

City Council Minutes – December 19, 2000

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 19, 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, Carkhuff, Duffy, Lee, Hill, and Gardner –9. Mayor Wagnon presided -1.

AFTER THE MEETING was called to order, prayer was offered by Reverend David Bennett, Fairlawn Church of the Nazarene.

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

THE CONSENT AGENDA was presented as follows:

Mayor Wagnon stated that there was a request to divide the question. She stated that Item F, a Communication recommending appointments to the Topeka/Shawnee County Metropolitan Planning Commission, would be placed directly following the consent agenda as requested by Councilmember Alcala.

RESOLUTION NO. 7117 introduced by Mayor Joan Wagnon, declaring the entire boundary of the City of Topeka, was presented.

ORDINANCE NO. 17624 introduced by Mayor Joan Wagnon relating to the Capital City Downtown Business Improvement District, establishing the method of raising revenue, amending City of Topeka Code § 42-38 and specifically repealing said original section, placed on first reading December 12, 2000, was again presented.

ORDINANCE NO. 17625 introduced by Mayor Joan Wagnon relating to project service fees for City projects, amending City of Topeka Code § 2-287 and specifically repealing said original section, placed on first reading December 12, 2000, was again presented.

ORDINANCE NO. 17622 introduced by Mayor Joan Wagnon authorizing the City of Topeka, Kansas, to issue its Taxable Industrial Revenue Bonds, Series A2000, (Payless ShoeSource, Inc., Project) in the maximum principal amount of \$10,563,000 for the purpose of purchasing, acquiring, constructing, reconstructing, improving, remodeling, equipping and installing certain facilities; authorizing execution of a

trust indenture by and between the City and UMB Bank, N.A., in the City of Kansas City, Missouri, as trustee; authorizing the City to lease said project to Payless ShoeSource, Inc.; and authorizing execution of a lease by and between said City and Payless ShoeSource, Inc., placed on first reading December 12, 2000, was again presented.

ORDINANCE NO. 17623 introduced by Mayor Joan Wagnon authorizing the City of Topeka, Kansas, to issue its Taxable Industrial Revenue Bonds, Series B2000, (Payless ShoeSource Distribution, Inc., Project) in the maximum principal amount of \$10,393,000 for the purpose of purchasing, acquiring, constructing, reconstructing, improving, remodeling, equipping and installing certain facilities; authorizing execution of a trust indenture by and between the City and UMB Bank, N.A., in the City of Kansas City, Missouri, as trustee; authorizing the City to lease said project to Payless ShoeSource Distribution, Inc.; and authorizing execution of a lease by and between said City and Payless ShoeSource Distribution, Inc., placed on first reading December 12, 2000, was again presented.

A COMMUNICATION from Mayor Joan Wagnon recommending the appointment of Jerry Lonergan to the Metropolitan Topeka Airport Authority, was presented.

PROJECT BUDGET AND RESOLUTION NO. 7118 introduced by Mayor Joan Wagnon, relating to Waterworks Project No. 28466 for water line replacement and authorizing the same, in the amount of \$1,200,000, were presented.

CEREAL MALT BEVERAGE APPLICATIONS bearing the approval of the Chief of Police and City Inspectors were presented for Bavarian Inn, 712 W 2nd Street, and Grover's Smokehouse, 1217 SW Gage.

Minutes of the regular meeting of December 12, 2000, were presented.

Councilmember Hill moved to approve the consent agenda except for Item F. The motion seconded by Councilmember Carkhuff carried unanimously. (9-0-0)

A COMMUNICATION from Mayor Joan Wagnon recommending the appointments of Ivan Weichert, Winnie Crapson, Henry McClure, Dean Vining, Jacquie Bugg, and Phil Morse to serve on the Topeka/Shawnee County Metropolitan Planning Commission, was presented.

Councilmember Hill moved to approve Item F. The motion was seconded by Councilmember Carkhuff.

Councilmember Alcalá stated that he was opposed to the appointments because he felt that not all areas throughout the City are being represented.

Councilmember Carkhuff stated that he would abstain because of a relative who currently serves on the commission.

The motion carried. Councilmember Alcalá voted "no". Councilmember Carkhuff "abstained". (7-1-1)

A COMMUNICATION regarding releasing GO Topeka funds for 2001, was presented.

Councilmember McClinton moved to approve the communication to release the funds. The motion was seconded by Councilmember Hill.

Dean Ferrell, Chairman of GO Topeka appeared to answer questions. He stated that they have a staff of three people who work with economic development. He stated that their goal is to select a good economic development person to head the Chamber of Commerce and then hire one for GO Topeka. He stated that they have raised approximately \$660,000 in pledges, and have received about \$235,000. He stated that the bulk of the pledges would be collected over a period of three years. He explained that they have allocated \$78,000 to Kaw Valley for workforce training and \$250,000 for new business. He stated that \$145,000 was spent to promote the sales tax extension.

Councilmember Gardner commented that he would like assurance that GO Topeka would have an economic development director in place before releasing funds. He asked if there was an interim plan until GO Topeka could collect the tax money in 2003.

Dean Ferrell stated that they are putting planning in place so they would be ready when the funds come in.

Councilmember Alcalá expressed concerns because of the money already spent for the campaign and salary for Pat Michaelis.

Mayor Wagnon noted the accomplishments and activities of GO Topeka for 2000 from their report.

Councilmember Pomeroy commented that the Council and City need an entity to compete with other cities for economic development.

David Price, Lazon Grays and Joseph Ledbetter appeared and commented that funding for economic development should be allocated fairly among all races and they should go after top quality jobs.

Councilmember Duffy noted that GO Topeka was not successful in fulfilling their contractual provisions with the City. He commented that since the sales tax question passed the Council could consider other economic development endeavors using these funds.

Councilmember Alcalá made a substitute motion to require all money that GO Topeka receives between now and 2003 when the sales tax is implemented, be paid back to the City and used for the K-State plan that was presented, specifically amenities for the Jackson Street Project. The motion was seconded by Councilmember Duffy.

Councilmember McClinton stated that the K-State presentation was a conceptual plan. He stated that there is no budget for it and they have not adopted the plan. He stated that the sales tax money is supposed to be used for economic development.

Councilmember Carkhuff noted that infrastructure for the Oakland Express has not been put in place and stated that they should be more concerned with this because it would create jobs.

Councilmember Duffy suggested deferring action until there was a plan.

Councilmember Gardner moved to table action on the request. The motion seconded by Councilmember Alcalá failed. Councilmembers Pomeroy, McClinton, Carkhuff, Hill and Lee voted "no". Councilmember Dunn was out of the room. (3-6-0)

The substitute motion failed. Councilmembers Pomeroy, McClinton, Carkhuff, Lee, and Hill voted "no". Councilmember Dunn was out of the room. (3-6-0)

The original motion to approve the communication to release the funds carried. Councilmembers Alcalá, Duffy and Gardner voted "no". (6-3-0)

AN ORDINANCE introduced by Councilmembers Fran Lee, Vanessa Hill, and Clark Duffy amending City of Topeka Code §§ 78-226, Definitions; 78-229, Areas where smoking is prohibited; 78-233, Permitted public smoking areas; and 78-238, Posting of signs and specifically repealing said original sections, placed on first December 5, 2000, was again presented.

ORDINANCE NO. 17626 introduced by Councilmember Jim Gardner amending City of Topeka Code § 78-226, Definitions; 78-229, Areas where smoking is prohibited; 78-233, Permitted public smoking areas, and 78-238, Posting of signs and specifically repealing said original sections, placed on first reading December 12, 2000, was again presented.

Councilmember Lee gave the committee report from the Public Health and Safety Committee. She stated that they have received a lot of input.

Several people appeared in opposition to the proposed ordinance. They expressed concerns about the definitions, enforcement of the ordinance and stated that business owners and patrons should be allowed to make their own decisions whether or not to allow smoking in their restaurants. Concerns that the proposed ordinance would also create an unfair advantage to surrounding areas that could allow smoking and be detrimental to Topeka restaurants were also expressed.

Several people appeared in support to the proposed ordinance. They expressed concerns about the health hazards second hand smoke creates. Several petitions in support of the ordinance were submitted. Concerns were also expressed that non-smokers don't get a choice for clean air if they want to eat out.

Councilmember McClinton expressed concerns about presenting two ordinances and moved to amend the ordinance by removing all changes and go back to the current language except for the lines involving signage. The motion was seconded by Councilmember Pomeroy.

Councilmember Gardner made a substitute motion to include Councilmember McClinton's motion but make the sign smaller. The motion was seconded by Councilmember Hill.

Councilmember Carkhuff moved to extend the meeting until 11:30 p.m. The motion seconded by Councilmember Lee carried. Councilmembers McClinton, Dunn, and Duffy voted "no". (6-3-0)

Councilmember Carkhuff stated that they need to consider the economic issue. He suggested a policy allowing restaurants to declare themselves either smoking or non-smoking. He stated that non-smoking would not permit smoking.

The substitute motion carried. Councilmembers Pomeroy, McClinton, Duffy and Lee voted "no". (5-4-0)

Councilmember Gardner moved to approve the ordinance as amended. The motion was seconded by Councilmember McClinton.

Councilmember Carkhuff made a substitute motion to amend the ordinance by including the language "either smoking or non-smoking" and non-smoking restaurants must add a sign that states "this is a smoke free establishment". The motion was seconded by Councilmember Gardner.

Councilmember Gardner suggested including the language on line 206, "and restaurants that are non-smoking must add a sign that states 'this is a smoke free establishment'".

Councilmember Dunn called the question.

Councilmember Carkhuff challenged the call.

Councilmember Carkhuff withdrew the challenge.

The substitute motion carried. Councilmembers Duffy and Lee voted "no". (7-2-0)

Councilmember Pomeroy moved to amend the language by removing lines 116 and 117, which would prohibit smoking in libraries and museums. The motion was seconded by Councilmember Duffy.

Councilmembers Gardner and Carkhuff spoke in opposition to the motion because they felt that good compromises have been made, and there may be a private party held at a museum where they would allow smoking.

Councilmember Dunn called the question.

Councilmember Pomeroy challenged the call.

The call was upheld. Councilmembers Pomeroy and McClinton voted "no". (7-2-0)

The motion to amend failed. Councilmembers Alcalá, Dunn, Carkhuff, Hill and Gardner voted "no". (4-5-0)

Councilmember Gardner moved to approve the ordinance as amended. The motion was seconded by Councilmember Dunn.

Councilmember Duffy made a substitute motion to adopt the ordinance labeled agenda Item 3C. The motion was seconded by Councilmember Pomeroy.

Councilmember McClinton called the question.

The substitute motion carried. Councilmembers Alcalá and Carkhuff voted "no". (7-2-0)

The ordinance, Item 3B, as amended with Item 3C was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Dunn, Carkhuff, Duffy, Lee, Hill, and Gardner –9.

Mayor Wagnon withdrew Item 3C from the agenda. She also withdrew Item 3D, an ordinance relating to dogs running at large, from the agenda and stated that it would be placed on a future agenda.

A RESOLUTION introduced by Councilmember James McClinton, amending Topeka City Council Rules and Procedures, approved January 20, 1998, and amended on November 17, 1998, February 23, 1999,

December 21, 1999, and December 12, 2000, specifically amending Rule 8.3 concerning personal and slanderous remarks, was presented for first reading.

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA ORDINANCE introduced by Mayor Joan Wagnon pertaining to an amendment to the text and map of the Topeka-Shawnee County Comprehensive Metropolitan Plan, was presented for first reading.

AN ORDINANCE introduced by Mayor Joan Wagnon 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 within the Tennessee Town neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from "M-1" Two Family Dwelling District, "M-2" Multiple Family Dwelling District, and "C-2" Commercial District all to "R-2" Single Family Dwelling District, was presented for first reading. (Z00/53)

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA ORDINANCE introduced by Mayor Joan Wagnon pertaining to an amendment to the text and map of the Topeka-Shawnee County Comprehensive Metropolitan Plan, was presented for first reading.

AN ORDINANCE introduced by Mayor Joan Wagnon 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 within the Elmhurst neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from "M-1" Two-Family Dwelling District to "R-2" Single Family Dwelling District, was presented for first reading. (Z00/54)

AN ORDINANCE introduced by Mayor Joan Wagnon 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 about the northwest corner of NW Independence Avenue and NW Topeka Boulevard from "R-1" Single Family Dwelling District and "C-4" Commercial District all to "C-4" Commercial District, was presented for first reading. (Z79/32)

AN ORDINANCE introduced by Mayor Joan Wagnon 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 about the southwest corner of SE 37th Street and SE Adams in the City of Topeka, Kansas, from "C-4" Commercial District to "C-2" Commercial District, was presented for first reading. (Z87/6)(1)

AN ORDINANCE introduced by Mayor Joan Wagnon 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 about the southwest corner of SE 37th Street and SE Colfax Place in the City of Topeka, Kansas, from "C-4" Commercial District to "C-2" Commercial District, was presented for first reading. (Z87/6)(2)

AN ORDINANCE introduced by Mayor Joan Wagnon 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 about the southeast corner of SW Lane Street and SW 12th Street in the City of Topeka, Kansas, from "M-1" Two Family Dwelling District to "M-2" Multiple Family District, was presented for first reading. (Z88/56)

AN ORDINANCE introduced by Mayor Joan Wagnon 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 on the west side of the 2200 block of SW Kingsrow Road in the City of Topeka, Kansas, from "R-1" Single Family Dwelling District to "M-1" Two Family Dwelling District, was presented for first reading. (Z89/45)

AN ORDINANCE introduced by Mayor Joan Wagnon 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 approximately 280-feet north of SW 29th Street and 500-feet east

of SW Villa West Drive in the City of Topeka, Kansas, from "M-2/PUD" Multiple Family Dwelling District and Planned Unit District to "C-4" Commercial District, was presented for first reading. (Z91/28)

Councilmember Dunn moved to recess into executive session to discuss a pending law suit that is due to expire on Friday, December 22, 2000 and then adjourn the meeting. The motion seconded by Councilmember Pomeroy carried. Councilmembers McClinton, Duffy, Lee and Gardner voted "no". (5-4-0)

NO FURTHER BUSINESS appearing, the meeting was adjourned by unanimous consent.

Iris Walker
City Clerk