

Council Minutes – September 29, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 29, 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 pull item 4A, a board appointment for Raubin Pierce to the Topeka Planning Commission from the consent agenda for separate discussion.

Councilmember Wolgast requested to add a resolution granting a noise exception for the Missionary Baptist Convention of Topeka to the Council agenda.

Councilmember Alcalá requested to withdraw item 4F, a resolution granting Patrick Unrein a noise exception from the Council agenda. He stated that the event has been cancelled.

Upon hearing no objections, Mayor Bunten announced that item 4A a board appointment for Raubin Pierce to the Topeka Planning Commission would be placed on the Council agenda as item 5A under Unfinished Business; the resolution granting a noise exception for the Missionary Baptist Convention of Topeka would be added to the consent agenda as item 4J; and item 4F would be removed from the Council agenda.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Mike Lackey to the Topeka Planning Commission for a term that would end September 30, 2012 was presented.

BOARD APPOINTMENT recommending the appointment of Marty Hazen to the Topeka Board of Zoning Appeals for a term that would end September 30, 2012 was presented.

BOARD APPOINTMENT recommending the appointment of Aaron Classi to the Topeka Board of Zoning Appeals for a term that would end September 30, 2012 was presented.

RESOLUTION NO. 8203 introduced by Councilmember Swank granting ARTSConnect an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 8204 introduced by Councilmembers Sylvia Ortiz, Jeff Preisner and Larry Wolgast expressing support for the Woodland Place of Soldier Creek, Development Project was presented.

MINUTES of the regular meeting of September 22, 2009 was presented.

2009 Open After Midnight License application bearing the approval of the Chief of Police and City Inspectors for The Break Room located at 911 S. Kansas Avenue, was presented.

RESOLUTION NO. 8205 introduced by Councilmember Larry Wolgast granting the Missionary Baptist Convention of Topeka an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

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

BOARD APPOINTMENT recommending the appointment of Raubin Pierce to the Topeka Planning Commission for a term that would end September 30, 2012 was presented.

Councilmember Alcalá moved to approve the board appointment. The motion was seconded by Councilmember Swank.

Councilmember Preisner made a substitute motion to defer the board appointment until October 27, 2009 to allow for the preparation of a resolution pursuant to state statute. The motion was seconded by Councilmember Swank.

Councilmember Ortiz stated that she would not support deferring the board appointment because the Topeka Planning Commission is in need of members to move forward and conduct business.

Braxton Copley, Deputy City Attorney stated that if the Council disapproves the nomination they must make a ruling within 45 days in the form of a resolution stating that the nominee is unfit or unqualified for the position. He recommended that the Council defer the appointment if they are not ready to vote on the issue.

Councilmember Alcalá stated that Mr. Pierce meets all the qualifications and brings an educated opinion to the Topeka Planning Commission. He asked Mr. Pierce to state why he would like to serve on the Planning Commission.

Raubin Pierce stated that the appointment would allow him the opportunity to serve the community and make a difference. He also stated that he hopes to offer his research skills and passion to the Planning Commission to help the community.

Councilmember Woelfel asked if a resolution can be presented at a later date if the appointment is approved.

Braxton Copley stated that a resolution could be presented at a later date; however, there may be an argument as to whether the issue being considered is different than the approval or denial of the appointment.

Mayor Bunten stated that he appointed Mr. Pierce because of his passion to serve the City of Topeka. He noted that he is clearly qualified to serve on the Commission and has a serious interest in the betterment of the community.

Councilmember Hiller stated that she would support deferral of the board appointment because she believes the Planning Commission needs more experienced members because there will be a number of positions that will become vacant in the near future.

Councilmember Harmon stated that he believes Mr. Pierce is qualified for the appointment; however, he would support deferral of the board appointment to allow further discussion on the matter.

Councilmember Woelfel stated that he would not support deferral of the board appointment because he believes the Planning Commission needs to move forward and conduct business. He noted that the Council has 45 days to submit a resolution stating why the appointee is unfit or unqualified to serve.

The substitute motion to defer the board appointment carried. Councilmembers Alcala, Ortiz, Woelfel and Archer voted “no.” (5-4-0)

ORDINANCE NO. 19314 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 placed on first reading September 22, 2009 was again presented.

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

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

ORDINANCE NO. 19315 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 placed on first reading August 25, 2009 was again presented.

Councilmember Swank gave the staff report.

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

Nancy Johnson, Community Resources Council reported that the Heartland Healthy Neighborhoods conducted a poll which overwhelmingly supported the clean-air in public places ordinance. She stated that she believes the Council is making a statement about the city's healthy image and strongly urged the Council to support the ordinance as presented.

Dr. John Neuberger, University of Kansas School of Medicine gave an overview of the cardiovascular effects of banning smoking in public places. He stated that the issue is an important public health concern and strongly supports the ordinance as presented.

Elaine Schwartz, Kansas Public Health Association stated that 32 states have passed a similar smoking ban in public places. She urged the Council to listen to the majority of the citizens of Topeka and adopt the ordinance.

Dr. Michael Atwood, Blue Cross and Blue Shield of Kansas Chief Medical Officer stated that the evidence is clear supporting that a clean-air act would result in improved health for the citizens of Topeka. He reported that the financial benefits of lowering the health care service costs and increased workplace productivity is a simple and cost-effective way that the Council can positively impact community health.

Lana Vanderplas stated that her family has recently relocated to the area and the lack of clean-air establishments has made it difficult to transition to the area. She reported that there is overwhelming positive evidence of the economic impact of smoke-free laws and believes it is pro-business and pro-health to eliminate smoking in public places.

Nancy Redd stated that the smoking ban in public places without exceptions is supported throughout the community. She noted that many health agencies have provided proof that it is extremely unhealthy to allow smoking in public places. She urged the Council to adopt the clean-air ordinance.

Dan Lykins, attorney stated that he has represented many clients who have suffered health issues relating to second-hand smoke. He encouraged the Council to adopt the proposed ordinance and ban second-hand smoke in public places.

Kristen White stated that the issue is about providing clean-air for the community to breathe and not about what people think is right or wrong. She encouraged the Council to make the City of Topeka a progressive city and adopt the clean-air ordinance.

Sara Humm stated that she believes the smoking ban would keep people in the community. She also stated that most area businesses are very supportive of the clean-air ordinance.

David Wang stated that he firmly supports the clean-air ordinance. He reported that banning smoking in public places has increased the overall number of businesses in other communities.

Kaelyn Seymour reported that second-hand smoke has been proven to be poisonous. She stated that change is what the City of Topeka needs to be a leader in the Kansas community.

Gary Caruthers, Shawnee County Medical Society stated that adopting the clean-air ordinance is the responsible thing to do for the community based on the statistical information that second-hand smoke is harmful. He encouraged the Council to approve the ordinance.

Lee Evans, Topeka Lodging Association recommended disapproval of the clean-air ordinance in its present form as it relates to hotel and motels. He suggested amending the ordinance to clarify statements relating to the percentage of occupancies that would allow smoking.

Theresa Steinlage stated that she believes second-hand smoke is as dangerous as driving under the influence of alcohol. She also stated that she is unable to eat at many area restaurants because of her health issues being affected by second-hand smoke.

Craig Gunther, Kansas State Board of Nursing Association urged the Council to adopt the ordinance as presented because the health and well-being of the community depends on it.

Dr. William Leeds stated that second-hand smoke clearly has a negative effect on the population. He noted that many businesses have closed or relocated over the years and it had nothing to do with the clean-air ban in public places.

Carlos Gomez stated that he opposes the ordinance in its current form. He also stated that he believes it will have a negative effect on small businesses because Shawnee County allows smoking in public places. He also stated that the City should offer business incentives to smoke-free establishments; and work with businesses instead of mandating them.

Councilmember Ortiz stated that she agrees with the concept of clean-air in public places and commended Councilmember Swank for proposing the ordinance; however, she is concerned with the enforcement and penalty procedure that is outlined in the ordinance. She expressed concern with the following:

1. Enforcement of the ordinance and why the police chief is responsible for enforcement.
2. Penalties in regards to not having a prompt, fair and efficient operation of the administrative adjudication system in place because the policy is in committee.
3. Questioned if the City is creating a system that is already in place but not being utilized.

Councilmember Swank stated that she discussed the clean-air in public places ordinance with the police department in detail. She reported that the offense would be considered administrative not criminal; and if the upcoming appeals and administrative hearing ordinance is adopted by the Council, the police chief would have the right to create his own administrative policy.

Councilmember Ortiz stated that she believes that private clubs and bars should be exempt from the clean-air in public places policy.

Councilmember Ortiz made a substitute motion to make all necessary amendments to the ordinance to allow for the exclusion of private clubs and bars. The motion seconded by was Councilmember Alcala.

Councilmember Alcala spoke in support of amending the ordinance; however, he believes the ordinance has been crafted in a very dense form making it difficult to amend without reviewing the document closely, and affecting several sections.

Mayor Buntin expressed concern with the proposed amendments and stated that it would be more beneficial if the Council could review the amendments in written form.

Councilmember Alcala recommended deferring the ordinance to allow staff sufficient time to draft an amended ordinance for the Council to review.

Councilmember Ortiz withdrew the substitute motion to make all necessary amendments to the ordinance to allow for the exclusion of private clubs and bars. The second concurred.

Councilmember Alcala made a substitute motion to make all necessary amendments to the ordinance to allow for the exclusion of private clubs and bars; and defer the ordinance for two weeks. The motion was seconded by Councilmember Ortiz.

Councilmember Swank stated that she would not support deferral of the ordinance because the Council has had sufficient time to present any proposed amendments to the ordinance. She also stated that time is critical because it is a health safety hazard. She noted that the majority of the community supports a clean-air in public places policy.

Councilmember Alcala expressed concern with the regulatory issues of the ordinance, as well as, property and property owner rights. He stated that he believes it is a choice to be a patron of an establishment that allows smoking. He also stated that because there are exceptions listed in the ordinance he questions if the issue should be labeled a health safety hazard.

The substitute motion to make all necessary amendments to the ordinance to allow for the exclusion of private clubs and bars; and defer the ordinance for two weeks failed.

Councilmembers Hiller, Wolgast, Swank, Archer, Preisner and Harmon voted “no.” (3-6-0)

Councilmember Preisner called the question.

The motion to adopt the ordinance carried. Councilmembers Alcala, Ortiz and Woelfel voted “no.” (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Wolgast, Swank, Archer, Preisner and Harmon -6. Noes: Alcala, Ortiz and Woelfel -3.

RESOLUTION NO. 8206 introduced by Councilmembers Sylvia Ortiz and John Alcala requesting Burlington Northern Santa Fe (BNSF) Railroad to expedite its repairs of the railroad crossing located at SE 4th Street was presented.

Councilmember Ortiz gave the staff report.

Councilmember Woelfel stated that he would like to allow BNSF Railroad the opportunity to make repairs. He noted that repairs have been scheduled to begin on October 14, 2009.

Councilmember Ortiz moved to approve the resolution. The motion was seconded by Councilmember Alcalá.

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

Councilmember Alcalá reported that he has made numerous requests to the Railroad to make the repairs over the past several years.

The substitute motion to defer the resolution until November 3, 2009 failed. Councilmembers Hiller, Alcalá, Ortiz, Archer and Harmon voted “no.” (4-5-0)

The motion to approve the resolution carried. Councilmembers Woelfel and Preisner voted “no.” (7-2-0)

A RESOLUTION introduced by Councilmembers John Alcalá and Bob Archer relating to the Internal Auditor position was presented.

Councilmember Archer gave the staff report.

Councilmember Archer moved to approve the resolution. The motion was seconded by Councilmember Alcalá.

Councilmember Wolgast questioned how the position would function within City government.

Norton N. Bonaparte, Jr., City Manager stated the original proposal anticipated that the internal auditor position would be part of the management team working with the City Manager and Budget and Financial Services Director, as well as, review the processes and internal policies.

Jim Langford, Budget and Financial Services Director stated that the position would review financial control and policies and confirm they are being followed. He also stated that the position would validate that performance measures are being met and the City is delivering services accurately.

Councilmember Archer stated that the position would give independent assurance that City business is being conducted properly. He also stated that the position would report to the Policy and Finance Committee.

Mayor Bunten clarified that the position would work in conjunction with the Policy and Finance Committee, management and staff.

Councilmember Swank stated that she would not support the resolution. She questioned if the position fits the operations of the current form of government.

Councilmember Archer stated that in his opinion an organization the size of the City should have an independent auditor in place for insurance.

Councilmember Wolgast stated that he does not see the necessity of the position and would prefer that the Council direct staff to perform an internal audit when necessary.

Councilmember Alcalá stated that an internal auditor would provide a separate point of view or opinion.

Councilmember Hiller questioned if the Council has time to manage a full-time position. She suggested hiring independent auditors who would cost less than a full-time employee.

Councilmember Alcalá stated that he believes an external auditor would not be useful and the internal position would be more cost-effective.

Councilmember Wolgast stated that if the position is to be independent of management and report to the Policy and Finance Committee he would need to know what the Committee's intention is in providing direction to the employee.

Councilmember Preisner stated that he is uncomfortable with the intent of the resolution and would abstain from voting on the resolution.

Councilmember Archer stated that the process would give the Council the independent insurance of knowing that tax dollars are being wisely.

Councilmember Woelfel questioned who would hire the internal auditor, as well as, who would make decisions regarding pay raises and employee evaluations.

Mayor Bunten stated that the city manager currently has the responsibility of hiring an internal auditor; however, approval of the resolution would change the responsibility.

Braxton Copley, Deputy City Attorney reported that the city manager would be responsible for hiring an internal auditor and regulated by the City of Topeka Personnel Policy.

The motion to approve the resolution failed. Councilmembers Hiller, Woelfel, Wolgast, Swank and Harmon voted "no." Councilmember Preisner abstained. (3-5-1)

ORDINANCE NO. 19316 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of September 7, 2009, through September 13, 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 Wolgast 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.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing the issuance of \$3,390,000 aggregate principal amount of General Obligation Improvement Bonds, Series 2009-A, and \$58,020,000 aggregate principal amount of General Obligation Refunding Bonds, Series 2009-B of the City of Topeka, Kansas under the authority of K.S.A. 10-101 to 125, inclusive, K.S.A. 10-427 et seq., K.S.A. 12-6a01 et seq., the home rule authority granted to the cities of the State of Kansas by Section 5 of Article 12 of the Kansas Constitution, and Charter Ordinance No. 89 of the city, all as amended was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced that property owners could apply for stimulus grant funding assistance on October 3, 2009 at the Cyrus K. Holliday building located at 620 SE Madison.

Councilmember Hiller encouraged the Council to attend the League of Kansas Municipalities Annual Conference beginning October 3, 2009 through October 6, 2009 hosted by the City of Topeka.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:09 p.m.

Brenda Younger
City Clerk