

Council Minutes – September 22, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 22, 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 Wolgast gave the invocation.

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

Councilmember Woelfel requested to add a resolution granting Orlando Rivera a noise exception to the Council agenda.

Upon hearing no objections, Mayor Bunten announced that the resolution granting Orlando Rivera a noise exception would be added to the consent agenda as item 4D.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Debbie Besenyi to the Topeka Human Relations Commission to fill an unexpired term that would end November 30, 2009 was presented.

MINUTES of the regular meeting of September 15, 2009 was presented.

A 2009 Open After Midnight License application bearing the approval of the Chief of Police and City Inspectors for Quinton's Bar & Grill located at 4121 SW Huntoon, was presented.

A 2009 Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Quick Stop Summit located at 2201 SW 6th Street, was presented.

RESOLUTION NO. 8200 introduced by Councilmember Jack Woelfel, granting Orlando Rivera an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

Councilmember Woelfel moved to approve the consent agenda. The motion seconded by Councilmember Swank carried unanimously. (9-0-0)

NOTICE OF PUBLIC HEARING

A PUBLIC HEARING in conjunction with vacation request V08S/4 to vacate a portion of the city right-of-way intersecting the railroad right-of-way located on NW Howard and NW 7th Streets between NW Lincoln and NW Lane Streets, City of Topeka, Shawnee County, Kansas.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a portion of city street right-of-way intersecting the railroad right-of-way located on NW Howard and NW 7th Streets between NW Lincoln and NW Lane Streets, City of Topeka, Shawnee County, Kansas placed on first reading September 15, 2009 was again presented.

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

Councilmember Alcalá requested that the background information for the vacation request be provided for clarification. He noted that this is the third time the vacation request has been placed on the Council agenda.

Braxton Copley, Deputy City Attorney reported that it was determined that the first public hearing notice was invalid because SW 7th Street was not named explicitly in the legal description or the public hearing notice; and the second public hearing notice was invalid after it was determined that the thirty-day publication requirement was not met. He stated that the closing of the railroad crossing was agreed to by Union Pacific Railroad and the City of Topeka allowing the City to move forward with the construction of the new Topeka Boulevard Bridge.

Councilmember Alcalá stated that the North Topeka Neighborhood Improvement Association does not support the closing of the crossing due to safety hazards. He stated that he also believes the closing of the crossing creates a safety risk and limits emergency vehicle access to the community.

Richard Knowlton spoke in opposition to the vacation and distributed a petition signed by forty-nine area residents opposing the vacation due to safety concerns. He gave a brief overview of the two routes residents are now utilizing which includes, NW Winter Street which is very narrow and only allows one lane of traffic to pass through at a time to reach NW 8th Street; and the NW Lyman Street intersection which is too narrow and only allows one vehicle to turn into the intersection at a time. He stated that in the past the only route utilized by residents was NW 7th Street to NW Lincoln Street; therefore, there is no accident history for the other two routes now being used. He noted that residents want to reach a compromise with the City.

Councilmember Harmon asked Mr. Knowlton for suggested alternate routes.

Mr. Knowlton stated that in his opinion, the ideal route would be to use NW Laurent Street to NW Gordon Street; or a second route to consider would be to use NW Buchanan Street located near Lower Silver Lake Road which would only effect two residents instead of forty-nine residents.

Councilmember Alcalá asked if the agreement allows for the City to consider alternate routes. He stated that he questions the City's liability if the Council denies the vacation because the Railroad was aware that the closing must be approved by the Council.

Braxton Copley reported that the Railroad did suggest an alternate route; however, it would have eliminated access to one of the City's Wastewater Treatment Plants.

Councilmember Harmon asked if it would be less expensive to build an alternate access to the City Wastewater Treatment facility as opposed to defending potential litigation if the vacation is denied. He requested that the Council defer the ordinance to a date certain to allow time for staff to develop alternate routes.

J. Tuckness spoke in opposition to the vacation request and stated that he does not see the advantages in closing this particular crossing. He also stated that he was not aware of the closing of the crossing or he would have spoke to the issue before now.

Councilmember Swank stated that she would like to consider alternatives to closing the railroad crossing because connectivity is important to the neighborhood. She noted that she is not sure why the railroad chose to close this particular crossing. She asked residents if they would agree to widen the existing intersections as an alternative; and what is the next step if the Council denies the vacation request.

Braxton Copley stated that the railroad acted in reliance of the agreement made with the City. He stated that the City would do everything possible to avoid litigation; however, he is not sure what the next step would be for the railroad.

Mike Teply, Public Works Director stated that the cost to correct drainage issues; reconstruct the crossing; and install sidewalks along NW Lyman Road would be approximately \$180,000 to \$200,000. He noted that this particular railroad crossing was suggested because of the low traffic volume, poor condition of the crossing, and the close proximity to NW Lyman Road.

Councilmember Swank stated that the intersection needs improvements no matter what is decided by the Council.

Councilmember Hiller suggested that NW Laurent and NW Buchanan Streets be presented to Union Pacific Railroad as possible alternatives.

Councilmember Harmon moved to postpone the public hearing and defer the ordinance for sixty days. The motion was seconded by Councilmember Swank.

Councilmember Alcalá made a friendly amendment to present Union Pacific Railroad with alternative options within two weeks.

Councilmember Harmon accepted the friendly amendment. The second concurred.

Councilmember Woelfel asked if the traffic flow for the alternate routes suggested by Mr. Knowlton has changed due to the construction of the Topeka Boulevard Bridge.

Mike Teply stated that in his opinion the traffic has increased; however, he is not sure if the Railroad considered the traffic volume or maintenance costs of the other suggested crossings. He stated that the railroad initially suggested closing ten crossings; and only three streets were negotiated. The following street crossings were offered by Union Pacific Railroad:

NW Gordon	NW Moore	NW Taylor	Lower Silver Lake Road
NW Lyman	NW Railroad	NW Grant	Saint John's
NW Howard	NW 7 th Street		

Councilmember Preisner asked if the City met the deadline stipulated in the agreement.

Braxton Copley stated that the City was in compliance with the initial agreement that stipulated that the vacation request must be presented to the Council within sixty days.

Councilmember Alcalá made a substitute motion to postpone the public hearing and defer the ordinance for two weeks. The motion was seconded by Councilmember Harmon.

Councilmember Hiller requested that staff conduct traffic counts on the alternate routes suggested by Mr. Knowlton.

The substitute motion to postpone the public hearing and defer the ordinance for two weeks carried unanimously. Mayor Buntin voted "yes." (10-0-0)

NOTICE OF PUBLIC HEARING

A PUBLIC HEARING for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of 2009 Operating Budget funds.

ORDINANCE NO. 19309 introduced by City Manager Norton N. Bonaparte, Jr., amending the adopted operating budget for the City of Topeka, for the year 2009, and appropriating the amounts for the purpose as set forth therein was presented for first and final reading.

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

Councilmember Preisner moved to close the public hearing and adopt the ordinance. The motion was seconded by Councilmember Swank.

Mayor Bunten questioned what type of equipment is being purchased.

Mike Teply, Public Works Director stated that street maintenance equipment would be purchased with the motor fuel tax funds. The purchase would include: two patch trucks; a paint truck; an air compressor; a lay-down machine, roller and trailer; two crack seal machines; and GPS systems.

Councilmember Hiller stated that there is a critical need for street maintenance equipment and the Council needs to move forward with the purchase.

Norton N. Bonaparte, Jr., noted that the City could only receive motor fuel tax funds once; therefore, they should aggressively move forward with the purchase of street maintenance equipment.

Councilmember Alcalá questioned if some of the aged street maintenance equipment is still operational. He asked what the life span of the equipment is; and if it would be more economical to rebuild the equipment instead of purchasing new equipment.

Mike Teply stated that the street maintenance equipment is outdated and antiquated, and it is his understanding that the equipment will not last much longer.

Councilmember Preisner asked how the debt service would be paid if the City purchases new equipment.

Mike Teply stated that the City could purchase the equipment with cash funds or finance the equipment through general obligation bonds.

Jim Langford, Budget and Finance Director stated that the street maintenance equipment would be obtained through a lease purchase agreement or possibly financed by general obligation bonds.

Councilmember Ortiz questioned the necessity of the GPS systems.

Mike Teply stated that the GPS systems would reduce the amount of travel time for maintenance crews; and provide supervisory staff with a tracking mechanism for street maintenance crews.

The motion to close the public hearing and adopt the ordinance 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 Topeka City Code Sections 134-143 and 134-169, subdivision regulations, relating to parkland acquisition and development, as well as, streets, repealing said original sections placed on first reading September 15, 2009 was again presented. (ASR09/1)

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

Councilmember Preisner asked if the ordinance has been reviewed by the developmental review committee.

David Thurbon, Planning Department Director stated that the concept of parkland acquisition and development was brought before the committee for review.

Councilmember Preisner moved to defer the ordinance until October 20, 2009. The motion seconded by Councilmember Alcalá carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., pertaining to an amendment to the text and map of the Topeka Comprehensive Metropolitan Plan placed on first reading September 15, 2009 was again presented. (CPA09/02)

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

Councilmember Preisner moved to defer the ordinance until October 20, 2009. The motion seconded by Councilmember Alcalá carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

ORDINANCE NO. 19310 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Comprehensive Zoning Regulations concerning wind energy creating Division 3 of Article 26 in City of Topeka Code Chapter 48 placed on first reading September 15, 2009 was again presented.

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

Jacy Gatchell, Hope Street Academy spoke in support of the ordinance and stated that the students have worked on the small wind energy system project for over a year.

Evanne Wheeler, Hope Street Academy spoke in support of the ordinance. She addressed the safety issues associated with small wind energy systems. She noted that the system would be automated; include a warranty; and provide endless educational opportunities for the students.

Amanda Rice, Hope Street Academy spoke in support of the project. She stated that they have collected 311 signatures throughout the community in support of the project. She reported

that the small wind energy system would generate minimal noise; measure 45 feet high and 12 feet in diameter; and would be constructed of non-reflective metal.

Quincy McCord, Hope Street Academy spoke in support of the project. He reported that the small wind energy system would produce 440 kilowatts of power per hour; and enhance the environment.

John Skoles, Hope Street Academy spoke in support of the project. He reported that small wind energy systems lead the future in wind technology; and could improve the economy in Topeka by moving the City forward to a greener future.

Councilmember Ortiz commended the staff and students of Hope Street Academy for their research and efforts in making the project feasible.

Councilmember Swank commended Hope Street Academy students and staff and stated that she is proud of them for being innovative and progressive leaders in the community.

Councilmember Woelfel congratulated Hope Street Academy students on the project. He asked if the project must be located on school property.

Scott Schultze, Hope Street Academy science teacher stated that they would have to re-evaluate the entire project if the small wind energy system is not located on school property.

Councilmember Woelfel questioned what type of zoning would allow for the placement of small wind energy systems; and if protest petitions could be filed by residents or business owners opposing the placement of a small wind energy system.

David Thurbon, Planning Department Director stated that each applicant would be required to obtain a conditional use permit which requires Council approval. He also stated that conditional use permits do not include provisions for filing protest petitions.

Braxton Copley, Deputy City Attorney stated that the ordinance allows for small wind energy systems for non-residential uses only. He also stated that there is a companion ordinance on the agenda implementing conditional use requirements for small wind energy systems. He noted that Hope Street Academy would have to obtain a conditional use permit prior to moving forward with the project.

Councilmember Harmon commended Hope Street Academy students and staff for their efforts in implementing and presenting the project to the Council.

Councilmember Wolgast congratulated Hope Street Academy and commended the students and staff for their efforts. He stated that the project moves the City of Topeka one-step closer to a greener future.

Councilmember Hiller commended Hope Street Academy for proposing alternative energy systems and encouraged other agencies to implement more of these types of projects. She questioned why there are so many steps in acquiring approval and stated that the process may need to be changed as they move forward with similar projects.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Alcalá 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.

ORDINANCE NO. 19311 introduced by City Manager Norton N. Bonaparte, Jr., concerning conditional use in each zoning district for non-residential small wind energy systems, amending City of Topeka Code Sections 48-2.02, 48-3.02, 48-4.02, 48-5.02, 48-6.02, 48-7.02, 48-8.02, 48-8a.02, 48-9.02, 48-10.02, 48-11.02, 48-12.02, 48-13.02, 48-14.02, 48-15.02, 48-16.02, 48-17.02, 48-18.02, 48-19.02, 48-20.02, 48-22.02, 48-23.02, 48-23a.03, 48-23a.04, 48-23a.05, 48-

24a.01, 48-24b.02, and 48-24b.03 and specifically repealing said original sections placed on first reading September 15, 2009 was again presented.

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

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, Alcala, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner, Harmon and Mayor Bunten -10.

APPROVAL of a grant from the COPS Hiring Recovery Program through the office of Community-Oriented Policing Services (COPS), an office of the U.S. Department of Justice was presented. (*Contract No.39743*)

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

Councilmember Preisner moved to approve the grant. The motion seconded by Councilmember Wolgast carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$284,000 and RESOLUTION NO. 8201 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. T-301014.00 (HTE 302930) which provides for property acquisition and site preparation for the Great Overland Station Park development more specifically described herein was presented.

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

Randy Speaker, Housing and Neighborhood Development Director stated that the fund was implemented, and has been accumulating since 2002. He noted that the City has also received federal funding for the project.

Councilmember Alcala stated that the park project falls within the parameters of the riverfront project design.

Councilmember Preisner moved to approve the project budget and resolution. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

RESOLUTION NO. 8202 introduced by City Manager Norton N. Bonaparte, Jr., concerning a residency requirement exception for a Department Head was presented.

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

Councilmember Woelfel stated that he would support the request; however, the Council should review the residency requirement policy to avoid the need for exceptions.

Councilmember Archer stated that he would not support the resolution because the provision is outlined in City policy and it would be unfair to other City employees.

Councilmember Alcalá suggested that the resolution be rescinded; or require staff to follow City policy eliminating the unfairness to other City employees.

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Ortiz carried. Councilmembers Wolgast, Swank and Archer voted “no.” (6-3-0)

ORDINANCE NO. 19312 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 31, 2009, through September 6, 2009, and enumerating said expenditures herein was presented for first and final reading.

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

Councilmember Harmon 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, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -9.

ORDINANCE NO. 19313 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 property located at 3860 SE California Avenue from “R-1” Single Family Dwelling District TO “PUD” Planned Unit Development District (M-1 use group, including a Residential Care Facility, Type III) placed on first reading September 15, 2009 was again presented. (*PUD09/2*)

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

Councilmember Woelfel stated that as a result of conversations with area residents he would like to give the Neighborhood Improvement Association additional time to meet and discuss their issues.

Councilmember Preisner moved to adopt the ordinance. The motion was seconded by Councilmember Alcalá.

Councilmember Woelfel made a substitute motion to defer the ordinance until December 1, 2009. The motion was seconded by Councilmember Harmon.

Councilmember Preisner stated that because Planned Unit Development (PUD) zoning designation is the most restrictive he would not support referring the ordinance back to the Topeka Planning Commission.

Councilmember Alcalá stated that he has received emails and telephones calls in opposition to the zoning case. He asked if there is any new information that needs to be considered in the zoning case.

David Thurbon, Planning Department Director stated he is not aware of any new information that has developed since the Topeka/Shawnee County Planning Commission meeting has taken place.

Fred Martinez, Rolling Meadows Neighborhood Improvement Association President stated that there is new information to present to the Council.

Councilmember Woelfel withdrew the substitute motion to defer the ordinance until December 1, 2009. The second concurred.

Councilmember Alcalá made a substitute motion to remand the ordinance back to the Planning Commission based on the determination that new and/or additional information has been presented to the Council that was not available at the time the public hearing was conducted. The motion was seconded by Councilmember Ortiz.

Mike Wilson, developer stated that remanding the ordinance back to the Planning Commission would have an adverse effect on the development.

Councilmember Preisner stated that staff followed all the requirements concerning the zoning case and in his opinion no new information has been presented; therefore, he would not support remanding the ordinance back to the Planning Commission.

Councilmember Swank requested that staff follow up with neighborhood residents regarding the zoning change procedure.

Mayor Bunten stated that he has received numerous emails and telephone calls expressing concern and believes remanding the zoning case back to the Planning Commission is a reasonable request at this time.

Councilmember Alcalá stated that he recommended the zoning case be remanded back to the Planning Commission to allow all information that has been presented since the public hearing to be considered.

Councilmember Alcalá withdrew the substitute motion to remand the ordinance back to the Planning Commission. The second concurred.

Councilmember Woelfel made a substitute motion to defer the ordinance until November 3, 2009. The motion was seconded by Councilmember Alcalá.

Councilmember Hiller reported that she received emails from residents who live approximately four blocks from the development and it appears that some individuals may not understand the zoning process. She requested to defer the ordinance for one week to allow neighborhood residents time to have their questions answered.

The substitute motion to defer the ordinance until November 3, 2009 failed. Councilmembers Hiller, Alcalá, Wolgast, Swank, Archer, Preisner and Harmon voted “no.” Mayor Bunten voted “yes.” (3-7-0)

Councilmember Harmon made a substitute motion to defer the ordinance for one week. The motion seconded by Councilmember Alcalá failed. Councilmembers Woelfel, Wolgast, Swank, Archer and Preisner voted “no.” Mayor Bunten voted “yes.” (5-5-0)

Exparte communications were declared by all Councilmembers and Mayor Bunten.

Councilmember Woelfel made a substitute motion to remand the ordinance back to the Planning Commission. The motion seconded by Mayor Bunten failed. Councilmembers Hiller, Wolgast, Swank, Archer, Preisner and Harmon voted “no.” Mayor Bunten voted “yes.” (4-6-0)

The motion to adopt the ordinance carried. Councilmembers Alcalá, Ortiz, Woelfel and Mayor Bunten voted “no.” (6-4-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Wolgast, Swank, Archer, Preisner, Harmon -6. Noes: Alcalá, Ortiz, Woelfel and Mayor Bunten -4.

AN ORDINANCE introduced by Councilmember Deborah Swank authorizing the sale, consumption and possession of alcoholic liquor as part of the ARTSConnect Arty 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 that City4 is broadcasting a new City of Topeka Presents Program highlighting Council District No. 2. He also announced that a public hearing on the ordinance concerning clean air in public places would be conducted on September 28, 2009 at the Cyrus K. Holliday building located at 620 SE Madison at 5:30 p.m.

Councilmember Hiller commended Downtown Topeka, Inc., Parks and Recreation Department and Water Pollution Control Division staff members for their help in landscaping the downtown area. She also invited the public to attend the Fourth Annual Aaron Douglas Art Fair on September 26, 2009 from 11:00 a.m. to 5:00 p.m.

Councilmember Alcalá commended City4 staff members for the vast improvement over the past two years in programming efforts and keeping the community informed.

Councilmember Ortiz congratulated Fire Chief Allen Bradshaw on his new appointment. She also thanked the Parks and Recreation Department for repairing the Hillcrest Community Center outdoor lighting.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:45 p.m.

Brenda Younger
City Clerk