

Council Minutes – March 24, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 24, 2009. 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 Preisner gave the invocation.

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

A REPORT and recommendations from the Topekans in Support of Public Transit (TSTP) on the service changes of the Topeka Metropolitan Transit Authority was presented by Ami Hyten, Topeka Independent Living Resource Center Assistant Executive Director.

Councilmember Swank requested that the Council be provided with a financial breakdown of the operations of TMTA so an informed decision could be made.

Mayor Bunten requested that TSTP contact Topeka Metropolitan Transit Authority (TMTA) representatives to discuss the recommendations and concerns.

Councilmember Haynes asked if the Council could approve an increase in the mill levy with the condition that approval of the increase is subject to a vote of the public. He questioned if the increase would generate enough revenue to restore transit services.

Jackie Williams, City Attorney stated that the Council does have the authority to conditionally approve a raise in the mill levy.

Norton N. Bonaparte, Jr., City Manager stated that he would invite TMTA representatives to next week's work session to discuss the transit service issues.

Councilmember Blackburn requested that the Council be provided with all necessary financial documentation including expenditures; and a complete list of revenue resources for TMTA.

Councilmember Woelfel requested that item 4A, a civil claim appeal for Martin Godfrey be pulled from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced that item 4A would be pulled from the consent agenda and placed on the Council agenda under New Business as item 6B.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of March 17, 2009 was presented.

2009 Open After Midnight License renewal applications bearing the approval of the Chief of Police and City Inspectors were presented for the following:

<u>Business</u>	<u>Address</u>
After Dark Video	2315 NW Topeka Boulevard
American Legion Capitol Post #1	3800 SE Michigan
Blind Tiger Brewery & Restaurant	417 SW 37 th Street
Bob's Carwash	2733 SE California Avenue
Bob's Carwash	3162 SE 6 th Street
Bosco's	435 S Kansas
Boss Hawg's	2833 SW 29 th Street
Capitol Bingo	2050 SE 30 th Street
The Celtic Fox	118 SW 8 th Street
Dillon's #88	4015 SW 10 th Street
Dillon's #87	5311 SW 22 nd Place
Donnie's	124 W 8 th Street
El Azteca Night Club	1201 SE 6 th Street
Fraternal Order of Eagles	2941 SE Fremont
Fergie's Clubhouse Bar	1418 SW Lane
Hooter's	6100 SW 10 th Avenue
Hot Pockets	1909 NE Seward
Hy-Vee #1658	2951 SW Wanamaker Road
Jax Drinks & Eatery	555 SW 39 th Street
Jeremiah Bullfrogs Bar & Grille	2940 SW Wanamaker Road
Jeremiah Bullfrogs Bar & Grille II	4115 SW Huntoon
Kansan Grill	705 S Kansas Avenue
Kwik Shop #705	1114 NW Topeka Boulevard

<u>Business</u>	<u>Address</u>
Kwik Shop #720	102 W 37 th Street
Kwik Shop #729	1700 Topeka Boulevard
Kwik Shop #740	2277 W 10 th Street
Kwik Shop #743	5633 SW 21 st Street
Kwik Shop #757	2619 SW 21 st Street
Kwik Shop #781	4500 SW Topeka Boulevard
Kwik Shop #788	1414 W 17 th Street
Kwik Shop #789	746 NE Wabash
Old Chicago	1231 SW Wanamaker Road
Oscar's	1424 SW Lane Street
Painkillers	1620 W 6 th Street
Phillip Billard VFW Post #1650	3110 SW Huntoon
Poor Bill's	840 N Kansas Avenue
Ruby Tuesday	1625 SW Wanamaker Road
Seabrook Bar & Grill	2105 SW Mission Avenue
Sidelines	5630 SW 29 th Street
Sinsations	4720 SW Topeka Boulevard
Sk8away	818 SW Fairlawn Road
Skinny's	4016 SW Huntoon
Some Like It Hot	4732 SW Topeka Boulevard
Spanky's	3100 SW Gage Boulevard
Starlite Skate Center	301 SE 45 th Street
Steak-N-Shake	1415 SW Wanamaker Road
Taco Bell	101 SE 29 th Street
Taco Bell	2013 N Topeka Boulevard
Taco Bell	1560 SW Wanamaker Road
Tailgater's Sports Pub & Grill	2025 SW Urish Road, Suite 108
Tammy's On the Go	3335 SW Gage Boulevard
Terry's Billard Club	3919 SW 21 st Street
The Tool Shed Tap	921 S Kansas Avenue
Topeka Country Club	2700 SW Buchanan
20's West	901 SW Fairlawn Road
Twilighter Country Club	816 N Kansas Avenue
VIP Lounge	5235 SW 28 th Court
Varsity Blues Bar & Bar-B-Que	1616 SW 17 th Street
Wal-Mart #5441	2600 NW Rochester Road
Wal-Mart #2131	1301 SW 37 th Street
Wal-Mart #1802	1501 SW Wanamaker Road
Whiplash Bar & Grill	2107 SE California Avenue
Wood Valley Racquet Club	2909 SW 37 th Street

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

ORDINANCE NO. 19236 introduced by Councilmember Woelfel amending City of Topeka Code Section 2-331 concerning the expenditure of monies from the historic asset tourism fund and specifically repealing said original section placed on first reading March 17, 2009 was again presented.

Councilmember Woelfel gave the staff report.

Greg Allen, Historic Preservation Review Committee Chairman spoke in support of the ordinance. He stated that the committee is eager to move forward with the establishment of the committee bylaws, as well as, the guidelines for grant applications and review methods.

Councilmember Woelfel asked if the committee has completed the bylaws, and if so, was a provision included that would address potential conflicts of interest.

Greg Allen reported that the committee is still in the process of developing the bylaws. He also stated that the conflict of interest issue would be addressed in the committee review method standards.

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

Councilmember Preisner expressed concern with how the funds should be allocated due to the City's budget constraints. He requested that the ordinance be referred to the Policy and Finance Committee for review.

Councilmember Preisner made a substitute motion to refer the ordinance to the Policy and Finance Committee. The motion was seconded by Councilmember Swank.

Councilmember Haynes asked if the funds could be used for other historical or general fund purposes.

Jim Langford, Budget and Finance Director stated that he would have to research the financial provisions of how the funds could be used.

Norton N. Bonaparte, Jr., City Manager stated that the funds could not be used for general fund purposes.

Councilmember Woelfel clarified that the committee is asking for the Council's direction to clarify and facilitate the Historic Asset Preservation Fund grant application process.

Councilmember Alcalá stated that he would not support referring the ordinance to the Policy and Finance Committee for review. He noted that Councilmember Woelfel worked closely with staff and committee members in drafting the amendment to the ordinance.

Councilmember Blackburn questioned if the funds could be used for other historical or tourism asset funds.

Councilmember Woelfel stated that the Transient Guest Tax fund was intended to be used for projects that would attract tourism to Topeka.

Councilmember Swank spoke in opposition to the ordinance. She expressed concern with eliminating the Historic Preservation concept and stated that the language needs to be clarified.

Councilmember Alcalá stated that Historic Asset Preservation funds could only be used in a particular capacity; however, as new funds are collected they could be allocated differently.

The substitute motion to refer the ordinance to the Policy and Finance Committee failed. Councilmembers Kennedy, Alcalá, Ortiz, Woelfel and Haynes voted "no." (4-5-0)

Norton N. Bonaparte, Jr., City Manager noted that there was a language discrepancy in the ordinance. He recommended that the wording on Line 35 of the ordinance be changed to "City Council Transient Guest Tax Committee" instead of "City of Topeka Transient Guest Tax Committee."

Councilmember Alcala made a friendly amendment to change the language of the ordinance as stated by the City Manager.

Councilmember Woelfel accepted the friendly amendment.

The motion to adopt the ordinance carried. Councilmembers Swank, Blackburn, Preisner and Harmon voted “no.” (5-4-0)

Councilmember Blackburn raised a point of order. He questioned if the friendly amendment would require a formal motion.

The Chair ruled that a separate motion must be made to amend the ordinance.

Councilmember Alcala moved to amend the language of the ordinance on line 35 as stated by the City Manager. The motion seconded by Councilmember Kennedy carried.

Councilmembers Swank, Blackburn, Preisner and Harmon voted “no.” (5-4-0)

Councilmember Kennedy questioned if the Planning Department was helpful in reviewing the document and offering input.

Councilmember Blackburn asked if the Planning Department supported the amendment to the ordinance.

David Thurbon, Planning Director stated that he supports the amendment. He reported that the only issue of contention by the Planning Commission and Planning Department was in relation to the insertion of the clause, “Individuals involved in writing the guidelines or submitting a grant would not be allowed to review the grants.” in the guidelines. He also stated that in his opinion, the Topeka Landmarks Commission should be included in the decision-making process, and the review method process must address potential conflicts of interest.

Councilmember Woelfel stated that the Planning Department staff was helpful during the process and did not interfere with the duties of the committee.

Councilmember Woelfel moved to approve the ordinance as amended. The motion seconded by Councilmember Alcalá carried. Councilmembers Swank, Blackburn, Preisner and Harmon voted “no.” (5-4-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Woelfel and Haynes -5. Noes: Swank, Blackburn, Preisner and Harmon -4.

ORDINANCE NO. 19237 introduced by Councilmember Brett Blackburn amending City of Topeka Code Section 106-213, Compulsory retirement and specifically repealing said original section placed on first reading March 17, 2009 was again presented.

Councilmember Blackburn gave the staff report and stated that the Police Department requested the age change to accommodate the varying ages of possible new recruits. He stated that the retirement benefits for the police and fire departments would need to be thoroughly reviewed at a later date. He also stated that Fire Department employees have requested that they be excluded from the ordinance.

Councilmember Blackburn moved to delete all references in the ordinance made to the Fire Department. The motion was seconded by Councilmember Preisner.

Steve Wharton asked for confirmation that the Fire Department would not be affected by the change in compulsory retirement age.

Jackie Williams, City Attorney stated that the Topeka Fire Department would not be affected by the change and excluded from the ordinance.

Councilmember Alcalá asked if the Police Chief and Fire Chief approved of the change. He also asked how the change would fiscally impact the City.

Norton N. Bonaparte, Jr., City Manager stated that the Police Chief, as well as, the Fire Chief approved of the change. He also stated that in the future, it would be in the best interest of

the City to avoid stipulating a set age for retirement to avoid potential age discrimination litigation. He reported that it would have a definite impact on the City's budget in terms of police officers working longer at a higher rate of pay as opposed to hiring new recruits at a lower rate of pay.

Mayor Bunten expressed concern with the process of amending the ordinance. He stated that he believes the ordinance should have been reviewed in committee, allowing input from staff and the public.

The motion to delete all references in the ordinance made to the Fire Department carried unanimously. (9-0-0)

Councilmember Blackburn moved to adopt the ordinance as amended. The motion seconded by Councilmember Preisner carried. Councilmembers Alcalá, Ortiz and Woelfel voted "no." Councilmember Haynes abstained. (5-3-1)

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

ORDINANCE NO. 19238 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of March 2, 2009, through March 8, 2009, 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 Kennedy 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.

CIVIL CLAIM APPEAL for Martin Godfrey in the amount of \$498 for damages sustained to his residence due to the backup of sewage was presented.

Councilmember Kennedy moved to approve the civil claim appeal. The motion seconded by Councilmember Alcala failed. Councilmembers Woelfel, Swank, Blackburn, Preisner and Harmon voted “no.” (4-5-0)

ORDINANCE NO. 19239 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 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 placed on first reading March 17, 2009 was again presented. (Z09/2)

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

Mayor Buntin asked if there were any exparte communications besides Councilmembers Ortiz, Woelfel, Swank, Blackburn, Preisner and Harmon. There were none declared.

Councilmember Blackburn moved to adopt the ordinance. The motion seconded by Councilmember Kennedy carried. Councilmembers Alcala and Ortiz voted “no.” (7-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Woelfel, Haynes, Swank, Blackburn, Preisner and Harmon -7. Noes: Alcala and Ortiz -2.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the City of Topeka Code Section 48-20.02 concerning use regulations in light industrial districts and specifically repealing said original section was presented for first reading. (ACZR09/1)

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

Norton N. Bonaparte, Jr., City Manager reported that the 2009 Budget Information Brochure is now available on the City’s website. He announced that the City would host public

forums to discuss the City's 2010 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 May 6, 2009 at Robinson Middle School. He also announced that the Extra-Ordinary Topeka Newsletter spring issue is available for review on the City's website; and upcoming community events.

Councilmember Ortiz asked constituents for their patience in receiving a return telephone call from her.

Councilmember Swank welcomed the participants and their families of the Kansas Kids' Wrestling Tournament to the City of Topeka.

Greg Rickey, Kim Richmond and Ron Shirrell appeared to speak under public comment.

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

Brenda Younger
City Clerk