

## **Council Minutes –July 13, 2010**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, July 13, 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, Councilmember Swank asked for a moment of silent meditation.

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

Councilmember Ortiz moved to suspend the Council Rules to add a tort claim for Daniel Nicholson to the consent agenda. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

Mayor Bunten announced that the tort claim would be added to the consent agenda as item 4H.

Councilmember Woelfel moved to reinstate the Council Rules. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

Councilmember Ortiz moved to suspend the Council Rules. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

Councilmember Ortiz requested to add a project budget and ordinance authorizing Neighborhood Improvement Project No. T-601018.00 to the Council agenda. She stated that the project would provide for improvements in the Chesney Park and Ward-Meade neighborhoods.

Councilmember Archer noted that the project budget and ordinance was withdrawn from the Council agenda on June 15, 2010. He asked if the six month reconsideration rule of the Council would apply.

Jackie Williams, City Attorney clarified the process and stated that Council Rule 5.3(b)(viii) states, “no matter previously acted upon by the City Council may be reconsidered until six months have elapsed,” however, Council Rule 5.3(b)(ix) states, “the Council may temporarily suspend a particular rule for a particular purpose and shall be approved by a two-thirds (2/3) majority of the Council.” He stated that in order for the ordinance to be properly considered, the Council must (1) suspend the Council Rules to add the ordinance to the Council agenda; (2) suspend Council Rule 5.3(b)(viii) to reconsider the ordinance before the six month reconsideration rule has elapsed; and (3) adopt the ordinance.

Councilmember Archer stated that he is opposed to shifting taxpayer money away from main thoroughfares where it is needed the most, and using the funds in specific neighborhoods for repairing lightly traveled streets.

Councilmember Ortiz stated that she would support the project because it would repair problems that have existed since 2005. She stated that many Ward-Meade and Chesney Park residents invite Councilmember Archer to tour the neighborhoods with them to allow them to show him all the target areas that are in need of repair.

Randy Speaker, Housing and Neighborhood Development Director stated that the SORT Program is working well to address many of the issues identified in target neighborhoods through the planning process; the program has helped to steadily raise property values in target neighborhoods since 2008; and the project is part of a two-year plan to improve neighborhood infrastructure for the Ward-Meade and Chesney Park areas.

Councilmember Archer stated that he has driven the streets and alleyways, as well as, walked the sidewalks and in his opinion, the infrastructure is as good as any other neighborhood in the City.

Councilmember Alcalá expressed concern with how the SORT Program funding is applied and repairs are prioritized, specifically alley pavement replacement.

Councilmember Hiller stated that she would prefer to have more time to discuss the improvement project and consider how the SORT Program should be applied.

Councilmember Ortiz moved to add the project budget and ordinance authorizing Neighborhood Improvement Project No. T-601018.00 to the Council agenda. The motion seconded by Councilmember Alcalá failed. Councilmembers Hiller, Woelfel, Archer and Harmon voted “no.” (4-4-0)

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Richard Thornburg to the Parks and Recreation Advisory Board for a term ending July 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Mark Saylor to the Parks and Recreation Advisory Board for a term ending July 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Veronica Padilla to the Parks and Recreation Advisory Board for a term ending July 31, 2014 was presented.

BOARD APPOINTMENT recommending the re-appointment of Mike Morse to the Topeka Board of Zoning Appeals for a term ending July 31, 2013 was presented.

BOARD APPOINTMENT recommending the re-appointment of Tim Carkhuff to the Board of Zoning Appeals for a term ending July 31, 2013 was presented.

MINUTES of the regular meeting of June 29, 2010 were presented.

An Open After Midnight License application for La Fiesta located at 1017 NE Seward Avenue was presented.

DENIAL of a Tort Claim in the amount of \$365.94 for pothole damage sustained by Daniel Nicholson on or about January 5, 2010 was presented.

Councilmember Alcalá moved to approve the consent agenda as amended. The motion seconded by Councilmember Swank carried unanimously. (8-0-0)

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 placed on first reading June 29, 2010 was again presented.

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

Frank Aguilar spoke in support of the ordinance and asked who would be responsible for enforcing the ordinance.

Councilmember Alcalá asked if the penalty would be more severe if the ordinance is adopted.

Judy Olander, Assistant City Attorney stated that the Topeka Police Department would be responsible for enforcement of the ordinance and the penalty would be more severe.

Councilmember Swank stated that the City must adopt the same level of severity for penalty as required by State law.

Mary Jane Hellebust spoke in support of the clean air ordinance and stated that it is an effective smoke free policy for the City of Topeka. She expressed appreciation for the due diligence of City staff in comparing both pieces of legislation to maintain the stronger elements of the State law that makes the City ordinance so effective.

Councilmember Alcala asked if the ordinance would be affected by Judge Theis' future ruling of the *Suwalski vs. City of Topeka* Shawnee County District Court case.

Judy Olander stated that the ruling would not affect the ordinance.

Councilmember Harmon asked if the ordinance would be retroactive and questioned if the ordinance would infringe on the Suwalski's due process rights. He expressed the importance of a fair judicial process.

Judy Olander stated that the ordinance would not be retroactive; however, it would more clearly define the term "smoke shop."

Councilmember Archer stated that he would not support the ordinance because he believes it is unnecessary. He noted that he supports State law which prohibits smoking in public places and questioned if the Council should revoke the City ordinance and honor State law.

Councilmember Swank noted that the public has expressed their support of the current City ordinance through public discussion and forums. She expressed concern with causing confusion due to discrepancies in City and State smoking laws.

Councilmember Hiller spoke in support of the clean air ordinance. She stated that it is important for City ordinances to work in conjunction with State law to ensure success.

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

Councilmember Swank made a substitute motion to defer the ordinance for one week to allow time for staff to address any additional questions the Council may have. The motion was seconded by Councilmember Wolgast.

Councilmember Alcala stated that he would not support the motion to defer because he believes the Council needs to make a decision at this time.

The substitute motion to defer the ordinance for one week failed. Councilmembers Alcala, Ortiz, Woelfel and Archer voted “no.” (4-4-0)

The motion to adopt the ordinance failed. Councilmembers Alcala, Ortiz, Woelfel and Archer voted “no.” (4-4-0)

APPROVAL of Retail Cereal Malt Beverage License Applications was presented.

The City Clerk reported there were no applications to consider.

A FINAL PLAT for Building Stone and Landscaped Villa Subdivision located at the southwest corner of SW 10<sup>th</sup> Avenue and SW Auburn Road, outside the City’s Municipal Service Area, but within the City’s three-mile extra-territorial jurisdiction all lying within unincorporated Shawnee County, Kansas was presented. (P10/1)

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

Angela Sharp, Bartlett & West Engineers appeared to answer questions and stated that the applicant wants to expand their business and generate more area jobs.

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

ORDINANCE NO. 19444 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of June 14, 2010 through June 20, 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. 19445 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of June 21, 2010 through June 27, 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.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 2.110.010 concerning court costs and fees and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing the City of Topeka, Kansas, to issue its Housing and Health Care Improvement Revenue Bonds, Series 2010, (Brewster Place Project) in the aggregate principal amount of \$11,000,000 for the purpose of financing the costs of constructing, equipping and improving certain residential and health care facilities located on the Brewster Place Campus in the city; currently refunding an outstanding revenue bond issue of the city; authorizing the execution of a fourth supplemental indenture by and between the City and CoreFirst Bank and Trust, Topeka, Kansas, as trustee; authorizing the execution of a fourth supplemental lease by and between the City and the Congregational Home, a Kansas not-for-profit corporation; and authorizing and approving

certain additional documents and actions in connection with the issuance of said bonds was presented for first reading.

A CHARTER ORDINANCE introduced by Councilmember Jack Woelfel, concerning term limits of councilmembers and mayor, amending Section A2-21 and repealing said original section was presented for first reading.

AN ORDINANCE introduced by Councilmember Jack Woelfel, calling an election to be held on the 2<sup>nd</sup> day of November, 2010, for the purpose of voting on a charter ordinance (relating to term limits of councilmembers and mayor) was presented for first reading.

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

Councilmember Ortiz invited the community to attend the 77<sup>th</sup> Annual Fiesta Mexicana Celebration during the week of July 13<sup>th</sup>.

Nancy Johnson, Ellen Ross and Yvonne May appeared to speak under public comment.

Councilmember Alcala 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 7:06 p.m.

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Brenda Younger  
City Clerk