

City Council Minutes – March 15, 2005

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 15, 2005. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Pomeroy, Alcalá, Nave, Haynes, Stubbs, and Muller -6. Absent: Chancler, Preisner and Mayor James A. McClinton –3. Deputy Mayor Duffy presided –1.

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

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

Deputy Mayor Duffy stated that Mayor McClinton was returning from Washington and would not be present, and Councilmember Chancler was ill.

Councilmember Stubbs moved to suspend the rules and add a resolution to the agenda in support of Community Services Block Grant and Community Action, Inc. The motion seconded by Councilmember Alcalá carried unanimously. (7-0-0)

Deputy Mayor Duffy stated that the resolution would be the next item following the consent agenda.

Councilmember Stubbs moved to reinstate the rules. The motion seconded by Councilmember Alcalá carried unanimously. (7-0-0)

Deputy Mayor Duffy removed Item 3A from the consent agenda for separate discussion.

THE CONSENT AGENDA was presented as follows:

ORDINANCE NO. 18400 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 and specifically repealing City of Topeka Ordinance 18387 placed on first reading March 8, 2005, was again presented. (A05/1)

A PROJECT BUDGET in the amount of \$1,678,200 and ORDINANCE NO. 18401 introduced by Mayor James A. McClinton, authorizing Trafficway Improvement Project No. 70142-01, which provides for the reconstruction of SE California Avenue from I-70 to SE 21st Street as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading March 8, 2005, was again presented.

Minutes of the Regular Meeting of March 8, 2005 were presented.

Councilmember Nave moved to approve Items B through D on the consent agenda. The motion seconded by Councilmember Stubbs carried unanimously. (7-0-0)

ORDINANCE NO. 18399 introduced by Mayor James A. McClinton, relating to water service to owners of real property outside city limits, amending Topeka City Code Section 146-37 and specifically repealing said original section placed on first reading March 8, 2005, was again presented.

Neil Dobler, Public Works Director gave the staff report. He explained that the new revision states that the reconnection shall be limited to the same size of service line as previous service, and limited to the same number of lines or connections which previously existed.

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

The ordinance was adopted on roll call vote as follows: Ayes: Pomeroy, Alcalá, Duffy, Nave, Haynes, Stubbs and Muller –7. Absent: Councilmembers Chancler and Preisner –2.

RESOLUTION NO. 7595 introduced by Councilmember Lisa Stubbs in support of Community Services Block Grant (CSBG) and the Community Action, Inc. agency which administers this program for low-income communities in the City of Topeka, was presented.

Councilmember Stubbs moved to approve the resolution. The motion seconded by Councilmember Muller 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, March 15, 2005, at 7:00 P.M. in conjunction with vacation request V05E/2 by Laubach Properties, LLC to vacate two, five-foot wide north/south utility easements and building setback along the east side of the property located at 4317 SW Drury Lane, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 18402 introduced by Mayor James A. McClinton relating to the vacation of a portion of a north/south and east/west utility easement located at 4317 SW Drury Lane, City of Topeka, Shawnee County, Kansas placed on first reading March 8, 2005, was again presented. (V05E/2)

Bill Fiander, Planning Department gave the staff report.

No one appeared to speak concerning the vacation request.

Councilmember Haynes moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Stubbs carried unanimously. (7-0-0)

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

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, March 15, 2005, at 7:00 P.M. to obtain citizen comment and review of a property tax exemption ordinance for improvements to real and personal property on behalf of Reser's Fine Foods, 3167 SE 10th Street, Topeka, Shawnee County, Kansas.

ORDINANCE NO. 18403 introduced by Mayor James A. McClinton, exempting certain property more specifically property owned by Reser's Fine Foods, Inc. from property taxation for economic development purposes, pursuant to the provisions of the Code of the City of Topeka, Chapter 138, Article III, and located at approximately 3167 SE 10th Street, Topeka, Shawnee County, Kansas placed on first reading March 8, 2005, was again presented.

John Myers, Economic Development Specialist gave the staff report. He stated that Reser's is planning an expansion that would include approximately 23 million dollars in demolition, construction, and equipment, creating approximately 60 new jobs.

Councilmember Duffy moved to amend the ordinance in Section 4(b), beginning at line 53 by adding the following language: "This information shall include a list of all new hires and their addresses to determine if the goal to hire at least 50% City of Topeka residents have been met." The motion was seconded by Councilmember Muller.

Following additional discussion, Councilmember Duffy revised his motion to delete names and addresses. The second concurred.

Councilmember Preisner entered the room.

Councilmember Alcalá stated that he would not support the amendment because it is not consistent with the way it has been done in the past.

Following further discussion, Councilmember Duffy asked the City Attorney to put together the appropriate language to reflect the concept of the motion.

The motion carried. Councilmember Alcalá voted "no". (7-1-0)

Councilmember Muller moved to close the public hearing and adopt the ordinance as amended. The motion seconded by Councilmember Stubbs carried unanimously. (8-0-0)

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

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, March 15, 2005, at 7:00 P.M. to obtain citizen comment and review of a property tax exemption ordinance for improvements to real and personal property on behalf of River Bottom Group, Inc., 3801 NW 14th Street, Topeka, Shawnee County, Kansas.

ORDINANCE NO. 18404 introduced by Mayor James A. McClinton, exempting certain property, more specifically property owned by River Bottom, Inc., from property taxation for economic development purposes, pursuant to the provisions of the Code of the City of Topeka, Chapter 138, Article III, and located at approximately 3801 NW 14th Street, Topeka, Shawnee County, Kansas placed on first reading March 8, 2005, was again presented.

John Myers, Economic Development Specialist gave the staff report. He stated that River Bottom is investing in new equipment to increase sheet metal production and will create approximately ten new jobs.

Councilmember Muller moved to amend the ordinance with the same language used in the Reser's ordinance to reflect the goal of the City to hire at least 50% City of Topeka residents. The motion seconded by Councilmember Nave carried. Councilmember Alcala voted "no".
(7-1-0)

Councilmember Preisner moved to close the public hearing and adopt the ordinance as amended. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

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

A ZONING PETITION AND ORDINANCE NO. 18405 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 29th Street approximately 1,150 feet west of SW Urish Road in the City of Topeka, Kansas from "RR-1" Residential Reserve District with County Resolution of Intent for "O&I-2" Office and Institutional District ALL TO "PUD" Planned Unit Development ("C-2" use group) placed on first reading March 8, 2005, was again presented. (PUD05/1)

Bill Fiander, Planning Department gave the staff report.

Mike Engler, Bartlett and West Engineers, representing the applicant appeared for questions.

Deputy Mayor Duffy asked if there were any ex parte communications. There were none declared.

Councilmember Preisner moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Muller carried unanimously. (8-0-0)

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

A ZONING PETITION AND ORDINANCE NO. 18406 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 commonly known as Capricorn Woods Subdivision No. 1 and No. 2, located approximately 600 feet south of the Kansas Turnpike and 1,300 feet west of SE Croco Road in the City of Topeka, Kansas from “RR-1” Residential Reserve District TO “R-1” Single Family Dwelling District placed on first reading March 8, 2005, was again presented. (Z05/3)

Bill Fiander, Planning Department gave the staff report.

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

Councilmember Nave moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Haynes carried unanimously. (8-0-0)

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

A ZONING PETITION AND ORDINANCE NO. 18407 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 commonly known as Clarion Lakes Subdivision No. 1, located east of SW Wanamaker Road, the centerline of which is approximately 950 feet south of SW 41st Street in the City of Topeka, Kansas from “RR-1” Residential Reserve District TO “R-1” Single Family Dwelling District placed on first reading March 8, 2005, was again presented. (Z05/4)

Bill Fiander, Planning Department gave the staff report.

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

Councilmember Preisner moved to approve the petition and adopt the ordinance. The motion seconded by Councilmember Muller carried unanimously. (8-0-0)

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

ORDINANCE NO. 18408 introduced by Mayor James A. McClinton, pertaining to an amendment to the text and map of the Topeka Comprehensive Metropolitan Plan placed on first reading March 8, 2005, was again presented. (CPA05/01)

Tim Paris, Planning Department gave the staff report and covered the highlights of the Parks and Open Spaces Plan. He stated that they established six goals in the plan:

1. Expand the park system as warranted by urban expansion
2. Establish partnerships
3. Preserve our local heritage
4. Preserve scenic views and corridors
5. Reconnect with the Kansas River and other waterways
6. Ensure responsible stewardship for public lands

He also explained the importance of adequate design of parks, noted the health categories, and assessment criteria for parks and open spaces.

Several Councilmembers inquired on the cost to implement the plan and expressed their concerns on how it would be funded.

Tim Paris noted that this was a planning document, not a financial one and having it in place would allow the city to seize funding opportunities as they arise.

Deputy Mayor Duffy stated that the plan sets the framework for what they want to accomplish. He stated that on-going maintenance needs would have to be considered as well.

Councilmember Haynes moved to amend line 21 by adding the following language: “subject to funding that does not require an increase in the mill levy.” Deputy Mayor Duffy ruled that the motion died for lack of a second.

Discussion continued regarding the differences between a neighborhood park and a community park and the functions each served.

Frank Kirtdoll appeared and asked where the funds would come from since the plan does not have a funding source.

Brett Blackburn appeared in opposition to the plan because of lack of a funding source. He stated that he believes the City should fix the parks they have before building new ones.

Deputy Mayor Duffy commented on priority #5, to establish additional points of access to the Kansas River for boating and fishing opportunities, and stated that the Kansas Canoe Association has a plan, and there might be opportunities in that existing plan for this priority. He also stated that the city has financed its share of the park in priority #6, to construct a Downtown Riverfront Park in conjunction with the Great Overland Station project financing. He noted that the city has issued \$1.6 million in bonds for trails in priority #7, to implement the Topeka-Shawnee County Regional Trails Plan.

Deputy Mayor Duffy moved that the document include language to acknowledge action on priorities #6 and #7 already taken by the Council. The motion was seconded by Councilmember Alcala.

Councilmember Alcala stated that he has a concern with the trail system being listed as priority #7. He stated that it should be a greater priority because the trails are well used by citizens throughout the community.

David Thurbon stated that the Planning Commission recommended removing the priorities from the plan and consider them year-by-year because they may change.

Councilmember Haynes made a substitute motion to set aside the document for six months until the City Manager is on board. The motion seconded by Councilmember Alcala failed. Councilmembers Alcala, Pomeroy, Duffy, Stubbs, and Muller voted “no”. (3-5-0)

The motion to acknowledge action on priorities #6 and #7 already taken by the Council carried. Councilmembers Nave and Haynes voted “no”. (6-2-0)

Councilmember Alcala moved to remove the priorities from the document, and review implementations annually. The motion seconded by Councilmember Stubbs carried. Councilmember Haynes voted “no”. (7-1-0)

The ordinance as amended was adopted on roll call vote as follows: Ayes: Pomeroy, Duffy, Nave, Stubbs, Preisner and Muller –6. Noes: Alcala and Haynes –2. Absent: Councilmember Chanler –1.

AN ORDINANCE introduced by Mayor James A. McClinton relating to sign regulations, repealing City of Topeka Code Sections 118-277 and 118-280, and amending City of Topeka Code Section 48-31.01, 48-31.02, 48-31.03, 118-1, 118-2, 118-58, 118-59, 118-179, and 118-276, and repealing the original sections placed on first reading August 24, 2004, was again presented. (ACZR04/4)

Councilmember Stubbs gave the committee report. She stated that the committee met twice on the ordinance and made several amendments. The committee amended the ordinance to reflect that they are not amortizing the portable signs to be banned in five years as was suggested by the Planning Commission, and they also increased the timeframe to have a portable sign up to seven weeks. She stated that they also amended the ordinance so that upon passage there would

be a three-year moratorium on monument sign permit fees to encourage permanent monument signs. She stated that with those amendments they had a 2-1 vote to pass out of committee without recommendation.

Councilmember Stubbs moved to defer the ordinance with the amendments made in committee for six months to allow the Unified Development Code (UDC) to work with staff on the legality and other issues relating to the ordinance. The motion was seconded by Councilmember Preisner.

Councilmember Alcalá made a substitute motion to not approve the ordinance. The motion seconded by Councilmember Haynes failed. Councilmembers Pomeroy, Duffy, Nave, Stubbs, Preisner and Muller voted “no”. (2-6-0)

The motion to defer for six months carried. Councilmembers Alcalá and Haynes voted “no”. (6-2-0)

CONTRACT NO. 35060 providing for an amendment to Contract No. 31228 between the City of Topeka and the International Association of Firefighters Local No. 83, was presented.

Chief Giles stated that this amendment would close out 2004 and allow them to proceed with negotiations for 2005.

Councilmember Alcalá asked if the union supported the amendment.

Chris Herrera, IAFF Local 83 President stated that the union voted and approved the amendment.

Councilmember Preisner moved to approve the contract amendment. The motion seconded by Councilmember Alcalá carried. Councilmember Haynes was out of the room. (7-1-0)

RESOLUTION NO. 7596 introduced by Councilmember Jeff Preisner 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.

Councilmember Preisner stated that he proposed the resolution on behalf of the developers because they are unable to get water service for their development. He stated that the City has a requirement for annexation before a developer is able to get water service, and as he understands it, they started their project prior to the requirement.

Mike Engler, Bartlett & West Engineers, representing the developers appeared and stated that they started their project prior to the annexation requirement. He stated that they have consented to annexation, but the city is unable to move forward with it without the consent of the county. He stated that the developer has missed two construction seasons, and he encouraged the council to approve the resolution.

Councilmember Preisner moved to approve the resolution. The motion was seconded by Councilmember Muller.

Councilmember Duffy noted that the city is not the governing body holding up the project. He stated that the City of Topeka governing body supports the project. He urged the developer to go before the county and encourage them to allow the annexation of this property. He asked if the developer would be willing to pay city taxes to supplement city taxpayers who are supplementing urban development on the fringes of the city.

Mike Engler stated that the developer would not object to paying city taxes if it is legal, because they want to be annexed. He stated that they would not want to pay city taxes and also pay out of city water rates.

Councilmember Alcalá stated that he would support the resolution because the annexation study should have been completed.

Councilmember Stubbs stated that she believed this situation was unique and she would support the resolution. She stated that the taxation issue needed to be remedied as soon as possible, either through annexation or special taxes.

Following further discussion Councilmember Haynes moved to amend the resolution as follows: “Whereas Legacy Woods LLC initiated its project with the City of Topeka prior to its adoption of Code Section 146-37.” The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

Councilmember Preisner moved to approve the resolution as amended. The motion seconded by Councilmember Alcalá carried. Councilmembers Pomeroy, Haynes and Duffy voted “no”. (5-3-0)

Mike Engler promised the council that they would continue efforts with the city to move ahead as an urban development, including spot annexation if necessary, and legal taxation.

AN ORDINANCE introduced by Mayor James A. McClinton, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Lateral Sanitary Sewer District No. 40350, Phase 4, with piping, manholes, engineering and all other contingencies needed to complete Lateral Sanitary Sewer District No. 40350, Phase 4, as defined and described in Resolution No. 7280, adopted and approved November 5, 2002 was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Lateral Sanitary Sewer District No. 40644, Phase 3,

with piping, manholes, engineering and all other contingencies needed to complete Lateral Sanitary Sewer District No. 40466, Phase 3, as defined and described in Resolution No. 7281, adopted and approved November 5, 2002 was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Lateral Sanitary Sewer District No. 40913-01, with piping, manholes, engineering and all other contingencies needed to complete Lateral Sanitary Sewer District No. 40913-01, as defined and described in Resolution No. 7381, adopted and approved August 12, 2003 was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Street Improvement Project No. 60468, Phase 4, with pavement, curb and gutter, and all other contingencies needed to complete Street Improvement Project No. 60468, Phase 4 as defined and described in Resolution No. 7282, adopted and approved November 5, 2002 was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee County, Kansas, for the improvement of Street Improvement Project No. 60566-03, with pavement, curb and gutter, and all other contingencies needed to complete Street Improvement Project No. 60566-03 as defined and described in Resolution No. 7283, adopted and approved November 5, 2002 was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, apportioning and levying a special assessment on certain lots and pieces of ground in the City of Topeka, Shawnee

County, Kansas, for the improvement of Street Improvement Project No. 60593-01, with pavement, curb and gutter, and all other contingencies needed to complete Street Improvement Project No. 60593-01 as defined and described in Resolution No. 7280, adopted and approved August 12, 2003 was presented for first reading.

AN ORDINANCE introduced by Mayor James A. McClinton, authorizing Improvement Project No. 60613-00, which provides for the infrastructure improvements to three targeted areas as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Preisner announced a Public Health and Safety Committee meeting scheduled for 12:00 noon, March 21, 2005.

REPORT FROM THE CHIEF ADMINISTRATIVE OFFICER, was presented.

Dave Graversen distributed the weekly legislative report.

PRESENTATIONS BY MEMBERS OF THE COUNCIL, were presented.

Councilmember Preisner commented that the Park Plan is a tool to guide the City in park planning, and expressed his concerns about lack of funding for the plan.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:34 p.m.

Iris Walker
City Clerk