

City Council Minutes – June 14, 2005

HILL'S FESTIVAL HALL, Topeka, Kansas, Tuesday, June 14, 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 Bunten presided -1.

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

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

Mayor Bunten requested that item 3L, a communication relating to the Topeka Planning Commission be placed under New Business, item 6G, to discuss the appointments.

Councilmember Haynes moved to place the communication under New Business as item 6G. The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

ORDINANCE NO. 18451 introduced by City Manager Neil Dobler allowing and approving city expenditures for the period of May 30, 2005, through June 5, 2005, and enumerating said expenditures herein was presented for first and final reading.

RESOLUTION NO. 7638 introduced by Councilmember Clark Duffy granting Ashley Spiker an exception to the provisions of the City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 7639 introduced by Councilmember Sylvia Ortiz granting Starbusters an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 7640 introduced by Councilmember John Alcala granting Fiesta Mexicana an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions during its parade and street dance scheduled for July 8, 2005 was presented.

RESOLUTION NO. 7641 introduced by Councilmember John Alcala granting Fiesta Mexicana an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

RESOLUTION NO. 7642 introduced by Councilmember Brett Blackburn granting Capital Title Insurance Company an exception to the provisions of City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

A FINAL PLAT for Heritage Tractor Subdivision located approximately 2,100 feet west of NW Vail Avenue in the City of Topeka, Kansas, was presented. (P05/12)

A FINAL PLAT for Sherwood Professional Park Subdivision No. 2 located on the south side of SW 29th Street between SW Lincolnshire Road and SW Villa West Drive in the City of Topeka, Kansas, was presented. (P04/35)

A FINAL PLAT for Rockfire Subdivision No. 2 located on the west side of SE Croco Road, the centerline of which is approximately 2,000 feet north of the intersection of SE 45th Street and SE Croco Road in the City of Topeka, Kansas, was presented. (P05/5)

A FINAL PLAT for Topeka Crossings Subdivision No. 4 located at 1900 SW Westport Drive in the City of Topeka, Kansas, was presented. (P05/10)

A COMMUNICATION recommending the appointment of Bob Storey to the Washburn University Board of Regents for a 4-year term that would expire on June 30, 2009 was presented.

MINUTES of the Regular Meeting of June 7, 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>
Ameri Gas, Inc.	4601 A SW Topeka Boulevard
KWIK Shop	738 SW Gage
Plaza BP	1401 Huntoon

Open After Mid-Night License Applications bearing the approval of the Chief of Police and City Inspectors were presented from the following:

<u>Business</u>	<u>Address</u>
Dimple Donuts	1949 NW Topeka Boulevard
Lollipops Gentlemen's Club	4831 SW Topeka Boulevard

Councilmember Preisner moved to approve the Consent Agenda. The motion seconded by Councilmember Nave 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 14, 2005, at 7:00 P.M. in conjunction with vacation request V05E/5 by Elizabeth Warner to vacate a 10-foot wide north/south utility easement located at 3040 NW Sproatan Lane, City of Topeka, Shawnee County, Kansas.

ORDINANCE NO. 18452 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 placed on first reading June 7, 2005 was again presented.
(V05E/5)

Neil Dobler, City Manager gave the staff report.

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

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

ORDINANCE NO. 18453 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 placed on first reading June 7, 2005 was again presented.

Neil Dobler, City Manager gave the staff report.

Mike Coker, Zoo Director appeared to answer questions.

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

A ZONING PETITION and ORDINANCE NO. 18454 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) placed on first reading on June 7, 2005 was again presented. (*PUD04/11*)

Neil Dobler, City Manager gave the staff report and stated that the Topeka Planning Commission recommended approval by a vote of 7-3-0 on May 16, 2005.

David Thurbon, Planning Director appeared for questions.

David Monical, representative for Washburn University distributed a booklet and gave a brief report on the proposal. The key points included:

- 140th Year Celebration
- Campus, Environs, Facilities and Space Needs
- Enrollment and Employment
- Local Economic Impact
- Cost of Alternative Proposals
- Planning Process

Councilmember Haynes moved to approve the zoning petition and adopt the ordinance.

The motion seconded by Councilmember Harmon 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.

A ZONING PETITION and ORDINANCE NO. 18455 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 placed on first reading on June 7, 2005 was again presented. (Z05/21)

Neil Dobler, City Manager gave the staff report and stated that the Topeka Planning Commission recommended approval by a vote of 10-0-0 on May 16, 2005.

Dean Forbes appeared and spoke in support of the proposal.

Rick Schmidt, Schmidt Engineering appeared to answer questions.

Mayor Bunten asked if there were any additional ex parte communications besides Councilmembers Alcala and Preisner. There were none declared.

Councilmember Preisner moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Alcalá carried unanimously. (9-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18456 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 placed on first reading June 7, 2005 was again presented. (Z05/22)

Neil Dobler, City Manager gave the staff report and stated that the Topeka Planning Commission recommended approval by a vote of 9-1-0 on May 16, 2005.

Mayor Bunten gave an opportunity for anyone present to speak. No one appeared.

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

Councilmember Preisner moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

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

A ZONING PETITION and ORDINANCE NO. 18457 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 placed on first reading June 7, 2005 was again presented. (Z05/23)

Neil Dobler, City Manager gave the staff report and stated that the Topeka Planning Commission recommended approval by a vote of 10-0-0 on May 16, 2005.

Mayor Bunten gave an opportunity for anyone present to speak. No one appeared.

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

Councilmember Nave moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Haynes 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.

A ZONING PETITION and ORDINANCE NO. 18458 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 placed on first reading June 7, 2005 was again presented. (Z05/24)

Neil Dobler, City Manager gave the staff report and stated that the Topeka Planning Commission recommended approval by a vote of 10-0-0 on May 16, 2005.

David Thurbon, Planning Director appeared for questions.

Mayor Bunten gave an opportunity for anyone present to speak. No one appeared.

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

Councilmember Haynes moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Preisner carried unanimously. (9-0-0)

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

A PROJECT BUDGET in the amount of \$1,035,405 and AN ORDINANCE introduced by acting City Manager Neil Dobler, authorizing the first phase of Grade Separation Project No. 12064, which provides for the design, right-of-way appraisal and utility relocation for construction of a grade separation structure on NW Lower Silver Lake Road as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading May 10, 2005 was again presented.

Councilmember Blackburn gave the committee report. He stated that the Economic and Community Development Committee recommended “Do Not Pass” by a vote of 3-0-0 on June 1, 2005. He stated that they would like to request that the City Manager bring back a benefit district proposal to help absorb some of the project cost.

Councilmember Alcalá moved to defer the proposal for thirty days to allow staff the opportunity to ask the Union Pacific Railroad to help the City pay the balance of the project cost. The motion was seconded by Councilmember Preisner.

Councilmember Alcalá asked for clarification regarding Public, Health and Safety issues.

Howard Giles, Fire Chief stated that at this time he does not believe that there is a Public, Health and Safety issue because currently they are meeting the required four-minute response time. He explained that a train could delay response time by 20 to 25 percent because alternate companies have to be called.

Tony Meier, area resident and business owner spoke in opposition of delaying the project. He stated that he believes it is a public safety issue because in the near future approximately 140 trains, per day, are scheduled to run on the tracks. He also stated that the City runs the risk of jeopardizing the funds the State is willing to contribute by delaying the project.

In response, Neil Dobler stated that he does not believe a thirty-day delay would cause the City to lose the State's portion of funding.

A PROJECT BUDGET in the amount of \$200,000 and ORDINANCE NO. 18459 introduced by acting City Manager Neil Dobler, authorizing Trafficway Improvement Project No. 70142-03, which provides for the design of improvements on SE California Avenue between SE 29th Street and SE 33rd Street as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading May 10, 2005 was again presented.

Councilmember Blackburn gave the committee report. He stated that the Economic and Community Development Committee recommended "Do Pass" by a vote of 3-0-0 on June 1, 2005. He also stated that the committee would like a traffic study conducted on the area to make certain five lanes are necessary.

Joseph Ledbetter spoke in support of the project. He gave a brief description of the surrounding commercial and residential growth areas. He stated that they should use the \$200,000 it would cost to conduct a traffic study and begin the project as soon as possible.

Fred Martinez spoke in support of the project. He suggested that they include 300-feet of new sidewalk under the I-470 bridge to improve public safety for pedestrians.

John Moyer spoke in support of the project. He stated that he believes that they need to consider future needs of the area. He also stated that the project would support and encourage East Topeka Development.

Cliff Cormier spoke in support of the project. He suggested that they extend the project through 45th Street.

Fred Sanders spoke in support of the project. He listed all of the subdivisions that would benefit from the project and stated that California Avenue already needs to be five-lanes. He stated that east Topeka should be given the opportunity to grow.

Henry McClure spoke in support of the project. He encouraged the Council to extend the project through 45th Street to accommodate future commercial and residential growth.

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

Councilmember Alcalá moved to amend lines 19 through 21 of the ordinance to read, "The design portion of this project shall include a traffic study, and appropriate designs and cost estimates for a three or five lane arterial along with associated curb and gutter, sidewalk and storm drainage facilities." The motion seconded by Councilmember Haynes carried.

Councilmember Duffy voted "no". (8-1-0)

The ordinance was adopted as amended on roll call vote as follows: Ayes: Kennedy, Alcalá, Ortiz, Nave, Haynes, Blackburn, Preisner and Harmon -8. Noes: Duffy -1.

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. This claim appeal was deferred from the meeting of June 7, 2005.

Brenden Long, City Attorney explained the claim appeal. He stated that on March 28, 2005 the claim was denied based on an investigation conducted finding no apparent negligence by the City. He also stated that the Mr. and Mrs. Bates have received an insurance payment of \$5,000.

Councilmember Preisner moved to approve the denial of the claim appeal. The motion was seconded by Councilmember Nave.

Councilmember Alcala made a substitute motion to pay \$2,961.88 for the cost of clean up. The motion seconded by Councilmember Haynes carried. Councilmembers Preisner and Harmon voted "no". (7-2-0)

RESOLUTION NO. 7643 introduced by City Manager, Neil Dobler, rescinding and replacing Resolution of Advisability and Authorization No. 7405 correcting the description of the properties contained in the proposed improvement district and authorizing Street Improvement Project No. 60389-03H, located at approximately SE 44th Street and SE Oakview Lane, as more specifically described herein was presented.

Neil Dobler, City Manager stated that the resolution corrects the legal description of the improvement district.

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

A RESOLUTION requesting a Conditional Use Permit to establish a group residence, limited on property located at 5401 SW 28th Street in the City of Topeka, Kansas on property currently zoned "R-1" Single Family Dwelling District was presented. (CU05/4)

David Thurbon, Planning Director gave the staff report. He explained that following an on-site investigation, it was discovered that there were six residents living in the house, in lieu of the five that had been reported in the applicant's application without a Conditional Use Permit. He stated that a code violation notice was sent to the residence following the investigation, instructing the applicant to correct the existing condition. He stated that the applicant for a Conditional Use Permit and the Planning Commission recommended approval by a vote of 9-1-0 on May 16, 2005. He explained that the approval was based on use and development of the site as a Group Residence restricted to no more than six occupants, and compliance with the Oxford House Statement of Justification, Policy, Rules and Procedures.

Councilmember Alcalá stated that the owners were aware of the regulations prior to allowing a sixth resident to live in the house. He also stated that if they approve the conditional use permit it would set precedence for other group residences. He encouraged the Council to deny the request.

Councilmember Preisner stated that he agrees with Councilmember Alcalá and would oppose the request.

Councilmember Haynes asked for clarification regarding the 90-day window compliance clause that was referenced in the memorandum by Ryan Vincent dated May 3, 2005.

Brenden Long, City Attorney stated that all group homes were notified of the change in process and the 90-day window only applied to those homes already in existence. He stated that the applicant should have applied for the permit prior to allowing the sixth resident to move in.

Councilmember Duffy stated that he opposes the request because he believes the request violates general safety regulations 2, 6 and 7, listed in the ordinance. He also stated that he has

spoke with several area residents that have expressed concern with adding an additional resident to the home.

Ryan Vincent, representative for the applicants stated that the sixth resident did not move into the home until approximately three weeks after filing for the conditional use permit. He stated that the landlord gave the applicants an eviction notice due to the zoning changes. He stated that the applicants filed for an application within thirty days of moving, therefore, he believes the applicants acted in a timely manner. He also stated that the ordinance should include procedural instruction in conjunction with the 90-day window compliance clause.

Brenden Long, City Attorney clarified that it would take two-thirds majority vote to override the Planning Commission's recommendation. He also explained that if the proposal receives 5 "no" votes, the request would automatically remand back to the Planning Commission.

Mayor Bunten asked if there were any additional ex parte communications besides Councilmembers Alcala, Duffy and Preisner. There were none declared.

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

Councilmember Alcala made a substitute motion to deny the conditional use permit request. The motion seconded by Councilmember Ortiz carried. Councilmember Harmon voted "no". (8-1-0)

RESOLUTION NO. 7644 requesting a Conditional Use Permit to establish conference, reception and assembly facility on property located at 3535 SW 6th Avenue in the City of Topeka, Kansas on property currently zoned "M-3" Multiple Family Dwelling District, was presented. (CU05/1)

Neil Dobler, City Manager gave the staff report.

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

A FINAL PLAT for Legacy Woods Subdivision located one-quarter mile south of SW 41st Street and west of SW Urish Road within unincorporated Shawnee County, Kansas was presented. (P03/21)

Neil Dobler, City Manager gave the staff report.

Mike Engler, Bartlett & West Engineers appeared for questions.

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

A COMMUNICATION regarding discussion on the Topeka/Shawnee County Consolidation Commission Preliminary Plan items was presented.

Neil Dobler, City Manager presented a list of items relating to City/County Consolidation to each Councilmember for recommendation. He stated that the final report would be presented to the Council at the June 14, 2005 work session, prior to presenting it to the Consolidation Commission. The Council addressed the following topics:

- Make up of a consolidated government: (1) Districts or (2) At-large
- Partisan or Non-partisan Elections
- Should there be a professional manager?
- Should there be a Mayor at large position?
- Law Enforcement: (1) Elected Sheriff or (2) Appointed Chief
- What type of services should be provided by consolidated government?
- What type of services should be provided outside of consolidated government?
- What is an acceptable mill levy increase/decrease both inside/outside of the City?

The consensus of the Councilmembers is as follows:

- 5 or 7 Districts
- Non-partisan elections
- Professional Manager
- Mayor at large position
- Elected Sheriff
- The consolidated government should provide as many services as possible to all residents of Shawnee County.
- The mill levy should be decided at a later date

Councilmember Duffy stated that he believes the Comprehensive Metropolitan Plan should be used as the foundation for City/County Consolidation.

RESOLUTION NO. 7645 introduced by City Manager, Neil Dobler authorizing initiation of condemnation proceedings for Improvement Project No. 13137-00 was presented.

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

A COMMUNICATION recommending the appointment of Mark Boyd, John McGivern, Kimberly Scott, Ralph Skoog, Dave Heinemann, Joselito Enriquez, Fred Sanders, Joe Swalwell and Michelle Hoferer to the Topeka Planning Commission, was presented.

Councilmember Preisner moved to defer one week. The motion was seconded by Councilmember Blackburn.

Councilmember Haynes moved to vote on the appointments individually. The motion died due to lack of a second.

Mayor Buntin stated the he took a great deal of time to choose a diverse commission, following the guidelines set by Council. He stated that they need to move forward as soon as possible because there are developers waiting for a decision to be made.

The motion to defer carried. Councilmember Haynes voted "no". (8-1-0)

AN ORDINANCE 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. 60572, with pavement, curb and gutter, and all other contingencies needed to complete Street Improvement Project No. 60572 as defined and described in Resolution No. 7166, adopted and approved July 10, 2001 was presented for first reading.

AN ORDINANCE introduced by Councilmember John Alcala amending City of Topeka Code Section 142-355 to include a provision allowing for the waiver of the provisions of the code section relating to parking on unimproved surfaces, and specifically repealing said original section was presented for first reading.

AN ORDINANCE introduced by Councilmember John Alcala authorizing the purchase, possession and consumption of cereal malt beverages during the Fiesta Mexicana, at specified locations and times was presented for first reading.

AN ORDINANCE introduced by John Alcala authorizing the purchase, possession and consumption of cereal malt beverages during the Fiesta Mexicana parade and street dance, at specified locations and times

AN ORDINANCE introduced by Councilmember Brett Blackburn, relating to the use and sale of fireworks within the city limits, amending Topeka City Code Section 70-57 and specifically repealing said original section was presented for first reading.

REPORTS OF COMMITTEES AND OFFICERS, were presented.

Councilmember Preisner announced that there would be a Public, Health and Safety Committee meeting held on June 27, 2005 at 4:30 pm in the City Council Office.

REPORT FROM THE CITY MANAGER, was presented.

Neil Dobler suggested that they schedule a work session on July 9th or July 16th to allow the agencies that are requesting city funding to give a presentation.

Peter Muraski , David Owen and Joseph Ledbetter appeared to speak under public communications and comments.

Councilmember Blackburn moved to adjourn into executive session for a period not to exceed ten minutes to discuss personnel matters. The motion seconded by Councilmember Harmon carried. Councilmembers Duffy and Preisner were out of the room. (6-0-0)

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

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:45 p.m.

Iris Walker
City Clerk