

Council Minutes – May 17, 2011

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 17, 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, Everhart, Wolgast, Manspeaker, Archer, Gray and Harmon -9. Mayor William W. Bunten presided -1.

AFTER THE MEETING was called to order, Pastor Grant English, Western Hills Baptist Church gave the invocation.

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

A PRESENTATION on the League of Kansas Municipalities (LKM) was provided by Don Moler, LKM Executive Director.

Councilmember Alcalá moved to suspend the Council Rules to add items to the Council agenda. The motion seconded by Councilmember Wolgast carried unanimously. (9-0-0)

Councilmember Alcalá moved to add a resolution concerning the Council's 2012 Budget Priorities to the consent agenda; and an ordinance relating to alcohol and cereal malt beverage license permits to the Council agenda under First Readings. The motion seconded by Councilmember Wolgast carried unanimously. (9-0-0)

Councilmember Wolgast moved to add a resolution relating to televising Council Committee meetings to the Council agenda under First Readings. The motion seconded by Councilmember Archer carried unanimously. (9-0-0)

Councilmember Alcalá moved to reinstate the Council Rules. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8330 introduced by Councilmember Richard Harmon granting Autosound, Inc., an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8331 introduced by Councilmember Richard Harmon granting Autosound, Inc., an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8332 introduced by Councilmember Karen Hiller granting The Office and Celtic Fox an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8333 introduced by Councilmember Denise Everhart granting Rhonda Redmond an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

RESOLUTION NO. 8334 introduced by Councilmember John Alcala granting Sacred Heart-St. Joseph Parish an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

DENIAL OF A TORT CLAIM of former Deputy Fire Chief Jeff Davis in the amount of \$493,630 in alleged lost pay and benefits, moving costs; housing expenses; humiliation; and damage to professional standing and reputation suffered from voluntary resignation following adverse court decision on union challenge to his hiring from outside the Topeka Fire Department was presented.

DENIAL OF TORT CLAIMS by Wendy Thompson and William McCracken in the amount of \$50,000 each for humiliation, shame, defamation, emotional distress, and anxiety

resulting from their allegedly racially-motivated false detention and citation by Topeka Police Officers for walking in the street was presented.

MINUTES of the regular meeting of May 10, 2011 were presented.

OPEN AFTER MIDNIGHT License application approvals were presented for the following:

<u>Business Name</u>	<u>Address</u>
The Car Wash	1814 SW 10 th Street
The Car Wash	720 SW Gage
The Dutch Goose	3203 SW 10 th Street
Rumba Club	816 N Kansas Avenue

RESOLUTION NO. 8335 introduced by Deputy Mayor John Alcala regarding the City Council's 2012 budget priorities was presented.

Councilmember Manspeaker moved to approve the consent agenda as amended. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

Norton N. Bonaparte, Jr., City Manager requested to withdraw Council agenda items 5A, a petition, project budget and resolution for Waterline Improvement Project No. T-281036.00; 5B, a petition, project budget and resolution for Sanitary Sewer Project No. T-401026.00; and 5C, a petition, project budget and resolution for Street Improvement Project No. T-601024.00. He reported the developer plans to replat a portion of the subdivision.

Upon hearing no objections, Mayor Buntin announced the items would be withdrawn from the Council agenda.

A PROJECT BUDGET in the amount of \$3,660,000 and ORDINANCE NO. 19560 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. T-281037.00 for disinfection modifications at the Water Treatment Plant approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and

authorizing the use of utility operation funds, 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 water and/or stormwater and/or 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 placed on first reading May 10, 2011 was again presented.

NOTICE OF INTENTION of the governing body of the City of Topeka, Kansas, to make improvements under Improvement Project No. T-281037.00 which provides for disinfection modifications at the Water Treatment Plant and to use utility operation funds, and to issue and sell revenue bonds of said City pursuant to K.S.A. 10-101 and 10-1201, et seq., and all amendments thereto, and to issue general obligation bonds pursuant to City of Topeka Code Section A12-1, and to borrow funds from the Kansas Department of Health and Environment, or any combination thereof, to pay the cost of the project.

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

Braxton Copley, Office of Utilities and Transportation Director stated the project is the result of directive given by the Environmental Protection Agency (EPA) and would reduce the level of Halo Acetic Acids (HAA) in the city's drinking water. He also reported testing locations would increase from four to eight testing sites.

Councilmember Harmon referenced the quality of drinking water in Kansas City, Missouri and asked why it is much better than the City of Topeka's. He also questioned the use of TriHalo Methane in drinking water.

Braxton Copley stated that he would assume the water has a lower organic load to begin with or they have a more enhanced filtration treatment system.

Don Rankin, Utilities Infrastructure Director stated the City of Topeka's TriHalo Methane levels are well below EPA regulations.

Councilmember Gray asked if the project would improve the quality of the city's drinking water and what would happen if the City did not comply with EPA regulations.

Braxton Copley stated the purification of Topeka's water would be improved. He reported the HAA levels have exceeded EPA regulations and the City has a responsibility to provide safe drinking water. He noted if the City did not comply with EPA regulations eventually penalties would be assessed and court orders would be issued by the EPA to force compliance.

Councilmember Wolgast moved to approve the project budget and adopt the ordinance and notice of intention. The motion seconded by Councilmember Harmon carried. Mayor Bunten voted "yes." Councilmember Gray voted "no." (9-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Harmon and Mayor Bunten -9. Noes: Gray -1.

ORDINANCE NO. 19561 introduced by Deputy Mayor John Alcalá authorizing the sale, consumption and possession of alcoholic liquor at specified locations and times for the 2011 Germanfest celebration on June 4 and 5, 2011, to be held at Sacred Heart-St. Joseph Parish placed on first reading May 10, 2011 was again presented.

Councilmember Alcala gave the staff report.

Councilmember Alcala moved to amend the ordinance as follows. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

- Beginning on Line 30, Section 4, insert “The Germanfest is hereby granted a temporary special event retailers permit to sell, offer, and serve cereal malt beverages for consumption on the premises pursuant to K.S.A. 41-2703, as amended.”
- Beginning on Line 33, Section 5, insert “The Germanfest is hereby approved as a special event as required by K.S.A. 41-2645 as amended.”
- On Line 38 strike the words “City Council” and insert the words “Governing Body.”

Councilmember Alcala moved to adopt the ordinance as amended. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -10.

RESOLUTION NO. 8336 introduced by Councilmember Bob Archer amending Topeka City Council Rules and Procedures 3.4 concerning work sessions placed on first reading March 22, 2011 was again presented.

Councilmember Archer gave the staff report and stated the resolution is the first step in providing transparency of City operations.

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

Councilmember Hiller asked if every Council committee meeting would be televised even if the meetings are not scheduled on Tuesday evenings.

Councilmember Archer reported the Council would be discussing the televising of Council committee meetings next week. He stated he recommends all Council work sessions be televised; however, it would be the decision of the person facilitating each work session.

Councilmember Alcala stated he believes the transparency issue is in the beginning stages and the details need to be worked through; however, whenever possible, all Council work sessions would be scheduled in the City Council Chambers from this point forward.

Councilmember Everhart asked if future Council Budget Committee meetings would be televised.

Councilmember Alcala stated the Budget Committee meetings would be televised.

The motion to approve the resolution carried unanimously. (9-0-0)

A RESOLUTION introduced by Councilmember Chad Manspeaker relating to the installation of sanitary sewer service at 1415 SW Lane, was presented.

Councilmember Manspeaker stated the purpose of the resolution was to resolve the sewer installation issue for Jerry's Bike Shop. He reported the City was a partner in the project; the installation of the sanitary sewer service would remove an obstacle for the property owner; and allow area development to move forward.

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

Councilmember Wolgast stated he appreciates the active role Councilmember Manspeaker has taken with the issue; however, current City of Topeka ordinance outlines that it is the duty or responsibility of the property owner to install and maintain sewer lines. He questioned if the City would set precedence by allowing the installation of sewer lines for a private owner.

Councilmember Gray stated he would oppose the installation of sanitary sewer for Jerry's Bike Shop because he believes the issue has become emotionally-based and should be handled by the private property owner and the developer. He reported the majority of District No. 8

constituents do not support the issue and he hopes Mr. Morgan will be more proactive in finding a resolution to the matter.

Councilmember Alcala stated he does not disagree with the statements that have been made; however, he supports the installation of a sewer system because the property was included in the approved Planned Unit Development zoning change in 2006, which in his opinion, makes the situation different.

Councilmember Ortiz spoke in support of the resolution. She stated she believes Mr. Morgan is being treated unfairly by the developers because he refused to sell his property.

Councilmember Everhart stated she concurs with Councilmember Gray and reported the majority of District No. 4 constituents do not support the resolution. She asked if approval would set precedence for future sanitary sewer installations on private property.

Mary Feighny, Deputy City Attorney stated approval of the resolution could be used as an argument in court and could affect the court's decision in future cases.

Councilmember Alcala asked how much money have taxpayers contributed to the College Hill project.

Jim Langford, Budget and Finance Director reported it has cost approximately \$5.8 million to fund the College Hill project, which does not include the funds used for infrastructure improvements.

Mary Feighny stated litigation between Jerry's Bike Shop and Washburn-Lane Parkway Development is still pending.

Councilmember Harmon referenced a memorandum from Braxton Copley dated December 2010 concerning his legal opinion of installing a private sewer line for Jerry's Bike

Shop. He expressed concern with there being no legal recourse against the developer or property owner to recoup installation costs if the City constructs the private sewer line.

Braxton Copley, Office of Utilities and Transportation Director stated he questioned the integrity of the building at the time he issued the legal opinion and still holds the same opinion.

Councilmember Harmon expressed concern with the lawsuit still pending. He stated he believes if the City installs the private sewer line the City could be conceived as an interloper and become involved with the lawsuit. He stated he believes it is improper use of taxpayer money and he will not support the resolution. He commended Councilmembers Alcalá and Manspeaker for trying to resolve the problem.

Councilmember Alcalá asked if the City Attorney's office supports Mr. Copley's opinion and if so, why was the resolution allowed to be presented to the Council.

Mary Feighny stated the City Attorney's office disagrees with Mr. Copley's legal conclusion, not the facts of the issue. She reported Legal staff reviewed public purpose doctrine and determined this matter is a policy decision for the Council. She stated the City Attorney's office has no legal opinion on the matter.

Councilmember Manspeaker asked what the City is paying per month on interest for the College Hill project. He stated he appreciates the difference in opinions; however, he believes there would not be any money paid back until there is visible progress in the area. He also stated the approved Planned Unit Development (PUD) zoning for the area defines that all businesses must be connected to the sewer; therefore, he supports the installation of the sewer line.

Jim Langford reported the total principle and interest paid for the project bonds is \$310,000 a year.

Councilmember Hiller stated the contract between the developer and property owner stipulates the developer would set aside \$120,000 in an escrow account for sewer hookup and construction of an addition to the building. She noted the City has already provided funds to the College Hill project; therefore, she believes if Council approves the resolution it could be conceived the City is paying for installation of the sewer line twice. She questioned what the City could do legally to determine if there are funds available in an escrow account. She expressed concern with the building structure and noted she had conversations with the property owner who also believes it is fragile.

Mary Feighny stated the contract between the developer and property owner states the developer is responsible for the installation of the sewer line. She noted the developer would have no obligation to reimburse the City if the sewer line is installed; therefore, it would be considered a gift to the property owner. She also stated she could not speculate on the City's liability in the matter if the resolution is approved.

The motion to approve the resolution failed. Councilmembers Hiller, Everhart, Wolgast, Gray and Harmon voted "no." (4-5-0)

ORDINANCE NO. 19562 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of April 25, 2011, through May 1, 2011, and enumerating said expenditures therein 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. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Manspecker, Archer, Gray and Harmon -9.

Retail Cereal Malt Beverage License applications were presented for the following:

<u>Business Name</u>	<u>Address</u>
Berkshire Country Club	3720 SW 45 th Street
Casey's General Store #2261	600 SE Rice Road
Casey's General Store #2312	4441 SE California
Dillons #47	2815 W 29 th Street
Dillons #54	800 NW 25 th Street
Dillons #58	1400 SW Huntoon
Dillons #67	2010 SE 29 th Street
Dillons #87	5311 SW 22 nd Place
Dillons #88	4015 SW 10 th Street
Downtown Amoco	600 SE Quincy
The Goose Express	2901 SE Fremont
Herman's Beef & Sausage House	823 NW Gordon
Hy-Vee #1658	2951 SW Wanamaker Road
I-70 BP	1000 SW Wanamaker Road
In a Pinch Convenience	706 SW Fairlawn Road
Kwik Shop #705	1114 NW Topeka Boulevard
Kwik Shop #713	5700 SW 21 st Street
Kwik Shop #720	102 SW 37 th Street
Kwik Shop #729	1700 SW Topeka Boulevard
Kwik Shop #740	2277 SW 10 th Street
Kwik Shop #757	2619 SW 21 st Street
Kwik Shop #780	2520 SW 6 th Street
Kwik Shop #781	4500 S Topeka Boulevard
Kwik Shop #788	1414 SW 17 th Street
Kwik Shop #789	746 NE Wabash
Lakeview BP	3000 SE Croco Road
Larry's Shortstop	3834 S Topeka Boulevard
Murphy Express #8599	1531 SW Wanamaker Road
Oakmart BP	2518 NE Seward
Prize Package	1420 SE 6 th Street
Quality Gas & Shop	1900 N Topeka Boulevard
Sav-N-Shop	810 SE 15 th Street
Seabrook Apple Market	1945 SW Gage
Tammy's on the Go	3335 SW Gage
Tilton's Oakland Market	1905 NE Seward
Tilton's Westside	1100 SW 6 th Street
Walgreens #02846	2915 SW Gage
Walgreens #02888	2110 NW Topeka Boulevard
Walgreens #03069	1001 SW Topeka Boulevard
Walgreens #03772	2901 SE California
Walgreens #04557	2121 SW Fairlawn Road
Walgreens #04782	3696 SW Topeka Boulevard
Walgreens #04981	3630 SW Wanamaker Road

Business Name

Walgreens #07888
Walmart Supercenter #1802
Walmart Supercenter #2131
Walmart Supercenter #5441
Wanamaker Gas 4 Less
Wood Oil

Address

1001 SW Gage
1501 SW Wanamaker Road
1301 SW 37th Street
2600 NW Rochester
2855 SW Wanamaker Road
101 NE Highway 24

Councilmember Ortiz moved to approve the retail cereal malt beverage license applications as presented. The motion seconded by Councilmember Wolgast carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

ORDINANCE NO. 19563 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 2721 SE Indiana Avenue from “C-4” Commercial District TO “O&I-1” Office and Institutional District placed on first reading May 10, 2011 was again presented. (Z11/5)

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

Exparte communications were declared by Councilmembers Ortiz and Everhart.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Manspecker, Archer, Gray, Harmon and Mayor Bunten -10.

ORDINANCE NO. 19564 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 2715 SE Indiana Avenue from “C-2” Commercial District TO “O&I-1”

Office and Institutional District placed on first reading May 10, 2011 was again presented.

(Z11/7)

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

Exparte communications were declared by Councilmembers Ortiz and Everhart.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Everhart carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -10.

ORDINANCE NO. 19565 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 2700 SE Kentucky Avenue from “C-2” Commercial District TO “M-1” Two-Family Dwelling District placed on first reading May 10, 2011 was again presented. *(Z11/8)*

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

Exparte communications were declared by Councilmembers Ortiz and Everhart.

Councilmember Everhart moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. Mayor Bunten voted “yes.” (10-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcalá, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -10.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending Chapter 12.40 of the Topeka Municipal Code (TMC) concerning sidewalk snow and ice removal was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Sections 18.230.030, 18.55.120, and 18.55.250 concerning general yard requirements and specifically repealing said original section was presented for first reading. *(ACZR11/4)*

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 18.50.060, concerning zoning district boundaries and specifically repealing said original section was presented for first reading. *(ACZR11/8)*

AN ORDINANCE 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 east of Kingsrow Road extended between SW 21st Street and SW 17th Street extended from “RR-1” Residential Reserve District and “M-2” Multiple Family Dwelling District ALL TO “PUD” Planned Unit Development District (“M-1a”, O&I-2”, “C-2” and “C-4” use groups) was presented for first reading. *(PUD11/3)*

AN ORDINANCE 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 a portion of the property located on the west side of NW Buchanan Street and north of NW Gordon Street the centerline of the property being approximately 1,700 feet north of the intersection of Buchanan Street and Gordon Street from “R-1” Single Family Dwelling District TO “X-2” Mixed Use District was presented for first reading. *(Z10/7)*

AN ORDINANCE introduced by Councilmember Karen Hiller authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for the

Downtown Summer Jam on July 8 and 9, 2011, to be held by The Office and The Celtic Fox was presented for first reading.

AN ORDINANCE introduced by Councilmember John Alcala, amending City of Topeka Code Section 5.55.080 and Section 9.16.040, concerning temporary liquor and cereal malt beverage permits for special events held in the vicinity of churches and schools and specifically repealing said original sections was presented for first reading.

A RESOLUTION introduced by Councilmember Larry Wolgast amending Topeka City Council Rules and Procedures 7.1(f) concerning television coverage of council committee meetings was presented for first reading.

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

Norton N. Bonaparte, Jr., City Manager announced the final Topeka Bikeways Master Plan Open House event would be held on May 18th at the Crestview Community Center from 5:00 p.m. to 8:00 p.m. He invited the public to attend the Jackson Spray Park ribbon-cutting ceremony located at 1112 SE 10th Avenue, May 18th at 4:00 p.m.

Councilmember Hiller invited the community to attend the Bark-A-Pawloosa event on May 22nd from 1:00 p.m. to 4:00 p.m. at the Gage Park Bark Park.

Councilmember Alcala asked how many encroachment agreements the City has executed and requested a copy of an encroachment agreement for review. He asked if the City could be held liable for the removal of a structure if an encroachment agreement is not disclosed when property is sold. He asked what the total amount of Community Development Block Grant funds the City receives and the dollar amount of those funds that are used for administrative fees.

Mary Feighny, Deputy City Attorney stated the City would not be held liable for the removal of a structure located in a City easement if it was not disclosed to a property owner.

Councilmember Ortiz invited the community to attend the Jackson Spray Park Grand Opening event on May 18th. She stated she is excited that area families will be able to enjoy the new spray park free of charge.

Councilmember Wolgast commented on the 57th Anniversary Commemoration of the Brown vs. Board of Education Banquet and encouraged Councilmembers to attend directly following the Council meeting. He noted United States Attorney General Eric Holder, Jr., would be a guest speaker.

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:32 p.m.

Brenda Younger
City Clerk