

Council Minutes – August 26, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 26, 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 Kennedy gave the invocation.

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

Councilmember Woelfel requested to pull item 4G, Minutes of the regular meeting of August 19, 2008 from the consent agenda and defer the Minutes until September 9, 2008.

Upon hearing no objections, Mayor Bunten announced that item 4G, Minutes of the regular meeting of August 19, 2008 would be deferred until September 9, 2008.

Councilmember Alcalá moved to suspend the Council Rules to add a resolution restoring funding to the Topeka Performing Arts Center and the Topeka Cemetery introduced by Mayor Bunten; a resolution restoring funding to the Topeka Performing Arts Center introduced by Councilmember Alcalá; and an emergency ordinance extending the Utility Franchise Fee Refund application deadline to the agenda. The motion seconded by Councilmember Ortiz carried.

Councilmembers Kennedy and Blackburn voted no. (7-2-0)

Mayor Bunten noted that the items would be added to the agenda under New Business as items 6J, 6K, and 6L respectively.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Robert Beaver to the Board of Mechanical Examiners for a term that would expire on August 31, 2010 was presented.

BOARD APPOINTMENT recommending the re-appointment of Ann Adams to the Downtown Business Improvement District Advisory Board for a term that would expire on August 31, 2010 was presented.

BOARD APPOINTMENT recommending the re-appointment of Mark Burenheide to the Downtown Business Improvement District Advisory Board for a term that would expire on August 31, 2010 was presented.

BOARD APPOINTMENT recommending the re-appointment of Darryl Coker to the Downtown Business Improvement District Advisory Board for a term that would expire on August 31, 2010 was presented.

BOARD APPOINTMENT recommending Stephen Tyler to the Downtown Business Improvement District Advisory Board for a term that would expire on August 31, 2010 was presented.

RESOLUTION NO. 8091 introduced by Councilmember Lana Kennedy granting Trinity Lutheran Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

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

A CHARTER ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., exempting the City of Topeka from the provisions of 2008 House Bill 2217, specifically Section 4, in accordance with the provisions of Article 12, Section 5 of the Constitution of the State of Kansas, and providing for the method of appointment of members to statutory and non-statutory boards and amending Section 24 of Charter Ordinance No. 94, codified at Section A2-72 of the

Code of the City of Topeka, and repealing said original section placed on first reading August 19, 2008 was again presented.

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

Braxton Copley, Deputy City Attorney stated that approval would allow the City of Topeka to be exempt from the non-uniform State requirement of making a finding of why an individual may not be qualified to serve on a board or commission. He noted that approval would require seven affirmative votes by the Governing Body.

Councilmember Preisner noted that a number of cities have already opted out of the requirement.

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

Mayor Bunten questioned the need for the charter ordinance.

Braxton Copley stated that approval would eliminate potential liability to the City and allow the Council to override an appointment without having to make a finding.

Councilmember Preisner stated that the current process for board appointments and commissions has not posed a problem.

Councilmembers Swank stated that it would be an unnecessary practice to follow.

Councilmember Kennedy stated that they must insure fairness regarding appointments to various boards and commissions.

Councilmember Haynes stated that the Council has an obligation to be open about the appointment process.

The motion to adopt the charter ordinance failed. Councilmembers Alcala, Ortiz, Haynes and Mayor Bunten voted “no.” (6-4-0)

ORDINANCE NO. 19149 introduced by Deputy Mayor Jeff Preisner amending Section 1 of Ordinance No. 18841 concerning the establishment of annual goals and objectives for the City Manager and the establishment of a procedure for the evaluation of the performance of the City Manager placed on first reading August 12, 2008 was again presented.

Councilmember Preisner gave the staff report and stated that the quarterly evaluation process was not effective.

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

Councilmember Alcalá stated that he would oppose the change in process because there is a need to gauge the performance of the City Manager throughout the year.

Councilmember Ortiz stated that she would oppose the ordinance because it is essential that the Council and City Manager communicate to establish goals and objectives. She also stated that it is important to continue conducting quarterly evaluations to help measure progress.

Councilmember Haynes requested that the matter be discussed in a work session.

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

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

A PROJECT BUDGET in the amount of \$397,057 and ORDINANCE NO. 19150 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-861000.00 (HTE 862590), which provides for an additional public parking lot benefiting the College Hill Redevelopment District, as more specifically described herein, all pursuant to

Section A12-1 of the Code of the City of Topeka placed on first reading August 19, 2008 was again presented.

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

Joann Peavler spoke in opposition to the project and stated that she believes the taxpayers should not continue to pay for an improvement project that only benefits the developer.

Duane Pomeroy spoke in support of the project and thanked the Council for investing in the community and changing the neighborhood appearance.

Bill Newsome, developer, spoke in support of the project and stated that he is pleased with the \$20 million development that has rehabilitated central Topeka. He also reported that the project is in its final stages and urged the Council to approve the funding.

Councilmember Preisner moved to approve the project budget and adopt the ordinance. The motion was seconded by Councilmember Swank.

Councilmember Harmon asked who would absorb the maintenance costs, and if the developer would be required to purchase the parking lot from the City after the Tax Increment Financing bonds have expired.

Bill Newsome stated that they have secured a twenty-year maintenance agreement with no cost to the City.

Braxton Copley, Deputy City Attorney reported that if the developer absorbed the cost of the project it would be considered a private activity bond issue, a provision that would not be allowed by the bond counsel.

Councilmember Alcalá stated that the overall project is a great investment for the city; however, he would oppose the project because he believes the developer should absorb the cost of the parking lot project.

Councilmember Swank spoke in support of the project. She stated that it has taken over ten years to locate a developer that was willing to take the risk and envision the rehabilitation of the neighborhood. She noted that the project has increased the value of the homes in the neighborhood and helped increase Washburn University enrollment.

Councilmember Ortiz questioned how the parking lot would be identified as public parking; and why the project was not included in the initial redevelopment plan.

Bill Newsome stated that they would work with City staff in determining what type of public parking should be established. He also stated that it was communicated to City staff that additional parking may be needed as the project progresses.

Councilmember Woelfel stated that he would support the project because the City made a commitment to the developer, and it is vital for the partnership to continue to make the development a success.

Councilmember Kennedy spoke in support of the project and commended the developer for revitalizing central Topeka.

Mayor Bunten stated that he strongly supports the project because it is a positive development for Washburn University, as well as, the entire city.

Councilmember Alcalá made a substitute motion to defer the project budget and ordinance and direct staff to establish a benefit district for the redevelopment area. The motion seconded by Councilmember Ortiz failed. Councilmembers Kennedy, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon voted “no.” (2-7-0)

The motion to approve the project budget and adopt the ordinance carried. Councilmembers Alcalá, Ortiz and Haynes voted “no.” Councilmember Blackburn abstained. (5-3-1)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Woelfel, Swank, Preisner and Harmon -5. Noes: Alcala, Ortiz and Haynes -3. Abstain: Blackburn -1.

RESOLUTION NO. 8092 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. The resolution was deferred from the meeting of August 12, 2008. (*Contract No. 38617*)

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

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Alcala carried. Councilmembers Alcala, Ortiz and Haynes voted “no.” Councilmember Blackburn abstained. (5-3-1)

ORDINANCE NO. 19151 introduced by Deputy Mayor Jeff Preisner, designating Deputy City Manager Randy Speaker to exercise the powers and duties of the City Manager in the absence or inability of the City Manager and authorizing him to execute contracts on behalf of the City pursuant to Charter Ordinance No. 94, codified at Section A2-52 and Section A2-55 of the Code of the City of Topeka placed on first reading August 12, 2008 was again presented.

Councilmember Preisner gave the staff report and stated that approval would designate a qualified employee to act during any temporary absence or disability of the City Manager.

Councilmember Preisner 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.

A PETITION, A PROJECT BUDGET in the amount of \$1,447,700 and RESOLUTION NO. 8093 introduced by City Manager Norton N. Bonaparte, Jr., amending the project budget

and adopting as amended Street Improvement Project No. T-601004.00 (HTE 606410) which provides for paving streets in Lauren's Bay Estates, pursuant to K.S.A. 12-6a01, et seq., as amended, and rescinding City of Topeka Resolution of Advisability and Authorization No. 8062 was presented.

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

Councilmember Preisner moved to approve the petition, project budget and resolution.

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

A PETITION, A PROJECT BUDGET in the amount of \$6,603 and RESOLUTION NO. 8094 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Sanitary Sewer Improvement Project No. T-401006.00 (HTE 409620) which provides for installation of a manhole over an existing sanitary sewer line located in Hofmann Acres Subdivision as more specifically described herein was presented.

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

Councilmember Alcalá moved to approve the petition, project budget and resolution.

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

A PROJECT BUDGET in the amount of \$88,000 and RESOLUTION NO. 8095 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Street Improvement Project No. T-601007.00 (HTE 60644) which provides for construction of a westbound right turn lane at SE 15th Street and SE Adams Street and authorizing same was presented.

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

Councilmember Alcalá stated that he would support the project because it is a great opportunity for the community and the developer.

Councilmember Ortiz stressed the importance of the City being consistent when developing Tax Increment Financing districts.

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

Mayor Bunten requested that the governing body discuss agenda items 6D, 6E and 6F simultaneously. He stated that each resolution proposes a different special purpose retailers' sales tax question to be placed on the November 4, 2008 ballot. He noted that a decision must be made immediately in order to meet the ninety-day deadline for the November 4, 2008 election.

Councilmember Preisner expressed concern with the Council not reaching a consensus on the percentage of special purpose retailers' sales tax to present to the voters. He requested that the sales tax issue be tabled until January 13, 2009.

Councilmember Alcala stated that he has received a number of telephone calls from concerned citizens in relation to the governing body approving a special purpose retailers' sales tax. He clarified that approval of any one of the resolutions proposed would only place the special purpose retailers' sales tax question on the November 4, 2008 election ballot, allowing the citizens to decide on the sales tax issue.

Jim Langford, Budget and Finance Director reported that the City would not receive the sales tax revenue funds for approximately one year from date of approval.

Councilmember Haynes urged the Council not to delay the process and allow citizens to vote on the sales tax issue on November 4, 2008.

Councilmember Swank stated that additional time is needed to educate the voters on the sales tax issue.

Councilmember Kennedy stated that she concurs with Councilmember Swank. She stated that she was contacted by a number of constituents referring to an informal telephone survey that offered misleading information to citizens on the purpose of the proposed sales tax issue.

Mayor Buntin expressed concern with delaying the sales tax issue until April 2009. He stated that a delay would only postpone much needed improvements to the city, as well as, cause citizens to be misinformed on the issue by potential election candidates who may not fully understand the purpose of the retailers' sales tax proposals.

Councilmembers Blackburn and Woelfel urged the Council to address the issue now.

A RESOLUTION introduced by Councilmember Lana Kennedy to submit to the qualified electors of the City of Topeka, Kansas the proposition of levying an additional three-tenths of one percent (0.3%) special purpose retailer's sales tax in the City of Topeka for the purpose of paying for certain improvements to streets in the City, pursuant to K.S.A. 12-187 et seq., was presented.

Councilmember Preisner moved to defer the resolution until January 13, 2009. The motion seconded by Councilmember Kennedy carried. Councilmembers Kennedy, Woelfel, Haynes and Blackburn voted "no." (5-4-0)

A RESOLUTION introduced by Councilmember Bill Haynes, to submit to the qualified electors of the City of Topeka, Kansas the proposition of levying additional special purpose retailer's sales taxes of up to one-half of one percent (0.5%) in the City of Topeka, for the purpose of paying for certain improvements and services in the City, pursuant to K.S.A. 12-187 et seq., as amended was presented.

Councilmember Swank moved to defer the resolution until January 13, 2009. The motion seconded by Councilmember Preisner carried. Councilmembers Kennedy, Woelfel, Haynes and Blackburn voted “no.” (5-4-0)

A RESOLUTION introduced by Mayor Bill Bunten concerning a Special Ballot Question for a retailer’s sales tax in the amount of one half of one percent (0.5%) as provided by K.S.A. 12-187, as amended was presented.

Councilmember Preisner moved to defer the resolution until January 13, 2009. The motion seconded by Councilmember Swank carried. Councilmembers Kennedy, Woelfel, Haynes and Blackburn voted “no.” (5-4-0)

RESOLUTION NO. 8096 introduced by City Manager Norton N. Bonaparte, Jr., authorizing the City Attorney’s office to take all appropriate legal action necessary to protect the City of Topeka’s ability and authority to regulate subdivision of land in its three-mile extraterritorial jurisdiction was presented.

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

Councilmember Preisner moved to refer the resolution to the Policy and Finance Committee. The motion was seconded by Councilmember Kennedy.

Councilmember Alcalá asked how much it would cost the City in legal fees to protect the three-mile extraterritorial jurisdiction (ETJ).

Braxton Copley, Deputy City Attorney stated that it would cost approximately \$20,000 in legal fees to insure that infrastructure and City services within the ETJ are adequate and within regulations.

Councilmember Blackburn stated that he would not support referring the resolution to the Policy and Finance Committee because it is the City's responsibility to protect the jurisdiction of the City and help eliminate urban sprawl.

Councilmember Harmon made a substitute motion to adjourn into executive session not to exceed 15 minutes for the purpose of discussing a matter concerning the City's ETJ authority that is subject to the attorney-client privilege. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

Following a 15-minute time period, the meeting reconvened into open session and Mayor Bunten announced that no action had been taken.

The motion to refer the resolution to the Policy and Finance Committee failed. Councilmembers Woelfel, Swank, Blackburn and Harmon voted "no." Councilmember Haynes was out of the room. (4-4-0)

Councilmember Blackburn moved to approve the resolution. The motion was seconded by Councilmember Harmon.

Councilmember Alcalá made a substitute motion to refer the resolution to the Committee of the Whole for further discussion. The motion seconded by Councilmember Ortiz failed. Councilmembers Kennedy, Woelfel, Haynes, Swank, Blackburn and Harmon voted "no." (3-6-0)

The motion to approve the resolution carried. Councilmember Preisner abstained. (8-0-1)

RESOLUTION NO. 8097 introduced by City Manager Norton N. Bonaparte, Jr., relating to documents concerning the agreement with Topeka Ice, Inc., and authorizing a one-year extension for Topeka Ice to complete its skating facility was presented.

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

Mike Eichten, developer stated that Topeka Ice, Inc., has raised \$3.3 million in pledges and private funds which is enough to build the facility. He reported that they are requesting an extension of the contract because construction would not be completed by the original deadline. He also stated no additional funds are being requested from the City and urged the Council to support the request.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Ortiz carried. Councilmember Kennedy abstained. (8-0-1)

ORDINANCE NO. 19152 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 4, 2008, through August 10, 2008, and enumerating said expenditures therein was presented for first and final reading.

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

Councilmember Alcalá 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.

RESOLUTION NO. 8098 introduced by Mayor William W. Bunten, authorizing the transfer of monies within the general fund from Police Department to non-departmental Contributions to Agencies program was presented.

Mayor Bunten stated that approval would remove funding from the Police Department Fund and restore funding to the Topeka Performing Arts Center in the amount of \$250,000; and restore funding to the Topeka Cemetery in the amount of \$19,000.

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

Councilmember Blackburn stated that he would not support allocating funds from the Police Department Fund to the Topeka Performing Arts Center (TPAC). He noted that TPAC receives over \$100,000 annually from the City for maintenance and utilities, and the Police Department is in need of new vehicles. He encouraged TPAC representatives to seek private funding.

Councilmember Blackburn made a substitute motion to direct the City Manager to shift the \$250,000 set aside for the Police Helicopter Unit to purchase new police vehicles. The motion seconded by Councilmember Woelfel failed. Councilmembers Alcala, Ortiz, Haynes, Swank, Preisner and Harmon voted “no.” (3-6-0)

Councilmember Kennedy made a substitute motion to divide the question by considering each appropriation of funds separately. The motion was seconded by Councilmember Ortiz.

Councilmember Kennedy questioned if the Topeka Cemetery could be funded through historical preservation funds.

David Thurbon, Planning Department Director stated that the cemetery qualifies for the use of historical funds; however, it is a policy decision to be made by the Council.

The motion to divide the question carried. Councilmembers Alcala, Swank and Preisner voted “no.” (6-3-0)

Councilmember Alcala moved to approve the appropriation of funds from the Police Department Fund to the Topeka Performing Arts Center in the amount of \$250,000. The motion seconded by Councilmember Haynes carried. Councilmembers Kennedy, Woelfel and Blackburn voted “no.” (6-3-0)

Councilmember Preisner moved to approve the appropriation of funds from the Police Department Fund to the Topeka Cemetery in the amount of \$19,000. The motion seconded by Councilmember Alcala carried. Councilmembers Woelfel and Blackburn voted “no.” (7-2-0)

Mayor Bunten withdrew item 6K, a resolution authorizing the allocation of \$300,000 to the Topeka Performing Arts Center from the agenda.

ORDINANCE NO. 19153 introduced by Councilmember John Alcala, amending City of Topeka Code Section 146-17, as amended by Section 1 of Ordinance No. 19129 concerning the utility franchise fee refund program and specifically repealing said original section was presented for first and final reading.

Councilmember Alcala stated that approval of the emergency ordinance would extend the application deadline to November 5, 2008.

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

Councilmember Kennedy left the meeting.

The motion to adopt the ordinance carried. Councilmembers Woelfel and Preisner voted “no.” Councilmember Blackburn abstained. (5-2-1)

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Ortiz, Haynes, Swank and Harmon -5. Noes: Woelfel and Preisner -2. Abstain: Blackburn -1. Absent: Kennedy -1.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 26-138 concerning the Board of Building and Fire Appeals and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by Norton N. Bonaparte, Jr., City Manager amending City of Topeka Code Sections 26-116 and 26-283, concerning building codes, and specifically repealing said original sections and Section 70-196 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-131007.00 (HTE 131700), which provides for upgrades to Fire Station Nos. 1, 6 and 7, 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., amending the project budget and authorizing as amended Street Improvement Project No. 18025-00 which provides for the removal of the free flow right turn lane on 21st Street to Arrowhead as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, and repealing City of Topeka Ordinance No. 18388 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a 40-foot wide portion of a platted access control easement located along the south line of Lots 2 and 3, Block "C", Aquarian Center Subdivision fronting on SE 29th Street, City of Topeka, Shawnee County, Kansas was presented for first reading. (V08RA/2)

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

Norton N. Bonaparte, Jr., City Manager announced the upcoming Police Department Citizens' Academy beginning on September 11, 2008 from 6:00 p.m. to 9:00 p.m.; and the Citizens' Academy: Topeka 101 beginning on September 17, 2008 from 6:00 p.m. to 8:30 p.m. He instructed citizens to contact Sergeant Lance Feyh at 368-9497 for more information on the

Police Department Citizens' Academy; and contact City Communications Manager David Bevens at 368-0900 for more information on the Citizens' Academy: Topeka 101.

Councilmember Ortiz questioned the necessity of additional testing for the Topeka Fire Department and stated that she believes there are qualified applicants available for employment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:08 p.m.

Brenda Younger
City Clerk