

Council Minutes – March 29, 2011

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 29, 2011. 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, Preisner and Harmon -9. Mayor William W. Bunten presided -1.

AFTER THE MEETING was called to order, Pastor Bradley Walker, First Presbyterian Church gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

MINUTES of the regular meeting of March 22, 2011 were presented.

OPEN AFTER MIDNIGHT License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Cousins	1211 S. Kansas Avenue
Jimmy Wong's Burrito Palace	4102 SW Gage Center Drive
The Office	124 SW 8 th Street
Oscar's	1424 SW Lane
Spanky's Bar & Grill	3100 SW Gage Boulevard
ThrottleBacks	2335 NW Clay Street
The 20's	2910 SW Oakley, Suite D
Walgreens #02846	2915 SW Gage Boulevard
Walgreens #03069	1001 SW Topeka Boulevard
West Ridge Lanes	1935 SW Westport Drive
Whiplash Bar & Grill	2107 SE California

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

Councilmember Alcalá moved to suspend the Council Rules to add a resolution relating to the termination of the agreement between the City of Topeka and Norton N. Bonaparte, Jr., City Manager to the Council agenda. The motion seconded by Councilmember Archer failed. Councilmembers Hiller, Woelfel, Wolgast, Swank, Preisner and Harmon voted "no." (3-6-0)

Councilmember Swank moved to suspend the Council Rules to add a resolution granting a noise exception to Sigma Phi Epsilon to the Council agenda. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

Mayor Bunten announced the resolution would be placed on the Council agenda and considered next on the agenda.

RESOLUTION NO. 8319 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.

Councilmember Swank moved to approve the resolution. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$2,299,775 and AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-301034.00, which provides for a new roofing system for the rainforest at the Zoo, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading March 22, 2011 was again presented.

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

Councilmember Wolgast stated he has communicated with Zoo staff and would request deferring the project so they could better assess the needs of the Zoo by conducting an engineering report in an amount not to exceed \$20,000 to analyze the existing rainforest roof structure and recommend other roofing systems. He also stated if the project is deferred he would make a separate motion to authorize expending an amount not to exceed \$20,000 for such a report which funds would be paid from the general fund and would be repaid from a revised project budget.

Councilmember Wolgast moved to defer the project budget and ordinance until May 24, 2011. The motion was seconded by Councilmember Harmon.

Joseph Ledbetter spoke in support of conducting a study of the rainforest which was suggested in 2005 by the Citizen Panel Review of the Topeka Zoo.

Councilmember Alcalá asked Brendan Wiley, Zoo Director if he would approve of deferring the project.

Councilmember Ortiz asked if the project would include HVAC system upgrades.

Brendan Wiley, Zoo Director stated he agrees with the deferral because he believes it would be the best approach in improving the facility. He noted the HVAC system is new and a new roofing system would improve insulation and make better use of the HVAC system.

The motion to defer the project budget and ordinance until May 24, 2011 carried unanimously. (9-0-0)

Councilmember Wolgast moved to amend the project budget by authorizing an expenditure of funds from the general fund not to exceed \$20,000 to conduct an engineering study to recommend other roofing systems with the funds being repaid from a revised project budget. The motion was seconded by Councilmember Alcalá.

Councilmember Harmon raised a point of order. He questioned how the Council could defer an agenda item and then make amendments to the item. He stated in his opinion, the project should be presented to the Council in the form of a resolution directing the City Manager to expend the funds to conduct the study.

Councilmember Alcalá stated the Council could amend the project budget first, and then defer the item until May 24, 2011, as amended. He asked the parliamentarian for procedural clarification.

Jackie Williams, City Attorney stated Councilmember Alcalá was correct; however, the Council could also direct the City Manager to expend an amount not to exceed \$20,000 to conduct the study; or staff could draft a resolution directing the City Manager to conduct the study for consideration by the Council.

Councilmember Alcalá moved to reconsider the motion to defer the project budget and ordinance until May 24, 2011. The motion seconded by Councilmember Archer carried unanimously. (9-0-0)

Councilmember Preisner moved to defer the project budget and ordinance until May 24, 2011. The motion seconded by Councilmember Wolgast carried unanimously. (9-0-0)

Councilmember Preisner directed staff to produce an expenditure document not to exceed \$20,000 for an engineering study to be conducted on the Zoo Rainforest roof.

ORDINANCE NO. 19543 introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 3.30.020 and creating Section 3.30.035, concerning competitive bids and negotiation procurement and specifically repealing said original section placed on first reading March 22, 2011 was again presented.

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

Joseph Ledbetter asked if the language relating to the cash basis law would be incorporated into the City's purchasing procedure and general contract language.

Jackie Williams, City Attorney stated the language would be incorporated into the City's purchasing procedure and general contract language.

Councilmember Wolgast moved to adopt the ordinance. The motion seconded by Councilmember Swank 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 RESOLUTION introduced by Councilmember Bob Archer amending Topeka City Council Rules and Procedures 3.4 concerning work session placed on first reading March 22, 2011 was again presented.

Councilmember Archer reported the televising of work sessions was discussed last year and at that time he believed it would cause Councilmembers to grandstand; however, due to recent events he believes the City has developed a reputation of covering up issues and stonewalling information. He stated televising the Council work sessions would provide much needed transparency to the public and help gain back public trust.

Joseph Ledbetter stated he believes it would be in the best interest of the City to always televise public meetings to provide transparency and accommodate public interest. He noted the State of Kansas encourages and follows an open public policy.

Councilmember Ortiz asked if the work sessions would be replayed throughout the week with Council meetings.

Councilmember Archer stated the work sessions would run in conjunction with the Council meetings.

Norton N. Bonaparte, Jr., City Manager reported work sessions and Council meetings would be replayed weekly on Wednesdays at 1:00 p.m., and Saturdays and Sundays at 9:00 a.m.

Councilmember Preisner questioned the financial implications of televising work sessions.

Councilmember Archer stated airing the work sessions would cost an additional \$85 per work session.

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

Councilmember Preisner made a substitute motion to refer the resolution to the Policy and Finance Committee to review the fiscal impact associated with the televising of work sessions. The motion was seconded by Councilmember Wolgast.

Councilmember Hiller reported last year the Council opted not to televise work sessions. She stated she believes the fiscal impact of \$85 per work session is underestimated and the fiscal impact needs to be researched in detail. She suggested the Council have more discussion on the issue before making a decision and stated she has several issues she would like addressed.

Councilmember Harmon stated he supports the resolution; however, he believes all public meetings, including committee meetings should be televised if the goal of the Council is complete transparency in City government.

Councilmember Archer stated he concurs with Councilmember Harmon and believes the resolution is the first step in being responsive to constituent concerns.

Councilmember Wolgast stated he concurs with Councilmember Harmon and believes it would be beneficial for the Policy and Finance Committee to research the fiscal impact in detail.

Councilmember Alcala spoke in opposition to referring the resolution to Committee for review. He stated transparency is more important than the cost associated with providing it. He reminded the Council amendments could be made to the resolution at any time after it is approved.

Councilmember Preisner stated he agrees that all public meetings should be televised, which are not equipped with broadcasting equipment

Norton N. Bonaparte, Jr., noted the estimated cost is for televising from the Council Chambers only. He reported committee meetings would incur additional costs because they are held at various meeting locations.

The motion to refer the resolution to the Policy and Finance Committee carried. Councilmembers Alcala, Ortiz, Swank and Archer voted “no.” (5-4-0)

A PROJECT BUDGET in the amount of \$600,000 and RESOLUTION NO. 8320 introduced by City Manager Norton N. Bonaparte, Jr., relating to and authorizing Improvement Project No. T-701005.00 which provides for the widening of SW 10th Avenue from Gage Boulevard to Fairlawn Road as more specifically described herein was presented.

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

Councilmember Harmon moved to approve the project budget and resolution. The motion was seconded by Councilmember Preisner.

Councilmember Harmon stated he would abstain from voting on the project because he owns property adjacent to the proposed improvement.

Councilmember Woelfel asked what the Federal Fund Exchange Program was and if Phase 2 of the project would be financed with the same funding source.

Norton N. Bonaparte, Jr., reported both project phases would be financed with Federal Fund Exchange Program dollars through the Kansas Department of Transportation.

Shawn Bruns, City Engineer stated the new program would allow the City to trade a portion of its federal fund allocations with state transportation dollars. She noted \$100 of federal funds would be equal to \$90 of state transportation funds.

Councilmember Hiller asked if there would be ditches on either side of the street; if there would be sidewalks located on both sides of the street; and how many traffic lanes are being proposed.

Shawn Bruns reported the street could consist of five traffic lanes with no ditches on either side, and sidewalks would be constructed on both sides of SW 10th Avenue from Gage Boulevard to Fairlawn Road. She stated the area would be reviewed with the design consultant to determine the best alternatives to the proposal.

Councilmember Harmon asked if the project proposal would require the City to move Mount Calvary Cemetery gravesites; and would four traffic lanes be considered instead of five.

Shawn Bruns reported no gravesites would be moved; and staff would consider all alternatives to the proposal.

The motion to approve the project budget and resolution carried. Councilmember Harmon abstained. (8-0-1)

RESOLUTION NO. 8321 introduced by City Manager Norton N. Bonaparte, Jr., pursuant to City of Topeka Code Section 12.35.060 concerning sidewalk repairs at location more specifically described hereinafter was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report and stated all property owners declined participation in the 50/50 sidewalk program.

Councilmember Preisner moved to approve the resolution. The motion seconded by Councilmember Wolgast carried unanimously. (9-0-0)

NO Retail Cereal Malt Beverage License applications were presented.

ORDINANCE NO. 19544 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of March 7, 2011, through March 13, 2011, and enumerating said expenditures therein presented for first and final reading.

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

Joseph Ledbetter questioned the following expenditures and suggested a \$10 fee be assessed to garnishments to help fund City government.

- Page 3, Housing and Credit Counseling
- Page 4, Lawyer's Title of Topeka

Jim Langford, Budget and Finance Director reported the payment to the Housing and Credit Counseling was for a city-wide homebuyer counseling program; and the payment to Lawyer's Title of Topeka was for acquiring right-of-way property for a water improvement project.

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. 19545 introduced by City Manager Norton N. Bonaparte, Jr., designating real property more specifically described herein as an historic landmark presently zoned "R-2" Single-Family Dwelling District and located at 419 SW Taylor Street in the City of Topeka, Kansas, pursuant to Section 18.255 of the Topeka Municipal Code placed on first reading March 22, 2011 was again presented. (HL11/01)

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

Exparte communications were declared by Councilmembers Hiller, Alcala, Wolgast, Archer and Harmon.

Councilmember Swank moved to adopt the ordinance. The motion seconded by Councilmember Hiller carried unanimously. Mayor Buntun voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Woelfel, Wolgast, Swank, Archer, Preisner, Harmon and Mayor Buntun -10.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 2.15.020, establishing city council meeting times and places pursuant to the provisions of the Charter Ordinance and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning fence height limits, amending Section 18.210.040 and specifically repealing said original section was presented for first reading. *(ACZR11/1)*

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-151003.01 which provides for drainage improvements to SW Woodbury South Court, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operation funds 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 constitutes 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 sanitary and/or stormwater and sewage disposal system pursuant to City of Topeka

Code A12-1 and authorizing the borrowing of funds from the KDHE SRF Loan to pay the cost thereof was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-151016.00 for piping replacement along SE 29th Street, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the use of utility operating funds 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 constitutes 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 sanitary and/or stormwater and sewage disposal system pursuant to City of Topeka Code Section A12-1, and authorizing the borrowing of funds from the KDHE SRF Loan to pay the cost thereof was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced March 31st would be the last day the Polar Ice skating rink would be open at the Zoo. He reminded citizens the City's 2010 Annual Report and the 2011 State of the City Video are available for review on the homepage of the City's website.

Councilmember Hiller stated she was recently an eyewitness to the apprehension of a fugitive parolee by the Topeka Police Department. She commended the Police Department for their display of expertise during the incident.

Councilmember Preisner encouraged citizens to vote on April 5th.

Councilmember Harmon thanked Councilmember Woelfel for his years of service on the Council and his strong conviction.

Councilmember Ortiz announced Phase 1 of Project Take Over/Make Over would begin on April 2nd and volunteers should meet at the Cyrus K. Holliday building located at 620 SE Madison at 8:00 a.m.

Yvonne May, Joseph Ledbetter and Clifford Cormier appeared to speak under public comment.

Councilmember Wolgast moved to recess the Council meeting into an executive session for a time period not to exceed 60 minutes to discuss personnel matters of non-elected personnel and to include the Governing Body, City Manager and the City Attorney. The motion was seconded by Councilmember Swank.

Councilmember Alcalá stated he would not support the motion to recess into executive session if the City Attorney is present because he directly reports to the City Manager.

Councilmember Wolgast stated the City Attorney represents and serves the City as a whole and it is important for legal counsel to be present during discussions to make sure Council action is appropriate.

Councilmember Alcalá stated he does not disagree that legal counsel should be present; however, in his opinion, they should hire a private attorney that does not serve at the pleasure of the City Manager.

The motion to recess the Council meeting into an executive session for a time period not to exceed 60 minutes to discuss personnel matters of non-elected personnel and to include the Governing Body, City Manager and the City Attorney carried. Councilmembers Alcala and Archer voted “no.” (7-2-0)

At 7:41 p.m., Mayor Bunten announced the Governing Body would recess into an executive session following a five minute break.

At 8:35 p.m., Mayor Bunten announced the executive session was adjourned with no action taken.

Councilmember Preisner moved to adjourn the Council meeting. The motion seconded by Councilmember Swank carried unanimously. (9-0-0)

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:36 p.m.

Brenda Younger
City Clerk