

Council Minutes – January 15, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 15, 2008. 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, Councilmember Ortiz gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

Minutes of the regular meeting of January 8, 2008 were presented.

A 2008 Dance Hall License renewal application bearing the approval of the Chief of Police and City Inspectors for The Den located at 1116 NW Lower Silver Lake Road, was presented.

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning driving under the influence of alcohol or drugs, amending Standard Traffic Ordinance Section 30 and repealing the original Section placed on first reading January 8, 2008 was again presented.

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

Councilmember Haynes asked if they anticipate an increase in the operational costs of the Municipal Court Department.

Norton N. Bonaparte, Jr., City Manager stated that the estimated increase in cost would be \$50,000 a year.

Councilmember Harmon asked the City Attorney how many cases the District Attorney's office has chosen not to prosecute.

Brenden Long, City Attorney stated that he does not know the exact number of DUI cases that are not prosecuted by the District Attorney's office.

Councilmember Preisner stated that he does not support the ordinance because he believes additional tax money would be spent on cases the District Attorney's office should be prosecuting.

Councilmember Alcalá asked for clarification of the intent of the ordinance.

Norton N. Bonaparte, Jr., stated that the ordinance would allow the City to have jurisdiction to prosecute cases the District Attorney's office chooses not to prosecute.

Councilmember Haynes asked what reason the District Attorney's office would have not to prosecute certain DUI cases. He also asked if there would be any additional staff needed to prosecute the DUI cases.

Brenden Long stated that the District Attorney's office reviews their case load and determines which DUI cases to pursue, and which cases they believe should be prosecuted by the City of Topeka Municipal Court. He noted that no additional staff would be needed.

Mayor Bunten asked what the expected costs would be to the City.

Brenden Long stated that expected costs would include court-appointed fees and jail costs.

Councilmember Preisner asked if City administration supports the jurisdiction change.

Norton N. Bonaparte, Jr., stated that City administration supports the ordinance.

Councilmember Alcalá stated that he would not support the ordinance because the exact number of DUI cases not prosecuted by the District Attorney's office has not been determined.

Brenden Long stated that the Police Department reported that approximately 35 to 50 DUI arrests are made a year.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Harmon failed. Councilmembers Kennedy, Alcala, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon voted “no.” (1-8-0)

ORDINANCE NO. 19018 introduced by Councilmember Brett Blackburn, amending City of Topeka Code Section 50-26 concerning court costs and fees, and specifically repealing said original section placed on first reading January 8, 2008 was again presented.

Councilmember Blackburn stated that the fee increase would be paid to the Police Department Equipment fund and could potentially assist with the new helicopter lease purchase payments.

Councilmember Haynes asked if the ordinance specifies that the funds would be used for the new helicopter lease purchase payments.

Councilmember Blackburn stated that the ordinance authorizes the increase in fees to be used for any Police Department equipment that may be needed.

Councilmember Haynes asked if the in-car cameras needed for the police cars could be funded from the increase in fees.

Norton N. Bonaparte, Jr., City Manager stated that the Council has the authority to stipulate what equipment would be purchased with the additional funding.

Councilmember Alcala stated that he believes the current court fees are too high and an increase could create more arrest warrants. He asked the City Attorney what the law states regarding the use of Police Department Equipment funds.

Brenden Long, City Attorney stated that the Council has the authority to approve the equipment purchased with the Police Department Equipment funds.

Councilmember Blackburn noted that the Municipal Court administration did not experience an increase in uncollected debt from the initial raise of court cost fees.

Steve Ebberts, Municipal Court Judge stated that there are too many factors to consider when determining if a \$5.00 increase in court fees would have an effect on the increase of uncollected debt by the City.

Councilmember Blackburn moved to adopt the ordinance. The motion was seconded by Councilmember Woelfel.

Brenden Long clarified that when specific expenditures are proposed, the City Manager would present an appropriation ordinance to the City Council authorizing a specific amount for specific equipment, which would require the Council's approval to use the funds.

Mayor Bunten expressed concern with increasing court cost fees and using the additional funding to assist with the helicopter lease purchase payments. He stated that he believes the Police Department Equipment fund is not necessary because the additional funds generated could be placed in the general fund and used to purchase a new Police Department helicopter if deemed by the Council.

The motion to adopt the ordinance carried. Councilmembers Alcalá, Ortiz, Haynes and Harmon voted "no." (5-4-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Woelfel, Swank, Blackburn and Preisner -5. Noes: Alcalá, Ortiz, Haynes and Harmon -4.

ORDINANCE NO. 19019 introduced by City Manager Norton N. Bonaparte, Jr., relating to the Capital City Downtown Business Improvement District, establishing a service fee levy for

2008, amending City of Topeka Code Section 42-38 and specifically repealing said original section pursuant to K.S.A. 12-1781, et seq., placed on first reading January 8, 2008 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that line 24 of the ordinance needs to be corrected to reflect \$0.0525 as the new service fee levy.

Susan Mahoney, Downtown Topeka Inc., appeared to answer questions.

Councilmember Harmon moved to amend line 24 of the ordinance to reflect \$0.0525 as the new service fee levy. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

Councilmember Preisner moved to adopt the ordinance as amended. 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, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

AN ORDINANCE introduced by Councilmember Richard Harmon amending City of Topeka Code Section 2-29 concerning the adding of items to City Council agendas and specifically repealing said original section placed on first reading January 8, 2008 was again presented.

Councilmember Harmon stated that he disagrees with the practice of submitting an item to the agenda at a Council meeting. He explained that he believes the public should have an opportunity to comment on items presented to the Council, and Councilmembers need sufficient amount of time to become informed on an issue before it is presented and acted upon at a Council meeting.

Councilmember Haynes moved to amend line 23 of the ordinance by deleting the words “thirty (30) hours” and inserting the words “five days”. The motion was seconded by Councilmember Ortiz.

Councilmember Kennedy expressed concern with the time constraint proposed by Councilmember Haynes. She stated that resolutions granting noise exceptions and Open After Midnight License applications have been submitted late from time to time.

Brenden Long, City Attorney stated that resolutions granting noise exceptions and license applications would not be allowed to be added to a Council agenda at a Council meeting because the documents would not be considered an emergency ordinance. He also stated that in his opinion, the ordinance does not exhibit a good definition of emergency ordinance; therefore, it would be at the discretion of the Council to take action on items submitted at a Council meeting.

Councilmember Blackburn read City of Topeka Code Section A2-30(e) and K.S.A. 12-3001 concerning the procedure of submitting an ordinance to the Council.

Councilmember Preisner distributed a proposed amendment to the ordinance. He stated that the amendment would delete the word “majority” and replace it with the word “unanimous” on line 18; and delete lines 20 through 26 of the ordinance in their entirety.

Councilmember Preisner moved to amend the ordinance as distributed and adopt the ordinance as amended. The motion died due to a lack of a second.

Councilmember Blackburn and Councilmember Swank stated that they would not support the ordinance because they believe the Council has different opinions on the definition of an emergency ordinance.

The motion to amend line 23 of the ordinance by deleting the words “thirty (30) hours” and inserting the words “five days” failed. Councilmembers Kennedy, Woelfel, Swank, Blackburn and Preisner voted “no.” (4-5-0)

Councilmember Alcalá moved to approve the amendment to the ordinance as distributed by Councilmember Preisner and adopt the ordinance as amended. The motion was seconded by Councilmember Kennedy.

Councilmember Alcalá asked if Councilmember Preisner’s amendment required that all Councilmembers be present at the meeting in order to add an item to the agenda.

Brenden Long stated that Councilmember Preisner’s amendment would require that all nine Councilmembers be present at a Council meeting to add an item to the agenda.

Councilmember Kennedy made a substitute motion to amend line 19 of Councilmember Preisner’s amendment by deleting the word “council” and inserting the words, “Councilmembers present at the Council meeting.” The motion seconded by Councilmember Preisner carried. Councilmembers Haynes and Swank voted “no.” (7-2-0)

Councilmember Alcalá moved to adopt the ordinance as amended. The motion seconded by Councilmember Preisner failed. Councilmembers Kennedy, Woelfel, Haynes, Swank, Blackburn and Harmon voted “no.” (3-6-0)

ORDINANCE NO. 19020 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, and located at the northwest corner of SW Wanamaker Road and SW 53rd Street within unincorporated Shawnee County, Kansas, and contiguous with the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading January 8, 2008 was again presented. (A07/7)

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

Councilmember Kennedy moved to adopt the ordinance. The motion seconded by Councilmember Woelfel 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.

CONTRACT NO. 38031 authorizing a labor agreement between the City of Topeka and the Water Pollution Control Division Local Union was presented.

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

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

ORDINANCE NO. 19021 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of December 24, 2007, through December 30, 2007, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Kennedy moved to adopt the ordinance. The motion seconded by Councilmember Preisner 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.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 2425 SE California Avenue in the City of Topeka, Kansas from “R-1” Single-Family Dwelling

District TO “C-2” Commercial District placed on first reading November 13, 2007 was again presented. The ordinance was remanded back to the Planning Commission from the meeting of November 20, 2007. (Z07/20)

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

Councilmember Blackburn moved to adopt the Planning Commission’s recommendations. The motion was seconded by Councilmember Kennedy.

Councilmember Harmon asked if the property owner requested a Planned Unit Development (PUD) zoning designation.

David Thurbon, Planning Department Director stated that the applicant has not requested to zone the property as a PUD.

Councilmember Alcala asked if the constituents of District No. 4 are in favor of the zoning proposal.

Councilmember Woelfel stated that he views the zoning proposal as an opportunity to generate business and contribute to the commercial growth of the area.

Councilmember Blackburn asked if the applicant did not prefer a PUD zoning designation because of the costs and limited flexibility associated with it.

David Thurbon stated that the costs to apply for PUD zoning designation are slightly higher than other zoning districts.

Mayor Bunten asked if there were any exparte communications besides Councilmembers Kennedy, Alcala, Ortiz, Woelfel, Haynes, Swank, Blackburn and Harmon. There were none declared.

Brenden Long, City Attorney stated that approval would require at least seven affirmative votes by the Council to override the protest petitions and approve the zoning change.

The motion to adopt the Planning Commission's recommendations failed.

Councilmembers Alcalá, Ortiz, Haynes and Harmon voted "no." (5-4-0)

ORDINANCE NO. 19022 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 the southwest corner of the intersection of SW Wanamaker Road and SW 30th Terrace from "O&I-2" Office and Institutional District TO "C-2" Commercial District placed on first reading November 13, 2007 was again presented. The ordinance was remanded back to the Planning Commission at the meeting of November 20, 2007. (Z07/22)

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

Councilmember Blackburn moved to adopt the ordinance. The motion was seconded by Councilmember Kennedy.

Councilmember Blackburn stated that he would support the proposal because he would like to see the land developed.

Councilmember Haynes asked if any school districts oppose the zoning proposal. He also asked if the applicant would consider PUD zoning.

David Thurbon stated that the applicant could apply for PUD zoning designation. He also stated that no school districts will be affected by the zoning .

Councilmember Preisner asked if the flood plane located south of the property is located in city limits.

David Thurbon stated that the flood plane is located outside city limits.

Exparte communications were declared by all Councilmembers.

The motion to adopt the ordinance carried. Councilmembers Alcalá, Ortiz, Haynes and Harmon voted “no.” (5-4-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Woelfel, Swank, Blackburn and Preisner -5. Noes: Alcalá, Ortiz, Haynes and Harmon -4.

RESOLUTION NO. 8030 introduced by City Manager Norton N. Bonaparte, Jr., in accordance with Section 48-23a.03(2)(L) of the Code of the City of Topeka, approving a Conditional Use Permit to allow for motor vehicle sales on property currently zoned “X-1” Mixed Use District and located at 2900 SE 6th Avenue in the City of Topeka, Kansas was presented. (CU07/7)

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

Councilmember Kennedy asked for an explanation regarding the Planning Department’s recommendations for the zoning proposal.

David Thurbon stated that the Planning Department recommended this type of zoning because they believe a car lot is a good fit for the area; and the proposed site would be well maintained.

Councilmember Ortiz stated that the East End, East Topeka North, and East Topeka South Neighborhood Improvement Associations are opposed to the zoning proposal.

Councilmember Woelfel stated that he supports the zoning conditions stipulated by the Planning Department.

Councilmember Ortiz moved to defer the ordinance for one week. The motion seconded by Councilmember Alcalá failed. Councilmembers Kennedy, Woelfel, Swank, Blackburn and Preisner voted “no.” (4-5-0)

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

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Blackburn carried. Councilmembers Alcala, Ortiz and Harmon voted “no.” (6-3-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., repealing City of Topeka Code Sections 106-53, 106-57 and 106-58 concerning police management promotion procedure was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made part of the Zoning Ordinance by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property commonly known as Misty Harbor Estates No. 3, located north of SW 45th Street and either side of SW Misty Harbor Avenue within the City of Topeka, Shawnee County, Kansas, from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District was presented for first reading. (Z07/27)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made part of the Zoning Ordinance by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property commonly known as Lauren's Bay Villas, Lauren's Bay Villas No. 2 and Lauren's Bay Estates, located about the west side of SW Wanamaker Road and the south side of SW 42nd Lane within the City of Topeka, Shawnee County, Kansas, from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District was presented for first reading. (Z07/28)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 4300 SW Drury Lane from “M-1” Two Family Dwelling District with a Special Use Permit for a Non-Profit Agency Headquarters TO “O&I-1” Office and Institutional District was presented for first reading. (Z07/29)

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

Norton N. Bonaparte, Jr., City Manager announced upcoming community events; the Mysteries and Legends December Contest winner; and Code Enforcement Open House events. He stated that the traffic signal heads were removed at the intersection of SE Seward and SE Chandler Streets; however, the poles and arms were not removed at that time due to the proximity of power lines. He stated that the remaining traffic signal equipment would be removed in approximately ten days.

Councilmember Alcala expressed concern with the removal of traffic lights at the intersection of SE Seward and SE Chandler Streets. He expressed concern with employment relocation costs and asked how many vacant City employment positions were being conducted on a nation-wide basis.

Norton N. Bonaparte, Jr., explained that City traffic engineers are in the process of configuring the traffic lights for the intersection of SE Seward and SE Chandler Streets. He stated that he would meet with City staff and report back to the Council on the issue. He also stated that a nation-wide search is being conducted for the Human Resources Department Director position.

Councilmember Ortiz announced that TARC is offering free paper-shredding the week of January 14, 2008.

Councilmember Haynes suggested that the Council read an informational article published in the Budget and Tax News Magazine concerning tax increment financing.

Councilmember Preisner requested that court cost refunds be submitted in the form of a check that has an expiration date instead of the postcard that is currently being used to notify residents that they qualify for a refund.

Mayor Bunten inquired on a security guard license that was approved by the City Council in last month. He stated that he received a complaint from the applicant that they have not yet received the license.

Brenden Long, City Attorney stated that he has been in contact with the individual's attorney and they are in the process of resolving the matter.

Councilmember Preisner moved to add Gene Jani to Public Comment. The motion seconded by Councilmember Haynes carried. Councilmembers Alcala and Ortiz voted "no."
(7-2-0)

Councilmember Preisner requested that the City Manager convey to the Shawnee County Commissioners that the intent of the resolution discussed earlier was to promote a business-friendly atmosphere with developers.

David Price, Clifford Cormier and Gene Jani appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:40 p.m.

Brenda Younger
City Clerk