

City Council Minutes – June 8, 2004

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

Mayor McClinton withdrew item 5E, a zoning petition and an ordinance relating to zoning case Z04/35.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the appointment of Jewell Edwards to the Topeka/Shawnee County Public Library Board of Directors for a 4-year term that would expire April 30, 2008, was presented.

A FINAL PLAT for Woodbridge Subdivision No. 11 located between SW Woodbridge Drive and SW 10th Street, the centerline of which is approximately 1,700 feet east of SW Wanamaker Road in the City of Topeka, Kansas, was presented. (P04/16)

Minutes of the Regular Meeting of June 1, 2004 were presented.

Applications for Open After Mid-Night Licenses bearing the approval of the Chief of Police and City Inspectors for the following, were presented:

<u>Business Name</u>	<u>Address</u>
T&AW, Inc.	820 N. Kansas Avenue
McDonald's Restaurant	2880 SE California Avenue
McDonald's Restaurant	3117 SW Topeka Boulevard
McDonald's Restaurant	2001 NW Topeka Boulevard

Applications for Cereal Malt Beverage Limited License Renewals bearing the approval of the Chief of Police and City Inspectors for the following, were presented:

<u>Business Name</u>	<u>Address</u>
In a Pinch Convenience U Market	706 SW Fairlawn Road 935 SE 21 st Street

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

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, June 8, 2004, at 7:00 P.M. in conjunction with vacation request V04E/4 by T.E. McBride and R.D. Anderson, owners, to vacate a portion of an east/west utility easement on property located approximately 425-feet east of SW Burlingame Road and approximately 150-feet south of SW 36th Street.

ORDINANCE NO. 18257 introduced by Mayor James A. McClinton relating to the vacation of a portion of an east/west utility easement on property located approximately 425-feet east of SW Burlingame Road and approximately 150-feet south of SW 36th Street, as dedicated by the plat of Burlingame Subdivision No. 2, City of Topeka, Shawnee County, Kansas placed on first reading June 1, 2004 was again presented. (V04E/4)

Bill Fiander, Planning Department gave the staff report.

Joseph Ledbetter stated that he would like to speak only on item 5G, an ordinance relating to the Housing and Neighborhood Department and public comment.

Councilmember Preisner moved to close the public hearing and 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: Pomeroy, Alcalá, Chancler, Nave, Haynes, Stubbs, Preisner, and Price -8. Absent: Duffy -1.

ORDINANCE NO. 18258 introduced by Councilmember John Alcalá authorizing Fiesta

Mexicana to sell and dispense cereal malt beverages during the Fiesta, at specified locations and times placed on first reading June 1, 2003 was again presented.

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcala, Chancler, Nave, Haynes, Stubbs, Preisner, and Price -8. Absent: Duffy -1.

ORDINANCE NO. 18259 introduced by Councilmember John Alcala authorizing Fiesta Mexicana to sell and dispense cereal malt beverages during the Fiesta parade and street dance, at specified locations and times placed on first reading June 1, 2004 was again presented.

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcala, Chancler, Nave, Haynes, Stubbs, Preisner, and Price -8. Absent: Duffy -1.

A ZONING PETITION and ORDINANCE NO. 18260 introduced by Mayor James A. McClinton designating real property more specifically described herein as a historic landmark and presently zoned "C-4" Commercial District and located at 3400 SW Topeka Boulevard in the City of Topeka, Kansas, pursuant to City of Topeka Code Section 80-4 placed on first reading June 1, 2004 was again presented. (HL04/1)

Bill Fiander gave the staff report.

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

Councilmember Stubbs moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcala, Chancler, Nave, Haynes, Stubbs, Preisner, and Price -8. Absent: Duffy -1.

A ZONING PETITION and ORDINANCE NO. 18261 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 northeast corner of SW 57th Street and US 75 Highway in the City of Topeka, Kansas from “I-1” Light Industrial District TO “PUD” Planned Unit Development District (“I-1” and “C-2” use groups) placed on first reading June 1, 2004 was again presented.
(PUD04/1)

Bill Fiander gave the staff report.

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

Councilmember Preisner moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Stubbs carried unanimously. (8-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcala, Chancler, Nave, Haynes, Stubbs, Preisner, and Price -8. Absent: Duffy -1.

A ZONING PETITION and ORDINANCE NO. 18262 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 southwest corner of SW 36th Street and SW Plass Avenue in the City of Topeka, Kansas from “R-1” Single Family Dwelling District with Resolution of Intent for “M-3” Multiple Family Dwelling District or “O&I-2” Office and Institutional District ALL TO “O&I-2” Office and Institutional District placed on first reading June 1, 2004 was again presented.
(Z04/36)

Bill Fiander gave the staff report.

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

Councilmember Preisner moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Haynes carried unanimously. (8-0-0)

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

ORDINANCE NO. 18263 introduced by Mayor James A. McClinton relating to Housing and Neighborhood Development, repealing City of Topeka Section 42-8, amending City of Topeka Code Sections 42-1, 42-2, 42-3, 42-4, 42-5, 42-6, 42-7, 42-8, 42-9, 42-10, 42-11, 42-12, 42-61, 42-62, 42-63, 42-64, 42-65, and 42-66 and specifically repealing said original sections placed on first reading March 16, 2004 was again presented.

Councilmember Preisner gave the committee report and stated that the Public, Health and Safety Committee recommended “Do Pass” by a vote of 3-0-0 on May 14, 2004.

Councilmember Haynes distributed a proposed amendment to the ordinance, in Section 16, lines 645 through 729, relating to the construction contracts and purchases made by the Housing and Neighborhood Department(HND)/City of Topeka. He explained that the amendment would incorporate the same bidding process that is in the current city ordinance and asked the City Attorney to clarify the amendment so that it could be included in the ordinance.

Brenden Long, City Attorney suggested that the amendment should be added as a subsection. The subsection would refer all contracts and bidding of contracts directly to Chapter 2, Article VII of the City of Topeka Contract Rules and Regulations as provided by the Code of the City of Topeka, Kansas.

Glenn Briggs, Housing and Neighborhood Department (HND) stated that the city code does not cover private homeowners, which makes up 80 to 90 percent of the service that they bid out. Currently, the homeowners are allowed to choose which contractors they want to use,

contingent on HND approval. The homeowners are allowed to chose the contractor because they have to sign a loan agreement to pay the money back. He continued to explain that the guidelines and procedures that are set work very well and have been constructed from years of working with the Housing and Urban Development Department.

Brenden Long recommended that line 713, Section 16 include “Except as specifically modified by this action all bids and contracts referred by this section shall be referred directly to Chapter 2, Article VII of the City of Topeka Contract Rules and Regulations as provided by the Code of the City of Topeka, Kansas”. This would incorporate everything except regulating private homeowners.

Councilmember Haynes moved to amend the ordinance to include the suggested verbiage provided by the Legal Department. The motion seconded by Councilmember Price carried. Councilmembers Pomeroy, Alcalá and Chancler voted "no". (5-3-0)

Councilmember Alcalá moved to hear from the public before further amendments are considered. The motion seconded by Councilmember Pomeroy carried. Councilmembers Chancler and Preisner voted "no". (6-2-0)

The following people spoke in opposition of the ordinance and expressed their concern that approval of the proposal would diminish citizen participation, cause low-income people to lose volunteer representation and funding for smaller but much needed projects in their homes and immediate area.

JoAnn Peavler - CDAC Committee member
Betty Phillips - Hi-Crest Neighborhood resident
Joseph Ledbetter - Hi-Crest NIA President
Michael Bell - Tennessee Town NIA member
Maggie Pinick - Hi-Crest Neighborhood resident
Senator Anthony Hensley – Kansas District 19
Betty Dunn - Topeka, Kansas
Michael Bradley - Topeka, Kansas

Joyce Long - CDAC Committee member
John Meyer - Topeka, Kansas
David Price - Topeka, Kansas
Hi Stockwell - Old Town Neighborhood resident
Ted Mize - Old Town Neighborhood resident
Elda Remington - Hi-Crest Neighborhood resident
John Reb - Oakland Neighborhood resident
Jenny Prichard - CDAC Committee member
Jack Alexander - Quinton Heights Neighborhood resident
Fred Sanders - Monroe NIA President
Vicki Smith - Central Highland Park NIA member
Frank Kirtdoll - Topeka, Kansas

Teresa Miller stated that she had called and requested to sign up to speak on the issue.

Mayor McClinton noted that she was not on the sign-up list to speak and would not be allowed to speak on the item per Council Rules and Regulations.

Councilmember Alcala moved to allow Teresa Miller to speak on the issue. The motion seconded by Councilmember Stubbs failed. Councilmembers Nave, Haynes, Stubbs and Preisner voted "no". (4-4-0)

Mayor McClinton stated that the system that was developed 30 years ago is not effective anymore and is antiquated. He also stated that he has served as a NIA President twice and on the City Council for one term and the City did not deliver the resources needed to revitalize the neighborhoods then or now, so they continue to deteriorate. Neighborhoods need to know when the city is going to assist in revitalization and in ten years all of the neighborhoods could be revitalized if they approve the proposal.

Councilmember Preisner moved to amend the ordinance, to strike line 229 beginning with the word "divided" through line 234 ending with the word "participation". The motion seconded by Councilmember Chancler carried unanimously. (8-0-0)

Councilmember Preisner moved to amend the ordinance, to strike line 316 beginning with the word "Membership" and ending with the word "area." on line 317. The motion was

seconded by Councilmember Haynes.

Councilmember Pomeroy stated that he opposes the amendment because it would allow an NIA President to live outside city limits.

Councilmember Alcalá moved to make a substitute motion to strike the word “residents” and replace it with “all property owners” on line 317 as defined in Section 1, 2, 3, 4, 5, 6 and 7 of the ordinance. The motion seconded by Councilmember Haynes carried. Councilmembers Pomeroy and Price voted "no". (6-2-0)

Councilmember Preisner moved to amend the ordinance to strike line 375 beginning with the word “who” and ending with the word “boundaries” on line 376. The motion was seconded by Councilmember Stubbs.

Councilmember Alcalá made a substitute motion to amend the ordinance beginning on line 375 to read, “Officers must be elected from members of a NIA who own or rent property within the NIA boundaries.” The motion was seconded by Councilmember Pomeroy.

Councilmember Alcalá withdrew the substitute motion.

The motion to amend line 375 of the ordinance carried unanimously. (8-0-0)

Councilmember Pomeroy moved to amend the ordinance beginning on line 377, to strike the words “At least one-half (1/2) of the”. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

Councilmember Pomeroy moved to amend the ordinance to insert the word “not” after the word “will” and before the word “be” on line 356. The motion seconded by Councilmember Price failed. Councilmembers Alcalá, Chancler, Haynes and Stubbs voted "no". (4-4-0)

Councilmember Pomeroy moved to amend the ordinance to insert the words “or fifty percent of the residents” after the word “signatures” and before the word “requesting” on line

273. The motion seconded by Councilmember Alcalá carried unanimously. (8-0-0)

Councilmember Chancler stated that she has worked many hours with the NIA's and the City to try and come to a resolution that would benefit the City and the Community, but everyone cannot be pleased. She also stated that it is their job as Councilmembers to listen to the community, however, she appreciates the support but as a low to moderate-income person she can speak for herself and believes that others can too.

Councilmember Stubbs moved to amend the ordinance on line 201, to insert the sentence "No person can be the NIA representative on the CAC for more than three (3) consecutive terms." after the word "council." and before the word "One". The motion was seconded by Councilmember Price.

Councilmember Pomeroy stated he believes there is no need for a 3-year term on the Advisory Council.

Councilmember Pomeroy made a substitute motion to make the Advisory Board Council a "one (1) year term for everyone." The motion died due to a lack of second.

Councilmember Preisner stated that he believes a one-year term does not allow a person enough time to become involved in the organization or implement their ideas.

Councilmember Pomeroy made a substitute motion to make the term of office on the Advisory Board Council a one (1) year term. The motion was seconded by Councilmember Haynes.

Councilmember Stubbs stated that she believes a 3-year term is a fair amount of time. She also stated that they would be constantly spending their time bringing each new member up-to-date if they only have a one-year term limitation.

The motion to make the Advisory Board Council a one (1) year term failed.

Councilmembers Alcalá, Chancler, Nave, Haynes, Stubbs, Preisner and Price voted "no". (1-7-0)

The amendment to make the Advisory Board Council a three (3) year term, on line 200 carried unanimously. (8-0-0)

Councilmember Stubbs moved to amend the ordinance to insert "A NIA representative may also elect an alternate CAC representative who may represent the NIA in the event the NIA's CAC representative cannot attend a CAC meeting." before the word "Except" on line 193, and strike the remaining sentence of line 194 beginning with the word "and" and ending with the word "unchanged". The motion seconded by Councilmember Pomeroy carried unanimously. (8-0-0)

Councilmember Haynes moved to amend lines 255 through 256 of the ordinance replacing the word "should" with the word "shall". The motion seconded by Councilmember Stubbs carried unanimously. (8-0-0)

Councilmember Pomeroy moved to amend the ordinance to insert "with input from the chair." after the word "agenda" and before the word "for" on line 223. The motion seconded by Councilmember Alcalá carried. Councilmembers Chancler and Nave voted "no". (6-2-0)

Councilmember Alcalá stated that he would not support the ordinance because he believes that it would move progress of the NIA's backwards.

Councilmember Preisner moved to adopt the ordinance as amended. The motion was seconded by Councilmember Haynes.

Discussion followed by each Councilmember relating to the importance of making the plan work, total support of all Councilmembers, determining how to allocate the funds, directing of resources, choosing target areas, NIA participation and expertise.

Councilmember Preisner called the question.

The ordinance as amended was adopted on roll call vote as follows: Ayes: Pomeroy, Chancler, Nave, Haynes, Stubbs, Preisner, and Price -7. Noes: Alcalá -1. Absent: Duffy -1.

ORDINANCE NO. 18264 introduced by Councilmember 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 June 1, 2004 was again presented.

Councilmember Preisner stated that he brought the ordinance back before the Council because the Kansas Legislature has not taken any action on the issue. He also stated that he has received numerous calls from businesses within city limits urging him to help them receive the same financial advantages that the County does by allowing the retail sale of alcoholic liquor on Sundays.

Councilmember Alcalá called the question.

The ordinance was adopted on roll call vote as follows: Ayes: Chancler, Nave, Haynes, Preisner, and Price -5. Noes: Pomeroy, Alcalá and Stubbs -3. Absent: Duffy -1.

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

Councilmember Nave gave the committee report and stated that the Policy and Finance Committee recommended "Do Not Pass" by a vote of 2-0-0 on June 1, 2004.

Brenden Long explained the two suggested amendments. Councilmember Price's amendment would include the Mayor in contract agreements only and prohibit the Mayor from entering into a contract if he had a conflict, without Council approval. Councilmember

Haynes' amendment would apply conflict of interest to the Mayor and Council in all transactions by the City.

Councilmember Alcalá moved to adopt the committee report. The motion was seconded by Councilmember Pomeroy.

Councilmember Price stated that it is a matter of principles and ethics and believes it is not fair to the taxpayers and it is unfair for Mayoral and Council Candidates to accept large contributions from unions that have their contracts approved by them.

Councilmember Pomeroy noted how the ordinance could create a problem in approving contracts. He explained that in the past there have been five Councilmembers that have worked for the State of Kansas and this ordinance would have prevented them from voting on a contract between the City and the State.

Councilmember Stubbs stated that the ordinance would eliminate campaign contributions from packs of more than \$100 if they have a contract with the City.

Councilmember Nave stated that he agrees with Councilmember Price, however, he cannot support the ordinance because he believes that there is another way to handle the issue. He also stated that this ordinance takes away the right of the Labor Unions' to support who they want.

Following further discussion, Councilmember Chanler called the question.

The motion to adopt the committee report carried. Councilmembers Stubbs, Preisner and Price voted "no". (5-3-0)

RESOLUTION NO. 7481 introduced by Mayor James A. McClinton relating to the leasing of property for the purpose of providing office space for staff of City of Topeka, pursuant to Topeka City Code Section 2-460(c) was presented.

Kevin Rooney, Housing and Neighborhood Department gave the staff report and stated that the lease agreement is a three-year contract and the cost of the lease will remain the same through the first year and increase \$.25 per square foot the following two years.

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

AN ORDINANCE introduced by Mayor James A. McClinton, creating the trafficway impact fees article, amending City of Topeka Code Chapter 130 by the addition of the following language was presented for first reading.

Councilmember Preisner moved to refer the ordinance to the Public, Health and Safety Committee. The motion seconded by Councilmember Price carried unanimously. (8-0-0)

AN ORDINANCE introduced by Mayor James A. McClinton relating to subdivisions, amending City of Topeka Code Chapter 134 and Sections 134-96, 134-99, 134-141, 134-142, and 134-166, and repealing the original sections was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton relating to correctional placement residences, amending City of Topeka Code Chapter 48, Article XXXV and Sections 48-9.02(c), 48-10.02(c), 48-11.02(a), 48-11.02(c), 48-12.02(c), 48-13.02(c), 48-14.02(c), 48-17.02(a), 48-17.02(c), 48-18.02(a), 48-18.02(c), 48-20.00, 48-20.02(a), 48-20.02(b), 48-20.02(c), 48-21.02(a), 48-21.02(c), 48-23a.04(2), 48-23.02(c), 48-23.02(d), 48-26.00(g), 48-26.00(n), 48-26.00(u), and 48-26.00(v) and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton relating to the vacation of a 60-foot wide public street right-of-way and a 30-foot wide platted setback located on the east side of SW Topeka Boulevard, the centerline of which is approximately 570-feet south of SW

37th Street as dedicated by the plat of Trail Inn Subdivision, City of Topeka, Shawnee County, Kansas was presented for first reading. (V04S/2)

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 1251 SW Fillmore Street in the City of Topeka, Kansas from “M-2” Multiple Family Dwelling District with Resolution of Intent for “E” Multiple Family Dwelling District TO “M-2” Multiple Family Dwelling District was presented for first reading. (Z04/38)

Hi Stockwell, Jenny Prichard, and Richard Jacobson appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:40 p.m.

Iris Walker
City Clerk