

City Council Minutes – October 22, 2002

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 22, 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 Brother Larry Cushinberry, Apostolic Church of Jesus Christ.

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 October 15, 2002, were presented

APPLICATION for a Cereal Malt Beverage License, bearing the approval of the Chief of Police and City Inspectors for Wal-Mart Supercenter #2131, 1301 SW 37th, was presented.

APPLICATION for a Dance Hall License, bearing the approval of the Chief of Police and City Inspectors for P.J.'s Bar & Grill, 935 N. Kansas, and Electric Cowboy, 3349 SW Topeka Boulevard, was presented.

Councilmember Alcalá requested that Item C, the dance hall application for El Rodeo be pulled for separate discussion.

Councilmember Dunn requested that Item A, denial of a claim appeal for H. Pat and Jerry Powers be pulled for separate discussion.

Councilmember Hill moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Dunn carried unanimously. (9-0-0)

Denial of a claim appeal for H. Pat and Jerry Powers alleging that on June 4, 2002, their dwelling at 2120 SW Brooklyn Avenue was flooded as a result of a storm water sewer backup was presented.

Councilmember Duffy explained that this is a difficult case to evaluate due to the location of the house and the drainage issues in that area. The city does not have any liability in this case and he feels that they should only pay for the clean-up process as they have done with similar cases in the past.

Councilmember Duffy moved to approve the claim in the amount of \$2,000. The motion was seconded by Councilmember Stubbs.

Several Councilmembers expressed their concerns with the large amount of damage that was sustained and the claimant's out of pocket expense.

Councilmember Dunn made a substitute motion to approve the claim in the amount of \$21,859.44. The motion was seconded by Councilmember Alcalá.

Councilmember Dunn stated that she feels each case should be evaluated separately.

Councilmember Stubbs stated that there was no negligence by the city or the homeowner, just unfortunate circumstances.

Councilmember Pomeroy expressed the importance of following the same procedure with each claim.

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

Councilmember Duffy's motion to approve the claim in the amount of \$2,000 carried. Councilmembers Dunn and Hill voted "no". (7-2-0)

APPLICATION for a Dance Hall License, bearing the approval of the Chief of Police and City Inspectors for El Rodeo, 1601 SE Seward, was presented.

Councilmember Alcalá explained that he has received several complaints from the neighbors on how this establishment is being operated and feels that these problems should be resolved before the license is issued.

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

Councilmember Alcalá moved to refer the license to the Policy Committee. The motion was seconded by Councilmember Lane.

Councilmember Pomeroy expressed concerns on the amount of time it would take for the Policy Committee to review the license and make a decision, and asked that they meet and resolve this as soon as possible in fairness to the applicant.

The motion to refer the license to the Policy Committee carried. Councilmembers Hecht and Duffy voted "no". (7-2-0)

ORDINANCE NO. 17907 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 2910 SE Croco Road in the City of Topeka from "R-1" Single Family Dwelling District to "C-2" Commercial District placed on first reading October 15, 2002, was again presented.

Barry Beagle, Planning Department 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.

AN ORDINANCE introduced by Councilmembers Clark Duffy, Lisa Stubbs and Gary Price, relating to the reorganization of the planning and zoning program of the City of Topeka,

specifically creating a City of Topeka planning commission, pursuant to K.S.A. 12-741 *et seq.* providing for transition measures, and amending City of Topeka Code Section 110-26 through 110-50 inclusive, 110-71 inclusive and specifically repealing said original sections placed on first reading June 12, 2002, was again presented.

Brenden Long, City Attorney explained the actions taken by the county concerning the approval of a final plat for Hickory Creek Subdivision No. 2 and recommended that the city take legal action against the county. He continued to explain the potential impact the ordinance would have on the relationship between the city and the county.

Braxton Copley, Assistant City Attorney introduced David Yearout, Planning Consultant for the City of Topeka who appeared to answer questions. He explained the process a transition of this nature would entail and that it is very common for city and county planning departments to operate separately. He stated that if this plan is implemented it would allow the planning and zoning department to focus on what would be most beneficial to the needs of the city.

Some of the issues that would need to be addressed are staffing requirements, reconstructing the Metropolitan Planning Organization and the effect the separation of the department would have on the community.

Councilmember Duffy clarified his position on the impact of splitting the Planning and Zoning Department and how it would affect the taxpayers. He explained that this action would not cause a raise in taxes and does not require the county to do anything that would cost money.

The following are the planning issues that he discussed:

- 1.) The qualifications for Commissioners.
- 2.) The number of current members of the Commission.
- 3.) Committee Structure.

- 4.) The current proposed elements of the plan that are not authorized.
- 5.) There is no requirement for elements of a comprehensive plan to include appropriate legislative, budgetary or administrative actions for the Governing bodies to implement the plan.
- 6.) There is not a requirement for public participation in the planning process.
- 7.) Planning is not done as part of the annual management process and plan updates are not presented in timely manner.
- 8.) There is no one monitoring the implementation of the plan.
- 9.) Subdivisions are still platted that are not consistent with the plan.
- 10.) Other issues involved are the maintaining of certain ordinances, current jurisdiction in the three mile limit, procedure for filing of plats, building permit requirements, building and setback requirements and the Inspection Department.

In conclusion, he stated that the largest concern expressed by his colleagues was the need to study this issue more. He explained that there was a study conducted in 1997. Jim Kaup, former legal council for the Kansas League of Municipalities and who also served several years on the planning commission participated in this study. On June 16, 1997 he distributed a memo stating that it is his recommendation that the city and county have separate planning departments.

Councilmember Stubbs stated that she agrees with Councilmember Duffy and the issues that he has raised. However, she feels that most of the issues can be resolved with an exchange of dialogue. There is a great need to discuss why the city and county cannot agree on certain issues, and if the commissioners are willing to meet and try to work things out then the city should as well.

Councilmember Price stated that he is encouraged by the county's interest in meeting with the city to resolve the issues that have been raised.

Councilmember Price moved to place this item in the Public, Health and Safety Committee with the promise that the chair would address this issue as soon as possible. The motion was seconded by Councilmember Duffy.

Councilmember Dunn stated that her main concern is if the city would be able to keep the three-mile territorial jurisdiction in tact and what the financial implications would be. She does not want to damage the economic development of the Topeka area and feels that it is very important to work these issues out with the county.

Councilmember Pomeroy explained that there are a series of past and present problems with the county and this pattern has to change in order to prevent the separation of the department. His suggestions for a joint agreement included:

- 1.) The city would agree to maintain the joint City-County Planning Commission, a three-year moratorium on any unilateral annexation, and a five-year moratorium on the SE 29th and Croco area. Following the moratorium, no unilateral annexation unless the area is bounded by at least three sides of city territory.
- 2.) The county would agree to approve annexation of any non-contiguous areas with a consent to annex. There would be no further interference with the three-mile territorial jurisdiction, would not issue IRB's within the city, amend the contract to allow the city to require consent to annex within District 33, and allow the Planning Department to make recommendations on annexation.
- 3.) Both parties must approve a unified development code, look at areas of consolidation, and explore areas where the county can provide services inside the city.
- 4.) The city would move toward limiting hookups to help slow down urban sprawl.

Councilmember Alcalá asked how much revenue the city receives from the three-mile territorial jurisdiction.

David Thurbon, Planning Director stated that at this time he can not give an exact amount, however, he does not feel that it is very large at this point. He will gather the information and distribute it as soon as possible.

Councilmember Alcalá inquired on the position of the county on this issue.

In response, Kurt Young, Chairman of the Topeka-Shawnee County Metropolitan Planning Commission explained their position. He stated that he feels it is very important not to separate the planning department and feels that the problems could be solved with dialogue between the city and county.

Councilmember Lane stated that if the planning department is separated it is going to be very difficult to settle joint agreements with the county in the future.

Councilmember Hecht stated that the actions that were taken by the county last week clearly show that they do not want a joint Planning Department, and this ordinance is the first step in implementing the best interests of the city.

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

Ivan Wiechert, Planning Commissioner spoke in support of maintaining a joint planning department.

Bill Yanek, representative of the Topeka Builder Realtor Association spoke in support of a joint planning department.

Henry McClure stated that the most important issue is to develop a new Metropolitan Planning Organization Plan so that the city does not lose more federal funding.

David Price, president of the IFFOC expressed concerns on the rules and regulations concerning annexation and feels that they should not pass the ordinance.

Joseph Ledbetter spoke in support of the ordinance.

Bob Sherbourne spoke in support of the ordinance.

David Ireland stated that he feels the differences between the city and the county can be overcome.

Robert Gilmore asked Councilmember Duffy questions concerning the Topeka-Shawnee County Commission.

Councilmember Dunn moved to defeat this ordinance and appoint a committee consisting of the Mayor, Chairman of the Shawnee County Commission, City Attorney, County Counselor and Chairman of the Topeka-Shawnee County Planning Commission to create a new document that incorporates Councilmember Pomeroy's suggestions. The motion was seconded by Councilmember Hill.

Councilmember Stubbs made a substitute motion to approve the ordinance with an active date of January 1, 2004.

Councilmember Stubbs withdrew the substitute motion.

The parliamentarian ruled Councilmember Dunn's motion out of order because it was a three-part motion.

The ordinance was not adopted on roll call vote as follows: Ayes: Councilmembers Pomeroy, Hecht, Duffy and Hill -4. Noes: Councilmembers Alcalá, Lane, Dunn, Stubbs and Hill -5.

Councilmember Pomeroy moved to establish a task force consisting of the Mayor, County Counselor, City Attorney, Chairman of the Shawnee County Commission and Chairman of the Planning Commission to create a new document that incorporates his suggestions within thirty days. The motion was seconded by Councilmember Stubbs.

Councilmember Alcalá stated that he opposes the motion because it takes the duties of the Deputy Mayor away.

The motion to establish a task force to create a new document within thirty days carried. Councilmembers Alcalá, Hecht and Duffy voted "no". (6-3-0)

RESOLUTION NO. 7269 introduced by Councilmember Clark Duffy establishing the Topeka City Council's priorities for Economic Development for the Joint Economic Development Organization of 2003, was presented.

Councilmember Duffy moved to amend the resolution to strike the words "goal six" and replace it with "goal eight" on page 2, line 4. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

Councilmember Duffy explained the need for the resolution. This resolution establishes the city's priorities for Economic Development for the Joint Economic Development Organization for 2003.

Councilmember Price stated that the city should initiate monthly meetings to encourage open dialogue with the county.

Councilmember Duffy moved to adopt the resolution as amended. The motion seconded by Councilmember Price carried. Councilmember Dunn voted "no". (8-1-0)

A COMMUNICATION from H.R. Cook, General Manager of Kansas Expocentre, requesting \$8,000 from the 2003 Transient Guest Tax fund to off-set expenses for the Kansas Kids and National Kids Wrestling Tournaments was presented.

Mayor Felker explained the time issues involved with the communication.

H.R. Cook, General Manager of the Kansas Expocentre explained the communication, the importance of the Kansas Kids and National Kids Wrestling Tournaments, and the

economical impact this event has on the community. This event consists of two weekends a year with approximately 7, 000 people in attendance, and over 2,000 rooms reserved each weekend generating up to \$900,000 in revenue for the city.

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

AN ORDINANCE introduced by Mayor Harry Felker, authorizing Improvement Project No. 14100-00, which provides for the Traffic Signal Upgrade for SE 4th Street and SE Madison Street as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker, authorizing Improvement Project No. 30067-03, which provides for improvements to Gage Park by upgrading the electrical service to the facilities as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker decreasing the number of cars to be operated by a taxicab business, amending City of Topeka Code Section 154-87 and repealing said original ordinance was presented for first reading.

AN ORDINANCE introduced by Mayor Harry Felker decreasing the number of cars to be operated by a taxicab business, amending City of Topeka Code Section 154-87 and repealing said original ordinance was placed on first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Hecht moved to pursue legal action against the county regarding the final plat for Hickory Creek Subdivision No. 2 that was in the three-mile territorial jurisdiction of

the city approved by the county. The motion seconded by Councilmember Price carried. (6-3-0)
Councilmembers: Alcala, Lane and Dunn voted "no".

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Pomeroy commended city employee, Matt Tolbert for his honesty in dealing with the public. He stated that he would like to remind the public of the new sign ordinance that was passed and to remove all yard signs that have been placed in the city's right-of-way areas. He asked when he would receive the information he requested concerning the Nazi Rally task force guidelines.

Councilmember Lane commended two water department employees, Ron Hertlein and Scott Cramer. He stated that he received a letter from Henry McClure concerning the possibility of the city purchasing vacant land owned by the railroad located by the Monroe Site, and would like the request placed in the Economic Development Committee for consideration. He also requested a report on the expenditures of the contract with Southwestern Bell.

Councilmember Hecht acknowledged the Topeka Police Department and the Shawnee County Sheriff Department on the large drug bust last weekend. She extended an invitation to the public and the City Council to help support the YMCA Week without Violence.

Councilmember Dunn requested a report on the increase of Municipal Court fines.

PUBLIC COMMUNICATIONS AND COMMENTS, were presented.

David Price appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent
at 10:23 p.m.

Iris Walker
City Clerk
10-22-02
407