

Council Minutes – December 1, 2009

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 1, 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, Councilmember Preisner gave the invocation.

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

Norton N. Bonaparte, Jr., City Manager requested to withdraw item 4A, Minutes of the regular meeting of November 24, 2009, and place them on the December 8, 2009 Council agenda.

Upon hearing no objections, Mayor Buntgen announced that item 4A, Minutes of the regular meeting of November 24, 2009 would be withdrawn from the Council agenda and placed on the December 8, 2009 Council agenda.

THE CONSENT AGENDA was presented as follows:

A Dance Hall License application bearing the approval of the Chief of Police and City Inspectors for the Kansas Expocentre located at One Expocentre Drive, was presented.

Councilmember Preisner moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

Councilmember Preisner moved to suspend the Council Rules to add an ordinance concerning the redevelopment project plan for Heartland Park Topeka to the Council agenda. The motion was seconded by Councilmember Harmon.

Mayor Bunten expressed concern with the estimated \$750,000 needed to improve the race track. He questioned how any remaining funds not expended on the project would be used.

The motion to suspend the Council Rules carried. Councilmember Alcalá voted “no.” (8-1-0)

Mayor Bunten announced that the ordinance would be placed on the Council agenda under First Readings as item 8A.

ORDINANCE NO. 19338 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 2, 2009, through November 8, 2009, and enumerating said expenditures herein placed on first and final reading November 24, 2009 was again presented. The ordinance was deferred from the meeting of November 24, 2009.

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

Councilmember Preisner 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.

RESOLUTION NO. 8223 introduced by Councilmember Jeff Preisner canceling the Council meetings for June 1, 2010, July 6, 2010, August 3, 2010, September 7, 2010, November 2, 2010, and December 28, 2010 and establishing a Council meeting for June 29, 2010 and August 31, 2010 was presented.

Councilmember Preisner gave the staff report.

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Woelfel carried. Councilmember Alcalá voted “no.” (8-1-0)

RESOLUTION NO. 8224 introduced by City Manager Norton N. Bonaparte, Jr., setting forth the City of Topeka's Notice Of Intent to issue general obligation bonds to acquire fire-fighting equipment, specifically an aerial ladder truck, all pursuant to K.S.A. 12-110c was presented.

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

Councilmember Preisner moved to amend the resolution by replacing the word "Council" with the term "Governing Body" in each place the word appears in the resolution. The motion was seconded by Councilmember Harmon.

Braxton Copley, Deputy City Attorney reported that he reviewed the state statutes surrounding K.S.A. 12-110, and K.S.A. 12-110c uses the term "city" and K.S.A. 12-110a, 12-110b and 12-110d uses the term "governing body." He also reported that the corresponding state statutes relating to revenue bonds and notice of intent uses the term "governing body," therefore, it is his interpretation that the Mayor is entitled to vote on the bond issue.

Mayor Bunten expressed concern with the interpretation and stated that it places restrictions on the Mayor's veto power.

Councilmember Harmon stated that agrees with the interpretation of the state law on this issue and commended Mr. Copley for making certain bonding laws are being followed. He noted that there are inconsistencies within state statutes regarding the Mayor's right to vote.

Norton N. Bonaparte, Jr., commended the Deputy City Attorney for researching the issue and ensuring that bonding laws are upheld.

Mayor Bunten referenced City of Topeka Charter Ordinance Nos. 94, 96 and 98 and requested the review of each charter ordinance to clarify the voting rights of the Mayor.

The motion to amend the resolution by striking the word “Council” and inserting the term “Governing Body” in each place the word appears in the resolution carried. Councilmember Alcala and Mayor Bunten voted “no.” (8-2-0)

Councilmember Preisner moved to approve the resolution as amended. The motion was seconded by Councilmember Wolgast.

Councilmember Woelfel asked how the cost of the aerial ladder truck was determined.

Allen Bradshaw, Fire Chief stated that the cost estimate was compiled from bids received in 2007, as well as, the National Fire Protection Agency recommended standards.

Councilmember Wolgast asked if the aerial ladder truck was already assembled or would the truck be built to the specifications of the fire department.

Allen Bradshaw stated that the aerial ladder truck would be built to the department’s specifications.

The motion to approve the resolution as amended carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

ORDINANCE NO. 19339 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of November 9, 2009, through November 15, 2009, and enumerating said expenditures therein was presented for first and final reading.

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

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

AN ORDINANCE 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 1236 SW Garfield Avenue from “R-2” Single Family Dwelling District TO “M-1” Two Family Dwelling District placed on first reading November 17, 2009 was again presented. The ordinance was deferred from the meeting of November 24, 2009. (Z09/8)

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that approval would require an affirmative vote by two-thirds of the governing body.

Councilmember Swank left the room.

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

Exparte communications were declared by Councilmembers Hiller, Alcala, Ortiz, Woelfel, Wolgast, Archer, Preisner, Harmon and Mayor Bunten.

Councilmember Preisner stated that he would not support the ordinance.

Councilmember Harmon stated that he has reviewed the zoning report and after applying the eight factors outlined in the Kansas Supreme Court case *Golden vs. City of Overland Park* he would not support the zoning ordinance.

Councilmember Alcala stated that he has researched and applied the eight factors outlined in the Kansas Supreme Court case *Golden vs. City of Overland Park* and would not support the zoning change request.

The motion to adopt the ordinance failed. Mayor Bunten voted “no.” Councilmember Swank was out of the room. (0-9-0)

Councilmember Swank entered the room.

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

Norton N. Bonaparte, Jr., City Manager announced upcoming Meet the Manager sessions on December 8, 2009 at Bradley's Corner Café located at 844 N Kansas Avenue; December 10, 2009 at Chic-A-Dee Café located at 3036 SE 6th Street; and December 15, 2009 at PT's Coffee Company located at 5660 SW 29th Street.

Councilmember Alcala stated that he opposed the suspension of the Council Rules to add an ordinance concerning the redevelopment project plan for Heartland Park Topeka because he would like to receive information from the City's bond counsel in regards to the expenditures listed for the project. He requested the information be provided to the Council prior to the December 8, 2009 City Council meeting.

Councilmember Ortiz thanked the volunteers who assisted in serving the annual Kansas Expocentre Thanksgiving Dinner.

Councilmember Woelfel commented on the SE 4th Street railroad crossing improvements and asked for an update on the remaining nine set of tracks that need to be upgraded at the crossing.

Norton N. Bonaparte, Jr., stated that he has not received any information from Burlington Northern Santa Fe Railroad about the project; however, he would contact the Railroad and provide the Council with an update.

Councilmember Swank stated that City of Topeka Ordinance No. 19315 concerning clean air in public places would become effective on December 4, 2009. She reported that citizens could obtain additional information about the clean air ordinance by visiting the City's website at www.topeka.org.

Linda DeCoursey appeared to speak under public comment.

Norton N. Bonaparte, Jr., City Manager asked for a moment of silence to honor the four police officers in Lakewood, Washington that were killed in the line of duty.

Councilmember Alcalá moved to adjourn the Council meeting. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 6:42 p.m.

Brenda Younger
City Clerk