

## City Council Minutes – November 23, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, November 23, 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.

THE CONSENT AGENDA was presented as follows:

Minutes of the Regular Meeting of November 16, 2004, were presented.

An Open After Midnight License application bearing the approval of the Chief of Police and City Inspectors for Adub's Game Plan, 2031 SW Moundview Drive was presented.

Dance Hall License applications bearing the approval of the Chief of Police and City Inspectors for Jul's Cocktail Club, 4117 SW Huntoon and The Tool Shed, 921 South Kansas Avenue, were presented.

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

Councilmember Stubbs moved to suspend the Council Rules to move item 4G, a zoning petition and ordinance regarding the Northland Shopping Center to the top of the agenda. The motion seconded by Councilmember Preisner carried. Councilmember Chancler voted "no". (8-1-0)

A ZONING PETITION and AN ORDINANCE introduced by Mayor James A. McClinton amending the Master PUD Plan of Northland Shopping Center by providing for

development of commercial land use and residential housing on property located at the southeast corner of NW Topeka Boulevard and NW Menninger Road in the City of Topeka, Kansas placed on first reading November 9, 2004 was again presented.

Councilmember Stubbs stated that due to the amount of concerns expressed by area residents she would suggest that they send the case back to the Planning Commission so that an agreement can be reached between all parties involved.

Councilmember Stubbs moved to remand back to the Planning Commission. The motion was seconded by Councilmember Preisner.

Councilmember Alcalá stated that he opposes the motion because there was an opportunity to reach an agreement between both parties and the developer would not compromise. He asked if the delinquent property taxes have been paid on the property. He also expressed concern with the proposal and if it would require only 5 votes to pass, instead of 7, if remanded back to the Planning Commission.

Braxton Copley, Assistant City Attorney stated that because there was a protest petition filed it would require a super majority vote by the Council to pass.

Councilmember Muller stated that she agrees that there should be an opportunity for a compromise before they make a decision on the proposal.

The motion to remand back to the Planning Commission carried. Councilmembers Pomeroy, Alcalá and Chancler voted "no". (6-3-0)

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

ORDINANCE NO. 18348 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 placed on first reading November 16, 2004 was again presented.

Neil Dobler, Public Works Director gave the staff report. He explained that existing businesses will be “grandfathered” in if a license is obtained prior to December 15, 2004. He stated that the ordinance applies primarily to new contractors and the licenses issued after December 15, 2004 would be provisional for the year 2005, subject to a qualifying party passing an examination in their respective field through a nationally recognized testing agency. He continued to explain that the proposed ordinance would also require continuing education for general contractors and expand the license requirement to include framing contractors.

Councilmember Haynes asked if the license would apply to people who build decks as a part-time business.

In response, Neil Dobler stated that the licensing requirement applies to any person who receives money to do work for someone else.

Councilmember Pomeroy asked if the licensing requirements would apply to the Habitat for Humanity Program.

Braxton Copley stated that any non-for-profit agency or social group would need to hire a contractor that is properly licensed to do their work.

Councilmember Alcalá asked how it would affect volunteer work done by contractors.

Neil Dobler stated that volunteer work should not be affected by the new license regulations because usually a person is individually licensed, or they work for someone who is.

David Price spoke in opposition of the new regulations and stated that the City already requires a permit for contractors and he believes the City is double dipping.

Joseph Ledbetter stated that he believes the new regulation creates a barrier for small businesses and new businesses. He asked the Council to reconsider the ordinance.

Pat DeLapp spoke in opposition of the ordinance. He stated that he believes that the new regulations are not user friendly and that they drive up the cost of business. He suggested that they place the ordinance in a committee and consider having it apply only to contractors who contract with the city.

Councilmember Chancler asked if there is a minimal cost provision regarding the requirement of obtaining a license.

In response, Neil Dobler stated that there is not a set dollar amount, only a minimum square footage provision. He explained that the goal is to prevent temporary, out-of-town contractors from working without insurance.

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

AN ORDINANCE introduced by Councilmember Lover Chancler amending City of Topeka, Kansas, Code Section 142-187 concerning speed limits on roadways in the City of Topeka, and repealing the original of said code section placed on first reading August 17, 2004 was again presented.

Councilmember Preisner stated that the ordinance was placed on the agenda per Council Rule 7.6(D). He explained that the scheduled Public, Health and Safety Committee meeting of November 15, 2004, was cancelled. He stated that the committee has recently received additional information regarding the issue and he would like the opportunity to discuss it further in committee.

Councilmember Preisner moved to refer the ordinance back to the Public, Health and Safety Committee. The motion seconded by Councilmember Haynes carried. Councilmember Pomeroy voted "no". (8-1-0)

A PROJECT BUDGET in the amount of \$5,637,234 and ORDINANCE NO. 18349 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. This ordinance was deferred from the meeting of November 16, 2004.

Neil Dobler gave the staff report and stated that the building price was reduced by \$105,000. He explained that the overall debt service of the purchase of the building is less than the rent that they are currently paying for existing space, and in addition they would gain 11,000 square footage of space.

Councilmember Preisner moved to approve the amended project budget in the amount of \$5,526,984 and adopt the ordinance. The motion was seconded by Councilmember Muller.

Jim Langford, Budget Director distributed information on the bonded indebtedness of the proposal.

Councilmember Alcala stated that he believes that they are paying too much money for the building.

Councilmember Stubbs stated that she supports the project and believes that the City of Topeka is the perfect candidate to occupy the space.

Councilmember Muller stated that she supports the project and commended staff for negotiating a reasonable price.

Councilmember Haynes stated that he believes the City is paying too much money for the building based on the occupancy percentage value.

Councilmember Pomeroy questioned leasing out part of the building.

Braxton Copley stated that the City would have to pay property tax on the entire building.

Councilmember Pomeroy stated that they should explore the option to separate the property for another use without being taxed.

David Price stated that he opposes the project and believes that they are paying too much for the building.

The motion to approve the project budget as amended and adopt the ordinance carried. Councilmember Alcala voted "no". (8-1-0)

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

A PROJECT BUDGET in the amount of \$2,276,180 and ORDINANCE NO. 18350 introduced by Mayor James A. McClinton, authorizing Improvement Project No. 60596-00, which provides for the construction of a public plaza at the intersection of SW 7<sup>th</sup> Street and VanBuren 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.

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

Susan Mahoney, representative for Downtown Topeka, Inc., (DTI) stated that they support the project. She explained that they provide a place for eighty percent of the events downtown, and the remaining events are too large to host. She stated that projects such as this

are crucial in helping DTI reach their financial goals and greatly improve quality of life in the downtown area.

JoAnn Peavler stated that she opposed the project because it is not in the Downtown Area Improvement Plan and believes that the funds could be better utilized in the neighborhoods. She also stated that the City would lose potential parking meter revenue. She asked if the City has project authorization from the Capital Area Plaza Authority, and who would be responsible for the maintenance of the area.

Terri Humphy, Executive Director of the Kansas Trial Lawyers Association spoke in opposition of the project. She stated that they purchased historic Fire Station No. 2 and have made significant investments to restore the building. She stated that the closing of Van Buren Street would obstruct traffic flow and create a loss of thirty parking spaces. She suggested that the City purchase the entire parking lot from the State of Kansas to extend the park and create additional parking.

Councilmember Stubbs asked if the State of Kansas would consider allowing the City to acquire the entire parking lot.

Neil Dobler stated that the City did not initially inquire on purchasing the entire parking lot.

Braxton Copley stated that he recently met with representatives from the State regarding the parking lot. He explained that they are not willing at this time to release the remaining parking lot because they need the additional parking spaces for state employees.

Councilmember Stubbs asked what would have to be modified in the current proposed plan to allow traffic to remain open, only closing the street when necessary, while maintaining the aesthetics.

Neil Dobler stated that it is possible to modify the proposal, however, staff has spent a great deal of time researching the project, and deciding what would be the most feasible plan.

Councilmember Stubbs moved to revise the project to allow Van Buren Street to remain open during the day. The was motion seconded by Councilmember Pomeroy

Councilmember Chancler expressed concern with the cost of maintaining the green space and parking lot. She stated that she understands that the project would beautify the downtown area, however, she is not convinced that the public would utilize the park. She suggested that they use the money to repair streets in other parts of the city that are badly needed and used on a regular basis.

Neil Dobler stated that maintaining the green space and parking lot would be considered operating costs, and are not included in the project budget.

Rogers Brazier, Parks and Recreation Director stated that they would need two additional part-time employees to maintain the area.

Councilmember Duffy asked if the State of Kansas would consider partnering with the City at a later date. He also stated that he supports the project because it is consistent with the overall area plan.

Neil Dobler stated that he believes that a future partnership with the State of Kansas is an option.

Councilmember Alcalá inquired on the amount of revenue that would be lost if the parking meters are removed.

Neil Dobler stated that they would lose approximately \$13,000 in parking revenue.

Councilmember Muller stated that the Van Buren Street Public Plaza is much bigger than just a \$13,000 loss in revenue. She also stated that the Parks and Recreation department has



committed to assisting with the maintenance of the Van Buren Street Public Plaza, and the 8<sup>th</sup> Street and Jackson Street projects.

Councilmember Nave asked if DTI would be willing to share the maintenance costs.

Councilmember Haynes stated that he is disappointed with the way the Jackson Street Project is being maintained and questioned the maintenance of the Van Buren and 8<sup>th</sup> Street projects once completed.

Susan Mahoney stated that they would assist the parks and recreation department in anyway possible to help maintain the Van Buren Street Public Plaza, and the 8<sup>th</sup> Street and Jackson Street projects.

Several Councilmembers expressed concern with how this project would affect the overall indebtedness of the City and taxpayers money.

Councilmember Duffy stated that this project as well as others have already been included in the Capital Improvement Program and would not raise taxes.

The motion to amend the project budget carried. Councilmembers Alcala, Nave and Preisner voted "no". Councilmember Chancler was out of the room. (5-4-0)

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

A PROJECT BUDGET in the amount of \$2,424,962 and ORDINANCE NO. 18351 introduced by Mayor James A. McClinton, authorizing Improvement Project No. 60596-01, which provides for the aesthetic improvements along the "Capital Parkway" 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.

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

The motion was seconded by Councilmember Stubbs.

Susan Mahoney appeared for questions.

Ted Mize spoke in opposition of the project and stated that the Parks and Recreation Department cannot take care of the trees located down the street from the proposed project, therefore, how can they maintain this project.

Several Councilmembers expressed concern with tree trimmings that have taken place throughout various parts of the city.

Mayor McClinton noted that they have been in contact with the company responsible for the tree trimmings and are working with them to resolve the problem.

Councilmember Preisner called the question.

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

Councilmembers Alcalá, Chancler and Haynes voted "no". (6-3-0)

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

A PROJECT BUDGET in the amount of \$3,525,000 and ORDINANCE NO. 18352 introduced by Mayor James A. McClinton authorizing Storm Sewer Project No. 50006-06, Phase 2 which provides for improvements to traffic signals at 4<sup>th</sup> and 5<sup>th</sup> Streets, construction of sidewalk, pedestrian lights and landscaping and improvements to the municipally owned water, water pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to make such improvements and to issue and sell

general obligation and revenue bonds of said City to pay part of the cost thereof pursuant to City of Topeka Code Section A12-1 and pursuant to K.S.A. 10-101 and 10-1201, *et seq.*, and all amendments thereto and repealing City of Topeka Ordinance No. 18002 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 Muller carried. Councilmembers Alcalá voted "no". Councilmember Preisner left the meeting. (7-1-0)

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

A PROJECT BUDGET in the amount of \$2,115,100 and RESOLUTION NO. 7550 introduced by Mayor James A. McClinton describing and authorizing Water Main Project No. 28527-00 and 28528-00 provides for the installation of a water transmission main along SW 17<sup>th</sup> Street from Arvonía Place to Indian Hills Road and on Urish Road from SW 17<sup>th</sup> Street to SW 21<sup>st</sup> Street as more specifically described herein was presented.

Neil Dobler gave the staff report.

Councilmember Duffy moved to approve the project budget and resolution. The motion seconded by Councilmember Nave carried. Councilmember Muller was out of the room. (7-1-0)

A PROJECT BUDGET in the amount of \$821,500 and RESOLUTION NO. 7551 introduced by Mayor James A. McClinton describing and authorizing an amendment to the Atchison Street Sanitary Improvement Project No. 29101 which provides for a new sewer line,

pump station and force main on Atchison Street as more specifically described herein and specifically rescinding City of Topeka Resolution No. 7242 was presented.

Neil Dobler gave the staff report.

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

A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of \$15,761 and RESOLUTION NO. 7552 introduced by Mayor James A. McClinton authorizing Sanitary Sewer Improvement Project No. 40928-00 as more specifically described herein was presented.

Neil Dobler gave the staff report.

Councilmember Haynes moved to approve the public improvement petition, project budget and resolution. The motion seconded by Councilmember Nave carried. Councilmember Muller was out of the room. (7-1-0)

RESOLUTION NO. 7553 introduced by Mayor James A. McClinton setting forth the City of Topeka's policy for the capital improvement program was presented.

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

RESOLUTION NO. 7554 introduced by Mayor James A. McClinton setting forth the City of Topeka's policy for debt management was presented.

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

RESOLUTION NO. 7555 introduced by Councilmember John Alcalá concerning the structure and operations of the City of Topeka Municipal Court was presented.

Councilmember Alcala moved to adjourn into executive session for a period not to exceed thirty minutes to discuss personnel matters. The motion seconded by Councilmember Haynes carried unanimously. (8-0-0)

Following a thirty-minute time period the Council reconvened into open session and extended the executive session for an additional five minutes. Following the five-minute time period the Council reconvened into open session and Mayor McClinton stated that no action had been taken.

David Price expressed concern with items 5D and 5E, resolutions relating to establishing a policy for spending city funds. He stated that he believes that the public has the right to know how their money is being spent, before the City actually spends it. He also expressed concern with the legality of item 5F, a resolution relating to the City of Topeka Municipal Court procedures.

AN ORDINANCE introduced by Mayor James A. McClinton relating to municipal court procedures, repealing City of Topeka Code Section 50-91, amending City of Topeka Code Sections 50-52, 50-54, 50-55, 50-58, 50-61, 50-73, 50-75, 50-78, 50-79, 50-80, 50-100, and 50-101 and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 12058-00, which provides for the removal and replacement of the Willow Street bridge over Ward Creek 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 Improvement Project No. 14102-00, which provides for the removal and installation of traffic signals, and

replacement of sidewalk ramps as more specifically described herein, all pursuant to Section A12-1 of Code of the City of Topeka was presented for first reading.

AN ORDINANCE introduced by Councilmember John Alcala, regarding the unlawful use of a Jake Brake, amending Topeka City Code Section 142-194 and specifically repealing said original section was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Stubbs announced that there would be an Economic and Community Development Committee meeting held on December 7, 2004 at 12:00 pm in the City Council Office.

Councilmember Duffy announced that there would be a Form of Government Transition Committee meeting held on December 1, 2004 at 4:00 p.m. in the City Council Office.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen stated that he wanted to schedule a time to meet with the Lobbyists to establish the City's Legislative Policy. It was the consensus of the Council to meet at 4:30 p.m. on December 7, 2004 to meet with the Lobbyists. He also asked what the Council desired regarding Management Partners' recommendation on scheduling a Council retreat. Councilmember Duffy stated that could be discussed by the Transition Committee.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Duffy asked for an update on the City's plan to participate in economic development opportunities available to the City of Topeka under the 2004 Kansas Economic Growth Act as stated in Resolution 7492. He also asked about the city's plan to participate in Resolution No. 7493 relating to incubator corporations. He also requested the status of the provisions of Ordinance No. 18132 that provides for free education under certain circumstances.

Councilmember Alcalá asked that Public Works staff to check the alley behind Councilmember Pomeroy's house for repairs. He also asked that the parking at 6<sup>th</sup> and Lake that was changed from horizontal parking to parallel parking be changed back because of complaints he has received from businesses.

Councilmember Stubbs distributed two resolutions relating to economic development for placement on a future agenda.

Councilmember Chancler stated that the potholes are causing sinkholes between 9<sup>th</sup> & Brookside and 8<sup>th</sup> and Brookside, and asked that the area be checked to see what could be done to repair the street.

Councilmember Duffy explained that he abstained on the vote last week relating to salaries of the Mayor and Councilmembers because it would have raised his own salary during his term of office and he believes that is unethical.

Shirley Phelps-Roper, Margie Phelps, Joseph Ledbetter and Karl Hockenbarger appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:50 p.m.

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Iris Walker  
City Clerk