

## City Council Minutes – November 25, 2003

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 25, 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 Reverend Richard Rounds, Love Chapel, McCrite Retirement Center.

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION from Deputy Mayor Duane Pomeroy recommending the appointment of Ed Ramirez and the re-appointment of Jerry Lonergan for a three-year term on the Metropolitan Topeka Airport Authority expiring on November 30, 2006 was presented. This was deferred from the meeting of November 18, 2003.

Minutes of the Regular Meeting of November 18, 2003 were presented.

APPLICATIONS for Open After Mid-Night Licenses bearing the approval of the Chief of Police and City Inspectors from The Den, 1116 NW Lower Silver Lake Road, and Sweet Justice Blues, 2008 SW Gage Boulevard, was presented.

Councilmember Alcalá requested that Item #3A, a communication regarding appointments to the Metropolitan Topeka Airport Authority, be removed from the consent agenda for discussion.

Councilmember Preisner moved to approve the consent agenda except for #3A. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

Councilmember Price moved to defer #3A for two weeks. The motion seconded by

Councilmember Duffy carried unanimously. (9-0-0)

AN ORDINANCE introduced by Councilmember Bill Haynes establishing the time and place of Council Meetings pursuant to City of Topeka Charter Ordinance A2-25, repealing section 2-27 of the Code of the City of Topeka, Kansas placed on first reading November 18, 2003 was again presented.

Councilmember Haynes moved to amend the ordinance by inserting language that the agenda shall be delivered ten days prior to the date of the Council meeting. The motion was seconded by Councilmember Duffy.

Joe Ledbetter appeared and stated that he had no objection to the ordinance and expressed his concern about lengthy meetings and citizens having to wait so long to make public comments.

Councilmember Haynes stated that the purpose of the amendment is so the Council would have time to study items, obtain additional information if required and visit with constituents.

Deputy Mayor Pomeroy explained the agenda process and stated that he felt the amendment would put a hardship on administration to have a published agenda that far in advance of the meeting.

Brenden Long, City Attorney stated that preparing documents ten days ahead of the meeting would be a problem for most documents, and they would have to work something out with ordinances that are on for first reading.

Councilmember Preisner stated that he would like to receive the agenda at least one day earlier than it's being received now. He suggested sending the ordinance to the Policy Committee to work out a compromise.

The motion to amend carried. Councilmembers Stubbs, Duffy and Price voted “no”. (6-3-0)

Councilmember Preisner moved to refer the ordinance to the Policy and Finance Committee. The motion seconded by Councilmember Alcala carried. Councilmembers Pomeroy and Stubbs voted “no”. (7-2-0)

Deputy Mayor Pomeroy stated that if there were no objections he would move Item #4G regarding Sunday liquor sales up as the next item on the agenda.

AN ORDINANCE introduced by Jeff Preisner establishing the permitted days and hours for the retail sale of alcoholic liquor, amending City of Topeka Code Section 10-117, and repealing said original section placed on first reading October 21, 2003 was again presented.

Councilmember Preisner stated that these hours mirror the county’s hours of operation for Sunday liquor sales. He encouraged the Council to approve the ordinance to allow those business owners in the city the opportunity to be open on Sunday if they desire.

Mel Lewis, Diana Wharton, Billy Weber and JoAnn Peavler spoke in support of the ordinance. They encouraged the Council to approve the ordinance to keep revenues from these sales in Topeka, give them an opportunity to compete with stores in Shawnee County and Lawrence, and allow them to serve their customers that have requested them to open on Sunday.

Francis Wood appeared in opposition to the ordinance. She noted statistics that there are fifty deaths per day due to alcohol, and it also contributes to domestic violence.

Cliff Cormier spoke in opposition to the ordinance and stated that he does not believe the County is making much profit by being open on Sundays.

Councilmember Preisner moved to adopt the ordinance.

Councilmember Stubbs asked for an update on the lawsuit with the Attorney General.

Brenden Long, City Attorney stated there would probably be a decision sometime in January or February.

Councilmember Nave stated that he supports the ordinance out of fairness and opportunity for owners who chose to operate their business on Sunday.

Councilmember Pomeroy stated that he would not support the ordinance because he does not want to increase the availability of alcohol.

The ordinance failed to be adopted on roll call votes as follows: Ayes: Nave, Duffy, Preisner and Price –4. Noes: Lane, Alcalá, Pomeroy, Haynes and Stubbs –5.

ORDINANCE NO. 18128 introduced by Deputy Mayor Duane F. Pomeroy adopting a neighborhood revitalization plan and designating a revitalization area, all as provided for in K.S.A. 12-17, 114 *et seq.*, Neighborhood Revitalization Act placed on first reading November 18, 2003 was again presented.

Bill Fiander, Planning Department submitted recommendations made from last week's public hearing on the neighborhood revitalization plan. He stated that there was also a text amendment to the plan suggested to grandfather permits already applied for under the existing plan.

Brenden Long, City Attorney stated that this would be a deviation from the current plan and would require an amendment to the current plan or the area could be added to the proposed plan.

Joe Ledbetter, JoAnn Peavler and Brian Smith appeared and encouraged the Council to include 50 lots in Cowdin Subdivision, Belmont Addition adjacent to Deer Creek, and Kanza Park.

Councilmember Duffy moved to add Kanza Business Park to the revitalization plan. The

motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

Councilmember Duffy moved to include Southern Hills Subdivision B in the plan. The motion was seconded by Councilmember Price.

Councilmember Duffy stated that he does not believe the area fits the criteria for high risk, but the plan is needed for the area to continue to develop.

The motion carried. Councilmember Duffy voted “no”. (8-1-0)

Councilmember Duffy moved to include 50 lots in Cowdin Subdivision to the plan. The motion seconded by Councilmember Lane carried. Councilmembers Pomeroy and Haynes voted “no”. (7-2-0)

Councilmember Duffy moved to include Belmont Subdivision in the plan. The motion seconded by Councilmember Lane carried. Councilmember Haynes voted “no”. (8-1-0)

Councilmember Duffy moved to amend Section 7 of the new plan to include building permits where applications have already been made but not yet received. The motion seconded by Councilmember Stubbs carried. Councilmember Haynes voted “no”. (8-1-0)

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

A ZONING PETITION and ORDINANCE NO. 18129 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 northwest corner of NW Fillmore Street and NW Lower Silver Lake Road in the City of Topeka, Kansas from “R-1” Single Family Dwelling District TO “M-1” Two Family Dwelling District placed on first reading November 18, 2003 was again presented. (Z03/45)

Bill Fiander, Planning Department gave the staff report. He stated that he received a letter from the North Topeka West Neighborhood Improvement Association who expressed opposition to the proposed rezoning. They stated they would be supportive of single-family development. He explained while the proposed site is within the North Topeka West NIA, it is outside the scope of the adopted plan for the area.

Councilmember Lane moved to approve the petition and adopt the ordinance. The motion was seconded by Councilmember Stubbs.

Councilmember Alcalá stated that he felt it is important to preserve owner occupied family residents in the area. He stated that multi-family duplex has a tendency to stay around and that makes it difficult to maintain an owner occupied neighborhood.

Gene Meier appeared in support of the petition. He stated that the project would provide good rental homes due to the proximity to the school.

Councilmember Alcalá declared his exparte communication.

Councilmember Preisner stated that the project would provide a buffer between industrial and residential development.

The motion carried. Councilmember Alcalá voted “no”. (8-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price –8. Noes: Alcalá –1.

A REVISED PROJECT BUDGET in the amount of \$1,057,000 and ORDINANCE NO. 18130 introduced by Councilmember Gary Price, authorizing Park Improvement Project No. 30205, which provides for the design and construction of the Gage Park Greenhouse as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka and repealing City of Topeka Ordinance No. 18001 placed on first reading November 18, 2003

was again presented.

Terry Bertels, Parks and Recreation stated that the greenhouse project has been designed and bid twice. He stated that the low bidder is \$157,500 over what they have available for construction of the project. He explained that every effort has been made to cut costs of the project to stay within their available dollars but they are still \$157,500 over. He explained that the project needs to be done and they are sensitive to the desire to hold General Obligation bonding funds at the approved levels. He further explained that their solution to this problem is to cut \$157,500 out of two 2004 capital budget projects (parking lots and sewer line upgrades) so that the bottom line for years 2003 and 2004, taken together, remains the same.

Councilmember Alcala expressed his concern about cutting projects that are needed. He stated that the parking lots at Garfield Shelter House and the Oakland Center are in poor condition.

Councilmember Duffy stated that this is a prime project to finance from acquired energy efficiency savings. He said it could possibly finance the shortfall on this project.

Brenden Long, City Attorney stated that alternatives for permanent financing could be considered when the project has been completed.

Councilmember Price moved to approve the revised 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. 7413 introduced by Councilmember Gary Price amending the adopted 2003-2004 Capital Budget for the City of Topeka, Kansas, and rescinding City of Topeka Resolution No. 7271 was presented.

Jim Langford, Capital Projects Coordinator gave the staff report.

Councilmember Duffy moved to amend the resolution by adding general obligation bonds and/or acquired energy savings as the method of financing. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

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

A RESOLUTION introduced by Councilmember Gary Price amending the adopted 2004-2005 Capital Budget for the City of Topeka, Kansas, and rescinding City of Topeka Resolution No. 7385 was presented.

Councilmember Alcala moved to disapprove. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$2,936,450 and ORDINANCE NO. 18131 introduced by Deputy Mayor Duane F. Pomeroy, authorizing Trafficway Improvement Project No. 70192-02, which provides for the reconstruction and widening of SW 6<sup>th</sup> Street and Gage Boulevard as more specifically described herein, all pursuant to Charter Ordinance No. 89 of the Code of the City of Topeka placed on first reading November 18, 2003 was again presented.

Neil Dobler, Public Works Director gave the staff report. He stated that the project would be funded by \$1.9 million federal funds and \$1 million City General Obligation Bonds.

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

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

ORDINANCE NO. 18132 introduced by Councilmembers Clark Duffy, Duane Pomeroy



and Gary Price establishing the Advantage Topeka Program which provides for a loan forgiveness program for eligible students enrolled at the University of Kansas and such other higher educational institutions as the City Council may designate placed on first reading November 18, 2003 was again presented.

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

RESOLUTION NO. 7414 introduced by Mayor Felker authorizing and adopting the 2004-2010 Capital Improvement Program for the City of Topeka, Kansas was presented. This was deferred from the meeting of November 18, 2003.

Jim Langford, Capital Projects Coordinator gave the staff report and stated that this is for the 2006-2010 Capital Improvements Program. He stated that they have already taken care of 2004 and 2005.

Councilmember Preisner moved to amend the Topeka Boulevard Bridge Project with the updated estimate of \$9.6 million of federal funds and \$31.4 million City General Obligation Bonds. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

Councilmember Preisner moved to approve the Capital Improvement Program as amended. The motion was seconded by Councilmember Pomeroy.

Councilmember Duffy moved to include a friendly amendment to include financing from acquired energy savings on all project where applicable. The motion carried unanimously. (9-0-0)

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

RESOLUTION NO. 7415 introduced by Deputy Mayor Duane F. Pomeroy authorizing an expenditure not to exceed \$55,000 from the zoo improvement reserve fund for the purpose

acquiring education equipment and furniture for the new Gary K. Clarke education center, pursuant to City of Topeka Code Section 2-328 was presented.

Mike Coker, Zoo Director gave the staff report.

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

RESOLUTION NO. 7416 introduced by Councilmember Clark Duffy authorizing a study of improvements to certain public buildings and providing for the payment of the costs of the study and the improvements was presented.

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

RESOLUTION NO. 7417 introduced by Councilmember Gary Price relating to the hiring of a Consultant or Consultants to perform an operational assessment and study of selected City departments and divisions to optimize and improve City services, amending City of Topeka Resolution No. 7374 was presented.

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

A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of \$125,000, and RESOLUTION NO. 7418 introduced by Deputy Mayor Duane Pomeroy authorizing Lateral Sanitary Sewer District No. 40915-00 H, located at approximately SE 22<sup>nd</sup> Terrace and SE Croco Road, as more specifically described herein was presented.

Neil Dobler, Public Works Director gave the staff report. He stated that both the sewer and the street project are developer projects and there are no city funds involved.

Councilmember Lane moved to approve the petition, project budget and adopt the

resolution. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of \$110,000, and RESOLUTION NO. 7419 introduced by Deputy Mayor Duane Pomeroy authorizing Street Improvement Project No. 60598-01 H, located at approximately SE 22<sup>nd</sup> Terrace and SE Croco Road, as more specifically described herein was presented.

Councilmember Haynes moved to approve the petition, project budget and adopt the resolution. The motion seconded by Councilmember Lane carried unanimously. (9-0-0)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy, relating to building codes for one and two family dwellings, repealing City of Topeka Code Sections 26-281, 26-282, 26-283, 26-296, 26-297, 26-298, 26-299, 26-300, 26-301, 26-302, 26-303, 26-304, 26-305, 26-306, 26-307, 26-308, 26-309, 26-310, 26-311, 26-312, 26-313, 26-314, 26-315, 26-316, 26-317, and 26-318, amending City of Topeka Code Chapter 26, Article VI, Division 1 and Chapter 26, Article VI, Division 2 and repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Duane F. Pomeroy, Deputy Mayor, relating to the annexation of land to the City of Topeka, Kansas was presented for first reading.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy allowing the payment of compensation for court testimony to members of the Police Reserves, amending City of Topeka Code Section 2-153 and repealing said original section was presented for first reading.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to Mayor's Police, repealing provisions of the City of Topeka Code Sections 90-101 through 90-117 was presented for first reading.

AN ORDINANCE introduced by Councilmembers John Nave, Jeff Preisner, and Lisa Stubbs relating to the adoption of provisions proscribing certain actions regarding drugs,

narcotics and paraphernalia, amending City of Topeka Chapter 54 was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Duffy requested financial implications on Item 6E the ordinance relating to drugs, narcotics and paraphernalia. He stated that from the Police Department he wanted the number of cases submitted to the District Attorney for prosecution within the last year. In addition he also requested that the City Attorney and Municipal Court provide information on the average time and cost of prosecuting one case under Section 17 of the current code.

Councilmember Stubbs stated that the Public Health and Safety Committee has scheduled a meeting on Monday, December 1, 2003 at 3:00 p.m. to discuss the ordinance, and they have requested some of that information from John Knoll.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Price requested an update on consolidation of the five codes.

Councilmember Preisner expressed his disappointment that a lot of people's time was wasted by not following through on the Sunday liquor sales ordinance.

Councilmember Duffy expressed his concern that advice given from a Housing and Credit Counseling, Inc. staff member regarding a landlord dispute was incorrect and suggested the City Attorney contact them.

Councilmember Duffy stated that he reviewed the Joint Economic Development Organization's (JEDO) board minutes and was unable to determine who the members were. He suggested that instead of listing who is present, the members be listed and have all others present sign an attendance sheet. He also stated that the minutes stated the strategic plan and Shawnee County's Comprehensive Metropolitan Plan 2025 were attached, but he did not receive any

attachments. He further stated that he was interested in the 2004 federal funding priorities and asked why they were not established in accordance with an inter-local agreement.

Councilmember Alcalá distributed an ordinance and a resolution relating to water service outside the city limits in hardship situations, and consolidation of the City and County Parks and Recreation Departments for a future agenda.

PUBLIC COMMUNICATIONS AND COMMENTS, were presented.

Dr. Isabel Masters, and Bob Sherbourne appeared to speak under public comments.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent at 10:17 p.m.

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Iris Walker  
City Clerk