

## **Council Minutes – April 15, 2008**

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

AFTER THE MEETING was called to order, Reverend Mitch Todd, University United Methodist Church gave the invocation.

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

A PRESENTATION was given by Evan Stair, Oklahoma Director of Northern Flyer Alliance on extending Amtrak services through Topeka and Shawnee County.

A PRESENTATION was given by Janlyn Nesbett-Tucker, Topeka Metropolitan Transit Authority Chief Executive Officer on the upcoming fare increase.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT for Terry Kimes to the Topeka/Shawnee County Public Library Board of Trustees for a term that would expire on April 30, 2012 was presented.

RESOLUTION NO. 8054 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.

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

2008 Open After Midnight License renewal applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Henry T's Bar & Grill	1521 SW 21 <sup>st</sup> Street
Ichabod Laundra Bar	1501 W 21 <sup>st</sup> Street
IHOP	1731 SW Wanamaker Road
Pain Killers	1620 SW 6 <sup>th</sup> Street

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

Councilmember Preisner moved to override the Mayoral veto of Resolution No. 8051, authorizing the lease purchase agreement of an Enterprise Resource Planning (ERP) software system. The motion was seconded by Councilmember Swank.

Councilmember Blackburn questioned the Mayor's reason for vetoing the purchase of the ERP software system. He asked if the Lawson Software System was the most economical and efficient software system for the City.

Mark Biswell, Information Technology Director and Jay Oyler, Contracts and Procurement Director both agreed that in their professional opinion, the Lawson Software System is the most economical choice for the City.

Councilmember Blackburn asked based on the Kansas Cash Basis Law, how many affirmative votes of the Council are needed to approve the resolution. He also asked if the technical errors of the agreement that were in violation of the Kansas Cash Basis Law have been corrected. He stated that after reviewing the facts, he believes the Lawson Software System is the best economical choice for the City.

Braxton Copley, Interim City Attorney stated that in his opinion, the provisions of the Kansas Cash Basis Law outline that five affirmative votes of the Council are necessary to

approve the resolution. He also stated that the technical errors have been corrected and the new lease purchase agreement complies with the Kansas Cash Basis Law.

Councilmember Haynes stated that he would support the veto override because he received a number of emails from City employees asking for the Council's support and he is confident that the Lawson Software System is the best choice for the City.

Councilmember Swank stated that she would support the veto override and believes the software system upgrade is a safety issue. She noted that it would provide information needed for the safety of the city to Police, Fire and other essential City departments.

Councilmember Alcala referenced Kansas Supreme Court Case No. 97-486 and stated that he believes the City would not be held liable if the Mayoral veto of Resolution No. 8051 is upheld. He asked if the Council has the authority to override the Mayor's veto.

Braxton Copley stated that the Council does have the authority to override the veto and the provisions are outlined in City of Topeka Code Section 2-32.

Councilmember Blackburn questioned if the veto would have an effect on the financial credibility of the City.

Norton N. Bonaparte, Jr., City Manager urged the Council to override the veto of the ERP software system. He stated that he is confident the Lawson Software System is the most efficient and economical choice for the City, helping to implement Best Business Practices as City operations advance into future technology.

Councilmember Alcala asked if the current HTE Software System could be upgraded to do what is needed.

Mark Biswell stated that in his opinion, the current software system could not function in the capacity the City needs to move forward and operate in an efficient manner.

Mayor Bunten stated he would not support the purchase of the ERP software system because the cost is too great and he believes there are other cost-effective alternatives.

The motion to override the Mayoral veto of Resolution No. 8051, authorizing the lease purchase agreement of an Enterprise Resource Planning software system carried.

Councilmembers Alcalá and Ortiz voted “no.” (7-2-0)

Councilmember Preisner moved to override the Mayoral veto of Resolution No. 8052, authorizing the lease purchase agreement of a Robinson R-44 Police helicopter. The motion was seconded by Councilmember Blackburn.

Councilmember Blackburn asked if staff was aware that the Kansas Cash Basis Law was violated prior to Council’s approval of the Robinson R-44 helicopter lease purchase agreement.

Braxton Copley, Interim City Attorney stated that staff was not aware that the original agreement was not in compliance with the Kansas Cash Basis Law. He also stated that he is confident the new agreement is in compliance with the Kansas Cash Basis Law because the technical errors have been corrected.

Councilmember Haynes stated that he alerted staff of his concerns with the agreement in December of last year.

Braxton Copley stated that because of questions raised by Councilmember Haynes the lease purchase agreements were reviewed, and it was discovered, that there were technical errors relating to the Kansas Cash Basis Law.

Councilmember Alcalá asked if the City Manager had the authority to release the information discussed in the executive sessions relating to the helicopter lease purchase agreement without approval of the Council.

Councilmember Woelfel asked if Councilmembers or City staff have the authority to release information discussed in an executive session.

Braxton Copley stated that he would research the matter and report back to the Council.

Councilmember Harmon stated that he would support the veto override. He requested that the City Manager be directly involved in the review of the Police Helicopter program before additional personnel resources are committed to the Helicopter Unit.

Mayor Bunten stated that he believes a new helicopter is unnecessary and unwarranted and the funds could be better utilized on more pressing needs of the city.

Councilmember Woelfel stated that he believes if the contract is not honored by the City it will have a negative effect on the City's financial future.

Councilmember Haynes stated that he would not support the attempt to override the veto of the helicopter lease purchase agreement because he believes the funds should be used to purchase other necessary equipment for the Police Department.

The motion to override the Mayoral veto of Resolution No. 8052, authorizing the lease purchase agreement of a Robinson R-44 Police helicopter failed. Councilmembers Kennedy, Alcala, Ortiz and Haynes voted "no." (5-4-0)

Councilmember Preisner requested that staff generate the necessary paperwork to terminate the lease purchase agreement of the Robinson R-44 Police helicopter.

Councilmember Alcala questioned if cancelling the lease purchase agreement would cause the City to be liable and portray admission of guilt by the Council.

Braxton Copley stated that he would research the legal ramifications of cancelling the lease purchase agreement and report back to the Council.

A CITY OF TOPEKA/BOARD OF COUNTY COMMISSIONERS of Shawnee County  
JOINT RESOLUTION NO. 8056 of support for the expansion of Amtrak Services in Topeka  
and Shawnee County was presented. The joint resolution was deferred from the meeting of April  
1, 2008.

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

John Mills spoke in support of the expansion of Amtrak services.

Councilmember Ortiz encouraged the Council to support the resolution and stated that  
expansion of Amtrak services would promote tourism for the City of Topeka.

Councilmember Ortiz moved to approve the City of Topeka-Shawnee County joint  
resolution. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

ORDINANCE NO. 19070 introduced by City Manager Norton N. Bonaparte, Jr.,  
concerning the Uniform Plumbing Code, repealing City of Topeka Code Chapter 26, Division 1  
and Division 2, Sections 406 to 445.16 placed on first reading April 8, 2008 was again presented.

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

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

ORDINANCE NO. 19071 introduced by City Manager Norton N. Bonaparte, Jr.,  
concerning the Uniform Plumbing Code, amending City of Topeka Code Chapter 26, Article  
VIII, Division 1 and Division 2, Sections 406 to 444 placed on first reading April 8, 2008 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. (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.

ORDINANCE NO. 19072 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 26-341 to 26-345, 26-366 to 26-371, and 26-381 concerning the 2008 National Electrical Code and specifically repealing said original sections placed on first reading April 8, 2008 was again presented.

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

Councilmember Kennedy 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, Alcala, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 19073 introduced by City Manager Norton N. Bonaparte, Jr., relating to the designation of street names, more specifically changing the name of SW Cambridge Court to SW Welton Grove Circle placed on first reading April 8, 2008 was again presented.

*(SNC08/2)*

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. (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.

ORDINANCE NO. 19074 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 146-11 through 146-15, 146-142, and 146-341 concerning the rates of the water, water pollution control, and stormwater utility of the City of Topeka, Kansas, and specifically repealing said original sections and section 146-16 placed on first reading April 8, 2008 was again presented.

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

Councilmember Blackburn asked if the rate increase could be extended over a four-year period, and if so, could a conceptual amendment be made to the ordinance to reflect the change.

Bob Sample, Water Pollution Control Director stated that the rate increase could be extended over a four-year period.

Braxton Copley, Interim City Attorney stated that in addition to a conceptual amendment a set rate must be determined and outlined in the ordinance.

Councilmember Haynes requested more time to review the rate changes and the need for the increases. He also asked what the estimated rate increase would be per month for residential, as well as, commercial customers.

Mike Teply, Public Works Director stated that the rate increases are needed to maintain regulatory compliance, address cash flow issues and replace infrastructure. He noted that it is anticipated that in the near future the Kansas River Levy will need \$17 million in repairs and the City is expected to finance \$6 million of the cost.

Councilmember Harmon asked if the City is actively addressing the red water problem.

Don Rankin, Water Superintendent stated that there are still areas of the city that are dealing with red water problems because the water mains need to be replaced. He explained that



the revenue generated from the rate adjustments will be used to finance improvement projects that are needed to help eliminate the red water problem.

Councilmember Alcalá asked if the City has implemented a low-income program for senior citizens; what the increase for customers outside city limits would be; and if there are any enterprise funds available to use. He also requested that all levels of water usage be considered when researching the possibility of implementing the program.

Mike Teply stated that they were unable to implement the low-income and elderly program because it was ruled that it would be discriminatory. He also stated that rural water customers would see a monthly increase of three percent; and there are no enterprise funds available to use at this time.

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

Patrick DeLapp spoke in opposition to the ordinance as it was presented. He stated that he believes a three percent monthly increase is fair. He asked the Council to review the rate increases.

Jim Langford, Budget and Finance Director stated that a number of years ago \$2 million was allocated to the Public Works Department to help resolve the red water problem. He noted that the funds have been repaid to the General Fund.

Councilmember Harmon asked if a low-income and elderly program could be implemented.

Councilmember Alcalá requested that low-to-moderate income, as well as, elderly residents are included in the program.

Braxton Copley stated that they would research the requirements of implementing this type of program and report back to the Council.

The motion to adopt the ordinance carried. Councilmembers Kennedy, Alcalá and Ortiz voted “no.” (6-3-0)

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

Norton N. Bonaparte, Jr., City Manager requested that item 5f, a project budget and resolution authorizing Project No. T-131003.00 providing for improvements at the Cyrus K. Holliday Building and the Law Enforcement Center be withdrawn from the agenda.

Upon hearing no objections, Mayor Bunten stated that the item would be withdrawn from the agenda.

APPROVING A REAL ESTATE REPORT and authorizing a Real Estate Purchase Agreement between the City of Topeka and 15th Street Investments, L.L.C., for the disposal of City surplus property located in the 1500 Block of SE Maryland Avenue was presented.

***(Contract No. 38289)***

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

Councilmember Preisner moved to approve the real estate report and real estate agreement. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

RESOLUTION NO. 8057 introduced by City Manager Norton N. Bonaparte, Jr., setting the public hearing for consideration of the adoption of a Redevelopment Project Plan for the East Gate Redevelopment District was presented.

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

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Kennedy carried. Councilmember Haynes voted “no.” (8-1-0)

ORDINANCE NO. 19075 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of March 24, 2008, through March 30, 2008, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Woelfel moved to adopt the ordinance. The motion seconded by Councilmember Harmon carried. Councilmember Alcala voted “no.” Councilmember Kennedy was out of the room. (7-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -7. Noes: Alcala -1. Absent: Kennedy-1.

AN ORDINANCE introduced by Councilmember John Alcala authorizing the sale, consumption and possession of alcoholic beverages at Germanfest 2008 to be held at the Sacred Heart-St. Joseph Parish on June 7-8, 2008 was presented for first reading.

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-841003.00 (HTE 843530) which provides for street repair on California Avenue from 29<sup>th</sup> Street to 33<sup>rd</sup> Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka 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 that Phase 2 of the 2008 Take Over/Make Over would be held on April 19, 2008 at 8:00 a.m. and all participants should meet at the Kansas Expocentre. He also announced upcoming Meet the Manager Sessions.

Councilmember Ortiz stated that she has received several complaints relating to the safety of area school children not having a walkway under the I-70 Turnpike Bridge located on SE California Avenue. She asked when construction of the walkway would begin.

Mike Teply, Public Works Director reported that a project budget has been issued for the project; however, he is not sure where exactly in the process the project is at this time. He stated that he would gather the information and report back to the Council.

Councilmember Alcala expressed concern with the lawsuit filed by Topeka Capital-Journal regarding the access of information relating to the April 4, 2008 Police helicopter crash. He asked if the release of information is in violation of the Kansas Open Records Act.

Braxton Copley, Interim City Attorney stated that in his opinion, K.S.A. 45-221(1) has not been violated. He explained that there are specific provisions under the federal regulations which would prevent the City from disseminating information relating to the National Transportation Safety Board (NTSB) investigation until such time the investigation has concluded, or the NTSB investigator in charge authorizes the release of records.

Yolanda Marshall appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:25 p.m.

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Brenda Younger  
City Clerk