

City Council Minutes – January 25, 2005

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 25, 2005. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, Duffy, Chancler, Nave, Haynes, Stubbs, Preisner and Muller -9. Mayor James A. McClinton presided -1.

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

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

Councilmember Duffy moved to suspend the Council Rules to add a resolution regarding House Bill No. 2083, relating to City-County government consolidation to the agenda under New Business, item 6D. The motion seconded by Councilmember Preisner carried.

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

Councilmember Duffy moved to reinstate the Council Rules. The motion seconded by Councilmember Preisner carried. Councilmember Haynes voted "no". (8-1-0)

Mayor McClinton pulled item 3A, a final plat for Russell Addition, per the Council's request for separate discussion.

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the appointment of Elizabeth Smith and the re-appointment of Scott Poor to the Topeka-Shawnee County Landmarks Commission for a three-year term that would expire on December 31, 2007, was presented.

CONTRACT NO. 34923 amending the Development and Management Agreement between the City of Topeka, Kansas and Jayhawk Racing Properties, L.L.C., was presented.

Minutes of the Regular Meeting of January 18, 2005, were presented.

Councilmember Preisner moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Muller carried. Councilmember Haynes was out of the room. (8-1-0)

A FINAL PLAT for Russell Addition located on the east side of NW Rochester Road, approximately 810 feet north of U.S. Highway 24 in the City of Topeka, was presented.
(P04/30)

Councilmember Duffy stated that he opposes approval of the plat because of the stream buffer issue. He also inquired on the flood level study that was conducted on the property.

David Lots, Continental Consulting Engineers, representing Wal-Mart Stores appeared for questions. He stated that they are building a retaining wall in the outer zone of the stream buffer area located along the north side of the building. He explained that the stream buffer ordinance regulations require that the same amount of square footage that is lost within an outer zone area must be supplemented at a different location on the site. He stated that the City Engineering Department has approved the proposed plan that incorporates the additional square footage within the area adjacent to the channel, located on the east side of the parking lot.

In conclusion, Mr. Lots explained that the flood level study was conducted on the 2-year flood level regulation instead of the normal 100-year flood level regulation to accomplish a more accurate study.

Councilmember Alcalá moved to approve the final plat. The motion seconded by Councilmember Chancler carried. Councilmembers Duffy, Stubbs, Preisner and Muller voted "no". (5-4-0)

THE ELECTION OF JEDO BOARD CHAIR, was presented.

Councilmember Stubbs moved to nominate Councilmember Jeff Preisner.

Councilmember Alcalá moved to nominate Councilmember Bill Haynes.

Councilmember Duffy moved to close nominations and cast a unanimous vote for Councilmember Preisner. Hearing no additional nominations the Mayor closed nominations.

The motion to nominate Councilmember Preisner carried unanimously. (9-0-0)

ORDINANCE NO. 18380 introduced pursuant to the provisions of KSA 12-3013, calling an election to be held on April 5, 2005, for the purpose of voting on an ordinance pertaining to the enactment, adoption, enforcement or administration of City of Topeka ordinances, regulations, rules or policies concerning homosexual, lesbian or bisexual orientation or gender identity or expression placed on first reading January 18, 2005 was again presented.

Councilmember Duffy stated that he received a call from Margie Phelps, a representative of Westboro Baptist Church and the primary sponsor of the petition. He stated that she requested that the question be placed on the primary election ballot, instead of the general election ballot.

Councilmember Duffy moved to delete the words "April 5, 2005" on line 29, and insert the words "March 1, 2005". The motion was seconded by Councilmember Preisner.

Councilmember Muller explained that the issue that the public is voting on is totally different than the anti-discrimination ordinance that was adopted in November 2004 by the City Council. She stated that if the question on the ballot is approved it would make it very difficult or possibly prevent the prosecution of individuals committing hate crimes.

Councilmember Stubbs asked how the policy would affect private business owners.

Brenden Long, City Attorney stated that it would not affect private business owners because they would have the right to implement their own policies regarding discrimination.

Councilmember Preisner called the question.

Councilmember Preisner withdrew the call.

Councilmember Duffy asked how this policy, if approved, would bind future government bodies.

Brenden Long stated that if the policy is adopted it cannot be repealed or amended for ten years, unless it is placed back on a ballot by the will of the voting public.

Councilmember Haynes noted a typographical error on page 2, line 37.

Councilmember Preisner called the question.

The motion to amend the ordinance 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.

ORDINANCE NO. 18381 introduced by the Form of Government Transition Committee, relating to the changes in the administrative code pursuant to Charter Ordinance No. 94, amending City of Topeka Code Sections 2-27, 2-28, 2-29, 2-30, 2-33, 2-34, 2-112, 2-114, 2-118, 2-141, 2-142, 2-143, 2-145, 2-146, 2-147, 2-149, 2-150, 2-151, 2-152, 2-153, 2-154, and 2-155 and repealing said original section placed on first reading January 18, 2005 was again presented.

Councilmember Pomeroy stated that the ordinance corrects technical amendments.

Brenden Long explained that the ordinance would go into effect on April 12, 2005 and reflect the change in titles and authority regarding the change in the form of government.

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

ORDINANCE NO. 18382 introduced by the Form of Government Transition Committee, relating to the appointment of board and commission members pursuant to Charter Ordinance No. 94, repealing City of Topeka Code Sections 2-183, 2-184, 2-185, 2-186, 2-187, 2-188, 2-189, 2-190, 2-191, 2-192, 2-193, 2-194, 2-195, 2-196, 2-197, and amending City of

Topeka Code Chapter 2, Division 2 and Sections 2-181, 2-198, 2-221, 26-67, 26-68, 26-138, 26-221, 26-236, 42-4, 42-5, 42-39, 86-1, 86-2, 86-27, 86-28, 102-197, 102-198, 106-41, 106-45, 106-204, 110-27, and 110-34, and repealing said original section placed on first reading January 18, 2005 was again presented.

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

ORDINANCE NO. 18383 introduced by the Form of Government Transition Committee, relating to changes in the administrative code regulating financial matters, purchasing, and asset management in conformity with Charter Ordinance No. 94, repealing Topeka City Code Sections 2-252, 2-253, 2-271, 2-286, 2-287, 2-321, 2-324, 2-329, 2-331, 2-346, 2-347, 2-348, 2-363, 2-364, 2-365, 2-386, 2-408, 2-456, 2-458, 2-459, 2-460, 2-479, 2-480, 23-492 and repealing said original section placed on first reading January 18, 2005 was again presented.

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 \$6,423,141.98 and ORDINANCE NO. 18384 introduced by Mayor James A. McClinton, authorizing an amendment to the project budget for Bridge Improvement Project No. 12051 which provides for the complete replacement of the Kansas Avenue bridge deck and reconstruction of the pedestrian sidewalk as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka, and specifically repealing City of Topeka Ordinance No. 16890 placed on first reading January 18, 2005 was again presented.

Councilmember Alcalá 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 RESOLUTION introduced by Councilmember John Alcalá relating to City contracts involving capital purchases of \$25,000 or more and the implementation of a hiring freeze, allowing the new City Manager maximum budgetary flexibility was presented.

Councilmember Pomeroy gave the committee report and stated that the Form of Government Transition Committee recommended "Do Not Pass" by a vote of 3-0-0 on January 12, 2005.

Brenden Long clarified that under the current form of government the Council could only request a hiring freeze. He stated that Council approval of contracts in the amount of \$25,000 or more is something that is currently within City Council authority.

Councilmember Alcalá stated that he supports the resolution and believes that it would be an excellent policy to implement regarding the form of government transition. He stated that it is essential that they are careful with future expenditures.

Councilmember Pomeroy stated that he agrees with the intent of careful spending, however, he believes that the citizens of Topeka did not intend for City government to shut down for five months until the change in the form of government is complete.

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

APPROVAL of claim appeal in the amount of \$640 for DeAnn Clingan, 4339 Wisconsin Avenue, was presented.

Councilmember Alcalá moved to approve the claim appeal. The motion was seconded by Councilmember Duffy.

Mike McGee, Assistant Public Works Director responded to the questions that were distributed by staff to the City Council at the January 18, 2004 City Council meeting regarding the Wisconsin Pump Station claim. He stated that the crew did everything feasibly possible considering that there were twenty-five pump stations that required service, and only two crews working.

Councilmember Alcalá stated that he believes that a slow response time due to a shortage in staff is not a viable excuse. He stated that they should have called in additional crews to handle the numerous pump station emergencies.

Mike McGee stated the City crew performed the job correctly. He explained that following the initial check at the Wisconsin Pump Station the crew did not receive an alarm signal call back alerting them to a back up problem. He stated that because they did not receive a call back they continued to check the other pump stations as necessary.

Councilmember Alcalá moved to approve the claim appeal in the amount of \$2,314.53. The motion was seconded by Councilmember Haynes.

Councilmember Chancler stated that she believes the homeowner should not have to suffer because of a bad decision made by the City.

The motion to approve the claim for the amount of \$2,314.53 carried. Councilmembers Duffy, Stubbs and Preisner voted "no". (6-3-0)

Councilmember Alcalá suggested that staff implement a policy as soon as possible to prevent this type of problem from occurring again.

A PROJECT BUDGET in the amount of \$1,845,200 and RESOLUTION NO. 7570 introduced by Mayor James A. McClinton describing and authorizing Water Main Project No. 28509-00 which provides for the installation of new water mains on the streets approaching the

Topeka Boulevard Bridge due to the bridge replacement as more specifically described herein was presented.

Mike McGee gave the staff report.

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

A PROJECT BUDGET in the amount of \$1,400,000 and RESOLUTION NO. 7571 introduced by Mayor James A. McClinton describing and authorizing Improvement Project No. 29095 which provides for the correction of inflow and infiltration into the City sanitary collection system as more specifically described herein was presented.

Mike McGee gave the staff report.

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

A PROJECT BUDGET in the amount of \$200,000 and RESOLUTION NO. 7572 introduced by Mayor James A. McClinton describing and authorizing Project No. 86251-02 which provides for the purchase and installation of wayfinding signs in the City of Topeka as more specifically described herein was presented.

Councilmember Stubbs moved to approve the project budget and resolution. The motion seconded by Councilmember Muller carried. Councilmembers Alcalá and Haynes voted "no". (7-2-0)

RESOLUTION NO. 7573 introduced by Mayor James A. McClinton concerning House Bill No. 2083, a proposed bill relating to consolidation of cities and counties was presented.

Councilmember Duffy distributed the following amendment to the resolution, "Finally, be it further resolved, that any consolidation legislation adopted by the legislature should

advance the goal of equalizing the ad valorem and personal property tax mill levies for all county property owners and achieving tax equity for city residents who currently provide a significant majority of the funding for services and projects in those parts of the county not located within the city limits of Topeka.” He stated that he believes the amendment will further clarify the City’s concerns with consolidation and why it is important.

Councilmember Duffy moved to amend the resolution as distributed. The motion seconded by Councilmember Muller carried. Councilmembers Alcala and Chancler voted "no". (7-2-0)

Councilmember Duffy moved to amend the resolution to add a final paragraph stating, “Finally, be it resolved that upon adoption, this Resolution shall be sent to the Governor, the Shawnee County legislative delegation and the members of the House of Governmental Organization and Elections committee.” The motion seconded by Councilmember Muller carried. Councilmembers Alcala and Chancler voted "no". (7-2-0)

Councilmember Pomeroy expressed concern with the verbage of House Bill 2083. He explained that the way that it is currently worded, new developments are exempt from paying city obligations.

Councilmember Pomeroy moved to amend line 47 of the resolution to include the statement, “unless annexation and bond payment provisions are removed”. The motion was seconded by Councilmember Haynes.

Councilmember Duffy made a conceptual amendment to add the language that would address the Council’s disapproval of the voting inequities.

Discussion continued by several Councilmembers regarding the language of the resolution in relation to bond repayment provisions and annexation.

Councilmember Haynes made a substitute motion to ask the Legal Department to study the resolution and come back with the appropriate language to include the suggested amendments. The motion was seconded by Councilmember Alcalá.

Councilmember Preisner called the question. The motion on if the question shall be called failed. Councilmembers Pomeroy, Duffy, Nave, Stubbs, Preisner and Muller voted "no". (3-6-0)

Brenden Long, City Attorney stated that the amended language would begin on line 47 and read as follows, "Be it further resolved, if the annexation prohibition, bond repayment provisions and voting inequities remain in HB 2083, the Council of the City of Topeka hereby expresses its strong objection to HB 2083 and withdraws its support for the study of and possible consolidation of the governments of the City of Topeka and Shawnee County into a single unified government."

The motion to approve the amendment as presented by the City Attorney carried. Councilmembers Alcalá, Chancler and Haynes voted "no". (6-3-0)

Councilmember Chancler stated that she would not support the resolution. She explained that she believes that there is a better way to approach the legislators regarding opposition to House Bill 2083.

Councilmember Preisner moved to approve the resolution as amended. The motion seconded by Councilmember Pomeroy carried. Councilmembers Alcalá and Chancler voted "no". (7-2-0)

AN ORDINANCE introduced by Mayor James A. McClinton relating to garage rates, and specifically amending Section 2 of City of Topeka Ordinance No. 18312 and specifically repealing said original section of Ordinance No. 18312 was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Street Repair Project No. 84331, which provides for the construction of handicapped accessible curb cuts and sidewalk ramps throughout the City 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 annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located between SE 23rd Terrace and K-4 Highway (Kansas Turnpike), approximately 1320-feet west of SE Croco Road within unincorporated Shawnee County, Kansas and adjacent to the City of Topeka corporate limits, and said land being annexed for all City purposes was presented for first reading. (A05/1)

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Duffy announced that the term of the Form of Government Transition Committee expired on January 25, 2004.

Councilmember Duffy moved to recreate the Form of Government Transition Committee until April 1, 2005. The motion seconded by Councilmember Pomeroy carried. Councilmember Haynes voted "no". (8-1-0)

Councilmember Stubbs announced that there would be an Economic and Community Development Committee held on April 1, 2005 at 12:00 p.m. in the Executive Conference Room.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Alcala submitted a request for a resolution to be implemented that would extend the deadline for the annexation report.

Joseph Ledbetter appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:40 p.m.

Iris Walker
City Clerk