

City Council Minutes – November 4, 2003

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 4, 2003. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Lane, Alcalá, Nave, Haynes, Duffy, Stubbs, Preisner and Price -8. Deputy Mayor Duane Pomeroy Presided -1.

AFTER THE MEETING was called to order, prayer was offered by Father Sullivan, Christ the King Parrish.

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

Councilmember Nave moved to suspend the rules to add a claim for Shiloh Baptist Church. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

Councilmember Haynes moved to reinstate the rules. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

Deputy Mayor Pomeroy stated that the claim would be added to the consent agenda.

Councilmember Duffy requested that item #3B be removed from the consent agenda for discussion.

THE CONSENT AGENDA was presented as follows:

A FINAL PLAT for Aquarian Acres Subdivision No. 9 on a 78.38 acre parcel located on the west side of SE Croco Road, the centerline of which is approximately 1,000 feet north of SE 29th Street in the City of Topeka, Kansas, was presented.

A RESOLUTION introduced by Councilmember Gary Price granting Francis Slobodnik an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

A COMMUNICATION from Deputy Mayor Duane Pomeroy recommending the re-appointment of Tim Peterson to another 4-year term on the Topeka/Shawnee County Public Library Board of Directors, which will expire April 30, 2007, was presented.

Minutes of the Regular Meeting of October 28, 2003 were presented.

APPLICATIONS for Open After Mid-Night Licenses bearing the approval of the Chief of Police and City Inspectors from AJ's Bistro, 930 S. Kansas and Stoney's Bar & Grill, 1914 NW Topeka Boulevard, were presented.

APPLICATIONS for Cereal Malt Beverage Licenses bearing the approval of the Chief of Police and City Inspectors from Hummers Market LLC, 600 Fairlawn Road, and 3300 Gage, were presented.

APPROVAL of Claim appeal of Shiloh Baptist Church in the amount of \$65,000 was presented.

The City Attorney explained that this is a claim against the City involving a sewer backup at Shiloh Baptist Church located at 1201 Buchanan. He stated that at a work session the Committee of the Whole heard the appeal it was the consensus to approve the claim in an amount not to exceed \$65,000. He stated that this would require a full release from the Church and they would need to submit two bids concerning the cleanup. He stated that they have also agreed to waive the \$14,000 for a sewer service line to the Church.

Councilmember Preisner moved to approve the Consent Agenda except for Item #3B. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

Councilmember Duffy stated that he agreed to sponsor Item #3B, a resolution granting Francis Slobodnik an exception to the provisions of the City of Topeka Code Section 54-148 concerning noise prohibitions, and the resolution should reflect that instead of Councilmember Price. He also stated that although he agreed to sponsor it, he would not support it.

Following discussion on allowing use of loudspeakers for a protest in a residential area, Councilmember Preisner moved to disapprove the resolution. The motion seconded by Councilmember Duffy carried. Councilmembers Alcalá and Haynes voted “no”. (7-2-0)

AN ORDINANCE introduced by Mayor Harry Felker, relating to the rules and regulations regarding private security licenses, repealing City of Topeka Code Section 30-399, 30-419, and 30-427, amending City of Topeka Code Section 30-66, 30-396, 30-397, 30-398, 30-400, 30-401, 30-402, 30-403, 30-416, 30-417, 30-418, 30-420, 30-421, 30-422, 30-423, and 30-424 and repealing said original sections placed on first reading October 21, 2003, was again presented. This was deferred from the meeting of October 21, 2003.

Councilmember Lane moved to defer until November 18, 2003. The motion seconded by Councilmember Price carried. Councilmember Duffy voted “no”. (8-1-0)

ORDINANCE NO. 18113 introduced by Deputy Mayor Duane F. Pomeroy authorizing the issuance of \$11,225,000 aggregate principal amount of General Obligation Bonds, Series 2003-C, of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, K.S.A. 12-110c, K.S.A. 12-685 et seq., K.S.A. 12-6a01 et seq., the home rule authority granted to the cities of the State of Kansas by Section 5 of Article 12 of the Kansas Constitution, Home Rule Ordinance No. 17733 of the City and Charter Ordinances Nos. 68 and 89 of the City, all as amended, placed on first reading October 28, 2003, was again presented.

RESOLUTION NO. 7406 introduced by Deputy Mayor Duane F. Pomeroy prescribing the form and details of the General Obligation Bonds, Series 2003-C of the City of Topeka, Kansas, in the aggregate principal amount of \$11,225,000 the issuance of which were authorized by the City pursuant to its ordinance adopted and approved November 4, 2003; and authorizing certain other documents and actions in connection with the issuance of the bonds, was presented.

RESOLUTION NO. 7407 introduced by Deputy Mayor Duane F. Pomeroy authorizing and directing the issuance of Temporary Notes, Series 2003-A of the City of Topeka, Kansas, in the aggregate principal amount of \$17,000,000 for the purpose of providing funds to pay the cost of renewing a portion of the principal amount of the Series 2002-A Temporary Notes of said City, dated July 1, 2002, and for the purpose of providing funds to pay a portion of the cost of certain improvements in said city, was presented.

Randy Bailes, Finance Director stated that the bonds were sold competitively. He stated that the best bid for the notes was from Commerce Capital Markets at a rate of 1.1471 percent, and the best bid for the bonds was from UBS Financial Services at a rate of 4.2460 percent. He noted that Kevin Wickliffe, Columbia Capital Management and Phil Wolfe, Bond Counsel were present to answer questions.

Frank Kirtdoll questioned the purpose of the bonds. He was given a list of projects being bonded.

Councilmember Haynes moved to adopt the ordinance and approve the resolutions. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcalá, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price-9.

A PROJECT BUDGET in the amount of \$600,000 and ORDINANCE NO. 18114 introduced by Deputy Mayor Duane F. Pomeroy, authorizing Improvement Project No. 30247-01, which provides for the design and construction of nine new tennis courts at the Kossover Tennis Center as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, placed on first reading October 28, 2003 was again presented.

Ron Cathey, Parks and Recreation Department gave the staff report.

Terry Cobb, President of the Tennis Association appeared in support of the project. He stated that this project would increase the number of tennis courts to eighteen and this will allow them to hold Tennis Tournaments in Topeka.

Bob Keeshan, Vice President of the Kansas District Association appeared in support of the project.

Frank Kirtdoll asked how the project would be funded.

Councilmember Lane stated it would be funded with General Obligation Bonds.

Councilmember Preisner moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price –9.

RESOLUTION NO. 7408 introduced by Deputy Mayor Duane F. Pomeroy establishing a date for a public hearing concerning the adoption of a plan pursuant to the Neighborhood Revitalization Act, K.S.A. 12-17, 114 et seq., was presented.

Bill Fiander, Planning Department gave the staff report and explained the boundaries of the plan.

Frank Kirtdoll asked the date of the public hearing and where the plan could be reviewed.

Deputy Mayor Pomeroy stated that the date for the hearing is November 18, 2003. The plan is on file in the City Clerk's office.

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

RESOLUTION NO. 7409 introduced by Deputy Mayor Duane Pomeroy concerning the imposition of a one-quarter percent (.25%) retailers sales tax to finance the rebuilding of the Topeka Boulevard Bridge, was presented.

Neil Dobler, Public Works Director gave the staff report and stated that this resolution is to request the County to place the question on the ballot for a vote in November of 2004.

Councilmember Lane asked if there was a sunset provision for the sales tax.

Brenden Long, City Attorney stated that it would be until the project is complete. He stated that has been estimated at five years.

Councilmember Alcalá moved to approve the resolution. The motion was seconded by Councilmember Lane.

Councilmember Duffy stated that he believes it is important to state the City's intent. He asked if it was an option to place a three-ton weight limit for cars on the bridge and not replace it.

Neil Dobler explained that was not an option because the bridge continues to deteriorate regardless of the weight limit.

Councilmember Duffy noted that the language in the resolution stated the purpose of the one-quarter percent sales tax is for rebuilding the Topeka Boulevard Bridge and other public infrastructure improvements associated with such project. He stated that the Council has already taken action stating the method of financing for six components of the bridge project. Those are:

initial repairs of the bridge; re-routing traffic or physical changes at certain intersections; demolition of the bridge; construction of the bridge; I-70 exchange off of the bridge; and, the Kansas Avenue fly off. He asked if these components were included in the question to be put on the ballot.

Brenden Long stated the resolution would include those components.

Councilmember Stubbs noted that on lines 23 and 24 of the resolution it states that using sales tax would save the taxpayers of the City approximately \$12,000,000 when compared with the costs associated with a general obligation bond issue.

Councilmember Pomeroy moved to amend the resolution on line 9 by striking the word “all”. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

Joe Ledbetter asked if a claim had been filed with the State for giving Topeka a defective bridge. He also expressed his concern that an increase in the sales tax would make sales tax greater in Topeka than the surrounding areas and could impact purchases in the City.

Councilmember Stubbs stated that when the State turned the bridge over to the City of Topeka they said it would require little or no maintenance for ten years, but there was no guarantee. She said it was previously determined that the State had no liability. She also explained that with the increase in sales tax on a purchase of a \$10,000 vehicle, the sales tax would be \$25 and probably not worth driving somewhere else to make that purchase.

The motion to approve the resolution as amended carried unanimously. (9-0-0)

RESOLUTION NO. 7410 introduced by Deputy Mayor Duane F. Pomeroy authorizing an expenditure not to exceed \$85,000 from the park land acquisition and development fund for the purpose of expanding Highland Crest Park, was presented.

Rogers Brazier, Parks & Recreation Director gave the staff report.

Councilmember Price asked if all properties were rented at this point and suggested that staff grandfather those rentals.

Joe Ledbetter and Betty Phillips appeared in support of the resolution.

Frank Kirtdoll expressed his concerns about funding for the Park.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Lane carried. Councilmember Haynes was out of the room. (8-1-0)

AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy, exempting certain property, more specifically property owned by PTMW, Inc., from ad valorem taxation for economic development purposes, pursuant to the provisions of the Code of the City of Topeka, Chapter 138, Article III, and located at approximately 3501 NW Highway 24, Topeka, Shawnee County, Kansas, was presented for first reading.

AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy, granting to Brooks Fiber Communications of Missouri, Inc., its successors and assigns, a system of voice, video conferencing and data transmission franchise in the City of Topeka, Kansas, prescribing the terms thereof and relating thereto, was presented for first reading.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy designating real property more specifically described herein as a historic landmark and presently zoned "I-1" Light Industrial District and located at 420 SE 6th Avenue in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4, was presented for first reading. (HL03/4)

AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy to the vacation of a 20-foot wide public alley right-of-way extending north of SE 21st Street between SE Adams Street and SE Massachusetts Avenue as dedicated by the plant of Stevenson's Addition, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V03A/4)

AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy relating to the vacation of a 20-foot wide public alley right-of-way located west of SW Home Street, the centerline of which is approximately 140-feet north of SW 6th Avenue as dedicated by the plat of Haynes Subdivision, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V03A/5)

AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy relating to the vacation of a 20-foot wide utility easement on property extending north of SE 21st Street between SE Massachusetts Avenue and SE Pennsylvania Avenue, as dedicated by the plat of Stevenson's Addition, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V03E/4)

AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy relating to the vacation of a 60-foot wide unimproved street right-of-way on property located west of SW Chatham Place approximately 470-feet south of SW 10th Avenue, as dedicated by the plat of Area Vocational-Technical School Subdivision No. 2, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V03S/3)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 NW Walker Street and NW MacVicar Avenue in the City of Topeka, Kansas from "PUD" Planned Unit Development District ("R-4" use group) ALL TO "PUD" Planned Unit Development District ("I-1" use group), was presented for first reading. (Z03/9)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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

between SE Adams Street and SE Massachusetts Avenue and north of SE 21st Street in the City of Topeka, Kansas from “M-1” Two Family Dwelling District and “M-2” Multiple Family Dwelling District TO “C-2” Commercial District, was presented for first reading. (Z03/47)

AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy, relating to establishing monthly water use rates and charges for consumers of water furnished by the City of Topeka, repealing City of Topeka Sections 146-138, 146-139, 146-140, 146-343, and 146-401 and amending City of Topeka Code Chapter 146, Article 1 and Section 146-142, and specifically repealing said original sections, was presented for first reading.

Councilmember Haynes moved to refer the ordinance to the Committee of the Whole for further study and explanation. The motion seconded by Councilmember Lane failed. Councilmembers Pomeroy, Nave, Duffy, Stubbs, Preisner and Price voted “no”. (3-6-0)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the Topeka Planning Commission and specifically increasing the membership by adding two commission members, clarifying the duties of the Planning Commission, and referencing the relevant Kansas Statutes and amending City of Topeka Code Sections 110-27, 110-35, 110-42 through 110-46 inclusive, 110-51 through 110-52 inclusive, 110-71, 110-72 inclusive, and 110-76 and specifically repealing said original sections, was presented for first reading.

Councilmember Alcalá requested that the City Attorney draft an amendment that future appointments be made in Council Districts not yet represented.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy, authorizing Park Improvement Project No. 30248-00, which provides for the expansion of Highland Crest Park, as more specifically described herein, all pursuant to City of Topeka Charter Ordinance No. 89, was presented for first reading.

REPORT OF COMMITTEES AND OFFICERS, were presented.

Deputy Mayor Pomeroy announced a Policy and Finance Committee meeting scheduled for Thursday, November 6, 2003, at 3:00 p.m. in the City Council office to discuss P-Card and personnel issues, and an economic development item.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen apologized for the meeting room being so cold and stated that staff is working on the problem.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Alcalá asked for an update and status of the City of Topeka's Planning Department and how it would be operated and funded.

Councilmember Duffy stated that he reviewed the list of boards and commissions and noticed there were no term limits on some of the boards. He suggested establishing terms for all of the boards as well as making sure the terms are current.

Councilmember Stubbs stated that she noticed there is no provision for removal of board members on some of the boards and asked how they remove a board member if necessary.

Councilmember Preisner noted that the petition filed in opposition to the Charter Ordinance regarding Sunday liquor sales was found to be insufficient and asked that his ordinance that would allow Sunday liquor sales be removed from committee and placed on the November 18, 2003 agenda for consideration.

PUBLIC COMMUNICATIONS AND COMMENTS, were presented.

Charles Criqui, Frank Kirtdoll, Fred Sanders, Ted Mize, Todd Valley and Michael Bell appeared to speak under public comments.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent
at 9:43 p.m.

Iris Walker
City Clerk