

## **City Council Minutes – February 13, 2001**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 13, 2001. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcala, McClinton, Carkhuff, Lee and Gardner –6. Mayor Wagnon presided -1. Absent: Councilmembers Dunn, Duffy, and Hill -3.

AFTER THE MEETING was called to order, prayer was offered by Councilmember Alcala.

Mayor Wagnon announced that Iris Walker, City Clerk, recently had knee replacement surgery and Linda Jeffrey, City Attorney, is on vacation and they would be off throughout the month of February. She stated that Beth Schafer, Assistant City Attorney, and Susan Cunningham, Records Manager, would be filling in for them. She also stated that Councilmember Hill would be absent because she was attending funeral services of a close friend.

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 2A, an Ordinance relating to the parking garage at 9<sup>th</sup> Street and Kansas Avenue, would be removed from the consent agenda and placed directly following.

ORDINANCE NO. 17638 introduced by Mayor Joan Wagnon amending City of Topeka Ordinance No. 17632 relating to annexation Case No. A00/13, amending Section 2 of said ordinance and specifically repealing said Section 2, placed on first reading February 6, 2001, was again presented.

RESOLUTION NO. 7128 introduced by Mayor Joan Wagnon setting the public hearing for the purpose of considering adoption of a resolution which authorizes Street Repair Project No. 84289, specifically provision of 1000 (one thousand) feet of bandera limestone curb within the boundaries of Potwin Place Association, was presented.

RESOLUTION NO. 7129 introduced by Mayor Joan Wagnon establishing a water main connection charge for water main extension along the 3400 block of SE Minnesota Avenue, was presented.

A FINAL PLAT for Ardmore Walk Subdivision No. 4 on property located about the south terminus of SW Atwood Avenue and SW 39<sup>th</sup> Street in the City of Topeka, Kansas, was presented.

Minutes of the regular meeting of February 6, 2001, were presented.

Councilmember Carkhuff moved to approve the consent agenda as amended. The motion seconded by Councilmember McClinton carried unanimously. (6-0-0)

AN ORDINANCE introduced by Mayor Joan Wagnon, amending City of Topeka Ordinance No. 17586 which authorized construction of a 272 stall parking garage at approximately 9<sup>th</sup> Street and Kansas Avenue, placed on first reading February 6, 2001, was again presented.

The ordinance was not adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, McClinton, Carkhuff, and Lee -4. Noes: Councilmembers Alcala and Gardner -2. Absent: Councilmembers Dunn, Hill, and Duffy -3.

Councilmember Duffy entered the room.

Councilmember McClinton asked what the implications of not adopting the ordinance would be.

Jeff White, Director of Public Works stated that the vote would end the project.

Mayor Wagnon stated that according to the Council rules one of the members of the prevailing side would need to make a motion to reconsider.

Councilmember Pomeroy asked if an absent vote was considered a "no" vote.

Beth Schafer, Assistant City Attorney explained that an absent vote is a "no" vote but didn't believe it was sufficient to be considered a member of the prevailing side in this case and stated that a motion to reconsider must be made by one of the two Councilmembers who voted "no".

Councilmember Lee asked if the ordinance could be brought back to the Council as a whole for consideration.

Mayor Wagnon stated that the ordinance would reappear for first reading on next week's agenda.

Mayor Wagon opened the public hearing for comments on the eleven ordinances regarding amendments to the nuisance and housing codes.

Karen Hiller, Housing and Credit Counseling, Inc. appeared and presented suggestions to the ordinances and distributed handouts that explained them. She commented that they along with the Topeka TurnAround Team, Inc. supported all of the proposed amendments except for Agenda Item 3D.

Pat Delapp and Jenny Prichard appeared and commented that they should enforce the current laws and were opposed to making changes to the existing ordinances.

Yvonne May, Ellen Ross, Darrel Eklund, Ron Bone, Joseph Ledbetter, Betty Phillips, Jim Vogel, Jenny Prichard, Frank Kirtdoll, and Ray Martinez appeared and commented that they would support the proposed ordinances with some changes. Several concerns were expressed about the need to clean up environmental code issues. Handouts were distributed from the Community Development Advisory Council (CDAC) and the Shawnee County Landlord's Association (SCLA) that included their positions.

ORDINANCE NO. 17639 introduced by Mayor Joan Wagnon, relating to service of nuisance violation notices amending City of Topeka Code § 66-32 and specifically repealing said original section, placed on first reading January 23, 2001, was again presented.

Councilmember Duffy moved to amend the ordinance by removing the language "occupant or agent" from lines 16, 18, 21, and 22. The motion seconded by Councilmember Carkhuff carried unanimously. (7-0-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, McClinton, Carkhuff, Duffy, Lee, and Gardner –7. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17640 introduced by Mayor Joan Wagnon relating to the Housing Code, amending City of Topeka Code § 82-158, Means of ingress and egress and specifically repealing said original section, placed on first reading January 23, 2001, was again presented.

Councilmember Alcalá asked for a definition from the City Attorney that references commercial buildings that have no doorknobs or hinges on the outside for interior or security protection.

Beth Schafer stated that commercial hardware is separate because this ordinance is limited to dwellings offered for residential use.

Councilmember Duffy moved to amend the ordinance by including the Committee of the Whole amendment made January 23, 2001, which removed the language "as may be provided" and inserted the language "which is required by (b) herein" on line 23. The motion seconded by Councilmember Carkhuff carried unanimously. (7-0-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Carkhuff, Duffy, Lee, and Gardner –7. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17641 introduced by Mayor Joan Wagnon, amending the City of Topeka Housing Code, specifically City of Topeka Code § 82-137, Temperature, heating and venting and specifically repealing said original section, placed on first reading January 23, 2001, was again presented.

Councilmember Pomeroy stated that he was opposed to the ordinance because the minimum temperature would not provide enough warmth for the elderly.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers McClinton, Carkhuff, Duffy, Lee, and Gardner –5. Noes: Councilmembers Pomeroy and Alcalá -2. Absent: Councilmembers Hill and Dunn -2.

ORDINANCE NO. 17642 introduced by Mayor Joan Wagnon relating to Administrative Hearing procedures for nuisance violations amending City of Topeka Code § 66-31.2 and specifically repealing said original section, placed on first reading February 6, 2001, was again presented.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Carkhuff, Duffy, Lee, and Gardner –7. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17643 introduced by Mayor Joan Wagnon relating to emergency abatements of nuisance conditions, placed on first reading January 23, 2001, was again presented.

Councilmember Lee moved to amend the ordinance by removing the language "occupant or agent" from lines 16, 17, 19, and 21. The motion seconded by Councilmember Duffy carried unanimously. (7-0-0)

Councilmember Alcalá moved to amend the ordinance by adding the language "the director shall grant immunity from other potential violations of ordinances observed". The motion was seconded by Councilmember Duffy.

Councilmember McClinton made a substitute motion to amend the ordinance by adding the language "The director may not abate other nuisances without giving proper notification" on line 19. The motion seconded by Councilmember Alcalá carried unanimously. (7-0-0)

Councilmember Duffy moved to amend the ordinance by removing the language "a" and insert the language "an attached" and remove the language "or lid which locks automatically and" and insert the language "that" on line 13. The motion seconded by Councilmember Gardner carried unanimously. (7-0-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Carkhuff, Duffy, Lee, and Gardner –7. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17644 introduced by Mayor Joan Wagnon relating to repeat violators of the nuisance code, amending City of Topeka Code § 66-33, Abatement by city and specifically repealing said original section, placed on first reading January 23, 2001, was again presented.

Councilmember Alcalá moved to amend the ordinance by removing the language "or a different" from line 27. The motion seconded by Councilmember Duffy carried unanimously. (7-0-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, McClinton, Carkhuff, Duffy, Lee, and Gardner –6. Noes: Councilmember Alcalá -1. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17645 introduced by Mayor Joan Wagnon relating to the nuisance code, providing for enhanced administrative penalties for repeat offenders, amending City of Topeka Code § 66-33.1 and specifically repealing said original section, placed on first reading January 23, 2001, was again presented.

Councilmember Duffy moved to amend the ordinance by including the Committee of the Whole amendment made January 23, 2001. The motion seconded by Councilmember Lee carried. Councilmember Gardner voted "no". (6-1-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, McClinton, Carkhuff, Duffy, and Lee –6. Noes: Councilmember Gardner -1. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17646 introduced by Mayor Joan Wagnon, relating to nuisances, amending Topeka City Code § 66-27(2) and specifically repealing Topeka City Code § 66-27(2), placed on first reading January 23, 2001, was again presented.

Councilmember Alcala moved to amend the ordinance by removing the word "furniture" and reinserting the word "stuffed" on line 17. The motion was seconded by Councilmember Gardner.

Councilmember McClinton made a substitute motion to incorporate Councilmember Alcala's language and remove the language "which creates an unsightly appearance" from line 18. The motion seconded by Councilmember Gardner carried unanimously. (7-0-0)

Councilmember Duffy moved to amend the ordinance by adding the language "provided further, no junked, wrecked or inoperable vehicles shall be stored or located at any place where, in the judgement of the Code Compliance Director, the vehicle will jeopardize public health, safety or welfare" beginning on line 24. The motion seconded by Councilmember Alcala carried unanimously. (7-0-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, McClinton, Carkhuff, Duffy, Lee, and Gardner –7. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17647 introduced by Mayor Joan Wagnon, amending the City of Topeka Housing Code, specifically City of Topeka Code § 82-91, Notice and order and specifically repealing said original section, placed on first reading January 23, 2001, was again presented.

Councilmember Duffy moved to amend the ordinance by removing the language "occupant, operator or agent" on line 18 and insert the language "In the event corrective action requires exterior repairs which are weather sensitive such as but not limited to roofing, painting, foundation work, then additional extension(s) of time may be granted by the Administrative Hearing Officer or the Code Compliance Director." on line 40. The motion seconded by Councilmember McClinton carried unanimously. (7-0-0)

Councilmember Duffy moved to amend the ordinance by adding the language "(8) Information on the availability of housing programs that assist owners in rehabilitation of structures." after line 72. The motion seconded by Councilmember Pomeroy carried unanimously. (7-0-0)

Councilmember Duffy moved to amend the ordinance by removing the language "or holder of any lease" on line 73. The motion seconded by Councilmember McClinton carried unanimously. (7-0-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Carkhuff, Duffy, Lee, and Gardner –7. Absent: Councilmembers Dunn and Hill -2.

ORDINANCE NO. 17648 introduced by Mayor Joan Wagnon relating to the Housing Code, specifically providing for an administrative penalty for uncorrected housing code violations, placed on first reading January 23, 2001, was again presented.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Carkhuff, Duffy, Lee, and Gardner –7. Absent: Councilmembers Dunn and Alcalá -2.

ORDINANCE NO. 17649 introduced by Mayor Joan Wagnon, relating to abandoned property as defined in K.S.A. 12-1750; designating an enforcing officer pursuant thereto, placed on first January 23, 2001, was again presented.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Carkhuff, Duffy, Lee, and Gardner -7. Absent: Councilmember Dunn and Hill -2.

RESOLUTION NO. 7130 introduced by Mayor Joan Wagnon in accordance with Section 48-25.01 of the Code of the City of Topeka, approving a City of Topeka Conditional Use Permit to establish a public parking garage on property currently zoned "C-5" Commercial District and located at 821, 823, and 835 South Kansas Avenue in the City of Topeka, Kansas, was presented. (CU01/02)

Councilmember Lee moved to adopt the resolution. The motion seconded by Councilmember McClinton carried. Councilmembers Alcalá and Gardner voted "no". (5-2-0)

ZONING PETITION (Z01/02) by Westboro Realty, LLC., requesting to amend the District Zoning Classification from "C-2" Commercial District to "O&I-1" Office and Institutional District on property located at the northeast corner of SW Huntoon Street and SW Oakley Street, in the City of Topeka, Kansas, was presented.

Mayor Wagnon gave an opportunity for anyone present to speak. No one appeared.

Mayor Wagnon asked Councilmembers to declare ex parte communications. There were none.

Councilmember Duffy moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Lee carried unanimously. (7-0-0)

ORDINANCE NO. 17650 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 at the northeast corner of SW Huntoon Street and SW Oakley Street in the City of Topeka, Kansas, from "C-2" Commercial District to "O&I-1" Office and Institutional District, placed on first reading February 6, 2001, was again presented. (Z01/02)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, McClinton, Carkhuff, Duffy, Lee, and Gardner -7. Absent: Councilmembers Dunn and Hill -2.



AN ORDINANCE introduced by Mayor Joan Wagnon providing for fair housing practices in the City of Topeka and amending the City of Topeka Code by the addition of the following language, 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 maps of the Topeka-Shawnee County Comprehensive Metropolitan Plan, was presented for first reading. (CPA00/6)

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

John Arnold, Chief Administrative Officer stated that he distributed a copy of the single bid contract with McElroy's that was requested. He stated that the Police have responded to the concerns expressed with speeding near the bus stop at 9<sup>th</sup> and Tyler. He also stated that they have looked into the allegations of illegal dumping at 31<sup>st</sup> and Fremont and the owner of the property is not in any violations of the Code.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Pomeroy stated he would like to remind City candidates that they could not place campaign signs in the City's right-of-way.

Councilmember Gardner asked for the award date of the contract with McElroy's. He also asked for the total amount paid to law firm of Frieden, Haynes & Forbes and what fund it is being paid from.

John Arnold stated that he would provide him with a report.

Councilmember Alcalá asked if the resolutions of intent would be brought back to the agenda.

Mayor Wagnon stated that they would begin to reappear on future agendas.

Councilmember Gardner asked about a judgment that was filed with the City Attorney's office from David Price.

Beth Schafer stated that he received a default judgement in the amount of approximately \$136,000. She stated that they have filed a motion to set aside the default and proceed on the merits of the case. She stated that she was confident it would be set aside.

Cecil Grist appeared and spoke during public comment.

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

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Iris Walker  
City Clerk