

Council Minutes – September 21, 2010

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 21, 2010. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner and Harmon -8. Mayor Bunten presided -1. Absent: Councilmember Alcala -1.

AFTER THE MEETING was called to order, Councilmember Preisner gave the invocation.

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

Councilmember Archer moved to table item 5C, a project budget, ordinance and notice of intention authorizing Waterline Improvement Project No. T-281028.00 for further study. The motion seconded by Councilmember Preisner carried. Mayor Bunten voted “yes.”

Councilmember Ortiz voted “no.” (8-1-0)

THE CONSENT AGENDA was presented as follows:

BOARD APPOINTMENT recommending the re-appointment of Toby Taggart to the Board of Building and Fire Appeals for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the re-appointment of Matthew Werner to the Board of Building and Fire Appeals for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending Keith Finney to the Board of Building and Fire Appeals for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the re-appointment of Doug Snook to the Board of Plumbing Examiners for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the re-appointment of Darryl Coker to the Downtown Business Improvement District Advisory Board for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the re-appointment of Debbie Briman-Latta to the Downtown Business Improvement District Advisory Board for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the re-appointment of Ann Adams to the Board of Plumbing Examiners for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the re-appointment of Mark Burenheide to the Board of Plumbing Examiners for a term ending September 30, 2012 was presented.

BOARD APPOINTMENT recommending the appointment of Kevin Beck to the Topeka Planning Commission for a term ending September 30, 2013 was presented.

BOARD APPOINTMENT recommending the appointment of Brett Klausman to the Topeka Planning Commission for a term ending September 30, 2013 was presented.

MINUTES of the regular meeting of September 14, 2010 were presented.

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

ORDINANCE NO. 19468 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 placed on first reading September 14, 2010 was again presented.

(Contract No. 40714)

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

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Swank carried unanimously. Mayor Buntten voted “yes.” (9-0-0)

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

ORDINANCE NO. 19469 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 placed on first reading September 14, 2010 was again presented.

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

Councilmember Harmon asked if approval of the ordinance would impose a lien against the properties listed in the ordinance. He reported there were three accounts paid after the first reading of the ordinance.

Councilmember Harmon moved to amend the ordinance to exclude the three accounts paid after the first reading of the ordinance. The motion was seconded by Councilmember Preisner.

Councilmember Wolgast asked if the City routinely follows this process to collect delinquent bills.

Jackie Williams, City Attorney reported state statute sets the procedures to constitute a real estate lien against the property. He stated property owners were notified of payment; however, due to neglect, failure or refusal to pay the Council now has the authority to institute a real estate lien on the properties.

The motion to amend the ordinance to exclude the three accounts paid after the first reading of the ordinance carried unanimously. (8-0-0)

Councilmember Preisner moved to adopt the ordinance as amended. The motion seconded by Councilmember Woelfel carried unanimously. (8-0-0)

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

ORDINANCE NO. 19470 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. The ordinance was deferred from the meeting of September 14, 2010.

Councilmember Hiller 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.

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

Councilmember Archer spoke in opposition to the ordinance and expressed concern with creating a liability for the City.

Marcia McKinley referenced newspaper articles relating to alcohol-related incidents in Kansas. She expressed concern with the increasing number of incidents and asked the Council to vote against the ordinance.

Judy Hill expressed concern with the use of alcoholic liquor at City facilities and noted the same facilities are financially supported by the taxpayers of Topeka. She also stated the City

should find other ways to promote downtown events other than the use of alcohol. She encouraged the Council to vote against the ordinance.

Darrell Parnell asked the Council to promote safety and protect all citizens from the use of alcohol at special downtown events to help prevent incidents.

Jason Fizell stated that the use of alcohol at special events is a legal activity as long as it is done responsibly. He referenced state statutes relating to alcohol consumption and possession, and alcohol consumed in vehicles; and noted no parking would be allowed on the top level of the parking garage during the Arty Party event. He addressed specifics of the event with a site plan and location of the off-duty officers and restroom facilities. He reported free cab rides would be available to event patrons.

Councilmember Archer expressed concern with 300 to 400 people drinking alcohol on the top level of a parking garage.

Jason Fizell reported the top level of the garage would primarily be used as a smoking area because the main event would be hosted inside the building.

Mayor Buntten expressed concern with alcohol consumption being allowed on the top level of a parking garage. He stated that he believes the ordinance accommodates a special group of people to host an event instead of addressing the policy as a whole and noted there are many other venues in Topeka that allow alcoholic drinks to be served at special events.

Councilmember Woelfel asked if the City's smoking ordinance would apply to this type of event.

Jackie Williams, City Attorney stated that he would research the issue and report back to Councilmember Woelfel.

Councilmember Woelfel stated that he believes the Council does not have the right to allow this type of event to be conducted at the parking garage. He expressed concern with the City's liability and stated he would oppose the ordinance.

The motion to adopt the ordinance carried. Councilmembers Ortiz, Woelfel and Archer voted "no." (5-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Wolgast, Swank, Preisner and Harmon -5. Noes: Ortiz, Woelfel and Archer -3. Absent: Alcalá -1.

RESOLUTION NO. 8290 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 Wolgast moved to approve the resolution. The motion was seconded by Councilmember Swank.

Mayor Bunten asked why "ten years" was used as the timeframe in the severance pay schedule.

Jacque Russell, Human Resources Director reported the timeframe of "ten years" was carried over from the existing language used in the City of Topeka Personnel Code adopted in 1982. She noted new employees hired after December 31, 2010 would not be included in the provision.

Norton N. Bonaparte, Jr., reported the language is also consistent with union contracts.

Mayor Bunten asked if the Police Chief and the City Manager would receive the severance pay benefits outlined in the proposed resolution, as well as, the benefits outlined in their employment contract.

Catherine Walter, Assistant City Attorney reported the Police Chief and City Manager would only receive the benefits outlined in their employment contracts.

The motion to approve the resolution carried unanimously. (8-0-0)

RESOLUTION NO. 8291 introduced by Deputy Mayor Deborah Swank concerning the Energy Efficiency and Conservation Strategy (EECS) developed for the City of Topeka was presented.

Councilmember Swank gave the staff report. She stated the Sustainability Advisory Board and the community have invested a lot of time and effort in the development of the Strategy Plan. She encouraged the City to achieve the outlined goals for energy conservation and set the example for other cities.

Mike McGee, Building and General Services reported the Strategy Plan was conducted by Vermont Energy, as well as, many meetings were conducted between the Sustainability Advisory Board, local government, communities and businesses to set the “Think Green” framework in motion. He encouraged the Council to approve the Energy Efficiency and Conservation Strategy Plan.

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

Councilmember Wolgast commended the Sustainability Advisory Board for their research and leadership in the community.

Councilmember Hiller asked if there was a study previously conducted regarding energy conservation.

Mike McGee reported an energy audit was conducted in 2005 by Chevron Energy Solutions on all City facilities. He reported Phase 1 is complete, and Phase 2 was postponed due to the lack of funding; however, Johnson Controls is currently researching possible alternatives to complete Phase 2.

Councilmember Woelfel expressed concern with the amount of funding it would take to accomplish goals that would realize only a small savings over time. He stated that he has many questions he would like answered before voting on the issue.

Councilmember Archer stated he supports the Strategy Plan as conceptual framework; however, he encourages the Council to review each project as they are presented to ensure tax dollars are spent wisely.

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

APPROVAL of Retail Cereal Malt Beverage License Applications was presented.

No license applications were presented.

ORDINANCE NO. 19471 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of August 30, 2010 through September 5, 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 Swank carried. Councilmember Wolgast was out of the room. (7-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Ortiz, Woelfel, Swank, Archer, Preisner and Harmon -7. Absent: Alcala and Wolgast -2.

Councilmember Wolgast entered the room.

ORDINANCE NO. 19472 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 placed on first reading September 14, 2010 was again presented. (*VIOIRA/I*)

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

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

Mayor Bunten expressed concern with the location of the gas station and noted an existing gas station is located only one block away. He also stated he believes the gas station will have an affect on the appearance of the Brookwood Shopping Center.

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

Councilmember Wolgast stated that he communicated with proponents and opponents of the zoning case.

Mayor Bunten stated that he communicated with the property owners.

The motion to adopt the ordinance carried. Mayor Bunten voted "no." (8-1-0)

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Sections 6.05.010, 6.05.020, 6.05.040, 6.05.080, 6.30.010. 6.30.050 and Section 9.05.080 concerning cruelty to animals, dangerous dogs, feral cats and animal control and

specifically repealing said original sections and the U.P.O.C. cruelty to animal ordinance, as well as, repealing in its entirety Chapter 6.25 concerning pit bull dogs was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., assessing the costs of sewer repair to real property, or specifically described hereafter, all pursuant to the authority found in Topeka Municipal Code Section 14.80.240 and Section 14.80.250 and K.S.A. 12-6a17 was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager encouraged citizens to attend the Kansas Avenue Revitalization Project work sessions to express their ideas and input relating to downtown improvements.

Councilmember Hiller commended the Downtown Kansas Avenue Revitalization Team and encouraged citizens to take an active role in the design work sessions and Councilmembers to meet with the consultants to share ideas. She also encouraged citizens and Councilmembers to get involved with the Polk-Quincy Viaduct Project and Bikeway Project work sessions.

Councilmember Wolgast reported the Kansas Avenue Revitalization Project work sessions have been scheduled on various days and times to accommodate different schedules and encourage community involvement by citizens and community leaders.

Councilmember Swank thanked the Council and the Sustainability Advisory Board for setting energy efficiency and conservation goals for the City of Topeka. She stated she attended the Zoobilee event at the Topeka Zoo, an enjoyable and successful fundraising event for the Zoo.

Councilmember Preisner reported the Unified Government of Wyandotte County, Kansas recently interpreted state statutes relating to general and primary elections differently than other

counties in Kansas. He asked the City Attorney to review the findings made by Wyandotte County and issue an opinion as to whether the Council should keep the legislative request relating to elections on the City's 2011 Legislative Agenda.

Ted Mize appeared to speak under public comment.

Councilmember Preisner 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 7:31 p.m.

Brenda Younger
City Clerk