

City Council Minutes – June 11, 2002

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 11, 2002. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcala, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price – 9. Mayor Felker presided –1.

AFTER THE MEETING was called to order, Mayor Felker 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:

Presentation on the draft of the Gage Park Master Plan, was presented.

Bill Riphahn, Park Planner gave the staff report. Some of the proposed projects presented for Gage Park included a face lift at the 6th & Gage entrance; removing two softball fields for possible expansion of the zoo; additional parking and landscaping in specified areas; additional restrooms in carousel area; permanent seating, fencing and trees at the amphitheatre; new train depot with restrooms; relocate Helen Hocker Theatre by the Amphitheatre; remove Helen Hocker Administration building; eliminate part of circle drive in front of the pool; face lift and new shelter in Civitan area; replace green house; move Snyder's cabin and replace with a larger shelter; and perhaps open a botanical garden where Snyder's cabin is currently located.

FINAL PLAT for Chelsea Townhomes Subdivision on property located at the northeast corner of SW 37th Street and SW Chelsea Drive in the City of Topeka, Kansas, (P02/15) was presented.

A COMMUNICATION requesting approval of the appointment of David Thurbon to the position of Director of the Topeka-Shawnee County Planning Department, was presented.

Minutes of the regular meeting of June 11, 2002, were presented.

APPLICATION for a Cereal Malt Beverage License, bearing the approval of the Chief of Police and City Inspectors for Kum and Go #322, 3335 Gage Boulevard, was presented.

Councilmember Stubbs stated that she would like to commend the Planning Department in regards to total neighborhood acceptance concerning the Final Plat for Chelsea Townhomes Subdivision.

Councilmember Dunn moved to approve the consent agenda. The motion seconded by Councilmember Price 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, June 11, 2002, at 7:00 P.M., in the Council Chamber, 214 East 8th Street in conjunction with vacation request V02E/4 by Ralph Lewis, co-trustee to vacate 25-foot and 60-foot wide access easement for property located at 350 NE U.S. Highway 24 in the City of Topeka, Kansas.

ORDINANCE NO. 17845 introduced by Mayor Harry Felker relating to the vacation of a 25-foot wide and 60-foot wide access easement on property located at 350 NE U.S. 24 Highway, as dedicated by plat of North Topeka Golf Center, City of Topeka, Shawnee County, Kansas, placed on first reading June 4, 2002, was again presented. (V02E/4)

Barry Beagle, 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 Councilmember Lane 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. 17846 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 for the City of Topeka, Kansas, and specifically repealing City of Topeka Ordinance No. 17786, placed on first reading June 4, 2002, was again presented. (ACZR01/04)

Councilmember Lane moved to make an amendment to page 15 of the ordinance by striking lines 329, 330, 331, 332, 333 and 334; striking the first three words of lines 339, 340, 341 and 342; and completely deleting lines 346, 347, 348, 349, 350 and 351. Insert language as follows; “if the required maintenance or replacement is not accomplished within one planting season the Planning Director on behalf of the City of Topeka shall cause the required maintenance or the replacement of the plantings and costs, thereof, shall be assessed against the real property as a service assessment”. The motion was seconded by Councilmember Dunn.

Mayor Felker suggested that planting season be defined.

Councilmember Alcalá made a friendly amendment to the motion to include specific a growing season.

Beth Schafer, Assistant City Attorney stated that the amended document should define a typical growing season, beginning in early spring and extending into late fall and she would more clearly define that in the ordinance if the amendment passed.

Several Councilmembers voiced their concerns on the financial implications of the ordinance.

Councilmember Lane accepted the friendly amendment to his motion.

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

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

ZONING PETITION (HL02/4) by Mark and Sarah Burenheide requesting to amend the District Zoning Classification by granting the "HL" Historic Landmark Overlay District to property currently zoned "C-5" Commercial District and located at 929 S. Kansas Avenue in the City of Topeka, Kansas, was presented.

ORDINANCE NO. 17847 introduced by Mayor Harry Felker designating real property more specifically described herein as a historic landmark and presently zoned "C-5" Commercial District and located at 929 S. Kansas Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4, placed on first reading June 4, 2002, was again presented.

Barry Beagle, Planning Department gave the staff report.

Mark Burenheide, Chairman of Historic Landmarks Commission appeared for questions.

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

Councilmember Alcalá moved to accept 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 (Z02/10) by AMO I, L.P., requesting to amend the District Zoning Classification from "R-2" Single Family Dwelling District TO "PUD" Planned Unit Development District ("M-2" usage) on property located at the southeast corner of SW Munson Avenue and SW Buchanan in the City of Topeka, Kansas, was presented.

ORDINANCE NO. 17848 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 southeast corner of SW Munson Avenue and SW Buchanan Street in the City of Topeka, Kansas, from "R-2" Single Family Dwelling District TO "PUD" Planned Unit Development District ("M-2" usage), placed on first reading June 4, 2002, was again presented.

Barry Beagle, Planning Department gave the staff report. No legal protest opposing this project was filed.

Mayor Felker asked if there were any exparte communications. Each Councilmember stated whether or not they had exparte communications.

Councilmember Duffy asked how the zoning changes on this specific project would help restore the historical character of the Tennessee Town Neighborhood Project.

In response, Barry Beagle stated that the design of the new buildings will resemble the old structures that are currently in the neighborhood keeping the historical character intact. This property was recognized within the original plan as an opportunity to develop a multi-family dwelling. By focusing on an open multi-family development instead of an elderly multi-family development it would enforce one of the main elements of the Tennessee Town Neighborhood Project, to bring families back into the neighborhood.

Councilmember Stubbs expressed concerns on how this project will effect the vacant homes in the area, who will manage the complexes, and if the green space and the playground would be developed simultaneously with the complexes.

Barry Beagle explained that this project was not designed to interfere with the infill housing project in this neighborhood, therefore it was not justifiable to use the current vacant

homes as multi-family dwellings. The new development will be managed by the Topeka Homes, the green space and the playground will be developed in conjunction with the complexes.

Councilmember Dunn inquired on how the complexes will accommodate the handicapped, and if this development would apply to a mixed-income group.

Barry Beagle stated that in addition to the front step entry the units are designed with both side and rear entries, and there will be certain units that will be specifically designed for the handicapped. He stated that the housing will be available to all levels of income.

Councilmember Duffy inquired on the possibility of accommodating a daycare facility in the neighborhood.

Oliver Green, Reverend Jean Wilson, Michael Bell and Al Goodwin spoke in support of the project.

Barbara Leal, Delores Smith, Ruth Floyd and Karen Hiller spoke in opposition of the project, and voiced their concerns about the density of the project and how it might not fit well with the character of the neighborhood.

Councilmember Dunn moved to accept the petition and adopt the ordinance. The motion was seconded by Councilmember Lane.

Councilmember Pomeroy challenged the call for the question.

Mayor Felker asked for a vote on if the question should be called.

The call for the question failed. Councilmembers Pomeroy, Duffy, Stubbs and Price voted "no". (5-4-0)

Discussion followed concerning the overall affect of the proposed project on the Tennessee Town Neighborhood.

Mayor Felker asked if there were any exparte communications.

Councilmembers Pomeroy, Alcalá, Dunn and Duffy declared their ex parte communications.

The motion to accept the petition and adopt the ordinance 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 (Z02/11) by Candace L. Howe, Trustee requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District with Resolution of Intent for "PUD" Planned Unit Development District ("M-2" use group) TO "M-1" Two Family Dwelling District on property located at the northeast corner of SW 37th Street and SW Chelsea Drive in the City of Topeka, Kansas, was presented.

ORDINANCE NO. 17849 introduced by 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 northeast corner of SW 37th Street and SW Chelsea Drive in the City of Topeka, from "R-1" Single Family Dwelling District with Resolution of Intent for "PUD" Planned Unit Development District ("M-2" use group) to "M-1" Two Family Dwelling District, presented for first reading on June 4, 2002, was again presented.

Barry Beagle, Planning Department gave the staff report.

Mayor Felker asked if there were any ex parte communications.

Councilmember Stubbs stated that she was pleased that all the surrounding neighborhoods were involved in the decision of the project however, she is disappointed that the zoning will be a straight "M-1" Two Family Dwelling District without including "PUD" Planned Unit Development District.

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

Councilmember Dunn moved to accept the petition and adopt the ordinance. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

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

ORDINANCE NO. 17850 introduced by Councilmembers Clark Duffy, Duane Pomeroy and Gary Price, sitting as the Economic Development Committee, relating to the arts, creating the Office of the Arts, and the Arts Advisory Committee, the Arts Grant Program and the Art in Public Places Program, placed on first reading June 4, 2002, was again presented.

RESOLUTION NO. 7238 introduced by Councilmembers Clark Duffy, Duane Pomeroy and Gary Price sitting as the Economic Development Committee proscribing Topeka Arts Grant Program funding and operational details, was presented.

Councilmember Duffy gave a detailed report on the ordinance including; development background, what other communities have done in comparison, what types of programs will be funded, how the funds would be generated and lastly, the importance of Arts in the community.

Following the report, several Councilmembers expressed their support of the ordinance and the contribution it will make towards the quality of life in the City of Topeka.

Councilmember Stubbs stated that she preferred to use a contracting agency to run this program.

David Nelson and Marge Bradshaw spoke in support of the ordinance.

Cheryl Logan appeared for questions.

Several Councilmembers expressed their concerns on the financial implications of this program, and how it will effect the community from a financial standpoint.

Councilmember Price moved to adopt the ordinance and the resolution. The motion seconded by Councilmember Stubbs, carried. Councilmember Alcalá voted "no". (8-1-0)

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

ORDINANCE NO. 17851 introduced by Councilmember Harold Lane relating to the prohibition of all-night parking, amending City of Topeka Code Section 142-581, All-night parking prohibited, and specifically repealing said original section, placed on first reading May 14, 2002, was again presented.

Councilmember Lane gave the committee report.

Councilmember Lane moved to approve the committee report. The motion seconded by Councilmember Dunn, carried. Councilmember Pomeroy voted "no". (8-1-0)

Councilmember Lane explained the ordinance and the safety issues involved.

Councilmember Stubbs asked what the penalty would be on a parking violation such as this.

In response, John Knoll, City Prosecution Office stated that a fine of \$499 or up to one-hundred-seventy-nine days in jail however, the Municipal Court Judge has the authority to make a fine schedule for certain violations, typically a parking violation is non-mandatory court and a twenty-dollar fine.

The ordinance was adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Alcalá, Lane, Dunn, Stubbs, Hill and Price -7. Noes: Councilmembers Hecht and Duffy -2.

Councilmember Dunn noted that it was nearly 11:00 p.m. and moved to extend the meeting until the end of the agenda. The motion seconded by Councilmember Lane carried. Councilmembers Hecht and Duffy voted "no". (7-2-0)

APPEAL by Jared Haines of denial/revocation of Merchant Guard License, was presented.

John Knoll, City Prosecution Office gave the staff report and explained why the license was revoked.

Attorney, Philip Grayson, with Fairchild Haney and Buck, appeared in support of the applicant.

Mr. Raus, owner of Pro Security, PSI Armor and PSI Security Alarm Systems appeared in support of Jared Haines.

Jared Haines spoke in his defense and explained the circumstances.

Several Councilmembers continued the discussion regarding the licensing procedure.

Councilmember Alcalá moved to defer for one week. The motion seconded by Councilmember Hill.

Councilmember Pomeroy stated that he did not think it was appropriate to defer when it affects someone's employment.

Councilmember Alcalá made a substitute motion to proceed with the rest of the agenda and move this item to the end of the agenda for further discussion . The motion seconded by Councilmember Pomeroy carried. Councilmembers Hecht, Stubbs and Price voted "no". (6-3-0)

A COMMUNICATION to authorize City of Topeka, Public Works Department to waive all permit fees for the U.S.D. #501 fourteen elementary school construction projects currently under design as well as the Sport Park Project, was presented.

Neil Dobler, Public Works Director gave the staff report.

Mayor Felker noted the fees involved, total amount of building permit fees is \$46,151.70 and the cost of right-away property is \$67,214.00.

Following the staff report Councilmember Duffy continued discussion on the pros and cons of the project. He stated that he does not see how the City of Topeka will benefit from this agreement and therefore opposes the request.

Councilmember Stubbs asked if the City of Topeka has waived fees for U.S.D. #501 in the past.

In response, Mayor Felker gave several examples of when the City of Topeka and U.S.D. #501 have assisted each other in certain financial situations.

Councilmember Duffy inquired on the financial implications of the project.

Councilmember Duffy moved to deny the request. The motion seconded by Councilmember Hecht, carried. Councilmembers Pomeroy, Dunn, Stubbs and Hill voted "no". (5-4-0)

A RESOLUTION introduced by Mayor Harry Felker, relating to transient guest tax funds, designating the Convention and Visitors Bureau as the Agency to evaluate requests for discretionary transient guest tax monies and thereafter make distributions, was presented.

The Deputy Mayor Dunn referred the resolution to the Policy Committee.

AN ORDINANCE introduced by Mayor Felker and Councilmembers Clark Duffy and Duane Pomeroy, amending the Comprehensive Zoning Code by adding as permitted, provisional and conditional uses, group residence general, group residence limited, correctional placement residence general, and correctional placement residence limited, and providing definitions therefor, amending City of Topeka Code Chapter 48, Article XXXV and Article XXVI, and

specifically amending City of Topeka Code Section 48-2.02(c), 48-3.02(c), 48-4.02(c), 48-5.02(c), 48-6.02(c), 48-7.02(c), 48-8.02(c), 48-8a.02(c), 48-9.02(a) and (c), 48-10.02(a) and (c), 48-11.02(a) and (c), 48-12.02(c), 48-13.02(c), 48-17.02(a) and (c), 48-18.02(a) and (c), 48-23.02(a) and (c); 48-23a.03.2, 48-23a.04.2, and specifically repealing said original code sections as noted in section 48 of this City of Topeka Ordinance and specifically repealing City of Topeka Ordinance No. 17829, was presented for first reading.

AN ORDINANCE introduced by Mayor Felker and Councilmembers Clark Duffy and Duane Pomeroy relating to uses that are regulated by adoption of City Ordinance and specifically repealing City of Topeka Ordinance No. 17830, was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Hill announced a Public Health and Safety Meeting concerning the Vicious Dog and Exotic Animal Ordinance on June 17, 2002, at 4:00 p.m., Room 255, City Hall.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Dunn commended the choice of the new Fire Chief and the GED Graduation Ceremony.

Councilmember Hecht encouraged City Council to support funding for the YMCA Safe Visit Program and announced the Rally Against Hate on June 15, 2002 at Gage Park Amphitheater

PUBLIC COMMUNICATIONS AND COMMENTS, were presented.

Marge Bradshaw and Tim Clothier spoke under public comment.

Following public comment Councilmember Alcalá moved to reconsider Item 7B., waiver of fees for U.S.D. #501. The motion seconded by Councilmember Lane carried.

Councilmembers Dunn, Hecht and Duffy voted "no". (6-3-0)

Councilmember Alcalá moved to approve the waiver. The motion seconded by Councilmember Lane carried. Councilmembers Hecht and Duffy voted "no". (7-2-0)

Councilmember Duffy expressed his concerns surrounding the drop out rate at U.S.D. #501 and the lack of effort by the school district to cooperate with the City of Topeka for a solution.

Mayor Felker said at this time, they would resume discussion on Item 7A., the appeal of denial/revocation of the Merchant Guard License by Jared Haines.

Councilmember Stubbs moved to defer the appeal for one week. The motion died for lack of a second.

Councilmember Alcalá moved to deny the appeal. The motion seconded by Councilmember Lane, carried. Councilmembers Pomeroy, Dunn, Hecht and Duffy voted "no". (5-4-0)

Councilmember Pomeroy moved to adjourn into executive session for a period not to exceed fifteen minutes for the purpose of discussing a legal matter. The motion seconded by Councilmember Hecht carried unanimously. (9-0-0)

After fifteen minutes had passed, motion was made and carried to extend the executive session for an additional fifteen minutes.

Following the fifteen minute extension of the executive session, the City Council reconvened in open session. Mayor Felker stated that no action was taken.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent
at 1:10 a.m.

Iris Walker
City Clerk