

City Council Minutes – September 7, 2004

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

AFTER THE MEETING was called to order, prayer was offered by Reverend Richard Rounds, McCrite Chapel.

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

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 7414 introduced by Councilmember Duane Pomeroy granting Matthew Alejos and Sarah Howe and exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

RESOLUTION NO. 7415 introduced by Councilmember Duane Pomeroy granting Tennessee Town Neighborhood Association an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions, was presented.

A COMMUNICATION recommending the appointment of Dennis Vasquez to the Convention and Visitors Bureau Board of Directors for a term that would expire on December 31, 2005 was presented.

WORKERS COMPENSATION SETTLEMENT for Rick Salter in the amount of \$21,982.72 was presented.

APPROVAL to pay the sewer backup cleaning cost portion of the claim of Kyle and Abby Lear, 5562 SW West Drive was presented.

APPROVAL to pay the sewer backup cleaning cost portion of the claims of Mary Taylor,

3416 SW Arrowhead; Monica Nicolay, 3418 SW Arrowhead; and Nancy Scott, 3412 SW Arrowhead, and grant authority to the City Attorney to negotiate cleanup cost settlements with residents residing in this area who present similar claims to the City was presented.

Minutes of the regular meeting of August 24, 2004 were presented.

Applications for Open After Mid-Night License bearing the approval of the Chief of Police for Frances O'Dooley's Irish Pub & Grille, 1930 Westport Drive and Wal-mart Supercenter #1802, 1501 SW Wanamaker Road, were presented.

Councilmember Preisner moved to approve the consent agenda. The motion seconded by Councilmember Alcalá carried. Councilmember Duffy voted "no". (6-1-0)

Councilmember Duffy moved to suspend the Council Rules to move item 5A, a contract between the City of Topeka and Dillon Real Estate Company to the beginning of the agenda under Unfinished Business. The motion seconded by Councilmember Stubbs carried. Councilmembers Alcalá and Chancler voted "no". (5-2-0)

Councilmember Duffy moved to reinstate the Council Rules. The motion seconded by Councilmember Stubbs carried. Councilmembers Alcalá and Chancler voted "no". (5-2-0)

CONTRACT NO. 34597 between the City of Topeka, Dillon Real Estate Company, Inc., and Topeka Turnaround Team, a not-for-profit corporation, for City acquisition of real property located at 1200 SW Lane was presented.

Rogers Brazier, Parks and Recreation Director gave the staff report.

Hi Stockwell spoke in support of the proposal and gave a brief biography of Aaron Douglas and his contributions to the art world.

Councilmember Stubbs moved to approve the contract. The motion seconded by Councilmember Nave carried unanimously. (7-0-0).

A ZONING PETITION and ORDINANCE NO. 18314 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 NW Rochester Road, the centerline of which is approximately 810-feet north of U.S. Highway 24 in the City of Topeka, Kansas from "R-1" Single Family Dwelling District and "C-4" Commercial District ALL TO "PUD" Planned Unit Development District placed on first reading July 6, 2004 was again presented. This was remanded back to the Topeka Planning Commission on July 20, 2004. (*PUD04/3*)

David Thurbon, Planning Department gave the staff report.

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

Vern Jarboe, attorney for Wal-mart Stores appeared for questions and submitted a petition in support of the proposal to the City Clerk.

Councilmember Pomeroy entered the room.

Greg Debacher, Frank Benteman, Charles Smith, Nina Skidmore, William McGoyne, and Charles Marling spoke in opposition of the proposal and stated that they believe the new Wal-Mart Store would cause area companies to go out of business and create numerous traffic safety hazards. They also stated that there are several other locations that would better accommodate the new store.

Thane Witmer, Carol Laird and Dave Ireland spoke in support of the proposal. They stated that they believe the new Wal-Mart store would bring much needed progress to North Topeka. They also commented on the convenience for the rural and elderly people, possible increase in city transit routes, potential to lead customers to other area businesses, and it would

generate an increase in employment and revenue for the City of Topeka.

Mike Whalstedt, traffic engineer for the project gave a brief overview of the traffic study that was completed on the area.

Councilmember Preisner stated that he believes the traffic studies are obsolete because the Kansas Department of Transportation (KDOT) has the final authority regarding traffic flow changes to the area.

Councilmember Pomeroy asked if the traffic studies included school bus traffic.

Councilmember Alcalá asked if they would be creating a dangerous traffic situation by approving the zoning change, and if so, can there be any additional changes made at a later date. He also asked if the traffic improvements would be necessary if the proposal is not approved.

Councilmember Stubbs expressed concern with the peak traffic time that was used in the traffic study, and suggested that they include shift change traffic from the companies surrounding the area and school traffic.

In response, Mike Whalstedt explained that they did not include school bus traffic in the study because school is not dismissed during the “peak” hours of the day, and the shift change traffic would not affect Rochester Road. He stated that he believes that by approving the proposal they would not be creating a dangerous situation, and the traffic improvements would be necessary even if the proposal is not approved.

Councilmember Chancler stated that it has been proven that the traffic improvements are necessary due to future growth in the area. She suggested that they use the Wal-mart proposal to set a precedence for future businesses to contribute to infrastructure improvements. She also stated that the citizens of Topeka must be willing to endure the small inconvenience of waiting at a traffic light for a few minutes to support the growth of the City.

Councilmember Nave stated that the initial traffic study did not factor in a new fully staffed juvenile correctional facility located near Rochester Road; Goodyear Tire & Rubber Company shift change traffic; school traffic; and the regular traffic flow between the hours of 2:00 p.m. and 5:00 p.m., which are all issues that may contribute to safety hazards.

David Lotz, representative for Wal-mart stated that they are willing to pay for the improvements suggested by the City of Topeka including infrastructure and trafficway improvements.

Each Councilmember declared exparte communications through email, telephone calls, U.S. mail and personal conversations.

Councilmember Chancler stated that the new competition would be good for business and it would encourage outside sales tax dollars.

Councilmember Alcalá stated that he supports the proposal and believes that the new Wal-mart would contribute to area impulse buying for small area businesses. He stated that he received several telephone calls from HallMark Company and Goodyear Tire & Rubber Company employees stating that they support the proposal because Wal-Mart Stores sell their products.

Councilmember Pomeroy asked why there was a change in the number of votes opposing the proposal at the second Planning Commission meeting.

David Thurbon stated that the change in the number of votes resulted from more Planning Commission members being present at the second meeting. He also stated that the Planning Department rejected the proposal because they believe that the new concept of a “neighborhood friendly Wal-Mart”, a smaller scale business, would better accommodate the area.

Councilmember Nave stated that he would support the proposal because Wal-mart is

going to contribute 1.5 million dollars for infrastructure improvements, relieving the financial burden from taxpayers.

The motion to approve the zoning petition and adopt the ordinance carried.

Councilmembers Duffy, Stubbs and Preisner voted "no". (5-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcalá, Chancler, Nave and Haynes -5. Noes: Duffy, Stubbs and Preisner -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 gave the committee report and stated that the Public, Health and Safety Committee recommended "Do Not Pass" by a vote of 3-0-0 on August 16, 2004.

Councilmember Preisner moved to approve the committee report. The motion seconded by Councilmember Chancler carried. Councilmember Duffy voted "no". (7-1-0)

Councilmember Alcalá stated that he would not support any documents relating to a city wide curfew because there has not been any data provided that proves that the targeted age groups are committing crimes. He also stated that the City is not a babysitter and he believes that the current laws need to be better enforced because a city wide curfew would only punish the good kids.

The ordinance was not adopted on roll call vote as follows: Ayes: Duffy -1. Nos: Alcalá, Pomeroy, Chancler, Nave, Haynes, Stubbs and Preisner -7.

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 gave the committee report and stated that the Public, Health and

Safety Committee recommended “Do Pass” by a vote of 2-1-0 on August 16, 2004. He also stated that he supports a city wide curfew because he believes that teenagers should not be out after midnight.

Councilmember Preisner moved to approve the committee report. The motion seconded by Councilmember Chancler carried. Councilmember Duffy voted "no". (7-1-0)

Councilmember Haynes moved to replace the words “loiter, idle, wander, stroll, or play” with “be or remain on” on lines 21, 22, 70 and 71, and to delete paragraph C of the ordinance. The motion was seconded by Councilmember Stubbs.

Councilmember Chancler stated that she believes businesses should be held responsible for enforcing a city wide curfew as well as parents.

Councilmember Chancler asked to divide the question.

Councilmember Stubbs stated that most businesses employ young adults as managers and she believes that they would not enforce the law on fellow youth.

The motion to replace the words “loiter, idle, wander, stroll, or play” with “be or remain on” on lines 21, 22, 70 and 71 carried. Councilmembers Alcalá and Stubbs voted "no". (6-2-0)

The motion to delete paragraph C failed. Councilmembers Pomeroy, Alcalá, Chancler and Duffy voted "no". (4-4-0)

Councilmember Nave requested that the ordinance include wording that would implement a tracking system.

Brenden Long, City Attorney suggested that they include a new section to the ordinance. He stated that it should include the definition of “contact” to clarify a tracking system by the Topeka Police Department.

Councilmember Nave moved to add a new section 6 as suggested by the City Attorney to

the ordinance. The motion seconded by Councilmember Chancler carried. Councilmember Duffy voted "no". (7-1-0)

Councilmember Preisner moved to delete the words "or any employee" on line 106 and 113 of the ordinance. The motion seconded by Councilmember Duffy carried. Councilmembers Alcala and Duffy voted "no". (6-2-0)

Councilmember Nave stated that the purpose of a city wide curfew is to provide safety for the children.

Brenden Long suggested that a sever ability clause be included as section 7 to the ordinance for validity and constitutional reasons.

Councilmember Chancler moved to add section 7, a sever ability clause to the ordinance. The motion seconded by Councilmember Nave carried. Councilmember Duffy voted "no". (7-1-0)

Jesse Rezac and Lucas Lux spoke in opposition of the ordinance.

Councilmember Chancler stated that implementation of the ordinance would show that the City of Topeka cares about what is happening on the streets by enforcing a curfew.

Councilmember Pomeroy stated that he opposes the curfew regulations for the 16 and 17 year old age groups.

The ordinance was not adopted on roll call vote as follows: Ayes: Chancler, Nave, Stubbs, and Preisner -4. Noes: Pomeroy, Alcala, Haynes and Duffy -4.

AN ORDINANCE introduced by Mayor James A. McClinton, relating to bus stop benches, amending Topeka City Code Section 154-38 and specifically repealing said original section placed on first reading August 24, 2004 was again presented.

Councilmember Stubbs moved to refer the ordinance to the Policy and Finance

Committee. The motion seconded by Councilmember Haynes carried. Councilmembers Alcalá and Duffy voted "no". (6-2-0)

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. This resolution was deferred from the meeting of July 13, 2004.

Councilmember Duffy explained the resolution.

Councilmember Duffy moved to approve the resolution. The motion seconded by Councilmember Haynes failed. Councilmembers Alcalá, Chancler, Nave, Haynes, Stubbs and Preisner voted "no". (2-6-0)

A RESOLUTION introduced by Councilmember Clark Duffy concerning the imposition of a countywide sales tax for economic development and infrastructure improvements was presented. This resolution was deferred from the meeting of July 13, 2004.

Councilmember Duffy explained the resolution.

Councilmember Duffy moved to approve the resolution. The motion seconded by Councilmember Pomeroy failed. Councilmembers Alcalá, Chancler, Nave, Haynes, Stubbs and Preisner voted "no". (2-6-0)

A PROJECT BUDGET in the amount of \$6,162,550 and RESOLUTION NO. 7515 introduced by Mayor James A. McClinton describing Improvement Project No. 28536-00 which provides for the installation of a water transmission main along Oakley Avenue from Front Street to SW 21st Street; thence continuing south and east to Randolph Avenue and SW 22nd Street as more specifically described herein was presented.

Mike McGee, Assistant Public Works Director gave the staff report.

Councilmember Preisner moved to approve the project budget and resolution. The motion seconded by Councilmember Stubbs carried. Councilmember Duffy voted "no". (7-1-0)

A PUBLIC IMPROVEMENT PETITION, PROJECT BUDGET in the amount of \$192,700 and RESOLUTION NO. 7516 introduced by Mayor James A. McClinton authorizing Lateral Sanitary Sewer District No. 40782-02 as more specifically described herein was presented.

Mike McGee, Assistant Public Works Director gave the staff report.

Councilmember Preisner moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Stubbs carried. Councilmember Duffy voted "no". (7-1-0)

A PUBLIC IMPROVEMENT PETITION, PROJECT BUDGET in the amount of \$131,200 and RESOLUTION NO. 7517 introduced by Mayor James A. McClinton authorizing Lateral Sanitary Sewer District No. 40906-02 as more specifically described herein was presented.

Mike McGee, Assistant Public Works Director gave the staff report.

Councilmember Preisner moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Haynes carried. Councilmember Duffy voted "no". (7-1-0)

A PUBLIC IMPROVEMENT PETITION, PROJECT BUDGET in the amount of \$279,200 and A RESOLUTION NO. 7518 introduced by Mayor James A. McClinton authorizing Street Improvement Project No. 60468-06 as more specifically described herein was presented.

Mike McGee, Assistant Public Works Director gave the staff report.

Councilmember Preisner moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Nave carried. Councilmember Duffy voted "no". (7-1-0)

A PUBLIC IMPROVEMENT PETITION, PROJECT BUDGET in the amount of \$431,800 and RESOLUTION NO. 7519 introduced by Mayor James A. McClinton authorizing Street Improvement Project No. 60525-01 as more specifically described herein was presented.

Mike McGee, Assistant Public Works Director gave the staff report.

Councilmember Preisner moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Chancler carried. Councilmember Duffy voted "no". (7-1-0)

DEMOLITION PERMIT APPEAL by Topeka City Homes regarding property located at 716 SW 8th Avenue, within the environs of Bethany Place, Register of Historic Kansas Places, was presented.

David Thurbon, Planning Department Director gave the staff report and explained that after reviewing the permit the Topeka-Shawnee County Landmarks Commission recommended to the State Historic Preservation Officer (SHPO) that the project would negatively impact upon the environs of Bethany Place. He stated that the SHPO agreed with the recommendation and determined that the project will “encroach upon, damage, or destroy” the environs of the historic property. He also stated that according to state statute the project cannot proceed until the local governing body has determined, based on a consideration of all relevant factors, there is no feasible and prudent alternative to the demolition proposal.

David Perkins, representative for Topeka City Homes stated that they wish to demolish the structure and are appealing the decision of the SHPO because financially there is not a

feasible alternative. He explained that the property has sustained excessive damage to the foundation, interior and exterior of the home, and has been vacant for three years. He stated that it would cost approximately \$97,700 to make the necessary repairs to the home and upon completion the property would only be worth approximately \$40,000 because of the area it is located in. He stated that their intention from the beginning was to demolish the existing home and replace it with infill housing.

Councilmember Nave asked if the State Historical Society has offered to buy the home.

Councilmember Stubbs asked if Topeka City Homes requires a home inspection prior to purchasing property.

In response, David Perkins stated that the State Historical Society has not offered to buy the home, and Topeka City Homes does not require a professional inspection of property prior to purchase.

Michael Bradley stated that the neighborhood agrees that the property should be demolished. He also stated that they would like the opportunity to discuss other options regarding the use of the property, and believe that the low-income housing should be spread throughout the neighborhood and not in one concentrated area.

Councilmember Preisner moved to find that there is no feasible and prudent alternative to the demolition proposal. The motion seconded by Councilmember Chancler carried unanimously. (8-0-0)

AN ORDINANCE introduced by Councilmember John Alcala establishing a franchise fee refund program for the City of Topeka was presented for first reading.

Councilmember Alcala moved to refer the ordinance to the Policy and Finance Committee. The motion seconded by Councilmember Haynes carried. Councilmember Duffy

was out of the room. (7-1-0)

AN ORDINANCE introduced by Mayor James A. McClinton, relating to the payment of gasoline and/or diesel fuel, amending City of Topeka Code Chapter 54 was presented for first reading.

Councilmember Haynes moved to refer the ordinance to the Policy and Finance Committee. The motion seconded by Councilmember Nave carried. Councilmember Duffy was out of the room. (7-1-0)

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 13143-00, Phase 1, which provides for the hiring of a structural engineer to provide an engineering analysis of Fire Station No. 5 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 authorizing the issuance of \$39,275,000 aggregate principal amount of General Obligation Refunding Bonds, Series 2004-B, of the City of Topeka, Kansas, under the authority of K.S.A. 10-101 to 125, inclusive, and K.S.A. 10-427 *et seq.*, all as amended was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton amending the Master PUD Plan of SE 29th Street and Cunningham Street by allowing development of an indoor mini-storage on property located at 210, 220, 230, 240, and 250 SE 29th Street in the City of Topeka, Kansas was presented for first reading. (Z73/19D)

AN ORDINANCE introduced by Councilmember John Alcala relating to tethering or chaining of dogs, amending City of Topeka Code Section 18-4, Cruelty to animals and repealing said original section was presented for first reading.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Alcalá submitted a resolution relating to the purchase of Self-Contained Breathing Apparatus (SCBA) units for the Topeka Fire Department to be placed on a future agenda as soon as possible.

David Owen and Hi Stockwell appeared to speak under public comment.

Councilmember Duffy moved to adjourn into executive session for a period not to exceed fifteen minutes to discuss employee labor negotiations. The motion seconded by Councilmember Stubbs carried unanimously. (8-0-0)

Following the fifteen minute time period the Council reconvened into open session and Mayor McClinton stated that no action had been taken.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:30 p.m.

Iris Walker
City Clerk