

Council Minutes – March 16, 2010

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 16, 2010. 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 Alcalá gave the invocation.

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

A PRESENTATION on the Capital City Wellness Program and the advantages of a healthy life style was given by Dr. Jason Eberhart-Phillips, Kansas Department of Health and Environment Division of Health Director.

Councilmember Preisner requested to pull item 4A, a Workers' Compensation Claim Settlement for Clinton Starnes from the consent agenda for separate discussion.

Upon hearing no objections, Mayor Bunten announced that item 4A would be removed from the consent agenda and placed on the Council agenda under Unfinished Business as item 5A.

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of March 9, 2010 were presented.

A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for Sunshine Energy SE #10 located at 1161 SW Gage Boulevard was presented.

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

A WORKERS' COMPENSATION CLAIM settlement proposal for Clinton Starnes in the amount of \$15,000 was presented.

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

Councilmember Preisner moved to approve the Workers' Compensation Claim Settlement in the amount of \$15,000 for Clinton Starnes. The motion seconded by Councilmember Harmon carried. Councilmembers Alcala, Archer and Preisner voted "no."

(6-3-0)

ORDINANCE NO. 19392 introduced by City Manager Norton N. Bonaparte, Jr., designating a recovery zone pursuant to the American Recovery and Reinvestment Tax Act of 2009 for the purpose of issuing recovery zone economic development bonds and designating the bond issuer placed on first reading March 9, 2010 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report. He stated that approval would designate the City of Topeka as a recovery zone and make the City eligible to accept an allocation of \$9.3 million of recovery zone economic development bond authority.

Mayor Bunten questioned if there were certain restrictions on the use of recovery zone economic development bonds.

Jim Langford, Budget and Finance Director stated the allocation came from the Kansas Department of Commerce and it is specifically for the replacement of the South Kansas River Pump Station.

Councilmember Woelfel questioned why the ordinance does not specify or state that the funding would be used for the replacement of the South Kansas River Pump Station. He read the definition of a recovery zone and stated that he believes the City of Topeka does not fit the criteria, and in his opinion the negative designation of a recovery zone is not worth the \$50,000

the City would save in interest costs per year. He questioned if the ordinance should be voted on by the entire governing body.

Norton N. Bonaparte, Jr., stated that the language of the ordinance is consistent with the language other municipalities have used.

Jackie Williams, City Attorney stated that in his opinion, the Mayor would not vote on the ordinance.

Joseph Ledbetter questioned why the recovery zone economic development bonds could only be used for one specific project when the entire city would be declared a recovery zone. He also asked what type of bonds would be issued to fund the project.

Jim Langford stated that revenue bonds would be used to finance the project.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Wolgast carried. Councilmember Woelfel voted “no.” (8-1-0)

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

RESOLUTION NO. 8244 introduced by Deputy Mayor Richard Harmon amending Topeka City Council Rules and Procedures 7.1(b) concerning City Council standing committees was presented.

Deputy Mayor Harmon gave the staff report.

Councilmember Hiller asked if the Transient Guest Tax Committee would have additional responsibilities. She stated that she reviewed city code and it did not outline committee job duties or descriptions. She noted that it would be helpful if standing committee job descriptions were outlined.

Councilmember Harmon stated that the Transient Guest Tax Committee oversees the Tourism Development Committee and its expenditures, and additional duties could be assigned at a later date by the Council.

Councilmember Preisner suggested the Council discuss job duties or descriptions in May when new committee members are appointed.

Joseph Ledbetter stated that he believes it shows good policy for elected officials to oversee standing committees because they allocate public tax revenues making them open record organizations. He requested that all standing committees keep minutes of the meetings and have the minutes available for review in the City Clerk's office to support transparency in local government.

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

ORDINANCE NO. 19393 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of February 22, 2010, through February 28, 2010, and enumerating said expenditures therein was presented for first and final reading.

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

Joseph Ledbetter questioned the following expenditures:

- Page 8, Friends of Free State Capitol
- Page 8, Astrology
- Page 9, Jan Hamilton, Chapter 13 Trustee, payback of City employees and asked if we charge employees garnishment fees
- Page 16, Landlord receiving emergency funds, and asked if the City is screening for landlords that have a long record of housing code violations
- Page 18, Miscellaneous Services

Jim Langford, Budget and Finance Director stated that the Friends of Free State Capitol was a Transient Guest Tax award of \$41,000; the Astrology class was offered by the Parks and

Recreation Department; the City does not charge garnishment service fees to employees; and Miscellaneous Services in the amount of \$1,600 was a Parks and Recreation Department service.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Preisner carried. Councilmember Woelfel abstained. (8-0-1)

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

ORDINANCE NO. 19394 introduced by City Manager Norton N. Bonaparte, Jr., concerning accessory uses and requirements for zoning regulations, creating City of Topeka Code Section 48-29.025 and amending Sections 48-29.00, 48-29.01 and 48-29.02 and specifically repealing said original sections placed on first reading March 9, 2010 was again presented. (ACZR09/6)

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

Mayor Bunten asked if a commercial vehicle can be parked in a residential area.

David Thurbon, Planning Department Director stated that a commercial vehicle can only be parked inside a garage in a residential area.

Councilmember Harmon asked where semi-trailer trucks should park.

David Thurbon stated that semi-trailer trucks park in heavy industrial parks or commercial type lots that allow the parking of semi-trailer trucks.

Councilmember Wolgast commended the Planning Commission and Planning Department for addressing the issue and implementing positive regulation changes.

Councilmember Alcala questioned if the amendment would grandfather in buildings already established that allow semi-trailer truck parking.

David Thurbon stated that the amendment would loosen the requirements and raise the weight limit for commercial vehicles parked in residential areas from five tons to seven and one-

half tons. He noted that city code previously required vehicles over five tons to park in enclosed areas if parking in residential areas.

The City Clerk asked each member of the Governing Body to disclose all ex parte communications regarding Zoning Case ACZR09/6.

Councilmember Alcalá stated that he was involved in a discussion based on the ordinance itself at a Neighborhood Improvement Association meeting. He reported that residents were concerned with a proposed structure that would not fit the character of the neighborhood.

Councilmember Wolgast stated that he had correspondence with the Planning Department.

Councilmember Harmon stated that he received email correspondence duplicative of the issues raised and addressed at the public hearing conducted at the Planning Commission meeting.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Wolgast 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. 19395 introduced by City Manager Norton N. Bonaparte, Jr., annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, generally located at the northeast corner of NW 25th Street and NW Alternate US 75 Highway, within unincorporated Shawnee County, Kansas and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading March 9, 2010 was again presented. (A10/1)

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

The City Clerk asked each member of the Governing Body to disclose all ex parte communications regarding Annexation Case A10/1. There were none declared.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Swank carried. Mayor Bunten voted “yes.” Councilmember Woelfel voted “no.” (9-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Wolgast, Swank, Archer, Preisner, Harmon and Mayor Bunten -9. Noes: Woelfel -1.

ORDINANCE NO. 19396 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 5720 SW 21st Street from “C-4” Commercial District TO “PUD” Planned Unit Development District (C-4 use group, plus an outdoor dog exercise area) placed on first reading March 9, 2010 was again presented. (*PUD10/2*)

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

Councilmember Hiller commended the neighborhood residents, the Planning Department staff and Helping Hands Humane Society for moving forward with the plan in a positive manner.

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

Councilmember Harmon stated that the PUD would reduce the noise and odor exception regulations from the normal 750 feet to 113 feet. He questioned what recourse the City would have if the noise and odor requirements as outlined in the PUD are not followed.

David Thurbon, Planning Department Director stated that the Planning Commission is satisfied with the requirements which include additional landscaping, fencing, and removal of waste on a daily basis. He stated that the Council could consider amending the PUD and requiring additional restrictions; however, if the property owner objects it would require approval by super-majority of the Council to overturn the owner’s objection.

Councilmember Woelfel stated that he has received communication in opposition to the PUD from the residential neighborhood surrounding area. He noted that Helping Hands Humane Society is a not-for-profit organization which would cause a loss in property taxes for the City.

David Thurbon questioned if the Council would have the authority to amend the PUD; and if the property owner would have to follow the amendments if there are no changes to the facility's operation. He stated that he has not dealt with this type of situation before and would prefer to research the issue and consult with the Legal Department.

Jackie Williams, City Attorney stated that he concurs with Mr. Thurbon and the issue would need to be researched to determine what recourse is available to the City.

Councilmember Harmon made a substitute motion to defer the ordinance for three weeks to allow the Legal Department to research recourse action. The motion was seconded by Councilmember Woelfel.

Councilmember Alcala stated that the Helping Hands Humane Society has been a good neighbor in North Topeka and has done a great job in maintaining many animals within a small area. He spoke in opposition to the substitute motion because if there is an issue with the PUD it would be brought back before the Council; and changes could be made at any time to the PUD. He also stated that he does not want to delay the project any longer than necessary.

Councilmember Preisner stated his opposition to the substitute motion because he is confident that Helping Hands Humane Society will be a good neighbor. He noted that any changes made to the PUD cause a delay in the project.

Jackie Williams stated that he believes there are options if it becomes necessary to amend the PUD; however, the process would have to start completely over.

Councilmember Swank stated her opposition to the substitute motion because she does not want to create any more project delays.

Councilmember Hiller asked if it is possible to make a PUD conditional.

David Thurbon stated that occasionally the Council has imposed additional regulations to zoning cases; however, he is not sure if additional regulations could be placed on a PUD. He also stated that he believes the Planning Commission has all the necessary conditions in place to address noise and odor.

The substitute motion to defer the ordinance for three weeks to allow the Legal Department to research recourse action failed. Councilmembers Hiller, Alcalá, Wolgast, Swank, Preisner and Mayor Bunten voted “no.” (4-6-0)

The City Clerk asked each member of the Governing Body to disclose all ex parte communications regarding Zoning Case PUD10/2.

Councilmember Hiller stated that she received emails from proponents and opponents, and had verbal communications with the applicant.

Councilmember Alcalá stated that he received emails and telephone calls from proponents and opponents.

Councilmember Ortiz stated that she received emails, telephone calls and written correspondence from proponents and opponents.

Councilmember Woelfel stated that he received emails, telephone calls, written correspondence, and had verbal communications with proponents and opponents.

Councilmember Wolgast stated that he received many communications from proponents and opponents.

Councilmember Swank stated that she received emails and telephone calls from proponents and opponents.

Councilmember Archer stated that he received an email regarding the zoning case.

Councilmember Preisner stated that he received written correspondence and had verbal communications with proponents, opponents and the applicant.

Councilmember Harmon stated that he received email and had verbal communications duplicative of the issues raised and addressed at the public hearing conducted at the Planning Commission meeting.

The motion to adopt the ordinance carried. Mayor Bunten voted “yes.” Councilmembers Woelfel and Harmon voted “no.” (8-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Wolgast, Swank, Archer, Preisner and Mayor Bunten -8. Noes: Woelfel and Harmon -2.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 12045, which provides for bridge replacement on SE 10th Street over Shunganunga Creek, 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-301010 (HTE #302890), which provides for the renovation of Gage Park Playland, 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., correcting certain sections of the codebook in preparation for its revision and codification, amending City of Topeka Code Sections 2-118, 2-363 through 2-365, 2-401, 2-479, 18-154, 26-4, 26-67, 26-76, 26-138, 26-420, 26-422, 26-607, 30-286, 30-288, 30-398, 30-441, 30-457, 38-2, 42-2, 42-3, 42-10, 66-101, 66-153, 70-36, 70-57, 74-32, 82-295, 82-298, 86-54, 98-131, 98-133, 98-211, 102-158, 106-74, 106-170, 112-5, 114-156, 130-161, 130-163, 142-63, 142-266, 142-401 through 142-404, 142-748, 146-30, 146-303, 146-351, 146-352, 146-458, 48-36.02, 48-18.02, 48-19.02,

48-20.02, 48-24.00, 48-24.03, 48-30.00, 48-30.01 and Article 35 of Chapter 48 and specifically repealing said original sections and repealing in their entirety Sections 2-330, 30-60, 30-74, 34-1 through 34-7, 34-36 through 34-62, 34-91 to 34-98, 78-1, 78-261, 78-363 and 130-2 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., pertaining to an amendment to the text and map of the Ward-Meade Neighborhood Plan, an element of the Topeka Comprehensive Metropolitan Plan 2025 was presented for first reading. (CPA09/3A)

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

Norton N. Bonaparte, Jr., City Manager announced the Topeka Police Department is accepting applications for the Citizen's Academy until March 19, 2010. He encouraged citizens to watch the City of Topeka Presents Program featuring Council District No. 6, and the Mayor's Minute segment on pothole repair. He stressed the importance of residents completing the 2010 Census packets and the role the information plays in the receiving of federal grants.

Councilmember Hiller stated that she attended the Crime Prevention through Environmental Design training offered through the Topeka Police Department. She commended the training program which had several city employees and police officers in attendance. She noted the goal of the Topeka Police Department is to have all officers attend the training.

Councilmember Archer invited the community to attend the St. Patrick's Day Parade taking place on March 17, 2010 at 12:00 p.m. on South Kansas Avenue.

Karla Hedquist, Nancy Johnson and Joseph Ledbetter appeared to speak under public comment.

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:38 p.m.

Brenda Younger
City Clerk