

City Council Minutes – June 7, 2005

HILL'S FESTIVAL HALL, Topeka, Kansas, Tuesday, June 7, 2005. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Councilmembers Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9. Mayor Buntten presided -1.

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

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

Councilmember Blackburn moved to suspend the rules and add a resolution to the agenda relating to the Municipal Service Area. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

Councilmember Alcala moved to reinstate the rules. The motion seconded by Councilmember Blackburn carried unanimously. (9-0-0)

Councilmember Blackburn stated that he would abstain on items 3A, 3B and 3C because they include expenditures dealing with his business.

Councilmember Alcala requested that items 3A, 3B and 3C be removed from the consent agenda for separate discussion.

CONTRACT NO. 35341 between Roy Abbott and Associates, and the City of Topeka to provide professional services in the area of overseeing the City's orientation to the world of work internship summer job program was presented.

A COMMUNICATION recommending the appointment of Jessie Mae Thompson to a 4-year term on the Civil Service Commission which would expire April 30, 2009 was presented.

MINUTES of the Regular Meeting of May 24, 2005 were presented.

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

<u>Business</u>	<u>Address</u>
Discounts Smokes	1221 SW 21 st Street
Lucy's Fourth Market	401 SE Lake
29 th Street Quick Stop	3101 SW 29 th Street

Councilmember Preisner moved to approve the remainder of the Consent Agenda. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

AN EXPENDITURE ORDINANCE introduced by City Manager Neil Dobler allowing and approving city expenditures for the period of May 9, 2005, through May 15, 2005, and enumerating said expenditures herein was presented for first and final reading.

AN EXPENDITURE ORDINANCE introduced by City Manager Neil Dobler, allowing and approving city expenditures for the period of May 16, 2005 through May 22, 2005, and enumerating said expenditures herein was presented for first and final reading.

AN EXPENDITURE ORDINANCE introduced by City Manager Neil Dobler, allowing and approving city expenditures for the period of May 23, 2005 through May 29, 2005, and enumerating said expenditures herein was presented for first and final reading.

Councilmember Alcalá moved to defer the three expenditure ordinances for two weeks for further review. The motion seconded by Councilmember Kennedy carried. Councilmembers Preisner, Duffy and Haynes voted “no”. (6-3-0)

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, June 7, 2005, at 7:00 P.M. for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of funds.

APPROPRIATION ORDINANCE NO. 18443 introduced by City Manager Neil Dobler, amending the adopted operating budget for the City of Topeka, for the year 2005, and appropriating the amounts for the purpose as set forth therein was presented for first and final reading.

Neil Dobler, City Manager stated that the amendment would increase the expenditure limitation on the Transient Guest Tax fund by \$200,000 which would be used for the Wayfinding Sign Project.

Richard Forester, William Beteta, Joseph Ledbetter and David Price appeared in support of the amendment and commented on the importance of completing the wayfinding system.

Councilmember Preisner moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

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, June 7, 2005, at 7:00 P.M. for the purpose of hearing any and all complaints that may be made as to the validity and fairness of the assessments on file in the office of the Clerk, on all lots, parcels and pieces of ground liable for the cost of improvement, same being Lateral Sanitary Sewer District No. 40915-00H, authorized by Resolution No. 7418, adopted and approved November 25, 2003.

ORDINANCE NO. 18444 introduced by City Manager, Neil Dobler 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 40915-00H, with piping, manholes, engineering and all other contingencies needed to complete Lateral Sanitary Sewer District No. 40915-00H, as defined and described in Resolution No. 7418, adopted and approved November 25, 2003 placed on first reading May 24, 2005, was again presented.

Joseph Ledbetter stated that he did not want to speak on agenda items 4B, 4C, and 4D. David Price stated that he did not want to speak again until item 5F.

Councilmember Preisner moved to close the public hearing and adopt the ordinance. The motion was seconded by Councilmember Alcala.

Councilmember Duffy noted that approval would increase the city's bonded indebtedness.

Jim Langford, Finance Director noted that the debt service would be paid by the assessments levied against the project.

The motion carried unanimously. (9-0-0)

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ORDINANCE NO. 18445 introduced by City Manager, Neil Dobler 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. 60578-H with pavement, curb and gutter, and all other contingencies needed to complete Street Improvement Project No. 60578-H as defined and described in Resolution No. 7278, adopted and approved October 15, 2002 placed on first reading May 24, 2005, was again presented.

Neil Dobler, City Manager gave the staff report.

Councilmember Haynes moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

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ORDINANCE NO. 18446 introduced by City Manager, Neil Dobler 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. 60206-02H with pavement, curb and gutter, and all other contingencies needed to complete Street Improvement Project No. 60206-02H as defined and described in Resolution No. 7372, adopted and approved August 5, 2003 placed on first reading, was again presented.

Neil Dobler, City Manager gave the staff report.

Councilmember Ortiz moved to close the public hearing and adopt the ordinance. The motion seconded by Councilmember Alcalá carried. Councilmember Preisner was out of the room. (8-1-0)

ORDINANCE NO. 18447 introduced by City Manager, Neil Dobler, instituting a real estate lien upon certain lots and pieces of ground in Shawnee County, Kansas to pay the cost for sewage collection and treatment where such payments to the City have not been made due to neglect, failure or refusal to pay, pursuant to K.S.A. 12-631k placed on first reading May 24, 2005, was again presented.

Neil Dobler, City Manager gave the staff report.

Joseph Ledbetter appeared and expressed his concern about providing city services to residents outside the city limits.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon –9.

AN ORDINANCE introduced by City Manager, Neil Dobler, regarding definitions, failure to pay; delinquent service fee, restoration of water service after payment of delinquency, amending Topeka City Code Sections 146-136, 146-148, and 146-150 and specifically repealing said original section placed on first reading May 24, 2005, was again presented.

Neil Dobler, City Manager gave the staff report and stated that the amendment would allow the Water Superintendent the flexibility to set operating hours to better serve customers' needs and improve efficiency in managing staffing levels.

Councilmember Alcala expressed a concern about the public not knowing what the hours of operation would be at any given time.

Don Rankin, Water Superintendent stated that the emergency hours would remain the same, and they could continue to be contacted 24 hours a day, seven days a week.

Councilmember Alcala moved to refer the ordinance to the Policy Committee to include the operating hours in the document. The motion seconded by Councilmember Haynes carried. Councilmembers Preisner, Blackburn, and Duffy voted "no". (6-3-0)

ORDINANCE NO. 18448 introduced by Councilmember Brett Blackburn, 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 May 24, 2005, was again presented.

Neil Dobler, City Manager explained the city previously had a policy that required a consent to annexation from a property owner prior to receiving water service outside the city limits. He stated that a few years ago that policy was changed to require actual annexation, and this ordinance would go back to requiring a consent to annexation before receiving water service outside the city limits.

Dustin Hawks and J.D. Yanek appeared in support of the ordinance and stated that most members of the Home Builders Association build to code, regulations are unnecessary and add an additional cost to the developer.

Joseph Ledbetter and Mark Galbraith appeared in opposition to the ordinance and expressed their opinion that approval would limit development inside the city limits, and also saddle the city with costs they are not prepared to meet.

Councilmember Alcalá asked Mr. Dobler to explain the return on the city's investment.

Neil Dobler, City Manager stated that they estimate a ten-year pay back with connection fees and monthly service fees.

Councilmember Duffy noted his financial concerns regarding the use of bonds outside the city limits and stated that he would oppose the ordinance.

Following a lengthy discussion, Councilmember Blackburn moved to adopt the ordinance. The motion was seconded by Councilmember Alcalá.

Councilmember Nave made a substitute motion to refer the ordinance to the Policy Committee. The Chair ruled that the motion died for lack of a second.

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Nave, and Blackburn –5. Noes: Preisner, Haynes, Duffy and Harmon-4.

AN ORDINANCE introduced by Councilmember Brett Blackburn relating to annexation and funding of sewer service and extensions, amending City of Topeka Ordinance No. 18272, Section 4, and repealing said original section placed on first reading May 24, 2005, was again presented.

Councilmember Kennedy noted for the record her affiliation with Lentz Plumbing, and stated that they are not involved in new construction, so she does not benefit from her vote on the ordinances being considered.

Dustin Hawks and Frank Kirtdoll appeared in support of the ordinance.

Joseph Ledbetter appeared in opposition to the ordinance.

Councilmember Blackburn moved to adopt the ordinance. The motion seconded by Councilmember Alcalá failed.

The ordinance failed to be adopted on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, and Blackburn –4. Noes: Harmon, Preisner, Nave, Duffy and Haynes –5.

ORDINANCE NO. 18449 introduced by Councilmember Brett Blackburn, amending City of Topeka Ordinance No. 17951 and City of Topeka Code Sections 26-58, 26-139.1.5, and 26-298 to limit the extension of the City of Topeka building code and permit process outside the City's boundaries to the City's Municipal Service Area placed on first reading May 24, 2005, was again presented.

Neil Dobler gave the staff report and stated that the current policy extends the building code in the 3-mile area outside of the city limits, and this amendment would extend the building code process within a Municipal Service Area.

Dustin Hawks appeared and stated that he supports an all county code, and he is opposed to double fees. He also stated work on his projects have been delayed because there are not

enough building inspectors to inspect work in the city limits and the 3-mile extra territorial jurisdiction of the city.

Joseph Ledbetter appeared in opposition and expressed his concern that the ordinance is improper because of a lawsuit.

David Price appeared in opposition to the ordinance.

Frank Kirtdoll appeared and suggested that the city increase the number of building inspectors.

Councilmember Blackburn moved the ordinance be approved. The motion was seconded by Councilmember Preisner.

Councilmember Haynes made a substitute motion to refer the ordinance to the Policy Committee. The motion seconded by Councilmember Nave failed. Councilmembers Kennedy, Alcala, Ortiz, Blackburn and Harmon voted “no”. (4-5-0)

Councilmember Alcala made a substitute motion to delete lines 1 through 141 of the ordinance. The motion was seconded by Councilmember Haynes.

Councilmember Duffy stated that he supports the motion if it eliminates the building permit process both within and outside the city.

Brenden Long, City Attorney stated that if the substitute motion was approved it would eliminate building codes and the building permit process in the city limits as well as in the 3-mile extra territorial jurisdiction of the city.

Following further discussion, Mayor Bunten suggested further study of the issue.

Councilmember Alcala stated that his intent was to eliminate city building codes outside the city limits only.

Councilmember Alcala withdrew his substitute motion.

Councilmember Alcala made a substitute motion to eliminate the city building code process in the 3-mile extra territorial jurisdiction of the city.

The Chair ruled that the motion died for lack of a second.

Councilmember Blackburn called the question on the motion to adopt the ordinance.

The motion carried.

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Blackburn, Preisner and Harmon –7. Noes: Duffy and Haynes –2.

ORDINANCE NO. 18450 introduced by Councilmember Brett Blackburn amending City of Topeka Code Section 134-1 to establish a city municipal service area within the City's three (3) mile extraterritorial jurisdiction, and specifically repealing said original section placed on first reading May 24, 2005, was again presented.

Neil Dobler, City Manager gave the staff report.

Frank Kirtdoll appeared in support of the ordinance.

Joe Ledbetter and David Price appeared in opposition to the ordinance.

Scott Henry, county resident appeared and stated he had to get both a county and a city permit, and he feels that he has no voice in the process.

Larry Cobler appeared and stated that he was undecided about the issue.

Councilmember Blackburn moved to adopt the ordinance. The motion seconded by Councilmember Alcala carried.

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Alcala, Ortiz, Nave, Blackburn, Preisner and Harmon –7. Noes: Duffy and Haynes –2.

RESOLUTION NO. 7637 introduced by Councilmember Brett Blackburn establishing the City of Topeka municipal service area was presented.

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

Councilmember Alcala noted that State Statute requires a legal description, map and street addresses be certified to the Election Commissioner within 30 days of establishing the Municipal Service Area.

Councilmember Preisner noted that it was nearly 11:00 p.m. and moved to extend the meeting through item 5G. The motion was seconded by Councilmember Blackburn.

Councilmember Alcala made a substitute motion to extend the meeting through 5G and First Readings. The motion was seconded by Councilmember Preisner.

Councilmember Blackburn made a friendly amendment to the substitute motion to include 6E.

Councilmember Alcala withdrew his motion.

Councilmember Alcala made a substitute motion to extend the meeting until the end of the agenda. The motion seconded by Councilmember Blackburn carried. Councilmembers Duffy, Preisner and Harmon voted “no”. (6-3-0)

RESOLUTION NO. 7631 introduced by Councilmember Lover Chancler relating to the installation of a traffic signal at the intersection of SE 6th Street and SE Deer Creek Trafficway was presented.

Councilmember Nave moved to approve the committee report. The motion seconded by Councilmember Blackburn carried. Councilmember Preisner was out of the room. (8-1-0)

JoAnn Peavler, John Moyer, Lena Russell, Fred Sanders and Joseph Ledbetter appeared in support of the resolution and stated that it is a safety issue.

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

Councilmember Kennedy moved to advance item 6E and 6F to be considered next on the agenda. The motion seconded by Councilmember Alcala carried. Councilmember Duffy abstained. (8-0-1)

RESOLUTION NO. 7633 introduced by Councilmember Brett Blackburn relating to the installation of streetlights on SW 35th Street between Belle Avenue and Glendale Drive was presented.

Roxanna Rusco and Ed Gray appeared in opposition to the resolution and stated that the streetlights were needed in the neighborhood for safety of the residents, and 79% of the residents signed a petition in support of having streetlights installed.

Jeannette Martens and Rick Streeter appeared and stated that they did not want streetlights installed in their yards.

Michelle O'Malley, representing Prairie Trace appeared in opposition to the resolution, and stated that the streetlights were needed for the safety and welfare of the residents of that area. She stated that this not only affects the 46 residences in this phase, but also the Westport area.

Joseph Ledbetter appeared and stated that streetlights were also needed in the Hi-Crest neighborhood.

Councilmember Blackburn moved to approve the resolution. The motion seconded by Councilmember Alcala carried. Councilmembers Preisner, Duffy, Haynes and Nave voted "no". (5-4-0)

RESOLUTION NO. 7634 introduced by Councilmember John Alcala relating to the Topeka Zoological Park and rescinding City of Topeka Resolution No. 7605.

Councilmember Alcalá moved to approve the resolution. The motion was seconded by Councilmember Ortiz.

Dr. Mark Morris, committee member appeared in support of the resolution and asked that the scope and mission of the committee be limited due to time restraints.

Councilmember Haynes moved to amend the resolution by striking the language on line 29 after the word “following” and the bullet points on that line and line 35, so it covers health and welfare of animals. The motion was seconded by Councilmember Preisner.

Joseph Ledbetter stated that he supports extension of time but not limiting the scope.

Councilmember Alcalá stated that he does not support the amendment, and noted that the Committee as a Whole has not agreed to limiting the scope.

The motion failed. Councilmembers Kennedy, Alcalá, Ortiz, Duffy and Blackburn voted “no”. (4-5-0)

The motion to approve carried. Councilmembers Preisner and Harmon voted “no”. (7-2-0)

RESOLUTION NO. 7632 introduced by City Manager, Neil Dobler designating an Acting City Manager, was presented.

Neil Dobler, City Manager stated that the resolution designates the Director of Budget and Financial Services to be the Acting City Manager during a temporary absence or disability of the City Manager.

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

A RESOLUTION introduced by City Manager, Neil Dobler adopting City Council Rules and Procedures, was presented.

Councilmember Alcala moved to defer for two weeks. The motion seconded by Councilmember Preisner carried. Councilmembers Duffy and Haynes voted “no”. (7-2-0)

A RESOLUTION introduced by Councilmember Jeff Preisner selecting an executive search firm to assist the City of Topeka in the employment of the city manager was presented.

Councilmember Preisner moved to refer the resolution to the Public Health and Safety Committee.

Councilmember Alcala stated that he supports the motion but he believed they should wait for the consolidation plan recommendation, and also consider the need to pay a search firm if they are satisfied with the Acting City Manager.

The motion seconded by Councilmember Nave carried. Councilmembers Duffy and Haynes voted “no”. (7-2-0)

A RESOLUTION introduced by Councilmember John Alcala relating to the distribution of money and financial assistance administered through the City of Topeka and amending City of Topeka Resolution No. 7580 was presented.

Councilmember Alcala stated that this would apply to not-for-profit organizations only.

Councilmember Alcala moved to approve the resolution. The motion was seconded by Councilmember Kennedy.

Councilmember Preisner stated that he was opposed to the resolution because anyone receiving funds should be held accountable.

The motion to approve failed. Councilmembers Kennedy, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon voted “no”. (2-7-0)

A COMMUNICATION by Councilmember John Alcala recommending that the Committee of the Whole review and update the proposed Topeka/Shawnee County Consolidation Plan, was presented.

Councilmember Alcala moved to approve the communication. The motion seconded by Councilmember Preisner carried. Councilmember Haynes voted “no”. (8-1-0)

DENIAL of claim appeal in the amount of \$5,473.53 by Henry and Helen Bates for damages caused by a sewer backup on February 6, 2005 was presented.

Neil Dobler, City Manager stated that the claimant was not present and asked that the appeal be deferred.

Councilmember Nave moved to defer the appeal for one week. The motion seconded by Councilmember Blackburn carried unanimously. (9-0-0)

A COMMUNICATION selecting two Councilmembers to serve on the Topeka Metropolitan Planning Organization (MPO) was presented.

Neil Dobler, City Manager stated that Councilmember Preisner holds one position on the board so they only need to select one Councilmember.

Councilmember Kennedy moved to nominate Councilmember Blackburn. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

A PETITION, PROJECT BUDGET in the amount of \$80,000 and RESOLUTION NO. 7635 introduced by City Manager Neil Dobler authorizing Lateral Sanitary Sewer District No. 40025-06 as more specifically described herein, was presented.

Councilmember Blackburn moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

A PETITION, PROJECT BUDGET in the amount of \$180,000 and RESOLUTION NO. 7636 introduced by City Manager Neil Dobler authorizing Street and Alley Improvement Project No. 60614-01 as more specifically described herein, was presented.

Councilmember Blackburn moved to approve the petition, project budget and resolution. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

AN ORDINANCE introduced by City Manager, Neil Dobler amending City of Topeka Code Section 30-302 relating to organizations and their members activities that shall be exempt from licensing and registration and specifically repealing said original section, was presented for first reading.

Councilmember Blackburn moved to refer the ordinance to the Economic and Community Development Committee. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

AN ORDINANCE introduced by City Manager, Neil Dobler, authorizing Project No. 30039-03 which provides for the repairs to the interior concrete floors of the orangutan holding 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.

AN ORDINANCE introduced by City Manager Neil Dobler 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 at 1729 SW MacVicar in the City of Topeka, Kansas from “R-1” Single Family Dwelling District TO “PUD” Planning Unit Development (“U-1” use group), was presented for first reading.

AN ORDINANCE introduced by City Manager Neil Dobler 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 northeast corner of NW 17th Street and NW Menoken Road in the City of Topeka, Kansas from “R-1” Single Family Dwelling District TO “I-1” Light Industrial District on the western half of the property and “I-2” Heavy Industrial District on the eastern half, was presented for first reading. (Z05/21)

AN ORDINANCE introduced by City Manager Neil Dobler 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 at 718 SW Washburn Avenue in the City of Topeka, Kansas from “M-1” Two Family Dwelling District TO “O&I-2” Office and Institutional District, was presented for first reading. (Z05/22)

AN ORDINANCE introduced by City Manager Neil Dobler 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 south of SE 13th Street, approximately 435 feet west of SE Long Street in the City of Topeka, Kansas from “E” Multiple Family Dwelling District TO “R-1” Single Family Dwelling District, was presented for first reading. (Z05/23)

AN ORDINANCE introduced by City Manager Neil Dobler 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 at 1900 SW Westport Drive in the City of Topeka, Kansas from “C-4” Commercial District TO “C-2” Commercial District, was presented for first reading. (Z05/24)

AN ORDINANCE introduced by City Manager, Neil Dobler, relating to the vacation of a portion of a north/south utility easement located at 3040 NW Sproatan Lane, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V05E/5)

Hi Stockwell and Peter Hancock appeared to speak under public communications and comments.

NO FURTHER BUSINESS appearing the meeting was adjourned at 12:45 a.m.

Iris Walker
City Clerk