

City Council Minutes – December 2, 2003

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, December 2, 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, Deputy Mayor Pomeroy asked for a moment of silent meditation.

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION from Deputy Mayor Duane F. Pomeroy recommending the appointment of Lana Gordon, District No. 7 for a two-year term to the Topeka Convention and Visitors Bureau expiring on December 31, 2005, was presented.

A COMMUNICATION recommending allocation of \$387,180 from the Special Alcohol Fund No. 228, was presented.

A WORKER'S COMPENSATION claim settlement in the amount of \$24,962.25 for Mark Hilt, was presented.

A WORKER'S COMPENSATION claim settlement in the amount of \$12,113.85 for Penny Ehalt, was presented.

Minutes of the Regular Meeting of November 25, 2003 were presented.

Councilmember Price requested that Items #3C and D, relating to worker's compensation claim settlements be pulled from the consent agenda and voted on separately.

Councilmember Duffy moved to approve Items #3A, B and E. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

Councilmember Lane moved to approve Item #3C, the worker's compensation claim settlement for Mark Hilt. The motion seconded by Councilmember Price failed.

Councilmembers Alcalá, Lane, Duffy, Stubbs, Preisner and Price voted "no". (3-6-0)

Councilmember Lane Price moved to approve Item #3D, the worker's compensation claim settlement for Penny Ehalt. The motion seconded by Councilmember Price failed.

Councilmembers Alcalá, Lane, Duffy, Stubbs, Preisner and Price voted "no". (3-6-0)

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 placed on first reading November 25, 2003, was again presented.

Neil Dobler gave the staff report.

Howard Uhl explained the process they used to change the code with the International Code Association. He suggested that the ordinance be amended to go into effect 60 days after publication to allow them an opportunity to get everyone up to speed on the changes.

Pat DeLapp appeared and stated that he agrees that the update is needed. He expressed his concerns about the proposed amendments.

Councilmember Price moved to defer the ordinance for one week to address concerns expressed. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

ORDINANCE NO. 18133 introduced by Duane F. Pomeroy, Deputy Mayor, relating to the annexation of land to the City of Topeka, Kansas placed on first reading November 25, 2003, was again presented.

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

ORDINANCE NO. 18134 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 placed on first reading November 25, 2003, was again presented.

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

ORDINANCE NO. 18135 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 placed on first reading November 25, 2003, was again presented.

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

ORDINANCE NO. 18136 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 placed on first reading November 25, 2003, was again presented.

Councilmember Stubbs gave the committee report and stated that the committee recommended approval.

John Knoll, City Prosecutor stated that they are projecting maybe 750 cases, but they

don't really know how many to expect. He stated that the number of cases would effect the cost to prosecute the cases. His initial projections were based on 1,000 cases which is what the District Court recommended to them. He stated that he believes the city would cover their cost plus some so he does not see this as a financial disincentive. He further stated that he believed sixty to eighty percent of the cases would go to diversion and there would be no jail time.

Councilmember Duffy asked how many cases the Police Department submitted to the District Attorney.

John Knoll stated that there were approximately 391 cases filed by the District Attorney in 2000.

Beth Schafer, Municipal Court Judge stated that they do not expect that these cases would overburden the court.

Councilmember Duffy stated that from information he has received, he calculated two man hours per case for the Court and City Attorney and estimates the cost for the City to prosecute these cases at \$1.2 million. He stated that they decided not to prosecute drug cases before because of the expense, and thought they would break even prosecuting the misdemeanors. He further stated that he did not understand the purpose of this ordinance.

Deputy Mayor Pomeroy stated that the County is not prosecuting these cases and if the City does not, they don't get prosecuted.

Chief Klumpp stated that the drug problem in Topeka is enormous, and the demand side of the problem has not been given enough attention. He stated that these cases do not get prosecuted because of caseload, but they need to send a message that use of illegal drugs will not be tolerated in our community and that we are going to prosecute those cases.

Councilmember Duffy asked if the City is prepared to address prevention and treatment.

Councilmember Alcala stated that he believed people keep small amounts of illegal drugs on them because they believe they will not be prosecuted, even if caught.

Councilmember Haynes stated that it would probably cost the taxpayers an additional one and one-half mills if this ordinance is adopted, and that should be considered.

Councilmember Stubbs stated that the financial implication is a consideration and they have made good faith estimates to show that there should not be a negative financial impact. She stated that even if there is an increase in what the City pays up front, you pay for illegal drug use one way or another. She stated that many of the City's crimes are based on drugs and this is the proper thing to do.

Councilmember Lane stated that even if it did cost taxpayers an additional one and one-half mills it might be the best investment a homeowner can make. He explained that if someone had something stolen by someone on drugs, it might cost them more to replace it than an increase on their taxes would be, especially if they have a deductible on their insurance policy.

Councilmember Duffy stated that he would not support the ordinance because the City has no agreement with the District Attorney to continue prosecuting the drug cases he is currently prosecuting. He also stated that he does not believe adopting the ordinance would send a message because the person can appeal to District Court. He stated that the Crime Summit recommended prevention, treatment and then enforcement. He further stated that he believed they should give someone who is addicted to drugs the same opportunity as they recently gave prostitutes, and assess the fine the same that is done for other heinous crimes such as DWI or burglary.

Councilmember Nave stated that this ordinance may allow people to get the help they need early by letting them know illegal drug use will not be tolerated in Topeka.

Councilmember Duffy moved to amend the ordinance on line 112 after “punished” by striking all of the existing phrase and inserting the following language: “in accordance with City of Topeka Code 1-7 the court shall also order a presentence evaluation to be performed by a community-based alcohol and drug safety action program certified in accordance with K.S.A. 8-1008, or another provider approved by the court. The presentence evaluation report shall be made available to the court, the defendant or defendant’s attorney and the prosecuting attorney, and shall be considered by the court prior to sentencing. The presentence evaluation report shall contain a history of the defendant’s prior criminal record, characteristics and alcohol or drug problems, and a recommendation concerning the amenability of the defendant to education, rehabilitation and mental health counseling. The cost of any education, rehabilitation and treatment programs for any defendant shall be paid by the defendant, and will be levied as costs in the action, but any assessment fee may be waived by the court if the court finds that the defendant is an indigent person. If financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant’s sentence. In lieu of penalties proscribed in City of Topeka Code Section 1-7, the court may sentence the person to a 30-day mandatory treatment program deemed acceptable to the court.”

The motion seconded by Councilmember Pomeroy failed. Councilmembers Lane, Alcala, Stubbs, Preisner and Price voted “no”. (4-5-0)

The ordinance was adopted on roll call vote as follows: Ayes: Lane, Alcala, Nave, Stubbs, Preisner and Price –6. Noes: Pomeroy, Haynes and Duffy –3.

ORDINANCE NO. 18137 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 November 18, 2003.

Councilmember Price moved to amend the ordinance with the language in the ordinance distributed by the Chief of Police. The motion was seconded by Councilmember Lane.

Chief Klumpp stated that this ordinance reflects the changes made to the merchant guard ordinance adopted on November 18, 2003, and an additional amendment to increase the temporary license fee from \$5 to \$10.

Councilmember Lane stated that he has been contacted by several merchant guard employees who are concerned with the ability to come up with the two year license fee.

The motion to amend the ordinance to the ordinance distributed by Chief Klumpp carried. Councilmember Duffy voted “no”. (8-1-0)

Councilmember Lane moved to amend the ordinance by changing “bi-yearly” to “annual” and changing the bi-yearly fees to annual fees on lines 21, 27, 28, 32, and 33, and on line 39 change “twenty-four” months to “twelve” months, and in Section one change “Code Section 30-66” to “Ordinance No. 18127”. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

John Morris, Tom Detrick and Ron Lee appeared in opposition to the ordinance. They expressed concerns that Police Officers do not have to pay these fees and they are allowed to use police department uniforms and equipment while working as a merchant guard, and they do not have to be licensed. They expressed their opinion that the officers are taking jobs away from them and they urged the council to create a level playing field by requiring police officers to go

through the same process as other merchant guards.

Councilmember Duffy stated that he is troubled by the word “arrested” on line 243 and “ordinance violation” on line 245.

Councilmember Duffy moved to strike “arrested” on line 243. The motion seconded by Councilmember Alcalá carried. Councilmembers Stubbs, Preisner and Price voted “no”. (6-3-0)

Councilmember Duffy moved to strike “ordinance violation” on line 245. The motion seconded by Councilmember Haynes carried. Councilmembers Price voted “no”. (8-1-0)

Councilmember Alcalá stated that everyone working as a merchant guard should pay the fees.

Councilmember Alcalá moved to strike lines 193 through 211. The motion seconded by Councilmember Lane carried. Councilmembers Pomeroy, Stubbs and Price voted “no”. (6-3-0)

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

A RESOLUTION introduced by Councilmember Lisa Stubbs relating to changing the form of government, was presented. This was deferred from the meeting of November 18, 2003.

Councilmember Nave distributed a resolution he had drafted to place a Charter Ordinance before the electors in November, 2006 to change the form of government either to a city manager/council form of government or unified city/county form of government. He stated this would give them time to educate the public and get input on the future government for Topeka.

John Fish, representing a group of business leaders appeared and distributed a draft of a Charter Ordinance changing the form of government from a strong mayor-council-chief administrative officer form to a mayor-council-city manager form. He stated that this group of people have worked on the ordinance for a long time and gave it careful consideration, and he

encouraged the Councilmembers and Deputy Mayor to introduce the charter ordinance. He explained that some of the highlights of the ordinance is that the mayor would be elected at large, have no veto power and would vote only to break a tie. He further explained that the council would go from nine to seven members with two members being elected at-large. The annual salary of the mayor would be \$24,000 and \$12,000 for each member of the council. He requested time at a future work session for the drafters and supporters to have an opportunity to fully explain the charter ordinance to the council.

Councilmember Haynes moved to refer both resolutions to the Committee of the Whole for further discussion. The motion was seconded by Councilmember Duffy.

Councilmember Stubbs spoke in opposition to the motion and stated that her resolution was just a first step, and it was not binding. She stated she did not believe there was a need to take three years to study this issue, eleven months is sufficient.

The motion failed. Councilmembers Lane, Alcalá, Pomeroy, Nave, Stubbs and Price voted “no”. (3-6-0)

Councilmember Stubbs moved to approve the resolution she introduced. The motion was seconded by Councilmember Price.

Councilmember Pomeroy moved to amend line 10 by striking “to a city manager/council” and on line 17 add “and Shawnee County”.

The motion died for lack of a second.

Councilmember Alcalá made a substitute motion to substitute Councilmember Stubbs’ resolution for Councilmember Nave’s resolution. The motion was seconded by Councilmember Haynes.

Councilmember Alcalá called the question.

Councilmember Haynes challenged the call.

The call for the question prevailed. Councilmembers Pomeroy, Duffy and Price voted “no”. (6-3-0)

The substitute motion failed. Councilmembers Pomeroy, Duffy, Stubbs and Price voted “no”. Councilmember Preisner abstained. (4-4-1)

Councilmember Duffy stated that he is opposed to the resolution because they need to analyze the situation, talk about the problem and then find a solution.

Councilmember Stubbs moved to amend the resolution to consider a unified government. The motion seconded by Councilmember Lane failed. Councilmembers Alcalá, Nave, Haynes, and Duffy voted “no”. Councilmember Preisner abstained. (4-4-1)

Councilmember Stubbs’ motion to approve the resolution that she introduced failed. Councilmembers Lane, Alcalá, Nave, Haynes and Duffy voted “no”. Preisner abstained. (3-5-1)

RESOLUTION NO. 7420 introduced by Deputy Mayor Duane F. Pomeroy and Councilmember Harold Lane, amending City of Topeka Resolution No. 7104 to grant to the Topeka Housing Authority eminent domain authority, and rescinding the original of City of Topeka Resolution No. 7104, was presented.

Councilmember Pomeroy stated that his primary interest is to allow completion of the project in Tennessee Town, and this would allow the Topeka Housing Authority to do that.

Councilmember Duffy asked if there was an option to limit the eminent domain authority to a time specific or project.

Brenden Long, City Attorney stated that he believed it was in the authority of the Council to limit that power to other bodies.

Councilmember Lane stated that he had discussed a sunset provision with Mr. Duncan.

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

Councilmember Lane moved to add a five-year sunset provision to the ordinance. The motion was seconded by Councilmember Pomeroy.

Tuck Duncan, Chair of the Topeka Housing Authority stated that eminent domain authority is a tool, not a weapon. He stated that it allows them to have serious negotiations with people. He stated that he has no problem with a five-year sunset. He explained that the resolution could be amended and the power removed at any time. He stated that he would let the Council know before they proceed.

Councilmember Haynes asked Mr. Duncan if he could help him propose an amendment which would include the two projects that he previously referred to.

Tuck Duncan stated that he would probably suggest creating a subsection that would say “in addition to the foregoing powers, the power of eminent domain within the following described areas”, and he would get the council the description for the two areas he mentioned. He went on to say the amendment could include “said power to expire on January 1, 2000 whatever it is or December 31st of that year”. He stated that was how they could do it, but he would probably pull it from that general section of powers because that general section of powers mirrors identically the Municipal Housing Laws provisions, and so then this subsection would make it clear that these limitations and the sunset relate only to the eminent domain power, and not to the sunset of the entire Housing Authority.

Councilmember Haynes asked Mr. Duncan if he could work out the language with the Legal Department if he had a week or two.

Tuck Duncan stated that he could.

Councilmember Haynes moved to defer the resolution for one week so Tuck Duncan could work with the Legal Department on an amendment.

The motion died for lack of a second.

Councilmember Lane's motion to add a five-year sunset carried. Councilmember Haynes voted "no". (8-1-0)

The motion to approve as amended carried. Councilmember Haynes voted "no". (8-1-0)

Councilmember Alcala moved to reconsider Item #4F , the ordinance relating to rules and regulations regarding private security licenses. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

Councilmember Alcala moved to reinstate the language on lines 193 through 211 that was previously deleted and add the following language on lines 204 and 209: "except such officers shall not be exempt from licensing fee requirements of City of Topeka Code Section 30-66". The motion was seconded by Councilmember Lane.

Councilmember Alcala stated that his intent was to require all law enforcement officers to pay the fees to work as a merchant guard.

The motion carried. Councilmember Price voted "no". (8-1-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Lane, Alcala, Nave, Haynes, Duffy, Stubbs, and Preisner –7. Noes: Pomeroy and Price –2.

A FINAL PLAT for Alexander Place Subdivision located on a 64.1 acre parcel extending between SW 45th Street and SW 49th Street, approximately 300-feet east of SW Cambridge Avenue, within unincorporated Shawnee County, Kansas, was presented. (P03/37)

Bill Fiander, Planning Department gave the staff report.

Councilmember Stubbs moved to accept the public dedication. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

INTERGOVERNMENTAL AGREEMENT NO. 33751 establishing the Topeka-Shawnee County Metropolitan Planning Organization, was presented.

David Thurbon, Planning Director gave the staff report.

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

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the vacation of a 15-foot wide public alley right-of-way on property located at 1101 SW Mulvane Street, as dedicated by the plat of Stilson and Bartholomew's Addition, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V03A/1)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the vacation of a portion of a street right-of-way along NE Laurent Street, as dedicated by the plat of Garden Park Addition, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V03S/4)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the vacation of one-foot of a 30-foot wide platted building setback as dedicated by Northland Subdivision 'B', City of Topeka, Shawnee County, Kansas, was presented for first reading. (V03SB/6)

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 Massachusetts Avenue and SE Pennsylvania Avenue and north of SE 21st Street;

and, located between SE Adams Street and SE Massachusetts Avenue, the centerline of which is approximately 230-feet north of SE 21st Street in the City of Topeka, Kansas from “M-2” Multiple Family Dwelling District TO “PUD” Planned Unit Development District, was presented for first reading. (Z03/46)

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 on the east side of SE California Avenue and SE 27th Street, extended, in the City of Topeka, Kansas from “C-4” Commercial District TO “PUD” Planned Unit Development District, was presented for first reading. (Z03/59)

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 on the east side of SE Fremont Avenue, the centerline of which is approximately 1,100-feet south of SE 29th Street in City of Topeka, Kansas from “E” Multiple Family Dwelling District TO “R-1” Single Family Dwelling District, was presented for first reading. (Z03/60)

PRESENTATIONS BY MEMBERS OF THE COUNCIL were presented.

Councilmember Preisner stated that he reserved his right not to explain his votes.

Councilmember Duffy requested that annexation of Alexander Place Subdivision be placed on the Council’s pending requests list.

Councilmember Duffy stated that the Capital Improvement Program should provide guidance for MPO Projects, and that should be articulated when the organization is formed.

Councilmember Duffy requested that Administration check on reports and information that is overdue to the Council. He stated that the annual report on the Crime Summit is one report that is overdue. He stated that Ginny has a list of overdue reports that they have been working on.

Councilmember Price asked for an update on group homes that are in violation. David Thurbon gave an update and stated that they identified about 37 group homes. He explained that the ordinance only applied to those who were not licensed by the State, and there were about five or six that were not. He stated that out of those not licensed, three have ceased operation and they have filed charges in Municipal Court on the remaining three or four.

NO FURTHER BUSINESS appearing the meeting was adjourned by unanimous consent at 10:55 p.m.

Iris Walker
City Clerk