

## **Council Minutes – July 24, 2007**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, July 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, Alcalá, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9. Mayor Bunten presided -1.

AFTER THE MEETING was called to order, Andrew Grosso, Grace Episcopal Cathedral gave the invocation.

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

A PRESENTATION on the Topeka–Shawnee County Regional Information Technology Systems (ITS) Architecture was presented by Mike Floberg, Kansas Department of Transportation.

Randy Speaker, Deputy City Manager of Operations led the discussion on the Sumner Elementary School renovation proposals. He stated that staff recommended the Pioneer Group, Inc., because they have the ability to finance the renovation of the building in a way that fits the character of the neighborhood, preserves the historic nature of the building, and financially able to maintain the building.

Councilmember Blackburn expressed concern with keeping the historic preservation of the building intact. He also inquired on the bid approval process of the project, and if the Council would be allowed an opportunity to review the conditions of the contract before the project begins.

Randy Speaker stated that the Pioneer Group, Inc., has successfully renovated the Curtis School Building in the same manner, by utilizing Low Income Housing Tax Credits while keeping the historic character of the building intact.

Brenden Long, City Attorney stated that the normal bidding process for this type of project generally entails two main factors; the best use of the property, and the amount of money offered for the property. He also stated that the Council would have the opportunity to review the contract prior to approval.

Councilmember Alcalá stated that he does not support the Pioneer Group, Inc., proposal. He explained that he would prefer that Community First be given the opportunity to renovate the building back to its original use.

Randy Speaker stated that in his opinion, the Pioneer Group, Inc., has a concrete financial plan and a history of successfully completing a similar project. He also noted that a conditional timeline of February 4, 2008 has been placed on the proposal.

Councilmember Kennedy expressed concern with the damage that has been sustained to the building due to neglect over the past several years. She asked who is responsible for maintaining the utilities on the building. She also stated that she does not want the building to remain vacant.

Randy Speaker stated that the City is responsible for maintaining the building's utilities. He also stated that because the building is vacant, and deteriorating at a fast rate, he will expedite the proposal as soon as possible.

Norton N. Bonaparte, Jr., stated that staff would prepare the necessary documents to begin the process.

A PRESENTATION on the Consolidated Rural Water District No. 4 (CRWD No. 4) and Emerald Renewable Energy, L.L.C., (Emerald) was presented by Mike Teply, Interim Public Works Director. He stated that the current contract between the City of Topeka and CRWD No. 4 requires the City to give written consent to the District to allow water service to Emerald

because the proposed location of the facility is in an area that is exclusively reserved for service by the City. He explained that there were three major conditions that the District would not agree to, but were willing to negotiate:

1. Extending the term of the contract.
2. Increasing the District's minimum water consumption.
3. Revising the contract annexation language.

Councilmember Preisner asked who tested the level of sodium in the City's water, and who determined that the level of sodium in the City's water was too high for the ethanol plant to use.

Mike Teply stated that he does not know who conducted the water testing.

Norton N. Bonaparte, Jr., City Manager clarified that the City's water is safe to drink.

Don Rankin, Water Superintendent stated that it is the opinion of the Water Department that the City of Topeka's water contains higher levels of sodium than other water sources because of the salt beds in surrounding rivers.

Councilmember Blackburn expressed concern with the City approving the request. He stated that if the communication is approved, they are running the risk of creating a potential competitor in the future that could cause the City to lose water customers, and revenue.

Mike Teply stated that there are always risks involved with this type of agreement. He also stated the City's only safety net is that the contract with the District does not expire for thirteen years.

Councilmember Harmon inquired on the pros and cons of granting the District permission to serve Emerald.

Mike Teply stated that in his opinion, approval would promote a good working relationship with the District and expand the City's customer base, however, it could also cause the City to lose potential revenue in the future.

Councilmember Woelfel asked if there is anything preventing the District from developing the new facility now, and if the facility would exclusively serve the ethanol plant.

Mike Teply stated that if the District has sufficient funding there would be nothing to prevent them from building the new facility at this time.

Councilmember Preisner asked where the water discharge from the ethanol plan would be released.

Mike Teply stated that it was his understanding that the discharge would not be released into the City's waste water system.

Councilmember Kennedy requested that item 4B, a communication relating to a sewer backup claim for property located at 2221 SW Belle Avenue; and items 4C and 4D, communications relating to re-appointments to the Topeka Board of Zoning Appeals be pulled from the consent agenda for separate discussion.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION authorizing a Workers' Compensation Settlement in the amount of \$16,974.43 was presented.

RESOLUTION NO. 7978 introduced by Councilmember John Alcala granting Jessica Tarwater and Lisa Bolton an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

Minutes of the regular meeting of July 17, 2007 were presented.

An Open After Midnight License application bearing the approval of the Chief of Police and City Inspectors for Mac Daddy's Sports Pub and Grill located at 5630 SW 29<sup>th</sup> Street, was presented.

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

A COMMUNICATION recommending the denial of a sewer backup claim for property located at 2221 SW Belle Avenue, City of Topeka, Kansas was presented.

Councilmember Kennedy stated that she believes the owner of the property acted responsibly.

Councilmember Kennedy moved to approve the communication in the amount of \$3,500. The motion was seconded by Councilmember Woelfel.

Councilmember Alcalá suggested that they approve \$2,500 based on the average payment of sewer claim settlements for clean up of property by the City.

Councilmember Alcalá made a substitute motion to approve the communication in the amount \$2,500. The motion was seconded by Councilmember Kennedy.

Councilmember Haynes asked if the City was negligent.

Councilmember Alcalá asked if the blockage of the sewer lines has been investigated.

Brenden Long, City Attorney stated that in his opinion, the City acted reasonably, promptly, and responsively by scheduling routine preventive maintenance every six months, and extracting grease samples to investigate who is responsible for the blockage of the sewer lines.

The substitute motion to approve the communication in the amount of \$2,500 failed. Councilmembers Woelfel, Haynes, Blackburn, Preisner and Harmon voted "no." (4-5-0)

The motion to approve the communication in the amount of \$3,500 failed.

Councilmembers Woelfel, Haynes, Blackburn, Preisner and Harmon voted “no.” (4-5-0)

A COMMUNICATION recommending the re-appointment of Tim Carkhuff to the Topeka Board of Zoning Appeals for a term that would expire on July 31, 2010.

Councilmember Kennedy referenced City of Topeka Charter Ordinance No. 94, Article 5, Section 24, and asked for clarification on the process in which individuals are nominated to committee boards

Brenden Long, City Attorney stated that individuals must be nominated by a Councilmember.

Councilmember Alcala moved to nominate Tim Carkhuff to the Topeka Board of Zoning Appeals and approve the communication. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

A COMMUNICATION recommending the re-appointment of Mike Morse to the Topeka Board of Zoning Appeals for a term that would expire on July 31, 2010.

Councilmember Alcala moved to nominate Mike Morse to the Topeka Board of Zoning Appeals and approve the communication. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

Councilmember Alcala moved to suspend the Council Rules to add a communication granting Consolidated Rural Water District No. 4 (CRWD No. 4) permission to serve Emerald Renewable Energy, L.L.C., to the agenda. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

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

Mayor Bunten noted that the communication would be placed on the agenda under New Business as item 5A, and the remaining items listed under New Business would be renumbered accordingly.

A COMMUNICATION approving the request of Consolidated Rural Water District No. 4 (CRWD No. 4) to serve Emerald Renewable Energy, L.L.C., (Emerald) at a location within the City's Reserve Service Area more specifically at a location north of U.S. Highway 24 and south of NW 35th Street approximately between NW Landon Road and NW Huxman Road, pursuant to Section 10 of City of Topeka Contract No. 30270, was presented.

Councilmember Alcalá asked how the project would affect the surrounding area.

Doug Kinsinger, Greater Topeka Chamber of Commerce stated that they anticipate that the proposed development will create 300 new jobs. He noted that the completion of a \$200 million industrial park would attract other companies to the area. He also stated that the project is time sensitive, and encouraged the Council to approve the proposal because Cargill is ready to move forward with the project.

Mick Mines, Emerald Renewable Energy, L.L.C., stated that following the testing of the City water supply it was discovered that high volumes of sodium content exist, which is not sufficient for the production of ethanol.

Councilmember Preisner questioned the City's financial gain, and the ecological effects the partnership with Emerald would have on surrounding areas. He also expressed concern with how the city's long term water supply would be affected.

Mick Mines stated that the 300-acre facility would be fully developed at Cargill's expense.

Councilmember Swank asked if the water run-off contained contaminants.

Mick Mines stated that the water run-off from the plant would not contain any chemicals. He also stated that the run-off would be recycled back into the community.

Councilmember Blackburn asked how the initial cost of the water would be affected by the cost of the treatment process.

Mick Mines stated it would cost approximately \$1 million a year to treat the water, which doubles the initial cost of the water to the facility.

Councilmember Swank asked if the City could continue to negotiate and resolve the issues with Emerald if the communication is approved.

Brenden Long, City Attorney stated that approval of the communication would not jeopardize future contract negotiations.

Norton N. Bonaparte, Jr., noted that the City would continue to work with the District to resolve their issues if the communication is approved.

Councilmember Blackburn expressed concern that other new companies located within the industrial park will demand the use of the District's water supply.

Councilmember Woelfel stated that he believes there are no issues that would adversely affect the city, and the industrial development is an asset to the community.

Councilmember Alcala moved to approve the communication. The motion seconded by Councilmember Ortiz carried. Councilmembers Kennedy, Blackburn, Preisner and Harmon voted "no." (5-4-0)

A COMMUNICATION from City Manager Norton N. Bonaparte, Jr., authorizing the publication of the Notice of Public Hearing for the purpose of hearing and answering objections of taxpayers to the proposed amendments to the 2007 Operating Budget on August 7, 2007 was presented.



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

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

A COMMUNICATION from City Manager Norton N. Bonaparte, Jr., authorizing the publication of the Notice of Public Hearing for the purpose of hearing and answering objections to taxpayers to the 2008 Operating Budget on August 7, 2007 was presented.

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

Jim Langford, Budget and Finance Director stated that the published budget would set upper limits on the amount of property tax to be levied, and expenditures by fund. He also stated that after the budget limit is published, it could not be increased.

Councilmember Haynes stated that he would not support a mill levy increase.

Councilmember Alcalá stated that he concurs with Councilmember Haynes.

Councilmember Preisner moved to approve the communication. The motion seconded by Councilmember Harmon failed. Councilmembers Kennedy, Alcalá, Ortiz, Haynes, Swank, and Blackburn voted “no.” (3-6-0)

Councilmember Kennedy moved to approve a 1.0 mill levy increase. The motion died due to a lack of second.

Councilmember Preisner moved to approve a 3.981 mill levy increase. The motion seconded by Councilmember Woelfel failed. Councilmembers Kennedy, Alcalá, Ortiz, Haynes, Swank, and Blackburn voted “no.” (3-6-0)

Councilmember Preisner moved to approve a 3.0 mill levy increase. The motion seconded by Councilmember Harmon failed. Councilmembers Kennedy, Alcalá, Ortiz, Haynes, Swank, and Blackburn voted “no.” (3-6-0)

Councilmember Preisner moved to approve a 2.0 mill levy increase. The motion seconded by Councilmember Harmon failed. Councilmembers Kennedy, Alcalá, Ortiz, Woelfel, Haynes, Swank and Blackburn voted “no.” (2-7-0)

Councilmember Swank moved to approve a 5.0 mill levy increase. The motion seconded by Councilmember Preisner failed. Councilmembers Kennedy, Alcalá, Ortiz, Haynes, Blackburn and Harmon voted “no.” (3-6-0)

Councilmember Preisner moved to approve a zero mill levy increase. The motion was seconded by Councilmember Haynes.

Norton N. Bonaparte, Jr., City Manager noted that at least a 1.0 mill levy increase must be approved to cover the debt service.

Councilmember Preisner withdrew the motion to approve a zero mill levy increase. The second concurred.

Councilmember Swank moved to approve a 3.8 mill levy increase. The motion seconded by Councilmember Preisner failed. Councilmembers Kennedy, Alcalá, Ortiz, Haynes, and Blackburn voted “no.” (4-5-0)

Several Councilmembers expressed concern with publishing an operating budget that reflected a mill levy increase.

Brenden Long, City Attorney stated that the publication of the operating budget only places a limitation on a mill levy increase for budget deliberation purposes, it does not bound the Council to adopt a budget with a mill levy increase.

Councilmember Blackburn moved to approve a 3.2 mill levy increase. The motion was seconded by Councilmember Haynes.

Mayor Bunten stated that he believes a 3.2 mill levy increase places too many restrictions on the budget process.

Councilmember Blackburn withdrew the motion to approve a 3.2 mill levy increase. The second concurred.

Councilmember Swank moved to approve a 3.4 mill levy increase. The motion seconded by Councilmember Harmon carried. Councilmembers Kennedy, Alcalá, Ortiz, and Haynes voted "no." (5-4-0)

ORDINANCE NO. 18937 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of July 2, 2007, through July 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 Kennedy carried unanimously. (9-0-0)

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

ORDINANCE NO. 18938 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 1412 SW 13<sup>th</sup> Street from "M-1" Two-Family Dwelling District TO "PUD" Planned Unit Development District ("M-2" and "C-2" use groups) placed on first reading July 17, 2007 was again presented. (*PUD06/IA*)

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

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

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Woelfel carried. Councilmember Alcalá voted “no.” (8-1-0)

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

Councilmember Swank moved to override the Mayor’s veto of the resolution authorizing the purchase of a new Police Department helicopter. The motion was seconded by Councilmember Preisner.

Councilmember Blackburn gave a brief overview of the financial implications and crime statistics relating to the purchase of a new helicopter. He stated that he believes it is the responsibility of the Council to keep the public safe by purchasing an additional helicopter.

Councilmember Haynes stated that he believes it is not necessary to override the veto at this time because the issue can be considered at a later date during budget deliberations.

Councilmember Woelfel stated that he would support the motion to override the veto because he believes it will not have an affect on the budget, and an additional helicopter would benefit the community.

Councilmember Alcalá stated that he would not support the motion to override the veto because he believes it is premature to make a decision at this time due to budget constraints.

Councilmember Ortiz stated that she has received numerous telephone calls from constituents expressing opposition to overriding the veto. She also stated that she contacted the Kansas State Highway Patrol regarding the use of their helicopter, and they assured her that the

majority of the time their helicopters would be available for use. She questioned the need for a new Police Department helicopter at this time.

Councilmember Preisner stated that he believes the Topeka Police Department needs the best equipment possible to do their job, and remain safe. He also stated that he believes having an additional helicopter is necessary to keep the community safe.

Councilmember Harmon stated that the only reason he would support to sustain the veto is because he believes the decision to purchase a new helicopter should be made during budget deliberations.

Councilmember Kennedy stated that she would support the motion to override the veto because she believes that an additional helicopter is necessary for the city to remain safe.

Mayor Bunten stated that he believes the helicopter issue has become clouded, and does not believe that the Police Department needs to purchase a second new helicopter during severe budget constraints. He also stated that the Switzer only needs minor repairs and is in working condition.

Councilmember Alcala raised a point of order regarding public comment. He stated that there are individuals present who would like to speak to the matter.

Mayor Bunten ruled that no public comment shall be allowed.

Brenden Long, City Attorney stated that he would recommend that no public comment be allowed. He explained that the motion to override the Mayor's veto was a procedural motion, not an actual item added to the agenda which allows for public comment.

Councilmember Kennedy challenged the ruling of the chair.

Mayor Bunten asked the Council to vote if the ruling of the chair shall be upheld.

The motion to uphold the ruling of the chair failed. Councilmembers Kennedy, Alcala, Ortiz, Woelfel and Harmon voted “no.” (4-5-0)

Larry Cobler, area resident spoke in support of purchasing a new helicopter for the Police Department.

Gary Herman, Deputy Police Chief gave a brief overview of the cost to maintain the Switzer helicopter, as well as, the Robinson-44 helicopter for the next five years. He stated that it would cost the City \$904,231 to maintain the Switzer helicopter, and \$139,000 for the Robison-44 helicopter.

Larry Bruning, area resident spoke in opposition of overriding the veto. He stated that in his opinion, the Police Department should sell the Switzer due to budget constraints. He also stated that he believes Topeka does not have the population or business growth to support an additional new helicopter.

Brenden Long noted that it would take six affirmative votes by the Council to override the veto.

The motion to override the Mayor’s veto of the resolution authorizing the purchase of a new Police Department helicopter failed. Councilmembers Alcala, Ortiz, Haynes and Harmon voted “no.” (5-4-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located approximately 225-feet north of SW 45<sup>th</sup> Street lying east and west of SW Misty Harbor Drive extended, within unincorporated Shawnee County, Kansas, and contiguous to the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A07/3)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a 45-foot wide strip of public street right-of-way located along the south side of NW 25th Street and east of NW Clay Street, City of Topeka, Shawnee County, Kansas was presented for first reading. (V07S/4)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a 13-foot wide access and utility easement located at the southeast corner of SE 10th Avenue and SE Wittenberg Road, City of Topeka, Shawnee County, Kansas was presented for first reading. (V07E/9)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., regarding a Contract Franchise Ordinance granted to McLeodUSA Telecommunications Services, Inc., a telecommunications local exchange service provider providing local exchange service within the City of Topeka, Kansas was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced upcoming community events. He also announced that the Topeka Police Department would be administering the written and physical exam to become a police officer on Friday, August 3, 2007. He noted that the registration deadline is August 1, 2007.

Councilmember Kennedy announced that the Kids Fishing Derby would be held on Saturday, August 4, 2007 at the Central Park Fishing Pond located at 1534 SW Clay. She noted that the event is free to kids ages 14 and under, and fishing poles would be provided if needed. She also commended the Council for their time and dedication in preparing the 2008 Operating Budget.

Councilmember Blackburn congratulated the Kansas Coyotes for winning the American Professional Football League championship.

Councilmember Harmon stated that he believes the Council should consider the Police Department's helicopter program to be an important part of the 2008 budgetary process.

Mayor Buntin announced that there would be a meeting held on Thursday, July 26, 2007 at 5:30 p.m. in the Executive Conference Room to discuss his 2008 Operating Budget proposals.

Sandra Lassiter, Aaron Edwards, Deborah Edwards, Betty Horton, Larry Cobler, Cindi Oneal, Shawn Leisinger, and Bishop Ronald Lassiter appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:31 p.m.

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Brenda Younger  
City Clerk