

Council Minutes – June 9, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 9, 2009. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9. Mayor Bunten presided -1.

AFTER THE MEETING was called to order, Councilmember Alcalá gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8165 introduced by Councilmember Richard Harmon granting Women In Action, Inc./Stardusters, Inc., an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

MINUTES of the regular meeting of June 2, 2009 was presented.

Councilmember Alcalá moved to approve the consent agenda. The motion seconded by Councilmember Ortiz 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, June 9, 2009, 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. 60607, authorized by Resolution No. 7890, adopted and approved November 14, 2006.

ORDINANCE NO. 19265 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 Mission Ridge Subdivision with pavement, curb and gutter and all other contingencies needed to complete Street Improvement

Project No. 60607 as defined and described in Resolution No. 7890, adopted and approved November 14, 2006 placed on first reading June 2, 2009 was again presented.

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

Mayor Bunten expressed concern with developers experiencing financial difficulties due to the slow housing market. He asked if there is a policy in place that would make developers financially responsible for unpaid special assessments after a period of time; and if the City conducts a financial background check on developers.

Jim Langford, Budget and Finance Director stated that the assessment process is currently being reviewed by the Policy and Finance Committee.

Councilmember Harmon stated that the Policy and Finance Committee is determining whether time limits should be placed on special assessments, and if a letter of credit should be required to determine if a developer is financially secure.

Councilmember Preisner moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner, Harmon and Mayor Bunten -10.

DENIAL OF CLAIM APPEAL by Ronald Bozarth seeking damages in the amount of \$489 for vehicle repair was presented.

Ken Benjamin, Assistant City Attorney gave the staff report. He stated that it was determined that the City was not negligent because the pothole had not been reported; and following the incident City street crews arrived within 30 minutes to repair the pothole.

Councilmember Alcalá moved to approve the claim appeal in the amount of \$489. The motion was seconded by Councilmember Preisner.

Councilmember Alcalá stated that he would support the claim appeal because he believes the City is negligent due to the fact a written policy does not exist.

Councilmember Woelfel questioned why the Legal Department recommended denial of the claim appeal. He stated that it was his understanding that the same area had been reported twice before for having potholes that needed to be repaired.

Ken Benjamin stated that it is the practice of the City to make random pothole checks throughout the city; however, he is not aware of any written policies outlining a procedure. He also reported that a year ago a pothole was repaired near the same area, as well as, one on the opposite side of the road.

Councilmember Preisner stated that he would not support the claim appeal because he believes the Council would be setting precedence for future claim appeals.

Councilmember Alcalá asked if the City would be liable if the Council denies the claim appeal based on the determination that approval would set precedence for future claim appeals.

Braxton Copley, Deputy City Attorney stated that each Councilmember is required to consider the facts as presented; consider the recommendation made by the Legal Department; and consider claim on a case by case basis.

Councilmember Hiller questioned if a written policy would obligate the City to pay for all claims relating to pothole repair. She also stated that she believes the City is not negligent because they responded to the situation in a timely manner.

The motion to approve the claim appeal in the amount of \$489 failed. Councilmembers Hiller, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon voted “no.” (1-8-0)

A PROJECT BUDGET in the amount of \$300,000 and AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-701002.00 (HTE 702090), which provides for the design of a roundabout to be constructed at 17th and MacVicar, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading June 2, 2009 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that an informational meeting was conducted for area residents on June 3, 2009.

Linda Voss, City Engineer stated that the following safety alternatives were presented by neighborhood residents at the informational meeting:

- (1) Trim the trees located near the intersection
- (2) Increase Police patrol
- (3) More clearly define pedestrian and bicycle cross walks
- (4) Check traffic light clearance times
- (5) Widen the intersection
- (6) Install speed bumps

She reported that the trees have been trimmed near the intersection; she has met with the Police Department and requested that they patrol the area more frequently; the pedestrian cross walks have not yet been painted; traffic light clearance times are set correctly; and the traffic flow is too heavy to install speed bumps. She stated that if it is the will of the Council a new traffic light could be installed or the intersection could be made wider.

Councilmember Preisner asked when the traffic signals are scheduled to be replaced and how much would it cost. He also asked if staff still recommends installation of a roundabout.

Linda Voss stated that the SW 17th and MacVicar intersection traffic signals are seventh on a list of 18 traffic signal replacement projects, and it would cost approximately \$170,000 to replace the traffic signals. She also stated that staff continues to recommend the installation of a

roundabout because it would be the safest alternative to control the heavy flow of traffic and decrease the number of accidents.

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

Councilmember Woelfel noted that the actual project cost would be \$491,713 if bonded over a twenty year period.

Jorge Nobo stated that the Council should consider the particulars of the area and believes a roundabout is not the safest way to control intersection traffic due to the high volume of pedestrian and bicycle traffic. He also noted the close proximity of the intersection to Washburn University.

Shelly Bearman thanked City staff and Council for remaining receptive to different ideas for the project. She stated that she believes the project would decrease the quality of life and property values within the area, as well as, make crossing the intersection difficult for pedestrians.

Kim Morse-Cordova thanked the City Council for their service. She distributed two petitions listing area residents that oppose the Roundabout Project. She stated that she has not found any evidence that a roundabout would be any safer than an intersection. She encouraged the Council to consider other cost-effective options.

Carol Vogel spoke in opposition to the project and stated that she agrees that it is a dangerous intersection that needs to be upgraded; however, she believes residents would avoid the roundabout, rerouting traffic through the Randolph Elementary School neighborhood. She also stated that intersection safety would increase if trees were trimmed and traffic laws were enforced. She suggested delaying the project for two years to allow simple safety measures to be implemented.

Joyce Smith, College Hill Neighborhood Improvement Association President stated that she has received many calls from area residents in support of the project. She noted that studies have shown that roundabouts are generally safer than intersections. She encouraged the Council to base their vote on professional facts and not emotions.

Richard Martinez asked if there is a more cost-effective alternative to consider. He stated that although a roundabout may decrease the accident rate, it would not make the needs of pedestrian traffic a priority. He requested that the Council make sure the project accommodates the neighborhood.

Gerald Long stated that he has witnessed drivers of all ages running the traffic lights. He also stated that he supports the concept of roundabouts, just not for this area due to the high volume of vehicle and pedestrian traffic. He expressed concern with project costs being much higher than anticipated.

David Church spoke in support of the project. He stated that a roundabout would decrease the number of accidents, as well as, accommodates bicycle and pedestrian traffic. He questioned the proposed size of the roundabout and the amount of right-of-way that must be acquired from property owners.

Susan Helbert spoke in opposition to the project. She stated that the long term effects of decreasing property values have not been mentioned; the preservation of historic homes has not been considered; and how dangerously close the traffic would be located to residents' homes.

Don Snethen distributed a handout and spoke in opposition to the project. He stated that he believes simple safety measures could be addressed such as trimming trees, increasing traffic law enforcement, and posting slower speed limits. He requested that the Council disapprove the project.

Reane Utemark spoke in opposition to the project and stated that the design would not accommodate bicycle traffic. She also stated that she believes there are more cost effective solutions that could be utilized that would be safer for bicycle and pedestrian traffic.

Helen Marie Gaither spoke in opposition to the project and stated that the roundabout would have a negative effect on pedestrian traffic. She also stated that she believes increasing police patrol would be less expensive to implement than the proposed project.

Angel Romero spoke in support of the project. He stated that he has spoken with many Washburn University students that support the project contingent upon constructing raised pedestrian crosswalks; staying within the project budget and project deadline; and maintaining constant communication with surrounding residents and students.

Chad Manspeaker spoke in opposition to the project and stated the he believes there are better options available. He expressed concern with the probability of the project reducing property values in a historic neighborhood that is vital and an important part of the city. He encouraged the Council to disapprove the project.

Councilmember Swank thanked residents for speaking to the issue. She stated that she would oppose the project because the majority of the neighborhood residents do not support it. She noted that the Heartland Visioning Committee has completed their reports concerning pedestrian, bicycle and vehicle traffic which will be presented to the Council in the near future. She encouraged discussion to continue throughout the community regarding improved safety of the intersection.

Councilmember Preisner stated that he would support the project as presented. He commended staff for their hard work in drafting the project and planning for the future.

Councilmember Hiller thanked City staff and the City Traffic Engineer for the research and thorough presentation of facts. She stated that she would oppose the project because she believes serious changes need to be made to the pedestrians cross walks throughout the area.

The motion to approve the project budget and adopt the ordinance failed. Councilmembers Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer and Harmon voted “no.” (1-8-0)

A JOINT CITY OF TOPEKA RESOLUTION AND SHAWNEE COUNTY RESOLUTION introduced to the City by Councilmember Jack Woelfel expressing the Topeka City Council and the Board of Shawnee County Commissioners’ intention to consolidate the City of Topeka Parks and Recreation Department into a single county agency was presented.

Councilmember Woelfel gave the staff report.

Councilmember Woelfel moved to approve the Joint City of Topeka Resolution and Shawnee County Resolution. The motion was seconded by Councilmember Preisner.

Councilmember Wolgast stated that it has been difficult as a new Councilmember to make a decision regarding the consolidation proposal because the City did not counteract with their own proposal. He stated that he believes Shawnee County’s proposal is viable but there are significant issues with the proposal that are too important to disregard at this time. He encouraged the Council to review the entire plan and determine if steps need to be taken prior to the consolidation of departments.

The motion to approve the Joint City of Topeka Resolution and Shawnee County Resolution failed. Councilmembers Hiller, Woelfel, Wolgast, Swank, Priesner and Harmon voted “no.” Mayor Buntén voted “yes.” (4-6-0)

A PETITION, A PROJECT BUDGET in the amount of \$210,150 and RESOLUTION NO. 8166 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Sanitary Sewer

Improvement Project No. T-401014.00 (HTE 409700) which provides for sanitary sewer service in the Cedar Crest Office Park Subdivision as more specifically described herein placed on first reading June 2, 2009 was again presented.

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

Councilmember Harmon moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Alcala carried. Councilmember Woelfel voted “no.” Mayor Buntun voted “yes.” (9-1-0)

A PETITION, A PROJECT BUDGET in the amount of \$929,840 and RESOLUTION NO. 8167 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Street Improvement Project No. T-601016.00 (HTE 606550), which provides for paving streets in the Cedar Crest Office Park Subdivision as more specifically described herein placed on first reading June 2, 2009 was again presented.

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

Councilmember Harmon moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Preisner carried. Councilmember Woelfel voted “no.” Mayor Buntun voted “yes.” (9-1-0)

RESOLUTION NO. 8168 introduced by City Manager Norton N. Bonaparte, Jr., relating to the lease purchase of an Enterprise Resource Planning (ERP) system for the City of Topeka and rescinding Resolution No. 8051 was presented. (*Contract No. 39552*)

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

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

Councilmember Archer stated that according to the cost benefit analysis he performed for over an eight year period, it would cost over \$5 million to fully implement the ERP System. He stated that he would oppose the purchase of the system until a significant implementation plan is presented that would save taxpayer dollars.

Mayor Bunten spoke in opposition to the resolution. He stated that it is a very expensive software system and other less expensive options should be considered.

The motion to approve the resolution carried. Councilmembers Alcalá, Ortiz, Archer and Mayor Bunten voted “no.” (6-4-0)

CONTRACT NO. 39553 between the City of Topeka and the Fraternal Order of Police (FOP) Lodge No. 3 was presented.

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

Councilmember Preisner moved to approve the agreement. The motion was seconded by Councilmember Swank.

Councilmember Woelfel spoke in opposition to the agreement. He stated that he is unsure if the City will have the funding necessary to support the wage increases that are being proposed over the next two years.

Mayor Bunten stated that he supports all employees receiving a raise; however, by approving this agreement it will make it difficult to provide raises to other employees due to the financial implications. He noted that approval of this agreement could cause an increase in the mill levy. He suggested that the agreement be deferred for one month so the latest sales tax revenue estimates for 2009 and 2010 can be taken into consideration and a responsible decision can be made.

Councilmember Archer spoke in support of the agreement. He stated that he believes the City should be mindful of the Police Department and the services they provide.

Councilmember Wolgast stated that he sympathizes with the financial concerns expressed by the Mayor; however, approval would put into practice many other significant improvements to the organization as a whole, having a long-term positive effect on the City.

Councilmember Harmon asked what would happen if the agreement is rejected by the Council.

Dennis Taylor, Performance Management Coordinator stated that if negotiations could not be re-established they would move to the fact finding stage or impasse.

Councilmember Swank spoke in support of the agreement and stated that she believes it is a good plan. She also stated that she understands that it is a difficult financial decision; however, it is an important decision that will have an effect on Police Department morale.

Councilmember Hiller spoke in support of the agreement. She stated that she agrees it is a difficult financial decision that will have an effect on the budget cycle. She encouraged the Council to remain open minded as they work to draft a feasible budget for 2010.

Councilmember Ortiz questioned if there were officers that opposed the agreement. She expressed concern with the City paying more in the long-term if the agreement is not approved at this time.

Ron Miller, Police Chief stated that there was some opposition expressed by a small percentage of Lodge members to certain terms of the agreement; however, after a year of negotiations they were able to arrive at an agreement that was approved by 80% of the Lodge members.

The motion to approve the labor agreement carried. Councilmember Woelfel voted “no.” Mayor Bunten abstained. (8-1-1)

ORDINANCE NO. 19266 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of May 18, 2009, through May 24, 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 Swank carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9.

ORDINANCE NO. 19267 introduced by City Manager Norton N. Bonaparte, Jr., amending the Master PUD Plan of McCrite Plaza Retirement Apartments and Health Center, to allow development of a single story structure for a memory care facility and expansion of an existing structure on property located at 1600 SW 37th Street in the City of Topeka, Kansas placed on first reading June 2, 2009 was again presented. (*Z90/30F*)

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

The City Clerk asked if there were any ex parte communications besides Councilmember Wolgast. There were none declared.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner, Harmon and Mayor Bunten -10.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as a historic landmark and presently zoned “R-2” Single-Family Dwelling District and located at 1248 SW Buchanan Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 was presented for first reading.

AN ORDINANCE introduced by Councilmember John Alcala authorizing the sale, consumption, and possession of alcoholic liquor as part of the Fiesta Mexicana at specified locations and times was presented for first reading.

AN ORDINANCE introduced by Councilmember John Alcala authorizing the sale, consumption, and possession of alcoholic liquor as part of the Fiesta Mexicana Parade and Street Party at specified locations and times was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced upcoming community events.

Councilmember Hiller commended City staff for their thorough research of the ERP System and stated that staff has been very helpful in providing information about the ERP System to the Council.

Councilmember Ortiz expressed the importance of cross-training City staff. She reported that the developer of the SE 15th and Adams Street Improvement Project has been waiting three weeks to receive a signage permit due to a staff member being on vacation. She also noted that the developer expressed concern with the amount of time is taking to complete the project. She thanked Randy Speaker, Deputy City Manager for resolving the issue and handling the situation in a professional manner.

Councilmember Preisner commended Fire Chief Howard Giles for participating in the 2009 Leadership Kansas Program.

Councilmember Harmon announced that the Greater Topeka Chamber of Commerce Annual Inter-City Visit is tentatively scheduled for September 1st, 2nd and 3rd. He stated that he would introduce a resolution rescheduling the September 1, 2009 Council meeting to September 8, 2009 allowing Councilmembers the opportunity participate in the event.

Ellen Ross appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:13 p.m.

Brenda Younger
City Clerk