

City Council Minutes – August 1, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 1, 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, Blackburn, Preisner and Harmon -8. Mayor Bunten presided. -1. Absent: Councilmember Duffy -1.

AFTER THE MEETING was called to order, Councilmember Nave 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 Basil Krug, 2025 N.W. Logan Street to the Board of Mechanical Examiners for a term that would expire on August 31, 2008, was presented.

A COMMUNICATION recommending the re-appointment of Ann Adams, 709 S.W. Crest Drive to the Downtown Business Improvement District Advisory Board for a term that would expire on August 31, 2008, was presented.

A COMMUNICATION recommending the appointment of Jeffrey Alvarez, 2865 S.W. Plass to the Juvenile Corrections Advisory Board to fill an unexpired term that would end June 30, 2007, was presented.

A COMMUNICATION recommending the appointment of John Williams, 2435 S.E. Madison to the Topeka Planning Commission for a term that would expire on July 31, 2007, was presented.

RESOLUTION NO. 7834 introduced by Deputy Mayor Jeff Preisner, granting Prairie Road Neighborhood Watch an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7835 introduced by Councilmember Lana Kennedy granting St. Joseph Catholic Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7836 introduced by City Manager Norton Bonaparte, Jr., granting exceptions to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7837 introduced by Councilmember Lana Kennedy granting St. John's Lutheran Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7838 introduced by Councilmember Clark Duffy granting the West of Washburn Neighborhood Watch an exception to the provisions of the City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

Minutes of the regular meeting of July 25, 2006 were presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Steinbock's Meat & Deli, 1401 N.W. Seward Avenue, was presented.

An Open After Mid-Night License application bearing the approval of the Chief of Police for Grab-N-Go, 1531 S.W. Wanamaker Road, was presented.

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

A PROJECT BUDGET in the amount of \$225,000 and ORDINANCE NO. 18687 introduced by City Manager Norton N. Bonaparte, Jr., for Crestview Park Shelter House ADA Improvement Project No. 30270 placed on first reading July 25, 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 Kennedy carried unanimously. (8-0-0)

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

A FINAL PLAT for Deer Creek Valley Subdivision located at 3130 S.E. 21st Street in the City of Topeka, was presented. (P06/13)

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

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

A COMMUNICATION authorizing the amendment to the contract between the City of Topeka and Rural Water District No. 8 for the sale of water and specifically authorizing City Manager Norton N. Bonaparte to execute the contract amendment, was presented.

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

Councilmember Preisner stated that because Councilmember Duffy was not present to ask the questions he has concerning the agreement, he would suggest that the communication be referred to committee.

Councilmember Preisner moved to refer the communication to the Policy and Finance Committee. The motion was seconded by Councilmember Blackburn.

Dennis Schwartz, Rural Water District No. 8 General Manager appeared for questions. He stated that the agreement would allow them to do some long range planning in the event of annexation. He explained that they have been working on the agreement for over a year, and look forward to implementing the plans.

Councilmember Alcalá asked if all issues have been resolved between the two parties.

Dennis Schwartz stated that in his opinion all issues have been resolved.

Councilmember Alcala stated that he opposes the motion to refer.

David Rutkowski, Chairman of the Board for Rural Water District No. 8 appeared for questions.

Councilmember Blackburn moved to defer for one week to allow Councilmember Duffy the opportunity to address his concerns. The motion was seconded by Councilmember Nave.

Councilmember Alcala asked Braxton Copley, Assistant City Attorney if there were any problems with the contract that have not been resolved.

Braxton Copley stated that in his opinion it is a fair agreement that accomplishes the needs of both the City and Rural Water District No. 8.

The motion to defer the agreement for one week carried. Councilmembers Kennedy, Alcala and Ortiz voted “no”. (5-3-0)

RESOLUTION NO. 7839 introduced by Councilmembers John Alcala and Lana Kennedy concerning the public’s access to City services during the lunch period, was presented.

Councilmember Alcala explained the resolution. He stated that he believes it is a necessary measure to provide better service to the public.

Councilmember Haynes asked how many offices were closed during the lunch period. He also asked if there would be an increase in cost to the City if the offices remain open.

Norton N. Bonaparte, Jr., City Manager stated that at this time there were three offices that close for the lunch period and there would be no additional cost to the City.

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

Councilmember Haynes reminded the Council that these matters are within the rights of the City Manager to decide. He stated that he believes it is inappropriate for the Council to direct him and he will oppose the motion.

Councilmember Preisner stated that he concurs with Councilmember Haynes and believes that the resolution is not necessary.

Councilmember Blackburn stated that he agrees that this is a policy decision for the City Manager, however, he believes a resolution is the appropriate venue to inform the City Manager of the Council's collective intent on certain issues.

The motion to approve the resolution carried. Councilmembers Haynes and Preisner voted "no". (6-2-0)

A PROJECT BUDGET in the amount of \$3,300,700 and RESOLUTION NO. 7840 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Improvement Project No. 28580-01 which provides for the construction of a new 24" transmission main on Highway 75 from the Westgate Bridge north to Lower Silver Lake Road, thence east to Austin Avenue, and more specifically described herein was presented.

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

Councilmember Alcalá moved to approve the project budget and resolution. The motion was seconded by Councilmember Preisner.

Lawrence Wheeler, III appeared in opposition to the project because it is not located in the city limits.

Don Rankin, Water Superintendent stated that this project is in the city and is part of the master plan that will help provide water throughout the city, as well as, service to north Topeka while the Topeka Boulevard Bridge is under construction.

Councilmember Haynes questioned if the project should be considered priority due to the concern surrounding the low water pressure issues in south Topeka.

Don Rankin explained that all of the improvements being made would eventually help the City address south Topeka water pressure concerns.

Discussion continued regarding the various waterline projects throughout the city, and the overall plan to improve water pressure in the east and south Topeka areas.

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

A PETITION, PROJECT BUDGET in the amount of \$563,500 and RESOLUTION NO. 7841 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Sanitary Sewer Improvement Project No. 40898-01 as more specifically described herein was presented.

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

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

RESOLUTION NO. 7842 introduced by Mayor William W. Bunten concerning the Phelps Family and the Westboro Baptist Church was presented.

Mayor Bunten explained the intent of the resolution. He stated that he believes it is important that the individuals affected by the picketing of the Westboro Baptist Church members know that the City Council and the Mayor do not support their efforts or beliefs. He also asked Braxton Copley, Assistant City Attorney to explain the suggested amendments to the resolution.

Braxton Copley stated that the amendments specify that only the City Council and the Mayor support the resolution, not the citizens of Topeka; and it would also eliminate the requirement of sending a copy of the resolution to any city, county or state where it is known that picketing may occur.

Mayor Bunten stated that Councilmember Duffy recommended removing the words “the above-described” on line 25, relating to funerals.

Councilmember Ortiz moved to amend the existing language of the resolution by deleting lines 5 through 28 and replacing it with the following:

“Whereas, the Topeka City Council believes the picketing of a person’s funeral or memorial service is reprehensible.”

“Now, therefore, be it resolved by the Council of the City of Topeka, Kansas, that the action of anyone picketing funerals or memorial services is condemned.”

The motion was seconded by Councilmember Kennedy.

Mayor Bunten noted that it has been recommended by the legal department not to use the word “condemned”.

Braxton Copley explained that the term “condemned” could not easily be defended in the event of litigation.

Councilmember Ortiz called the question.

Councilmember Blackburn challenged the call to the question.

Mayor Bunten asked if the question shall be called, or shall debate on the question cease.

The motion on shall the question be called failed. Councilmembers Kennedy, Alcala, Nave, Blackburn and Harmon voted “no”. (3-5-0)

Braxton Copley recommended replacing “condemned” with “not condoned” or “not supported” on line 5 of the resolution.

Councilmember Haynes made a substitute motion to delete the words “the Westboro Baptist Church” from line 7; delete lines 10, 11 and 12; delete lines 13, 14, 15, 16; replace the words “City of Topeka” with “Governing Body” on line 17; replace the word “condone” with

“support or approve” on line 18; delete lines 20, 21 and 22; and delete the word “Council” and insert “Governing Body”, delete lines 24, 25, 26, 27 and 28 and insert “that it is neither approved of, nor supported by the Council of the City Of Topeka.” The motion was seconded by Councilmember Preisner.

Brandy Socko, Pedro Irigonegaray, Joe Cox and Dr. Roy Menninger spoke in support of the resolution. The following suggested amendments were discussed; require picketers to obtain a permit, include sexual orientation and gender, and language that makes a clear statement that the actions of the Phelps family are not supported.

Bob Cutler spoke in opposition to the context of the resolution. He stated that he believes that the resolution should reflect that people agree with the Phelps family because gay rights have been denied.

Lawrence Wheeler stated that he believes the resolution would not be effective because the Phelps family have the right to speak their minds.

The substitute motion to amend the resolution failed. Councilmembers Kennedy, Ortiz, Nave, Blackburn and Harmon voted “no”. (3-5-0)

Councilmember Blackburn made a friendly amendment to Councilmember Ortiz’s amendment to change the word “condemned” to “not supported”. The second concurred.

Councilmember Kennedy made a friendly amendment to the title of the resolution by replacing the words “Phelps Family and the Westboro Baptist Church” with “picketing of funerals or memorial services”.

Councilmember Ortiz accepted the amendment.

Norton N. Bonaparte, Jr., noted that it was suggested that the words “Governing Body” be used in place of “the Council” to include the Mayor.

Mayor Bunten stated that he is opposed to the amendments. He also stated that it takes the significance out of the resolution because the Westboro Baptist Church members are doing the picketing, not other people or churches. He stated that he believes they need to take a firm stand against people who do not embrace good values.

Councilmember Ortiz called the question.

Mayor Bunten asked if the question shall be called.

The motion on if the question shall be called carried unanimously. (8-0-0)

The motion to amend the resolution carried. Councilmember Haynes voted “no”. (7-1-0)

Councilmember Kennedy moved to approve the resolution as amended. The motion seconded by Councilmember Ortiz carried. Councilmember Haynes voted “no”. (7-1-0)

ORDINANCE NO. 18688 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period July 10, 2006, through July 16, 2006, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Nave carried. Councilmember Alcala voted “no”. (7-1-0)

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

A FINAL PLAT for Sherwood Park Subdivision No. 9 located approximately 1,425-feet north of S.W. 29th Street and 2,000-feet east of S.W. Auburn Road in the City of Topeka, Kansas, was presented. (P06/22)

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

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

ORDINANCE NO. 18689 introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Downtown Commercial District and located at 427-429 S. Kansas Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading July 25, 2006 was again presented. (*HL05/03*)

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

Councilmember Kennedy moved to amend the ordinance as distributed by Braxton Copley to include “commonly know as Constitutional Hall, Topeka” in the description. The motion was seconded by Councilmember Alcalá.

Councilmember Blackburn asked if the designation would create any environs.

David Thurbon, Planning Director stated that is would not affect any surrounding properties.

Greg Allen, applicant spoke in support of the ordinance and stated that it is important not to lose the historic landmark status known as Constitutional Hall.

Braxton Copley, Assistant City Attorney stated that because this is a zoning application public comment is not allowed.

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

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

ORDINANCE NO. 18690 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 3720 SW 45th Street (NW corner of SW 45th Street/SW Stone Avenue and on the south side of SW 45th Street across from said property) from "R-1" Single Family Dwelling District, "O&I" Office and Institutional District, "R-1" Single Family Dwelling District with Resolution of Intent for "D&O" Multiple Family and Office District and Special Use Permits for a golf pro-shop, clubhouse allowing for the consumption of alcohol, and golf driving range ALL TO "PUD" Planned Unit Development (mixed use groups) allowing for use as a golf course, driving range, commercial fitness center, and clubhouse facility licensed to sell and dispense alcoholic beverages for consumption within the clubhouse facility placed on first reading July 25, 2006 was again presented. (*PUD05/6*)

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

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., assessing the costs of sidewalk repair to real properties, more specifically described hereinafter, all pursuant to the authority found in Topeka City Code 130 - 373 through 378 and Topeka City Code 126 - 96 through 102, inclusive, and repealing Ordinance No. 18396 was presented for first Reading.

AN ORDINANCE introduced by Councilmember Richard Harmon, authorizing Improvement Project No. 60629-00 which provides for certain public improvements for the

River Hill Project including improvement of 6th Street from Wanamaker Road east approximately 3,000 feet; the improvement of Wanamaker Road from 6th Street north approximately 2,800 feet; construction of a public street from 6th Street, at a point approximately 2,800 feet east of Wanamaker Road northerly, then westerly to Wanamaker Road at a point approximately 2,000 feet north of 6th Street; construction of water lines and sewer mains to service the development - all on public right-of-way or easements, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first Reading.

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 1814 SE Madison within the City of Topeka, Kansas from "I-1" Light Industrial District with a Resolution of Intent for "I-2" Heavy Industrial District TO "I-2" Heavy Industrial District was presented for first Reading. *(Z05/13)*

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 1222 SW 10th Avenue from "O&I-1" Office and Institutional District TO "R-2" Single-Family Dwelling District was presented for first reading. *(Z06/19)*

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

3212 SW Huntoon Street in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District TO "O&I-1" Office and Institutional District was presented for first Reading. (Z06/20)

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 1100 SW Gage Blvd. in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District with a Special Use Permit for a Non-Profit Agency Headquarters TO "O&I-1" Office and Institutional District was presented for first Reading. (Z06/18)

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

Norton N. Bonaparte, Jr., encouraged the community to attend the Night Out Against Crime event held on Saturday, August 5, 2006. He also stated that he would like to commend the NIA's that helped organize the event.

Councilmember Kennedy stated that she received an email from a constituent expressing concern with the poor condition of the fish pond located outside of the Municipal Court building.

Councilmember Ortiz thanked Mayor Bunten for the Certificate of Appreciation she received for participating in the 2006 Make Over/Take Over Program.

Councilmember Blackburn suggested that they give the City Manager the authority to revise the budget to meet the direction of the Council regarding the mill levy.

Councilmember Preisner encouraged the Council to continue sharing concerns on the budget via electronic mail to allow everyone to be aware of the proposed changes and make the process run smoother.

Mayor Bunten suggested that as a courtesy, all budget amendments be discussed as soon as possible to speed up the process.

Councilmember Haynes suggested that all amendments to the budget be distributed at least two weeks prior to final action on the budget.

Councilmember Alcala stated that he believes two weeks is an unrealistic request. He explained that he is working on a proposal for the Human Relations Commission Department and would let the Council know as soon as it is complete.

Lawrence Wheeler, III., appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:15 p.m.

Iris Walker
City Clerk