

Council Minutes – May 8, 2007

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 8, 2007. 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, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9. Mayor Bunten presided -1.

AFTER THE MEETING was called to order, Pastor Tedd Inman of Highland Park United Methodist Church, gave the invocation.

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

A REPORT on recent area flooding was presented by Howard Giles, Fire Chief.

Councilmember Preisner moved to suspend the Council Rules to add a communication authorizing settlement of litigation between Oxford House, Inc., and the City of Topeka to the agenda. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

Councilmember Preisner moved to reinstate the Council Rules. The motion seconded by Councilmember Blackburn carried unanimously. (9-0-0)

Mayor Bunten noted that the communication would be placed on the consent agenda as item 4E.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION authorizing the City Attorney's office to commence legal action to prevent local telecommunication providers from doing business in the City of Topeka without entering into a franchise agreement with the City pursuant to K.S.A. 12-2001 was presented.

ORDINANCE NO. 18867 introduced by City Manager Norton N. Bonaparte, Jr., regarding a Contract Franchise Ordinance granted to Granite Telecommunications, L.L.C., a

telecommunications local exchange service provider providing local exchange service within the City of Topeka, Kansas placed on first reading May 1, 2007 was again presented.

MINUTES of the regular meeting of April 24, 2007 and May 1, 2007 were presented.

A Dance Hall License application bearing the approval of the Chief of Police and City Inspectors for Our Lady of Guadalupe Church located at 216 NE Branner, was presented.

2007 Open After Mid-Night License Renewal applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>Name</u>	<u>Address</u>
Bob's Carwash	2733 California
Bob's Carwash	3162 SE 6 th Street
Boobie Trap Bar	1417 SW 6 th Street
After Dark Video	2315 NW Topeka Boulevard
Jul's	4117 SW Huntoon
Naughty But Nice	903 N Kansas Avenue
Sinsations	4720 SW Topeka Boulevard
Some Like It Hot	4732 SW Topeka Boulevard
Painkillers	1620 SW 6 th Street
Southwest Bowls	5265 SW 28 th Court
Static Bar	5243 SW 28 th Court

2007 Cereal Malt Beverage License Renewal applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>Name</u>	<u>Address</u>
Fast Lane	512 SW Topeka Boulevard
Our Lady of Guadalupe Church	134 NE Lake Street
Prize Package	1420 E 6 th Street
Wal Mart #5441	2600 NW Rochester Road
Wal Mart #2131	1301 SW 37 th Street
Wal Mart #1802	1501 SW Wanamaker Road

A COMMUNICATION from the Legal Department requesting authority from the City Council to settle the case of Oxford House, Inc., verses the City of Topeka, Kansas under terms and conditions negotiated by the parties, was presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

A 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, May 8, 2007, at 6:00 P.M. 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 Street Improvement Project No. 60525-01, authorized by Resolution No. 7519, adopted and approved September 7, 2004.

ORDINANCE NO. 18868 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 Street Improvement Project No. 60525-01 with pavement, curb and gutter and all other contingencies needed to complete the project as defined and described in Resolution No. 7519, adopted and approved September 7, 2004, placed on first reading May 1, 2007 was again presented.

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

Councilmember Preisner moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

A PROJECT BUDGET in the amount of \$1,337,776 and ORDINANCE NO. 18869 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 13153-00, which provides for the rehabilitation and reconstruction of Fire Station No. 5, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading May 1, 2007 was again presented.

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

Councilmember Ortiz asked if the project budget included the cost to demolish and rebuild the fire station, or demolish and remodel the fire station.

Howard Giles, Fire Chief stated that the project budget included both options. He explained that the architectural engineer would make a recommendation regarding the best option, however, in his opinion the fire station should be rebuilt.

Councilmember Haynes asked how the project would be financed. He also stated that it seems premature to approve a funding source for the project prior to knowing the exact amount needed to repair or rebuild the fire station.

Jim Langford, Budget and Finance Director stated that the City would issue temporary notes to provide funding for the project. He also stated that the project budget would be presented to the Council in a revised form for final approval. He noted that approval of the project budget expresses the City's intent to move forward with the project.

Councilmember Haynes moved to amend the project budget by decreasing the total amount to \$125,000 to cover the costs of the design fee. The motion was seconded by Councilmember Harmon.

Councilmember Blackburn asked if the design costs included structural engineering fees.

Bernie Cosby, City Engineer stated that the project budget included the fees necessary to hire a structural engineer.

City Attorney, Brenden Long stated that the funding must be approved prior to starting the project because City ordinances require that the Council authorize a method of financing prior to moving forward with a project.

The motion to amend the project budget carried. Councilmembers Kennedy and Woefel voted "no." (7-2-0)

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

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

A PROJECT BUDGET in the amount of \$392,000 and ORDINANCE NO. 18870 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Sewer Improvement Project No. 86182-03, which provides for construction of service lines connecting residents to the City's sanitary sewer system and the elimination of private septic tanks, as more specifically described herein, all pursuant to Section 146-236 of the Code of the City of Topeka and K.S.A. 12-631 placed on first reading April 24, 2007 was again presented.

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

Councilmember Alcala moved to amend page 2 of the ordinance by adding, "Construction will only occur with the written consent of the property owner to the terms and conditions of the project, as established by the City." on line 38 after the word "permit." The motion was seconded by Councilmember Ortiz.

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

Councilmember Swank stated that she believes the amendment is too contradictory and would only support the original ordinance.

Councilmember Blackburn stated that he would not support the amendment because he believes it gives people permission to refuse to be connected to the City sewer system.

Councilmember Alcala clarified that the amendment would prevent the City from forcing a person to be connected to the City sewer system.

Councilmember Harmon asked if the amendment should be made to the original ordinance adopted in 1997 mandating the conditions of the septic tank elimination program.

Brenden Long, City Attorney stated that in his opinion, the amendment should be made to the original ordinance. He noted that approval of the project would provide the necessary funding source for people to connect to the City sewer system.

Councilmember Alcala raised a point of order and questioned the legality of the substitute motion.

The Parliamentarian ruled that the substitute motion was out of order.

Councilmember Preisner withdrew the substitute motion to approve the project budget and adopt the ordinance. The second concurred.

The substitute motion to amend the project budget failed. Councilmembers Kennedy, Woelfel, Haynes, Swank, Blackburn and Preisner voted “no.” (3-6-0)

Councilmember Preisner moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Ortiz carried. Councilmembers Alcala, Ortiz, and Haynes voted “no.” (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Woelfel, Swank, Blackburn, Preisner and Harmon -6. Noes: Alcala, Ortiz and Haynes -3.

ORDINANCE NO. 18871 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 16, 2007, through April 22, 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 Preisner carried unanimously. (9-0-0)

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

ORDINANCE NO. 18872 introduced by City Manager Norton N. Bonaparte, Jr., amending the Master PUD Plan of Sherwood Landing, to allow for expansion of the existing Dillon's Grocery Store located at 6829 SW 29th Street in the City of Topeka, Kansas placed on first reading May 1, 2007 was again presented. (Z96/32E)

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

Councilmember Blackburn asked if litigation was still pending regarding annexation of the area.

Brenden Long, City Attorney stated that litigation is pending, however, the area is considered part of the city.

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

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

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

ORDINANCE NO. 18873 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 2111 SE 3rd Street and the triangular shaped parcel directly to the south in the

City of Topeka, Kansas from "M-1" Two Family Dwelling District TO "I-1" Light Industrial District placed on first reading May 1, 2007 was again presented. (Z07/6)

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

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

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 18874 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 1809 SW Gage Boulevard in the City of Topeka, Kansas from "O&I-2 Office and Institutional District TO "C-3 Commercial District placed on first reading May 1, 2007 was again presented. (Z07/9)

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

Mayor Bunten 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 unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 18875 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 south side of SW 6th Avenue between SW Governors Lake Road and SW Security Benefit Place the centerline of which is approximately 1,200 feet west of I-70 Highway in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District TO "O&I-1" Office and Institutional District placed on first reading May 1, 2007 was again presented. (Z07/11)

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

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

Councilmember Harmon moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woefel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the project budget and authorizing as amended Improvement Project No. 29091-05, which provides for the replacement of the aeration basins and secondary clarifiers at the Oakland Wastewater Treatment Plant (WWTP) along with other necessary improvements as more specifically described pursuant to City of Topeka Code A12-1 and pursuant to K.S.A. 10-101 and 10-1201, *et seq.*, and all amendments thereto and repealing Sections 1, 2, 3 and 4 of City of Topeka Ordinance No. 18509 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 the improvement of Street Improvement Project No. 60611-02

with pavement, curb and gutter and all other contingencies needed to complete the project as defined and described in Resolution No. 7611, adopted and approved April 27, 2005 was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager reported that the City of Topeka provided four police officers and eight firefighters to assist with the rescue efforts in the City of Greensburg. He also thanked the Red Cross and Salvation Army for providing the City of Topeka neighborhoods assistance during the flooding. He asked citizens to drag flood debris to the end of their driveway for pickup and to call 368-3111 if they have questions relating to the disposal of flood debris. He announced that the City will repair the sidewalks, and install a pedestrian flasher at the SE 4th and Branner Streets Intersection beginning in September. He also announced that the Zoo will be hosting the “Mother’s Day” event on May 13, 2007.

Mike Teply, Interim Public Works Director clarified that the City will pick up primarily carpeting and furniture, and hazardous materials should be separated from other debris. He noted that the residents located in the Shunga Creek area would be assisted first.

Councilmember Kennedy thanked the community for expressing compassion in time of need. She also cautioned citizens to be aware of scams relating to unlicensed contractors offering clean-up services. She noted that citizens should call the Public Works Department for contractor license verification.

Councilmember Alcalá encouraged citizens to call the City at 368-3111 to obtain instructions on the correct procedure for clean up of sewage and other debris. He also advised flood victims to contact the City Clerk’s office if they need to obtain a claim form.

Councilmember Swank commended everyone who assisted with the Stout Elementary School clean up. She noted that the school would reopen on Wednesday, May 9th.

Councilmember Blackburn announced that there would be an Economic and Community Development Committee meeting held on May 10, 2007 at 12:00 noon in the Executive Conference Room.

Councilmember Harmon thanked City employees and citizens for assisting with flood clean up and emergency response.

Mayor Bunten commended staff and citizens for assisting with flood damage and dealing with crisis in an organized manner.

Ellen Ross and Pat DeLapp appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:30 p.m.

Brenda Younger
City Clerk