

## City Council Minutes – January 27, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 27, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Alcala, Pomeroy, Nave, Haynes, Duffy, Stubbs, Preisner and Price -8. Mayor James A. McClinton presided -1.

AFTER THE MEETING was called to order, prayer was offered by Rabbi Karol Lawrence, Temple Beth Sholom.

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 January 20, 2004 were presented.

A Cereal Malt Beverage application bearing the approval of the Chief of Police and City Inspectors for the Bavarian Inn, 712 W. 2<sup>nd</sup>, and Hunam's, 5005 W. 29<sup>th</sup> Street, was presented.

An Open After Mid-night application bearing the approval of the Chief of Police for Frances O'Dooley's, 1930 Westport Drive, was presented.

A Dance Hall application bearing the approval of the Chief of Police and City Inspectors for Skinny's Sports Bar & Grill, 4016 SW Huntoon, was presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Price carried unanimously. (8-0-0)

ORDINANCE NO. 18165 introduced by Mayor James A. McClinton annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located at the NW Corner of SW 6<sup>th</sup> Avenue and SW Wanamaker Road and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes, placed on first reading January 20, 2004, was again presented. (A04/1)

David Thurbon, Planning Director gave the staff report. He stated that the developer intends to construct a commercial development on Lots 1 and 2, Block A of River Hill. He stated that written consent to annexation has been provided for this property.

Councilmember Alcalá moved to adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (8-0-0)

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

SELECTION of Councilmember for District No. 3 vacancy was presented.

Following the reading of the first ballot, Mayor McClinton announced that Lover Chancler was selected as the Councilmember to represent Council District No. 3 by six votes of the Council.

Mayor McClinton stated that the communication relating to disposal of surplus property has been withdrawn until a later date.

A CONTRACT between the City of Topeka and the International Association of Firefighters, Local 83 providing for an amendment to the 2002-2004 labor agreement, was presented.

Mayor McClinton stated that Councilmember Haynes has excused himself from participation in discussion of the contract because of a potential conflict of interest.

Councilmember Preisner moved to refer the contract to a Special Committee created by the Deputy Mayor. The motion seconded by Councilmember Price carried. Councilmember Alcalá voted “no”. (6-1-0)

RESOLUTION NO. 7437 introduced by Mayor James A. McClinton authorizing initiation of condemnation proceedings for Waterline Improvement Project No. 28491-00, was presented.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Alcalá moved to approve the resolution. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

RESOLUTION NO. 7438 introduced by James A. McClinton authorizing the City Attorney's office to take all appropriate legal action necessary to protect the City of Topeka's ability and authority to regulate subdivision of land in its three mile extraterritorial jurisdiction, was presented.

Brenden Long, City Attorney gave the staff report. He stated that the legal department is requesting permission to initiate legal action primarily against the Board of Shawnee County Commissioners relating to action they took in an attempt to charter out of state law which requires Shawnee County to participate and cooperate with the City of Topeka in regard to establishing regulation of subdivisions within the three-mile area. He stated that this has also caused some confusion in the development community, and this issue needs to be settled. He explained that plats outside the city are going to both the county and the city for approval.

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

Councilmember Haynes asked if there were two issues involved.

Brenden Long, City Attorney explained that one issue is the county's ability to charter out of state law, and also the issue of the county's ability to charter out of state law that affects the rights of the City of Topeka.

In response to questions from several Councilmembers Brenden Long stated that they created the Topeka Planning Department consistent with State law and everyone must comply with the city ordinance that is in place. He explained that the advantage to taking legal action against the County Commissioners is that it would decide the issue in court and they would not have to go after every individual on a case-by-case basis to enforce the ordinance. He further explained that they have attempted to resolve the issue with the county, and have corresponded with them for the past two months to establish joint subdivision regulations. He stated that there has been no effort by the county to abide by the statute.

Councilmember Alcalá stated that he would not support the resolution because the city needs to work with the county, and this would just drive a bigger wedge between them. He stated that it would also not be a good use of taxpayers' money and difficult on developers in the three-mile area.

Councilmember Stubbs stated that she believed it was important to move forward and resolve the issue. She stated that it is a legal question concerning the relationship between cities and counties throughout Kansas as it relates to the extraterritorial jurisdiction of cities.

Councilmember Haynes stated that he agrees with Councilmember Stubbs that the issue needs to be resolved. He asked if a friendly lawsuit has been considered and explained how that could be accomplished.

Brenden Long stated that he was not at odds with the County Counselor and will consider everything, but the issue needs to be resolved and this is the option they have.

Mayor McClinton stated that they have differing constituents and the community is caught in the middle. He stated that they need a clear interpretation so this issue could be resolved.

Councilmember Duffy asked if it would be appropriate to ask the Kansas League of Municipalities and other jurisdictions to assist in the lawsuit since this question affects all cities in Kansas.

Brenden Long stated that he would check with the League.

The motion to approve the resolution carried. Councilmember Alcalá voted “no” (7-0-0)

REPORTS OF COMMITTEES AND OFFICERS were presented.

Deputy Mayor Pomeroy stated that he has assigned the new District No. 3 Councilmember Lover Chanler, to the Policy and Finance Committee. He stated that he has also named Councilmembers Price, Stubbs, Nave and himself to serve on the Special Committee, and they will select a Chair when they meet.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen, CAO distributed the legislative update. In response to previous requests from Councilmembers he stated that the Fire Chief has received information from four cities regarding their ISO ratings, and stated that he would submit additional information when it is received. He also stated that John Myers has scheduled a meeting with Mr. Polly regarding the Artist Relocation Program and they will have some additional information on that in a couple of weeks. He further explained that Bill Riphahn is finalizing the drawing on the park plan development relating to the Kansas Avenue fly-off project and it should be ready next week.

Councilmember Duffy clarified the information he requested and stated that according to the drawing that they saw there was a road going through the middle of the park, and he wanted to know how they could condemn property for a road going in an area where we don't know where the park will be located.

Dave Graversen stated that the fly-off project would take some of the property for the park but they believe there is still enough property for the park, and they will come back with a drawing to show the location.

Councilmember Duffy asked if the City of Topeka is going to follow through, and require that the Great Overland Station follow through because that is different from what was agreed upon. He asked if there would be a different resolution negotiated.

Councilmember Alcalá stated that if this were not time sensitive he would bring it back to get this settled.

Councilmember Duffy stated that the Kansas Avenue fly-off project encroached on the park and that is a change from the resolution approved for the Great Overland Station. He asked if other provisions of the resolution would be fulfilled and if that is a matter of concern for the Council.

Dave Graversen stated that he believes the idea of the fly-off and the river front park development could still be accomplished and that is what is moving forward. He stated that they would bring that document forward as soon as it is finished.

Councilmember Pomeroy asked for the status of the city's contract with the Convention and Visitors' Bureau. He expressed his disappointment that past Councilmember Lane would introduce something to single out Topeka. He stated that if it is good policy to make the records of the Convention and Visitors Bureau open to the public, then it should be good for all Convention and Visitors Bureaus in Kansas. He stated that he was also disappointed that he has not yet seen the contract with the language he requested.

Discussion continued regarding establishing policy that would require all entities that receive Transient Guest Tax funds to have the same language in their contracts as the

Convention and Visitors Bureau; the level of detail the public should have access to; the cost of the burden to provide the information; who will provide the information, the city or the organization, and if there should be any exceptions made. Several Councilmembers expressed a desire to have the same language in all contracts with the City of Topeka.

Brenden Long, City Attorney stated that entities that received funds from the City should be accountable to the City, and they already have language that gives the City the authority to request information. He stated that the question is could the public request records of the Convention and Visitors Bureau and other entities. He stated that many of the organizations provide the City with annual reports and that information would be available to the public as well as other information within the scope of any contract they have with the City.

Mayor McClinton stated that this has been a good discussion but this did not have to be decided tonight. He stated that there are several options to consider.

Dave Graversen also stated that he has made the lobbyists aware of the gaming issue and they will keep the City abreast of the issue. He stated that they have also distributed some information from Heartland Park regarding the concern expressed last week on assisting with the Solar Vehicle Racing event.

Charles Criqui appeared to speak under public comments.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:10 p.m.

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Iris Walker  
City Clerk