

Council Minutes – March 17, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 17, 2009. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Alcalá, Ortiz, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -8. Mayor Bunten presided -1. Absent: Councilmember Kennedy -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.

Councilmember Woelfel moved to suspend the Council Rules to add an ordinance concerning the expenditure of monies from the historic asset tourism fund to the Council agenda under first readings. The motion seconded by Councilmember Haynes carried. (8-0-0)

Councilmember Blackburn moved to add an ordinance extending the current compulsory retirement age of 60 to 67 for all employees of the police and fire departments, except for the chiefs to the Council agenda under first readings. The motion seconded by Councilmember Woelfel carried. (8-0-0)

Upon hearing no objections, Mayor Bunten announced that the ordinances would be added to the Council agenda under First Readings as items 7C and 7D.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT for Robert Harder to the Topeka/Shawnee County Public Library Board of Trustees for a term that would expire on April 30, 2011 was presented.

MINUTES of the regular meeting of March 10, 2009 was presented.

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

A JOINT CITY OF TOPEKA RESOLUTION NO. 8149 AND SHAWNEE COUNTY RESOLUTION introduced by Councilmember Brett Blackburn, Lana Kennedy, and Jack Woelfel, expressing the Topeka City Council and Shawnee County Board of Commissioners' intention to consolidate the City of Topeka Parks and Recreation Department with the Shawnee County Parks and Recreation Department into a single County agency was presented. The joint city-county resolution was deferred from the meeting of March 10, 2009.

Councilmember Blackburn stated that the resolution would express the City's intent to consider the consolidation of the City of Topeka Parks and Recreation Department with the Shawnee County Parks and Recreation Department into a single County agency. He also stated that the consolidation would be subject to both governing bodies considering and adopting a plan that provides for the form and manner of the consolidation on or before July 1, 2009.

Councilmember Blackburn moved to approve the joint city-county resolution. The motion was seconded by Councilmember Woelfel.

Councilmember Haynes stated that in the past the Council supported consolidation of the Parks and Recreation Departments. He also stated that the City Manager was directed to draft a consolidation report to present to the Council.

Councilmember Alcalá asked the City Manager what his stance was on the consolidation of the two departments.

Norton N. Bonaparte, Jr., City Manager reported that staff did present a consolidation plan report for consideration which has been reviewed and discussed by City staff members. He also reported that in 2008 the City conducted a community survey which determined that the one service the citizens of Topeka valued the most was the Parks and Recreation Department; therefore, he is not in favor of consolidation at this time. He stated that if the resolution is

approved, City staff members are prepared to meet with County staff members to discuss the plan and present the Council with a consolidation proposal.

Councilmember Preisner stated it is an opportune time to review all departmental functions and services, as well as, consolidation due to the state of the economy. He also stated that he is leery of implementing such a major policy directive when there could be a substantial change in the governing body in four weeks.

The motion to approve the joint city-county resolution carried. Councilmembers Swank and Harmon voted “no.” (6-2-0)

ORDINANCE NO. 19234 introduced by Mayor William W. Bunten amending City of Topeka Code Sections 18-4, 18-7 and 54-8 concerning bow and arrow hunting within City limits, and specifically repealing said original sections placed under first reading March 10, 2009 was again presented.

Mayor Bunten gave the staff report.

Mike Hayden, Kansas Department of Wildlife and Parks Secretary reported that the ordinance would allow the bow and arrow hunting of turkey and deer within the city limits only on land owned by the State of Kansas Department of Wildlife and Parks. He stated that the deer and turkey population has increased substantially over the past several years and approval of the ordinance would help resolve the problem before it gets out of hand. He also stated that other cities have taken action by encouraging the State Legislature to become involved in wildlife issues; however, he believes cities should implement their own laws.

Councilmember Blackburn expressed concern with the language of the ordinance. He suggested amending the language to more closely mirror the language of the ordinance approved by the City of Leavenworth. He requested that the language be amended to allow bow and arrow

hunting on private property with permission. He also asked Mr. Hayden if he would support an amendment to the language.

Secretary Hayden stated that the proposed ordinance was based on the direction given by the City's Legal Department and the current ordinance that is in effect. He also stated that if the implementation of the proposed ordinance is a success then the ordinance could be amended at a later date to allow bow and arrow hunting on private property.

Councilmember Haynes asked why the State is required to obtain permission from the City to allow hunting on property owned by the State.

Jackie Williams, City Attorney stated that the requirement is mandated through the City's home rule powers.

Councilmember Woelfel asked if the Kansas Department of Wildlife and Parks manage any properties within city limits.

Secretary Hayden reported that the Kansas Department of Wildlife and Parks do not manage properties within city limits; however, the language of the proposed ordinance would allow the State to do so if requested at a later date.

Councilmember Blackburn moved to amend the ordinance by striking the word "exclusively" on line 116, and the words "or private property" on line 117; and inserting the language, "property or privately owned property" at the beginning of line 117. The motion seconded by Councilmember Preisner carried. Councilmembers Alcala and Haynes voted "no." (6-2-0)

Councilmember Blackburn moved to adopt the ordinance as amended. The motion seconded by Councilmember Preisner carried. Councilmembers Woelfel, Haynes and Swank voted "no." (5-3-0)

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

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., authorizing initiation of condemnation proceedings to acquire a property interest for a storm sewer easement, which provides for the improvement of the storm sewer located at 2717 SW Boswell Avenue, was presented.

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

Joe McFarland adjacent property owner reported that over the past several years he has taken many steps to help prevent the flooding of his property and he is anxious to correct the problem.

Councilmember Swank noted that the City has been working with Mr. McFarland for nearly a year to help fix the drainage problems.

Tom Benaka, property owner stated that he opposes the storm sewer improvement because it would decrease the value of his home. He stated that he has made a strong effort to work with the City to find a solution to the problem with no success. He reported that he offered to pay one-half of the cost to relocate the pipe in the amount of \$12,500; and the City made a counter offer to pay \$2,500 of the relocation costs and proceed with condemnation. He stated that it has always been his goal to correct the problem.

Councilmember Woelfel asked Mr. Benaka if he would still be willing to pay \$12,500 of the relocation costs.

Councilmember Alcala asked if Mr. Benaka would prefer to relocate the pipe or replace it.

Mr. Benaka stated that he would prefer that the City relocate the pipe.

Councilmember Blackburn asked if there were disadvantages of the request made by Mr. Benaka.

Kelly Haller, Water Pollution Control reported that the City only needs to replace a certain portion of the pipe, not the entire length of the pipe as suggested by Mr. Benaka. He reported that the City did consider Mr. Benaka's request to (1) install pipe along the public easement and reconnect the new pipe to the storm sewer system which would double the amount of pipe and the project cost; or (2) install a new pipe and manhole between Mr. Benaka's and Mr. McFarland's houses which would compromise the foundations.

Councilmember Swank asked how much it would cost to do what Mr. Benaka is requesting.

Kelly Haller stated that it would cost approximately \$50,000.

Councilmember Harmon asked if the water issues would be resolved if the easement is granted.

Kelly Haller stated that by replacing the pipe it would significantly reduce the water flow; however, he could not guarantee that the flooding would stop.

Councilmember Blackburn asked if Mr. Benaka would agree to sign a temporary easement.

Mr. Benaka stated that he would be willing to sign a temporary easement.

Councilmember Blackburn moved to defer the resolution for two weeks to allow time for all parties involved to execute a temporary easement, allowing the City to make improvements to the storm sewer. The motion was seconded by Councilmember Haynes.

Councilmember Alcala made a substitute motion to table the resolution indefinitely. The motion seconded by Councilmember Blackburn carried unanimously. (8-0-0)

ORDINANCE NO. 19235 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of February 23, 2009, through March 1, 2009, 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 Haynes carried. Councilmember Swank was out of the room. (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Ortiz, Woelfel, Haynes, Blackburn, Preisner and Harmon -7. Councilmember Swank was out of the room. Absent: Kennedy -1.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing the initiation of condemnation proceedings to acquire a property interest for a storm sewer easement, which provides for the improvement of the storm sewer located at 2717 SW Boswell Avenue was presented for first reading.

Norton N. Bonaparte, Jr., City Manager requested that the ordinance be withdrawn from the agenda because the companion resolution was tabled indefinitely.

Upon hearing no objections, Mayor Buntin announced that the ordinance would be withdrawn from the Council agenda.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and make 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 a portion of property located at the northwest corner of SW Wanamaker Road and SW 53rd Street having an address of 5127 SW Wanamaker Road from "RR-1" Residential Reserve District TO "C-2" Commercial District was presented for first reading. (Z09/2)

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

Norton N. Bonaparte, Jr., City Manager announced upcoming community events. He also reported that a brochure providing information on the City's 2009 Operating Budget is being sent to residents in their water bill. He announced that the City would host public forums on the City's 2010 Operating Budget on April 8, 2009 at the Crestview Community Center; April 15, 2009 at the Garfield Community Center; April 22, 2009 at the Hillcrest Community Center; and on May 6, 2009 at Robinson Middle School.

Councilmember Alcalá stated that he would forward questions that he has to the Council relating to the Water Enterprise Resource Fund. He also stated that Bishop Ronald Lassiter requested that the City recognize the Highland Park High School Boys Basketball Team for winning the 5A State Championship.

Councilmember Ortiz thanked school administration for inviting her to help distribute the championship medals to the Highland Park High School Boys Basketball team members. She requested that the City publicly recognize the team with the designation of a proclamation.

Councilmember Preisner announced that a Committee of the Whole meeting would be held during the work session on March 24, 2009 at 5:15 p.m. in the Council Chambers.

Mayor Bunten recognized all Topeka-Shawnee County High School girls and boys basketball teams for their accomplishments this year.

Andrew Gray, Michael Byington and Edward Kirtdoll appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:43 p.m.

Brenda Younger
City Clerk