.

Councilmember Nave announced that there would be a Human Relations Commission Town Hall meeting held at the Central Park Community Center on Thursday, May 4, 2006 at 7:00 p.m.

Councilmember Kennedy announced that she would not be participating in the neighborhood clean up efforts on Saturday due to a prior commitment. She also stated that there would be an Economic and Community Development Committee meeting held on May 3, 2006 at 3:00 p.m. in the City Council Office.

Paula Smith appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:25 p.m.

Iris Walker
City Clerk