

Council Minutes – December 16, 2008

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 16, 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, Swank, Blackburn, Preisner and Harmon -8. Mayor Bunten presided -1. Absent: Councilmember Haynes -1.

AFTER THE MEETING was called to order, Mayor Bunten gave the invocation.

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

PRESENTATION of the 3rd Quarter Topeka Police Department Annual Report was given by Police Chief Ronald Miller.

Councilmember Preisner moved to suspend the Council Rules to add a Workers' Compensation Settlement for Connie Potter to the Council agenda. The motion seconded by Councilmember Harmon carried. Councilmember Alcala voted "no." (7-1-0)

Mayor Bunten announced that the Workers' Compensation Settlement would be placed on the consent agenda as item 4J.

Councilmember Harmon reported that the owner of the Fleming Court Apartments is requesting an additional mortgage on the property. He stated that the financial documents outlining the details of the transaction were distributed to the Council on Friday, December 12, 2008. He requested to add a resolution to the agenda consenting to the leasehold mortgage and noted that written consent of the City is required to complete the transaction.

Councilmember Harmon moved to add a resolution consenting to a leasehold mortgage for the Fleming Court Apartments to the Council agenda. The motion seconded by Councilmember Woelfel carried unanimously. (8-0-0)

Mayor Bunten announced that the resolution would be placed on the Council agenda under New Business as item 7E.

Councilmember Alcala expressed concern with voting on the transaction in good faith. He stated that he would need additional information to make a decision. He asked if the owner was asking for an increase in funds; if they are experiencing financial difficulty; what is the urgency of the transaction; and how would the transaction affect the City's budget.

Kathryn Peters, Kutak Rock, L.L.P., stated that the existing lease stipulates that before the borrower could incur another mortgage on the property the City must grant written consent to a second mortgage on the building. She reported that they are requesting the same amount; the City would incur no liability; and fund limitations are set by the bank.

Pam Simecka, City Controller stated that the Council's decision would have no affect on the City's budget because the mortgage would be subordinate to the outstanding bonds.

THE CONSENT AGENDA was presented as follows:

APPROVAL of a Workers' Compensation Claim offering a settlement for Steve Roth, Jr., in the amount of \$19,048.50 was presented.

COMMISSION APPOINTMENT recommending the re-appointment of Nancy Artzer-May to the Topeka Housing Authority Board of Commissioners for a term that would end December 31, 2012 was presented.

BOARD APPOINTMENT recommending the re-appointment of Gary Yager to the Topeka Housing Authority Board of Commissioners for a term that would end December 31, 2012 was presented.

BOARD APPOINTMENT recommending the appointment of Paul Post to the Topeka Sustainability Advisory Board for a term that would end December 31, 2010 was presented.

BOARD APPOINTMENT recommending the appointment of Gina Penzig to the Topeka Sustainability Advisory Board for a term that would end December 31, 2010 was presented.

BOARD APPOINTMENT recommending the appointment of Stan Meyers to the Topeka Sustainability Advisory Board for a term that would end December 31, 2010 was presented.

A FINAL PLAT for Wanamaker Northwest Subdivision located at 6209, 6211, and 6213 SW 10th Avenue within the corporate limits of the City of Topeka was presented.

MINUTES of the regular meeting of December 9, 2008 was presented.

Dance Hall License applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>NAME</u>	<u>ADDRESS</u>
Joletta's	600 NW Paramore Street
Rendezvous Grille	705 S. Kansas Avenue

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Lynn's Place located at 2212 Sardou was presented.

APPROVAL of a Workers' Compensation Settlement for Connie Potter in the amount of \$68,000 was presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Swank carried unanimously. (8-0-0)

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, December 16, 2008, at 6:00 P.M. for the purpose of hearing any and all complaints that may be made as 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. 60626, authorized by Resolution No. 7943, adopted and approved May 1, 2007.

ORDINANCE NO. 19199 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 Wanamaker West Subdivisions No. 2 and No. 3, with pavement, curb and gutter and all other contingencies needed to complete Street Improvement Project No. 60626 as defined and described in Resolution No. 7943, adopted and approved May 1, 2007 placed on first reading December 9, 2008 was again presented.

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. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woelfel, Swank, Blackburn, Preisner and Harmon -8. Absent: Haynes -1.

A CHARTER ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section A6-16 and Section A6-17, and repealing said original sections placed on first reading November 18, 2008 was again presented. The charter ordinance was deferred from the meeting of November 25, 2008.

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

Councilmember Preisner stated that the Council requested a comprehensive review of item 6A, a charter ordinance clarifying the civil service hiring process; and item 6B, an ordinance clarifying which positions in the Fire and Police Departments are subject to the Civil Service Commission. He reported that the Legal Department has requested ninety days to complete the review.

Councilmember Preisner moved to defer item 6A and item 6B for ninety days. The motion was seconded by Councilmember Swank.

Councilmember Alcala questioned why the ordinances were being deferred.

Norton N. Bonaparte, Jr., stated that it was determined that the provisions need to be reviewed in their entirety.

Councilmember Alcala questioned why there still appears to be a communication breakdown between administration and Fire Department employees. He stated that if the problems were resolved the provisions would not need to be amended.

Councilmember Alcala made a substitute motion to table item 6A and item 6B indefinitely. The motion seconded by Councilmember Ortiz carried. Councilmember Woelfel voted "no." (7-1-0)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., authorizing the City Attorney's office to take all appropriate legal action necessary to collect monies owed by Consolidated Rural Water District No. 1 to the City of Topeka was presented. The resolution was deferred from the meeting of December 9, 2008.

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

Councilmember Preisner requested additional time to negotiate an agreement with the District.

Councilmember Preisner moved to defer the resolution until January 20, 2009. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

APPROVAL of the real estate report and Real Property Purchase Agreement including the method of disposal between the City of Topeka and Faith Temple, Inc., for property located at 1155 SW Lincoln Street was presented. (*Contract No. 39075*)

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

Councilmember Preisner moved to approve the real estate report and real property purchase agreement. The motion seconded by Councilmember Alcala carried unanimously.

(8-0-0)

RESOLUTION NO. 8133 introduced by Councilmember John Alcala, requesting the City of Topeka to provide financial assistance in the amount of \$60,000 for maintenance of Rochester Cemetery was presented.

Councilmember Alcala gave the staff report and stated that it would cost approximately \$5,000 a month to maintain the cemetery. He stated that the cost for the City to manage the cemetery would easily exceed the amount being requested.

Daytha McNorton gave a brief overview of the history of the cemetery. She stated that they have cut costs where possible and encouraged the Council to approve the request.

Clyde McNorton stated that he has maintained the cemetery grounds for the past eight years and it would be impossible for the City to maintain the cemetery for less than \$60,000 annually. He also stated that the maintenance equipment would need to be replaced every four to five years.

Councilmember Blackburn requested a more detailed financial report of cemetery operations. He questioned if another cemetery would be interested in maintaining the cemetery.

Pam Simecka, City Controller reported that she reviewed the financial statements which appeared to be accurate. She explained that the majority of funds reflected in the financial statement are not accessible. She also reported that the maintenance equipment would need to be replaced next year, and the requested fund amount would have to be allocated from the general fund balance.

Councilmember Blackburn asked if the resolution could be deferred to allow time for a more in-depth financial analysis of the operation of the cemetery.

Councilmember Preisner requested to defer the resolution for thirty days to allow time for the Council to locate a funding source in the 2009 budget.

Councilmember Swank stated that if the resolution is approved the financial statements and operation of the cemetery would still need to be reviewed.

Nancy Applehantz spoke in support of the request and encouraged the Council to approve the allocation of funds.

Councilmember Harmon asked if the City has conducted an audit on the operations or the financial statements of the cemetery.

Pam Simecka stated that an audit has not been conducted by the City.

Councilmember Alcala moved to approve the resolution. The motion seconded by Councilmember Ortiz carried. Councilmembers Woelfel and Blackburn voted “no.” (6-2-0)

RESOLUTION NO. 8132 introduced by City Manager Norton N. Bonaparte, Jr., declaring the entire boundary of the City of Topeka and rescinding City of Topeka Resolution No. 8024 was presented.

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

Councilmember Kennedy moved to approve the resolution. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

ORDINANCE NO. 19200 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 24, 2008, through November 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 Kennedy moved to adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Woelfel, Swank, Blackburn, Preisner and Harmon -8. Absent: Haynes -1.

A RESOLUTION introduced by Norton N. Bonaparte, Jr., City Manager, consenting to a leasehold mortgage in connection with a facility financed with multi-family housing refunding revenue bonds concerning a project at Fleming Court Apartments was presented.

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

Councilmember Preisner moved to direct the City Manager to execute at his discretion. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

ORDINANCE NO. 19201 introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and make 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 6209, 6211, 6213 SW 10th Avenue in the City of Topeka, Kansas from "R-1" Single-Family Dwelling District and "C-2" Commercial District ALL TO "PUD" Planned Unit Development District ("C-2" use group) placed on first reading December 9, 2008 was again presented. (*PUD08/2*)

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

Mayor Buntin asked if there were any exparte communications. There were none declared.

Councilmember Kennedy moved to adopt the ordinance. The motion seconded by Councilmember Harmon carried. Councilmember Alcala voted "no." (7-1-0)

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

ORDINANCE NO. 19202 introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark and presently zoned “OS-1” Open Space District and located at 1638 NW Harrison Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading December 9, 2008 was again presented. (*HL08/04*)

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

Mayor Bunten asked if there were any exparte communications besides Councilmembers Alcalá, Ortiz and Preisner. There were none declared.

Councilmember Alcalá moved to adopt the ordinance. The motion seconded by Councilmember Kennedy carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Woelfel, Swank, Blackburn, Preisner and Harmon -8. Absent: Haynes -1.

ORDINANCE NO. 19203 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 southeast corner of SE Adams and SE 21st Street from “R-1” Single-Family Dwelling District and “C-2” Commercial District ALL TO “PUD” Planned Unit Development District (“M-2” use group) placed on first reading December 9, 2008 was again presented. (*PUD08/5*)

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

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

Councilmember Kennedy stated that a protest petition was filed against the proposed zoning change. She asked if the development met the requirements of the eight factors outlined in the *Golden vs. Overland Park* Supreme Court case.

Braxton Copley, Deputy City Attorney stated that all factors were considered by the Planning Commission and Planning Department and were met by the developer. He noted that approval would require seven affirmative votes by the Council.

Councilmember Preisner spoke in support of the development. He stated that the development would produce affordable housing, utilize local contractor and engineering services, and add \$50,000 to the tax roll annually.

Councilmember Blackburn stated that the development meets the requirements of the eight factors outlined in the *Golden vs. Overland Park* Supreme Court case and was recommended by City staff. He noted that it did not meet the model of the neighborhood.

Councilmember Harmon stated that both the area residents and the developer presented sound reasons to approve or deny the development; however, he could not find sufficient reasons to deny the zoning change request. He commended area residents for expressing their views of the project.

Councilmember Alcalá stated that he has spoke to a number of constituents that are opposed to the project; however, he could not find any basis to deny the proposal. He noted that the development did not fit the model of the neighborhood.

Exparte communications were expressed by all Councilmembers.

The motion to adopt the ordinance carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Woelfel, Swank, Blackburn, Preisner and Harmon -8. Absent: Haynes -1.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 48-24.01 through 48-24.07 concerning planned unit development districts and specifically repealing said original sections placed on first reading December 9, 2008 was again presented. (ACZR08/1)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.

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

Councilmember Blackburn made a substitute motion to refer the ordinance to the Economic and Community Development Committee. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 70114-03, which provides for widening Gage Boulevard from 10th to 12th Streets, 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. 18956 was presented for first reading.

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL;

Norton N. Bonaparte, Jr., City Manager reported that Garfield Community Center received a \$15,000 grant from the St. Francis Health Care Mission Fund to be used for the

Quincy Elementary After School program. He announced upcoming community events. He also announced that the next City Council meeting would be held on January 6, 2009.

Councilmember Kennedy commended City staff for their assistance in clearing city streets due to inclement weather conditions.

Mayor Bunten commended City employees for their hard work and dedication in clearing streets for citizens during inclement weather conditions.

Councilmember Blackburn commended the Topeka Rescue Mission for their service to the community. He encouraged citizens to donate food, clothing and toy items to the Mission.

Sandra Lassiter and Bishop Ronald Lassiter appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:45 p.m.

Brenda Younger
City Clerk