

City Council Minutes – July 13, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, July 13, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, Duffy, Nave, Haynes, Preisner and Price -7. Mayor James A. McClinton presided -1. Absent: Chancler and Stubbs -2.

AFTER THE MEETING was called to order, prayer was offered by Jenny Good.

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

Councilmember Nave moved to suspend the Council Rules to add a resolution granting exception to the annexation requirements of the City of Topeka to the agenda, under New Business. The motion seconded by Councilmember Haynes carried unanimously.

(7-0-0)

Councilmember Pomeroy moved to reinstate the Council Rules. The motion seconded by Councilmember Preisner carried unanimously. (7-0-0)

THE CONSENT AGENDA was presented as follows:

A FINAL PLAT by South View Subdivision located at the northeast corner of SW 57th Street and US 75 Highway in the City of Topeka, Kansas, was presented. (P04/1)

A FINAL PLAT by Meier's Duplex Subdivision located at the northwest corner of NW Fillmore Street and NW Lower Silver Lake Road in the City of Topeka, Kansas, was presented. (P04/9)

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

Applications for a Cereal Malt Beverage License bearing the approval of the Chief of Police for Phillips Food Mart, 1611 SE 29th Street and Sunny & Sons, 2201 SW 6th Street, were presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Price carried unanimously. (7-0-0)

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, July 13, 2004, at 7:00 P.M. in conjunction with vacation request V04A/3 by Spangles, Inc., to vacate a public street right-of-way located along SW 21st Street and SW Gage Boulevard.

ORDINANCE NO. 18289 introduced by Mayor James A. McClinton relating to the vacation of a portion of a public street right-of-way located at the northwest corner of SW 21st Street and SW Gage Boulevard as dedicated by the plat of Seabrook Subdivision No. 3, City of Topeka, Shawnee County, Kansas, placed on first reading July 6, 2004 was again presented. (V04S/3)

Bill Fiander, Planning Department gave the staff report and explained that they have concerns with allowing a 20-foot right-of-way because of the existing land uses and the plat of the subdivision. He continued to explain that they would support a 13-foot wide strip of right-of-way to be vacated allowing the applicant to place a smaller pylon sign at this location while still being consistent with right-of-way dedications on the other three corners of the intersection.

Councilmember Preisner and Councilmember Duffy stated that there are several restaurants in this particular area that have complied with City sign regulations and prospered.

Dave Dooman, CFO for Spangles, Inc., appeared for questions and stated that they plan to open a couple of restaurants in the Topeka area, and the Spangles sign is the trademark that sets the restaurant apart from the others. He also stated that they are not affiliated with a national chain nor do they have a large advertising budget. He explained that the main reason they chose this site was because they were under the understanding that City staff agreed with the size, dimension, and location of the sign.

Councilmember Alcala stated that he does not understand why the City continues to allow businesses to come in and invest their dollars and tell them that everything is okay and then identify a problem such as this example. He also stated that this is a recurring problem and encourages an unfriendly business environment.

Mayor McClinton asked if the Planning Department was aware of the initial size of the sign.

Dave Dooman stated that prior to signing a 25 year lease on the property he submitted a full set of plans to Tim Green and Bill Fiander that included a picture of the initial 300-foot sign proposal that fell within City code regulations. He continued to explain that he was told that the sign ordinance was in the process of being changed and he would not be allowed to use a sign of that size, so he resubmitted a proposal for a 230-foot sign and was told that he would be allowed to use it.

Councilmember Pomeroy stated that he is not in favor of a sign placed close to the street. He also stated that the staff should supply information for tax incentive property in the future to encourage a downtown location.

Councilmember Preisner asked if they could just vacate the area that the sign would shadow.

Councilmember Price asked what kind of precedent would this set for the other businesses in the location if it is approved.

Councilmember Duffy moved to close the public hearing. The motion seconded by Councilmember Preisner carried unanimously. (7-0-0)

Councilmember Duffy moved to amend the ordinance to allow a 13-foot wide strip of right-of-way to be vacated. The motion was seconded by Councilmember Price.

Councilmember Duffy withdrew the motion to amend the ordinance.

Councilmember Haynes moved to adopt the ordinance to allow a 20-foot wide strip of right-of-way to be vacated. The motion was seconded by Councilmember Alcalá.

Councilmember Duffy stated that he opposed the motion because the existing businesses are already in compliance with the sign ordinance.

The motion carried. Councilmembers Duffy and Price voted "no". (5-2-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcalá, Nave, Haynes and Preisner –5. Noes: Duffy and Price –2. Absent: Chancler and Stubbs –2.

Councilmember Nave stated that he does not agree with a 20-foot vacation right-of-way and he thought that they were approving a 13-foot vacation right-of-way.

Councilmember Nave moved to reconsider. The motion seconded by Councilmember Duffy failed. Councilmembers Alcalá and Haynes voted "no". Councilmember Preisner was out of the room. (4-2-1)

A PROJECT BUDGET in the amount of \$200,000 and ORDINANCE NO. 18276 introduced by Mayor James A. McClinton, authorizing Improvement Project No. 30244-00, which provides for the asphalt mill and overlay and striping of the existing parking lot at Felker Park as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading July 6, 2004 was again presented.

Terry Bertels, Parks and Recreation Department gave the staff report.

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

Councilmember Haynes asked if the project would be funded by General Obligation Bonds and increase indebtedness for 2005.

Randy Bailes, Financial Director stated that bonded indebtedness is incurred after the project is completed and temporary notes or general obligations bonds are sold to pay for the project.

Councilmember Price stated that they should review what is coming off of the General Obligation Bond list each year.

Councilmember Duffy stated that this is a policy decision that was made a year ago and included in the Capital Improvement Plan (CIP). He stated that is why they look at the entire CIP each year.

Dave Graversen, Chief Administrative Officer stated that the Capital Improvement Plan is only a plan of action inconjunction with approval by the Council.

The motion to approve the project budget and adopt the ordinance carried.

Councilmember Haynes voted "no". (6-1-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcala, Nave, Duffy, Preisner, and Price -6. Noes: Haynes -1. Absent: Chancler and Stubbs -2.

ORDINANCE NO. 18277 introduced by Mayor James A. McClinton relating to city owned vehicles, amending City of Topeka Code Section 2-450 and specifically repealing said original section placed on first reading July 6, 2004 was again presented.

Ron Raines, Fleet Services appeared for questions.

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcala, Nave, Haynes, Duffy, Preisner, and Price -7. Absent: Chancler and Stubbs -2.

ORDINANCE NO. 18278 introduced by Mayor James A. McClinton relating to block parties, amending City of Topeka Code Section 130-1 and repealing the original section placed on first reading July 6, 2004 was again presented.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Alcala left the meeting.

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

ORDINANCE NO. 18279 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 5800 SW 6th Avenue and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading July 6, 2004 was again presented. (A04/4)

David Thurbon, Planning Director gave the staff report.

Mike Engler, Bartlett & West Engineers representative for the applicant appeared for questions.

David Lacy, Northwest Development appeared for questions.

Robert Sherburne inquired on what areas were being annexed.

Councilmember Preisner requested information on the impact, if any, the annexation would have on the fire-fighting contract.

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

A ZONING PETITION and ORDINANCE NO. 18280 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 1235 SW Wanamaker Road in the City of Topeka, Kansas from "C-4" Commercial District TO "PUD" Planned Unit Development District ("C-4" use group) placed on first reading July 6, 2004 was again presented. (PUD04/4)

A FINAL PLAT by Wanamaker Crossings Subdivision located at 1235 SW Wanamaker Road (NW corner of SW Huntoon and SW Wanamaker) in the City of Topeka, Kansas, was presented. (P04/14)

Bill Fiander, Planning Department gave the staff report.

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

Mayor McClinton asked if there were any exparte communications.

Councilmember Pomeroy stated that he spoke briefly with Jim Kelley.

Councilmember Preisner moved to approve the zoning petition, adopt the ordinance and accept the public dedication. The motion was seconded by Councilmember Price.

Jim Kelley, project developer for the project appeared for questions.

Mark Boyd appeared for questions.

The motion carried. (6-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18281 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 south side of SW Huntoon Street, the centerline of which is approximately 1,200 feet west of SW Arvonía Place in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "PUD" Planned Unit Development District ("M-1a" use group) placed on first reading July 6, 2004 was again presented. (PUD04/5)

Bill Fiander gave the staff report.

John Ladson, Bartlett & West Engineers representing the applicant appeared for

questions.

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

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. (6-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18282 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 enclosed by SW 13th Street on the south, SW Taylor street on the west, SW 10th Avenue on the north and SW Topeka Boulevard on the east in the City of Topeka, Kansas from "M-2" Multiple Family Dwelling District "M-3" Multiple Family Dwelling District, and "O&I-2" Office and Institutional District ALL TO "PUD" Planned Unit Development District ("O&I-1", "O&I-2" and "O&I-3" use groups) placed on first reading July 6, 2004 was again presented. (PUD04/6)

Bill Fiander gave the staff report.

Councilmember Pomeroy stated that initially the neighborhood residents expressed concern about the west boundary but that has been worked out.

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

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. (6-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18283 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 SE 29th Street, the centerline of which is approximately 1,530-feet west of SE Croco Road in the City of Topeka, Kansas from "R-1" Single Family Dwelling District, "R-1" Single Family Dwelling District with Resolution of Intent for "M-2" Multiple Family Dwelling District and "R-1" Single Family Dwelling District with Resolution of Intent for "C-2" Commercial District ALL TO "PUD" Planned Unit Development District ("O&I-2", "C-2" and "R-1" use groups) placed on first reading July 6, 2004 was again presented. (Z02/23)

Bill Fiander gave the staff report and stated that the original proposal passed on March 9, 2004 and was not recorded with the register of deeds within the 45 day time limit.

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

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

Councilmember Nave moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Haynes carried unanimously. (6-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18284 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 36th Street and SW Plass Avenue, extended, 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 "M-1a" Limited Multiple Family Dwelling District placed on first reading July 6, 2004 was again presented. (Z04/35)

Bill Fiander gave the staff report.

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

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 Price carried unanimously. (6-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18285 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 5840 SW 21st Street in the City of Topeka, Kansas from "R-1" Single Family Dwelling District TO "C-4" Commercial District placed on first reading July 6, 2004 was again presented. (Z04/39)

Bill Fiander gave the staff report.

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

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 Price carried unanimously. (6-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18286 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 northeast corner of SE 8th Avenue and SE Madison Street in the City of Topeka, Kansas from "M-2" Multiple Family Dwelling District and "C-4" Commercial District ALL TO "D-1" Downtown District placed on first reading July 24, 2004 was again presented. (Z04/40)

Bill Fiander gave the staff report.

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

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 Price carried unanimously. (6-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18287 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 east side of SW Fairlawn Road, about 175-feet south of SW 34th Street, extended in the City of Topeka, Kansas from "R-1" Single Family Dwelling District TO "O&I-1" Office and Institutional District placed on first reading July 6, 2004 was again presented.

(Z04/41)

Bill Fiander gave the staff report.

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

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 Price carried unanimously. (6-0-0)

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

ORDINANCE NO. 18288 introduced by Mayor James A. McClinton relating to the Board of Zoning Appeals, amending City of Topeka Code, Chapter 48, Article XXXIV and Sections 2-192, 48-34.00, 48-34.01, 48-34.02, 48-34.03, 48-34.04, 48-34.05, 48-34.06, 48-34.07, 48-34.08, 48-34.09, 48-34.10, and 48-34.11 and specifically repealing said original sections placed on first reading July 6, 2004 was again presented.

David Thurbon, Planning Director gave the staff report.

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

AN ORDINANCE introduced by Councilmember Duane Pomeroy relating to a city wide

curfew for minors placed on first reading May 25, 2004 was again presented.

Councilmember Preisner moved to remand the ordinance back to the Public, Health and Safety Committee. The motion seconded by Councilmember Haynes carried unanimously. (6-0-0)

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 moved to remand the ordinance back to the Public, Health and Safety Committee. The motion seconded by Councilmember Price carried unanimously. (6-0-0)

A RESOLUTION introduced by Councilmember Clark Duffy concerning the imposition of a countywide sales tax for economic development and infrastructure improvements was presented.

Councilmember Duffy stated that a draft of the resolution was inadvertently placed in the Council Packets. He distributed a copy of the final version to the Council.

Councilmember Duffy explained the resolution and stated that they must try to control the uncontrolled urbanization of Shawnee County, Kansas. He stated that he disagrees with the statements that have been made that the City of Topeka and Shawnee County do not get along. He further stated that he believed the difference is a basic, fundamental public policy issue. He pointed out that the City is growing in an area where they have no tax base and leaving their critical care areas in want. He also stated that he believes that the voters should be given a choice of continuing if they want to be the primary tax base for Shawnee County. He discussed the uncontrolled growth area by comparing the medium income of the proposed areas of housing development, bridge repair and street repair. He continued to explain that his resolution

proposes a quarter cent sales tax initiative for the implementation of the following projects:

- Topeka Boulevard Bridge including the Kansas Fly-off and I-70 exchange
- The Downtown Redevelopment Plan
- The Neighborhood Elements of the Plan
- Historic Preservation Plan
- Parks and Open Space Plan
- Office of the Arts ordinance

Councilmember Duffy moved to defer the resolution until September 7, 2004. The motion seconded by Councilmember Preisner carried. Councilmember Haynes voted "no".

(5-1-0)

A RESOLUTION introduced by Councilmember Clark Duffy relating to the extension of the current countywide retailers' sales tax for economic development and countywide infrastructure development was presented.

Councilmember Duffy gave a brief overview of the Shawnee County Economic and Community Development Plan goals, and explained that ninety percent of the projects are located outside city limits.

Councilmember Duffy moved to defer the resolution until September 7, 2004. The motion seconded by Councilmember Nave carried. Councilmember Haynes voted "no". (5-1-0)

A RESOLUTION introduced by Councilmember John Nave granting an exemption from the annexation requirements of City of Topeka Code Section 146-37, as amended, for the provision of water to certain specified property located in Shawnee County, Kansas, was presented.

Neil Dobler, Public Works Director gave the staff report and explained that some property owners were caught in the middle of transactions when the ordinance was adopted requiring annexation of property to receive city water. He stated that the owners in this case

have requested a waiver and it was not granted administratively.

Russell Dyke, owner appeared for questions and stated that they were misinformed concerning connection to City water after purchasing the land and it has created a hardship on them because they are unable to get water for their residence.

Councilmember Price moved to refer to the Policy and Finance Committee. The motion was seconded by Councilmember Nave.

Councilmember Haynes made a substitute motion to approve. The motion seconded by Councilmember Nave failed. Councilmembers Pomeroy, Duffy and Price voted “no”. (3-3-0)

Councilmember Duffy moved to reconsider. The motion seconded by Councilmember Pomeroy carried. Councilmember Haynes voted "no". (5-1-0)

Councilmember Price moved to refer the resolution to the Policy and Finance Committee. The motion seconded by Councilmember Preisner carried. Councilmember Haynes voted “no”. (5-1-0)

AN ORDINANCE introduced by Councilmember Lisa Stubbs amending the provisions of City of Topeka Code Chapter 30 and Section 54-102 concerning the use of paintball guns within the city limits of Topeka, and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton authorizing the issuance of \$13,385,000 aggregate principal amount of taxable General Obligation Bonds, Series 2004-A (Pension Obligation Refunding), of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, the home rule authority granted to the cities of the State of Kansas Constitution, and Home Rule Ordinance No. 18269 of the City, all as amended was presented for first reading.

A CHARTER ORDINANCE introduced by Councilmembers Lisa Stubbs, Bill Haynes, Duane Pomeroy, Jeff Preisner and Gary Price relating to a change in the form of government for the City of Topeka, Kansas repealing Charter Ordinance Numbers 65, 66, 72, 73, 75, 87, 90, and 92 and any other Ordinance in conflict herewith was presented for first reading.

A CHARTER ORDINANCE introduced by Councilmember Clark Duffy amending City of Topeka Charter Ordinance Code Sections A2-19, A2-20, A2-31, A2-32, and A2-33, concerning the office of City Manager, and repealing the originals of said code sections was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS were presented. Councilmember Preisner announced that there would be a Public, Health and Safety Committee meeting held on August 2, 2004 at 12 noon in the City Council Office.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:28 p.m.

Iris Walker
City Clerk