

## **Council Minutes –September 14, 2010**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 14, 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 Preisner -8. Mayor Bunten presided -1. Absent: Councilmember Harmon -1.

AFTER THE MEETING was called to order, Councilmember Preisner asked for a moment of silent meditation.

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

A PRESENTATION on GO Topeka's Entrepreneurial & Minority Business Development program was presented by Lucky DeFrizz, GO Topeka, Inc. Lonnie Williams read the mission statement of the program and Diana Ramirez gave a brief overview of the responsibilities of the program.

A PRESENTATION on the Kansas Rights 4 Kids program and the importance of stricter sexual offender laws in the State of Kansas was presented by Leslie Ramirez, Michelle Profee and Sara Wood.

Councilmember Swank requested to add a resolution granting a noise exception to Sigma Phi Epsilon to the consent agenda.

Councilmember Wolgast requested to add a resolution granting a noise exception to Rick Spivey and Tornado Alley Entertainment to the consent agenda.

Upon hearing no objections, Mayor Bunten announced the resolutions would be added to the Council agenda under the consent agenda as items 4G and 4H.

Councilmember Wolgast moved to suspend the Council Rules to add an ordinance amending City of Topeka Code Section 9.15.020 concerning unlawful possession and

consumption of alcoholic liquor or cereal malt beverages to the Council agenda. The motion seconded by Councilmember Swank carried. Councilmember Woelfel voted “no.” (7-1-0)

Mayor Bunten announced the ordinance would be placed on the Council agenda under Unfinished Business as item 5D.

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the appointment of Marilyn Lind to the City of Topeka ADA Advisory Council for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the appointment of Gene Gibson, Jr., to the City of Topeka ADA Advisory Council for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the appointment of Renee Wiggins to the Human Relations Commission to fill an unexpired term ending December 15, 2011 was presented.

BOARD APPOINTMENT recommending the appointment of Michael Steinlage to the Topeka Sustainability Advisory Board to fill an unexpired term ending December 31, 2010 was presented

MINUTES of the regular meeting of August 31, 2010 were presented.

RESOLUTION NO. 8286 introduced by Councilmember Deborah Swank, granting Sigma Phi Epsilon an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8287 introduced by Councilmember Larry Wolgast, granting Rick Spivey and Tornado Alley Entertainment an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

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

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.

Councilmember Ortiz reported the Public, Health and Safety Committee made no recommendation for the purpose of the Council to remand the ordinance back to the Public, Health and Safety Committee by a vote of 3-0-0 on August 26, 2010. She stated the Committee needs more time to focus on the issue and conduct the public hearing scheduled on September 16, 2010 at 4:00 p.m. at the Hillcrest Community Center. She noted individuals would be allowed four minutes to speak to the issue.

Councilmember Hiller stated the Public, Health and Safety Committee considered revising the ordinance; however, they would prefer to have public input on the issue.

Councilmember Ortiz moved to refer the ordinance to the Public, Health and Safety Committee. The motion seconded by Councilmember Hiller carried unanimously. (8-0-0)

RESOLUTION NO. 8288 introduced by Councilmember Karen Hiller granting ARTSConnect an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was again presented. The resolution was deferred from the meeting of August 31, 2010.

Councilmember Hiller gave the staff report and stated the event would be held in the Crosby Place Condominium Building at 719 S. Kansas Avenue.

Jason Fizell gave a brief overview of the fundraiser event and presented a site plan to the Council. He stated the event would take place on private property; however, ARTSConnect wanted to give event patrons the freedom to utilize the outside area for smoking and additional restroom facilities.

Councilmember Hiller moved to approve the resolution. The motion seconded by Councilmember Preisner carried. Councilmember Archer voted “no.” (7-1-0)

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., amending Article 8, Section 2 of Resolution No. 7758, City of Topeka Personnel Code, relating to severance benefits and specifically rescinding said original section was again presented.

Councilmember Wolgast gave the staff report and stated the resolution was referred from the Policy and Finance Committee with a “Do Pass as Amended” recommendation by a vote of 3-0-0 on August 23, 2010.

Councilmember Hiller commended City staff and the Policy and Finance Committee for their thorough research on the issue.

Councilmember Woelfel expressed his appreciation for the research conducted by staff. He questioned the following language in the resolution.

- “Employment evaluations valid for 90 days” on Line 39
- “Human Resources Director and position bumping” on Line 52
- “Non full-time employees expiration of employment date” on Line 124

Jacque Russell, Human Resources Director stated that the 90-day timeframe is irrelevant regarding evaluations; position bumping would not apply to non-bargaining union members; and she would have to review the language on Line 124 and report back to the Council.

Norton N. Bonaparte, Jr., stated the language on Line 124 speaks to employees hired for a definite timeframe and does not apply to full-time employees.

Mayor Bunten expressed concern with what is being offered to the 240 non-bargaining unit City employees and believes all City employees should be treated the same.

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

Councilmember Woelfel made a substitute motion to defer the resolution for one week. The motion seconded by Councilmember Archer carried. Councilmember Preisner voted “no.” (7-1-0)

AN ORDINANCE introduced by Councilmember Karen Hiller amending City of Topeka Code Section 9.15.020, concerning the unlawful possession or consumption of alcoholic liquor or cereal malt beverages and specifically repealing said original section placed on first reading August 24, 2010 was again presented.

Councilmember Wolgast gave the staff report and stated the Policy and Finance Committee recommended “Do Pass” by a vote of 2-1-0 on September 8, 2010. He explained the ordinance does not specifically apply to the Arty Party Event on October 2, 2010; however, the ordinance would allow possession and consumption of alcoholic liquor on certain City properties.

Jackie Williams, City Attorney noted if the Council approves the ordinance Arty Party Event organizers would be required to present a resolution requesting exemption to the Council for approval.

Councilmember Alcala questioned the public comment procedure and the lack of proper notification to the public to address the issue.

Marcia McKinley expressed concern with the City supporting the serving of alcohol and believes the Council should do what is morally right.

Tiffany Ranger requested utilizing the building located on SW 1<sup>st</sup> Street and Jackson as a community center and believes it would be an affordable way to care for local children.

Francis Wood spoke in opposition to the ordinance. She questioned if the City is ready to accept the responsibility of increased alcohol consumption and impaired drivers.

Jason Fizell stated the ordinance would streamline the City's event planning process for future events. He reported that he has been working with the Topeka Police Department and Public Works Department to address their concerns.

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

Councilmember Swank noted the Policy and Finance Committee discussed the liability requirements and special event process in detail.

Jackie Williams, City Attorney stated the current liability requirements would reasonably protect the City from being liable.

Councilmember Alcala expressed concern with allowing the consumption of alcohol in a parking garage and creating an unnecessary liability for the City. He referenced the language "but not limited to parking lots" on Line 20 of the ordinance and asked if it was reviewed when the amendments were made.

Councilmember Wolgast noted a resolution requesting exemption would be required to be presented to the Council for each event and this ordinance only changes the overall City policy.

Councilmember Hiller noted there would be no vehicles parked on the top level of the parking garage where the Arty Party Event is to take place.

Councilmember Preisner questioned why the language amendments were not addressed before now. He stated that it was his understanding State law supersedes all City ordinances relating to possession and consumption of alcoholic liquor.

Jackie Williams stated the ordinance is a policy decision to be made by the Council; and State law supersedes all City ordinances relating to alcoholic liquor.

Councilmember Alcalá made a substitute motion to amend Line 20 of the ordinance by deleting the statement, “including but no limited to.” The motion was seconded by Councilmember Preisner.

Councilmember Woelfel questioned if the Arty Party Event could take place anywhere if the amendment is approved.

Councilmember Alcalá withdrew the substitute motion. The second concurred.

Councilmember Woelfel made a substitute motion to defer the ordinance for two weeks to clarify the language of the ordinance and properly notify citizens to allow public input. The motion seconded by Councilmember Archer failed. Councilmembers Hiller, Wolgast, Swank and Preisner voted “no.” (4-4-0)

Councilmember Swank moved to defer the ordinance for one week. The motion seconded by Councilmember Archer carried. Councilmember Preisner voted “no.” (7-1-0)

RESOLUTION NO. 8289 introduced by Councilmember Jack Woelfel supporting efforts to strengthen and enhance Kansas state law with respect to registered sexual offenders was presented.

Councilmember Woelfel gave the staff report.

Councilmember Hiller asked if a specific proposal from the Council would accompany the letter of support to the Kansas Legislature.

Mayor Bunten stated the resolution would express the Council's support of Kansas State law with respect to registered sexual offenders and encourage the Kansas Legislature to review the laws and strengthen them if possible.

Jackie Williams, City Attorney concurred with Mayor Bunten. He noted that State law specifically prohibits cities and counties from passing laws relating to sexual offenders.

Councilmember Woelfel asked when the issue would be presented to the Legislature.

Leslie Ramirez stated Senator Robert Olson has researched the issue and presented the bill to legal advisors for review.

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

A FINAL PLAT for Crews Family Subdivision located at 3321 NE Seward Avenue (a.k.a. 3321 NE K-4 State Highway), outside the City's Municipal Service, but within the City's three-mile extraterritorial jurisdiction within unincorporated Shawnee County, Kansas was presented. (*P10/14*)

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

Councilmember Preisner moved to approve the final plat. The motion seconded by Councilmember Alcala carried unanimously. Mayor Bunten voted "yes." (9-0-0)

APPROVAL of Retail Cereal Malt Beverage License Applications was presented.

No Retail Cereal Malt Beverage License applications were presented.

ORDINANCE NO. 19466 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 16, 2010 through August 22, 2010, 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 Wolgast carried unanimously. (8-0-0)

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

ORDINANCE NO. 19467 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 23, 2010 through August 29, 2010, 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 Woelfel carried unanimously. (8-0-0)

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., regarding a Contract Franchise Ordinance granted to Broadband Dynamics, a telecommunications local exchange service provider providing local exchange service within the City of Topeka, Kansas was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., instituting a real estate lien upon certain lots and pieces of ground in Shawnee County, Kansas to pay the cost for sewage collection and treatment where such payments to the City have not been made due to neglect, failure, or refusal to pay, pursuant to K.S.A. 12-808c was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., relating to the vacation of a 40-foot wide portion of a platted access control easement located along the north

line of Lot 1, Block “A”, Brookwood Subdivision in the City of Topeka, Shawnee County, Kansas was presented for first reading. (*VIORA/I*)

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

Norton N. Bonaparte, Jr., City Manager commended Mayor Bunten for being honored at the Keep America Beautiful Annual Luncheon. He announced that an East Topeka Alliance Meeting would be held on September 23, 2010 at the Highland Park High School at 6:30 p.m. He congratulated City of Topeka Employee of the Month Garry Scott, TSG Public Education Specialist.

Councilmember Hiller commended the Water Department for painting fire hydrants and improving the appearance of neighborhoods. She expressed appreciation to the Fairness in Government Group for supporting the City’s position regarding motor fuel tax revenues.

Councilmember Alcalá requested a written update on the public water condition relating to the smell and aftertaste of the water. He also asked when the City expects the issues to dissipate.

Councilmember Ortiz distributed pictures of deteriorating curbs located on East 6<sup>th</sup> Street and asked when the repairs would be done. She congratulated Gage Park Mini Train Engineer Damian Levings for winning the “Why I Love My Job Contest” sponsored by the Topeka Capital Journal. She encouraged the community to view the Heart of America Wall Mural Memorial honoring the “Unborn” located at 1016 SE Republican.

Councilmember Woelfel thanked City staff for their assistance with the Kansas Rights 4 Kids presentation. He also thanked the Council for their unanimous approval of the resolution supporting Kansas Rights 4 Kids. He asked if the Kansas Attorney General has issued an

opinion regarding the Shawnee County Commissioners' decision to withhold motor fuel tax revenues from the City.

Jackie Williams, City Attorney reported there are many options the City is considering at this time regarding the motor fuel tax revenue issue.

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 8:24 p.m.

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Brenda Younger  
City Clerk