

City Council Minutes – July 18, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, July 18, 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, Preisner and Harmon -8. Mayor Buntin presided. -1. Absent: Councilmember Blackburn -1.

AFTER THE MEETING was called to order, Councilmember Ortiz 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 appointment of Gregg Desch, 741 SW Cambridge Avenue to the Board of Plumbing Examiners for a term that would expire on July 31, 2008 was presented.

MINUTES of the Regular Meeting of July 11, 2006 were presented.

Cereal Malt Beverage License applications bearing the approval of the Chief of Police and City Inspectors for the following were presented:

<u>Business</u>	<u>Address</u>
Fast Lane	512 SW Topeka Boulevard
Grab-N-Go	3300 SW Gage Boulevard

An Open After Mid-Night License application bearing the approval of the Chief of Police for The Catch, 1929 S. Kansas Avenue, was presented.

A Dance Hall License application bearing the approval of the Chief of Police and City Inspectors for Sizzlers Lounge, 601 N.W. Highway 24, was presented.

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

Mayor Bunten stated that staff has requested that a public hearing and ordinance for final reading relating to Lateral Sanitary Sewer Project No. 40925-00 be added to the agenda. He stated that the ordinance was on last week's agenda for first reading, and the hearing was properly noticed, but the documents were inadvertently left off the agenda.

Councilmember Haynes moved to suspend the Council Rules to add a public hearing and ordinance to the agenda relating to Lateral Sanitary Sewer Project No. 40925-00 located in Aquarian Acres Subdivision. The motion seconded by Councilmember Duffy carried unanimously. (8-0-0)

Councilmember Duffy moved to reinstate the Council Rules. 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, July 18, 2006, 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 Lateral Sanitary Sewer District No. 40925-00 authorized by Resolution No. 7485, adopted and approved July 6, 2004.

ORDINANCE NO. 18683 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 Lateral Sanitary Sewer District No. 40925-00 with piping, manholes, engineering and all other contingencies needed to complete Lateral Sanitary Sewer District No. 40925-00, as defined and described in Resolution No. 7485, adopted and approved July 6, 2004 placed on first reading July 11, 2006 was again presented.

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

Councilmember Duffy moved to close the public hearing and 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, Alcalá, Ortiz, Nave, Haynes, Duffy, Preisner and Harmon -8. Noes: Blackburn -1.

A PROJECT BUDGET in the amount of \$500,000 and AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Street Repair Improvement Project No. 84340, which provides for construction of handicapped accessible curb cuts and sidewalk ramps at selected intersections throughout the City, to meet requirements of the Americans with Disabilities Act in accordance with the City's sidewalk ramps – transition plan, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading July 11, 2006 was again presented.

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

Mayor Bunten expressed his concern that the areas scheduled for ADA upgrades need to be assessed prior to construction to insure that the upgrades are necessary.

Councilmember Alcalá noted that the City has always made a good faith effort to accommodate the disabled community. He suggested that they create a position designated by the City Manager to oversee ADA compliance projects and help insure that the money is being used where it is needed the most.

Councilmember Ortiz asked how neighborhoods are selected for ADA upgrades, and how individual needs are addressed. She also questioned why ADA upgrades are not installed during the construction phase of a project.

Councilmember Haynes asked how many sidewalk ramps are needed, and how many are completed each year.

Mike McGee, Deputy Public Works Director stated that ADA compliance regulations are mandated by Federal Government guidelines. He explained that ADA upgrades are funded from

a separate source and that is why ADA upgrades are not incorporated into most construction projects. He stated that the majority of the City's ADA upgrade projects run in conjunction with mill and overlay projects, however, individuals with handicap needs are given priority. He noted that 150 sidewalk ramps are completed each year, and approximately 1200 are still needed.

Councilmember Duffy stated that he believes ADA upgrades should be included in new construction projects, in conjunction with utilizing funds in the best way possible. He also stated that he would like to review Councilmember Alcalá's proposal and complete the 2007 budget deliberations before voting on the issue.

Councilmember Duffy moved to defer the ordinance for 30 days. The motion was seconded by Councilmember Alcalá.

Ellen Ross stated that she supports the creation of a new position to oversee ADA compliance issues. She also stated that if there were better communication between the organizations that make the street, water, and utility repairs a lot of money would be saved in the long run.

The motion to defer the ordinance for 30 days carried unanimously. (8-0-0)

ORDINANCE NO. 18675 introduced by City Manager, Norton N. Bonaparte, Jr., and Councilmember Clark Duffy amending Subsection 1 through 11 of Ordinance No. 18132 and re-establishing the Advantage Topeka Program which provides for a loan forgiveness program for eligible students enrolled at the University of Kansas and such other higher educational institutions as the City Council may designate and specifically repealing Subsection 1 through 11 of Ordinance No. 18132 placed on first reading July 11, 2006 was again presented.

Councilmember Duffy explained the ordinance and stated that it would change the way the funds are deposited by sending it directly to the higher educational institution.

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

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

Norton N. Bonaparte, Jr., City Manager requested that the following items be deferred for one week; item 5C, an ordinance relating to the 2006 legislative changes regarding suspended driver's licenses and driving while an habitual violator; item 5D, an ordinance relating to building and trade permits; and item 5E, an ordinance relating to Municipal Court procedure.

Councilmember Ortiz questioned the deferral.

Councilmember Nave stated that he has requested more information from the Legal Department regarding item 5C, and Councilmember Blackburn requested that he be present when considering items 5D and 5E.

Councilmember Nave moved to defer items 5C, 5D and 5E for one week. The motion seconded by Councilmember Preisner carried. Councilmember Duffy was out of the room. (7-1-0)

AN ORDINANCE introduced by Councilmember John Nave concerning the Topeka Human Relations Commission amending City of Topeka Code, Sections 86-1, 86-2, 86-51, 86-53, 86-68, 86-79 and 86-112 and specifically repealing said original Sections placed on first reading July 11, 2006 was again presented.

Councilmember Nave stated that the amendments were basic clean up and would bring the ordinance closer into compliance with the State of Kansas.

Al Martin, Human Relations Commission Director explained that the amendments would bring the ordinance closer into compliance with the State of Kansas Act Against Discrimination,

provide a mechanism for the dismissal of a case, place all housing discrimination regulations into the same code section and slightly change administrative duties. He noted that the investigative process would basically remain the same.

Councilmember Haynes expressed concern with the State's regulations disrupting the City's investigative process, or causing an increase in City staff.

Lloyd Swart stated that the amendment would allow 300 days for investigative purposes instead of 180 days, which in the past, has not been a sufficient amount of time.

Councilmember Haynes asked if the Legal Department has reviewed the ordinance.

Brenden Long, City Attorney stated that they have reviewed the document.

Councilmember Nave stated that he believes the extended investigative time frame is an advantage for the City, as well as, the State.

Councilmember Kennedy inquired on how many complaints the HRC Department processes each year.

Al Martin stated that approximately 26 to 30 cases are settled each year.

Councilmember Haynes stated that he does not understand the conflict, nor why the Legal Department cannot create guidelines for HRC to follow.

Anthony Fadale, member of the ADA Commission spoke in support of the ordinance and stated that the extended investigation time allows the commission to make a fair assessment.

Michael Bell spoke in support of the ordinance and encouraged the Council to adopt the revisions to help reduce the possibility of the City being sued. He noted that the HRC Department processes four to five complaints a day.

Councilmember Alcala stated that he would like to research all avenues of the investigation process and introduce restructuring of the department.

Councilmember Alcala moved to defer the ordinance for 30 days. The motion was seconded by Councilmember Kennedy.

Councilmember Nave asked if a 30-day delay would have an affect on the department.

Brenden Long stated that a delay would not affect the function of the department.

The motion to defer the ordinance for 30 days carried. Councilmembers Nave and Duffy voted "no". (6-2-0)

ORDINANCE NO. 18676 introduced by Councilmember John Nave amending City of Topeka Code Chapter 30 by the addition of Article XIV relating to tobacco/novelty retail licenses placed on first reading July 11, 2006 was again presented.

Councilmember Nave explained the intent of the ordinance is to fund the implementation of a Drug Court Program that would mirror Shawnee County's Drug Court Program. He stated that he believes it is a program that would greatly benefit the community.

John Knoll, Assistant City Attorney stated that the ordinance would clean up the prosecution process for the Police Department. He also stated that the funds would be placed in the Crime Prevention fund.

Jared Harsin, Shawnee County Drug Court Program Director gave a brief overview of the program. He stated that the majority of the program participates are residents of city. He explained that they treat approximately 40 people a year at a cost of \$100,000, which includes drug treatment only. He stated that he supports the ordinance because it would mandate non-regulated items and prohibit the sale to minors.

Councilmember Haynes expressed concern with the enforcement of the new license requirements and the language of the ordinance.

Councilmember Kennedy asked who would enforce the new regulations and what would happen if a license is not purchased.

John Knoll stated that primarily community officers would enforce the regulations and violators would be prosecuted in Municipal Court.

Councilmember Duffy asked who would be required to purchase a license.

Jared Harsin stated that all businesses selling items that are not regulated under other government agencies would be required to purchase a license.

Lori Husky, Jim Olson and Nancy Lollman spoke in support of the ordinance. They discussed the importance of stricter regulations to help fight drug abuse in the community, the positive efforts of Shawnee County Drug Court, and limiting the accessibility of drug paraphernalia.

Councilmember Kennedy stated that she believes that tobacco rolling papers should be excluded from the restrictions because of the amount of people that use them to make their own cigarettes.

Councilmember Kennedy moved to delete line 28 from the ordinance. The motion was seconded by Councilmember Ortiz.

Councilmember Haynes made a substitute motion to remove Sections 28 and 29 of the ordinance. The motion died due to a lack of a second.

Councilmember Duffy stated that he is concerned that not enough money would be raised for the Drug Court Program because a large number of establishments will be exempt from the license requirements.

Councilmember Nave stated that he would not support the amendment because he believes tobacco rolling papers need to be included in the restrictions.

The motion to remove line 28 failed. Councilmembers Alcalá, Nave, Duffy, Preisner and Harmon voted "no". (3-5-0)

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

RESOLUTION NO. 7826 introduced by Councilmembers Brett Blackburn, Lana Kennedy, and Clark Duffy relating to the implementation of a hiring freeze was presented. The resolution was deferred from the meeting of July 18, 2006.

Norton N. Bonaparte, Jr., City Manager gave the staff report. He stated that he understands the necessity of being very restrictive to hiring prior to budget approval. He also distributed a list of positions that he believes should be excluded from the hiring freeze, including grant funded positions and the Chief of Police.

Councilmember Duffy stated that if the interview phase is completed, he would recommend filling the position.

Norton N. Bonaparte, Jr., stated that he does not have the specifics of where they are in the hiring process at this time.

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

Councilmember Alcalá stated that he is concerned with how positions would continue to be funded if the grant money runs out.

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

RESOLUTION NO. 7827 introduced by Councilmember Jeff Preisner concerning the appropriation and expenditure of transient guest tax funds, and expressing the intention of the

City of Topeka to enter into an agreement with Topeka Convention and Visitors Bureau (TCVB) to administer these funds, was presented.

Councilmember Preisner explained the intent of the resolution and encouraged the Council to provide their input when constructing the contract.

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

Councilmember Haynes stated that he would not support the resolution because he believes the Council should retain the privilege of allocating the funds.

Councilmember Alcalá stated that he would not support the resolution because the Council would not regulate where funds are being distributed.

Brenden Long, City Attorney stated that safeguards would be included in the contract to insure that the Council approves the criteria and the total amount of money being allocated to TCVB.

The motion to approve the resolution carried. Councilmembers Alacla, Ortiz and Haynes voted "no". (5-3-0)

A PETITION, A PROJECT BUDGET in the amount of \$370,220 and RESOLUTION NO. 7828 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 40944-02 located in the Woodland Trail Subdivision as more specifically described herein, was presented.

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

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

A PETITION, A PROJECT BUDGET in the amount of \$760,700 and RESOLUTION NO. 7829 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 60624-02 located in the Woodland Trail Subdivision as more specifically described herein, was presented.

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

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

ORDINANCE NO. 18677 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of June 26, 2006, through July 2, 2006, and enumerating said expenditures therein was presented for first and final reading.

Councilmember Haynes 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, Ortiz, Nave, Haynes, Duffy, Preisner and Harmon -7. Noes: Alcala -1. Absent: Blackburn -1.

ORDINANCE NO. 18678 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 approximately 900' north and 1,050' east of the intersection of SE California Avenue and SE 45th Street in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "M-1" Two-Family Dwelling District and "R-1" Single-Family Dwelling District placed on first reading July 11, 2006 was again presented. (Z06/14)

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

Mayor Bunten asked if there were any ex parte communications. There were none declared.

Councilmember Kennedy moved to approve the ordinance. 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, Alcala, Ortiz, Nave, Duffy, Preisner and Harmon -7. Noes: Haynes -1. Absent: Blackburn -1.

ORDINANCE NO. 18679 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 the intersection of SE California Avenue and SE 45th Street in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "C-3" Commercial District placed on first reading July 11, 2006 was again presented. (Z06/15)

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

Mayor Bunten asked if there were any additional ex parte communications besides Councilmember Nave. There were none declared.

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

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

ORDINANCE NO. 18680 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 SE 45th Street the centerline of which is approximately

2,100' east of the intersection of SE 45th Street and SE California Avenue in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single-Family Dwelling District placed on first reading July 11, 2006 was again presented. (Z06/16)

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

Mayor Bunten asked if there were any additional exparte communications besides Councilmember Nave. There were none declared.

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

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

ORDINANCE NO. 18681 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 1815 and 1819 SW Gage Boulevard in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for "D&OP" Multiple Family Dwelling and Office Park District TO "PUD" Planned Unit Development District ("O&I-2" Office and Institutional District, and "M-2" Multiple Family Dwelling District) placed on first reading July 11, 2006 was again presented. (Z86/16)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.

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

ORDINANCE NO. 18682 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 generally located at the southeast corner of SE 17th Street and SE Adams Streets, of which the centerline of the tract is approximately 250' south of SE 17th Street and 145' east of SE Adams Street in the City of Topeka, Kansas from "M-1" Two Family Dwelling with a Resolution of Intent for "I-1" Light Industrial District ALL TO "I-1" Light Industrial District placed on first reading July 11, 2006 was again presented. (Z05/14)

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

Mayor Buntin asked if there were any exparte communications. There were none declared.

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made 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 713 SW Topeka Blvd. in the City of Topeka, Kansas from "C-3" Commercial District TO "O&I-3" Office and Institutional District placed on first reading July 11, 2006 was again presented. (Z06/10)

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

Councilmember Kennedy asked if the applicant has any unpaid penalties pending as a result of not purchasing a parking lot permit in 2004.

Miriam Berke, Development Services Director stated that at this time parking lot permits do not fall within the guidelines of being penalized.

Councilmember Kennedy stated that she is very unhappy with the current policy and encouraged administration to change it to insure equality. She also stated that because a city employee is involved in the project it conveys a message to the public that city employees are treated differently than the public.

Councilmember Duffy expressed concern with the inconsistency of the policy and asked that the codes be strengthened.

Councilmember Haynes stated that he concurs with Councilmembers Kennedy and Duffy.

Councilmember Kennedy asked if the applicant is in compliance.

David Thurbon, Planning Director stated that they are in compliance.

Each Councilmember, except Councilmembers Nave and Harmon declared exparte communications via email, telephone conversations and basic correspondence.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Alcalá failed. Councilmembers Kennedy, Ortiz and Nave voted "no".

Councilmember Alcalá abstained. (4-3-1)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr. in accordance with Section 48-14.02(c)(10) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a vehicle surface parking lot on property zoned "O&I-3" Office and

Institutional District and located at 713 SW Topeka Boulevard in the City of Topeka, Kansas was presented. (CU06/5)

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

Brenden Long, City Attorney recommended that the resolution be deferred until the accompanying ordinance is reconsidered. He also stated that it would require six affirmative votes of the Council to approve the resolution.

Councilmember Haynes moved to table the resolution. The motion was seconded by Councilmember Duffy.

Councilmember Alcalá made a substitute motion to approve the resolution. The motion seconded by Councilmember Ortiz failed. Councilmembers Preisner and Harmon voted "no". Councilmember Ortiz abstained. (5-2-1)

A CHARTER ORDINANCE introduced by Councilmember Jeff Preisner concerning the election of City Councilmembers, amending Charter Ordinance A2-21 and A2-22, and repealing said original sections of Charter Ordinance A2-21 and A2-22 was presented for first reading.

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

Norton N. Bonaparte, Jr., stated that he would like to extend his deepest concern on behalf of the City of Topeka to the Public Work's employee that was recently injured on the job. He also stated that the new P-Card policy is moving forward and should be presented to the Council in a couple of weeks. He stated that he received a memorandum from Councilmember Alcalá outlining concerns with recent P-Card purchases. He noted that he would forward the memorandum to the proper offices for response.

Councilmember Ortiz requested that the new P-card Policy include a requirement that each employee sign an acknowledgement outlining usage guidelines on an annual basis. She also thanked the Police Department and everyone involved in making the Fiesta Mexicana Celebration a success.

Councilmember Kennedy stated that it is important that city employees follow the same policy as the public regarding the purchase of building and trade permits. She encouraged business owners and investors to locate in the downtown area because there will be an increase in traffic flow due to the Topeka Boulevard Bridge detour. She also expressed concern with the recent shooting that took place near Terry's Bar and Grill and the overall effect it could have on the business.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:36 p.m.

Iris Walker
City Clerk