

City Council Minutes – May 18, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, May 18, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, 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 Haynes.

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

Councilmember Alcalá moved to suspend the Council Rules to add an ordinance relating to Improvement Project No. 60587 to the agenda. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

Councilmember Alcalá moved to reinstate the Council Rules. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

THE CONSENT AGENDA was presented as follows:

A FINAL PLAT for Woodland Park at Soldier Creek Subdivision located on the southeast corner of NW Menninger Road and NW Topeka Boulevard in the City of Topeka, Kansas, was presented. (P03/40)

Minutes of the Regular Meeting of May 11, 2004 were presented.

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

AN ORDINANCE introduced by Councilmembers Jeff Preisner, Lisa Stubbs, Gary Price, and John Nave relating to a city wide curfew for minors placed on first reading May 11, 2004 was again presented.

Councilmember Preisner explained the ordinance and stated that the Public, Health and Safety Committee worked closely with the Chief of Police and gathered information from across the State to create the ordinance. He also distributed a handout from the National League of Cities relating to overall reduction of crime following the implementation of a curfew in certain cities throughout the nation.

Ed Klumpp, Chief of Police gave the staff report and stated that he supports the ordinance and believes it would assist in reducing the overall crime rate within one year of its passage. He also stated that the ordinance was mirrored off of the City of Wichita curfew ordinance. He explained that he spoke with the Wichita Chief of Police regarding their curfew ordinance and since it has been initiated they have seen a decrease in gang violence and overall crime.

Councilmember Chanler stated that she does not agree with the 11:00 p.m. curfew for kids 15 years of age and under because most of the summer activities available for children that age do not end until 11:00 p.m. She also asked how the Police Department plans to enforce the curfew, and if they would be willing to adjust the curfew time to accommodate the summer activities.

Councilmember Haynes questioned the language of the ordinance on lines 21 through 22, and 70 through 71, he believes that the language is too broad for enforcement, and may violate the constitutionality of freedom of speech.

Chief Klumpp stated that the general curfew hours were mirrored from other similar ordinances and it seems to be what works in most cases. He also stated that they would be willing to adjust the time for summer activities as long as there is a procedure in place to ensure consistency in enforcement.

John Knoll, Assistant City Attorney stated that he cannot guarantee the constitutionality

of the ordinance. He stated that about fifty percent of all curfew ordinances throughout the United States have been upheld. He also suggested using the words “remain or be” in place of “loiter, idle, wander, stroll, or play” on lines 21 through 22, and 70 through 71, and also to include a severability clause.

Councilmember Haynes moved to defer two weeks to allow the legal department to clarify the language in the ordinance. The motion was seconded by Councilmember Alcalá.

Councilmember Alcalá asked the Chief of Police to compile a crime report that consists of the crime statistics between the hours of 11:00 p.m. and 6:00 a.m. on kids ranging from 15 to 16 years old that includes their age, race, and location of the crime.

Councilmember Duffy suggested that they meet with USD No. 501 and incorporate some of their rules for handling juveniles. He questioned the procedural process of the ordinance and asked how it would be enforced. He also stated that the highest crime statistics show between the ages of 18 and 25.

In response, Ed Klumpp stated that a report requiring that much detail may take some time to compile but he would send the report to Councilmember Alcalá as soon as possible. He also explained that the procedural process would consist of a series of punishment options. The first offense would be handled with a warning to the child and parent, or release the child with instructions to go home. The second option would be community service, and the third option would be a fine ranging from fifty to five-hundred dollars.

Councilmember Nave expressed concern with how the Police Department would enforce the curfew and the need for extended hours in the summer to accommodate the activities.

Ed Klumpp stated that if the Council has concerns with certain activities, then he would suggest that they include them in the ordinance as exceptions.

Councilmember Preisner made a substitute motion to amend the ordinance to replace the words “loiter, idle, wander, stroll, or play” with “remain or be” on lines 21 through 22, and 70 through 71. The motion was seconded by Councilmember Stubbs.

Councilmember Price commended staff on their hard work and stated that currently there are no laws to enforce sending children home, which only increases the problems because it moves them from place to place throughout the city.

Councilmember Preisner withdrew his motion.

Councilmember Pomeroy expressed concern with the verbiage of the ordinance and stated that it needs to be adjusted to better accommodate each age group.

Councilmember Duffy stated that he supports the motion to defer for two weeks and would like to recreate the ordinance so it concentrates on adults between the ages of 18 and 25.

Councilmember Nave stated that he would like the ordinance to concentrate on the at-risk children and their parents.

Councilmember Stubbs stated that this is the initial step and the ordinance can be adjusted if needed. She also stated that a curfew law has worked in many other communities and believes that the Police Officers will use common sense when enforcing the curfew law.

Councilmember Haynes withdrew his motion to defer.

Councilmember Haynes moved to refer the ordinance to the Public, Health and Safety Committee. The motion was seconded by Councilmember Preisner.

Mayor McClinton noted that there are people signed up to speak on the subject and asked the Council if they would prefer that they speak at the committee meeting.

In response, several Councilmembers stated that they believe it would be inconsiderate not to allow the public to speak.

Councilmember Haynes called the question.

Councilmember Alcala challenged the question.

Mayor McClinton asked for a vote on if the question shall be called.

The motion of shall the question be called failed. Councilmembers Alcala, Pomeroy, Chancler, Nave, Haynes, Duffy, and Price voted "no". (2-7-0)

Max Wilson spoke in support of the ordinance and suggested that the Council send it back to committee to address the community's concerns.

Angelica Huber spoke in support of the ordinance.

Judette Padilla, Shawnee County Juvenile Parole Officer stated that she supports the ordinance, however, they need to figure out where they are going to facilitate the offenders.

Curtis Pitts stated that he supports the ordinance but believes it is bad timing. He also stated that the City needs to concentrate on programs for the youth that need somewhere to go, and the encouragement to succeed.

The motion to refer back to the Public, Health and Safety Committee carried.

Councilmember Preisner voted "no". (8-1-0)

Councilmember Alcala stated that he would like to reconsider the consent agenda and pull item 3A, a final plat for Soldier Creek Subdivision for separate discussion.

Councilmember Alcala moved to reconsider the consent agenda. The motion seconded by Councilmember Haynes carried. Councilmembers Preisner and Price voted "no". (7-2-0)

Councilmember Alcala asked if the problems regarding the protest petition, delinquent property taxes, and other legal issues involved with the property have been resolved.

David Thurbon, Planning Director stated that all of the delinquent property taxes for this particular property have been paid and building permits for this property will not be issued until

all of the legal matters have been settled.

Councilmember Pomeroy moved to approve the final plat. The motion seconded by Councilmember Preisner carried. Councilmembers Alcalá and Nave voted "no". Councilmember Haynes abstained. (6-2-1)

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

ORDINANCE NO. 18245 introduced by Mayor James A. McClinton relating to billiard and dance halls, amending City of Topeka Code Sections 14-51, 14-52, 14-53, and 14-114 and repealing the original sections placed on first reading May 11, 2004 was again presented.

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

A ZONING PETITION and ORDINANCE NO. 18246 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 north side of SW 7th Street between College Avenue and Jewell Avenue, property located at the northeast corner of SW 7th Street and SW College Avenue and property located on the south side of SW 6th Avenue between SW College Avenue and SW Mulvane Street in the City of Topeka, Kansas from "R-2" Single Family Dwelling District, "M-1" Two Family Dwelling District, "M-2" Multiple Family Dwelling District, "C-4" Commercial District and "O&I-2" Office and Institutional District ALL TO "MS-1" Medical Services District placed on first reading May 11, 2004 was again presented. (Z04/30)

Mayor McClinton asked if there were any exparte communications, besides Councilmember Pomeroy. There were none declared.

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

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

RESOLUTION NO. 7473 introduced by Councilmember Bill Haynes relating to the implementation of a Code of Ethics Policy for the City of Topeka, its elected officials and its employees was presented.

Councilmember Nave gave the committee report and stated that they recommended approval.

Councilmember Alcalá moved to approve the committee report. The motion was seconded by Councilmember Nave.

Councilmember Alcalá withdrew the motion to approve.

Councilmember Stubbs moved to amend the resolution to insert the word “unlawful” before the word “discrimination” on line 40. The motion seconded by Councilmember Price carried. Councilmember Pomeroy voted "no". (8-1-0)

Councilmember Duffy moved to amend line 55 of the resolution to add the statement “without regard to personal beliefs” after the word “partisanship”. The motion seconded by Councilmember Nave failed. Councilmembers Alcalá, Chancler, Haynes, Stubbs, and Price voted "no". (4-5-0)

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

A PROJECT BUDGET in the amount of \$662,000 and RESOLUTION NO. 7474 introduced by Mayor James A. McClinton, authorizing Water Main Project No. 28529-00 which

provides for the installation of a water transmission main from I-70 and Gage Boulevard through the Kansas Department of Transportation Maintenance Facility to the northbound Westgate Bridge as specifically described herein, and authorizing the same was presented.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Preisner moved to approve the project budget and resolution. The motion seconded by Councilmember Price carried. Councilmember Duffy was out of the room.

(8-1-0)

A PROJECT BUDGET in the amount of \$271,200 and RESOLUTION NO. 7475 introduced by Mayor James A. McClinton, relating to City of Topeka Waterworks Project No. 28535-00 which provides for a waterline extension and authorizing the same was presented.

Neil Dobler gave the staff report.

Councilmember Price moved to approve the project budget and resolution. The motion seconded by Councilmember Haynes carried. Councilmember Duffy was out of the room.

(8-1-0)

A PROJECT BUDGET in the amount of \$4,428,015.25 and RESOLUTION NO. 7476 introduced by Mayor James A. McClinton, authorizing Improvement Project No. 29058-04 which provides for the replacement of the existing South Kansas Interceptor as more specifically described herein, and authorizing the same was presented.

Neil Dobler gave the staff report.

Councilmember Price moved to approve the project budget and resolution. The motion seconded by Councilmember Haynes carried. Councilmember Duffy was out of the room.

(8-1-0)

AN ORDINANCE introduced by Mayor James A. McClinton authorizing the initiation of

condemnation proceedings to acquire property by eminent domain for the City of Topeka Trafficway Improvement Project No. 70192-02, in the area of 6th Street from Oakley to Gage Boulevard was presented for first reading.

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 between SW 45th Street and SW 49th Street, approximately 300-feet east of SW Cambridge Avenue and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A03/8)

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 Arvon 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 annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, on property located at 3935 NW 25th Street and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A04/3)

AN ORDINANCE introduced by Mayor James A. McClinton authorizing the City of Topeka, Kansas, to issue its taxable Industrial Revenue Bonds, Series A2004, (Payless ShoeSource Worldwide, Inc. Project) in the principal amount of \$10,000,000 for the purpose of purchasing acquiring, constructing, reconstructing, improving, remodeling, equipping and installing certain facilities; authorizing execution of a second supplemental indenture by and between the City and UMB Bank, N.A., in the City of Kansas City, Missouri, as trustee;

authorizing the City to lease said project to Payless ShoeSource Worldwide, Inc.; and authorizing execution of a second supplemental lease agreement by and between said City and Payless ShoeSource Worldwide, Inc., was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton relating to lands to which article applies, amending City of Topeka Code Section 74-32 and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 60587-00, which provides for the construction phase services for improvements along North Kansas Avenue as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen distributed the weekly Legislative report and a memorandum relating to the implementation of a City Property Inventory Policy.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Alcalá stated that he has received several noise complaints from area residents surrounding TJ's Bar & Grill in the Oakland area and asked if the Police Department could address the problem as soon as possible.

Councilmember Haynes asked Brenden Long to explain the memorandum he distributed regarding the recent ruling of the Kansas Supreme Court relating to the Hickory Creek Subdivision Final Plat.

Brenden Long explained that the ruling confirmed that the City has sole authority to accept or reject final plats within the three-mile extraterritorial area, and that the County did not have the authority to opt out of its joint agency responsibilities in regards to the final plat.

Councilmember Stubbs inquired on the meeting between the City of Topeka and Governor Sebelius regarding House Bill 2774.

Councilmember Price commended City staff for a job well done regarding the Monroe site Grand Opening.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:38 p.m.

Iris Walker
City Clerk