

City Council Minutes – February 5, 2002

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 5, 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 Councilmember Hecht.

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

THE CONSENT AGENDA was presented as follows:

Communication requesting approval of settlement offer of \$18,328.97 in Kendall v. Cares v. City of Topeka, Case No. 01-C-1220, was presented.

Final Plat for Indian Creek Meadows Subdivision No. 2 on property located on the north side of NE 46th Street within unincorporated Shawnee County, Kansas, was presented.

Final Plat for Sherwood Park Subdivision No. 6 on property extending west of SW Indian Hills Road at approximately SW 27th Street within unincorporated Shawnee County, Kansas, was presented.

Final Plat for Westridge Business Park Subdivision No. 2 on property located at the northeast corner of SW 21st Street and SW Arvonía Place in the City of Topeka, was presented.

A RESOLUTION introduced by Mayor Felker relating to a housing tax credit application by Topeka City Homes for the development of affordable rental housing at 1243 Western, was presented.

Minutes of the Regular Meeting of January 22, 2002, were presented.

Councilmember Duffy requested that the Final Plats for Indian Creek Meadows Subdivision No. 2 and Sherwood Park Subdivision No. 6 be pulled from the Consent Agenda and discussed separately.

Councilmember Pomeroy requested that the Resolution relating to a housing tax credit application by Topeka City Homes be pulled from the Consent Agenda and discussed separately.

Councilmember Hill moved to approve the Consent Agenda with the exception of Items B, C and E. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

FINAL PLAT for Indian Creek Meadows Subdivision No. 2 on property located on the north side of NE 46th Street within unincorporated Shawnee County, Kansas, was presented.

Neil Dobler, Interim Planning Director gave the staff report and stated that the applicant wanted to combine two lots into one lot.

Councilmember Duffy stated that if the one home is being built to support the production of agriculture on the site, he would support approval of the plat because it would be consistent with the Comprehensive Plan. If it's not to support agriculture but authorization for additional septic tanks for further development on the site, he stated that he would not be supportive of the plat.

Councilmember Duffy moved to defer action on the Final Plat for one week to get clarification on the plat. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

FINAL PLAT for Sherwood Park Subdivision No. 6 on property extending west of SW Indian Hills Road at approximately SW 27th Street within unincorporated Shawnee County, Kansas, was presented.

Councilmember Duffy noted that this was the third Sherwood Park Subdivision that has come before them since he has been on the Council. He expressed his concerns that accepting these public dedications outside the city limits contributes to urban sprawl and does not contribute to the public health and welfare of the City of Topeka. He distributed information listing rationale for why the final plat did not conform to some of the provisions of the Comprehensive Metropolitan Plan 2010 (filed in the Council Packet), and stated for those reasons he will continue to oppose development of this subdivision.

Councilmember Dunn moved to accept the public dedication. The motion seconded by Councilmember Hill carried. Councilmembers Hecht, Duffy, Stubbs and Price voted “no”.
(5-4-0)

A RESOLUTION introduced by Mayor Felker relating to a housing tax credit application by Topeka City Homes for the development of affordable rental housing at 1243 Western, was presented.

Councilmember Pomeroy stated that there are two Neighborhood Improvement Associations (NIAs) within the boundary of the project. He stated that the applicant had discussed this project with one of the NIA’s but not both of them, and he would like to defer action on the resolution until both NIAs are informed.

Councilmember Dunn requested information on many low-income tax credits are being requested by the applicant.

Councilmember Pomeroy moved to defer action on the resolution for one week. The motion seconded by Councilmember Dunn carried unanimously. (9-0-0)

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA
ORDINANCE NO. 17786 introduced by Mayor Felker, amending Chapter 48 of the Code of the

City of Topeka, Comprehensive Zoning Regulations for the City of Topeka and unincorporated areas of Shawnee County by creating Landscape Requirements and regulations therefor repealing said original sections placed on first reading October 9, 2001, was again presented. (ACZR01/04)

Councilmember Pomeroy stated that the ordinance was passed out of committee and this would address the problem of parking lots paved without any landscaping.

Councilmember Lane stated that he spoke with a developer who expressed a concern that the ordinance was too restrictive and would contribute to the decline in economic development. He suggested deferring the ordinance for two weeks for input from the developers.

Tim Paris, Planning Department stated that the ordinance has been in the works for over a year. He stated that there has been several public meetings on this ordinance and developers, architects and engineers were invited to attend. He explained that they applied this ordinance to existing and recent developments and the result was that the cost was approximately one percent of the total construction costs. He noted that one developer told him they typically have clients reserve two percent of the total construction costs for landscaping, so the provisions of the ordinance are comparable.

Councilmember Stubbs stated that she attended the open forums for the engineers and developers. She noted that much could be accomplished by leaving the existing vegetation in place instead of cutting down large, mature trees when developing, and the ordinance provided credits for doing that.

Phil Morse, Planning Commission Member appeared in support of the ordinance. He stated that landscaping makes a more livable community and this is an important step forward for the community. He stated that this plan does not place an undue burden on developers.

Councilmember Dunn expressed a concern about shrubbery around parking lots creating a safety issue.

Tim Paris explained that concern would be addressed in the site plan ordinance that will come before the Council shortly.

Councilmember Lane moved to defer the ordinance until February 19, 2002. The motion seconded by Councilmember Dunn failed. Councilmembers Pomeroy, Alcalá, Dunn, Hecht, Duffy, Stubbs, Hill and Price voted “no”. (1-8-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Dunn, Hecht, Duffy, Stubbs, Hill and Price –8. Noes: Councilmembers Lane –1.

ZONING PETITION by Brad and Adrienne Prokop requesting to amend the District zoning classification from “M-1” Two Family Dwelling District, “E” Multiple Family Dwelling District and “M-3” Multiple Family Dwelling District all to “M-S” Medical Service District on property located at the northwest corner of SW 10th Avenue and SW Lane Street in the City of Topeka, Kansas, was presented.

ORDINANCE NO. 17786 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 the northwest corner of SW 10th Avenue and SW Lane Street in the City of Topeka, from “M-1” Two Family Dwelling District, “E” Multiple Family Dwelling District and “M-3” Multiple Family Dwelling District all to “M-S” Medical Service District placed on first reading September 4, 2001, was again presented. (Z01/13)

Neil Dobler, Interim Planning Director gave the staff report.

Mike Wilson, President of Architect One, representing the applicant appeared for questions.

Mayor Felker asked if there was any exparte communications. Councilmember Pomeroy stated that he had an exparte communication neighborhood residents.

Mayor Felker asked if there was anyone present who wanted to speak concerning the petition. No one appeared.

Councilmember Pomeroy moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Dunn 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.

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)

Neil Dobler, Interim Planning Director gave the staff report. He stated that the petition was remanded back to the Zoning and Platting Committee, they reconsidered it and voted it out unchanged.

Discussion followed relating to the buffer between this property and the residential property to the North.

Ben Crosland, applicant appeared and stated that the zoning he is seeking is classified as a buffer zoning between commercial and single-family in the zoning regulations.

Henry McClure appeared in support of the petition. He stated that he was a member of the Zoning and Platting Committee but chose not to vote on this issue.

Bob Sherbourne appeared and stated that the development should be a blend and best use of the land.

Councilmember Stubbs stated that she opposes the petition because it is not in the best interest of public health and welfare.

Mayor Felker asked if there was any exparte communication.

Councilmember Stubbs stated that she spoke with some of the neighbors in the area.

Councilmember Dunn moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Lane failed. Councilmembers Pomeroy, Hecht, Duffy, Stubbs and Price voted “no”. (4-5-0)

The ordinance failed to be adopted on roll call vote as follows: Ayes: Councilmembers Alcala, Lane, Dunn and Hill –4. Noes: Councilmembers Pomeroy, Hecht, Duffy, Stubbs and Price –5.

**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, Neighborhood Planner gave the staff report. He discussed changes to the plan adopted by the Planning Commission as outlined in the memorandum (filed in Council Agenda Packet) from Kurt Young, Planning Commission addressed to the City Council and County Commissioners dated January 29, 2002. He stated that the Planning Commission recommended approval of the changes.

Lazone Grays, International Black Student Alliance spoke about the strategy to support Welfare-to-Work Programs. He stated that he wanted to provide clarity between welfare-to-work and low-income. He explained the difference and stated that low-income is a separate class or category and should be included in the document separately.

Phil Morse, Planning Commission member stated that they agreed with 90% of suggested amendments. He explained that this is a long-term plan and they felt some changes unnecessarily took away the flexibility of the plan.

Councilmember Duffy noted his objections to the memorandum. He stated that the plan includes a list of acknowledgements, but none of those listed appeared or had a discussion with the Council about the plan.

Councilmember Duffy moved to defer the ordinance for one week. The motion seconded by Councilmember Dunn carried unanimously. (9-0-0)

ORDINANCE NO. 17788 introduced by Mayor Harry Felker relating to the Capital City Downtown Business Improvement District, establishing the method of raising revenue, amending City of Topeka § 42-38 and specifically repealing said original section placed on first reading January 22, 2002, was again presented.

Councilmember Dunn stated that the Policy Committee voted the ordinance out of committee and recommended approval by a 2-1 vote.

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

Jim Parrish, Business Improvement District Board Member appeared and explained the proposed increase in the BID service fees. He also distributed a copy of their annual report to each Councilmember.

Devin Sutherland, BID Director was present to answer questions.

Hans Heinemann appeared and expressed his opposition to taxes for businesses. He stated that when businesses are taxed, they raise their rates to the consumer.

Councilmember Alcalá moved to approve the original ordinance without an increase in rates. The motion was seconded by Councilmember Lane.

Councilmember Alcalá stated that it is unfair to increase the service fees when there are 30% of businesses that have not paid. He stated that these businesses are vital to our community.

A discussion followed regarding whether or not the Director of the Business Improvement District should handle the billing for the service fees.

Randy Bailes, City Controller stated that it is the City's responsibility to collect the fees and the billing should come from the City.

The motion to amend the ordinance by approving the original fees without an increase failed. Councilmembers Pomeroy, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price voted "no". (1-8-0)

The ordinance was adopted on roll call votes as follows: Pomeroy, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –8. Noes: Councilmember Alcalá –1.

AN ORDINANCE introduced by Councilmembers Duane Pomeroy, Clark Duffy, and Gary Price, sitting as the Economic Development Committee, relating to the Topeka Public Building Commission, pursuant to and in accordance with the provisions of K.S.A. 12-1757, et seq., amending § 26-66, Created, § 26-67, Members, and § 26-68, Functions, and repealing said original sections placed on first reading January 8, 2002, was again presented.

The Deputy Mayor referred the ordinance to the Economic Development Committee.

ORDINANCE NO. 17789 introduced by Mayor Felker amending City of Topeka Code § 54-133 prohibiting prostitution or sodomy and establishing prostitution elimination zones, and repealing said original section placed on first reading December 11, 2001, was again presented.

Councilmember Dunn moved to accept the committee report. The motion was seconded by Councilmember Hill.

John Knoll, Assistant City Attorney gave an explanation of the ordinance. He noted that this type of ordinance has been used in Kansas City and has not been challenged.

Police Chief Klumpp explained the difficulties the Police Department has had in building a case for prosecution on these types of cases. He stated that to reduce crime you need to focus on quality of life issues, and they are trying to do this in this particular area where there is a problem with this activity.

Councilmember Hecht expressed her concern that the ordinance would have no impact without changes to require the court to impose payment of fines, court costs and jail time without parole.

Janene Falley, Community Police Officer appeared in support of the ordinance and stated that a select few involved in other crimes have inflated their statistics. She stated that clients would not know where to find the prostitutes if they are moved from their comfort area.

Councilmember Price stated that the Neighborhood Improvement Associations are also concerned about this problem. He stated that he agrees with Councilmember Hecht that they need to address other issues as well but he supports this ordinance to assist the Police Department.

Bill Nickelson and Pat DeLapp appeared in opposition to the ordinance and expressed their concerns about government abuse of power and the ordinance not being allowed by the State and not being cost effective.

Mayor Felker noted that it was nearly 11:00 P.M. and asked for a motion to extend the meeting.

Councilmember Dunn moved to extend the meeting through the end of the agenda. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

Ted Mize, Hans Heinemann, Marcia Miltz, Lee Stone and Major Mike Padilla appeared in support of the ordinance. They expressed their concerns that prostitution and activity that goes along with it is a detriment to the residential neighborhoods and a nuisance to those living there. It was also noted that this is not just a law enforcement problem, but everyone has a role including the court, council and neighborhood improvement associations.

Councilmember Duffy stated that he opposed the ordinance in committee because of the prostitution elimination zones. He stated that this is a short cut to the judicial process at the expense of civil rights, and he believes there is already a tool in place to accomplish what the Police Department is requesting.

Councilmember Duffy moved to eliminate the provision that establishes prostitution elimination zones. The motion was seconded by Councilmember Lane.

John Knoll explained that being in the area alone would not be a crime. He stated that there would need to be proof required that they are there to engage in sexual activity.

Discussion followed relating to the possibility of this restriction causing the problem to move to other parts of the City and if they should restrict freedom of movement.

The motion to eliminate the provision for establishment of the prostitution elimination zones failed. Councilmembers Pomeroy, Alcalá, Stubbs, Hill and Price voted “no”. (4-5-0)

Mayor Felker asked for a clarification on whether a charter ordinance was required.

Brenden Long, City Attorney stated that they had already taken necessary action, and this just required an ordinary ordinance.

The motion to accept the committee report and adopt the ordinance carried.

Councilmembers Lane, Hecht and Duffy voted “no”. (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Dunn, Stubbs, Hill and Price –6. Noes: Councilmembers Lane, Hecht and Duffy –3.

A RESOLUTION introduced by Councilmember Gary Price amending the Rules of Procedure for City Council Committees, was presented..

The Deputy Mayor referred the resolution to the Policy Committee.

A RESOLUTION introduced by Councilmember Gary Price amending Topeka City Council Rules of Procedures, specifically Rule 6.A and Rule 6.12, and rescinding said original sections, was presented.

The Deputy Mayor referred the resolution to the Policy Committee.

AN ORDINANCE introduced by Mayor Felker relating to the vacation of a 2-foot wide strip of drainage easement located on either side of SW 23rd Street and SW 23rd Court, the

centerline of which is approximately 375-feet west of SW Ancaster Road as dedicated by West Indian Hills Subdivision No. 11, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V02E/1)

AN ORDINANCE introduced by Mayor Felker, authorizing security improvements to the City Hall Municipal Building, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, was presented for first reading.

The Deputy Mayor referred the ordinance to the Economic Development Committee.

AN ORDINANCE introduced by Mayor Felker relating to the inspection of taximeters, amending City of Topeka Code § 154-128, and specifically repealing said original section, was presented for first reading.

AN ORDINANCE introduced by Mayor Felker relating to the licensing of taxicabs, amending City of Topeka Code §154-66, and specifically repealing said original section, was presented for first reading.

AN ORDINANCE introduced by Mayor Felker relating to taxicab insurance, amending City of Topeka Code § 154-88, and specifically repealing said original section, was presented for first reading.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER:

Mayor Felker stated that the Chief Administrative Officer was not present because he was ill.

REPORTS OF COMMITTEES AND OFFICERS:

Councilmember Lane reported that the Public Improvements Committee would meet at 4:00 p.m., Thursday, February 07, 2002.

Mayor Felker reported on GO! Topeka's fund raising drive.

PRESENTATIONS BY MEMBERS OF THE COUNCIL:

Councilmember Lane asked if there was a need for the 5:30 work sessions since some of the information is repeated at the Council meetings.

Councilmember Duffy complimented the Public Works Department on their snow and ice removal efforts. Mayor Felker stated that the Forestry crews were being sent to Lawrence to help out where they were hit worse than Topeka.

Councilmember Duffy asked about the Legislative package. The City Attorney stated that he had a meeting scheduled with the Lobbyist, Shelby Smith on Thursday and would provide an update to the Council.

Councilmember Duffy inquired about the Joint Economic Development Organization (JEDO) Board meeting and stated that he noticed that the draft contract did not include provisions for competitive bidding and employment issues. He stated that revitalization of the downtown core of Topeka was also not included. He also noted that it was the responsibility of the City Council and County Commissioners to make decisions about Economic Development priorities for the year.

Councilmember Duffy distributed copies of a resolution regarding the City of Topeka's concern with the proposed downsizing of the Colmery-O-Neil Veterans Administration Medical Center in Topeka, and requested that it be placed on a future agenda.

Councilmember Hecht expressed her concern about the need for City Officials to meet with Burlington Northern Santa Fe and other major businesses to see what can be done to keep them in Topeka.

Mayor Felker reported on his meeting with Burlington. He stated that he would be meeting with Governor Graves to share their concerns.

Councilmember Dunn expressed her frustration with conflicting information she has received from Administration on the Zoo, the Law Enforcement Center roof and Housing and Neighborhood Development Department.

PUBLIC COMMUNICATIONS AND COMMENTS:

Lazone Grays appeared to speak for Public Comments.

Councilmember Dunn moved to adjourn into executive session for a period of thirty minutes to discuss a personnel matter. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

The Council reconvened in open session after thirty minutes. No action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 1:15 a.m. by unanimous consent.

Iris Walker
City Clerk