

City Council Minutes – September 10, 2002

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 10, 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, Hecht, Duffy, Stubbs, Hill and Price -8. Absent: Mayor Felker –1. Deputy Mayor Dunn presided -1.

Mayor Felker was attending a conference in Ft. Worth, Texas.

AFTER THE MEETING was called to order, prayer was offered by Captain Paul Dustin, Salvation Army.

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

THE CONSENT AGENDA was presented as follows:

A Final Plat for Walker Square Subdivision on property located between SE Minnesota Avenue and SE Iowa Avenue on the south side of SE 33rd Street, extending approximately 662-feet east of SE Minnesota Avenue in the City of Topeka, Kansas, was presented. (P02/11)

Minutes of the Regular Meeting of August 27, 2002 and September 3, 2002, were presented.

Councilmember Lane moved to accept 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, September 10, 2002, at 7:00 P.M., requesting a Conditional Use Permit to establish a cultural facility on property currently zoned "R-1" Single Family Dwelling District and located at 1201 SW Oakley Avenue in the City of Topeka, Kansas.

RESOLUTION NO. 7264 introduced by Mayor Harry Felker 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 cultural facility on property currently zoned "R-1" Single Family Dwelling District and located at 1201 SW Oakley Avenue in the City of Topeka, Kansas, was presented.

Barry Beagle, Planning Department gave the staff report.

Cheryl Logan, Executive Director of the Arts Council appeared to answer questions.

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

Councilmember Stubbs moved to close the public hearing and adopt the resolution. 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, September 10, 2002, at 7:00 P.M., in conjunction with vacation request V02E/6 by Indian Hills Land Development No. 2 Corporation, owners, to vacate a 5-foot wide strip of a 35-foot wide drainage/utility easement which is located on the east side of SW Ancaster Road at SW 23rd Street, extended, which adjoins their property.

ORDINANCE No. 17884 introduced by Mayor Harry Felker relating to the vacation of a 5-foot wide strip of a 35-foot wide drainage/utility easement on property located east of SW Ancaster Road at SW 23rd Street, extended, as dedicated by the plat of West Indian Hills Subdivision No. 11, City of Topeka, Shawnee County, Kansas, placed on first reading September 3, 2002 was again presented.

Barry Beagle, Planning Department gave the staff report.

Councilmember Dunn gave an opportunity for anyone present to speak. No one appeared.

Councilmember Hill 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.

Deputy Mayor Dunn announced that there would be a change made to the agenda, and First Readings will be presented at this time.

AN ORDINANCE introduced by Mayor Felker, instituting a real estate lien upon certain lots and pieces of ground in Shawnee County, Kansas, to pay the cost for sewage collection and treatment where such payments to the City have not been made due to neglect, failure or refusal to pay, pursuant to K.S.A. 12-631k was presented for first reading.

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from "I-1" Light Industrial District to "M-1" Two-Family Dwelling District was presented for first reading.

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 within the Monroe neighborhood of the City of Topeka, Kansas requesting to amend the District Zoning Classification from "I-1" Light Industrial District and "I-2" Heavy Industrial District to "OS-1" Open Space District was presented for first reading

AN ORDINANCE introduced by Mayor Harry Felker regulating traffic within the corporate limits of the City of Topeka, Kansas, incorporating by reference the "Standard Traffic Ordinance for Kansas Cities" edition of 2002, with certain omissions, changes and additions; amending and repealing original Section 142-151 of the Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker amending Section 142-152 of the Code of the City of Topeka to amend and delete certain provisions of the current edition of the Standard Traffic Ordinance for Kansas Cities, and specifically repealing said original Section 142-152 was presented for first reading

AN ORDINANCE introduced by Mayor Felker relating to grease traps and grease interceptors, amending City of Topeka Code Section 26-442.1 and Section 1014.1 of the Uniform Plumbing Code as amended by City of Topeka Ordinance 17835 and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker, authorizing Improvement Project No. 13131-01, which provides for the repair/replacement of the Topeka Performing Arts Center's roof covering system as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

Councilmember Duffy moved to defer Items B through F for one week. The motion was seconded by Councilmember Alcalá.

Councilmember Stubbs asked if they could vote on Item F because she was contacted by one of the developers and told it is a time sensitive issue.

Councilmember Duffy moved to amend the motion to exclude Item F.

Councilmember Alcalá withdrew the second.

The motion to defer Items B through E seconded by Councilmember Stubbs carried unanimously. (9-0-0)

A ZONING PETITION (HL02/5) by Historic Jayhawk Theatre, Inc. 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 720 SW Jackson Street in the City of Topeka, Kansas.

AN ORDINANCE 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 720 SW Jackson Street in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading September 3, 2002 was again presented.

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

A ZONING PETITION (HL02/7) by Golden City Development, LLC 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 909 S. Kansas Avenue in the City of Topeka, Kansas.

AN ORDINANCE 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 909 S. Kansas Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading was again presented.

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

A ZONING PETITION (Z02/26) by Walker Services, Inc. requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District TO "M-1" Two Family Dwelling District on property located at the southeast corner of SE 33rd Street and SE Minnesota Avenue in the City of Topeka, Kansas.

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 at the southeast corner of SE 33rd Street and SE Minnesota Avenue in the City of Topeka from "R-1" Single Family Dwelling District to "M-1" Two Family Dwelling District placed on first reading September 3, 2002 was again presented.

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

A ZONING PETITION (Z02/27) by Family Service and Guidance Center of Topeka, Inc. requesting to amend the District Zoning Classification from "O&I-2" Office and Institutional District TO "O&I-3" Office and Institutional District on property located at the west side of SW Frazier Avenue at SW 4th Street, extended, in the City of Topeka, Kansas.

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 west side of SW Frazier Avenue at SW 4th Street, extended, in the City of Topeka, Kansas, from "O&I-2" Office and Institutional District to "O&I-3" Office and Institutional District placed on first reading September 3, 2002 was again presented.

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

A ZONING PETITION (Z02/28) by James T. Blackburn Trust and Barbara L. Blackburn Trust requesting to amend the District Zoning Classification from "C-2" Commercial District TO

"PUD" Planned Unit Development District ("O&I-2" and "C-2" usage) on property located at 3024 SW Wanamaker Road in the City of Topeka, Kansas was presented.

ORDINANCE No. 17886 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 710-feet South of SW 29th Street in the City of Topeka, Kansas, from "C-2" Commercial District TO "PUD" Planned Unit Development District placed on first reading September 3, 2002 was again presented.

A FINAL PLAT for Heritage Plaza Subdivision by James T. Blackburn Trust and Barbara L. Blackburn Trust on property located at 3024 SW Wanamaker Road in the City of Topeka, Kansas was presented.

Barry Beagle, Planning Department gave the staff report.

Deputy Mayor Dunn asked if there was additional exparte, besides Councilmember Stubbs. There was none declared.

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

Councilmember Stubbs moved to approve the zoning petition, adopt the ordinance and accept the final plat. The motion seconded by Councilmember Alcala 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. 17885 introduced by Councilmembers Gary Price, Duane Pomeroy, Clark Duffy and Lisa Hecht making it unlawful to commit certain crimes by reason of any motive of intimidation or bias based on the race, religion, creed, color, sex, sexual orientation,

gender identity or expression, disability, national origin or ancestry, or age of an individual or group placed on first reading September 3, 2002 was again presented.

Brenden Long, City Attorney concurred that Councilmember Alcala does not have a conflict of interest.

Councilmember Alcala stated that he would participate in the discussion.

Councilmember Duffy stated that the first ordinance would be voted on before continuing with public comment on the second ordinance.

Jack Jacob, Timothy Phelps, Steve Drain, Charles Hockenbarger, Margie Phelps, Carl Hockenbarger, Jonathan Phelps Fred Phelps, Sr., Ron Stewart, Dan Walker, Rabbi Yehjoa Levin, John Cooney, Mark Hunson, Ben Williams, Craig Dunstan, Bob Hanson, Clara Gamache, Robert Gilmore, Hal Smith, Kirk Nystrom, Marge Bradshaw, Reverend Edward Kirtdoll, Jason Oesterreich, Tom Munker, George Harrington, Susan Hamilton, and Mark Schriener spoke in opposition of the ordinance.

Sharon York, Jason Chaika, Dr. Roy Menninger, Pedro Irigonegary, Charlene Mullenhardt, Dan Osman, Jo Ann Donnell, Arlen Clayton, L.J. Leatherman, Sherry Baer and Bill Rich spoke in support of the ordinance.

Councilmember Price moved to adopt the ordinance. The motion was seconded by Councilmember Duffy.

Councilmember Stubbs asked several questions concerning the ordinance.

Councilmember Duffy explained why he supports the ordinance and stated that it is important that the community does not put up with hate.

Councilmember Alcala asked for clarification of the verbiage in the ordinance.

Councilmember Lane inquired on the legal definition of criminal sodomy. He also stated that he received an overwhelming response to oppose this ordinance, therefore, he will not support this ordinance.

Councilmember Price stated that he would support this ordinance because hate should not be tolerated in the City of Topeka.

Several Councilmembers asked if this ordinance would prevent picketing.

In response, Brenden long stated that this ordinance does not address any particular group or individuals and it would not eliminate picketing.

Councilmember Stubbs expressed her concerns on the consistency of the State Statute and consulted the parliamentarian for clarification.

Councilmember Stubbs moved to amend the verbiage of the ordinance to mirror State Statute. The motion was seconded by Councilmember Alcala.

Councilmember Alcala asked if the suggested amendment is to strike "gender identity or expression", and if so then he would support the ordinance because it would be identical to the State Statute that is already in place.

The City Attorney stated that he believed that was correct.

The motion to amend failed. Councilmembers Pomeroy, Dunn, Hecht, Duffy and Price voted "no". (4-5-0)

Following further discussion, Councilmember Duffy made a motion to reconsider the previous amendment to mirror State Statute. The motion seconded by Councilmember Pomeroy carried. Councilmembers Dunn and Hill voted "no". (7-2-0)

The motion to amend the ordinance carried. Councilmember Dunn voted "no". (8-1-0)

Councilmember Price moved to adopt the ordinance as amended. The motion seconded by Councilmember Duffy carried. Councilmembers Dunn and Hill voted "no". (7-2-0)

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

Councilmember Dunn stated that she voted no because she felt there is no need for the ordinance because of the State Statute that is already in place.

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

AN ORDINANCE introduced by Councilmembers Clark Duffy and Lisa Hecht relating to the discrimination ordinances, amending Topeka City Code Sections 82-290, 82-291, 82-293, 82-295, 82-296, 82-297, 82-298, 86-2, 86-28, 86-51, 86-52, 86-111, 86-112, 86-114, 86-131, 86-134 and specifically repealing said original sections place on first reading September 3, 2002 was again presented.

Councilmember Duffy moved to refer the ordinance to the Public, Health and Safety Committee. The motion was seconded by Councilmember Hecht.

Councilmember Dunn made to make a substitute motion to refer the ordinance to the Committee Of The Whole.

Councilmember Dunn withdrew the substitute motion.

The motion to refer the ordinance to the Public, Health and Safety Committee failed. Councilmembers Alcalá, Lane, Dunn, Stubbs and Hill voted "no". (4-5-0)

Jack Jacob, Rita Cline, Dr. Jim Congdon, Shirley Phelps-Roper, Megan Phelps-Roper, Ben Phelps, Rebekah Phelps-Davis, Steve Drain, Margie Phelps, Lauren Drain, Charlene

Hockenbarger, Carl Hockenbarger, Jonathan Phelps, Fred Phelps, Sr., Quinton Martin, Reverend Cecil Washington, Jr., Reverend Billie Blackman, Ron Stewart, Denise Eulert, Reverend Edward Kirtdoll, Jim Lord, Rabbi Yehjoa Levin, Barry Feaker, Joe Ledbetter, Mark Schriener, Austin Vincent, Dan Walker, Ben Williams, Arlen Clayton, Robert Gilmore, Susan Hamilton, Ralph Knehans, Jason Oesterreich, Clara Gamache, Kirk Nystrom, Dean Schmitt, Craig Dunstan, Greg Varney, Bob Hanson, Marge Bradshaw, Mark Schriener and Erin Norris spoke in opposition of the ordinance.

Pedro Irigonegary, Sharon York, Jim Schnoeberen, Dr. Roy Menninger, Alice Bartlett, Ryan Freed, Charlene Mullenhardt, Rabbi Lawrence Karol, Lora Burton, Mike Congdon, Reverend Paul Evans, Amy Hyten, Travis Barnhart, Todd Reeves, Tiffany Muller, Lora Burton, Alexis Mitchell, Annette Billings, Tom Munker, Hi Stockwell, Andrew Marsh, Jonathan Loppnow, Jason Chaika, Ludy Sapp-Kietzman, Dale Schmidt, Bill Rich, Jo Ann Donnell, Sherry Baer, Dr. Richard Donner, Teresa Valencia and L.J. Leatherman spoke in support of the ordinance.

Councilmember Stubbs explained that she would not support the ordinance because there is no consistency in the criteria.

Councilmember Pomeroy moved to amend the ordinance on page 13, line 262 strike the word "sale" and strike the remainder of line 264 beginning with the word "unless" through the end of the sentence. The motion seconded by Councilmember Duffy failed. Councilmembers Alcala, Lane, Dunn, Stubbs and Hill voted "no". (4-5-0)

Councilmember Price explained his vote and stated that it is wrong to practice hate.

Councilmember Duffy expressed the need for this ordinance in the community.

Councilmember Hecht stated that everyone is entitled to equal protection.

Councilmember Alcala stated that his vote was based on the calls and emails he has received from his constituents.

Councilmember Lane stated that his vote was based on the will of the people who contacted him.

Councilmember Dunn stated that she has received 150 emails, 10 letters and 176 calls in the last two days and is proud of the community and the effort that has been put forth towards this emotional issue.

The motion to adopt the ordinance failed. Councilmembers Alcala, Lane, Dunn, Stubbs and Hill voted "no". (4-5-0)

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

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent at 2:30 a.m.

Iris Walker
City Clerk