

City Council Minutes – November 16, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 16, 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 Muller -9. Mayor James A. McClinton presided -1.

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

AFTER THE MEETING was called to order, prayer was offered by Peter Gotta, Heart of America Hospice.

Councilmember Pomeroy requested that item 3B, a resolution regarding Cox Communications Kansas, L.L.C. be pulled for separate discussion.

THE CONSENT AGENDA was presented as follows:

Minutes of the Regular Meeting of November 9, 2004, were presented.

A COMMUNICATION requesting the approval of the City's portion of the 2005 funding recommendations from the Topeka-Shawnee County Alcohol-Drug Abuse Advisory Council was presented.

A Dance Hall License application bearing the approval of the Chief of Police and City Inspectors for the Electric Cowboy, 3249 SW Topeka Boulevard was presented.

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

Godfathers Pizza	1835 N. Topeka Blvd
Godfathers Pizza	5300 W. 17 th Street
Godfathers Pizza	1707 SE 29 th Street

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

Councilmember Duffy stated that there is a total of 105 people signed up to speak under public comment. He explained that if each individual is allowed four minutes to speak, it would take over seven hours to complete public comment. He encouraged the Council to limit the time allotted for each individual speaker.

Councilmember Preisner moved to limit public comment to one-minute. The motion died due to a lack of a second.

Councilmember Stubbs moved to limit public comment to two-minutes. The motion seconded by Councilmember Alcala carried. Councilmember Preisner voted "no". (8-1-0)

RESOLUTION NO. 7547 introduced by Mayor James A. McClinton consenting to the purchase of the outstanding publicly held Class A common stock of Cox Communications Kansas, L.L.C. by subsidiaries of Cox Enterprises, Inc., was presented.

Ted Mize and Michael Bradley spoke in opposition of the resolution. They expressed concern with area tree trimmings that have recently been conducted by Cox Communications, Inc., and encouraged Council to refer the resolution to a committee.

Brenden Long, City Attorney stated that the tree trimming problem should be addressed with Kansas Power and Light. He stated that he does not believe that Cox Communications is to blame for the destruction of area trees.

Councilmember Pomeroy suggested that they draft a resolution that would protect area trees and set regulations for companies to follow when trimming trees.

Councilmember Duffy stated that Adam Moser, Forestry Department is working diligently with certain companies to help alleviate current and future problems.

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

Councilmember Haynes moved to suspend the Council Rules to add a resolution to the agenda granting a noise waiver to WatKansas Vanaram, a Buddhist Temple located at 3901 SE Adams Street, under Unfinished Business, item 4J. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

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

A PROJECT BUDGET in the amount of \$26,700 and RESOLUTION NO. 7548 introduced by Mayor James A. McClinton describing and authorizing Sanitary Sewer Project No. 40077-02 which provides for the construction of a sewer extension in Paramore Street as more specifically described herein was presented.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Alcala moved to approve the project budget and resolution. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

A FINAL PLAT for Capricorn Woods Subdivision No. 3 located between SE 23rd Terrace and K-4 Highway (Kansas Turnpike), approximately 1320-feet west of SE Croco Road within unincorporated Shawnee County, Kansas was presented. (P04/27)

David Thurbon, Planning Director gave the staff report.

Steve LaCasse, Bartlett & West Engineers appeared to answer questions.

Councilmember Preisner moved to approve the final plat. The motion seconded by Councilmember Duffy carried unanimously. (9-0-0)

ORDINANCE NO. 18343 introduced by Mayor James A. McClinton annexing land to the City of Topeka, Kansas in accordance with K.S.A. 12-520, as amended, generally located west of SW Wanamaker Road, approximately 1200 feet north of SW 6th Street, within

unincorporated Shawnee County, Kansas and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading November 9, 2004 was again presented. (A04/8)

David Thurbon gave the staff report.

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

ORDINANCE NO. 18344 introduced by Mayor James A. McClinton annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located on the south side of SW 29th Street approximately 953-feet west of the intersection of SW Urish Road and SW 29th Street within unincorporated Shawnee County, Kansas and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes placed on first reading November 9, 2004 was again presented. (A04/9)

David Thurbon gave the staff report.

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

A PROJECT BUDGET in the amount of \$120,000 and ORDINANCE NO. 18345 introduced by Mayor James A. McClinton, authorizing Improvement Project No. 70142-02, which provides for the removal and replacement of the medians at 21st and 25th Street intersections as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading November 9, 2004 was again presented.

Neil Dobler gave the staff report.

Councilmember Duffy moved to approve the project budget and adopt the ordinance. The motion seconded by Councilmember Nave 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 Muller -9.

A PROJECT BUDGET in the amount of \$4,103,210 and ORDINANCE NO. 18346 introduced by Mayor James A. McClinton, authorizing Trafficway Impact Fee District No. 70183-00, which provides for the construction of South Kansas Avenue from SW 37th Street to the Interstate 470 and South Topeka Boulevard intersection as more specifically described herein, all pursuant to City of Topeka Ordinance No. 18273 placed on first reading November 9, 2004 was again presented.

Neil Dobler gave the staff report.

Henry McClure, developer appeared to answer questions.

Councilmember Duffy moved to approve the project budget and adopt the ordinance.

The motion seconded by Councilmember Preisner carried. Councilmember Pomeroy voted "no".
(8-1-0)

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

A PROJECT BUDGET in the amount of \$5,637,234 and AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 86248-00, which provides for the City's acquisition and renovation of the current EBA Building located at 620 SE Madison as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading November 9, 2004, was again presented.

Neil Dobler gave the staff report.

Councilmember Duffy moved to adjourn into executive session, including assistant Chief Administrative Officer Neil Dobler, for a period not to exceed ten minutes to discuss an issue

relating to real-estate matters. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

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

Councilmember Duffy moved to defer action for one week. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

A RESOLUTION introduced by Councilmember John Alcala relating to the purchase of Self-Contained Breathing Apparatus (SCBA) units for the Topeka Fire Department was presented.

Councilmember Preisner gave the committee report and stated that the resolution was removed from the Public, Health and Safety Committee “Without Recommendation” on November 1, 2004.

Councilmember Preisner moved to remand back to the Public, Health and Safety Committee and adopt the committee report. The motion was seconded by Councilmember Duffy.

Councilmember Alcala stated that he would not support the motion because he believes it is a public safety issue that needs to be addressed immediately. He also stated that he believes the Fire Department does not have the money to purchase the equipment.

Mayor McClinton noted that the Fire Department did not express necessity of the equipment during budget deliberations.

Councilmember Alcala stated that he is not convinced that the excess \$550,000 left over from a KDOT project could not be used to purchase the equipment.

Councilmember Duffy stated that the current Fire Department shrinkage rate is 3.2% and if they would increase the rate to 3.5% it would provide sufficient funding necessary to purchase the equipment.

Councilmember Stubbs stated that she received a memorandum from Linda Wood, City Controller regarding the excess \$550,000. She stated that the memo explained that it is important that they use the money for trafficway improvements as it was intended.

Councilmember Chancler stated that the committee is awaiting information from the Fire Chief on how many SCBA Units are absolutely necessary to purchase at this time.

Councilmember Alcalá asked if the Fire Fighters safety is a currently at risk with the safety equipment that they have.

David Sterbenz, Interim Fire Chief stated that it is not a safety issue at this point.

The motion to remand back to the Public, Health and Safety Committee for further discussion carried unanimously. (9-0-0)

ORDINANCE NO. 18347 introduced by Councilmembers Clark Duffy and Tiffany Muller relating to the discrimination ordinances, amending Topeka City Code Sections 82-290, 82-291, 82-293, 82-295, 82-296, 82-297, 82-298, 86-2, 86-28, 86-51, 86-52, 86-53, 86-55, and 86-114, and specifically repealing said original sections placed on first reading November 9, 2004 was again presented.

Mayor McClinton expressed the importance of respecting others while speaking under public comment.

Councilmember Preiner moved to make an amendment to the ordinance to delete sections 1 through 13, and strike the words “or gender, identity or expression” after the word “sexual

orientation” on line 558, section 14 of the ordinance. The motion was seconded by Councilmember Stubbs.

Councilmember Preisner stated that he made the amendment to encourage compromise, set an employment policy similar to the County’s employment policy, and to send a clear message that the City of Topeka, as an employer does not discriminate.

Councilmember Alcalá expressed concern with the drastic change in verbiage of the ordinance and asked the City Attorney if they would have to present a new ordinance for consideration.

In response, Brenden Long stated that the amendment relates to the same subject matter, therefore, it would not be necessary to construct a new document.

Councilmember Muller stated that she appreciates the effort to compromise, however, she cannot support the amendment because the citizens of Topeka need full protection from discrimination throughout the community.

Councilmember Haynes asked the City Attorney if he had reviewed the amended language to make certain that it accomplishes what the Council has intended.

Brenden Long stated that he reviewed the language and believes it would accomplish what is intended.

Councilmember Duffy expressed concern with making amendments to the ordinance prior to hearing public comment.

Councilmember Pomeroy stated that he would like to state his amendment prior to public comment so the public has the opportunity to respond to the proposed changes.

Councilmember Pomeroy suggested a friendly amendment to the ordinance, to insert the statement “This term shall not apply to a religious or private fraternal and benevolent association or corporation” on line 398.

Mayor McClinton encouraged those that were signed up to speak under public comment to speak only to the issue.

The following appeared and spoke in opposition of the ordinance:

Margie Phelps	Ben Phelps	Shirley Phelps
Fred Phelps, Sr.	Steve Drain	Megan Phelps-Roper
Fred Phelps, Jr.	Joseph Ledbetter	Becky Phelps-Davis
Jonathan Phelps	Sam Phelps-Roper	Mark Schreiner
Timothy Phelps	Bob Hansen	Karl Hockenbarger
Cecil Washington	Kirk Nystrom	Jim Lord
John Cooney	Greg Varney	

The following appeared and spoke in support of the ordinance:

Melly Schmidt	Susan Candea	Betsy Rohleder
Jon Johnson	Alan Martin	

Mayor McClinton stated that he would like to remind the public to speak only to the topic regarding discrimination.

Councilmember Stubbs encouraged consistency regarding the management of the meeting.

Councilmember Duffy stated that it is the Mayor’s obligation to follow Council Rule 8.3 that was established by the City Council.

Councilmember Alcalá challenged the Mayor’s definition of Council Rule 8.3 in regards to “repetitious speech”.

Councilmember Haynes called the question.

The Mayor asked for a vote on if the Mayor’s definition of Council Rule 8.3 in regards to “repetitious speech” shall be upheld. The motion seconded by Councilmember Stubbs failed.

Councilmembers Pomeroy, Alcalá, Chancler, Nave, Haynes, Stubbs, Preisner and Muller voted "no". (1-8-0)

Councilmember Alcalá moved to extend the meeting through the end of the agenda. The motion seconded by Councilmember Pomeroy carried. Councilmember Preisner voted "no".

(8-1-0)

The following individuals appeared and spoke in opposition of the ordinance:

Edward Kirtdoll	Anthony Divers	Robert Thadison
Austin Vincent	Quinton Martin	Alan Winn
Rick Tague	David Owen	Mike Foster
Bill Smallback	Patricia Real	Jason Smith
Dan Walker	Bill Farris	Jack Jacob
Pastor Stan Johnson	Ruth Wiltz	Paula Carvel
Brett Carvel	Hi Stockwell	Bruce Bynum
David Epps	Norm Crawford	Deb Koerth
Richard Koerth		

The following individuals appeared and spoke in support of the ordinance:

Bill Rich	Angela Hollman	Reverend CR Williams, Sr.
Jason Chaika	Todd Reeves	Richard Donner
Tom Cypert	Sonja Feist	Bill Beachy
Samantha Snyder	Dean Schmitt	Pedro Irigonergaray
Wendy Farley	Marshall Barber	Diane Caudle
John Wilds	Michael Bell	

Following the conclusion of public comment, Councilmember Preisner asked the City Attorney if the original motion to amend the ordinance was in order.

The City Attorney confirmed that the motion was in order.

Councilmember Preisner called the question.

The motion to delete sections 1 through 13, and strike the words “or gender, identity or expression” after the word “sexual orientation” on line 558, section 14 of the ordinance carried.

Councilmembers Alcalá, Chancler, Haynes and Stubbs voted "no". (5-4-0)

Councilmember Duffy moved to amend the ordinance to add sections 1 through 13. The motion seconded by Councilmember Stubbs failed. Councilmembers Alcalá, Chancler, Nave, Haynes and Stubbs voted "no". (4-5-0)

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

Brenden Long clarified that the adopted ordinance only relates to the City of Topeka as an employer, adding "sexual orientation" to the list of factors regarding discrimination in the work place.

RESOLUTION NO. 7549 introduced by Councilmember Bill Haynes granting WatKansas Vanaram, a Buddhist Temple, an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

Councilmember Haynes moved to approve the resolution. The motion seconded by Councilmember Stubbs carried. Councilmember Duffy voted "no". (8-1-0)

AN ORDINANCE introduced by Mayor James A. McClinton relating to fees and specifically amending Sections 6, 7, and 12 of City of Topeka Ordinance No. 18292 and specifically repealing said original sections of Ordinance No. 18292 was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Duffy moved to establish a Government Transition Committee. The motion seconded by Councilmember Stubbs carried unanimously. (9-0-0)

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Duffy submitted an ordinance relating to the Landmarks Commission for a future agenda. He also submitted a request per Council Rule 5.3 to place the annexation of Capricorn Woods Subdivision No. 3 under pending requests.

Councilmember Pomeroy stated that it has been four weeks since he has submitted a request relating to the City of Topeka's internal policy regarding endorsement of electoral candidates and has not yet received the information. He asked if he could receive the information as soon as possible.

David Owen appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 11:45 p.m.

Iris Walker
City Clerk