

City Council Minutes – October 10, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 10, 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, Preisner and Harmon -9. Mayor Bunten presided: -1.

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

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION appointing Howard Blackmon, 2615 SW Fillmore, to the Board of Zoning Appeals for a three-year term that would expire on October 31, 2009, was presented.

RESOLUTION NO. 7875 introduced by Councilmember Brett Blackburn granting PT's Coffee Company an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7876 introduced by Councilmember Clark Duffy granting Washburn University an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7876 introduced by Councilmember John Nave granting St. Matthew's Catholic Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

MINUTES of the regular meeting of October 3, 2006 were presented.

Open After Mid-Night License applications bearing the approval of the Chief of Police and city inspectors for Los Portables, L.L.C., located at 1116 S.E. 6th Street; and Wal-Mart Supercenter #5441 located at 2600 N.W. Rochester Road, were presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Alcalá 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, October 10, 2006, at 6:00 P.M. on the advisability of Street Improvement Project No. 60619-00 located in Horseshoe Bend Subdivision.

A PROJECT BUDGET in the amount of \$1,292,700 and A RESOLUTION by City Manager Norton N. Bonaparte, Jr., authorizing Street Improvement Project No. 60619-00 which provides for paving certain streets located in Horseshoe Bend Subdivision, as more specifically described herein, was presented.

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

Councilmember Blackburn stated that the Economic and Community Development Committee reached a compromise with the developer on how the benefit district would be figured. He asked why the amount that was agreed upon in committee, and the amount that is before them, is different.

Brenden Long, City Attorney stated that this is the project that was presented by the developer and he is not aware of any discrepancies regarding benefit district amounts.

Councilmember Haynes asked why the committee report was not included in the project information packet.

Brenden Long, stated that the original benefit district changed substantially, therefore, it was necessary to create a new ordinance, which has not been discussed in committee.

Councilmember Blackburn stated that he would not support the project because there has been a substantial change in the benefit district cost.

Mike Engler, Bartlett & West Engineers stated that the project was expanded as discussed in the committee meeting. He explained that the change in the benefit district effectively reduced the assessments of two tracts and the overall cost of the benefit district.

Henry McClure, representing the property owners contiguous to the project asked that the project be placed back into committee for further consideration. He suggested that the overall benefit district process be reviewed to ensure that all property owners are treated fairly.

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

Councilmember Preisner made a substitute motion to close the public hearing and refer the project budget and resolution to the Economic and Community Development Committee. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$157,500 and ORDINANCE NO. 18724 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 14119-00, which provides for replacement of an existing traffic signal, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading October 3, 2006 was again presented.

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

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

Councilmember Blackburn moved to reduce the design fee of the project budget by 20% or \$13,141. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

Councilmember Alcalá moved to approve the project budget and adopt the ordinance as amended. The motion seconded by Councilmember Blackburn carried unanimously. (9-0-0)

The ordinance was adopted as amended on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

A PROJECT BUDGET in the amount of \$128,000 and ORDINANCE NO. 18725 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 70123-01, which provides for a traffic study to determine proper traffic control and geometry, and preparation of plans, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading October 3, 2006 was again presented.

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

Councilmember Blackburn moved to reduce the design fee of the project by 20% or \$24,381. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

Councilmember Preisner moved to approve the project budget and adopt the ordinance as amended. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

The ordinance was adopted as amended on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

AN ORDINANCE introduced by Councilmembers Clark Duffy and Jeff Preisner, amending City of Topeka Code Section 146-37 concerning water service to an owner of real property outside city limits, and specifically repealing said original section placed on first reading September 19, 2006 was again presented. The ordinance was deferred from the meeting of September 26, 2006.

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

Brenden Long, City Attorney distributed the following amendment to the ordinance.

He suggested that the following new subsection be added after line 68:

- (c) An owner of real property outside the city limits may be exempt from the annexation requirement set forth in subsections (a)(1) or (a)(2) above if the property owner consents to annexation of the real property to be served at least one of the following conditions are satisfied:
- (1) To eliminate an imminent threat to public health and safety as determined and/or ordered by the Kansas Department of Health and Environment or a similar regulatory agency, or a court of law.
 - (2) To promote an economic development project as determined by the city council.
 - (3) To avoid unnecessary hardship in situations not created by actions of the applicant as determined by the city council.
 - (4) The city is obligated to provide water service to the property owner by contract or other legally enforceable document.
 - (5) The planning commission has prior to October 10, 2006 approved a preliminary or final plat which includes city water service.
 - (6) The city has previously provided water service to the same parcel of real estate for which service has been requested. The reconnection of service shall be limited to the same size of service line as the previous service. Further, the reconnection shall be limited to the same number of lines connections which previously existed.

Councilmember Duffy moved to amend the ordinance to include amendments (1) through (4) as distributed by the City Attorney. The motion was seconded by Councilmember Blackburn.

Councilmember Haynes moved to amend Section (c)(4) by adding a comma after the word “document” and adding “or by an enforceable agreement between the property owner and the City.” The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

Councilmember Alcala expressed concern with the financial impact it could have on the City, and the unclear verbiage of the ordinance.

Councilmember Alcala moved to refer the ordinance to the Policy and Finance Committee. The motion seconded by Councilmember Ortiz carried. Councilmembers Nave, Duffy, Blackburn and Preisner voted “no”. (5-4-0)

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to court ordered costs and fees, witness fees, contempt powers, warrants, arrest procedures, sentencing procedures and parole, repealing City of Topeka Code Sections 50-47, 50-49 and 50-50, amending City of Topeka Code Sections 50-26, 50-41, 50-54, 50-60, 50-64, 50-99 and 50-101, and repealing said original sections placed on first reading July 11, 2006 was again presented. The ordinance was deferred from the meeting of August 22, 2006.

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

Councilmember Blackburn moved to amend the ordinance by adding “\$5.00 for the Police Department Equipment Fund” after line 84; and deleting sections 6, 7, 8 and 9. The motion was seconded by Councilmember Preisner.

Councilmember Alcala asked how the amendment would impact the fee structure for Municipal Court.

Judge Ebberts stated that court costs would increase \$15 per case.

Councilmember Alcala asked how Municipal Court was trying to recoup the outstanding court fees, and how much has been collected since the first of the year.

Judge Ebberts stated that he does not know the exact amount of outstanding court fees at this time. He also explained the procedures that are in place to collect outstanding court fees, including contracting with a collection agency.

Councilmember Alcala stated that he would like additional information on the outstanding amount of court fees prior to approval of the ordinance.

Councilmember Alcala moved to defer the ordinance for one week. The motion was seconded by Councilmember Ortiz.

Councilmember Blackburn stated that he believes increased court fees would offer property tax relief in the form of a user fee for the taxpayers.

The motion to defer the ordinance for one week carried. Councilmembers Nave, Duffy, Blackburn and Preisner voted “no”. (5-4-0)

Councilmember Alcala asked Judge Ebberts to gather and distribute information to the Council regarding the total amount of outstanding court fees, and how the fees are monitored and collected.

ORDINANCE NO. 18726 introduced by Councilmember Brett Blackburn amending City of Topeka Code Section 2-336 by establishing a police department equipment fund placed on first reading August 22, 2006 was again presented.

Councilmember Alcala moved to approve the ordinance. The motion was seconded by Councilmember Blackburn.

Mayor Buntin stated the Police Department budget is \$22.7 million and in addition to the budget, they receive funding from grants. He asked if the money would be a reduction in appropriation for the Police Department.

Discussion continued on the process of the fund once it is established.

Norton N. Bonaparte, Jr., City Manager stated that the ordinance only establishes a fund.

Councilmember Haynes made a substitute motion to defer the ordinance for one week. The motion died due to lack of a second.

Councilmember Blackburn explained how money for the fund would be generated.

Councilmember Preisner called the question.

The motion to approve the ordinance carried. Councilmember Haynes voted “no”.

(8-1-0)

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

A COMMUNICATION approving the Declaration of Improvement Covenants and Restrictions (Agreement) and authorizing the City Manager to execute the Agreement on behalf of the City was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that the communication was tabled from the meeting of August 8, 2006.

Councilmember Harmon suggested that the item be tabled for a period not to exceed six months because St. Francis Hospital is interested in buying one of the parcels of land.

Councilmember Harmon moved to table the communication for six months. The motion was seconded by Councilmember Preisner.

Councilmember Blackburn questioned why the City is funding the infrastructure for the project instead of requiring the establishment of a benefit district. He asked the Council to oppose the communication because approval would set a precedent for future project proposals.

Councilmember Blackburn moved to approve the communication. The motion was seconded by Councilmember Kennedy.

Mike Engler, Bartlett & West Engineers stated that they built in safeguards and all money expended for infrastructure would be returned to the City.

Councilmember Alcala asked what would be considered the best option for the City of Topeka, to invest in the project’s infrastructure, or kill the project.

Norton N. Bonaparte, Jr., stated that he would be reluctant to recommend the spending of city funds because there is not a project plan in place.

Nave stated that he would support deferring the project for six months to allow the developer to comprise a project plan.

Councilmember Duffy stated that he does not see a reason to wait six months because the developer does not have a plan in place, the funds could be better utilized somewhere else, and it is bad public policy.

Discussion continued on the importance of a plan being in place prior to approval of City funding, and why the infrastructure could not be funded by the establishment of a benefit district.

Councilmember Kennedy called the question.

Councilmember Alcalá challenged the call to the question.

The motion on shall the question be called or should debate cease failed.

Councilmembers Alcalá, Ortiz, Duffy, Blackburn, Preisner and Harmon voted “no”. (3-6-0)

Councilmember Alcalá asked Councilmember Harmon if he would prefer the project to be disapproved or tabled for six months.

Councilmember Harmon stated that he sees no harm in tabling the item for six months.

The substitute motion to approve the communication failed. (0-9-0)

Councilmember Alcalá moved to reconsider the vote. The motion was seconded by Councilmember Ortiz.

Councilmember Harmon stated that he is comfortable with the action the Council because a new proposal can be presented again in six months.

Councilmember Alcalá withdrew the motion to reconsider. The second concurred.

A PROJECT BUDGET in the amount of \$6,200,000 and 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 placed on first reading August 8, 2006 was again presented. The ordinance and project budget was table for 60 days from the meeting of August 8, 2006.

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

Councilmember Alcalá called the question.

The motion to approve the project budget and adopt the ordinance failed. (0-9-0)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., amending the 2006-2007 Capital Improvement Budget was presented. The resolution was tabled for 60 days from the meeting of August 8, 2006.

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Harmon failed. (0-9-0)

CONTRACT NO. 36789 an agreement between the City of Topeka and Development Services Division/Planning Department, AFSCME Local 1294, amending Contract No. 36431 (2007 wage re-opener) was presented.

Ken Benjamin, Labor Relations Director gave the staff report.

Doris Branham, AFSCME representative appeared to answer questions.

Councilmember Alcalá moved to approve the agreement. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

ORDINANCE NO. 18728 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period September 18, 2006, through September 24, 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 approve the ordinance. The motion seconded by Councilmember Haynes carried. Councilmember Alcalá voted “no”. Councilmember Preisner was out of the room. (7-2-0)

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

ORDINANCE NO. 18729 introduced by City Manager Norton N. Bonaparte, Jr. relating to the designation of street names, more specifically changing the name of SW Bines Way and SW Elmo Drive in Bines Addition to SE Bines Way and SE Elmo Drive placed on first reading September 26, 2006 was again presented. The ordinance was deferred for one week from the meeting of October 3, 2006. (SNC06/1)

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

Councilmember Nave moved to adopt the ordinance. The motion seconded by Councilmember Blackburn carried. Councilmember Haynes voted “no”. (8-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Nave, Duffy, Blackburn, Preisner and Harmon -8. Noes: Haynes -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 west of SW Wanamaker Road between SW 30th Terrace and SW 31st Street in the City of Topeka, Kansas from "O&I-2" Office and Institutional District TO "C-1" Commercial District placed on first reading October 3, 2006 was again presented. (Z06/30)

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

Councilmember Preisner asked why the Planning Department recommended disapproval.

David Thurbon, Planning Director stated that staff recommended disapproval because the zoning change is inconsistent with the established goals and objectives of the Comprehensive Plan, and the surrounding character of the neighborhood.

Councilmember Preisner encouraged the Council to support the Planning Department's recommendation.

Councilmember Blackburn stated that he believes that "C-1" Commercial District zoning is a reasonable compromise for the surrounding residential neighborhood.

Councilmember Blackburn moved to approve the ordinance. The motion seconded by Councilmember Preisner failed. Councilmembers Alcalá, Ortiz, Nave, Haynes, Duffy, Preisner and Harmon voted "no". (2-7-0)

AN ORDINANCE introduced by Councilmember Clark Duffy amending City of Topeka Code Sections 2-326, 2-328, 2-331, 2-332, and 2-335 concerning the expenditure of monies from special funds established by the City Council, and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Project No. 30245-00, which provides for the design and construction of selected water line upgrades and additions at Gage Park, S.W. 625 Gage Boulevard, 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., authorizing Improvement Project No. 30271-00, which provides for improvements to Gage Park located at 625 SW Gage Boulevard, 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., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for Street Improvement Project No. 60598-01 H, located at approximately SE 22nd Terrace and SE Croco Road, with concrete curb and gutter, asphalt pavement, storm drainage facilities and all other contingencies required to complete Street Improvement Project No. 60598-01 H, as defined and described in Resolution No. 7419, adopted and approved November 25, 2003 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 13154-00, which provides for the design and construction services for improvements to the existing 1963 Fire Station Training Tower, 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 City of Topeka Code Section 142-152 to amend and delete certain provisions of the current edition of

the Standard Traffic Ordinance for Kansas Cities, and specifically repealing said original section was presented for first reading.

AN ORDINANCE regulating traffic and vehicles within the city limits of Topeka, Kansas, that adopts by reference the Standard Traffic Ordinance for Kansas Cities, 2006 edition 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 offered his condolences to the family of the firefighter that passed away this past weekend. He also gave an update on proposed State funding for certain projects within the city. He reported that \$500,000 has been placed in the House Transportation Treasury Housing and Urban Development Appropriation Bill for the I-70 Viaduct Planning; \$500 has been placed in the Interior Appropriation Bill for the South Topeka Sewer and Water Projects of Commerce Park; \$100,000 has been placed in the Senate Energy and Water Appropriation Bill for the Kansas River Investigative Study regarding the waterfront; and \$250,000 has been placed in the Senate Interior Appropriation Bill for Constitution Hall. He noted that the amounts listed have only been earmarked and not finalized.

Councilmember Kennedy expressed her concern that there seems to be conflict of the City's visionary goals between the Planning Department and the Planning Commission.

Following further discussion relating to the role of the Planning Department staff, Norton N. Bonaparte, Jr., suggested that the Planning Department, the Planning Commission and the Council meet for additional dialogue to help resolve the difference of opinion between the voluntary body and professional staff.

Councilmember Kennedy asked for an update on union negotiations with the firefighters.

Norton N. Bonaparte, Jr., stated that they have met with the representatives from the firefighters union and at this time, they are awaiting a response.

Councilmember Kennedy suggested that they schedule a work session or a public forum with the firefighters to discuss their concerns.

Councilmember Haynes expressed concern that such a forum would be in violation of the laws relating to bargaining units.

Councilmember Kennedy stated that she believes there is turmoil within the department separate from the union contract. She also stated that in her opinion, an open forum would allow employees to come forward with their concerns and express their dissatisfaction with interdepartmental issues.

Councilmember Alcala suggested that Councilmember Kennedy submit the work session request in writing to the City Manager. He stated that a written request would ensure that contract negotiations are not violated, and identify exactly what would be discussed at the work session.

Councilmember Ortiz stated that she has received numerous telephone calls from firefighters and their families expressing concern with interdepartmental issues. She asked the City Manager to take necessary action to resolve the problems and improve employee moral.

Norton N. Bonaparte, Jr., stated that he seriously considered the concerns, and is mindful of what needs to be done to help resolve the issues.

Councilmember Nave stated that he has not received any telephone calls from firefighters. He also stated that they need to be careful that the public forum does not generate discussion that could be considered contract negotiations.

Councilmember Haynes noted that the Charter Ordinance states that the City Manager is charged with dealing with city employees and their complaints.

Councilmember Ortiz encouraged everyone to attend their local neighborhood Fire Station Open House event this week.

Councilmember Blackburn stated that he received traffic count information on various intersections located throughout the city. He requested that the full Council be provided with the information, as well as information on traffic signals, warrants and round-about. He also encouraged everyone to attend the Heartland Park event scheduled for this weekend.

Councilmember Ortiz announced that there would be a Public, Health and Safety Committee meeting held on October 12, 2006 at 4:00 p.m. in the Executive Conference Room.

Councilmember Alcala asked for traffic study information on the N.E. 4th Street and Branner intersection.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:45 p.m.

Iris Walker
City Clerk