City Council Minutes – April 4, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 4, 2006. The Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcalá, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9. Mayor Bunten presided. -1.

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

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

SELECTION OF THE DEPUTY MAYOR, was presented.

Councilmember Nave moved to nominate Councilmember Preisner. The motion was seconded by Councilmember Haynes.

Councilmember Ortiz moved to nominate Councilmember Blackburn. The motion was seconded by Councilmember Alcalá.

Councilmember Blackburn stated that he would respectively decline the nomination of Deputy Mayor in favor of the senior member.

Councilmember Ortiz withdrew the nomination of Councilmember Blackburn. The second concurred.

Hearing no further nominations, the Mayor asked for a vote on selection of the Deputy Mayor.

Mayor Bunten announced that Councilmember Preisner was selected as the new Deputy Mayor by a unanimous vote. (9-0-0)
SELECTION OF JEDO BOARD VOTING REPRESENTATIVES, was presented.

Councilmember Blackburn moved to nominate Councilmember Duffy. The motion was seconded by Councilmember Preisner.

Councilmember Oriz moved to nominate Councilmember Alcala. The motion was seconded by Councilmember Duffy.

Councilmember Duffy moved to nominate Councilmember Blackburn. The motion was seconded by Councilmember Nave.

Councilmember Alcala moved to nominate Councilmember Haynes. The motion was seconded by Councilmember Ortiz.

Brenden Long, City Attorney announced that each Councilmember should vote for two voting representatives.

Councilmember Preisner moved to close the nominations. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

Mayor Bunten announced that Councilmember Duffy and Councilmember Blackburn were selected as the new voting representatives for the JEDO Board after receiving five votes each.

Councilmember Alcala moved to suspend the Council Rules to add an item to the agenda. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

Councilmember Alcala moved to add an ordinance to the agenda for first reading relating to the financing of the Topeka Boulevard Bridge. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)
Jim Langford, Budget and Finance Director explained why the ordinance was being added to the agenda. He stated that they have recently learned that they must authorize an additional $7 million in revenue bonds to complete the project.

Mayor Bunten noted that the ordinance would be added to the agenda under First Readings, item 10G.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 7776 introduced by Councilmember Brett Blackburn granting Capital Title Insurance Company an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

MINUTES of the Regular Meeting of March 28, 2006 were presented.

2006 Open After Mid-Night License renewal applications bearing the approval of the Chief of Police were presented for the following:

<table>
<thead>
<tr>
<th>Business</th>
<th>Address</th>
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<tbody>
<tr>
<td>Deep Pockets</td>
<td>4310 S.W. 21st Street</td>
</tr>
<tr>
<td>The Den</td>
<td>1116 N.W. Lower Silver Lake Road</td>
</tr>
<tr>
<td>Double Deuce Bar &amp; Grill</td>
<td>3701 S.W. Plaza Drive</td>
</tr>
<tr>
<td>Down Under Lounge</td>
<td>3810 S. Topeka Boulevard Suite B</td>
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<tr>
<td>The Dugout</td>
<td>1545 S.W. Fairlawn</td>
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<tr>
<td>Electric Cowboy</td>
<td>3249 S.W. Topeka Boulevard</td>
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<tr>
<td>Frances O’Dooley’s</td>
<td>1930 S.W. Westport Drive</td>
</tr>
<tr>
<td>Gage Bowl North</td>
<td>200 E. Highway 24</td>
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<tr>
<td>Gage Bowl Center</td>
<td>4200 S.W. Huntoon</td>
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<tr>
<td>Ichabod Laundra Bar</td>
<td>1501 W. 21st Street</td>
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<tr>
<td>Joletta’s</td>
<td>600 N.W. Paramore</td>
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<tr>
<td>Midwest Elks Lodge #1441</td>
<td>1316 S.E. Madison</td>
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<tr>
<td>Mr. D’s</td>
<td>3339 Gage Boulevard</td>
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<tr>
<td>Philip Billard VFW Post #1650</td>
<td>3110 S.W. Huntoon</td>
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<tr>
<td>Sixth Avenue Ballroom</td>
<td>117 S.W. 6th Street</td>
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<tr>
<td>Spanky’s Bar &amp; Grille</td>
<td>3100 S.W. Gage Boulevard</td>
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<tr>
<td>The Tool Shed Tap</td>
<td>921 S. Kansas Avenue</td>
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<tr>
<td>VIP Lounge</td>
<td>5235 S.W. 28th Street</td>
</tr>
<tr>
<td>West Ridge Lanes &amp; Family Fun Center</td>
<td>1935 S.W. Westport Drive</td>
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Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

NOTICE OF PUBLIC HEARING

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, April 4, 2006, at 6:00 P.M. on the advisability of the adoption of a Redevelopment Project Plan for the College Hill Redevelopment District.

ORDINANCE NO. 18604 introduced by City Manager Norton N. Bonaparte, Jr., adopting a Redevelopment Project Plan for the College Hill Redevelopment District pursuant to K.S.A. 12-1770 et seq., as amended placed on first reading March 28, 2006 was again presented.

Brenden Long, City Attorney distributed an amendment to the ordinance which would add a new Section 7.

Bill Newsome, developer of the project stated that he looks forward to starting the project. He also thanked the Council for their support of the project.

Mary Lou Herring spoke in opposition to the plan. She stated that she believes that the plan is not right for the area because it does not meet TIF statutes, it is business unfriendly, and it is inconsistent with the future land use for the area in the Parkway Plan.

Frank Kirtdoll stated that Council Rule 5.3 stated that an issue that has already been considered could not be brought back for sixty days. He stated that also State Statute does not allow a city to spend more the $100,000 without following other procedures. He questioned the legality of the project based on the process the City was following, and asked that the hearing be ruled out of order or deferred until they receive a ruling on the issue.

Bruce Woner, attorney for Southwind Capital explained that the project has received scrutiny from their office, the City Attorney’s Office, as well as Bond Counsel for the City. He assured the Council that proper procedure was being followed.
Deborah Swank spoke in support of the project and asked for the Council’s continued support.

Henry McClure spoke in support of the project. He stated that the plan was approved by the Metropolitan Planning Department and Shawnee County. He also thanked everyone involved with the project and asked the Council for continued support so that the project could move forward.

Councilmember Ortiz asked if an agreement has been reached with business owner, Mike Calvin.

Henry McClure stated that they have had a number of communications in the past couple of days with Mr. Calvin and hope to resolve the issue very soon.

Councilmember Preisner moved to close the public hearing. The motion seconded by Councilmember Blackburn carried unanimously. (9-0-0)

Councilmember Preisner moved to amend the ordinance to include Section 7 as distributed by the City Attorney. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

Councilmember Preisner moved to adopt the ordinance as amended. The motion was seconded by Councilmember Nave.

Councilmember Harmon asked if the Council Rules and State Statues were being followed.

Brenden Long, City Attorney stated that they were complying with Council Rules and State Statues and he is confident that proper procedure has been followed. He stated that the Redevelopment Plan has not previously been before the Council. He also stated that he believes that Mr. Kirtdoll made reference to the document establishing the Redevelopment District that
was previously before the Council. He noted that the City’s Bond Counsel has been guiding the City through the process and will give their signature of approval.

The ordinance was adopted as amended on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

AN ORDINANCE introduced by Councilmembers Clark Duffy, John Nave, and Jeff Preisner amending City of Topeka Code Section 26-281 to include the adoption of Appendix F “Radon Control Methods” of the International Residential Code for One and Two Family Dwellings, 2003 and repealing said original section placed on first reading March 28, 2006 was again presented.

Councilmember Duffy explained the ordinance. He stated that radon is one of the most insidious forms of poisoning there is because it is colorless and odorless. He also stated that it is the second leading cause of cancer. He stated that approval of the ordinance would ensure that new homes are protected.

Dr. James Hamilton gave a presentation that showed a significant number of homes by zip code, and levels of radon detected in the homes. He also showed a chart showing the cancer rate in hospitals in Kansas, and stated that it is a statewide problem. He noted that a radon test could be purchased for $1.00 for those people interested in testing their homes.

Councilmember Harmon asked how the radon would be mediated.

Councilmember Haynes questioned if all residential dwellings should be included in the ordinance, not just one and two family dwellings.

Dr. Hamilton explained how the radon would be mediated. He stated that the radon would be drawn from the soil under the house and released through a plastic pipe that would
protrude through the roof. He stated that the installation cost is minimal and he would like to see all residents live in a radon free environment.

Brian Hanson stated that apartment buildings are built to bring fresh air into the buildings, and typically do not have the radon problems that residential homes do that are built tighter. He distributed information relating to radon-resistant new construction and a memo from the City of Manhattan who adopted a similar ordinance in 2001. He noted that one in every three homes tested in Shawnee County came back with elevated levels. He also stated that the average cost of radon resistant new construction ranges from $350 to $500.

Cindy Evans distributed a laboratory analysis report showing the results of homes tested in Shawnee County. She stated that the apartments located in the basement or first floor are probably at greater risk than those on the upper floors. She also stated that the radon testing kits could be purchased from their office located at 1740 S.W. Western Avenue.

J.D. Yanek stated that the Topeka Builder Realtor Coalition association understands the risks of radon, but believes that the adoption of Appendix F would create extra expense for builders and homeowners. He stated that the EPA lists Shawnee County in Zone 2, which is an acceptable level. He also expressed concern with receiving the additional inspections needed for radon resistant installation in a timely manner. He suggested that mandate testing would reduce the risks and be less costly. He requested that the Council send the ordinance to committee for further discussion.

Councilmember Haynes asked if staff was prepared to make additional inspections.

Neil Dobler, Public Works Department stated that it would require additional inspections, but would probably not be a huge increase in the workload.
Councilmember Duffy moved to adopt the ordinance. The motion was seconded by Councilmember Harmon.

Councilmember Blackburn made a substitute motion to refer the ordinance to the Economic and Community Development Committee. The motion seconded by Councilmember Kennedy carried. Councilmember Alcala voted "no". (8-1-0)

ORDINANCE NO. 18605 introduced by Councilmembers Jeff Preisner, Clark Duffy and John Nave amending City of Topeka Code Section 26-297 and establishing Section 26-297.5 regarding buildings and building regulations, and repealing said original section placed on first reading March 28, 2006 was again presented.

Councilmember Duffy explained that the ordinance would ensure that contractors are providing lead poisoning information to homeowners, which is required by State and Federal law. He stated that contractors would sign a document provided by the building inspector certifying that they have provided the occupant of the property where the work is being performed with an informational pamphlet on lead poisoning from the Environmental Protection Agency.

Tom Langer, representing the Kansas Department of Health and Environment distributed a handout regarding lead poisoning. He explained that the greatest exposure for lead poisoning appears in children under the age of six, and in homes built prior to 1978. He stated that Topeka is a high-risk community for lead based poisoning, and adoption of the amendment would make Topeka safer. He stated that his office would provide the City with the necessary form for the contractors to sign.

Councilmember Kennedy questioned who would pay for lead abatement.
Tom Langer stated that the ordinance does not require abatement, but it does require that the contractors inform the property owner of the problem. He explained that if a contractor does not inform a property owner, then the property owner should contact KDHE or the EPA to ensure that lead poisoning regulations are enforced.

Councilmember Blackburn moved to adopt the ordinance. The motion seconded by Councilmember Preisner carried. Councilmember Haynes voted "no". (8-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Duffy, Blackburn, Preisner and Harmon -8. Noes: Haynes -1.

A COMMUNICATION from Shawnee County requesting approval to waive the building permit fees for three projects located at Lake Shawnee was presented. The communication was deferred from the meeting of March 21, 2006.

Councilmember Alcala moved to approve the communication. The motion was seconded by Councilmember Ortiz.

Councilmember Preisner stated that he would not support the motion because it was taking money away from taxpayers.

Norton N. Bonaparte, Jr., City Manager stated that currently the City does not have the authority to waive the fees for the County. He also stated that he was told that they would need to amend the current ordinance to allow for this type of waiver.

Councilmember Preisner made a substitute motion to refer the ordinance to the Policy and Finance Committee. The motion was seconded by Councilmember Duffy.

Councilmember Blackburn stated that they would need to decide in committee if they want to set a precedent, and if they want to treat the County better than staff, which is also
required to pay fees. He also stated that they would need to consider how it would affect the Development Services Department.

Mayor Bunten stated that there have been conflicts between the two levels of government for a long time. He stated that he believes this is a minor request and it would be a reasonable thing to do to express good will towards the County. He suggested that they approve the request when it is brought back before the Council.

The motion to refer the communication to the Policy and Finance Committee carried unanimously. (9-0-0)

ORDINANCE NO. 18606 introduced by City Manager Norton N. Bonaparte, Jr., annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located on the northeast corner of SE California Avenue and SE 45th Street within unincorporated Shawnee County, Kansas and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading March 28, 2006 was again presented. (A06/5)

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

Councilmember Duffy moved to adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

ORDINANCE NO. 18607 introduced by City Manager Norton N. Bonaparte, Jr., allowing and approving city expenditures for the period of March 13, 2006, through March 19, 2006 and enumerating said expenditures herein was presented for first and final reading.
Councilmember Duffy moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

A PROJECT BUDGET in the amount of $50,000 and RESOLUTION NO. 7777 introduced by City Manager Norton N. Bonaparte, Jr., describing and authorizing Improvement Project No. 30244-01, which provides for the second phase of the project to complete the remaining concrete work at Felker Park as more specifically described herein was presented.

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

Councilmember Duffy moved to approve the project budget and the resolution. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

RESOLUTION NO. 7778 introduced by City Manager Norton N. Bonaparte, Jr., authorizing expenditures from the Crime Prevention Fund was presented.

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

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

Councilmember Duffy stated that he believed there was obsolete language in the ordinance that requires the Council to continue to approve the requests. He also stated that they receive an annual report on the fund, therefore, he believes it is not necessary for the Council to approve each request. He asked the City Attorney to review the ordinance and bring back an amendment that would clean-up the process.

The motion to approve the project budget and the resolution carried unanimously. (9-0-0)
A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of $332,600 and RESOLUTION NO. 7779 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 40942 located in Stone Crest Subdivision as more specifically described herein was presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report for items 9D, 9E and 9F. He stated that Neil Dobler, the Public Works Director was present to respond to questions.

Councilmember Ortiz moved to approve the petition, project budget and the resolution. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of $387,100 and RESOLUTION NO. 7780 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 40943, Phase 1, located in Stone Crest Subdivision as more specifically described herein was presented.

Councilmember Ortiz moved to approve the petition, project budget and the resolution. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of $929,600 and RESOLUTION NO. 7781 introduced by City Manager Norton N. Bonaparte, Jr., authorizing Improvement Project No. 60623, Phase 1, located in Stone Crest Subdivision as more specifically described herein was presented.

Councilmember Ortiz moved to approve the petition, project budget and the resolution. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

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 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at
6446 SW Huntoon Street, the centerline of the tract being approximately 1,775 feet east of SW Urish Road and being adjacent to SW Huntoon Street in the City of Topeka, Kansas from “RR-1” Residential Reserve District TO “R-3” Single Family Dwelling District was presented for first reading.  \( (Z06/5) \)

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 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 6446 SW Huntoon Street, the center line of the tract being approximately 2,450 feet east of SW Urish Road and 415 feet north of SW Huntoon Street in the City of Topeka, Kansas from “RR-1” Residential Reserve District TO “M-1a” Limited Multiple Family Dwelling District was presented for first reading. \( (Z06/6) \)

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 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 6446 SW Huntoon Street, the center line of the tract being approximately 2,445 feet east of SW Urish Road and being adjacent to SE Huntoon Street in the City of Topeka, Kansas from “RR-1” Residential Reserve District TO “O&I-1” Office and Institutional District was presented for first reading. \( (Z06/7) \)

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 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 1139 SW Gage Boulevard in the City of Topeka, Kansas from “R-1” Single Family Dwelling District TO “O&I-2” Office and Institutional District was presented for first reading. \( (Z06/8) \)
AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing an amendment to the project budget for Project No. 30127, Phase 7, which provides for design and construction of an extension of the existing Shunga bicycle and jogging trail from the intersection of Topeka Boulevard and Shunga Creek proceeding north and east following Shunga Creek for a distance of approximately 2700 feet as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, and specifically repealing City of Topeka Ordinance Nos. 17686 and 17526 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing an amendment to the project budget for Project No. 30127, Phase 9, which provides for design and construction of an extension of the Shunga bicycle and jogging trail from the intersection of abandoned Missouri-Pacific Railroad Right of Way and Shunga Creek and proceeding north and east following Shunga Creek for a distance of approximately 5000 feet as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, and specifically repealing City of Topeka Ordinance No. 17842 was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the project budget and authorizing as amended Improvement Project No. 12053-03 which provides for the removal and replacement of the Topeka Boulevard Bridge over the Kansas River, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the publication of the Notice of Intention of the City Council of the City of Topeka, Kansas, to make such improvements and to issue and sell revenue bonds of said City to pay the cost thereof pursuant to K.S.A. 12-195, *et. seq.*, and all amendments thereto, and repealing City of Topeka Ordinance No. 18577 was presented for first reading.
PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE
CITY COUNCIL, were presented.

Mayor Bunten stated that bicycle trails and jogging trails are good, and there are many of them in the city. He stated that he wanted to point out that the city has other needs such as repairs to infrastructure, curbs, gutters and alleys. He further stated that they would need to decide what their priorities are because there are so many needs, and they cannot all be funded.

Norton N. Bonaparte, Jr., City Manager thanked everyone involved in the cleanup this past weekend. He stated that he appreciated all of the volunteers from all over the community, and hopes everyone will continue in this effort to help clean up the City.

Mayor Bunten stated that many people mentioned that they appreciated Mr. Bonaparte’s participation in the cleanup. He noted that 143 tons of trash was picked up as a result of the cleanup.

Councilmember Ortiz noted that refuse workers were there at 6:00 a.m., and no one had their stuff on the curb. She stated that residents should be reminded to put their trash on the curb the night before. She stated that County residents also helped with the effort, and she wanted to thank them as well.

Councilmember Blackburn asked Neil Dobler if the Transportation Enhancement funds could be used for other projects. Councilmember Blackburn also asked for an update on getting funding assistance for sewers not connected to the City’s sewer system in parts of the City. He stated that the Kansas Coyotes have a game away from home this week, but they will be home next week and encouraged support of Topeka’s pro football team.

Neil Dobler stated that the funds could only be used for trails or transportation projects.
Councilmember Preisner stated that he would like to see the RFP for Cypress Ridge Golf Course on the agenda as soon as possible.

Councilmember Ortiz reminded the community’s youth that Friday, April 07, 2006 is the last day to apply for summer jobs with the City.

Councilmember Harmon congratulated Neil Dobler for being selected to be a part of the Leadership Kansas Program.

Councilmember Kennedy stated that she wanted to pass on a request from a constituent for support of disability services. She also asked the status of a payment center for all utilities in the Holliday building.

Councilmember Alcala stated that they need to make sure that they follow-up with programming in Parks and Recreation to accommodate handicapped needs. He stated that this should be a priority before it becomes a mandate.

Councilmember Duffy stated that a previous governing body made a decision to establish a trails system and allocated the cost of the trails system. He stated that those decisions have been made, and the financing has been established through the bond process. He stated that everyone should cleanup their area and everyone in the city should have the opportunity to participate, not just those in the eligible NIA areas. He stated that in the future he hopes they could extend cleanup opportunities to the entire city.

Mayor Bunten stated that there are no eligibility requirements for areas to be cleaned up. He stated that it is volunteer work, and the trucks and time were donated from various agencies. He stated that effort was centered on moderate to low-income neighborhoods because they have the biggest problems, without the resources to get the job done. He stated that nothing stops
people from facilitating cleanup efforts in other parts of the city, however, they are continuing to address the first 18 neighborhoods noted.

Councilmember Duffy noted that almost 40 percent of low-income residents do not reside within an NIA.

Councilmember Kennedy suggested looking to provide tire amnesty throughout the community once or twice per year.

Councilmember Nave stated that he received some calls regarding the construction at California, which was much needed and those calling were glad the construction allowed continued support of the businesses along California.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:00 p.m.

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Iris Walker
City Clerk