

Council Minutes – September 8, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 8, 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 and Harmon -8. Absent: Councilmember Preisner and Mayor Bunten -2.

Deputy Mayor Harmon served as the presiding officer for the Council meeting.

AFTER THE MEETING was called to order, Cynthia Neufeld Smith, Associate Pastor, Southern Hills Mennonite Church gave the invocation.

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

SWEARING IN CEREMONY for Fire Chief Allen Bradshaw, Topeka Fire Department, was conducted.

Councilmember Woelfel requested that item 5A, a civil claim appeal by Todd Fargo be removed from the consent agenda for separate discussion.

Upon hearing no objections, Deputy Mayor Harmon announced that item 5A, a civil claim appeal by Todd Fargo would be removed from the consent agenda and placed under Unfinished Business as item 6D.

THE CONSENT AGENDA was presented as follows:

A TEMPORARY ENCROACHMENT AGREEMENT between the City of Topeka and Citizens Bank and Trust granting consent by the City for public improvement in the City's right-of-way was presented. (*Contract No. 39779*)

RESOLUTION NO. 8189 introduced by Councilmembers Sylvia Ortiz, Karen Hiller, Larry Wolgast and John Alcalá expressing support for the Cornerstone of Topeka, Inc., infill housing scattered site affordable housing project was presented.

RESOLUTION NO. 8190 introduced by Councilmember Sylvia Ortiz granting the Kansas Black Expo an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8191 introduced by Councilmember Larry Wolgast granting Phyllis Perry an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8192 introduced by Councilmember Karen Hiller granting Sacred Heart-St. Joseph Parish an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

MINUTES of the regular meeting of August 25, 2009 was presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Topeka Fuel Center located at 1320 SW 6th Street was presented.

A Dance Hall License application bearing the approval of the Chief of Police and City Inspectors for Jet Ultra Lounge located at 4117 SW Huntoon was presented.

Councilmember Ortiz moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Woelfel carried unanimously. (8-0-0)

ORDINANCE NO.19302 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 placed on first reading August 25, 2009 was again presented.

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

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

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

A PROJECT BUDGET in the amount of \$444,000 and AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 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 placed on first reading August 25, 2009 was again presented.

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

Councilmember Alcalá expressed concern with the amount of the project budget. He asked if there are other baseball fields available within the city that meet tournament standards; if the project is a necessity at this time; when Felker Park lighting was upgraded; and if Ruger Field and MacDonald Field are acceptable alternatives for hosting tournaments.

Terry Bertels, Parks and Recreation Department Director stated that Felker Park lighting is the same standard as all other city baseball fields; Felker Park lighting has never been upgraded; and MacDonald Field has sufficient lighting but does not have facilities that meet tournament standards. He stated that he believes this project is a necessity for the four hundred or more local people playing in league tournaments, as well as, bringing in larger national tournaments.

Councilmember Wolgast expressed concern with the amount of the project budget; however, he stated that he understands that the City could gain more revenues if able to attract larger national tournaments.

Councilmember Swank stated that she believes this is an important project to help bring revenue to the City. She spoke in support of the project and noted that it is included in the Capital Improvement Program.

Olivia Simmons, President and CEO of Visit Topeka, Inc., asked for the Council's consideration of the project. She stated that the City of Topeka could not bid on larger tournaments because of the lighting at Felker Park. She reported that thirty-one teams were hosted last year for a tournament attracting nearly seven hundred people to the Topeka area, directly impacting revenue within just a few days. She also stated that it is important to maintain quality facilities to stay competitive in bidding on larger national tournaments for the Topeka/Shawnee County area.

Councilmember Woelfel asked if the City has lost bids for tournaments due to field lighting issues; and if it would be applicable for the City to ask Visit Topeka, Inc., for Transient Guest Tax (TGT) funds to help contribute to the project.

Olivia Simmons stated that Visit Topeka, Inc., does not bid on larger tournaments that the City could not host due to limited facilities; however, this project would allow the City to start bidding on larger tournaments. She also stated that she would not recommend asking for TGT funds at this time because the funds would be used to improve facilities, taking away from marketing dollars.

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

Councilmember Alcalá stated that it is understood that revenue is generated as a result of tournaments; however, it is not guaranteed. He asked how many people could the national tournaments bring to Topeka and how many teams could be hosted at Ruger Field.

Olivia Simmons reported that some leagues host sixty to seventy-five teams in one tournament.

Terry Bertels stated that at the maximum, Ruger Field could accommodate thirty-one teams.

Councilmember Woelfel noted that the project is approved in the 2009 Capital Improvement Program and Budget. He asked how much the City would save in interest costs if the project is not approved.

Pam Simecka, City Controller stated that the City would save approximately \$8,000 in interest costs per year.

Councilmember Alcala stated that he would not support the project. He stated that he believes there are other fields available that are sufficient to host tournaments.

Councilmember Harmon asked when the Council would consider the 2010 Capital Improvement Program. He requested that new Councilmembers be guided through the process so they could observe how projects are prioritized.

Norton N. Bonaparte, Jr., stated that the Council would consider the 2010 Capital Improvement Program in October.

Councilmember Harmon made a substitute motion to defer the project budget and resolution for three months. The motion was seconded by Councilmember Ortiz.

Councilmember Hiller spoke in support of the project. She stated that she believes the Council should be selective in making decisions on large projects. She also stated that she prefers investments that are transformational and build on the assets the City already possesses.

The substitute motion to defer the project budget and resolution for three months carried. Councilmembers Alcala and Woelfel voted “no.” (6-2-0)

A PROJECT BUDGET in the amount of \$2,754,549 and 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 the 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 placed on first reading August 25, 2009 was again presented.

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

Councilmember Alcalá stated that he has some questions regarding the use of STP Funds and the City's portion of sales tax that he would like answered before making a decision on the project.

Councilmember Alcalá moved to defer the project budget and ordinance for one week. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

CIVIL CLAIM APPEAL submitted by Todd Fargo in the amount of \$2,383 for damages sustained to the basement of his residence was presented.

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

Councilmember Ortiz moved to approve the civil claim appeal. The motion was seconded by Councilmember Alcalá.

Todd Fargo gave a brief description of the water damages to his property. He stated that he did consent to the work being done by the City surrounding his property; however, he had many drainage issues afterwards. He also stated that he believes that the grading of the property that was performed by the City caused the problem.

Councilmember Alcalá asked Mr. Fargo if he experienced flooding problems in the past, or prior to the City performing work near his property.

Todd Fargo stated that the property does not have a history of sewer backup or water runoff problems. He also displayed pictures showing the extent of the grading problems and water damages.

Councilmember Swank expressed concern with approving the claim. She asked if approval of the claim would expose the City to additional liability.

Jackie Williams, City Attorney stated that if the Council approves the civil claim appeal, it would leave the claim open-ended.

Todd Fargo noted that he couldn't get the contractors to commit to a set amount for the work needed for repairs and mold.

Ken Benjamin, Assistant City Attorney reported that it was determined that the City did not change the grade of the property prior to the water damage; and the changes that were made to the property by the City did not relate to the excavation that was done for the sewer line project. He stated that it was determined that the City was not negligent.

Councilmember Alcala made a friendly amendment to approve the civil claim appeal in the amount of \$2,383. Councilmember Ortiz concurred.

Councilmember Woelfel asked if the Council stipulates an amount certain, would it preclude the City from further liability of damages.

Jackie Williams, City Attorney stated the claimant has the right to submit another claim; however, the Council has the right to deny the claim.

Councilmember Woelfel asked if the sewer line project was located in the utility easement and did it require the owner's permission.

Ken Benjamin stated that the project was completed in the utility easement and the owner's cooperation was attained. He noted that the topography and contours of the property were not altered.

Todd Fargo stated that he would be in agreement to resolve all issues with the City with the passing of the civil claim appeal.

Councilmember Hiller asked if the pictures had shown where the City performed the work.

Todd Fargo stated that the work was not performed on his property; however, large machinery took up 90% of his backyard and half of his front yard during the sewer line project.

The substitute motion to approve the civil claim appeal in the amount of \$2,383 failed. Councilmembers Woelfel, Wolgast, Swank, Archer and Harmon voted "no." (3-5-0)

Norton N. Bonaparte, Jr., City Manager requested to withdraw item 7A, a contract between the City of Topeka and the Topeka Performing Arts Center from the Council agenda.

Upon hearing no objections, Deputy Mayor Harmon announced that item 7A would be withdrawn from the Council agenda.

A PETITION, A PROJECT BUDGET in the amount of \$163,400 and RESOLUTION NO. 8193 introduced by City Manager Norton N. Bonaparte, Jr., amending the proposed improvement district and adopting as amended Waterline Improvement Project No. 28627-00 which provides for water service improvements for Wanamaker Meadows Subdivision, pursuant to K.S.A. 12-6a01, et seq., as amended, and rescinding City of Topeka Resolution of Advisability and Authorization No. 7928 was presented.

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

Councilmember Ortiz moved to approve the petition, project budget and resolution. The motion was seconded by Councilmember Wolgast.

Councilmember Alcala asked if there are delinquent property taxes owed on the properties.

Jackie Williams, City Attorney stated that all property taxes are current.

The motion to approve the petition, project budget and resolution carried unanimously.

(8-0-0)

A PETITION, A PROJECT BUDGET in the amount of \$540,800 and RESOLUTION NO. 8194 introduced by City Manager Norton N. Bonaparte, Jr., amending the proposed improvement district and adopting as amended Sanitary Sewer Improvement Project No. 40951-00 which provides for sewer improvements for Wanamaker Meadows and Lauren's Bay Villas No. 2 subdivisions, pursuant to K.S.A. 12-6a01, et seq., as amended, and rescinding City of Topeka Resolution of Advisability and Authorization No. 7926 was presented.

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

Councilmember Harmon asked if there are delinquent property taxes owed on the properties.

Jackie Williams, City Attorney stated that all property taxes are current.

Councilmember Ortiz moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

A PETITION, A PROJECT BUDGET in the amount of \$957,000 and RESOLUTION NO. 8195 introduced by City Manager Norton N. Bonaparte, Jr., amending the proposed improvement district and adopting as amended Street Improvement Project No. 60632-00 which provides for street improvements for Wanamaker Meadows Subdivision, pursuant to K.S.A. 12-6a01, et seq., as amended, and rescinding City of Topeka Resolution of Advisability and Authorization No. 7927 was presented.

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

Councilmember Archer moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

AUTHORIZING a public hearing on September 22, 2009 for the purpose of hearing and answering objections of taxpayers to the proposed amendments to the 2009 Operating Budget was presented.

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

Deputy Mayor Harmon reported that Mayor Bunten would like to request from staff an itemized list of the Special Street Repair Fund in the amount of \$1,600,040. He stated that the list should outline how much would be allocated for street improvements; and how much would be allocated for the purchase of equipment.

Councilmember Ortiz moved to approve the publication of the notice of public hearing on September 11, 2009. The motion seconded by Councilmember Swank carried unanimously. (8-0-0)

ORDINANCE NO. 19303 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 10, 2009, through August 16, 2009, and enumerating said expenditures herein was presented for first and final reading.

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

Councilmember Woelfel moved to 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: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer and Harmon -8. Absent: Preisner -1.

ORDINANCE NO. 19304 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 17, 2009, through August 23, 2009, and enumerating said expenditures herein was presented for first and final reading.

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

Councilmember Wolgast moved to 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: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer and Harmon -8. Absent: Preisner -1.

RESOLUTION NO. 8196 introduced by City Manager Norton N. Bonaparte, Jr., in accordance with Section 48-23a.05(2)(n) of the Code of the City of Topeka, approving a Conditional Use Permit to allow for a warehouse on property currently zoned "X-3" Mixed Use District and located at 206 NW Norris Street in the City of Topeka, Kansas was presented.
(CU09/3)

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

Councilmember Alcalá gave a brief description of the area and noted that the property owners have been good neighbors for the community.

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

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Traffic Signal Replacement Project No. T-141005.00 (HTE 141330) for the intersection located at

SW Huntoon and SW Wanamaker, 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 City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-301009.00 (HTE 302880), which provides for building improvements to citywide community centers, 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 Hispanic Heritage Month/Mexican Independence Day Celebration at the specified location and time 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; the Economic Development Forum hosted by the City of Topeka on September 9, 2009 at the Ramada Inn located on SE 6th and Madison Streets from 3:00 p.m. to 5:30 p.m., and the Discovering Topeka program series featuring Council District No. 2 televised on City4.

Councilmember Hiller thanked the City and Greater Topeka Chamber of Commerce for the opportunity to participate in the Inter-City Visit to the Quad Cities.

Councilmember Alcalá requested that a work session be scheduled to provide the Council with an update on the recent violations cited to the Topeka Zoo from the United States Department of Agriculture.

Norton N. Bonaparte, Jr., stated that he would schedule a work session as soon as possible to discuss the Topeka Zoo.

Councilmember Ortiz referenced an article published in the Topeka Capital Journal Newspaper relating to the SE 4th and Branner Street intersection accident rate. She expressed concern with the removal of the traffic signal earlier this year and requested that new Councilmembers become familiar with the history of the intersection. She asked the Council to consider reinstalling a traffic signal at the intersection.

Norton N. Bonaparte, Jr., noted that he was aware of the newspaper article and staff is researching the issue. He requested that a work session be scheduled to allow staff the opportunity to present their findings to the Council.

Councilmember Ortiz stated that she is drafting a resolution concerning the repair of the railroad tracks located between SE 4th and Kline Streets and SE 4th and Jefferson Streets.

Councilmember Alcala expressed concern with the accident rate at the SE 4th and Branner Street intersection. He questioned if pictures were taken at the scene of the accidents and if the Council could view them.

Major Mike Haugen, Topeka Police Department stated that diagrams are generally done at the scene of an accident unless death is a concern.

Councilmember Woelfel welcomed new Fire Chief Allen Bradshaw and stated that he looks forward to working with him.

Councilmember Archer requested to schedule a work session to discuss the recent Inter-City trip he took to the Quad Cities.

Councilmember Alcala asked if the ordinance relating to councilmembers attending out-of-state trips and reporting back to the Council is still applicable.

Gail Deford appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:29 p.m.

Brenda Younger
City Clerk