

## City Council Minutes – September 17, 2002

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, September 17, 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, prayer was offered by Pastor Mona McGee, East Minister Presbyterian Church.

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

THE CONSENT AGENDA was presented as follows:

Minutes of the Regular Meeting of September 10, 2002, were presented.

Councilmember Dunn moved to accept the consent agenda. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

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, was presented.

ORDINANCE NO. 17887 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.

Barry Beagle, Planning Department gave the staff report.

Tuck Duncan, Attorney representing the applicant explained the request and encouraged the Council to approve the petition.

Mayor Felker asked if there were any ex parte communications. There was none declared.

Councilmember Alcalá moved to approve the petition 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.

ZONING PETITION (Z02/6) by Thomas A. and Margaret K. McDonald requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District TO "O&I-1" Office and Institutional District on property located at 1603 SW 29<sup>th</sup> 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 at 1603 SW 29<sup>th</sup> Street in the City of Topeka, from "R-1" Single Family Dwelling District to "O&I-1" Office and Institutional District placed on first reading August 6, 2002 was again presented.

Barry Beagle, Planning Department gave the staff report.

Councilmember Duffy expressed his concerns about the process and the number of times an item can come before the Council for consideration if it does not receive five votes for approval or denial.

Joe Huerter, Attorney representing the applicant appeared to explain the request and answer questions. He stated that the application was reviewed and approved by all public agencies, and the proposed reclassification is consistent with the intent of the O&I-1 District to accommodate moderate intensity office use in transition to single-family neighborhoods. He

noted that SW 29<sup>th</sup> Street is a major traffic thoroughfare and not bordered by single-family development for two miles. He stated that this is the highest and best use of the property, and encouraged approval of the petition.

Mayor Felker asked if there were any ex parte communications. There was none declared.

Councilmember Alcalá moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Dunn 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 Alcalá, Lane, Dunn and Hecht –4. Noes: Councilmembers Pomeroy, Hecht, Duffy, Stubbs and Price –5.

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, was presented.

ORDINANCE NO. 17888 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 placed on first reading September 3, 2002 was again presented.

Barry Beagle, Planning Department gave the staff report.

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

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

Councilmember Dunn moved to approve the petition 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, Alcala, Lane, Dunn, Hecht, Duffy, Stubbs, Hill and Price –9.

ZONING PETITION (Z02/15) by City of Topeka to reclassify parcels in the Monroe Neighborhood from "I-1" Light Industrial District to "M-1" Two Family Dwelling District to implement the Downtown Topeka Redevelopment Plan and more appropriately reflect the desired future development of the neighborhood within the Monroe School and Williams Magnet School area 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, 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 placed on first reading September 10, 2002 was again presented.

Bill Fiander, Neighborhood Planner gave the staff report.

Larry Hill, Hill and Company appeared to answer questions. He explained that their company has been doing business in Topeka for 50 years and have been good neighbors and provided employment opportunities. He stated that the property was crime-infested and badly deteriorated and they have done a lot of work to clean it up over the years. He stated that he believed that this was spot zoning designed to take their property, and it will hinder their plans

and growth. He stated that if there are plans and financing for this property they would be willing to discuss relocating their business, but no one has come forward with a plan or funds.

Courtney Dillard, developer from Atlanta, Georgia and former Highland Park High School graduate appeared and explained his interest in the property. He stated that he has begun forming a relationship with Monroe NIA and spent the last six months looking at downtown Topeka. He noted that the new market tax credits could bring investors in and give them 39% tax break on certain projects, so there may be some options available for development of this property.

Several Councilmembers expressed their concern that the petition may be premature and the need to discuss further options regarding this property. They also noted that Hill & Company has been a good neighbor and an asset to the community, and expressed a desire to work with them to enable them to continue their business in Topeka.

Councilmember Price moved to table the petition and ordinance. The motion was seconded by Councilmember Dunn.

Mayor Felker stated that a motion to table stops debate.

Councilmember Price withdrew his motion. The second concurred.

Randy Speaker, Housing & Neighborhood Development Director stated that he toured the Monroe area with a representative of Fannie Mae. He stated that investors would pick communities that have the least barriers to their project. He stated that existing businesses are the fabric of the community, and their concerns should be considered.

Councilmember Alcalá noted that developers should have a recent track record and assets to back up their project, and it was important that they make sure this is the case with any future developers contracted to do business with the City.

Bob Keeshan, Attorney for Hill and Company appeared to answer questions and stated that his clients are receptive to discussing relocation.

Frank Kirtdoll appeared in opposition to the petition and stated that he plans to build a museum on property he owns within this area.

Steve Adams representing the National Park Service, Eunice Baggerly, President of Monroe NIA, William Schroeder, Peg McCarthy and Ann Palmer appeared in support of the petition. They expressed their concerns about the importance of preserving the historic character of the Monroe neighborhood, the reclassification would encourage residential use in the area, and how a Memorial Park and green space would link Williams Science and Fine Arts School with the Monroe School Museum.

Councilmember Lane stated that this was a decision of great magnitude and additional time was needed to discuss all possible options.

Councilmember Lane moved to table the petition and ordinance until the first Council meeting in March 2003. The motion seconded by Councilmember Dunn carried unanimously. (9-0-0)

ZONING PETITION (Z02/16) by the City of Topeka to reclassify parcels in the Monroe Neighborhood from "I-1" Light Industrial District and "I-2" Heavy Industrial to "OS-1" Open Space District to implement the Downtown Topeka Redevelopment Plan and more appropriately reflect the desired future development of the neighborhood within the Monroe School and Williams Magnet School area 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 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 placed on first reading September 10, 2002 was again presented.

Councilmember Lane moved to table the petition and ordinance until the first Council meeting in March 2003. The motion seconded by Councilmember Dunn carried unanimously. (9-0-0)

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 33<sup>rd</sup> Street and SE Minnesota Avenue in the City of Topeka, Kansas was presented.

ORDINANCE NO. 17889 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 33<sup>rd</sup> 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.

Barry Beagle gave the staff report.

Mayor Felker asked if there was anyone presented who wanted to speak. No one appeared.

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

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

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 4<sup>th</sup> Street, extended, in the City of Topeka, Kansas, was presented.

ORDINANCE NO. 17890 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 4<sup>th</sup> 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.

Barry Beagle gave the staff report.

Mayor Felker noted that he was on the Board of Directors for the Family Service and Guidance Center of Topeka, Inc. and he does not vote, but he has had no discussion with Planning staff or the Planning Commission regarding this request.

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

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

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

ORDINANCE NO. 17891 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 placed on first reading September 10, 2002 was again presented.

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. 17892 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 placed on first reading September 10, 2002 was again presented.

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. 17893 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 placed on first reading September 10, 2002 was again presented.

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. 17894 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 placed on first reading September 10, 2002 was again presented.

Neil Dobler, Public Works Director gave the staff report and explained the ordinance.

Councilmember Alcala moved to amend the ordinance on line 29 by changing “3,000” square feet to “5,000” square feet. The motion was seconded by Councilmember Dunn.

Councilmember Stubbs made a substitute motion to remove the square footage language from the ordinance and allow the Public Works Director to make the decision to grant the waiver on a case by case request.

The motion seconded by Councilmember Alcala carried. Councilmember Dunn voted “no”. (8-1-0)

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

A PROJECT BUDGET in the amount of \$187,000 and ORDINANCE NO. 17895 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 placed on first reading September 10, 2002 was again presented.

Councilmember Dunn moved to approve the project budget and adopt the ordinance. The motion was seconded by Councilmember Duffy.

Councilmember Alcala stated that he would not support the motion because these are funds that could be used for the Topeka Blvd. Bridge.

The motion carried. Councilmember Alcala 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 Alcala – 1.

ORDINANCE NO. 17896 introduced by Mayor Felker, authorizing Improvement Project No. 30221, which provides for the development of Gage Park and the construction of two play structures as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading September 3, 2002 was again presented.

Terry Bertels, Parks Management gave the staff report.

Councilmember Alcalá asked when the play structures purchased for East Topeka would be installed.

Terry Bertels stated what they have previously purchased would be installed before these structures they are requesting for Gage Park.

Councilmember Duffy stated that there were two issues that need to be addressed. There is no policy on dealing with playground equipment, and the Park Land Acquisition and Development fund has not been used for park land acquisition and development. He stated that he would like the Economic Development Committee to look at this issue and perhaps consider abolishing the fund.

Councilmember Stubbs stated that she agreed with Councilmember Duffy and the Committee should also look at funding for the Park Land Acquisition and Development fund so it could be funded at a level that it could be useful.

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

RESOLUTION NO. 7265 introduced by Mayor Felker authorizing a grant of \$35,000 from the Park Land Acquisition and Development Fund for the purpose of purchasing and installing a play structure in Crestview Park was presented.

Councilmember Stubbs moved to amend the resolution by striking the word “grant” and replacing it with “authorize the expenditure” on lines 4 and 9. The motion seconded by Councilmember Hill carried unanimously. (9-0-0)

Councilmember Dunn moved to approve the resolution as amended. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

RESOLUTION NO. 7266 introduced by Mayor Felker describing and authorizing Improvement Project No. 30222 which provides for the development of Crestview Park by the installation of a play structure and authorizing a grant of \$35,000 from the Park Land Acquisition and Development Fund for the purpose of installing the play structure was presented.

Councilmember Hill moved to approve the resolution. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

RESOLUTION NO. 7267 introduced by Mayor Felker relating to a mutual aid agreement for emergency preparedness purposes between the Prairie Band Potawatomi Nation and the City of Topeka, Kansas, was presented.

Councilmember Hill gave the committee report and stated that this agreement formalizes the relationship and allows for a point of contact in the event of a disaster.

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

RESOLUTION NO. 7268 introduced by Mayor Harry Felker authorizing expenditures from the Crime Prevention Fund was presented.

Councilmember Duffy stated that the funds should be appropriated by the City Council. He stated that he was comfortable with the resolution, but he would like this included in the budget in the future.

Councilmember Hecht stated that she would abstain because she is a member of the Battered Women's Task Force and they might receive money from this fund.

Councilmember Lane stated that he would not support the resolution because it is circumventing the Council's authority to approve expenditures from this fund.

Councilmember Hill moved to approve the resolution. The motion seconded by Councilmember Dunn carried. Councilmember Hecht abstained. Councilmember Lane voted "no". (7-1-1)

RESOLUTION NO. 7269 introduced by Mayor Harry Felker, authorizing initiation of condemnation proceedings to acquire easements and property by eminent domain for City of Topeka Trafficway Improvement Project No. 70167-04, the improvement of the trafficway located as SW Huntoon Street approximately between SW Fairlawn Road and Glendale Drive, was presented.

Councilmember Price moved to approve the resolution. The motion seconded by Councilmember Hill carried unanimously. (9-0-0)

A RESOLUTION introduced by Mayor Harry Felker relating to a grant application for the Hi-Crest Neighborhood Plan was presented.

Bill Fiander, Neighborhood Planner gave the staff report.

Councilmember Alcalá noted that it was almost 11:00 p.m. and moved to extend the meeting through the first readings of ordinances. The motion was seconded by Councilmember Lane.

Councilmember Pomeroy made a substitute motion to extend the meeting for thirty minutes. The motion seconded by Councilmember Price failed. Councilmembers Alcalá, Lane, Dunn, Duffy and Hill voted "no". (4-5-0)

Councilmember Alcalá's motion to extend the meeting through the first readings of ordinances failed. Councilmembers Pomeroy, Dunn, Hecht, Duffy and Price voted "no". (4-5-0)

Councilmember Duffy stated that in case the meeting ended without completing the discussion on the current item, he would request that a copy of the letter from Diane Alpert to Bill Fiander, and the Planning Department's response to that letter be circulated to all Councilmembers.

Councilmember Dunn moved to extend the meeting through public comment. The motion was seconded by Councilmember Lane.

Councilmember Alcalá made a substitute motion to extend the meeting to finish discussion on the current item, then go directly to 6B, first reading of the Charter Ordinance. The motion seconded by Councilmember Dunn carried. Councilmembers Pomeroy, Hecht, Duffy and Price voted "no". (5-4-0)

Following further discussion relating to the relationship between the Botwin Company and the City, Councilmember Stubbs suggested that representatives of the Botwin Company be invited to attend the meeting next week.

Councilmember Duffy moved to defer the resolution for one week. The motion was seconded by Councilmember Stubbs.

Clara Simmons and Betty Phillips appeared and expressed their concerns relating to the proposal for a land use study and site plan for an undeveloped portion of the Hi-Crest Neighborhood, and the relationship between the City and Botwin Company.

The motion to defer the resolution for one week carried. Councilmember Dunn voted "no". (8-1-0)

Councilmember Lane moved to add 5E and 6A back on the agenda. The motion seconded by Councilmember Stubbs carried. Councilmembers Hecht and Duffy voted 'no'. (7-2-0)

AN AMENDMENT to the contract between the City of Topeka and the Topeka City Employees, Local 1294, Missouri/Kansas State Council 72, American Federation of State, County and Municipal Employees was removed from the agenda.

A COMMUNICATION by Mayor Harry Felker, Vince Frey, Board President of Sunflower Games and Richard Forester requesting \$17,500 from the 2003 Transient Guest Tax amount for the Sunflower State Games was presented.

Mayor Felker stated that he spoke with Mr. Frey and they are having a Board Meeting on Wednesday or Thursday and they needed to know if they had a commitment from the City for next year's Sunflower Games.

Vince Frey appeared and said he wanted to assure the Board that the funds would be available for 2003, and in addition they would like to request the same dollar commitment for 2004.

Councilmember Alcalá stated that they have scheduled a meeting to establish the process for requesting Transient Guest Tax funds, and that process should be finalized soon.

Several Councilmembers stated that they did not have a problem with this request, but the request for funds for 2004 would need to go through the process.

Councilmember Dunn moved to approve the communication. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

AN ORDINANCE introduced by Mayor Harry Felker authorizing the City of Topeka, Kansas, to issue its taxable Industrial Revenue Bonds, Series A2002, (Payless Shoesource, Inc.,

project in the principal amount of \$14,000,000 for the purpose of purchasing, acquiring, constructing, reconstructing, improving, remodeling, equipping and installing certain facilities; authorizing execution of a first supplemental indenture by and between the City and UMB Bank, N.A., in the City of Kansas City, Missouri, as trustee; authorizing the City to lease said project to Payless Shoesource, Inc., and authorizing execution of a first supplemental lease agreement by and between said City and Payless Shoesource, Inc., was presented for first reading.

A CHARTER ORDINANCE introduced by Councilmembers Clark Duffy, Gary Price and Duane Pomeroy increasing the transient guest tax from five percent to six percent through December 31, 2015 and amending Charter Ordinance Section A15-17 and repealing original said section was presented for first reading.

Councilmember Alcalá stated that he supports the ordinance and would like to add his name as a co-sponsor.

Councilmember Hill moved to adjourn the meeting. The motion seconded by Councilmember Lane carried. Councilmember Dunn voted “no”. (8-1-0)

The meeting was adjourned at 11:30 p.m.

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Iris Walker  
City Clerk