

Council Minutes –June 15, 2010

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 15, 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 and Harmon - 8. Mayor Bunten presided -1. Absent: Councilmember Preisner -1.

AFTER THE MEETING was called to order, Imam Omar Hazim, Islamic Center of Topeka gave the invocation.

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

A PRESENTATION update on recent shooting incidents located throughout the city was given by Topeka Police Chief Ron Miller.

Councilmember Ortiz requested to pull items 4A and 4B, board appointments to the Juvenile Corrections Advisory Council from the consent agenda. She stated that these board appointments required approval of the Governing Body, including the Mayor.

Upon hearing no objections, Mayor Bunten announced that items 4A and 4B would be removed from the consent agenda for separate consideration.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8260 introduced by Councilmember John Alcalá granting Fiesta Mexicana an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions during the parade and street party scheduled for July 9, 2010 was presented.

RESOLUTION NO. 8261 introduced by Councilmember John Alcalá granting Fiesta Mexicana an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8262 introduced by Councilmember Richard Harmon granting Autosound, Inc., an exception to the provisions of City of Topeka Code Section 9.45.150 concerning noise prohibitions was presented.

RESOLUTION NO. 8263 introduced by Councilmember Richard Harmon granting Autosound, Inc., an exception to the provisions of City of Topeka Code Section 9.45.150 concerning noise prohibitions was presented.

MINUTES of the regular meeting of June 8, 2010 were presented.

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

BOARD APPOINTMENT recommending the re-appointment of Miriam Krehbiel to the Juvenile Corrections Advisory Board for a term ending June 30, 2013 was presented.

BOARD APPOINTMENT recommending the re-appointment of Carol Ramirez to the Juvenile Corrections Advisory Board for a term ending June 30, 2013 was presented.

Councilmember Ortiz moved to approve the board appointments. The motion seconded by Councilmember Archer carried unanimously. Mayor Bunten voted “yes.” (9-0-0)

A PROJECT BUDGET in the amount of \$1,000,000 and ORDINANCE NO. 19429 introduced by City Manager Norton N. Bonaparte, Jr., amending the scope of this project as approved by Ordinance No. 19170 and repealing said Ordinance and authorizing as amended Improvement Project No. T-281000.03 (HTE 286383) for rehabilitation of the Water Treatment Plant approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to issue and sell revenue bonds of said City to make such improvements which constitute improvements to the municipally owned water, water

pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, pursuant to K.S.A. 10-101 and 10-1201, et seq., and all amendments thereto, authorizing issuance of general obligation bonds to pay the costs of the project which further constitutes a general improvement to the City's waterworks system pursuant to City of Topeka Code Section A12-1, and authorizing the borrowing of funds from the State of Kansas Loan Funds to pay the cost thereof placed on first reading June 8, 2010 was again presented.

A NOTICE OF INTENTION of the governing body of the City of Topeka, Kansas, to make improvements under Improvement Project No. T-281000.03 (HTE 286383) which provides for rehabilitation of the Water Treatment Plant and to issue and sell revenue bonds of said City pursuant to K.S.A. 10-101 and 10-1201, et seq., and all amendments hereto, and to borrow funds from the State of Kansas Loan Funds, or any combination thereof, to pay the cost of the project.

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

Councilmember Ortiz moved to approve the project budget, notice of intention and adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. Mayor Bunten voted "yes." (9-0-0)

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

Norton N. Bonaparte, Jr., City Manager stated that Councilmember Archer has requested to withdraw item 5B, a project budget and ordinance authorizing Neighborhood Improvement Project No. T-601018.00 from the Council agenda.

Councilmember Archer stated that he believes it is not a good use of taxpayer money because Chesney Park and Ward Meade neighborhood streets are lightly traveled. He requested to discuss the details of the project in a work session.

Upon hearing no objections, Mayor Bunten announced that item 5B would be withdrawn from the Council agenda.

ORDINANCE NO. 19430 introduced by City Manager Norton N. Bonaparte, Jr., concerning stream buffers amending Topeka Municipal Code Sections 17.10.020, 17.10.060, 18.35.150 and 18.35.200 and specifically repealing said original sections and creating new Section 18.40.150 placed on first reading June 8, 2010 was again presented. (ASR10/1)

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

Joseph Ledbetter expressed concern with the municipal service area being extended outside city limits which encourages urban sprawl. He questioned if the municipal services area includes industrial parks located near Topeka.

David Thurbon, Planning Department Director stated that the ordinance would apply the City's stream buffer regulations to new subdivisions in the three-mile extraterritorial jurisdiction.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. Mayor Bunten voted "yes." (9-0-0)

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

ORDINANCE NO. 19431 introduced by Councilmember John Alcalá authorizing the sale, consumption and possession of alcoholic liquor as part of the Fiesta Mexicana Parade and Street Party at specified locations and times placed on first reading June 8, 2010 was again presented.

Councilmember Alcala gave the staff report.

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

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

ORDINANCE NO. 19432 introduced by Councilmember John Alcala authorizing the sale, consumption and possession of alcoholic liquor as part of the Fiesta Mexicana at specified locations and times placed on first reading June 8, 2010 was again presented.

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

Councilmember Alcala 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, Alcala, Ortiz, Woelfel, Wolgast, Swank, Archer and Harmon -8. Absent: Preisner -1.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., creating City of Topeka Code Section 9.40.005 concerning the unlawful carrying of a firearm placed on first reading June 8, 2010 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that the ordinance would reinstate the ban on the open carry of firearms.

Councilmember Wolgast moved to refer the ordinance to the Public Health and Safety Committee. The motion was seconded by Councilmember Swank.

Councilmember Wolgast stated that he has received many excellent ideas from citizens and believes this is a difficult issue. He stated that he would prefer to listen to both sides of the issue to make the ordinance acceptable for the majority of the people.

Councilmember Alcala stated that he would oppose sending the ordinance to a committee because in his opinion the issue needs to be dealt with this evening. He noted that if substantial changes are made to the document it could be considered by the Council at any time.

Councilmember Archer concurred with Councilmember Alcala.

Councilmember Hiller stated that many citizens have relayed to her that the language of the ordinance is confusing. She stated that she believes the business community has not engaged in enough discussions relating to the ordinance.

Mayor Bunten stated that if the Council has questions relating to the language of the ordinance it should be referred to a committee for review.

Councilmember Woelfel reported that he has received numerous emails expressing opposition to the ordinance. He stated that he would prefer to take action on the item this evening.

The motion to refer the ordinance to the Public Health and Safety Committee failed. Councilmembers Alcala, Ortiz, Woelfel, Archer and Harmon voted “no.” (3-5-0)

John Atherton, Earl McIntosh, Avery Moore, Dewayne Burgess, Mark Langley, Lana Gordon, Frances Nelson, Shanae Gooden and Ted Mize spoke in opposition to the ordinance. Comments were made relating to the infringement of citizen liberties; the constitutional right to bare arms; beliefs in a safe community; the ability to defend oneself; and the need for more public education on gun safety.

Sally Zellers and Brian Thomas appeared to speak in support of the ordinance. Comments were made relating to the need to control violence in a large city; the need of additional training on gun safety; the balance between individual rights and social rights; and citizens having as much control as police officers.

Ron Miller, Topeka Police Chief encouraged the Council to make a responsible decision regarding the issue. He recommended approval of the ordinance as presented with the intent of amending the document at a later date. He reported that they would discuss the issue with opponents, as well as, proponents and create acceptable amendments to the ordinance.

Kyle Smith, Assistant City Attorney discussed examples of violent incidents involving guns in public places. He stated that he believes if more guns are visible it is more likely that more violence would occur. He reported that the majority of cities with a population of over 100,000 people have implemented a ban on the open carry of firearms. He noted that it is not the intent of the Police Department to restrict the rights of people but to keep the public safe.

Councilmember Swank moved to adopt the ordinance. The motion seconded by Councilmember Archer failed. Councilmembers Alcalá, Ortiz, Woelfel, Archer and Harmon voted “no.” (3-5-0)

ORDINANCE NO. 19433 introduced by City Manager Norton N. Bonaparte, Jr., amending Topeka Municipal Code Sections 2.135.010., 2.135.130, 2.55.010, 2.55.040 and 9.20.020, concerning the elimination of the Topeka Human Relations Department and specifically repealing said original sections as well as eliminating in their entirety Sections 2.55.020, 9.20.010, 9.20.030, 9.20.050 through 9.20.150 and 9.25.040 through 9.25.240 placed on first reading June 8, 2010 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated that approval of the ordinance would retain the Human Relations Commission and eliminate the Topeka Human Relations Department. He also reported that elimination of the Department was suggested by the COST Team as one of the many steps the City should take in reducing overall operating costs.

Councilmember Woelfel asked what the City would save in the 2010 and 2011 City budgets if the Topeka Human Relations Department is eliminated.

Norton N. Bonaparte, Jr., stated that the City would save approximately \$70,000 in 2010 and \$160,000 in 2011.

Councilmember Archer asked why the ordinance was being proposed when staff knew the issue would be controversial and unpopular.

Norton N. Bonaparte, Jr., stated that he supports equal opportunity for all citizens; however, the decision to eliminate the Department was strictly based on the City's tough financial situation. He noted that the City has a \$5 million budget deficit and the services provided by the Topeka Human Relations Department could be handled by the State of Kansas.

Councilmember Ortiz asked if there is City staff members qualified to resolve pending cases if the Department is eliminated. She expressed concern with elimination of the Department costing the City more money in the long run in the event pending cases are not handled properly.

Bennie Lee Davis, Anthony Fadale, Sharon Joseph, Michael Bell, John Nave, Bernadette Forge, Lorean Williams, Jason Chaika, Stephanie Mott and Vern McFalls spoke in opposition to the ordinance. Comments were made relating to the need to investigate citizen complaints in a timely manner and on a local level; ensuring equal civil rights for all citizens; and providing the City with a check and balance system as an enforcement agency of civil rights.

Councilmember Swank stated that she agrees with many of the comments made by citizens; however, she will support the ordinance because there is a professional alternative at the State level. She also stated that she understands the value of the services provided; how

important the Department is to the community; and the enforcement of civil rights. She asked for an overview of the Department's case load in 2009.

Rio Cervantes-Reed, Topeka Human Relations Department Director stated that the Department handled approximately 35 to 40 employment cases and 8 to 9 housing cases in 2009. She reported that many employment cases are race or gender related and Department policy requires these cases to be complete within 300 days. She stated that many of the housing cases are disability related and Department policy requires them to be complete within 100-150 days. She noted that they recommend applicants file complaints locally, as well as, with the State of Kansas to protect their rights.

Councilmember Archer reminded the Council if the ordinance is approved the Human Relations Commission would remain intact. He noted that the Topeka Human Relations Department is being eliminated because there are not enough cases to justify three full-time staff members.

Councilmember Ortiz asked if the elimination of the Topeka Human Relations Department would create additional employee lay-offs; and how much U.S. Department of Housing & Urban Development (HUD) funding does the Department receive annually.

Norton N. Bonaparte, Jr., stated that elimination of the Department would result in at least three employee lay offs.

Rio Cervantes-Reed stated that the Topeka Human Relations Department receives \$10,000 for administrative fees, as well as, \$2,500 per case and other mandatory training funds from HUD annually.

John Nave stated that he believes the elimination of the Topeka Human Relations Department would create morale issues within the community because there would be no enforcement or investigative aspect on a local level to support the complainants.

Councilmember Ortiz referenced a letter from Bill Minner, Director of the State of Kansas Human Relations Commission expressing support for continued operations of the Topeka Human Relations Department. She stated that she would oppose eliminating the Topeka Human Relations Department and believes the COST Team proposals were ineffective and not the opinion of the majority of City employees.

Councilmember Wolgast stated that elimination of the Topeka Human Relations Department is a difficult decision; however, the City has a significant budget deficit and one way to help reduce the deficit is to eliminate staff positions.

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

Councilmember Woelfel thanked citizens for the correspondence he has received regarding the issue. He stated that he would not support the proposal because he does not believe the elimination of the Department would make a huge impact on the City's budget deficit, and he would prefer to handle the services on a local level. He questioned how much state funding is included in the anticipated savings for 2010 and 2011 City budgets.

Jim Langford, Budget and Finance Director stated that the anticipated amount includes zero state funding.

Councilmember Hiller stated that she attended the recent rally in support of civil rights and it reminded her of how hard people have had to work to get where they are today. She stated that she takes this issue very seriously in her professional and personal life; however, it is time to

move forward because she believes we may need to take another approach to advance our community goals to where they should be. She also stated that she wants to make sure citizens know where to go and identify who the contact person will be regarding the complaint process if the ordinance is passed.

Councilmember Alcala stated that a family member was involved in a lawsuit relating to the Department; therefore, he would abstain from voting on the issue to avoid a conflict of interest.

The motion to adopt the ordinance carried. Councilmembers Ortiz and Woelfel voted “no.” Councilmember Alcala abstained. (5-2-1)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Wolgast, Swank, Archer and Harmon -5. Noes: Ortiz and Woelfel -2. Abstained: Alcala -1.

APPROVAL of a Dance Hall License Application for Rumba Club located at 816 N. Kansas Avenue was presented. The license application was deferred from the meeting of June 8, 2010.

Councilmember Alcala stated that he has spoke with the applicant and his questions relating to the safety of the patrons have been answered to his satisfaction.

Councilmember Alcala moved to approve the Dance Hall License application. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

APPROVAL of Retail Cereal Malt Beverage License Applications was presented.

The City Clerk reported there were no applications to consider.

RESOLUTION NO. 8264 introduced by City Manager Norton N. Bonaparte, Jr., supporting the Joint Economic Development Organization to direct the Growth Organization of

Topeka/Shawnee County to provide funding on behalf of the City of Topeka in support of the Heartland Visioning Project was presented.

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

Councilmember Wolgast moved to approve the resolution. The motion seconded by Councilmember Swank carried. Councilmember Woelfel voted “no.” (7-1-0)

RESOLUTION NO. 8265 introduced by Councilmember John Alcala granting a waiver to the provisions of City of Topeka Code Section 10.60.120, as amended, relating to parking on unimproved surfaces was presented.

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

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

RESOLUTION NO. 8266 introduced by City Manager Norton N. Bonaparte, Jr., establishing the City of Topeka municipal service area and rescinding Resolution No. 7637 was presented.

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

Councilmember Woelfel asked what areas are included in the municipal service area.

David Thurbon, Planning Department Director stated that the municipal service area would include all areas that are anticipated to grow in the next ten years.

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

ORDINANCE NO. 19434 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of May 24, 2010 through May 30, 2010, and enumerating said expenditures therein was presented for first and final reading.

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. (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. 19435 introduced by City Manager Norton N. Bonaparte, Jr., amending the “District Map” referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 5100 SW 29th Street from “C-4” Commercial District to “PUD” Planned Unit Development placed on first reading June 8, 2010 was again presented. (*PUD10/8*)

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

Councilmember Archer moved to adopt the ordinance. The motion seconded by Councilmember Wolgast carried. Mayor Bunten abstained. (8-0-1)

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

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 18.50.050 of the Topeka Municipal Code (TMC), by providing for certain changes in zoning on property located at 1700 SW 37th Street and 3624 SW Garfield Avenue in the City of Topeka, Kansas from “R-1” Single-Family Dwelling District TO “PUD” Planned Unit Development District (“M-3” use group) by amending the Master PUD Plan of McCrite Plaza Retirement Apartments and Health Center Revision No. 3 to include these properties located at 1700 SW 37th Street and 3624 SW

Garfield Avenue for the accommodation of landscaping and additional parking was presented for first reading. (Z90/30G)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., to amend the Master PUD Plan for Grand Oaks Subdivision from PUD (“R-1” use group) TO PUD (“R-1” and “M-1” use groups) on property located northeast of SW Topeka Boulevard and SE 45th Street was presented for first reading. (Z00/34B)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 14.45.010 concerning the life safety code and specifically repealing said original section presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager reported that the City is still accepting applications for the Topeka 101: Citizens Academy. He gave a brief update on the street improvement projects funded by half-cent sales tax revenues. He announced upcoming Meet the Manager sessions on June 16, 2010 at the Garfield Community Center located at 1600 N. Quincy Street from 5:30 p.m. to 6:30 p.m.; June 17th at the Hillcrest Community Center located at 1800 SE 21st Street from 8:00 a.m. to 9:00 a.m.; June 23rd at the Crestview Community Center located at 4801 Shunga Drive from 5:30 p.m. to 6:30 p.m.; and June 24th at the Topeka-Shawnee County Library located at 1515 SW 10th Street from 8:00 a.m. to 9:30 a.m.

Councilmember Hiller reported that an economic development project has begun in North Topeka including a new hotel and restaurant. She commended Councilmember Wolgast for his involvement in the dedication of the Lantern of Light sculpture at the Washburn

University Campus. She noted that many opportunities for growth are happening throughout the city.

Councilmember Ortiz asked why the light located in the Hillcrest Community Center parking lot has been removed. She reported that she is receiving a lot of complaints regarding potholes located on SE Branner Trafficway between SE 10th and 15th Streets. She questioned what is the best economical choice for the City regarding the repair of potholes, to outsource crews or pay City employees overtime.

Norton N. Bonaparte, Jr., stated that outsourcing provides the City with more crews to complete work more quickly and eliminates the need to hire additional full-time employees.

Councilmember Swank acknowledged City employees attending the Council meeting and expressing their views on recent employee lay-offs.

Councilmember Archer commended Councilmember Wolgast for his involvement in the dedication of the Lantern of Light sculpture at Washburn University. He also commended the citizens who attended the Council meeting to voice their concerns regarding City policies.

Councilmember Harmon reported that the tornado siren at SW 10th Street and Fairlawn Road did not activate on Sunday evening during the severe weather. He asked if there were other instances around the city where sirens did not sound.

Councilmember Woelfel requested an update of emergency sirens be provided to the entire Council.

Mayor Bunten requested to visit with the Council on his proposed options to balance the budget.

David Fish appeared to speak under public comment.

Councilmember Alcalá moved to adjourn the City Council meeting. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:26 p.m.

Brenda Younger
City Clerk