

Council Minutes – April 24, 2007

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 24, 2007. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Mayor Buntten presided -1. Absent: Councilmember Alcala -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.

A PRESENTATION on the City of Topeka Fire Department's Burn Permit Process was presented by Greg Bailey, Fire Marshal.

Councilmember Harmon moved to pull items 4A, 4B, 4C, 4D and 4E, Communications recommending appointments to the Topeka/Shawnee County Library Board of Trustees from the consent agenda for separate discussion. The motion seconded by Councilmember Kennedy carried. Councilmember Preisner abstained. (7-0-1)

Councilmember Preisner requested that item 4F, a Communication relating to a Workers' Compensation Settlement Claim by Lisa Pinkley be pulled from the consent agenda for separate discussion.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 7939 introduced by Councilmember Deborah Swank granting Washburn University an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7940 introduced by Councilmember Deborah Swank granting Washburn University an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

MINUTES of the regular meeting of April 17, 2007 were presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors were presented for Star 2 located at 1320 SW 6th Avenue, was presented.

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

A COMMUNICATION recommending the appointment of David DePue to the Topeka/Shawnee County Library District Board of Trustees for a four-year term that would expire on April 30, 2011 was presented.

A COMMUNICATION recommending the appointment of James Rankin to the Topeka/Shawnee County Library District Board of Trustees for a four-year term that would expire on April 30, 2011 was presented.

A COMMUNICATION recommending the appointment of Elizabeth Ross to the Topeka/Shawnee County Library District Board of Trustees for a four-year term that would expire on April 30, 2011 was presented.

A COMMUNICATION recommending the appointment of Daniel Guenther to the Topeka/Shawnee County Library District Board of Trustees for a four-year term that would expire on April 30, 2011 was presented.

A COMMUNICATION recommending the re-appointment of Suzanne Robb to the Topeka/Shawnee County Library District Board of Trustees for a four-year term that would expire on April 30, 2011 was presented.

Councilmember Harmon expressed concern with the lack of diversity and geographical composition of the board appointments.

Councilmember Kennedy stated that she concurred with Councilmember Harmon.

Councilmember Harmon moved to approve item 4A, a Communication recommending the appointment of David Depue to the Topeka/Shawnee County Library District Board of Trustees; 4B, a Communication recommending the appointment of James Rankin to the Topeka/Shawnee County Library District Board of Trustees; 4C, a Communication recommending the appointment of Elizabeth Ross to the Topeka/Shawnee County Library District Board of Trustees; 4D, a Communication recommending the appointment of Daniel Guenther to the Topeka/Shawnee County Library District Board of Trustees; and 4E, a Communication recommending the re-appointment of Suzanne Robb to the Topeka/Shawnee County Library District Board of Trustees. The motion seconded by Councilmember Kennedy carried unanimously. (8-0-0)

A COMMUNICATION authorizing the Workers' Compensation Claim settlement for Lisa Pinkley in the amount of \$22,173.44 was presented.

Councilmember Preisner moved to approve the communication. The motion seconded by Councilmember Harmon carried. Councilmember Preisner abstained. (7-0-1)

AN ORDINANCE introduced by Councilmember Sylvia Ortiz regulating the distribution, acquisition, possession and use of graffiti implements placed on first reading February 13, 2007 was again presented. The ordinance was referred to the Public, Health and Safety Committee from the meeting of February 20, 2007.

Councilmember Ortiz stated that the committee members have not had the opportunity to discuss the ordinance with the new Councilmembers.

Councilmember Ortiz moved to refer the ordinance back to the Public, Health and Safety Committee. The motion seconded by Councilmember Haynes carried. Councilmembers Blackburn and Preisner voted “no.” (6-2-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning streets, sidewalks, and other public places, repealing City of Topeka Code Sections 130-176, 130-177, 130-196 through 130-207, 130-231 through 130-238, 130-261 through 130-264, 130-281 through 130-284, 130-301 through 130-310, and 130-331 through 130-333, amending City of Topeka Code Chapter 130, Article 4 and Sections 130-156 through 130-165, and repealing said original sections placed on first reading April 10, 2007 was again presented.

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

Councilmember Kennedy asked why the City does not currently hold contractors responsible for damage sustained in City right-of-ways.

Brenden Long, City Attorney stated that the City does hold contractors liable, however, this ordinance would give the City an additional administrative tool for recouping the cost of damage.

Mike McGee, Deputy Public Works Director stated that not only does the ordinance give the City additional administrative leverage, it will also help recoup the cost of staff, address safety issues, and help maintain existing City infrastructure.

Councilmember Blackburn expressed concern with the verbiage relating to revoking or refusing to issue permits.

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

Councilmember Swank asked how the regulations would be enforced.

Mike McGee stated that it would be the responsibility of the contractor to inspect the area prior to beginning work.

Councilmember Haynes stated that he would not support the ordinance because in his opinion, there are a considerable amount of changes that need further explanation.

Councilmember Haynes made a substitute motion to refer the ordinance to the Committee of the Whole. The motion was seconded by Councilmember Ortiz.

Dawn Right, Topeka Home Builders Association expressed concern with the verbiage of the ordinance and suggested that they refer the ordinance to committee for review.

The substitute motion to refer the ordinance to the Committee of the Whole carried. Councilmember Preisner voted “no.” (7-1-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., establishing an Americans with Disabilities Act Advisory Council for the City of Topeka, Kansas, amending City of Topeka Code Section 2-181, and specifically repealing said original section placed on first reading April 17, 2007 was again presented.

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

Councilmember Woefel stated that with additional time he believes a joint City-County Americans with Disabilities Act Advisory Council could be created.

Councilmember Woefel moved to defer the ordinance until June 5, 2007. The motion was seconded by Councilmember Preisner.

Kim Dietrich, Topeka Independent Living Center spoke in support of the ordinance and stated that she believes that an ADA Council would bring more ADA accessibility to the city.

The motion to defer the ordinance until June 5, 2007 carried unanimously. (8-0-0)

ORDINANCE NO. 18853 introduced by City Manager, Norton N. Bonaparte, Jr.,

instituting a real estate lien upon certain lots and pieces of ground in Shawnee County, Kansas, to pay the cost for sewage collection and treatment where such payments to the City have not been made due to neglect, failure or refusal to pay, pursuant to K.S.A. 12-631k placed on first reading April 17, 2007 was again presented.

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

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

ORDINANCE NO. 18854 introduced by City Manager Norton N. Bonaparte, Jr., regarding a Contract Franchise Ordinance granted to Universal Telecom, Inc., a telecommunications local exchange service provider providing local exchange service within the City of Topeka, Kansas placed on first reading April 17, 2007 was again presented.

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

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

A PROJECT BUDGET in the amount of \$165,000 and AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30264-00, which provides for improvements to existing Creative Play/Civitan Play shared play area to update conditions and to meet ADA standards, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading April 17, 2007 was

again presented.

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

Councilmember Kennedy stated that she believes the Civitan Play Group would be willing to raise private dollars to help fund the improvements because the play area has provided such a great service to the community.

Brenden Long, City Attorney stated that it is important for the City to remain conscientious of ADA issues and how to correct them.

Councilmember Ortiz asked when they would receive an update on the Parks and Recreation Consolidation Plan Report.

Norton N. Bonaparte, Jr., stated they are in the process of reviewing the report and will make a recommendation in six to eight weeks.

Councilmember Ortiz stated that she would not support the project because she does not believe it is fair for City taxpayers to solely incur the debt of the project when consolidation is being considered. She suggested that the project be deferred until a final decision is made on the consolidation of departments.

Councilmember Blackburn asked what percentage of the funds would be used for ADA upgrades.

Terry Bertels, Interim Parks and Recreation Director state that approximately 80% of the funds would be used for necessary ADA upgrades.

Councilmember Haynes expressed concern with financing the project through general obligation bonds. He also stated that he believes there are other projects that should be considered priority.

Councilmember Kennedy suggested that they charge a fee for using the play area.

Councilmember Preisner clarified that all City debt will be acquired by the Shawnee County if the Parks and Recreation Departments consolidate. He also stated that he believes it is very important to continue to move forward with park improvement projects.

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

Councilmember Blackburn asked if the project budget could be reduced.

Terry Bertels stated that the costs associated with the demolition and landscaping could be reduced.

Councilmember Blackburn moved to defer the project budget and ordinance for one week to allow staff time to find areas where the project budget could be reduced. The motion seconded by Councilmember Kennedy carried. Councilmembers Ortiz and Haynes voted “no.” (6-2-0)

A PROJECT BUDGET in the amount of \$212,000 and ORDINANCE NO. 18855 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30269-00, which provides for new walks throughout the botanical garden area in Old Prairie Town, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading April 17, 2007 was again presented.

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

Councilmember Blackburn asked what percentage of the funds would be used for ADA upgrades.

Terry Bertels, Interim Parks and Recreation Director stated that he would have to further review the project budget to determine the exact percentage.

Councilmember Preisner moved to approve the project budget and adopt the ordinance.

The motion was seconded by Councilmember Ortiz.

Councilmember Kennedy inquired on the possibility of raising the user fee.

Terry Bertels stated that the user fee has already been increased this year.

Councilmember Blackburn stated that he believes the project budget should be reduced to include only the cost of the necessary ADA upgrades.

Councilmember Blackburn moved to defer the project budget and ordinance one week.

The motion was seconded by Councilmember Kennedy.

Terry Bertels stated that the total cost of the necessary ADA upgrades is \$86,000.

Councilmember Blackburn withdrew the motion to defer the project budget and ordinance for one week. The second concurred.

Jim Langford, Budget and Finance Director stated that the project budget must also include \$4,300 to cover the cost of accrued interest on the temporary notes for one year.

Councilmember Blackburn made a substitute motion to reduce the project budget to \$90,300. The motion seconded by Councilmember Kennedy carried. Councilmembers Ortiz and Haynes voted “no.” (6-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Woefel, Swank, Blackburn, Preisner and Harmon -6. Noes: Ortiz and Haynes -2. Absent: Alcala -1.

A PROJECT BUDGET in the amount of \$212,000 and ORDINANCE No. 18856 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30274-00, which provides for restrooms at Gage Park and Oakland Park, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first

reading April 17, 2007 was again presented.

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

Councilmember Preisner moved to approve the project budget and adopt the ordinance.

The motion was seconded by Councilmember Ortiz.

Councilmember Blackburn asked if the project included any ADA upgrades.

Terry Bertels, Interim Parks and Recreation Department stated that the new sidewalks would be ADA accessible.

The motion to approve the project budget and adopt the ordinance carried.

Councilmembers Ortiz and Haynes voted “no.” (6-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Woefel, Swank, Blackburn, Preisner and Harmon -6. Noes: Ortiz and Haynes -2. Absent: Alcala -1.

A PROJECT BUDGET in the amount of \$437,000 and ORDINANCE NO. 18857 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 30276, which provides for resurfacing and maintenance of roadways and parking lots at various parks throughout Topeka, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading April 17, 2007 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 was seconded by Councilmember Preisner.

Terry Bertels, Interim Parks and Recreation Director noted that the project budget does not cover the cost to fix all of the parking lots that need repaired.

Councilmember Blackburn requested that Gwendolyn Brooks Park be placed at the bottom of the list of priorities because it may be converted to commercial real estate.

Terry Bertels noted that the park is already located at the bottom of the list.

The motion to approve the project budget and adopt the ordinance carried.

Councilmembers Kennedy, Ortiz and Haynes voted “no.” (5-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Woefel, Swank, Blackburn, Preisner and Harmon -5. Noes: Kennedy, Ortiz and Haynes -3. Absent: Alcalá -1.

ORDINANCE NO. 18858 introduced by City Manager Norton N. Bonaparte, Jr., authorizing the initiation of condemnation proceedings to acquire property interest for Improvement Project No. 70142-02, which provides for the removal of the medians at the intersection of 25th Street and California and the construction of sidewalk on the west side of California Avenue from 21st Street to 29th Street placed on first reading April 17, 2007 was again presented.

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

Councilmember Woefel asked if there were plans to widen California Avenue between SE 21st Street and SE 29th Street.

Mike Teply, Interim Public Works Director stated that there are no plans at this time.

Councilmember Kennedy 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, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Absent: Alcalá -1.

ORDINANCE NO. 18859 introduced by City Manager Norton N. Bonaparte, Jr., authorizing the initiation of condemnation proceedings to acquire property by eminent domain for City of Topeka Improvement Project No. 14115-00, for a traffic signal removal and installation of stop signs and the creation of a cul-de-sac on Central Avenue at the location of

North Kansas Avenue and North Gordon Avenue and Central Avenue placed on first reading April 17, 2007 was again presented.

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

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

A PROJECT BUDGET in the amount of \$148,000 and AN ORDINANCE introduced by Councilmember John Alcalá, authorizing Improvement Project No. 14103-01, which provides for replacement of existing traffic signal and necessary sidewalk and ramp modifications at SE Fourth Street and SE Branner Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading April 17, 2007 was again presented.

Norton N. Bonaparte, Jr., City Manager requested that the ordinance be deferred for one week because Councilmember Alcalá was absent.

Councilmember Ortiz moved to defer the project budget and ordinance for one week. The motion seconded by Councilmember Haynes carried. Councilmembers Swank and Blackburn voted “no.” (6-2-0)

A RESOLUTION introduced by Councilmember John Alcalá adopting the 2007-2008 Capital Improvement Budget for the City of Topeka, Kansas and rescinding City of Topeka Resolution No. 7909 was presented.

Norton N. Bonaparte, Jr., City Manager requested that the resolution be deferred for one week because it is a companion document to the previous ordinance.

Councilmember Ortiz moved to defer the resolution for one week. The motion seconded by Councilmember Harmon carried. Councilmember Preisner was out of the room. (6-0-0)

ORDINANCE NO. 18860 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 2, 2007, through April 8, 2007, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Ortiz 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, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Absent: Alcalá -1.

ORDINANCE NO. 18861 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 2315 and 2325 NW Clay Street in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District and "I-1" Light Industrial District TO "C-4" Commercial District placed on first reading April 17, 2007 was again presented. (Z07/5)

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

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

Councilmember Preisner 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, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Absent: Alcalá -1.

ORDINANCE NO. 18862 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 1010 SW Polk Street in the City of Topeka, Kansas from “M-3” Multiple Family Dwelling District TO “O&I-2” Office and Institutional District placed on first reading April 17, 2007 was again presented. (Z07/7)

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

Mayor Bunten asked if there were any additional exparte communications besides Councilmembers Kennedy and Preisner. There were none declared.

Councilmember Kennedy 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, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Absent: Alcalá -1.

ORDINANCE NO. 18863 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 1021 SW Tyler Street in the City of Topeka, Kansas from “M-3” Multiple Family Dwelling District TO “O&I-2” Office and Institutional District placed on first reading April 17, 2007 was again presented. (Z07/8)

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

Mayor Bunten asked if there were any exparte communications besides Councilmembers Kennedy, Preisner and Harmon. There were none declared.

Councilmember Kennedy 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, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Absent: Alcalá -1.

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

Norton N. Bonaparte, Jr., City Manager announced that the 2007 Takeover/Makeover project is complete and the brush leftover from the clean up efforts will be picked up as soon as possible.

Councilmember Kennedy asked who authorized GO Topeka to conduct a \$120,000 economic development study on the City of Topeka. She also asked how the study was funded.

Norton N. Bonaparte, Jr., stated that the funding was not provided by the City, and the study was authorized by GO Topeka and the Greater Topeka Chamber of Commerce.

Councilmember Kennedy stated that she believes the City should clarify in a press release that the study was not funded by the City.

Councilmember Preisner explained that the cost of the study falls within the financial parameters of their contract. He also stated that the revenue generated through the Economic Development Sales Tax was used to fund the study.

Councilmember Ortiz asked where to direct people who need trash and debris picked up.

Norton N. Bonaparte, Jr., requested that the individuals in need of trash or brush removal submit their address to the City Manager's office to be added to the pick up schedule.

Councilmember Swank asked if a copy of the study is available for review.

Mayor Bunten stated that he received a copy of the study upon request from the Greater Topeka Chamber of Commerce.

Councilmember Haynes requested that a copy of the study be available for review in the City Council office.

Councilmember Harmon asked for an update on the results of the franchise agreement audit report. He also stated that he believes it is very important for the Council to prioritize Capital Improvement Program projects, and remain informed on the process.

Jim Langford, Budget and Finance Director reported that an audit has been conducted on Cox Communications, and they have entered into negotiations with Southwestern Bell. He also reported that they have not yet entered into an agreement with the electric and gas utility companies.

Norton N. Bonaparte, Jr., suggested that the Council discuss the Capital Improvement Program process in a Committee of the Whole meeting.

Councilmember Haynes requested that a list of all Capital Improvement Program projects be submitted to the Council for review prior to 2008 budget deliberations.

Councilmember Blackburn announced that the 2008 Budget Schedule would be distributed to the Council no later than Monday, April 30, 2007. He noted that the schedule would include a date certain regarding discussion of Capital Improvement Program projects.

Mayor Bunten thanked the volunteers and restaurant owners for their assistance with the 2007 Takeover/Makeover project. He noted that project encompassed ten Neighborhood Improvement Associations.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:17 p.m.

Brenda Younger
City Clerk