

**City Council Minutes – April 13, 2004**

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, April 13, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Alcala, Pomeroy, Chancler, Nave, Haynes, Duffy, Stubbs, Preisner and Price -9. Mayor James A. McClinton presided -1.

AFTER THE MEETING was called to order, prayer was offered by Councilmember Alcala.

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

THE CONSENT AGENDA was presented as follows:

A FINAL PLAT for GH & H Subdivision on a 1.0-acre parcel located north of SE 6<sup>th</sup> Avenue, the centerline of which is approximately 216-feet east of SE Golden Avenue in the City of Topeka, Kansas, was presented. (P03/43)

Minutes of the Regular Meeting of April 6, 2004 were presented.

Open After Mid-Night 2004-2005 renewal applications bearing the approval of the Chief of Police and City Inspectors for the following were presented:

<u>Business Name</u>	<u>Address</u>
Easy Time	501 Lyman
Fairlawn North 66 #2706259	600 Fairlawn Road
Hollywood Video #016-824	400 SW 29 <sup>th</sup> Street
The Matinee	611 SE Carnahan Avenue
South Gage 66 #2706289	3300 Gage
Sweet Justice Blues	2008 SW Gage Boulevard
Walgreens #2846	2915 SW Gage
Walgreens #3069	1001 SW Topeka Boulevard
West Ridge Lanes & Family Fun Center	1935 SW Westport Drive

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

Mayor McClinton withdrew item 5E, an ordinance relating to zoning case Z87/62, and item 5M, an ordinance relating to zoning case Z04/23 under Unfinished Business from the agenda.

#### NOTICE OF PUBLIC HEARING

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, April 13, 2004, at 7:00 P.M. to consider authorization of the issuance of Housing and Health Care Refunding and Improvement Revenue Bonds in the amount of \$12,000,000 for Congregational Home, commonly know as Brewster Place.

RESOLUTION NO. 7456 introduced by Mayor James A. McClinton expressing the intent of the City of Topeka, Kansas, to issue its Housing and Health Care Refunding and Improvement Revenue Bonds in the maximum principal amount of \$12,000,000 to finance various improvements benefiting the Congregational Home, refinance two outstanding revenue bond issues of the City and promote, stimulate and develop the economic welfare of both the City and the State of Kansas was presented.

John Myers, Economic Development Specialist gave the staff report.

Mayor McClinton gave the opportunity for anyone present to speak. No one appeared.

Councilmember Preisner moved to close the public hearing and approve the resolution.

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

#### NOTICE OF PUBLIC HEARING

Notice is hereby given that there will be a special meeting of the Councilmembers of the City of Topeka, Shawnee County, Kansas, held Tuesday, April 13, 2004, at 7:00 P.M. in conjunction with Conditional Use Permit request CU04/1 by Maxim, L.L.C., to establish a public utility structure on property located at 4101 SW Lincolnshire Road in the City of Topeka, Kansas.

RESOLUTION NO. 7457 introduced by Mayor James A. McClinton in accordance with Section 48-3.02.(c)(11) of the Code of the City of Topeka, approving a Conditional Use Permit

to establish a public utility structure on property currently zoned “RR-1” Residential Reserve District and located at the southeast corner of SW Lincolnshire Road and SW 41<sup>st</sup> Street in the City of Topeka, Kansas, was presented. (CU04/1)

Bill Fiander, Planning Department gave the staff report.

Mayor McClinton gave the opportunity for anyone present to speak. No one appeared.

Councilmember Preisner moved to close the public hearing and approve the resolution.

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

ORDINANCE NO. 18213 introduced by Councilmember Lisa Stubbs concerning City Council approval of employment and severance agreements placed on first reading April 6, 2004 was again presented.

Councilmember Stubbs stated that she introduced this ordinance because of the position the Council was placed in a couple of years ago, and the information that has surfaced in the last six months regarding employment and severance agreements. She also stated that this ordinance allows the public the right to know when the agreements exist and the Council the opportunity for review and approval.

Councilmember Pomeroy asked if there are currently any employment contracts with a severance agreement, and if so what are the details of the agreement.

Dave Graversen, Chief Administrative Officer stated that there is an agreement for the Housing and Neighborhood Director position that was administered by former Mayor Felker which includes a severance package. He also stated that he would send the details of the agreement to the Council.

Councilmember Duffy asked who the appointive officers and employees are.

Brenden Long, City Attorney stated that he primary appointive officer would be the Chief Administrative Officer followed by the City Attorney and the Municipal Court Judge.

Councilmember Haynes moved to amend the ordinance, striking lines 12 through 15, replaced it with “All employment contracts of more than 90 days duration with department heads or appointive officers shall be approved by the City Council prior to signature by the Mayor.” and on line 17, insert the words “or an employment” in front of the word “contract”, and on line 19, delete the word “authorization” and insert the word “approval”. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

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

AN ORDINANCE introduced by Councilmember Gary Price establishing City of Topeka Code Section 2-495 concerning councilmember conflicts of interests placed on first reading April 6, 2004 was again presented.

Councilmember Price explained the ordinance.

Councilmember Haynes moved to amend the ordinance as follows:

- Line 11, 12 and 13 insert the words “or the mayor” after the word “councilmember”
- Line 16 insert the words “issue or matter” after the word “any”
- Add the statement “or the mayor’s execution of any contract or agreement involving the contributing person, organization or agent as a part” at the end of the line 17.
- Add the statement “not withstanding any duty to vote provided for elsewhere herein.” At the end of the line 23
- Strike Selection 1.(a)(i) and replace it with “Should a conflict of interest arise for the mayor under this subsection (a), the mayor shall not execute the contract or agreement unless it was awarded pursuant to the city competitive bidding process or the council has consented to its execution.”
- Line 45 insert the words “or the mayor” after the word “councilmember”
- Line 46 insert the statement “after the effective date of the Section,” after the word “received” and before the word “during”.
- Line 48 insert the words “or the mayor” after the word “councilmember’s”
- Line 51 insert the words “or the mayor” after the word “councilmember” in both places

The motion died due to lack of a second.

Councilmember Duffy stated that he appreciates the work that has gone into the creation of the ordinance, however, he is still uncertain of some of the terms and believes that the amendment and the ordinance should be reviewed together in committee.

Councilmember Duffy moved to refer the ordinance to the Policy and Finance Committee. The motion seconded by Councilmember Price carried. Councilmember Alcalá voted "no". (8-1-0)

AN ORDINANCE introduced by John Alcalá, relating to the full accounting of all funds and City Property entrusted to him/her upon the retirement, resignation or discharge from City employment by a department or division head placed on first reading April 6, 2004 was again presented.

Councilmember Alcalá explained the purpose of the ordinance.

Councilmember Pomeroy asked what the procedure would be if company property was stolen.

Brenden Long stated that the procedure is to contact the Police Department if they believe a theft has occurred.

Councilmember Pomeroy asked if the department head would be responsible for the replacement of a stolen item.

Brenden Long stated that they would not be responsible.

Councilmember Price stated that they need to address how they would document department inventory from the beginning of employment to the end, and what would be included in the inventory.

Mayor McClinton stated that he would contact the State of Kansas and find out how they document and track their inventory and report back to the Council in thirty days with a similar policy for the City.

Councilmember Haynes stated that there are two issues that need to be addressed, how to document and audit inventory within a department, and a return policy.

Councilmember Duffy stated that he believes that Councilmember Alcalá's ordinance is good public policy, however, they also need an ordinance that covers the basic principal of good management of assets.

Brenden Long explained the amendment that Councilmember Haynes asked him to prepare. The amendment encompassed how city property and funds shall be assigned to the department head, a policy for personal usage of p-cards and cell phones, and several payment options for reimbursement of funds to the City.

Councilmember Preisner moved to refer the ordinance to the Policy and Finance Committee. The motion seconded by Councilmember Stubbs carried. Councilmember Pomeroy voted "no". (8-1-0)

ORDINANCE NO. 18214 introduced by Mayor James A. McClinton 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 832 SW Tyler Street in the City of Topeka, Kansas from "E" Multiple Family Dwelling District TO "C-4" Commercial District placed on first reading April 6, 2004 was again presented.  
(Z85/54)

Bill Fiander, Planning Department gave the staff report.

Councilmember Duffy inquired on if the Planning Department reviewed the Capital Area Plaza Authority's Plan to see if it was consistent with the area plan.

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

A ZONING PETITION and ORDINANCE NO. 18215 introduced by Mayor James A. McClinton 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 northwest corner of SE 45<sup>th</sup> Street and SE Adams Street in the City of Topeka, Kansas from "R-1" Single Family Dwelling District TO "M-1a" Limited Multiple Family Dwelling District placed on first reading April 6, 2004 was again presented. (Z04/3)

Bill Fiander gave the staff report.

Mayor McClinton asked if there were any exparte communications. There were none declared.

Councilmember Duffy moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember carried unanimously. (9-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18216 introduced by Mayor James A. McClinton 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 west side of SE California Avenue, the centerline of which is approximately 300-feet north of SE 25<sup>th</sup> Street in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for "C-2" Commercial District to "R-1"

Single Family Dwelling District placed on first reading April 6, 2004 was again presented.

(Z04/4)

Bill Fiander gave the staff report.

Teddy Van Vale and Roger Lovett appeared in support of the zoning case.

Councilmember Nave stated that he spoke with several constituents in the area and he supports the zoning change. He stated that he believes it will improve the appearance of the California Avenue corridor.

Councilmember Chancler asked if there has been any additional information brought forward from the property owner that was considering starting a business in the area.

Councilmember Stubbs thanked the Planning Department for not changing the zoning and doing what is best for the area.

Mayor McClinton asked if there were any additional exparte communications besides Councilmember Nave. There were none declared.

Councilmember Stubbs moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Price carried. Councilmember Alcalá voted "no".

(8-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Chancler, Nave, Haynes, Duffy, Stubbs, Preisner, and Price -9. Noes: Alcalá -1.

A ZONING PETITION and ORDINANCE NO. 18217 introduced by Mayor James A. McClinton 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 southeast corner of SW 44<sup>th</sup> Street and SW Gage Boulevard in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for



“D&O” Multiple Family Dwelling and Office District TO “O&I-1” Office and Institutional District placed on first reading April 6, 2004 was again presented. (Z04/18)

Bill Fiander gave the staff report and stated that the next five cases are in the same general area.

Mayor McClinton asked if there were any additional exparte communications besides Councilmember Preisner. There were none declared.

Councilmember Duffy moved to approve zoning petition and adopt the ordinance. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18218 introduced by Mayor James A. McClinton 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 SW 45<sup>th</sup> Street and SW Moundview Drive in the City of Topeka, Kansas from “R-1” Single Family Dwelling District with Resolution of Intent for “D&O” Multiple Family Dwelling and Office District TO “O&I-1” Office and Institutional District placed on first reading April 6, 2004 was again presented. (Z04/19)

Bill Fiander gave the staff report.

Mayor McClinton asked if there were any additional exparte communications besides Councilmember Preisner and Councilmember Stubbs. There were none declared.

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

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

A ZONING PETITION and ORDINANCE NO. 18219 introduced by Mayor James A. McClinton 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 SW 45<sup>th</sup> Street and SW Moundview Drive in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for "D&O" Multiple Family Dwelling and Office District TO "O&I-1" Office and Institutional District placed on first reading April 6, 2004 was again presented. (Z04/20)

Bill Fiander gave the staff report.

Mayor McClinton asked if there were any additional exparte communications besides Councilmember Preisner. There were none declared.

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

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

A ZONING PETITION and AN ORDINANCE introduced by Mayor James A. McClinton 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 SW 45<sup>th</sup> Street and SW Stone Avenue in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for "D&O" Multiple Family Dwelling and Office District TO "M-1" Two Family Dwelling District placed on first reading April 6, 2004 was again presented. (Z04/21)

Bill Fiander gave the staff report and stated that the Planning Commission recommended disapproval.

Mayor McClinton asked if there were any additional exparte communications besides Councilmember Stubbs. There were none declared.

Councilmember Stubbs moved to concur with the Planning Commission recommendation to disapprove the zoning petition and ordinance. The motion seconded by Councilmember Haynes carried. Councilmember Pomeroy and Alcala voted "no". (7-2-0)

A ZONING PETITION and ORDINANCE NO. 18220 introduced by Mayor James A. McClinton 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 SW 45<sup>th</sup> Street and SW Stone Avenue in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for "D&O" Multiple Family Dwelling and Office District TO "M-1" Two Family Dwelling District placed on April 6, 2004 was again presented. (Z04/22)

Bill Fiander gave the staff report.

Mayor McClinton asked if there were any additional exparte communications besides Councilmember Stubbs. There were none declared.

Councilmember Price moved to approve the zoning petition 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: Alcala, Pomeroy, Chancler, Nave, Haynes, Duffy, Stubbs, Preisner, and Price -9.

A ZONING PETITION and ORDINANCE NO. 18221 introduced by Mayor James A. McClinton 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 1222 SW 10<sup>th</sup> Avenue in the City of Topeka, Kansas from "M-3" Multiple Family Dwelling District TO "O&I-1" Office and Institutional District placed on first reading April 6, 2004 was again presented. (Z04/24)

Bill Fiander gave the staff report.

Councilmember Pomeroy commended the Old Town Neighborhood Improvement Association for their support.

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

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

ORDINANCE NO. 18222 introduced by Mayor James A. McClinton 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 April 6, 2004 was again presented.

Bill Fiander explained the amendment to the Neighborhood Revitalization Plan.

Councilmember Pomeroy asked if this area met the criteria for inclusion in the plan.

Bill Fiander stated that it did meet the qualifications.

Councilmember Alcalá asked Don Chrisman, developer to stand for questions and explain his proposed development.

Councilmember Pomeroy asked Mr. Chrisman to request that the Seaman School District participate in the plan.

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

ORDINANCE NO. 18223 introduced by Mayor James A. McClinton relating to the execution of an amendment to a loan agreement between Topeka, Kansas and the State of Kansas, for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Fund for the purpose of financing a Wastewater Treatment Project placed on first reading April 6, 2004 was again presented.

Neil Dobler, Public Works Director gave the staff report.

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

REAL ESTATE PURCHASE CONTRACT NO. 34171 between Ralph R. and Barbara J. Anderson and the City of Topeka for Project No. 15020-05 on property located at 6340 SW 10<sup>th</sup> Street was presented.

Neil Dobler gave the staff report.

Councilmember Preisner moved to approve the Real Estate Purchase Agreement. The motion seconded by Councilmember Price carried unanimously. (9-0-0)

AN ORDINANCE introduced by Mayor James A. McClinton annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, on property located on the south side of SW Huntoon Street, the centerline of which is approximately 1,200 feet west of SW Arvonía Place and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A04/2)

AN ORDINANCE introduced by Mayor James A. McClinton relating to the vacation of a 15-foot wide public north/south alley right-of-way located north of SW 7<sup>th</sup> Street between SW College Avenue and SW Jewell Avenue and the vacation of a portion of a 15-foot wide public east/west alley located to the west of SW College Avenue right-of-way located approximately 145 feet south of SW 6<sup>th</sup> Avenue as dedicated by the plat of Melrose Subdivision, City of Topeka, Shawnee County, Kansas was presented for first reading. (V04A/2)

AN ORDINANCE introduced by Mayor James A. McClinton relating to the vacation of a portion of an east/west utility easement and a portion of a north/south utility and public access easement of property located at 817 SW Harrison Street, as dedicated by the plat of Original Town, City of Topeka, Shawnee County, Kansas was presented for first reading. (V04E/2)

AN ORDINANCE introduced by Mayor James A. McClinton relating to the vacation of a 16-foot wide public east/west alley located between SW College Avenue and SW Mulvane Avenue about 134 feet south of SW 6<sup>th</sup> Avenue as dedicated by the plat of Martin Place Addition, City of Topeka, Shawnee County, Kansas was presented for first reading. (V04A/3)

AN ORDINANCE introduced by Mayor James A. McClinton establishing City of Topeka Code Section 130-11 concerning the procedures for changing street names and designating memorial streets was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 30251-00, which provides for the construction of a new building for the Helen Hocker Theater 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 James A. McClinton relating to sewer and sewage disposal, repealing Topeka City Code Sections 146-237, 146-241, 146-257, 146-347,

146-348, 146-349, 146-350, 146-351, 146-352, and 146-353, amending Topeka City Code Chapter 146, Article III, Division 8, and Sections 146-196, 146-240, 146-251, 146-256, 146-283, 146-341, 146-342, and 146-343, and repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton relating to water service and connection fees, amending City of Topeka Code Sections 146-32 and specifically repealing said original section was presented for first reading.

Councilmember Stubbs moved to refer item 7G, an ordinance relating to sewage and sewage disposal, and item 7H, an ordinance relating to water service and connection fees to the Public, Health and Safety Committee. The motion seconded by Councilmember Price carried. Councilmember Pomeroy was out of the room. (8-1-0)

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Stubbs announced that there would be a Public, Health and Safety Committee meeting on April 19, 2004 at 4:00 p.m. in the City Council Office.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen distributed the weekly Legislative Report and encouraged anyone that is having trouble getting questions answered in a timely manner to contact the Chief Administrative Officer so that they can help expedite the process.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Duffy stated that they are planning to schedule a meeting in the near future to review the procedure being used to answer questions asked by the public.

Councilmember Chancler thanked the volunteers who have helped with the Monroe Area clean up.

Councilmember Stubbs stated that she would be presenting a resolution supporting the Brown verses Board of Education decision and encouraged her colleagues to join her by co-sponsoring the resolution.

Charles Van Horn appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at

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Iris Walker  
City Clerk