

Council Minutes – August 12, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 12, 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, Councilmember Woelfel gave the invocation.

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

A PRESENTATION on the advantages and disadvantages of utilizing the Federal E-Verify Program was presented by Dr. Kris Kobach and Michael Sharma-Crawford, attorney.

Councilmember Blackburn requested that items 4C and 4D, board appointments for the Topeka Planning Commission be removed from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced that items 4C and 4D would be removed from the consent agenda and placed on the agenda under New Business as items 7E and 7F.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Jeremiah O'Dell to the City of Topeka ADA Advisory Council for a term that would end on August 31, 2010 was presented.

BOARD APPOINTMENT recommending the appointment of Andy Sanchez to the Topeka Metropolitan Transit Authority Board to fill an unexpired term that would end on April 30, 2010 was presented.

A FINAL PLAT for Emcon Subdivision located at the southwest corner of SE 45th Street and SE Adams Street and contiguous to the corporate limits of the City of Topeka within the 3-mile extra-territorial jurisdiction of the City of Topeka, all being within unincorporated Shawnee County, Kansas was presented. (P08/12)

Minutes of the regular meeting of July 29, 2008 were presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Charles Wood Oil Inc., located at 101 NE Hwy 24, was presented.

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, August 12, 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 Lateral Sanitary Sewer District No. 40659-02, authorized by Resolution No. 7545, adopted and approved October 26, 2004.

ORDINANCE NO. 19136 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 Kuhn-Smith Subdivision with piping, manholes, engineering and all other contingencies needed to complete Lateral Sanitary Improvement Project No. 40659-02, as defined and described in Resolution No. 7545, adopted and approved October 26, 2004 placed on first reading July 29, 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 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, August 12, 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 Sanitary Sewer Improvement Project No. 40928-00, authorized by Resolution No. 7552, adopted and approved November 23, 2004.

AN ORDINANCE 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 Sanitary Sewer Improvement Project No. 40928-00, as defined and described in Resolution No. 7552, adopted and approved November 23, 2004 placed on first reading July 29, 2008 was again presented.

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

Councilmember Ortiz requested verification of the project location. She stated that it was her understanding the parcel was located outside the city limits.

Councilmember Ortiz moved to defer the public hearing and ordinance for one week.

The motion seconded by Councilmember Alcalá 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, August 12, 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. 60364-02, authorized by Resolution No. 7873, adopted and approved September 26, 2006 and rescinding Resolution No. 7647, adopted and approved June 21, 2005.

ORDINANCE NO. 19137 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 Street Improvement Project No. 60364-02 which provided a turn-a-round on Reeder Street in the Kuhn-Smith Subdivision as defined and described in Resolution No. 7873, adopted and approved September 26, 2006 placed on first reading July 29, 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.

AN ORDINANCE introduced by Councilmember Jack Woelfel creating City of Topeka Code Section 106-3 concerning City of Topeka hiring procedures placed on first reading July 29, 2008 was again presented.

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

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

The following individuals spoke in opposition to the Federal E-Verify Program. Various topics of concern were raised regarding the Social Security Administration's database system error rate and case back log; racial discrimination; the negative impact the program would have on immigrants seeking employment and small businesses; the responsibility of local government compared to the federal government in resolving immigration problems; and program implementation would create an unnecessary barrier in the City's hiring system.

Dr. William Albott
Elias Garcia
Lalo Munoz
Michelle Cuevas-Stubblefield

Kim Morse Cordova
Christy Coldwell
Gabriela Vega
Mary Cuevas

Richard Jones
Carlos Gomez
Michael Sharma-Crawford

Dina Cox
Nancy Ochoa

The following individuals spoke in support of the Federal E-Verify Program and stated that the program is nondiscriminatory; assists with the ongoing effort to keep immigration problems under control; and a proactive step in the City's hiring process.

Myron Holter
Kathy Brown
Kimberly Tibbs

Councilmember Haynes asked if staff is prepared to implement the program; if there is a procedure in place for an appeal process; how the ordinance would be administered; and would the City be required to enforce violations.

Jacque Russell, Human Resources Director stated that staff has received training on the program. She also stated that the Human Resources Department would contact the appropriate agency to begin the appeal process within 10 days of the disapproval notification.

Jay Oyler, Contracts and Procurement Division Director stated that all individuals that submit a bid to the City would be required to sign a form stating that they are a member of the Federal E-Verify Program.

Braxton Copley, Interim City Attorney stated he would have to research the City's role in enforcement of violations and report back to the Council. He also stated that all contracts would be reviewed to eliminate any potential problems relating to the Federal E-Verify Program requirement.

Councilmember Alcalá stated that he believes the Federal E-Verify Program gives the perception of discrimination, causing potential litigation for the City. He questioned the necessity of the program, and how much research was done on the issue.

Councilmember Woelfel stated that implementation of the Federal E-Verify Program allows the City the opportunity to be proactive, as well as, an excellent tool to verify employment.

Councilmember Alcala stated that he believes the system is incapable of detecting fraudulent documents; leading to potential litigation for the City.

Braxton Copley stated that there is a potential for liability; however, it would be defensible.

Councilmember Blackburn asked if it would apply to Field Purchase Orders.

Jay Oyler stated that they would have to make a determination if it would apply to contracts and commodities.

Dr. Kris Kobach, University of Missouri-Kansas City School of Law stated that no City has received a lawsuit solely on the basis of the program. He explained that the consistency of reporting information to the government is important and necessary for accuracy. He noted that the program has implemented the photo tool to help prevent fraudulent documents.

Councilmember Harmon moved to strike subsection 1b (Lines 42-49) in its entirety. The motion was seconded by Councilmember Preisner.

Councilmember Haynes requested a friendly amendment to the motion by deleting subsection 1a (Lines 33-41) in its entirety.

Braxton Copley raised a point of order and stated that in his opinion, deleting subsections 1a and 1b of the ordinance removes the purpose of the ordinance.

The substitute motion to strike subsection 1a (Lines 33-41) in its entirety failed. Councilmembers Kennedy, Alcala, Ortiz, Woelfel and Swank voted “no.” (4-5-0)

Councilmember Haynes made a substitute motion to delete subsection 1b (Lines 42-49) in its entirety. The motion died due to a lack of a second.

The motion to adopt the ordinance failed. Councilmembers Kennedy, Alcalá, Ortiz, Haynes, Swank, Blackburn, Preisner and Harmon voted “no.” (1-8-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing the initiation of condemnation proceedings to acquire property interests by eminent domain for Improvement Project No. 29093-02, which provides for the installation of a new force main from the Deer Creek Pump Station to the Oakland Wastewater Treatment Plant placed on first reading July 29, 2008 was again presented.

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

Braxton Copley, Interim City Attorney stated that the City is still negotiating with an owner and would not file the petition as long as negotiations continue.

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

Councilmember Woelfel made a substitute motion to defer the ordinance until August 26, 2008. The motion seconded by Councilmember Kennedy carried. Councilmembers Swank, Blackburn and Preisner voted “no.” (6-3-0)

ORDINANCE NO. 19138 introduced by City Manager Norton N. Bonaparte, Jr., concerning petty cash fund for water deposits, repealing City of Topeka Code Section 2-322 placed on first reading July 29, 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 Alcalá 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 July 1, 2008.

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

Councilmember Swank reported that a work session is scheduled on August 26, 2008 to discuss the College Hill Redevelopment Project.

Councilmember Swank moved to defer the resolution until August 26, 2008. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

AN INTERLOCAL AGREEMENT (*Contract No. 38580*) between the Board of Shawnee County Commissioners, the Shawnee County Sheriff and the City of Topeka for the Operation and Management of the Shawnee County Emergency Communications Center (CCEC) was presented.

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

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

A RESOLUTION introduced by Deputy Mayor Jeff Preisner, amending Section 5 of Article 2 of the Personnel Code for the City of Topeka concerning residency requirements was presented.

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

Councilmember Preisner moved to approve the resolution. The motion was seconded by Councilmember Alcala.

Councilmember Alcala stated that he would not support the resolution because he believes it allows for special provisions, and is not fair to those individuals who have already had to relocate inside city limits.

Councilmember Ortiz stated that she has received a number of complaints from constituents in opposition to the policy change. She also stated that she would not support the resolution because she believes all City employees should reside inside city limits.

Councilmember Blackburn stated that he would support the resolution because it supports promoting from within City departments.

The motion to approve the resolution failed. Councilmembers Alcala, Ortiz and Swank voted “no.” Councilmembers Woelfel and Haynes abstained. (4-3-2)

ORDINANCE NO. 19139 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of July 14, 2008, through July 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 Kennedy moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried. Councilmember Alcala 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: Alcala -1.

ORDINANCE NO. 19140 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of July 21, 2008, through July 27, 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 Kennedy 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.

BOARD APPOINTMENT recommending the appointment of John Federico to the Topeka Planning Commission for a term that would end on August 31, 2011 was presented.

Councilmember Blackburn moved to defer the board appointment for four weeks. The motion was seconded by Councilmember Swank.

Councilmember Alcalá questioned if the Mayor has the authority to appoint individuals to the Topeka Planning Commission. He noted that it has become crucial that the Topeka Planning Commission vacancies are filled as soon as possible to avoid further interruption of City business.

Councilmember Kennedy stated that she has received complaints from the public regarding the Topeka Planning Commission appointments.

Mayor Bunten stated that in his opinion, both appointments are qualified individuals.

Councilmember Kennedy requested that the public be given the opportunity to speak to the board appointments because the items were removed from the consent agenda and placed on the agenda under New Business.

The Chair ruled that no public comment would be allowed.

Councilmember Kennedy challenged the ruling of the Chair.

The motion on shall the ruling of the Chair be upheld carried. Councilmember Haynes and Preisner voted “no.” (7-2-0)

Councilmember Alcala called the question.

The motion to defer the board appointment for four weeks carried. Councilmembers Alcala, Ortiz, Haynes and Harmon voted “no.” (5-4-0)

BOARD APPOINTMENT recommending the appointment of Carol Torrence to the Topeka Planning Commission for a term that would end August 31, 2011 was presented.

Councilmember Blackburn moved to defer the board appointment for four weeks. The motion seconded by Councilmember Kennedy carried. Councilmembers Alcala, Ortiz, Haynes and Harmon voted “no.” (5-4-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., attesting to the increase in taxes levied for budget year 2009 necessary to finance public services for the City of Topeka was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a 20-foot public alley located west of 1034 SW Polk Street and east of 1027 SW Tyler and 600 SW 11th Street, City of Topeka, Shawnee County, Kansas was presented for first reading. (V08A/1)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a platted street right-of-way in Garden Park Addition located south of NE State Street and either side of NE Michigan Avenue, City of Topeka, Shawnee County, Kansas was presented for first reading. (V08S/6)

AN ORDINANCE introduced by Deputy Mayor Jeff Preisner, amending City of Topeka Code Section 154-121, as amended by Ordinance No. 19115, concerning rates of fare offered by taxicabs in the City of Topeka and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the project budget and authorizing as amended Improvement Project No. 30273-00, which provides for the design and construction of a new zoo exhibit as more specifically described herein, pursuant to Section A12-1 of the Code of the City of Topeka, and rescinding City of Topeka Resolution No. 7924 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 70123-01, which provides for rebuilding of the intersection at SW Fairlawn and SW 29th Street and I-470 ramps, 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 upcoming community events. He also announced that the August edition of the City's e-newsletter is available for review on the City's website.

Councilmember Kennedy commended staff for their work in organizing the Topeka Boulevard Bridge Grand Opening Celebration.

Councilmember Ortiz expressed concern for the safety of area school children and asked when the sidewalk located under the Kansas Turnpike Bridge on SE California Avenue would be completed.

Councilmember Woelfel expressed concern with information discussed in executive sessions being reported to the newspaper.

Councilmember Swank commended the event organizers for the National Night Out Against Crime events.

Councilmember Preisner stated that the resolution relating to the residency requirement was presented because it was his understanding that the Council agreed to implement the change.

Councilmember Harmon moved to extend the meeting through the end of the Agenda.

The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

JoAnn Peavler and Gene Jani appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:07 p.m.

Brenda Younger
City Clerk