

Council Minutes – June 3, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 3, 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 -1.

AFTER THE MEETING was called to order, Councilmember Preisner asked for a moment of silent meditation.

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

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Jeff Romine to the Board of Plumbing Examiners for a term that would expire on May 31, 2010 was presented.

A FINAL PLAT for J. G. Meier's Subdivision generally located at 2649 NW Indianola Road in the City of Topeka, Shawnee County, Kansas was presented. (P07/11)

DENIAL of Civil Suit Claim Settlement filed by James M. Lewis in the amount of \$75,000 was presented.

Minutes of the regular meeting of May 20, 2008 were presented.

2008 Cereal Malt Beverage 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>
CSC #48	1531 SW Wanamaker Road
CSC #69	3830 SW 29 th Street
East Quick Stop	3100 SE 6 th Street
Phillip's 66	2525 SW 29 th Street
Wal Mart Supercenter #2131	1301 SW 37 th Street
Wal Mart Supercenter #1802	1501 SW Wanamaker Road
Wal Mart Supercenter #5441	2600 NW Rochester Road

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Kennedy 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, June 3, 2008, 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. 60581-01, authorized by Resolution No. 7364, adopted and approved July 1, 2003.

ORDINANCE NO. 19091 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 a roundabout at SW 6th Avenue and Wanamaker with pavement, concrete curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60581-01 as defined and described in Resolution No. 7364, adopted and approved July 1, 2003 placed on first reading May 20, 2008 was again presented.

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

Councilmember Harmon moved to close the public hearing and 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, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -9.

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., authorizing the approval of Amendment No. 4 to Contract No. 36091 with Washburn-Lane Parkway Renovations regarding the College Hill Redevelopment Project was presented. The resolution was deferred from the meeting of May 20, 2008.

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

Councilmember Swank moved to defer the resolution to July 1, 2008. The motion was seconded by Councilmember Preisner.

Councilmember Alcalá asked if City of Topeka Contract No. 36091 expired on December 31, 2007.

Braxton Copley, Interim City Attorney stated that the contract has not expired because it runs the length of the Tax Increment Financing Bonds; however, the construction deadline for the project expired on December 31, 2007.

The motion to defer the resolution to July 1, 2008 carried. Councilmembers Alcalá and Haynes voted “no.” Councilmember Blackburn abstained. (6-2-1)

ORDINANCE NO. 19092 introduced by City Manager Norton N. Bonaparte, Jr., concerning membership on the Topeka Human Relations Commission, amending City of Topeka section 86-27 and repealing said original sections placed on first reading May 20, 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 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.

Councilmember Kennedy moved to suspend the Council Rules to add an ordinance authorizing the sale, consumption and possession of alcoholic liquor at the Downtown Rocks the Block event on June 14, 2008 to the agenda under First Readings. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

Mayor Bunten stated that the ordinance would be placed on the agenda under First Readings as item 8E.

RESOLUTION NO. 8065 introduced by Norton N. Bonaparte, Jr., City Manager relating to a ground lease agreement with Kansas Children's Discovery Center, Inc., for construction and operation of a children's learning center at Gage Park was presented.

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

Ehren Sherrod spoke in support of the Kansas Children's Discovery facility and reported that over \$2 million has been raised in private funds for the project.

Lambert Wu, M.D., thanked the Council for their support in moving forward with the project.

Councilmembers Swank and Ortiz commended the Organization for a great project and all of their hard work and time dedicated to the project.

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

RESOLUTION NO. 8066 and SETTLEMENT OFFER from Riverside Farms, Inc., in the matter of Riverside Farms versus the City of Topeka for damages sustained to their property and loss of crops was presented.

Braxton Copley, Interim City Attorney gave the staff report.

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

A PROJECT BUDGET in the amount of \$300,000 and RESOLUTION NO. 8067 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. 28622-00 which provides for the construction of a boat ramp and repair to the portage route on

the north bank of the Kansas River near the weir as more specifically described herein was presented.

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

Mayor Bunten asked why the Kansas Department of Wildlife and Parks is not constructing the boat ramp.

Braxton Copley, Interim City Attorney stated that the Corps of Engineers has notified the City that they are responsible for providing a portage route. He explained that the initial permit from the Corps of Engineers for the construction of the weir required that a boat ramp be built and because the boat ramp was not initially built, the City is in noncompliance. He noted that the City has been placed on notice that certain steps must be taken to be compliant with permit regulations.

Councilmember Kennedy asked why Water Utility funds were being used to finance the project.

Mike Teply, Public Works Director stated that the portage route would be used as a source for providing water to the water treatment plant.

Councilmember Preisner moved to approve the project budget and resolution. The motion seconded by Councilmember Harmon failed. Councilmembers Kennedy, Alcalá, Ortiz and Haynes voted “no.” Councilmember Blackburn abstained. (4-4-1)

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

Councilmember Alcalá raised a point of order. He stated that it was his understanding that an abstention is not considered a “yes” or “no” vote; therefore, Councilmember Blackburn

would not be considered on the prevailing side unless four other Councilmembers also abstained from voting.

Mayor Bunten ruled that the motion to reconsider was in order. He stated that in his opinion, an abstention is considered a “no” vote.

Councilmember Alcalá challenged the ruling of the Chair. He asked the City Attorney for a recommendation on the procedure.

Braxton Copley requested that the Council consider the next item on the agenda while he reviewed the procedure.

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

Councilmember Kennedy asked if there is another source of funding that could be used to finance the project.

Jim Langford, Budget and Finance Director stated that funds could be allocated from the General fund or the project could be financed through general obligation bonds.

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

Councilmember Alcalá asked if the Council’s action would be null and void if it is determined that the ruling of the chair is improper.

Councilmember Blackburn moved to reconsider the motion to approve the project budget and resolution. The motion was seconded by Councilmember Preisner.

Braxton Copley reported that according to the Robert’s Rules of Order an individual must cast a “yes” or “no” vote to be considered on the prevailing side.

Councilmember Preisner stated that it was his understanding that once the ruling of the Chair is upheld by a majority vote of the Council, the action taken by the Council is valid.

Councilmember Alcala stated that he would not vote on the issue because he believes the ruling of the Chair is improper.

The motion to reconsider approval of the project budget and resolution carried. Councilmembers Ortiz, Haynes and Harmon voted “no.” Councilmember Alcala did not cast a vote. (5-3-0)

Councilmember Preisner moved to approve the project budget and resolution. The motion seconded by Councilmember Blackburn carried. Councilmembers Kennedy, Ortiz and Haynes voted “no.” Councilmember Alcala did not cast a vote. (5-3-0)

RESOLUTION NO. 8068 introduced by City Manager Norton N. Bonaparte, Jr., granting a waiver of the requirements of City of Topeka Code Section 138-76 et seq., relating to property tax exemptions for the SPS Processing Facility located at 3801 NW 14th Street in Topeka, Kansas and rescinding Resolution No. 7914 was presented.

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

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Alcala carried. Councilmember Blackburn abstained. (8-0-1)

ORDINANCE NO. 19093 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of May 5, 2008, through May 11, 2008, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Alcala 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. 19094 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of May 12, 2008, through May 18, 2008, 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 Alcala 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.

Councilmember Kennedy requested that an ordinance proposing a zoning change on property located at 3420 SW Fairlawn Road (Z08/13) be added to the agenda for consideration due to the financial hardships that have been placed on the developer. She also asked that Councilmembers Blackburn and Preisner refrain from discussing, or voting on the issue due to the temporary restraining order that is in place.

Councilmember Alcala expressed concern with the pending litigation relating to the zoning proposal and asked if the matter should be discussed in an executive session.

Braxton Copley stated that the matter could be discussed in an executive session; however, the temporary restraining order states that the proposal could be considered by the Council, provided that Councilmembers Blackburn and Preisner do not participate in the discussion, deliberation or voting of the zoning proposal.

Councilmember Alcala moved to adjourn into executive session for a time period not to exceed ten minutes to discuss legal matters relating to zoning proposal Z08/13 on property located at 3420 SW Fairlawn Road. The motion was seconded by Councilmember Haynes.

Braxton Copley stated that it would require six affirmative votes by the Council to suspend the Council Rules and add the ordinance to the agenda for consideration.

Councilmember Ortiz moved to suspend the Council Rules and add an ordinance proposing a zoning change on property located at 3420 SW Fairlawn Road (Z08/13) to the agenda for consideration. The motion seconded by Councilmember Kennedy failed.

Councilmembers Swank and Harmon voted “no.” Councilmembers Alcala and Ortiz abstained.

(5-2-2)

AN ORDINANCE introduced by Councilmember Deborah Swank, amending City of Topeka Code Section 2-181 concerning Boards and Commissions and repealing said original section and repealing Section 2-199 concerning the convention and tourism committee in its entirety was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-141002.00 (HTE 141300), which provides for traffic signal replacement and minor sidewalk and ramp repair at NE Seward and Freeman, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-141003.00 (HTE 141310), which provides for traffic signal replacement and minor sidewalk and ramp repair at SW 29th and Oakley, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-141004.00 (HTE 141320), which provides for traffic signal

replacement and minor sidewalk and ramp repair at SW 25th and Fairlawn, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by Councilmember Lana Kennedy authorizing the sale, consumption and possession of alcoholic liquor at Downtown Rocks the Block to be held in the One Hundred Block of SW Eighth Avenue on June 14, 2008 was presented for first reading. The ordinance was added to the agenda at the meeting.

Councilmember Alcalá withdrew the motion to adjourn into executive session for a time period not to exceed ten minutes to discuss legal matters relating to zoning proposal Z08/13 on property located at 3420 SW Fairlawn Road. The second concurred.

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

Norton N. Bonaparte, Jr., City Manager announced upcoming community events.

Councilmember Alcalá asked if there is a policy in place that allows Directors to address the media without permission from the City Manager. He referenced a newspaper article recently published by the Topeka Capital-Journal relating to the excessive use of sick leave by Fire Department Personnel. He encouraged the City Manager to resolve the morale issues and media communication problems between Fire Administration and Union members.

Councilmember Ortiz requested that the City extend the approval of burning permits through the end of June to provide additional time for residents to clean up storm debris.

Councilmember Blackburn commended Jim Green on his appointment as the new City of Topeka Emergency Management and Preparedness Coordinator.

Councilmember Preisner asked when the contract between the City of Topeka and Community First, Inc., expired. He also asked if there were other options to consider regarding the Sumner School building.

Norton N. Bonaparte, Jr., City Manager stated that the contract expired on May 31, 2008, and there are two other entities that have expressed an interest in the Sumner School building.

Mayor Bunten announced that a special meeting of the Governing Body would be held on June 12, 2008 at 5:00 p.m. in the City Hall 1st Floor Conference Room. He stated that he would distribute an agenda at a later date that would include the issues he believes they need to address as soon as possible, specifically the review of City of Topeka Charter Ordinance No. 94.

Ronald Lassiter, Sandra Lassiter, Gary Parnell, Deborah Edwards, Aaron Edwards, Donna Mathena-Menke, Therese Hartnett and Sheena Mooney appeared to speak under public comment.

Councilmember Alcalá moved to direct staff to extend the Community First, Inc., contract deadline sixty days. The motion was seconded by Councilmember Ortiz.

Norton N. Bonaparte, Jr., City Manager encouraged the Council to review the Sumner School documents distributed by City staff before making a decision on extending the agreement. He requested that the Council discuss the matter in a work session and direct staff on how to further proceed.

Braxton Copley, Interim City Attorney stated that the original contract has expired; however, a new contract restating the same terms with a new expiration date could be created.

Councilmember Swank made a substitute motion to consider the extension of the Sumner School proposal on a future agenda after it has been discussed in a work session. The motion was seconded by Councilmember Preisner.

Discussion continued by several Councilmembers relating to the creation of a new contract, and consideration of the new contract without following the proper agenda process.

Councilmember Swank withdrew the substitute motion to consider the extension of the Sumner School proposal on a future agenda after it has been discussed in a work session. The second concurred.

Councilmember Alcalá withdrew the motion to extend the Community First, Inc., contract deadline sixty days. The second concurred.

Councilmember Blackburn moved to suspend the Council Rules and direct the Legal Department to prepare a new contract between the City of Topeka and Community First, Inc., that would expire in sixty days, and authorize the City Manager to execute the contract. The motion was seconded by Councilmember Alcalá.

Councilmember Haynes stated that he would not support the motion because he needs additional time to review the Sumner School information distributed by City staff so that he can make an informed decision.

Councilmember Preisner stated that he would abstain from voting on the issue because he has not had the opportunity to carefully review the Sumner School information distributed by City staff.

The motion to suspend the Council Rules and direct the Legal Department to prepare a new contract between the City of Topeka and Community First, Inc., that would expire in sixty days, and authorize the City Manager to execute the contract failed. Councilmembers Woelfel, Swank and Harmon voted “no.” Councilmembers Haynes and Preisner abstained. (4-3-2)

Councilmember Haynes requested that a work session be scheduled at the Council’s earliest convenience to discuss the Sumner School building.

Councilmember Kennedy requested that a work session be scheduled following the June 10, 2008 Council meeting to discuss the Sumner School building.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:23 p.m.

Brenda Younger
City Clerk