

Council Minutes – August 25, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, August 25, 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 Buntgen presided -1.

AFTER THE MEETING was called to order, Pastor Troy Scroggins, Hope Lutheran Church gave the invocation.

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

A PRESENTATION of the 2008 Annual Report for the Human Relations Commission was given by Rio Cervantes-Reed, Human Relations Commission Director.

THE CONSENT AGENDA was presented as follows:

A BOARD APPOINTMENT recommending the re-appointment of Sharon Joseph to the Human Relations Commission for a term that would end August 31, 2011 was presented.

A BOARD APPOINTMENT recommending the re-appointment of Anthony Fadale to the Human Relations Commission for a term that would end August 31, 2011 was presented.

A BOARD APPOINTMENT recommending the re-appointment of Mike Hayden to the Topeka/Shawnee County Riverfront Authority Board for a term that would end August 31, 2012 was presented.

RESOLUTION NO. 8188 introduced by Councilmembers Deborah Swank, Karen Hiller, Larry Wolgast, Sylvia Ortiz and John Alcalá expressing support for the Echo Ridge affordable housing project was presented.

MINUTES of the regular meeting of August 18, 2009 was presented.

An Open After Midnight License application bearing the approval of the Chief of Police and City Inspectors for Fairlawn Plaza BP located at 2101 SW Fairlawn Road was presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Archer 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, August 25, 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 Sanitary Sewer Improvement Project 40949-01, authorized by Resolution No. 7973, adopted and approved June 26, 2007.

ORDINANCE NO. 19298 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 Shadywood Subdivision with piping, manholes, engineering and all other contingencies needed to complete Sanitary Sewer Improvement Project No. 40949-01, as defined and described in Resolution No. 7973, adopted and approved June 26, 2007 placed on first reading August 18, 2009 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 Swank carried unanimously. Mayor Buntun 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 Buntun -10.

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, August 25, 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 Sanitary Sewer Improvement Project T-401006.00 (HTE 409620), authorized by Resolution No. 8094, adopted and approved August 26, 2008.

ORDINANCE NO. 19299 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 Hofmann Acres Subdivision with piping, manholes, engineering and all other contingencies needed to complete Sanitary Sewer Improvement Project No. T-401006.00 (HTE 409620), as defined and described in Resolution No. 8094, adopted and approved August 26, 2008 placed on first reading August 18, 2009 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 Swank 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., amending City of Topeka Code, creating Article 9 in Chapter 2, establishing an appeal and administrative hearing process for the City placed on first reading August 18, 2009 was again presented.

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

Councilmember Hiller distributed an amendment to the ordinance. She explained that the ordinance outlines the appeal process model to be used by all departments. She also stated that she believes it is very important to have an appeal process available to citizens.

Mayor Bunten noted that the administrative hearing officer is a licensed attorney who contracts through the City.

Councilmember Hiller stated that currently hearings are scheduled every other week; however, following approval of the ordinance she anticipates hearings will be scheduled more often expediting the appeal process.

Councilmember Alcalá spoke in support of the ordinance. He stated that elimination of the appeal fee would allow for an ease in process and eliminate potential problems that may occur if refunds are necessary.

Councilmember Hiller moved to amend the ordinance as distributed. The motion was seconded by Councilmember Swank.

Councilmember Ortiz questioned why the process only allowed for one continuance.

Jackie Williams, City Attorney stated that it is common practice in district courts to allow for only one continuance.

Councilmember Swank requested that the amendments be read aloud.

Jackie Williams stated the ordinance would be amended as follows:

- Amend lines 9 through 17 to read, “WHEREAS, the City Council desires to establish a uniform procedure for the appeal from a notice of violation or imposition of an administrative fee or charge; and WHEREAS, appeals should be directed to the appropriate department director so that issues may be resolved, if possible, without the need for an administrative hearing; and WHEREAS, all appeals of administrative action should be done in an expedient and fair manner and hearings scheduled as soon as possible to allow for a timely resolution of issues. NOW THEREFORE,”
- Delete the words, “ten (10) business days from the date of” on line 31
- Delete the statement, “(3) Request an administrative hearing to contest the finding of a violation, other administrative action, or imposition of the fee or charge cited in the notice.” beginning on line 36 and ending on line 38
- Add the words, “Alternatively, a” on line 39
- Add the statement, “within ten (10) business days from the date of the notice appeal all or part of” beginning on line 40 and ending on line 41
- Add the statement, “and at least one other method of contact such as telephone number or Email address,” beginning on line 44 and ending on line 45

- Delete the statement, “within ten (10) business days after receipt of the notice.” on line 47
- Delete the words, “within thirty (30) days” on line 48
- Add the statement, “to be held as soon as practicable but no later than fifteen (15) business days” on line 49
- Delete the statement, “Additionally, the director of the applicable department shall mail written notice to the person of the date and time of the hearing. (2) The written request for an appeal hearing must be accompanied by an appeal fee of \$25.00. Appeal fees will be refunded to the person appealing the finding of a violation if the administrative hearing officer does not find there was a violation.” beginning on line 50 and ending on line 55
- Add the statement, “The person requesting the appeal shall be notified of the appeal time and date in person, by telephone, Email or regular mail as may be necessary to notify the person requesting the hearing. Additionally, a reminder shall be provided by the department director or his or her designee at least forty-eight (48) hours in advance of the hearing by telephone or Email.” beginning on line 55 and ending on line 59
- Add the statement, “The City and the person requesting the appeal shall each be permitted one continuance and” beginning on line 82 and ending on line 83
- Delete the word “calendar” and add the word “business” on line 99

Councilmember Wolgast asked if City staff approves of the amendments.

Ron Miller, Police Chief stated that the concept of the ordinance decriminalizes city code and encourages residents to fix the cited nuisance instead of following through to an administrative hearing. He discouraged the elimination of the \$25 appeal fee because the fee would act as a deterrent to an appeal.

Councilmember Hiller commended legal staff for their work on the ordinance. She noted that unexpected conflicts arose when other departments were included in the appeals and administrative hearing procedures.

Ron Miller stated that in his opinion some of the amendments need to be reviewed further.

Councilmember Hiller stated that she was recently informed that there are two more departments that have not had the opportunity to review the ordinance, and need to be included in the process.

Councilmember Hiller withdrew the motion to amend the ordinance as distributed. The second concurred.

Pat DeLapp spoke in opposition to the ordinance and stated that he believes some of the language needs to be changed.

Councilmember Preisner moved to defer the ordinance until September 15, 2009. The motion seconded by Councilmember Hiller carried unanimously. (9-0-0)

Councilmember Woelfel requested that the timeline of notifications be considered when reviewing the amendments to the ordinance. He also asked if the appeal process could be handled administratively by the City Manager.

ORDINANCE NO. 19300 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Sections 146-26, 146-28, 146-32, 146-35, 146-46, 146-47, 146-78, 146-79, 146-81, 146-82, 146-83, 146-102, 146-136, 146-148, 146-151 and specifically repealing said original sections; creating Sections 146-9, 146-10, 146-16, 146-20, 146-38, 146-48, 146-50, 146-76, 146-77, 146-80, 146-99, 146-141, 146-144, 146-145, 146-146 and 146-150 all concerning the water, water pollution control, and stormwater utility placed on first reading July 28, 2009 was again presented.

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

Mayor Bunten asked if approval of the ordinance would give the Water Department the authority to increase fees.

Don Rankin, Water Department Superintendent stated that it would only authorize the Department to establish fees based on services or goods provided, as well as, protect the Department from losing money on the established fees.

Mayor Bunten suggested that a cap be placed on the fees to promote good policy for the governing body to follow.

Norton N. Bonaparte, Jr., City Manager reported that water rates are still determined by the City Council.

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

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

CHARTER ORDINANCE NO. 100 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section A2-1, Statutes made inapplicable, and repealing said original section and repealing City of Topeka Code Section A17-1 concerning a central utility billing office placed on first reading July 28, 2009 was again presented.

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

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

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

ORDINANCE NO. 19301 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 3, 2009, through August 9, 2009, and enumerating said expenditures herein was presented for first and final reading.

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

Councilmember Swank 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: Hiller, Alcala, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project T-301012.00 (HTE 302910), which provides for a new lighting system at Felker Park Softball Complex, 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 Councilmember Karen Hiller authorizing the sale, consumption, and possession of alcoholic liquor as part of the Sacred Heart-St. Joseph Parish Autumnfest 2009 at specified locations and times was presented for first reading.

AN ORDINANCE introduced by Councilmember Deborah Swank, amending City of Topeka Code Sections 78-226 through 78-239 concerning clean indoor air in public places and places of employment and repealing said original sections and creating Sections 78-240 through 78-242 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. 70192-02 which provides for widening of S.W. 6th Street between S.W. Oakley Street and S.W. Gage Boulevard, as more specifically described herein, pursuant to Section A12-1 of the Code of the City of Topeka, and repealing City of Topeka Ordinance No. 18131 was presented for first reading.

Councilmember Hiller requested that agenda item 8C, an ordinance relating to clean air in public places be deferred until late September. She stated that she would prefer that the public be given the opportunity to express their opinions at scheduled work sessions.

Mayor Bunten stated that he believes there are more citizens that would like to speak to the clean air issue and supports the deferral of the ordinance.

Councilmember Wolgast stated that Council meetings provide a public forum for citizens to express their opinions.

Councilmember Archer stated that he would prefer that citizens be allowed to provide their input prior to making a decision on the clean air issue.

Councilmember Hiller moved to schedule work sessions on September 21, 2009 and September 28, 2009 for the purpose of conducting public hearings on the ordinance concerning clean air in public places; and defer agenda item 8C, an ordinance concerning clean air in public places until September 29, 2009. The motion was seconded by Councilmember Archer.

Councilmember Harmon questioned if public hearings could be conducted at work sessions. He requested that a Council committee administer the public hearings.

Councilmember Alcalá made a friendly amendment to identify the work sessions as Committee of the Whole meetings for the purpose of conducting public hearings on the ordinance concerning clean air in public places; and the details of the public hearings be published with the Committee meeting notices.

Councilmember Swank requested that a time limit be imposed on public input at the public hearings.

The motion to schedule Committee of the Whole meetings on September 21, 2009 and September 28, 2009 for the purpose of conducting public hearings on the ordinance concerning clean air in public places; publish the details of the public hearings with the Committee meeting notices; and defer agenda item 8C, an ordinance concerning clean air in public places until September 29, 2009 carried. Councilmembers Wolgast, Swank and Preisner voted “no.” (6-3-0)

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

Norton N. Bonaparte, Jr., City Manager announced that there would be no City Council meeting next week on September 1, 2009. He also announced upcoming community events.

Councilmember Alcala reported that the company contracted to mow some of the City parks is doing a poor job of trimming near play structures and leaving mounds of grass attracting insects. He requested that City staff resolve the problem. He stated that agenda item 8A, an ordinance authorizing Parks and Recreation Improvement Project T-301012.00 is a costly upgrade. He requested a financial breakdown of revenue from 2008 to present for Felker Park; what the tournament standards are for lighting; and when the last park upgrade was done.

Councilmember Woelfel asked if citizens would be allowed to speak to the ordinance concerning clean air in public places at the September 29, 2009 Council meeting. He requested that the ordinance concerning appeals and administrative hearings be amended to include a \$25 appeal fee. He stated that if the fee is held by the court and deposited after the process is finalized, it could avoid any issues with refunds.

Councilmember Wolgast commended event organizers and supporters of the Great Overland Station Railroad Festival.

Councilmember Swank asked if the Council is allowed to converse with the citizens during the public comment portion of the agenda if they are speaking to the ordinance concerning clean air in public places.

Jackie Williams, City Attorney stated that the Council is not allowed to question or converse with conferees during the public comment portion of the Council agenda.

Councilmember Archer stated that he is looking forward to attending the 2009 Inter-City Visit to the Quad Cities in Iowa and Illinois sponsored by the Greater Topeka Chamber of Commerce.

Councilmember Harmon stated that Kansas Governor Mark Parkinson attended the H1N1 Summit to educate citizens and asked if the City is taking proactive steps in educating employees and implementing a contingency plan.

Norton N. Bonaparte, Jr., stated that the City has taken steps to implement sanitary conditions and contingency plans within departments.

Councilmember Alcalá stated that a work session was conducted prior to the August 25, 2009 Council meeting concerning clean air in public places. He reported that there were proponents that spoke to the clean air issue, and no Councilmembers engaged in conversation with conferees providing testimony.

Ed Serrano, William J. Foley, Sr., Nancy Johnson and Matthew Bevins appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:37 p.m.

Brenda Younger
City Clerk