City Council Minutes – December 12, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 12, 2006. The
Councilmembers of the City of Topeka met in regular session at 6:00 P.M., with the following
Councilmembers present: Councilmembers Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy,

AFTER THE MEETING was called to order, Larry Parish, Kansas Army National Guard
Chaplin, gave the invocation.

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

Councilmember Blackburn moved to suspend the Council Rules to add a final plat for
Lauren’s Bay Villas Subdivision No. 2, and an ordinance relating to the Medevac MidAmerica
franchise agreement to the agenda. The motion seconded by Councilmember Kennedy carried
unanimously. (8-0-0)

Brenden Long, City Attorney noted that the final plat would be placed under Unfinished
Business as Item 6C, and the ordinance would be placed under First Readings as Item 9G.

Councilmember Blackburn moved to reinstate the Council Rules. The motion seconded
by Councilmember Nave carried unanimously. (8-0-0)

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the re-appointment of Michael Bell to the Human
Relations Commission for a term that would expire on December 31, 2008, was presented.

A COMMUNICATION recommending the appointment of Susan White to the Topeka
Housing Authority Board of Commissioners for a term that would expire on December 31, 2010,
was presented.

MINUTES of the regular meeting of December 5, 2006 were presented.
A Cereal Malt Beverage License application bearing the approval of the Chief of Police and City Inspectors for The Spot located at 2202 Buchanan, was presented.

Dance Hall License applications bearing the approval of the Chief of Police and City Inspectors for The Den located at 1116 Lower Silver Lake Road; and the American Legion Post 400 located at 3029 N.W. Highway 24, were presented.

Open After Mid-Night License applications bearing the approval of the Chief of Police and City Inspectors for Crescent Stores Corporation located at 3300 S.W. Gage Boulevard; The Vintage Restaurant & Lounge located at 1301 Gage Boulevard; and Poor Bill’s located at 840 N. Kansas Avenue, were presented.

Councilmember Blackburn moved to approve the consent agenda. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

A 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, December 12, 2006, at 6:00 P.M. to obtain citizen comment and review of a property tax exemption ordinance for improvements to real and personal property on behalf of Frito-Lay, Inc., located at approximately 4236 SW Kirklawn Avenue, Topeka, Shawnee County, Kansas.

ORDINANCE NO. 18771 introduced by City Manager Norton N. Bonaparte, Jr., exempting certain property, more specifically property owned by Frito-Lay, Inc., from property taxation for economic development purposes, pursuant to the provisions of the Code of the City of Topeka, Chapter 138, Article III and located at approximately 4236 SW Kirklawn Avenue, Topeka, Shawnee County, Kansas placed on first reading December 5, 2006 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.
Councilmember Alcala moved to close the public hearing and adopt the ordinance. The motion was seconded by Councilmember Ortiz.

Councilmember Blackburn made a substitute motion to refer the ordinance to the Economic and Community Development Committee. The motion was seconded by Councilmember Duffy.

Councilmember Alcala encouraged the Council to oppose referring the ordinance to the Economic and Community Development Committee. He gave a brief overview of the history of the company and stated that Frito-Lay, Inc., employs 800 people with an average starting salary of $16.00 per hour. He noted that the company is also planning to make a large investment in capital improvements to the building and equipment. He stated that he believes it is important to look at enhancing the businesses that are already located in Topeka and keeping the jobs in the area.

Councilmember Duffy stated that at this time, he does not believe that the City has all of the necessary requirements in place to approve the ordinance. He also stated that he supports sending the ordinance to Committee because before he can make an informed decision, he would like to receive all of the information he has requested, including a separate cost benefit analysis for the City, County and State.

Kathy Mollenberndt, Topeka Chamber of Commerce stated that a cost benefit analysis was prepared and presented to the Administrative Review Committee as required by law. She gave a brief explanation of the formula used to determine the incentive amount and stated that Frito-Lay, Inc., would qualify for an 80% property tax exemption, and would be required to implement 50 new jobs over the next two years.
Councilmember Blackburn and Councilmember Haynes questioned the procedure, and if all of the legal requirements have been met.

Brenden Long, City Attorney stated that all issues were discussed in the Administrative Review Committee meeting, however, all the documents were not distributed because some of the information received was confidential.

Councilmember Alcala called the question.

Councilmember Blackburn challenged the call to the question.

Mayor Bunten asked for a vote on if the question shall be called.

The motion on if the question shall be called failed. Councilmembers Kennedy, Nave, Duffy and Blackburn voted “no”. (4-4-0)

Discussion continued by several Councilmembers relating to whether approval was required from the other taxing entities that are involved in the project.

Councilmember Nave stated that it is a struggle for him to support tax incentives for large businesses because residential property owners and small businesses have to pick up the tax burden.

Alan Moore, Frito-Lay, Inc., Technical Manager stated that this is a time sensitive project because they need to get the product line up and running as soon as possible.

Councilmember Harmon stated that in his opinion he believes that the competitive nature of the industry should dictate how the Council acts upon the proposal.

The substitute motion to refer the ordinance to the Economic and Community Development Committee failed. Councilmembers Alcala, Ortiz, Haynes and Harmon voted “no”. (4-4-0)
Councilmember Blackburn stated that he believes that small businesses and residential owners are the ones that need a tax break. He suggested that they use sales tax to pay for economic development.

Councilmember Duffy stated that there are fourteen factors that should be considered when identifying the economic benefit that the City would receive. He asked if anyone could share what the findings were pertaining to the fourteen factors, specifically the total amount of incentive received by the State, and the corporate culture in regards to day care service credits and community service credits.

Kathy Mollenberndt explained the State’s participation in the incentive package. She stated that she does not have the total incentive amount because they have to qualify for each program, and that has not been finalized at this time.

The motion to close the public hearing and adopt the ordinance carried. Councilmembers Kennedy, Duffy and Blackburn voted “no”. (5-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Ortiz, Nave, Haynes and Harmon -5. Noes: Kennedy, Duffy and Blackburn -3. Absent: Preisner -1.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., authorizing the initiation of condemnation proceedings to acquire property by eminent domain for City of Topeka Trafficway Improvement Project No. 70190-01, Part B, which provides for the reconstruction of East 6th Street to five lanes wide between Golden Avenue and Market Street placed on first reading December 5, 2006 was again presented.

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

Councilmember Blackburn asked to divide the question and vote on each parcel separately.
Brenden Long, City Attorney stated that in order to delete certain parcels the ordinance would have to be amended.

Councilmember Ortiz inquired on the status of negotiations.

Mike Teply, Acting Public Works Director stated that there are four property owners that have not reached an agreement with the City.

Councilmember Kennedy moved to amend the ordinance to delete parcel 6. The motion died due to a lack of second.

Tom Zeltner, Tom’s Auto Repair stated that he is looking for relocation in the same area so he can continue working.

Pat DeLapp stated that he has not understand why the City will not give him a copy of the property appraisal because other cities allow their appraisals to be distributed. He also stated that he needs to know what is listed on the appraisal before he can continue with negotiations.

Councilmember Kennedy moved to amend the ordinance by deleting parcel 6. The motion was seconded by Councilmember Blackburn.

Councilmember Alcala made a substitute motion to defer the ordinance until January 9, 2007 to allow additional time for negotiations. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

AN ORDINANCE introduced by Councilmembers Clark Duffy and Jeff Preisner, amending City of Topeka Code Section 146-37 concerning water service to an owner of real property outside city limits, and specifically repealing said original section placed on first reading September 19, 2006 was again presented.

Norton N. Bonaparte, Jr., City Manager gave the staff report.
Councilmember Duffy moved to refer the ordinance to the Policy and Finance Committee. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

A FINAL PLAT for Lauren’s Bay Villas Subdivision No. 2 located west of SW Wanamaker Road, approximately 650 feet south of the intersection of SW 43rd Terrace and SW Wanamaker Road, being contiguous to the City of Topeka, within unincorporated Shawnee County, Kansas, was presented. \(P06/30\)

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

Councilmember Blackburn moved to approve the final plat. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

A COMMUNICATION approving and authorizing the City Manager to execute CONTRACT NO. 36923 a bargaining unit agreement between the City of Topeka and the Kansas Association of Public Employees Local 4565 for the period beginning January 2006 through December 2008, was presented.

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

David Fish, President of the Kansas Association of Public Employees Local 4565 appeared to answer questions.

Councilmember Duffy moved to approve the communication. The motion seconded by Councilmember Nave carried. Councilmember Ortiz abstained. (7-0-1)

ORDINANCE NO. 18772 introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made 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 the southeast corner of SW Van Buren Street and SW Roby Place in the City of
Topeka, Kansas from "M-1" Two-Family Dwelling District TO "C-3" Commercial District placed on first reading December 5, 2006 was again presented. (Z06/32)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.

Councilmember Blackburn moved to adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

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

ORDINANCE NO. 18773 introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made 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 the southeast corner of SW Van Buren Street and SW Roby Place in the City of Topeka, Kansas from "M-1" Two-Family Dwelling District TO "C-3" Commercial District placed on first reading December 5, 2006 was again presented. (Z06/32)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.

Councilmember Blackburn moved to adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn and Harmon -8. Absent: Preisner -1.
ORDINANCE NO. 18774 introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made 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 north of SE 45th Street about 1,830-feet west of SE Croco Road in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District placed on first reading December 5, 2006 was again presented. (Z06/23)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.

Councilmember Nave moved to adopt the ordinance. The motion seconded by Councilmember Ortiz carried unanimously. (8-0-0)

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

ORDINANCE NO. 18775 introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made 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 the northwest corner of SW 29th Street and SW Indian Hills Road in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "R-1" Single Family Dwelling District placed on first reading December 5, 2006 was again presented. (Z06/27)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.
Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Harmon carried unanimously. (8-0-0)

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

ORDINANCE NO. 18776 introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made 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 north of SW 29th Street between SW Santa Fe Drive and SW Berkshire Drive in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "OS-1" Open Space District placed on first reading December 5, 2006 was again presented. (Z06/28)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

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

ORDINANCE NO. 18777 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 1201 SW Oakley Avenue in the City of Topeka, Kansas from “R-1” Single Family Dwelling District with a Conditional Use Permit for a cultural facility ALL TO “O&I-2”
Office and Institutional District placed on first reading December 5, 2006 was again presented.

(Z06/33)

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

Mayor Bunten asked if there were any exparte communications. There were none declared.

Councilmember Ortiz moved to adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

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

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. concerning cereal malt beverage retailer license fees, amending City of Topeka Code Section 30-53 and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of the South Half of SE 31st Street extending from the east line of SE Granger Street to the east line of Shawnee Estates Subdivision extending north of 3100 SE Granger Street, City of Topeka, Shawnee County, Kansas was presented for first reading. (V04S/5)

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of all of SE Lake Terrace Road in Shawnee Estates Subdivision extending from the east line of SE Granger Street to the east line of Shawnee Estates Subdivision located south of 3108 SE Granger Street, City of Topeka, Shawnee County, Kansas was presented for first reading. (V06S/2)

AN ORDINANCE introduced by Councilmember Lana Kennedy relating to the Capital City Downtown Business Improvement District, establishing a service fee levy for 2007,
amending City of Topeka Code Section 42-38 and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the Master PUD Plan of Mission Woods Subdivision by providing for development of a small animal clinic on property located at the northeast corner of SW Urish Road and SW 29th Street in the City of Topeka, Kansas was presented for first reading.  (Z84-52J and Z84-53J)

AN ORDINANCE introduced by Norton N. Bonaparte, Jr., City Manager repealing City of Topeka Code Appendix B, Article XI, and amending City of Topeka Appendix B, Article VIII relating to ambulance services within the City of Topeka, Kansas, providing a non-exclusive franchise to Medevac MidAmerica, Inc. doing business as American Medical Response to operate an ambulance service within the City of Topeka, Kansas, and specifically repealing City of Topeka Code Appendix B, Articles VIII and XI, was presented for first reading.

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE CITY COUNCIL, were presented.

Norton N. Bonaparte, Jr., City Manager announced that there would be a Metropolitan Planning Organization meeting on December 15, 2006 at 10:00 a.m. in the Cyrus K. Holliday Building; and the Cyprus Ridge Golf Course will host a holiday sale on December 16th and 17th from 8:00 a.m. to 4:00 p.m.

Mayor Bunten congratulated Iris Walker, City Clerk on her retirement and commended her for 25 years of dedicated service.  He also stated that he concurs with Councilmember Blackburn regarding the placement of non-controversial zoning case ordinances on the consent agenda.
Brenden Long, City Attorney stated that zoning cases are regulated by State Statues and they must be cautious when considering a change in procedure. He noted that he would review the State Statues and report back to the Council.

Councilmember Alcala praised Iris Walker for her hard work and dedication while serving as the City Clerk.

Councilmember Ortiz commended Iris Walker for her years of service with the City. She noted that the Hillcrest Community Center does not have electricity at this time. She also expressed concern with the lack of communication between media, staff and the Council relating to the proposed city-county consolidation of the Information Technology Departments.

Norton N. Bonaparte, Jr., City Manager stated that the only proposal that he has received is from a group of employees that comprised a suggested consolidation action plan.

Councilmember Kennedy stated that she believes the Topeka Capital-Journal Newspaper should print a retraction regarding the distribution of misleading information on the consolidation.

Councilmembers Nave and Haynes congratulated Iris Walker on her upcoming retirement.

Councilmember Blackburn stated that he would introduce a resolution in the next two weeks requesting the Council’s approval to consider a functional consolidation of certain City and County departments.

Councilmember Harmon commended Iris Walker for her outstanding display of character while serving as the City Clerk.

Larry Cobler appeared to speak under public comment.
NO FURTHER BUSINESS appearing the meeting was adjourned at 8:45 p.m.

Brenda Younger
Interim City Clerk