

City Council Minutes – June 27, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 27, 2006. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn and Harmon -8. Mayor Bunten presided. -1. Absent: Councilmember Preisner -1.

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

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

Councilmember Harmon moved to suspend the Council Rules to add a resolution to the agenda granting O'Dooley's and Lucky Dog's Sports Bar an exception to the City of Topeka noise prohibitions. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

Councilmember Harmon moved to reinstate the Council Rules. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

Councilmember Alcala requested that item 4I, an Open After Mid-Night License application for La Fiesta be pulled from the consent agenda for separate discussion.

Councilmember Duffy requested that item 4D, a communication relating to a re-appointment of the Topeka Planning Commission be pulled from the consent agenda for separate discussion.

Mayor Bunten noted that the items would be considered at the end of New Business.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the appointment of Dave Krug to the Board of Electrical Appeals for a term that would expire on June 30, 2008 was presented.

A COMMUNICATION recommending the re-appointments of Jack Alexander and Pat Hubbell to the Topeka Metropolitan Transit Authority Board for terms that would expire on June 30, 2010 was presented.

A COMMUNICATION recommending the re-appointment of Brad Perry to the Topeka Performing Arts Center Advisory Board for a term that would expire on June 30, 2009 was presented.

A COMMUNICATION recommending the appointment of Terry Kimes to the Topeka/Shawnee County Public Library Board for a term that would expire on April 30, 2008 was presented.

RESOLUTION NO. 7818 introduced by Councilmember John Alcala granting Fiesta Mexicana an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 7819 introduced by Councilmember John Alcala granting Fiesta Mexicana an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions during its parade and street dance scheduled for July 7, 2006 was presented.

MINUTES of the Regular Meeting of June 20, 2006 were presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Ameri Gas, 4601-A S.W. Topeka Boulevard, was presented.

Councilmember Duffy moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Haynes carried unanimously. (8-0-0)

ORDINANCE NO. 18667 introduced by Councilmember John Alcala authorizing the purchase, possession and consumption of cereal malt beverages during the Fiesta Mexicana, at specified locations and times placed on first reading June 20, 2006 was again presented.

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

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

ORDINANCE NO. 18668 introduced by Councilmember John Alcala authorizing the purchase, possession and consumption of cereal malt beverages during the Fiesta Mexicana parade and street dance, at specified locations and times placed on first reading June 20, 2006 was again presented.

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

CONTRACT NO. 36527 approving and authorizing the City Manager to execute an amendment to City of Topeka Contract No. 36091 between the City and Washburn-Lane Parkway Renovations, LLC., was presented.

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

Grant Glenn, attorney for the applicant stated that the amendments were based on the opinion of the Bond Counsel. He also stated that the tri-party agreement is close to being signed.

Councilmember Haynes moved to defer action on the communication for one week because he did not receive all of the amendments until this evening. The motion died for lack of a second.

Braxton Copley, Assistant City Attorney explained that the amendments consisted of removing clauses within the agreement that would have jeopardized the tax-exempt status of the

project. He also stated that if the contract was deferred, it could possibly push back the bonding for the project because the agreement has to be in place first.

Councilmember Haynes questioned the developer's right to protest taxes and the type of condemnation proceedings that could be used.

Grant Glenn explained the tax provision in the agreement. He also stated that he believes the agreement is broad enough to include any anticipated circumstances relating to condemnation proceedings.

Mike Calvin area business owner distributed his comments. He stated that he believes the agreement obligates the City to the condemnation of his property. He also stated that he is opposed to the use of condemnation for the purpose of eliminating one business owner's property and replacing it with another.

Discussion continued by several Councilmembers on the proper use of condemnation.

Braxton Copley stated that the agreement does not bind the City to use of condemnation.

Bill Newsome stated that in the interest of time he would ask the Council to approve the agreement this evening to avoid a delay in the sale of the bonds. He also stated that they have a disagreement on price with Mr. Calvin and eminent domain would allow that issue to be resolved.

Councilmember Alcalá stated that he believes they have strayed from the subject on the agenda.

Braxton Copley, Assistant City Attorney stated that the agreement is the item under discussion, and the condemnation ordinance is on the agenda for first reading this week and would be discussed at the next Council meeting.

The Chair ruled that they have not strayed from the subject.

Councilmember Alcala challenged the ruling of the Chair.

The vote on if the ruling of the Chair shall be upheld failed. Councilmembers Nave, Duffy, Blackburn and Harmon voted "no". (4-4-0)

The motion to approve the contract carried. Councilmember Haynes voted "no". (7-1-0)

A PETITION, A PROJECT BUDGET in the amount of \$130,714 and RESOLUTION NO. 7820 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 40941-00, as more specifically described herein was presented.

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

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

RESOLUTION NO. 7821 introduced by Councilmember John Alcala granting a waiver to the provisions of City of Topeka Code Section 142-355 relating to parking on unimproved surfaces was presented.

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

ORDINANCE NO. 18669 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period May 29, 2006, through June 4, 2006, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Alcala stated that he would vote "no" on all expenditure ordinances until all policy issues are resolved.

Councilmember Harmon moved to adopt the ordinance. The motion seconded by Councilmember Duffy carried. Councilmember Alcala voted "no". (7-1-0)

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

ORDINANCE NO. 18670 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period June 5, 2006, through June 11, 2006, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Duffy moved to adopt the ordinance. The motion seconded by Councilmember Nave carried. Councilmember Alcalá voted "no". (7-1-0)

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

A COMMUNICATION recommending the re-appointment of Joselito Enriquez to the Topeka Planning Commission for a three-year term that would expire on June 30, 2009 was presented.

Councilmember Duffy noted a number of absences by the nominee. He explained that in the first six months of the calendar year, he missed four meetings. He stated that he could not support the nominee because he does not meet the criteria of the ordinance.

Councilmember Blackburn concurred with Councilmember Duffy.

Councilmember Ortiz stated that the information the Council received stated that all of the absences have been excused.

Councilmember Duffy stated that the ordinance does not have a provision that addresses excused or unexcused absences.

Councilmember Alcalá asked who reviews the appointments prior to submitting them to the Council.

Mayor Bunten stated that his office reviews the applicants background information. He explained that he spoke with Mr. Enriquez and he stated that the absences could not be avoided, but he would like to continue to serve on the Planning Commission.

Councilmember Alcala requested that the Legal Department draft a document to define “excused” and “unexcused” absences for the Planning Commission.

Braxton Copley stated that they could prepare a draft ordinance to clarify the term “absence”.

Councilmember Haynes asked if the rule applies to other boards and commissions, and if not, could they make sure that it is uniformly applied.

Councilmember Ortiz moved to approve the communication. The motion seconded by Councilmember Haynes failed. Councilmembers Kennedy, Nave, Haynes, Duffy, Blackburn and Harmon voted "no". (2-6-0)

An Open After Mid-Night License application bearing the approval of the Chief of Police for La Fiesta, 1017 N.E. Seward Avenue, was presented.

Councilmember Alcala stated that he wanted to clarify that the application was not for a cereal malt beverage license.

Braxton Copley, Assistant City Attorney stated that the application was for an open after mid-night license.

Councilmember Alcala moved to approve the application. The motion seconded by Councilmember Ortiz carried. Councilmember Nave voted "no". (7-1-0)

RESOLUTION NO. 7822 introduced by Councilmember Richard Harmon granting O'Dooley's and Lucky Dog's Sports Bar an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

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

A CHARTER ORDINANCE introduced by City Manager Norton Bonaparte, Jr., concerning fire department promotions, amending City of Topeka Charter Ordinance No. A6-18 and repealing the original of said charter ordinance was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing the initiation of condemnation proceedings to acquire property by eminent domain for the College Hill Redevelopment Project Plan as adopted by City of Topeka Ordinance No. 18604 on April 4, 2006 for the purpose of implementing the College Hill Redevelopment Project Plan as provided for in K.S.A. 12-1770 *et seq.*, as amended, for the interest in real property located at 1600 SW Washburn Avenue was presented for first reading.

AN ORDINANCE authorizing the issuance of full faith and credit tax increment bonds, series 2006-A (College Hill Redevelopment) in the maximum principal amount of \$5,840,000 of the City of Topeka, Kansas, for the purpose of paying certain redevelopment project cost in connection with the redevelopment plan; and making certain covenants with respect thereto 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 stated that staff is revising a P-Card Policy that will include a section outlining disciplinary action. He stated that the new policy would be presented to the Council very soon and a public hearing would be held to allow input.

Councilmember Ortiz stated that a retired City employee informed her that when a P-card is assigned to an individual they are instructed on the proper use and disciplinary guidelines.

Councilmember Kennedy stated that the public has expressed concern with the current P-card Policy and would like the problems resolved as soon as possible. She asked about the criteria for a fireworks stand, and stated that she received a call informing her that a fireworks stand is located by a residential home.

Councilmember Alcalá expressed concern with the P-Card Policy and stressed the importance of accountability and follow-up by management. He also asked when the updates to the website would be completed.

Councilmember Haynes asked that employees be given information that outlines the rules of the P-card Policy, including termination. He also clarified that if a property was not on the list for trash pick up it would not have been included in the neighborhood clean up efforts.

Councilmember Ortiz reported two instances in her district where trash was not picked up. She asked for a copy of the Topeka Convention and Visitor's Bureau bylaws. She also announced that David Owens has been missing since June 16, 2006, and anyone who sees him should call the Police Department.

Fire Chief Giles stated that he would need to gather more information regarding zoning criteria for firework stands located in residential areas. He also stated that he believes the stand that Councilmember Kennedy referred to is in a properly zoned location.

Councilmember Nave stated that there were also some areas in Highland Park that missed the trash pick up. He announced that there would be an Economic and Community Development Committee meeting held on June 28, 2006 at 1:00 p.m. in the City Council Office.

Mayor Bunten stated that the overall cleanup effort was a tremendous success. He also stated that he would meet with the City Manager and work through the trash pick up problem. He noted that he does not know the circumstances of the areas where trash pick up was missed,

however, all neighborhoods were provided with information regarding the cleanup efforts. He stated that they would help clean up the areas that were missed, but it is also important for neighborhoods to take responsibility for their own trash pick up.

Councilmember Blackburn stated that fireworks stands can be placed next to residential homes in some areas of the city due to commercial zoning abutting residential zoning.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:28 p.m.

Iris Walker
City Clerk