

Council Minutes – June 29, 2010

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 29, 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, Archer, Preisner and Harmon -8. Absent: Mayor Bunten -1. Deputy Mayor Swank presided -1.

AFTER THE MEETING was called to order, Pastor Fritz Clark, Senior Minister, Countryside United Methodist Church gave the invocation.

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

A PRESENTATION on the new Shawnee County Outdoor Emergency Warning System was presented by Dave Sterbenz, Shawnee County Emergency Management Director.

Councilmember Ortiz requested to pull items 4G and 4H, board appointments to the Topeka Metropolitan Transit Authority Board from the consent agenda for separate discussion.

Upon hearing no objections, Deputy Mayor Swank announced that items 4G and 4H would be removed from the consent agenda for further discussion.

THE CONSENT AGENDA was presented as follows:

DENIAL of a Tort Claim in the amount of \$116,707.72 in workers' compensation reimbursement by the insurer Randy Long's former employee, Cook-Flatt-Strobel Engineers was presented.

DENIAL of a Tort Claim in the amount of \$2,000,000 for injuries and damages in the form of medical expenses and lost future earnings for Randy Long was presented.

DENIAL of a Tort Claim in the amount of \$185,022.50 from Stormont-Vail Hospital for indigent medical services provided to Jesse Dimmick was presented.

DENIAL of a Tort Claim in the amount of \$1,500,000 for personal injuries suffered by Jesse Dimmick was presented.

BOARD APPOINTMENT recommending the appointment of Ben Phillips to the Board of Mechanical Examiners for a term ending June 30, 2012 was presented.

BOARD APPOINTMENT recommending the appointment of Tom Cain to the Board of Mechanical Examiners for a term ending June 30, 2012 was presented.

RESOLUTION NO. 8269 introduced by Councilmember Jack Woelfel granting Jennifer Baker an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8270 introduced by Councilmember Karen Hiller granting Leslie Ham an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

MINUTES of the regular meeting of June 22, 2010 were presented.

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

BOARD APPOINTMENT recommending the appointment of Rodney Miller to the Topeka Metropolitan Transit Authority (TMTA) Board for a term ending June 30, 2014 was presented.

Councilmember Ortiz expressed concern with a new board appointment during tough financial times for the organization. She stated that she would not support the appointment because she believes the current member of the Board Mr. Hubbell is more familiar with the needs of the organization, and would provide valuable financial information to assist the Board in making tough decisions.

Councilmember Ortiz moved to deny the board appointment. The motion was seconded by Councilmember Wolgast.

Councilmember Alcala stated that he would not support the board appointment because he believes the nomination and appointment process is unfair.

Councilmember Harmon questioned the state statute relating to mayoral appointments and if it applies to the TMTA board.

Jackie Williams, City Attorney outlined the process according to state statute and stated that a Councilmember must submit an appointment nomination to the Mayor for review and the Mayor submits the nomination to the Council for approval. He stated that if a board appointment is denied the Council has forty-five (45) days to present an affirmative resolution explaining why the individual is unqualified or unfit to serve on a board.

Councilmember Ortiz moved to amend the motion to deny and approve the board appointment. The second concurred.

Councilmember Archer stated that he would support both board appointments because he hopes the new appointees will bring fresh ideas and experience to the Board. He reported that TMTA has lost 40% of their customers in the past two years; operating expenses have increased by 80% from 2001 to 2008; and the 50% mill levy increase that was initially implemented on a temporary basis is now permanent.

Councilmember Ortiz stated that she would not support the appointment of Ms. Johnson because she works for the Community Resources Council which lobbies for City funding; therefore, she questions if the appointment would be a conflict of interest.

Councilmember Hiller stated that she nominated Mr. Miller and believes he is a very capable individual who is a visionary and knows the importance of public transportation.

Councilmember Alcala asked if it was necessary to draft a resolution stating an individual is unqualified or unfit to serve on a board if an appointment is disapproved because another person is more qualified.

Jackie Williams stated that a resolution would have to be completed within 45 days if the appointment is disapproved.

The motion to approve the board appointment carried. Councilmembers Ortiz, Wolgast and Swank voted “no.” Councilmember Alcala abstained. (5-3-1)

BOARD APPOINTMENT recommending the appointment of Nancy Johnson to the Topeka Metropolitan Transit Authority Board for a term ending June 30, 2014 was presented.

Councilmember Archer stated that he nominated Ms. Johnson because he believes she is more than qualified to serve on the TMTA Board.

Councilmember Archer moved to approve the board appointment. The motion was seconded by Councilmember Alcala.

Councilmember Swank stated that she would not approve the board appointment of Ms. Johnson because she concurs with Councilmember Ortiz and questions if there would be a conflict of interest.

Councilmember Alcala stated that Ms. Johnson continues to help the community in many ways; however, he would abstain from voting because he believes there are more qualified individuals who could serve on the Board.

The motion to approve the board appointment carried. Councilmembers Ortiz and Swank voted “no.” Councilmembers Alcala and Preisner abstained. (5-2-2)

A NOTICE OF PUBLIC HEARING

A PUBLIC HEARING for the purpose of hearing any and all complaints that may be made as to the validity and fairness of the assessments on file in the office of the Clerk on all lots, parcels and pieces of ground liable for the cost of Sewer Improvement Project No. 40951-00, more specifically described herein, authorized by Resolution No. 8194, adopted and approved September 8, 2009, which rescinded Resolution No. 7926, adopted and approved March 20, 2007.

ORDINANCE NO. 19439 introduced by City Manager Norton N. Bonaparte, Jr., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Wanamaker Meadows Subdivision and Lauren's Bay Villas No. 2 with piping, manholes, engineering and all other contingencies needed to complete Sanitary Sewer Improvement Project No. 40951-00 as defined and described in Resolution No. 8194, adopted and approved September 8, 2009, and repealing Ordinance No. 19402 placed on first reading June 22, 2010 was again presented.

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

Councilmember Woelfel moved to adopt the ordinance. The motion seconded by Councilmember Archer 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. Absent: Mayor Bunten -1.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 6.20.120 and Section 6.30.100 concerning permit fees for cats and dogs and specifically repealing said original sections placed on first reading June 22, 2010 was again presented.

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

Joseph Ledbetter stated that in his opinion the license fee is too expensive for people with multiple dogs; therefore, the policy would discourage license renewals. He also stated that he

believes the main reason license fees have remained low is for the purpose of tracking rabies vaccination records.

Councilmember Alcalá distributed an amendment to the ordinance. He expressed concern that the increase in license fees would discourage people from adopting dogs and cats from the Helping Hands Humane Society. He read the following proposed amendments:

- Section 6.10.120(c), “Effective from and after the approval of this ordinance, the permit fee shall be permanently waived for a dog adopted from Helping Hands Humane Society, Inc.”
- Section 6.30.100(c), “Effective from and after the approval of this ordinance, the permit fee shall be permanently waived for a cat adopted from Helping Hands Humane Society, Inc.”

Councilmember Alcalá moved to amend the ordinance as distributed. The motion was seconded by Councilmember Ortiz.

Councilmember Woelfel asked how the dogs and cats adopted from Helping Hands Humane Society would be monitored to ensure license fees would not apply to the owners.

Councilmember Alcalá stated that Helping Hands Humane Society provides the proper adoption documentation for pet owners.

Councilmember Hiller expressed concern with the fee increase and stated that she would prefer to have a process that is owner and pet oriented. She reported that there are 85 kennels in the City of Topeka which no fees are collected; the City spends approximately \$1 million a year on animal control issues; and \$350,000 a year in shelter fees. She suggested the Council table the ordinance for six months for further discussion and review.

Councilmember Alcalá stated that he would not support tabling the ordinance because the issue is time-sensitive and will have an effect on the 2011 Operating Budget. He questioned why the City is not enforcing pet registration for 90% of the pet owners in Topeka.

Norton N. Bonaparte, Jr., stated that there are ideas of partnering with local veterinarians and the Helping Hands Humane Society to enforce pet registration; however, at this time the service is provided on a voluntary basis by businesses.

Councilmember Wolgast acknowledged the research Councilmember Hiller has conducted on the issue. He reported that he has heard from a number of constituents that question the system and are concerned with the high number of pet owners who do not register their pets.

Councilmember Swank asked if the issue could be handled administratively; and if a timetable has been established in regards to enforcement.

Norton N. Bonaparte, Jr., stated that he anticipates the process to be established within the next few months.

Councilmember Hiller made a substitute motion to table the ordinance. The motion was seconded by Councilmember Alcala.

Norton N. Bonaparte, Jr., noted that the ordinance is time-sensitive.

Councilmember Hiller stated that an amendment to the ordinance would be drafted within a week.

Councilmember Hiller made a substitute motion to place the ordinance on the July 20, 2010 Council agenda following review by the Public, Health and Safety Committee. The motion seconded by Councilmember Alcala carried. Councilmembers Ortiz and Woelfel voted “no.”
(7-2-0)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 14.20.060 and Section 14.55.070 concerning permit fees for new

construction and specifically repealing said original sections placed on first reading June 22, 2010 was again presented.

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

Councilmember Preisner commended staff for generating ideas that would enhance revenue; however, he would not support an increase in construction fees at this time due to the state of the economy.

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

Eric Stafford, Director of Government Affairs for the Associated General Contractors of Kansas asked the Council to disapprove the fee increase. He gave a brief description of how the economy has affected the growth of construction throughout the State of Kansas, and noted Topeka is already uncompetitive in the fee structure and an increase would only make Topeka even less appealing to developers.

Councilmember Hiller reported that staff felt there was room to increase permit fees.

Dawn Wright, Topeka Homebuilders Association Chief Executive Officer stated that she is not opposed to an increase in permit fees; however, she is opposed to raising fees strictly for revenue enhancement. She gave a brief description of the number of building permits approved in 2009 and 2010 and expressed concern that the increase could damage competitiveness within the City and County. She stated that the City of Topeka charges up to \$962 for a permit fee while Shawnee County charges \$253.

Steve Jenkins, Growth Organization of Topeka Economic Development Senior Vice President stated that operational efficiencies concerning construction permits should be explored. He noted that two factors are a primary driver for businesses looking for a good location; 1) short

term costs in building and, 2) quality of workforce. He expressed concern on the proposed increase in permit fees and stated that he has received many comments from local businesses that are stunned at Topeka's building permit fees. He asked that the Council postpone the decision to review and compare surrounding cities and counties. He stated that his staff is researching 13 other communities to see how Topeka compares in the construction permit fee structure.

Councilmember Hiller asked when the Council could review the comparisons.

Steve Jenkins stated that the information would be provided to the Council in the next two weeks.

Dean Farrell, Farrell Construction of Topeka, Inc., stated that he researched six other communities regarding construction permit fee structures. He reported that the City of Topeka charges 42% to 46% higher commercial fee rates than surrounding communities. He asked the Council to vote against the ordinance to allow area construction businesses to remain competitive.

Norton N. Bonaparte, Jr., requested Mr. Jenkins and Mr. Farrell schedule a work session with City staff to discuss how Topeka compares with other communities.

Councilmember Wolgast made a substitute motion to defer the ordinance until July 20, 2010. The motion was seconded by Councilmember Archer.

Councilmember Preisner asked what services are provided by the County compared to the City when a new construction fee permit is issued.

David Thurbon, Planning Department Director stated that it is his understanding the County makes sure flood plain regulations and zoning requirements are followed; and the City inspects the commercial building for electrical, fire, mechanical, plumbing and building code compliance.

Councilmember Wolgast spoke in support of deferring the ordinance. He stated that this would allow staff time to research and compare construction permit fees with other communities, and ensure the Council makes an informed decision.

Norton N. Bonaparte, Jr., reported that City staff has reviewed a number of cities and the services provided. He stated that he welcomes the opportunity to work with the Greater Topeka Chamber of Commerce and the Growth Organization of Topeka on the issue.

Councilmember Swank noted that the issue has already been discussed in a work session and believes the City provides more services to assure homeowners of their investment.

Councilmember Hiller requested reconciliation between the numbers compiled by City staff and the numbers provided by the public speakers.

Councilmember Wolgast concurred with Councilmember Hiller.

The motion to defer the ordinance until July 20, 2010 carried. Councilmember Preisner voted "no." (8-1-0)

ORDINANCE NO. 19440 introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for Celtic Fox and The Office on July 10, 2010 placed on first reading June 22, 2010 was again presented.

Councilmember Hiller gave the staff report.

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

A REVISED PROJECT BUDGET in the amount of \$251,000 and ORDINANCE NO. 19441 introduced by City Manager Norton N. Bonaparte, Jr., amending the project budget and

authorizing as amended Traffic Signal Replacement Project No. T-141005.00 (HTE 141330) which provides for traffic light replacement at Huntoon and Wanamaker more specifically described herein and repealing City of Topeka Ordinance No. 19306 placed on first reading June 22, 2010 was again presented.

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

Councilmember Harmon moved to approve the revised project budget and adopt the ordinance. The motion was seconded by Councilmember Wolgast.

Joseph Ledbetter asked the Council to thoroughly research all items brought to their attention to make informed decisions.

Councilmember Woelfel asked if the project would be financed from the general fund.

Mike Teply, Public Works Director stated that the funds have not been specifically identified in the Public Works Operating fund; however, the Transportation Operations Department believes the amount needed would be less than the requested \$5,000 funding match.

The motion to approve the revised project budget and adopt the ordinance 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.

APPROVAL of Retail Cereal Malt Beverage License Applications was presented.

The City Clerk reported there were no applications to consider.

A PROJECT BUDGET in the amount of \$1,525,000 and RESOLUTION NO. 8271 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Project No. T-281025.00 which provides for the waterline relocation for SE 45th Street more specifically described herein was presented.

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

Joseph Ledbetter expressed concern with using Countywide Half-Cent Retailers' Sales Tax revenues to fund the project. He stated that he does not recall the project being listed on the 2004 election ballot.

Councilmember Alcala stated that he agrees with Mr. Ledbetter and believes the City is responsible for the project costs.

Joseph Ledbetter asked the Council to practice due diligence in funding projects. He stated that he believes documentation should be shown that the City has the authority to utilize the Countywide Half-Cent Retailers' Sales Tax revenue funds on the project.

Norton N. Bonaparte, Jr., noted that the waterline is being relocated solely at the request of Shawnee County and would not be moved otherwise.

Councilmember Ortiz moved to refer the project budget and resolution to the Policy and Finance Committee. The motion was seconded by Councilmember Alcala.

Councilmember Preisner stated that he would not support referring the project to committee because the City would not be moving the waterline if it weren't for the County construction project.

Mike Teply, Public Works Director noted that the SE 45th Street expansion project was approved in 2004.

Councilmember Woelfel made a substitute motion to approve the project budget and resolution. The motion was seconded by Councilmember Preisner.

Councilmember Ortiz questioned if there were utilities that would have to be moved, and if so who would cover the cost.

Mike Teply stated that there are franchise agreements in place with the utility companies, as well as, the City has the authority to perform work in public easements.

Councilmember Hiller stated that she believes the Countywide Half-Cent Retailers' Sales Tax was implemented to benefit the City and County as a whole.

The substitute motion to approve the project budget and resolution carried.

Councilmembers Alcalá and Ortiz voted "no." (7-2-0)

RESOLUTION NO. 8272 introduced by City Manager Norton N. Bonaparte, Jr., authorizing and adopting for the City of Topeka, Kansas, the 2010-2011 Capital Improvement Program and the 2010-2011 Capital Improvement Budget and rescinding certain portions of Resolution No. 8214 was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report. He stated that there is a typographical error in Attachment A regarding the adopted 2011 City Budget amount for the Waterline Extension along Fairlawn to 41st and Wanamaker. He stated that the correct amount is \$2,297,000.

Councilmember Woelfel moved to amend Attachment A of the resolution by correcting the Waterline Extension along Fairlawn to 41st and Wanamaker project amount to read \$2,297,000. The motion seconded by Councilmember Preisner carried. Councilmembers Alcalá and Ortiz voted "no." (7-2-0)

Joseph Ledbetter expressed concern with the City's construction and inspection fees listed in the project budget.

Councilmember Preisner moved to approve the resolution as amended. The motion seconded by Councilmember Archer carried. Councilmembers Alcalá and Ortiz voted "no." (7-2-0)

ORDINANCE NO. 19442 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of June 7, 2010 through June 13, 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 6, Certus Architectural Engineering
- Page 7, Eisenbarth & Associates
- Page 11, Meiers Ready Mix
- Page 14, Safety Consulting, Inc.
- Page 10, Kansas State Treasurer

Jim Langford, Budget and Finance Director reported that the payment to Certus Architectural Engineering was for architectural services for a CIP project; the payment to Eisenbarth and Associates was for medical health services provided to inmates through the Municipal Court; the payment to Meiers Ready Mix was for utility projects except the last amount listed was a City Half-Cent Retailers' Sales Tax project; the payment to Safety Consulting, Inc., was for evaluation of City sewer and water procedures related to plant operations; and the payment to the Kansas State Treasurer was for fees collected by the Municipal Court and submitted to the Treasurer to be distributed to specific State funds.

Norton N. Bonaparte, Jr., City Manager requested Mr. Ledbetter submit his questions before the Council meeting to Mr. Langford to allow sufficient time for the research of expenditures and to ensure questions are answered accurately.

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

ORDINANCE NO. 19443 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 1624 and 1622 SW Topeka Boulevard from “C-2” Commercial District TO PUD Planned Unit Development District (“M-2” Multiple-Family Dwelling District use group) placed on first reading June 22, 2010 was again presented. (*PUD10/7*)

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

The City Clerk asked if there were any ex parte communications.

Councilmember Hiller stated that she spoke with the applicant.

Councilmember Woelfel 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. Absent: Mayor Bunten -1.

AN ORDINANCE introduced by Deputy Mayor Deborah Swank amending Sections 8.20.020, 8.20.030, 8.20.040, 8.20.070, 8.20.080, 8.20.090, 8.20.110 and 2.110.130 concerning clean indoor air and specifically repealing said original sections as well as repealing in their entirety Sections 8.20.120, 8.20.130 and 8.20.140 was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager commended Topeka Firefighters for the rescue of five family members from a house fire located at 618 SE Leland on June 26, 2010. He encouraged residents to report potholes to the Pothole Hotline at 368-3711. He announced that citizens could obtain information on the Topeka 101: Citizens Academy by calling 368-0900 or

visiting the City's website at www.topeka.org. He also announced that there would be no City Council meeting on July 5, 2010.

Councilmember Ortiz asked if the traffic light at SE 4th and Branner would be replaced; and if the shopping area located near SE 15th and Adams Streets would be accessible during construction.

Councilmember Alcalá stated that he believes the traffic light is schedule to be replaced in the fall.

Norton N. Bonaparte, Jr., stated that he would check the status of the traffic light replacement and report back to Councilmember Ortiz. He also stated that he was assured by staff members the shopping area would be accessible during the construction project.

Councilmember Harmon thanked Mr. Anderson and Mr. Hubbell for their service and dedication to the Topeka Metropolitan Transit Authority Board.

Councilmember Swank thanked Mr. Anderson and Mr. Hubbell for serving on the TMTA Board. She stated that the recent consultant study conducted on the public transportation system shows that TMTA is on the right track of becoming more cost efficient.

Susan Suwalski, Jim Suwalski, Robert Lee 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 8:48 p.m.

Brenda Younger
City Clerk