

## **Council Minutes – June 21, 2011**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 21, 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, Mike Glotzbach, Mother Teresa Catholic Church gave the invocation.

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

A PRESENTATION on the Safe Streets 555 Program was presented by Sally Zellers, Safe Streets Executive Director and Ron Miller, Topeka Police Chief.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 8345 introduced by Councilmember Karen Hiller granting Potwin Place Neighborhood Association an exception to the provisions of City Of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions was presented.

BOARD APPOINTMENT recommending the appointment of Clark Trammell to the Topeka Metropolitan Transit Authority Board for a term ending June 30, 2015 was presented.

MINUTES of the regular meeting of June 14, 2011 were presented.

An Open After Midnight License application for Robin's Nest, L.L.C., located at 1620 SW 6<sup>th</sup> Street, was presented.

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

### **A NOTICE OF PUBLIC HEARING**

A PUBLIC HEARING for the purpose of hearing any and all complaints that may be made as to the validity and fairness of the assessments on file in the office of the Clerk, on all

lots, parcels and pieces of ground liable for the cost of improvement, same being Sanitary Sewer Improvement Project No. T-401011.00 (HTE 40967-00), authorized by Resolution of Advisability and Authorization No. 8134, adopted and approved January 6, 2009. The public hearing was deferred from the meeting of June 14, 2011.

ORDINANCE NO. 19591 introduced by City Manager Norton N. Bonaparte, Jr., apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement to part of Kaw Half-Breed Reserve No. 2 with piping, manholes, engineering and all other contingencies needed to complete Sanitary Sewer Improvement Project No. T-401011.00, as defined and described in Resolution No. 8134, adopted and approve January 6, 2009 placed on first reading June 7, 2011 was again presented. The ordinance was deferred from the meeting of June 14, 2011.

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

Terry Cohee stated in his opinion he has not been treated fairly by City staff. He stated he was informed by City staff the situation was evaluated and it would not change; however, he still believes \$6,000 is a huge amount of money to charge for administrative fees.

Councilmember Manspeaker asked how the interest would be handled regarding the financing of the special assessment.

Mike Teply, Development Coordination Director stated the interest would be added to the property tax rolls over a twenty (20) year period if the total special assessment costs are not paid within thirty (30) days from the date of publication of the ordinance. He stated the interest rate would be determined when the bonds are sold in September.

Councilmember Everhart asked for the financial breakdown of the special assessment cost totaling \$18,148.25.

Councilmember Manspeaker asked for a cost breakdown of the engineering services provided.

Mike Teply reported the larger scale projects are completed by outside contractors and some smaller scale projects are handled by City Engineering staff to generate lower project costs. He provided the following financial breakdown of the expenses associated with the total project cost:

Engineering, Design, Survey, Inspection	\$5,396.20
Printing and Advertising	\$374.00
Cost of Bond Issuance	\$31.14
Construction Services	\$12,256.00
Temporary Note Interest	\$380.81
Bond Sale Discount	<u>(\$289.90)</u>
Total Project Cost	\$18,148.25

Councilmember Wolgast moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Archer carried. Councilmembers Everhart and Manspeaker voted “no.” Mayor Bunten voted “yes.” (8-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Hiller, Alcala, Ortiz, Wolgast, Archer, Gray, Harmon and Mayor Bunten -8. Noes: Everhart and Manspeaker -2.

Councilmember Alcala suggested if the Council was concerned with the amount of in-house engineering fees being charged for special assessment projects they should review the process and make suggested changes.

ORDINANCE NO. 19592 introduced by Councilmember John Alcala authorizing the sale, consumption and possession of alcoholic liquor as part of the Fiesta Mexicana at specified locations and times placed on first reading June 14, 2011 was again presented.

Councilmember Alcala gave the staff report.

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

ORDINANCE NO. 19593 introduced by Councilmember John Alcala authorizing the sale, consumption and possession of alcoholic liquor as part of the Fiesta Mexicana parade and Street Party at specified locations and times placed on first reading June 14, 2011 was again presented.

Councilmember Alcala gave the staff report.

Councilmember Alcala 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, Alcala, Ortiz, Everhart, Wolgast, Manspeaker, Archer, Gray, Harmon and Mayor Bunten -10.

RESOLUTION NO. 8346 introduced by Deputy Mayor John Alcala granting a waiver to the provisions of City of Topeka Code Section 10.60.120 relating to parking on unimproved surfaces was presented.

Councilmember Alcala gave the staff report.

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

APPROVAL of a three-year Labor Agreement between the City of Topeka and the Fraternal Order of Police was presented.

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

Councilmember Ortiz questioned the Workers’ Compensation Section on Page 38 of the labor agreement. She asked for clarification on the sick leave appeal process to the City Manager.

Councilmember Manspeaker questioned if the labor agreement included retroactive pay for sick leave.

Ron Miller, Police Chief reported in the event an employee is injured and receiving workers' compensation (which equals 66 2/3% of their total salary - tax free) the person has the option to use their sick leave (up to 33 1/3%) to supplement their paycheck during injury leave. He stated when the employee returns to work they could submit a request to the Police Chief to reinstate their sick leave if the injury is duty-related; however, it is not required by State law to grant the request. He stated the Topeka Police Department, as an employer, has chosen for many years to be more generous with benefits than State law requires.

Councilmember Archer stated the practice of reinstating sick leave allows an employee's take home pay to be more than if they were working. He noted the practice offers no incentive for employees to return to work.

Ron Miller stated an employee has to be injured in the line of duty to receive the benefit.

Councilmember Ortiz stated she respects Police and Fire Department employees; however, she wants to be fair across the board for both departments, as well as, other employees. She expressed concern with the current practice of paying sick leave to employees on injury leave and then replenishing the sick leave used while off work. She asked how many sick leave reinstatement requests have been granted.

Ron Miller reported the language regarding sick leave has been included in Police Department labor agreements for years and noted there are not many officers off on injury leave for a long period of time because they are able to return to light duty fairly quickly. He stated amendments were made to the labor agreement concerning light duty assignments so the Department has more latitude in the hours the officer works and where the officer works.

Councilmember Wolgast moved to approve the labor agreement. The motion was seconded by Councilmember Everhart.

Councilmember Alcala questioned the amount of lost time hours generated by the Police Department.

Ron Miller stated he does not have the information with him; however, he could provide a report to the Council.

Councilmember Archer spoke in opposition to the labor agreement. He stated in his opinion the City could not afford to provide a pay increase for Police officers.

Councilmember Ortiz spoke in opposition to the labor agreement. She stated she believes the City is paying Police officers twice for sick leave.

Councilmember Hiller stated she concurs with Councilmember Archer. She reminded the Council the City laid off 120 employees last year due to budget constraints related to pay raises already negotiated in union contracts. She reported the Council would be required to make cuts in the budget equaling 3 mills to provide salary increases for employees and avoid a mill levy increase, which would be very difficult because so many budget cuts have already been made. She asked if it would be possible to negotiate a labor agreement with salary increases contingent on if the Council does not have to raise property taxes.

Councilmember Everhart asked if the labor agreement includes a Cost Of Living Adjustment (COLA).

Ron Miller stated the labor agreement does not approve a COLA for 2012; however, a 2% COLA plus a step movement equals a pay increase of 2.9% in 2013 and 2014, which is less than \$500,000 annually.

Councilmember Manspeaker spoke in support of the labor agreement. He stated he believes the City needs to move in a safe direction and provide adequate salaries for police officers.

Ron Miller stated City Management is committed to presenting a balanced budget to the Council, as well as, make sure there are adequate resources for police officers.

Councilmember Gray asked what the next step would be in the process if the agreement is not approved.

Ron Miller reported they would return to negotiations. He stated Management would need clear direction from the Council on what issues are not acceptable, and it would be possible the Union would declare impasse and take the issue to the next level in the Kansas Public Employer-Employee Relations Act.

Councilmember Archer stated he believes Management did not bargain hard enough during negotiations. He reminded the Council to be mindful of how they are going to handle other City employees' pay raises as they go through the budget process.

Councilmember Wolgast asked Police Chief Ron Miller to report on the changes made to the labor agreement.

Ron Miller stated the changes made in the sick leave provisions, promotions and grievance procedures were advantageous to Management; most of the provisions requested by Management and the Union were included in the labor agreement; and the labor agreement was negotiated in good faith by both sides.

Councilmember Alcala questioned if a savings could be generated if the City paid out accrued sick leave annually instead of paying 55 days of accrued sick leave upon retirement at a higher pay rate.

Councilmember Alcala made a substitute motion to defer the labor agreement for one week. The motion was seconded by Councilmember Ortiz.

Ron Miller stated he believes employees would not be receptive to an annual sick leave payout. He stated most employees prefer to accumulate their sick leave and use it when needed and receive a portion of sick leave pay at retirement.

Councilmember Ortiz requested clarification on the sick leave provision.

Ron Miller stated officers would receive payment in the amount of \$1.00 per hour above the current 55 day cap at retirement, a language provision that mirrors the Topeka Fire Department's Union contract.

Mayor Bunten stated he believes \$500,000 is an amount the budget could absorb this year. He stated he would not support the deferral because he believes the Police Department is the heart of the government, and the Governing Body should support their efforts in making the city a safer place to live.

Councilmember Alcala asked what would happen if the Union declares impasse.

Ron Miller reported it has been his experience the disapproval of a labor contract creates Union and political pressure, as well as, disharmony between the Union and Management. He outlined below what would happen if the Union declared impasse:

1. The Public Employers Relation Board would be notified.
2. Union representatives and Management would begin mediation proceedings.
3. A fact-finding hearing would be conducted by an independent party followed by a written report.
4. The report would be provided to the employer; however, the employer is not obligated to follow the report.
5. Employees determine if they want the Council to adopt the written report.

Councilmember Wolgast stated he concurs with Mayor Bunten. He noted the Council has had two weeks to obtain answers and make a decision on the labor agreement. He



questioned the need for a language change at this stage in the process when it has been part of the contract for years.

Councilmember Alcalá withdrew the substitute motion to defer the labor agreement for one week. The second opposed withdrawal of the substitute motion.

Councilmember Ortiz made a substitute motion to defer the labor agreement for one week. The motion was seconded by Councilmember Gray.

Councilmember Everhart questioned if the Council would request to open negotiations with the Topeka Fire Department Labor Union because their contract has the same provisions in regards to sick leave and workers' compensation.

Councilmember Hiller questioned if taxpayers would be willing to pay more taxes to support salary increases.

Councilmember Manspeaker stated he would be willing to use \$500,000 of the \$5 million allocated for the South Kansas Avenue improvements to pay for the salary increase.

The substitute motion to defer the labor agreement for one week failed. Councilmembers Everhart, Wolgast, Manspeaker, Archer and Mayor Bunten voted "no." (5-5-0)

Mayor Bunten cautioned the Council on the possible outcome if the labor agreement is not approved.

The motion to approve the labor agreement failed. Councilmembers Hiller, Alcalá, Archer and Harmon voted "no." Mayor Bunten voted "yes." Councilmember Ortiz abstained. (5-4-1)

ORDINANCE NO. 19594 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving City expenditures for the period of May 30, 2011, through June 5, 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 Wolgast carried unanimously. (9-0-0)

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

APPROVAL of retail cereal malt beverage license application for U Market, Inc., located at 935 SE 21<sup>st</sup> Street, was presented.

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

ORDINANCE NO. 19595 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 on the west side of SW Woodbridge Drive approximately 530 feet north of the intersection of SW 10<sup>th</sup> Avenue and SW Woodbridge Drive from “D&O” Multiple-Family Dwelling and Office District TO “M-2” Multiple-Family Dwelling District placed on first reading June 14, 2011. (Z11/9)

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

No exparte communications were declared by the Governing Body.

Councilmember Harmon moved to adopt the ordinance. The motion seconded by Councilmember Archer 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. 8347 introduced by City Manager Norton N. Bonaparte, Jr., in accordance with Section 18.190.030(2) and 18.165.030(c)(10) of the Topeka Municipal Code (TMC) approving a Conditional Use Permit to allow for a nonresidential small wind energy system on property currently zoned “PUD” Planned Unit Development District (“I-1” Light Industrial use group) and located at 1620 NW Gage Boulevard in the City of Topeka, Kansas was presented. *(CUII/1)*

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

Exparte communications were declared by Councilmembers Hiller, Wolgast and Manspeaker.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Manspeaker 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 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 on the west side of SW Urish Road approximately 425 feet north of SW 21<sup>st</sup> Street from “O&I-2” Office and Institutional District TO “PUD” Planned Unit Development District (“C-2” use group) was presented for first reading. *(PUDI/2)*

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 at 1001 NE Atchison Avenue from “I-1” Light Industrial District TO “PUD” Planned Unit

Development District (“M-3” Multiple Family Dwelling District use group) was presented for first reading. (*PUD11/4*)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Sections 18.265.010, 18.265.020, 18.265.030 and 18.265.040 concerning wind energy regulations and specifically repealing said original section was presented for first reading. (*ACZR11-02*)

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning driving under the influence, amending City of Topeka Code Section 10.15.020 and specifically repealing said original section as well as creating Article 4 of Chapter 10.20 consisting of Sections 10.20.230, 10.20.240, 10.20.250 and 10.20.260 was presented for first reading.

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

Councilmember Wolgast commended Safe Streets Program coordinators for their efforts in the community and encouraged residents to become involved in the program and make Topeka neighborhoods safer.

Councilmember Manspeaker expressed concern with staff informing citizens it is not worth their while to speak to the Council at Council meetings. He requested staff be directed otherwise.

Norton N. Bonaparte, Jr., City Manager stated the issue would be discussed with staff.

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 7:47 p.m.

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Brenda Younger  
City Clerk