

Council Minutes – May 6, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 6, 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, Bishop Ronald Lassiter, Faith Temple gave the invocation.

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

A PRESENTATION and departmental quarterly update was given by Topeka Police Chief Ron Miller.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8060 introduced by Councilmember Deborah Swank granting Mulvane Art Museum 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 22, 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>
American Legion Post 400	3029 NW US Highway 24
Billar “El 2 de Oros”	2018 SE Swygart Street
The Celtic Fox	118 SW 8 th Street
Goose Sports Bar & Grill	3203 SW 10 th Street
Jax	4121 SW Huntoon
Joletta’s	600 NW Paramore Street
Jul’s Cocktail Club	4117 SW Huntoon
Las Fuentes Mexican Restaurant	4111 SW Gage Center Drive
MacDaddy’s	5630 SW 29 th Street
Michelle’s Lounge	605 SW Fairlawn
Midwest Elks Lodge #1441	1316 SE Madison

<u>BUSINESS NAME</u>	<u>ADDRESS</u>
Sharkey's Tiki Bar	5217 SW 28 th Court
Uncle Bo's (Ramada Inn Downtown)	420 SE 6 th Street
Walgreen's #2846	2915 SW Gage
Walgreen's #3069	1001 SW Topeka Boulevard
Wood Valley Racquet Club	2909 SW 37 th Street

A 2008 Cereal Malt Beverage application bearing the approval of the Chief of Police and City Inspectors for Hy-Vee #1658 located at 2951 SW Wanamaker Road, 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 6, 2008 at 6:00 P.M. relating to the vacation of a 60-foot wide strip of platted street right-of-way located between SE Republican and SE Long Streets and south of SE 10th Avenue, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 19080 introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of a 60-foot wide strip of platted street right-of-way in Dyer Subdivision No. 2 located between SE Republican and SE Long Streets and south of SE 10th Avenue, City of Topeka, Shawnee County, Kansas placed on first reading April 22, 2008 was again presented.
(V08S/1)

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 Ortiz 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.

Norton N. Bonaparte, Jr., City Manager requested that item 5B, a public hearing and ordinance relating to the vacation of a 50-foot wide strip of platted street right-of-way in

Stringham's Addition (V08S/2); item 5C, a public hearing and ordinance relating to the vacation of a portion of platted street right-of-way in Curtis Addition (V08S/3); and item 5D, a public hearing and ordinance relating to the vacation of a portion of a platted street right-of-way in White Oak Grove Subdivision (V08S/4) be removed from the agenda per staff's request.

Councilmember Alcalá stated that he received numerous complaints on item 5D. He requested clarification on the safety hazards of closing the street and would like an alternative to the proposal.

Elvin Reed expressed concern with the proposed street closing for the White Oak Grove Subdivision. He asked Council to reconsider the street closings as it is a main access for emergency vehicles and area residents.

Upon hearing no objections, Mayor Bunten announced that items 5B, 5C and 5D would be removed from the agenda.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 2-142 concerning the City's legal department and specifically repealing said original section placed on first reading April 22, 2008 was again presented.

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

Councilmember Haynes questioned if the code amendment is a policy change that should be handled by City Administration.

Councilmember Ortiz stated that she does not support the ordinance because the State, as well as, Federal government do not allow their attorneys to work outside the agency. She also stated that she believes it would create a conflict of interest.

Braxton Copley, Interim City Attorney stated that City of Topeka Code Section 2-142 does not allow attorneys in the Legal Department to provide legal services outside the City. He

explained that the proposed amendment would allow the City's legal representation to expand to the private practice of law including for profit work, as well as, *pro bono* work; and it would also allow the City Manager, with notice to the Council, to provide exceptions on a case by case basis, provided the legal work would not interfere with the employee's work for the City and follows the Rules of Professional Conduct.

Norton N. Bonaparte, Jr., City Manager stated that he supports the change in policy and clarified that the purpose was to provide exceptions to a new attorney that may be hired by the City and still have open cases that need to be closed.

Councilmember Harmon stated that he would not support the ordinance as written because he believes the language is too broad.

Norton N. Bonaparte, Jr., City Manager stated that based on the concerns expressed by the Council he would request that the ordinance be deferred to amend the language.

Councilmember Harmon moved to defer the ordinance for thirty days. The motion seconded by Councilmember Preisner carried. Councilmember Ortiz voted "no." (8-1-0)

A PROJECT BUDGET in the amount of \$1,500,000 and ORDINANCE NO. 19081 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-601005.00 (HTE 606420), which provides for neighborhood infrastructure improvements in Central Park and Historic Holliday 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 22, 2008 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 Kennedy.

Vanessa Lamoreux and Kim Brown, Historic Holliday Park Neighborhood Improvement Association spoke in support of the proposal and encouraged the Council to approve the project.

Mayor Bunten questioned if the Construction Service Fee was necessary, and if the funds were used to pay Public Works employees for services rendered.

Shawn Bruns, Engineering Department Director stated that the Construction Service Fee is included in all projects and is a normal part of the process. She confirmed that the fee is used to pay Engineering Department staff members for inspection, survey and design services.

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

PRESENTATION OF CLAIM filed by Brainstorm Development Group against the City of Topeka alleging that members of the City Council and the Mayor denied claimants due process during the consideration of zoning applications, and that the denials contravene state law and City of Topeka zoning ordinances and regulations was presented.

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

Councilmember Preisner moved to approve staff's recommendation to deny the claim. The motion seconded by Councilmember Blackburn carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$200,000 and RESOLUTION NO. 8061 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. T-131003.00 (HTE131660) which provides for the repair of the parking deck at the Law Enforcement Center as more specifically described herein was presented.

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

Councilmember Preisner moved to approve the project budget and resolution. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

A RESOLUTION introduced by Deputy Mayor Jeff Preisner, terminating the lease purchase agreement of a Robinson R-44 helicopter was presented.

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

Councilmember Preisner moved to approve the project budget and resolution. The motion died due to a lack of a second.

Braxton Copley, Interim City Attorney stated that in his opinion, the resolution would close the issue, and resolve some of the legal issues outlined in the lawsuit filed by the Shawnee County District Attorney. He stated that he would welcome any language amendment suggestions from the Council.

Councilmember Haynes stated that he is opposed to the language as it is written in line 55 of the resolution. He noted that in his opinion, there is not a lease purchase agreement to terminate.

Councilmember Harmon stated that he agrees that the language of the resolution needs to be amended.

Braxton Copley, Interim City Attorney suggested amending line 55 of the resolution by striking the statement, “the City hereby terminates the lease purchase agreement,” and inserting the statement, “the lease purchase agreement is terminated or null and void.”

Councilmember Harmon requested that line 55 be amended to read, “the document is terminated or null and void.”

Braxton Copley, Interim City Attorney suggested amending the resolution by striking lines 55 and 56 in their entirety, beginning after the word “Inc.,” on line 55 and inserting the statement, “that the document commonly known as Contract No. 37914 is null and void and of no legal affect.”

Councilmember Harmon moved to amend the resolution by striking lines 55 and 56 in their entirety, beginning after the word “Inc.,” on line 55 and inserting the statement, “that the document commonly known as Contract No. 37914 is null and void and of no legal affect.” The motion died due to a lack of a second.

Councilmember Haynes noted that the language in lines 10 and 11 of the resolution also need to be amended.

Councilmember Harmon moved to defer the resolution for one week. The motion seconded by Councilmember Preisner carried. Councilmember Blackburn abstained. (8-0-1)

Councilmember Preisner left the meeting.

ORDINANCE NO. 19082 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 7, 2008, through April 13, 2008, 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 Alcalá carried. Councilmember Alcalá voted “no.” (7-1-0)

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

ORDINANCE NO. 19083 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 14, 2008, through April 20, 2008, 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 Alcalá carried. Councilmember Alcalá voted “no.” (7-1-0)

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a portion of the platted vehicular traffic restriction along SE California on property at 2001 SE 10th Avenue, City of Topeka, Shawnee County, Kansas was presented for first reading. (V08RA/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 742 and 746 NE Poplar Street from “C-2” Commercial District TO “R-2” Single Family Dwelling District was presented for first reading. (Z08/12)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Sections 130-71, 130-72, 130-73, and 130-74 concerning Sidewalk Cafes in Downtown Business Area, and specifically repealing said original sections 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 the Topeka Police Department and Shawnee County Sheriff's Office would host the annual Law Enforcement Memorial Service on May 8, 2008 at 9:00 a.m. followed by a candlelight vigil at 8:30 p.m. at the Law Enforcement Center. He also announced that the Kansas Law Enforcement Memorial Service would be held on May 9, 2008 at 12:00 p.m. at the State Capitol. He announced upcoming Meet the Manager Sessions and community events. He encouraged citizens to participate in the public budget session scheduled on May 19, 2008 at the Central Park Community Center at 5:30 p.m. He also reported that the pedestrian signal at the SE 4th and Branner Streets intersection would be installed by mid-May.

Councilmember Kennedy stated that she has received complaints from residents living near the area of SW 21st Street and Urish Road. She asked if it would be possible to prohibit bicyclists and pedestrians from using the route until construction is complete. She also announced that the Eagle Cruise Night event would be held on May 10, 2008 during the hours of 5:00 p.m. and 10:00 p.m. on SE Kansas Avenue, between SE 6th and SE 12th Streets.

Councilmember Ortiz expressed concern with the removal of the pedestrian signal at the SE Seward and SE Chandler Streets intersection. She asked how the Police Department plans to monitor the pedestrian traffic during the upcoming Fiesta Mexicana Event. She also asked if the City is responsible for a portion of the funeral expenses for Firefighter Tony Cox, and if so, when would it be paid. She also asked if the City is obligated to communicate to the public when Fire Companies would be closed on certain days.

Councilmember Woelfel commended City Traffic Engineers for their careful planning of the SE Croco Road detours. He noted that he has received minimal complaints from area residents affected by the rerouting of traffic.

Councilmember Haynes commended the Topeka Fire Department for their quick response to his house fire. He stated that as a Councilmember, he would make every effort to make sure the Fire Department has the necessary funding to perform their duties effectively.

Councilmember Harmon expressed the importance of having Fire Companies fully staffed and the effects it has on response time. He asked the Council to consider the needs of the Fire Department during budget deliberations. He also asked if there were plans to schedule additional public budget sessions in various locations throughout the city.

Councilmembers Kennedy and Blackburn left the meeting.

Councilmember Haynes moved to adjourn into executive session following public comment for a time period not to exceed ten minutes to discuss legal matters relating to the lease purchase agreement of the Enterprise Resource Planning software system. The motion seconded by Councilmember Harmon carried unanimously. (6-0-0)

J. Tuckness appeared to speak under public comment.

Councilmember Alcalá left the meeting.

Following a 10-minute time period, the meeting reconvened into open session and Councilmember Harmon moved that no action was taken during the executive session. The motion seconded by Councilmember Haynes carried unanimously. (5-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:53 p.m.

Brenda Younger
City Clerk