

City Council Minutes - June 22, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, June 22, 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, Duffy, Nave, Haynes, Stubbs, Preisner and Price -9. Mayor James A. McClinton presided -1.

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

THE PLEDGE OF ALLEGIANCE was recited by those present in the chamber. Councilmember Alcalá requested that item 3B a resolution relating to housing tax credits for family rental housing by Fillmore Home Estates, L.L.C. and Meier's Ready Mix, Inc., be withdrawn.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 7483 introduced by Councilmember Clark Duffy granting Morning Star Bible Church an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

A Final Plat for Century Plaza II Subdivision located on the north side of SE 28th Street and California Avenue in the City of Topeka, Kansas, was presented. (P04/10)

A Final Plat for MDR Subdivision No. 5 located on the west side of SW Winding Road and north of SW 12th Street in the City of Topeka, Kansas, was presented. (P04/13)

Minutes of the Regular Meeting of June 15, 2004 were presented.

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

<u>Business Name</u>	<u>Address</u>
Los Taquitos, Inc.	1017 NE Seward Avenue
The Back Door	610 Wayne

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Nave carried. Councilmember Duffy voted "no". (8-1-0)

A HOME RULE ORDINANCE NO. 18269 introduced by Mayor James A. McClinton authorizing and providing for the issuance and public sale of taxable General Obligation Bonds, Series 2004-A (Pension Obligation Refunding) of the City of Topeka, Kansas, to fund certain obligations of the City to the Kansas Police and Fireman's retirement system for certain eligible employees of the City and pay the costs of issuing such bonds; setting forth the details of said sale; and providing for the giving of notice thereof placed on first reading June 15, 2004 was again presented.

Randy Bailes, Financial Director gave the staff report.

Councilmember Haynes asked how they can save money using Refunding Bonds if interest rates continued to rise.

In response, Randy Bailes stated that they are currently paying KPERS eight percent interest on KP&F liability and expect to sell the taxable bonds at an interest rate of six percent or less. The amount of money that would be made by selling the taxable bonds would match the current maturity of the KPERS debt payoff. This would lower the KP&F Pension to a level that would payoff the debt service of the bonds and save the City of Topeka approximately 1 million dollars over a ten-year period.

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

A REVISED PROJECT BUDGET in the amount of \$708,500 and ORDINANCE NO. 18270 introduced by Mayor James A. McClinton, authorizing Improvement Project No. 6058700, 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, and repealing City of Topeka Ordinance No. 18254 placed on first reading June 15, 2004 was again presented.

Neil Dobler, Public Works Director gave the staff report and stated that the City Council previously passed a project budget in the amount of \$408,500 for the North Kansas Avenue streetscape project, and they are requesting an additional \$300,000 to complete the project. He explained that the remaining \$341,500 of the original project budget of \$750,000 was used for the Jackson Street project. He also stated that eliminating phase 2 of the project and completing it all at once would save approximately fifteen percent in immobilization costs and provide less disruption to the area.

Councilmember Preisner inquired on the construction schedule of the project.

Neil Dobler stated that the project is scheduled to begin construction late in the summer and will be completed by early spring.

Councilmember Preisner moved to approve the project budget and adopt the ordinance. The motion was seconded by Councilmember Alcalá.

Dave Graversen, Chief Administrative Officer noted a point of clarification concerning the allocation of the \$750,000 of excess sales tax revenue money. He explained that \$408,500 was designated for the North Kansas Avenue streetscape project, and the remainder was used for the Jackson Street improvements. The \$300,000 that is being requested to finish the North Kansas Avenue streetscape project is an additional amount that would have to be paid for by

General Obligation Bonds.

Councilmember Haynes asked if there were any other funds available to use for the project besides General Obligation Bonds or Temporary Notes.

Randy Bailes stated that the only other funding option would be if the project is completed prior to the fall bond sale then they could bond the project without using temporary notes. However, due to the litigation involved with the excess sales tax revenue he believes it would be advisable not to bond the project this year and use temporary notes until they know if the excess sales tax funds can be used for the project.

Brenden Long, City Attorney explained the litigation. He stated that a citizen of Shawnee County filed suit against the City of Topeka claiming that the excess sales revenue money should go directly to Shawnee County.

Councilmember Haynes made a substitute motion to wait until a decision has been made concerning the excess sales tax revenue funds before designating the money to the project. The motion was seconded by Councilmember Price.

Councilmember Duffy stated the City Attorney has advised the Council repeatedly not to spend the excess sales tax revenue money until litigation is settled. Instead, they have allocated all of the excess money with the understanding that the law suit may be lost and then they will have to pay it back with taxpayers money. He continued to explain that even if the case is won, there is not enough money for this project unless the Council is willing to revisit the CIP and reduce the amount of money allocated to other projects. He stated that he would oppose the proposal because he believes they should establish a Business Improvement District (BID) to fund the remainder of the project.

Councilmember Pomeroy asked if there is a provision in the proposal that allows the

money that is leftover from the project to roll back into the total bonded indebtedness of the project.

Darrell Six, Vice President of the North Topeka Business Alliance stated that he supports the proposal. He thanked staff for all of their hard work in implementing the project, and stated that the enhancements would have a positive influence on the development of the North Kansas Avenue new growth area.

Councilmember Alcalá stated that other businesses in North Topeka area have expressed their support of the project.

Councilmember Stubbs stated that this project is a great opportunity to attract private investment to the area and unless the project would be greatly impacted, she would suggest that they delay their decision until the 2005 budget deliberations. She explained that the delay would give them the opportunity to see how it might affect other projects, and if it could be included in a future Capital Improvement Plan.

Councilmember Duffy encouraged them to create an ordinance that would set up a Business Improvement District to finish the project. He stated that in the last three years they have invested over 15 million dollars in the North Topeka area.

Charlene Robuck, North Topeka business owner stated that she believes that the North Topeka area has great potential and has been misrepresented for many years. She also stated that since the introduction of this proposal she had noticed an increase in traffic flow and visitors. Councilmember Haynes withdrew the substitute motion.

Councilmember Alcalá encouraged his colleagues to support the proposal. He stated that this project would give North Topeka the same opportunity to move forward as Downtown Topeka.

Councilmember Price stated that although he is enthusiastic about the project and believes it would have a positive impact on the area, he would have to oppose it. He explained that if they agree to approve the project it would set a precedence to add other projects to the CIP budget at any given time.

Councilmember Chancler stated that she supports the project. She also stated that it is time for the City Council to start doing what they say they are going to do when it comes to funding projects.

Councilmember Chancler called the question. Councilmember Stubbs challenged the call for the question. Mayor McClinton asked for a vote on if the question shall be called.

The motion to call the question failed. Councilmembers Pomeroy, Haynes, Duffy, Stubbs and Price voted "no". (4-5-0)

Councilmember Stubbs made a substitute motion to defer until August 24, 2004.

The motion seconded by Councilmember Haynes failed. Councilmembers Pomeroy, Alcalá, Chancler, Duffy and Preisner voted "no". (4-5-0)

The motion to approve the project budget and adopt the ordinance carried. Councilmembers Pomeroy, Haynes, Duffy and Price voted "no". (5-4-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcalá, Chancler, Nave, Stubbs and Preisner -5. Noes: Pomeroy, Haynes, Duffy and Price -4.

Councilmember Duffy asked if the 2005 Capital Improvement Plan would reflect approval of Improvement Project No. 60587-00 when presented to the Council during the 2005 budget deliberations.

Dave Graversen stated that they would include it in the plan.

AN ORDINANCE introduced by Mayor James A. McClinton, granting to Kansas Gas Service, a division of ONEOK, Inc., its successors and assigns, a natural gas franchise in the City of Topeka, Kansas, prescribing the terms thereof and relating thereto, an repealing portions of Ordinance No. 15667 placed on first reading March 9, 2004 was again presented.

Councilmember Duffy stated that items 4C, 4D, 4E and 4F were placed on the agenda per Council Rule 7.6(B) and suggested that they defer these items until July 20, 2004 for the 2005 budget deliberations.

Councilmember Stubbs moved to defer the ordinance until July 20, 2004. The motion seconded by Councilmember Haynes carried. Councilmembers Alcalá, Preisner and Price voted "no". (6-3-0)

AN ORDINANCE introduced by Mayor James A. McClinton, pertaining to the transportation, distribution, and sale of natural gas or other energy through pipelines or distribution systems in the City of Topeka, requiring a franchise placed on first reading March 9, 2004 was again presented.

Councilmember Stubbs moved to defer the ordinance until July 20, 2004. The motion seconded by Councilmember Haynes carried. Councilmembers Alcalá, Duffy and Preisner voted "no". (6-3-0)

AN ORDINANCE introduced by Mayor James A. McClinton, granting to Westar Energy, Inc., its successors and assigns, an electric energy franchise in the City of Topeka, Kansas, prescribing the terms thereof and relating thereto, and repealing Ordinance No. 15667 placed on first reading March 9, 2004 was again presented.

Councilmember Stubbs moved to defer the ordinance until July 20, 2004. The motion seconded by Councilmember Haynes carried. Councilmembers Chancler, Duffy and Preisner

voted "no". (6-3-0)

A RESOLUTION introduced by Councilmembers Clark Duffy and John Nave relating to the use of the proceeds from the proposed increase in franchise fees on electrical, natural gas and transported gas within the City of Topeka was presented.

Councilmember Haynes moved to defer the resolution until July 20, 2004. The motion seconded by Councilmember Stubbs carried. Councilmembers Pomeroy voted "no". (8-1-0)

ORDINANCE 18271 introduced by Mayor James A. McClinton relating to water service and connection fees, amending City of Topeka Code § 146-32 and specifically repealing said original section placed on April 13, 2004 was again presented.

Neil Dobler gave the staff report and explained that the ordinance is a revision that allows them to charge additional connection fees to cover system improvements and extensions.

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

ORDINANCE 18272 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 placed on first reading April 13, 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 June 21, 2004.

Councilmember Preisner moved to adopt the committee report as amended. The motion seconded by Councilmember Duffy carried. Councilmember Alcalá voted "no". (8-1-0)

Councilmember Price asked if this ordinance stops the County from prohibiting the City from annexing certain areas.

Neil Dobler explained that the ordinance states that if a person is located within the municipal service boundaries of the City they have to be annexed in order to connect to the City of Topeka sewer system. He also stated that if a person is developing inside the municipal service boundaries and is willing to consent to annexation, the City would provide them with an interceptor sewer connector at City cost. However, with this ordinance if a person is located outside the municipal service boundaries they would be able to connect to the City of Topeka sewer system if they sign a consent to annexation.

Councilmember Price stated that this ordinance is a step in the right direction, unfortunately, it came about thirty-years too late prohibiting City growth.

Councilmember Duffy asked how they were planning to incorporate the urban service area for potential annexation.

Neil Dobler stated that the majority of the urban service area is within the municipal service area boundaries, and explained that as large blocks of development within Urban Service areas transpire, they will become part of the City due to annexation requirements for sewer hookups.

Brenden Long stated that the City has hired a consultant to create an annexation plan that should be presented to the Council by the end of the year.

Councilmember Haynes moved to adopt the ordinance as amended. The motion seconded by Councilmember Preisner carried. Councilmember Alcalá voted "no". (8-1-0)

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

ORDINANCE NO. 18273 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 placed on first reading June 8, 2004 was again presented.

Councilmember Preisner gave the committee report and stated that the ordinance was removed from the Public, Health and Safety Committee "Without Recommendation" on June 21, 2004 because the amendments were not complete.

Bill Yanek, Topeka Builder-Realtor Association appeared in support of the ordinance and gave suggested amendments to the ordinance.

Councilmember Duffy stated that he appreciates all of the hard work that has gone into the creation of the ordinance, however, he believes the ordinance could have a negative effect on the development of the City.

Councilmember Preisner moved to adopt the committee report. The motion seconded by Councilmember Price carried. Councilmember Alcalá and Haynes voted "no". (7-2-0)

The ordinance was adopted as amended on roll call vote as follows: Ayes: Chancler, Nave, Haynes, Stubbs, Preisner, and Price -6. Noes: Pomeroy, Alcalá and Duffy - 3.

A COMMUNICATION from the Fire Department recommending approval of applications for firework pyrotechnic displays from Topeka Country Club, 2700 SW Buchanan and Shawnee Country Club, 913 SE 29th was presented.

Councilmember Preisner moved to approve the communication. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing the initiation of condemnation proceedings to acquire property by eminent domain for City of Topeka Waterline Improvement Project No. 28537-00, in the area of South Topeka Boulevard

Kirkclawn Tower south to SE 45~' Street was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, relating to the ability of the fire chief to permit pyrotechnical displays, amending city of Topeka Code § 70-57 and specifically repealing said original section was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS were presented.

Councilmember Nave announced that there would be a Policy and Finance Committee meeting held on June 29, 2004 at 3:00 p.m. in the Executive Conference Room to discuss the resolution relating to a Balanced Budget and Surplus Policy, an ordinance establishing a license fee for mobile food services, and an ordinance relating to business and occupation license and permit fees.

PRESENTATIONS BY MEMBERS OF THE COUNCIL were presented.

Councilmember Nave stated that he attended the Gage Park activities and Juneteenth Celebration and commended the Parks and Recreation Department for all of their hard work in making the events a success.

Councilmember Alcala stated that he would like to clarify that the City of Topeka staff did what they were suppose to do concerning a North Topeka water issue. He stated that an article printed in the June 22, 2004 Capital Journal newspaper stated the "The City of Topeka did not contact the person involved," and this statement is false. He explained that the City Council Office attempted to contact the person twice.

Councilmember Chancler stated that she also attended the Gage Park activities and Juneteenth Celebration and suggested that next year's Juneteenth Celebration should offer a shuttle service to eliminate the traffic congestion. She also stated that she was disappointed with

