

City Council Minutes – January 15, 2002

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 15, 2002. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price – 9. Mayor Felker presided – 1.

AFTER THE MEETING was called to order, the invocation was given by Minister Ricardo Bonner, True Light Baptist Church.

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

THE CONSENT AGENDA was presented as follows:

Denial of claim appeal of Craig H. Yorke, Sr. was presented.

Communication requesting the Council concur in the appointment of Neil Dobler as Acting Director of Metro Planning, according to City Ordinance and County Resolution, was presented.

Minutes of the Regular Meeting of December 18, 2001 and January 8, 2002, were presented.

Councilmember Lane asked to remove the claim appeal from the consent agenda for separate discussion.

Councilmember Hecht asked to remove the communication relating to the appointment of an Acting Director of Metro Planning from the consent agenda for separate discussion.

Councilmember Dunn moved to approve Item C, the minutes of the regular meetings of December 18, 2001 and January 8, 2002. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

Denial of claim appeal of Craig H. Yorke, Sr., was presented.

Councilmember Lane moved to pay the \$250 deductible on Mr. Yorke's car insurance.

The motion was seconded by Councilmember Alcalá.

Mr. Yorke appeared to answer questions and stated that he would be pleased to have the deductible paid.

The motion failed. Councilmembers Hecht, Duffy, Stubbs, Hill and Price voted "no".

(4-5-0)

COMMUNICATION requesting the Council concur in the appointment of Neil Dobler as Acting Director of Metro Planning, according to City Ordinance and County Resolution, was presented.

Councilmember Hecht expressed her concern that the county was not participating in payment of the salary for the Acting Planning Director.

John Arnold, Chief Administrative Officer explained that he was trying to get concurrence from the county and city as soon as possible because Bill Fiander asked to be relieved of those duties as of December 31, 2001. He stated that he agreed that the city would pay the entire cost to move forward with the appointment.

Discussion followed concerning the county's lack of participation in funding the Acting Planning Director position and costs for recruitment of a permanent Planning Director.

Councilmember Duffy moved to concur in the appointment of Neil Dobler as Acting Director of Metro Planning. The motion seconded by Councilmember Dunn 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 on Tuesday, January 15, 2002, at 7:00 P.M., in the Council Chamber, 214 East 8th Street in conjunction with vacation request V02SB/1 by Community National Bank to vacate a 10-foot wide strip of building setback along SW 29th Street on property located at the southeast corner of SW 29th Street and SW McClure Street.

Tim Paris, Planning Department gave the staff report.

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

Councilmember Dunn moved to close the public hearing and adopt the ordinance. The motion seconded by Hill carried unanimously. (9-0-0)

ORDINANCE NO. 17777 introduced by Mayor Harry Felker relating to the vacation of the north 25 feet of a platted building setback, less the north 15 feet, on property located at the southeast corner of SW 29th Street and SW McClure Street, in the City of Topeka, Kansas, placed on first reading January 8, 2002, was again presented. (V02SB/1)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

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 on Tuesday, January 15, 2002, at 7:00 P.M., in the Council Chamber, 214 East 8th Street in conjunction with vacation request V01S/10 by State of Kansas Department of Administration to vacate a 20-foot wide strip of SW 8th Avenue extending from SW Harrison Street to SW Jackson Street, which adjoins their property.

Neil Dobler, Acting Planning Director gave the staff report and stated that State staff told him he would have the easements on 6th and MacVicar tomorrow if this is approved this evening.

Councilmember Dunn moved to accept the committee report. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

Councilmember Duffy stated that he asked about the State's plans in the Capitol Complex area and found that they have no plans or projects proposed for 9th Street between Topeka and Harrison; 9th Street at the intersection of Jackson; ADA compliance needs in the Complex; modification of one-way or two-way parking on Jackson and Harrison between 8th and 10th Streets; nor any Capitol Complex plan in process of implementation. He stated that this clears up his concern about coordination between the Capitol Complex area and the City's plans. He further stated that it would be helpful to meet with State staff about the City's plans to determine if they could partner on any projects.

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

Councilmember Lane moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

ORDINANCE NO. 17778 introduced by Mayor Harry Felker relating to the vacation of a 20-foot wide strip of right-of-way located south of SW 8th Avenue extending from SW Jackson Street to SW Harrison Street as dedicated by Original Town, City of Topeka, Shawnee County, Kansas, placed on first reading December 11, 2001, was again presented. (V01S/10)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

ZONING PETITION by 3620 Wanamaker L.L. C. requesting to amend the District zoning classification from "R-1" Single Family Dwelling District to "PUD" Planned Unit Development District ("M-1" use and "O&I-1" use) on property located on the east side of SW Wanamaker Road, the centerline of which is approximately 530-feet north of SW 37th Street in the City of Topeka, Kansas, was presented.

AN ORDINANCE introduced by Mayor Harry Felker 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 east side of SW Wanamaker Road, the centerline of which is approximately 530-feet north of SW 37th Street in the City of Topeka, Kansas, from "R-1" Single Family Dwelling District TO "PUD" Planned United Development District ("M-1" and "O&I-1" usage), placed on first reading January 8, 2002, was again presented. (Z01/14)

Barry Beagle gave the staff report.

Ben Crosland, applicant appeared to answer questions.

Councilmember Stubbs expressed her concerns that there was not a residential buffer between the neighbors and the proposed office development.

Ben Crosland stated that was controlled by the PUD plan. He stated that office development blends, and it is a key portion of the project. He explained that he visited with staff and made adequate concessions.

Councilmember Stubbs moved to return the petition to the Zoning and Platting Committee with a recommendation to look at residential only for this property. The motion seconded by Councilmember Duffy carried. Councilmembers Alcala, Lane, Dunn and Hecht voted "no". (5-4-0)

ZONING PETITION by Edwards Investments, L.L.C. requesting to amend the District Zoning Classification from "C-4" Commercial District and "PUD" Planned Unit Development District (commercial usage) all to "PUD" Planned Unit Development District (commercial usage) on property located at 5801 SW 21st Street in the City of Topeka, Kansas, was presented.

ORDINANCE NO. 17779 introduced by Mayor Harry Felker 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 5801 SW 21st Street in the City of Topeka, Kansas, from "C-4" Commercial and "PUD" Planned Unit Development District (commercial usage) ALL TO "PUD" Planned United Development District (commercial usage), placed on first reading January 8, 2002, was again presented. (Z01/23)

Barry Beagle gave the staff report.

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

Mayor Felker asked if there were any exparte communications. There were none.

Councilmember Hill moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

ORDINANCE NO. 17780 introduced by Mayor Harry Felker 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 SW Wanamaker Road, the centerline of which is approximately 290-feet north of SW 38th Street as dedicated by Shadywood South Subdivision, City of Topeka, Shawnee County, Kansas, placed on first reading January 8, 2002, was again presented. (Z86/31)

Barry Beagle gave the staff report.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA

ORDINANCE NO. 17781 introduced by Mayor Felker relating to building setbacks for existing lots, amending City of Topeka Code § 48-27.02, and specifically repealing said original section, placed on first reading January 8, 2002, was again presented. (ACZR01/06)

Bill Fiander, Planning Department gave the staff report. He stated that it is the intent of the proposed amendment to allow flexibility in establishing front-yard setbacks only. The proposed ordinance amendment, in its current form, would allow such flexibility to all building setbacks. He stated that in order to correct this, he is requesting an amendment to the language of the ordinance, specifically to insert the words “front-yard” in front of the words “building setback” on lines 60, 62, and 72 within the proposed ordinance.

Councilmember Pomeroy moved to amend the ordinance as requested. The motion seconded by Councilmember Dunn carried unanimously. (9-0-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA

ORDINANCE introduced by Mayor Felker relating to accessory uses, amending City of Topeka Code § 48-29.00, Authority, and specifically repealing said original section, placed on first reading January 8, 2002, was again presented. (ACZR01/07)

Councilmember Alcalá moved to defer final action on the ordinance until further notice from the Planning Department. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA

ORDINANCE NO. 17782 introduced by Mayor Felker relating to Article XXXV, Definitions of

the Comprehensive Zoning Regulations, amending the definition of rear yard, and repealing said original section, placed on first reading January 8, 2002, was again presented. (ACZR01/08)

Bill Fiander gave the staff report and stated that the amendment to the definition of rear yard alters the designation of the rear yard on corner lots. He stated that it is recommended by this change that the designated rear yard not be established at the time of platting, but instead at the time a building permit is sought to allow the property buyer and homebuilder to design the home in keeping with the orientation of homes on adjacent properties.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA
ORDINANCE introduced by Mayor Felker relating to minimum lot size requirements, providing for an administrative waiver amending City of Topeka Code § 48-27.01, and specifically repealing said original section, placed on first reading January 8, 2002, was again presented. (ACZR01/09)

Bill Fiander, Planning Department gave the staff report. He stated that any lot existing now would be grandfathered. This would apply to zoning requests to go from residential to commercial where there is a higher lot size requirement.

Councilmember Pomeroy stated that he could see no real reason for the amendment since this is a minimal variance that the Board of Zoning Appeals would probably approve.

Councilmember Pomeroy moved to amend the ordinance in Section 1 (f) by adding a Number 4 “provided that” to read as follows: the location is within a jurisdiction whose governing body provides all or part funding for the position of the Planning Department Director. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

Orville Johnson appeared and expressed his concern that the amendment gives power to one person. He asked the Deputy Mayor to refer the ordinance to committee.

Following further discussion on the minimum size of developable lots, the Deputy Mayor referred the ordinance to the Public Improvements Committee.

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA
ORDINANCE introduced by Mayor Felker pertaining to an amendment to the text and map of the Topeka-Shawnee County Comprehensive Metropolitan Plan, placed on first reading January 8, 2002, was again presented. (CPA01/03)

Bill Fiander, Planning Department gave the staff report. He stated that they made some amendments based on the concerns expressed by the Council at last week's work session. They amended the map to include Historic North Topeka and clarify that it is part of downtown; clarified the map is for potential office development and is not related to any retail commercial type of development; and, substituted the word manufacturing under Goal No. 1, Page 39. It should have read major employment and not been limited to manufacturing. He stated that they have made textual map changes to reflect those amendments.

Mr. Fiander explained that the County Commissioners voted 2-1 to refer the amendment back to the Planning Commission to review their concerns as follows: review the role of Downtown vs. the Wanamaker Corridor because there is no mention of commercial retail for Downtown; remove all references to future land use growth and management policies in advance of their adoption as components of the Comprehensive Metropolitan Plan; and, remove the population from Goal No. 7.

Councilmember Duffy distributed some suggestions to the amendment for the Planning Commission to consider as follows:

1. **Responsible organizations.**

Limit responsible organizations to Shawnee County, the City of Topeka or departments of those entities or organizations that have a contractual relationship with those organizations such as GO Topeka. In all other cases add as an action item below that strategy to indicate the need to coordinate or form a partnership with other organizations that are currently listed in this draft document.

2. **Goals III and V.**

Goals III and V are not goals; they are strategies to implement Goals I and II. Change accordingly.

3. **Goal I.**

After the fourth strategy, add a new Strategy 5: Create new jobs by assisting existing businesses with local expansions.

Actions:

- 1) Increase employment base with emphasis on jobs, which can sustain a household;
- 2) Broaden and diversify economic base;
- 3) Develop enablers to economic growth;
- 4) Create an environment for organizational excellence and opportunities for leadership development and cooperation;
- 5) Improve area's export expertise and ability to attract foreign investment;
- 6) Secure federal resources to further economic development goals.

4) **Goal II.**

At the end of the second strategy, add a new Strategy 3: Create new jobs by recruiting new business and industry.

Actions:

- 1) Increase employment base with emphasis on jobs which can sustain a household;
- 2) Broaden and diversify economic base;
- 3) Develop enablers to economic growth;
- 4) Create an environment for organizational excellence and opportunities for leadership development and cooperation;
- 5) Improve area's export expertise and ability to attract foreign investment;
- 6) Secure federal resources to further economic development goals.

5) **Goal I, Page 43; Strategy 3, Action 4.**

Strike the word financial in this action and on page 43, Goal III, Strategy I, Action 4 - strike in its entirety.

6) **Goal II, Page 41.**

After the bold heading, strike all narrative and insert in lieu thereof “identify several key business and industry groups that can thrive here based on geographic and labor force characteristics.” In addition, on page 42, Strategy 1, Actions 3 – strike the last sentence “Priority industries include administrative centers, food and kindred products, distribution centers and health centers.”

7) **Goal III, Page 43: Strategy 1, Action 3.**

At the completion of the sentence, add the phrase “if that industry agrees to locate in Topeka.”

8) **Benchmarks.**

Add the following:

Goal I - Amount of new capital investment.

Goal II – Amount of new capital investment.

Goal VI – Number of office jobs created downtown.

Goal VII – Increase in growth in City tax base.

Goal VII – More diversified economy as identified in Section 2.

Councilmember Dunn moved to approve the amendments suggested by Councilmember Duffy. The motion was seconded by Councilmember Pomeroy.

Councilmember Stubbs asked to divide the question and vote on the amendments with the exception of No. 7. She stated that she would like to have further discussion on that one.

The motion to approve the amendments with the exception of No. 7 carried unanimously.

(9-0-0)

Councilmember Stubbs expressed her concern about the wording of the phrase “if that industry agrees to locate in Topeka”, and moved that they send a conceptual suggestion on No. 7.

Councilmember Duffy made a substitute motion that he and Councilmember Stubbs meet with Planning Department staff and develop conceptual language on No. 7 for the Planning Commission to review. The motion seconded by Councilmember Stubbs carried.

Councilmembers Pomeroy, Dunn and Hecht voted “no”. (6-3-0)

The document was referred back to the Planning Commission.

ORDINANCE NO. 17783 introduced by Mayor Felker relating to establishment of a golf course improvement reserve fund, placed on first reading January 8, 2002, was again presented.

Dan Bertels, Golf Course gave the staff report and stated that there are many capital projects that need to be funded at the golf course, and the proposed fund will provide a relatively certain source of funds for these projects. He stated that it would reduce the current practice of budgeting proposed projects through the operations budget. He explained that the proposed fund would give the golf course staff a tool to more easily plan both operational and project budgets.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

ORDINANCE NO. 17784 introduced by Councilmember John Alcalá relating to shelter from weather, amending § 18-1, Definitions and § 18-4, Cruelty to animals and repealing said original sections, placed on first reading January 8, 2002, was again presented.

Councilmember Alcalá expressed his concerns for dogs being exposed to the elements during winter and summer months. He explained the amendment and stated that it defines housing. He stated that he proposed this amendment to help eliminate cruelty to animals during months of cold or hot weather.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

A CHARTER ORDINANCE introduced by Deputy Mayor Betty Dunn concerning the prohibition of Councilmembers to hold another elected position, amending City of Topeka Charter Ordinance § A2-23, Prohibitions, and specifically repealing said original section, placed on first reading January 8, 2002, was again presented.

Councilmember Dunn stated that this amendment would bring Topeka in compliance with the County and State.

Councilmember Dunn moved to amend the ordinance on line 22 to insert the words “any elected” before the word “state”. The motion was seconded by Councilmember Lane.

Discussion followed regarding why the state mandated this prohibition for counties and not for cities, and the policies already in place for city officials to declare potential conflict of interests.

The ordinance as amended failed to be adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane and Dunn. Noes: Councilmembers Hecht, Duffy, Stubbs, Hill and Price.

ORDINANCE NO. 17785 introduced by Mayor Harry Felker annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, located at 1685 SE 45th Street and the City boundary, and said land being annexed for all City purposes, is hereby assigned to a specific City Council District in accordance with Section A2-18 of the Code of the City of Topeka, and, repealing Ordinance 17736, placed on first reading January 8, 2002, was again presented. (A01/7)

Brenden Long, City Attorney explained that copies of the ordinance as amended by the Committee were distributed that repealed Ordinance No. 17736 and essentially de-annexed this area so it would not be part of the City.

Councilmember Dunn gave the committee report and stated there was a discrepancy in the legal description of the ordinance that was passed and published. The ordinance was brought back to correct the legal description and was sent to the committee at that time. Staff recommended that this land not be annexed at this time.

Councilmember Duffy asked if the consent to annex agreement would continue to be in effect if the City did not annex at this time.

Brenden Long, City Attorney stated that it would remain in effect.

Mr. Willard appeared and stated that it was his intent to build on this land but he was told by the Public Works Department that he would not be able to get a sewer line to the property for some years to come. He asked that this property not be annexed into the City.

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcala, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER:

John Arnold, Chief Administrative Officer reported that the City received a letter from Cox Communications regarding an increase in their cable rates. He explained that rates for cable are deregulated and have been for some time, but they are required by their Franchise Agreement to notify the City when they have an increase in rates. He stated that if you subscribe to their first tier, second tier and roadrunner high speed Internet services, the total increase would be \$8.54 per month. He stated that there would also be an increase in their equipment rental charge for addressable converters from \$1.55 to \$3.00 effective March 2, 2002.

REPORTS OF COMMITTEES AND OFFICERS:

Councilmember Pomeroy reported that the Community Development Committee met and passed the landscape regulations ordinance out of committee for placement on the agenda in two weeks. He requested that it be placed ahead of the zoning petition that was deferred until January 29, 2002. He stated that the committee also began looking at the site plan ordinance and are checking on a couple of amendments. He stated that staff is still working the temporary sign ordinance.

Councilmember Duffy distributed some documents that he said verified that statements made to the Council by JoAnn Peavler were factually correct.

PRESENTATIONS BY MEMBERS OF THE COUNCIL:

Mayor Felker explained that Council Rule 3.2 allows the Mayor or five Councilmembers to call a special meeting, and this may be announced at any meeting where all members are in attendance. He announced that due to the cancellation of the meeting of January 1, 2002 there will be a special meeting of the City Council on January 29, 2002. He stated that they will discuss any business that may come before the Council in regular session. He stated that the 5:30 p.m. Work Session for January 29th will be with TPAC.

Mayor Felker stated that he and Councilmember Pomeroy will be out of town next week, January 22, 2002 and the Deputy Mayor will chair the meeting.

Councilmember Lane stated that he spoke with the owner of the property at 13th and Quincy and learned that he was putting fill dirt to even it out and plans to build a fence.

PUBLIC COMMUNICATIONS AND COMMENTS:

Orville Johnson, David Palrang, Pallas Holts, David Price and Joel Stottelmire appeared to speak for Public Comments.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:50 p.m. by
unanimous consent.

Iris Walker
City Clerk