

## City Council Minutes – September 5, 2000

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 5, 2000. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcala, McClinton, Dunn, Duffy, Lee, and Hill –7. Deputy Mayor Carkhuff presided -1. Absent: Mayor Wagnon and Councilmember Gardner -2.

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

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

THE CONSENT AGENDA was presented as follows:

Deputy Mayor Carkhuff stated that Item 2A, a Final Plat for Indian Woods North Subdivision, and Item 2C, a Final Plat for McFarland Farm Subdivision No. 2, would be removed from the consent agenda and placed directly following as requested by Councilmember Duffy.

A FINAL PLAT for Shawnee Hills Village Subdivision No. 6 on property located on the south side of SW Huntoon Street approximately 1800-feet west of SW Wanamaker Road in the City of Topeka, Kansas, was presented.

A FINAL PLAT for Ponderosa Subdivision on property extending between SW Westport Drive and SW Ashworth Place on the south side of SW 19<sup>th</sup> Terrace in the City of Topeka, Kansas, was presented.

A FINAL PLAT for Benfer Subdivision on property located at 2515 and 2521 SE 45<sup>th</sup> Street within unincorporated Shawnee County, Kansas, was presented.

RESOLUTION NO. 7083 introduced by Mayor Joan Wagnon authorizing the expenditure from the Softball/Sports Facilities Reserve Fund for the purpose of completing the remaining enhancements at the Rueger Park Softball Complex, pursuant to City of Topeka Ordinance No. 16269, was presented.

Minutes of the Regular Meetings of August 15 and 22, 2000, were presented.

Councilmember Lee moved to approve the consent agenda except for Items 2A and 2C. The motion seconded by Councilmember McClinton carried unanimously. (8-0-0)

A FINAL PLAT for Indian Woods North Subdivision on property located on the south side of NE 31<sup>st</sup> Street and extending west of the proposed Oakland Expressway right-of-way in unincorporated Shawnee County, Kansas, was presented.

Councilmember Duffy commented that the Planning Department was not responsive to the concerns that were originally expressed. He stated that the City is trying to remove septic tanks from the City and the 3-mile area but they continue to allow them in new development. He stated that the policies are inconsistent and suggested that the City and County address this issue.

Councilmembers Lee and Pomeroy stated they would vote no on the proposal because they were opposed to allowing septic tanks in new development.

Mike Engler, Bartlett and West Engineers stated that the proposal was thoroughly reviewed by the Health Department and septic systems are generally not a problem on large lots. He stated that the developers have agreed to create a district for sewers if the City extends service.

Councilmember Gardner entered the room.

Councilmember Lee moved to accept the public dedication. The motion seconded by Councilmember McClinton carried. Councilmembers Pomeroy and Lee voted "no". Councilmember Gardner abstained. (6-2-1)

A FINAL PLAT for McFarland Farm Subdivision No. 2 on property located on the southwest side of SW Steeple Chase Lane at SW Camden Court in the City of Topeka, Kansas, was presented.

Councilmember Duffy suggested reversing the ingress/egress onto Huntoon Street, which is a five lane street instead of onto 10<sup>th</sup> Street, which is a two lane street.

Several Councilmembers expressed concerns about the increased level of traffic on 10<sup>th</sup> Street.

Mike Engler stated that they did a traffic study and found that there would be no impact to 10<sup>th</sup> Street. He stated that the developer would not mind if they used Huntoon as an access point. He suggested removing the word "emergency", which would allow a primary entrance onto Huntoon Street.

Councilmember McClinton moved to strike the word "emergency" from the proposal. The motion was seconded by Councilmember Lee.

John Dugan, Director of the Planning Department stated that the proposal needs further review and could be amended administratively if requested by the developer.

Councilmember Gardner moved to defer the Final Plat for one week. The motion seconded by Councilmember McClinton carried unanimously. (9-0-0)

AN ORDINANCE introduced by Councilmember Sam Carkhuff prohibiting smoking in restaurants, amending City of Topeka Code §§ 78-226, 78-229, 78-233 and 78-238 and specifically repealing said original sections, placed on first reading June 6, 2000, was again presented.

Linda Jeffrey, City Attorney distributed a memo regarding the amendments that were previously made to the smoking ordinance. She stated that the ordinance before the Council for consideration contains the amended definition of restaurant and the amended exception for truck stops and travel plazas.

Councilmember Gardner moved to refer the ordinance back to the Public Health and Safety Committee for further review. The motion was seconded by Councilmember Dunn.

Councilmember Lee stated that she would like to hear from those who were present and wanted to speak.

Councilmember Dunn made a substitute motion to hear from people who wish to speak and then refer the ordinance back to the Public Health and Safety Committee. The motion was seconded by Councilmember Lee.

Councilmembers Duffy and Alcala stated that they supported the substitute motion.

Councilmember Alcala stated that he would like to know if anyone had information on the economic impact of the ordinance on businesses.

Councilmember Duffy stated that he received a letter from GO Topeka and would distribute it. He stated that they declined to take a position because it was not a significant economic issue to them.

Councilmember Pomeroy stated that they should hear from the public and then take action tonight.

The substitute motion carried. Councilmembers Pomeroy, Carkhuff and Gardner voted "no". (6-3-0)

Several people appeared in opposition to the proposed ordinance. They expressed concerns about governmental intervention in private lives, enforcement of the ordinance, and business owners should be allowed to make their own decisions whether or not to allow smoking in their restaurants.

Several people appeared in support of the proposed ordinance. They expressed concerns about second hand smoke and how it hampers their ability to enjoy dining out in restaurants that allow smoking.

Julie Sergeant, Program Director for the Kansas Disability and Health Program, Bureau of Health Promotion appeared and gave expert testimony that focused on the estimated number of people with asthma in Shawnee County, the effects of second hand smoke on people with asthma, and the applicability of the Americans with Disabilities Act to environmental smoke and people with asthma.

Dr. William Leeds appeared and stated that from a medical standpoint, second hand smoke is a catastrophe. He submitted a petition signed by sixty-six Topeka area Physicians in support of the ordinance.

Councilmembers Dunn and Duffy asked if the State was considering this as a State law and questioned why there was not a standard for air quality indoors like there is for outdoors.

ORDINANCE NO. 17538 introduced by Councilmember John Alcala, creating a fund for the removal of graffiti and setting forth the fund purpose, placed on first reading August 22, 2000, was again presented.

Councilmember Alcala explained that the ordinance creates a special fund that would be comprised from Community Development Block Grant (CDBG) monies and other sources. He summarized the efforts of teams formed and Neighborhood Improvement Associations (NIAs) that were working to clean up graffiti.

Councilmember Dunn asked if non-profit organizations and youth groups could apply for the funds.

Councilmember Alcala stated that those issues would be addressed when the resolution is formed.

L.S. Wheeler appeared to offer suggestions about licensing merchants who sell spray paint. He suggested using revenues generated from the license fee to pay for graffiti removal.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, McClinton, Dunn, Carkhuff, Duffy, Lee, Hill and Gardner –9.

ORDINANCE NO. 17539 introduced by Councilmember Clark Duffy relating to prohibited nuisances and the removal of graffiti, amending City of Topeka Code § 66-28, specifically repealing said original section, placed on first reading August 22, 2000, was again presented.

Councilmember Duffy explained that this is an amendment that would cleanup the ordinance so that a person could not be guilty of a misdemeanor until ten days after being sited for graffiti.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, McClinton, Dunn, Carkhuff, Duffy, Lee, Hill and Gardner –9.

ORDINANCE NO. 17540 introduced by Councilmember John Alcala authorizing the Committee for the Mexican Independence Day Celebration to hold events, placed on first August 22, 2000, was again presented.

Councilmember Alcala explained that the event would be Friday, September 15, 2000 and it would be in the same format as the Thursday Night Live event.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, McClinton, Dunn, Carkhuff, Duffy, Lee, Hill and Gardner –9.

ZONING PETITION (Z00/34) by Fidelity Development, Inc. requesting to amend the District Zoning Classification from "I-1" Light Industrial District to "PUD" Planned Unit Development District on property extending between the Kansas Turnpike and SE 45<sup>th</sup> Street, the centerline of which is approximately 1,000-feet east of South Topeka Boulevard in the City of Topeka, Kansas, was presented.

Barry Beagle, Planning Department gave the staff report. He explained issues that were discussed and resolved.

Deputy Mayor Carkhuff gave an opportunity for anyone present to speak.

Vern Jarboe, representative of the developers appeared to explain the project. He stated that this would be a significant downzoning. He commented that park land would be provided with the development. He stated that 45<sup>th</sup> Street is an issue and street improvements would be needed. He stated that they have worked with neighbors from Oakwood Hills on their concerns.

Bryan Smith, Attorney for some of the Oakwood Hills residents stated that he met with Mr. Jarboe and a lot of concerns were met. He stated that there are concerns about traffic on 43<sup>rd</sup> Terrace, and asked staff to assess the traffic and make improvements as necessary. He also asked that there be deed restrictions similar to those of the Oakwood Hills area and ample landscaping in the round about.

Several people appeared in opposition to the zoning petition. They expressed concerns about the need for three entrances into the project and opening 43<sup>rd</sup> Terrace into the proposed development. They also expressed concern about safety of the area, connecting a subdivision of over 300 lots with one that has approximately 80 lots and the increase in traffic along 45<sup>th</sup> street.

Councilmember Duffy asked Rogers Brazier to explain why he did not accept the public dedication of the park space.

Rogers Brazier, Director of Parks and Recreation explained that it would require additional funds for maintenance.

Councilmember Carkhuff expressed concerns about connecting the two neighborhoods without a buffer.

Councilmember Carkhuff moved to remand the zoning petition and ordinance back to the Planning Commission for review. The motion was seconded by Councilmember Gardner.

Councilmember Pomeroy stated that they would also need to rethink extending 43<sup>rd</sup> Terrace.

The motion carried unanimously. (9-0-0)

Councilmember Lee noted that it was nearly 11:00 p.m. and moved to extend the meeting to cover the first readings only. The motion was seconded by Councilmember Duffy.

Councilmember Carkhuff made a substitute motion to extend the meeting to consider Item 5B and first readings only. The motion seconded by Councilmember Lee failed. Councilmembers Pomeroy, Alcala, Dunn, Hill and Gardner voted "no". (4-5-0)

The original motion failed. Councilmembers Pomeroy, Alcala, Dunn, Duffy, Hill and Gardner voted "no". (3-6-0)

The meeting was adjourned.

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Iris Walker  
City Clerk