

City Council Minutes – October 11, 2005

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, October 11, 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, Councilmember Ortiz gave the invocation.

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

Councilmember Blackburn requested that item 3B, a communication relating to the Topeka Landmarks Commission be pulled from the consent agenda for discussion. He stated that the communication was not placed on the preliminary agenda and there are some questions that he would like answered before he makes a decision.

Councilmember Kennedy requested that item 3A, a denial of a claim appeal by Dale L. Hitsman be pulled from the consent agenda for separate discussion.

MINUTES of the Regular Meeting of October 4, 2005 were presented.

Councilmember Kennedy noted a correction to page 411 of the Minutes. She stated that that the motion in paragraph 4 should state that, Councilmember “Kennedy” moved to suspend the Council Rules, instead of Councilmember Nave.

RESOLUTION NO. 7695 introduced by City Manager Neil Dobler rescinding Resolution of Advisability and Authorization No. 7282 regarding Street Improvement Project No. 60468, Phase 4, was presented.

An Open After Mid-Night License application bearing the approval of the Chief of Police and City inspectors for Hooters, located at 6100 SW 10th Avenue, was presented.

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

Neil Dobler, City Manager stated that items 3A and 3B previously listed on the consent agenda would be placed under Unfinished Business, and considered as item 5I and item 5J.

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, October 11, 2005, at 7:00 P.M. for to consider the adoption of the Redevelopment Project Plan for a major motorsports complex in the proposed Heartland Park Redevelopment District.

Neil Dobler, City Manager gave the staff report.

Councilmember Preisner moved to extend the public hearing an additional two weeks.

The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$70,000 and ORDINANCE NO. 18521 introduced by City Manager Neil Dobler, authorizing Improvement Project No. 30252-00, which provides for improvements to the Discovering Apes building as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading September 20, 2005 was again presented. The project budget and ordinance were deferred from the meeting of September 27, 2005.

Neil Dobler, City Manager gave the staff report.

Brenden Long, City Attorney gave a brief overview of the memorandum that was distributed to the City Council and Mayor regarding Friends of the Topeka Zoo (FOTZ). He stated that in his opinion FOTZ is not outside the scope of their mission to assist in the financing of improvements and repairs to the Discovering Apes Building, however, FOTZ is a private organization with the authority to make its own decisions concerning the expenditure of funds.

The following items were addressed in the memo:

- 1.) Internal Revenue Service regulations and rulings relating to income tax exempt organizations.
- 2.) The By-laws of FOTZ.
- 3.) The history of the projects and activities funded by FOTZ.
- 4.) The provisions of City Code Section 102-304 directly relating to FOTZ.
- 5.) The mandates listed in the current contract between the City of Topeka and FOTZ.

Neil Dobler stated that now would be an opportune time to renegotiate a new contract with FOTZ and define the financial obligations of both parties. He also stated that he believes negotiations could be complete by the end of December 2005.

Joseph Ledbetter gave a brief overview of the Zoo Committee Study. He stated that in his opinion FOTZ should be obligated to pay for the repairs to the Discovering Apes Building to ensure the health and welfare of the animals.

Councilmember Alcala requested that the official opinion of FOTZ be submitted for the record. The opinion was presented as follows:

“FOTZ believes that providing funding for zoo building repairs and improvements would be contrary to its tax-exempt status, which they stated was limited to providing “educational” support to the zoo.”

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

Brenden Long stated that in his opinion the expenditure could be challenged.

Councilmember Duffy asked if Chevron has completed the energy audit survey so they know how much can be financed through acquired energy savings, as originally planned.

Mike Coker, Zoo Director stated that a memorandum was distributed to the Council stating that the building did not have enough square footage to do an energy audit survey.

Councilmember Duffy stated that it was his understanding that Chevron was to conduct an energy audit survey on all the buildings listed in the Capital Improvement Budget.

Neil Dobler stated that the energy audit has not been completed.

Councilmember Blackburn clarified that FOTZ did receive an official request for funds from the Zoo Director in the amount of \$70,000 via email. He stated that he would not support the project if bonded because he believes there are other funds available in the budget.

Jim Langford, Budget Director stated that the project would not be bonded until 2006. He also noted that they recently purchased a fire truck in the amount of \$300,000 affecting the ending balance of the operating budget.

Mike Coker verified that he sent a request to FOTZ as stated by Councilmember Blackburn and did not receive a response.

Brenden Long suggested that they amend the ordinance to include the statement, "The City Manager is hereby directed to make every reasonable effort to utilize other lawfully available funds in lieu of issuing general obligation bonds."

Councilmember Haynes moved to amend the ordinance as stated by the City Attorney. The motion seconded by Councilmember Nave carried. Councilmember Blackburn voted "no".
(8-1-0)

Councilmember Duffy asked when the project would be complete.

Neil Dobler stated that the project should be complete by the end of November 2005. He stated that they would make sure that the new units are more efficient than the old ones. He also stated that a complete energy audit is included in the Zoo Master Plan.

Councilmember Preisner moved to approve the project budget and adopt the ordinance as amended. The motion seconded by Councilmember Harmon carried. Councilmember Blackburn voted "no". (8-1-0)

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

A PROJECT BUDGET in the amount of \$1,589,600, AN ORDINANCE and A NOTICE OF INTENTION introduced by City Manager Neil Dobler authorizing Phase 2 of Improvement Project No. 28509-02 which provides for the construction and installation of two, twenty (20) inch water lines on the new Topeka Boulevard Bridge over the Kansas River at the time of bridge construction which constitute improvements to the municipally owned water, water pollution control, and stormwater utility system of the City of Topeka, Shawnee County, Kansas, approving cost estimates of the proposed improvements, and doing all other things necessary and incidental thereto, and authorizing the publication of the Notice of Intention of the governing body of the City of Topeka, Kansas, to make such improvements and to issue and sell revenue bonds of said City to pay the cost thereof pursuant to K.S.A. 10-101 and 10-1201 *et. seq.*, and all amendments thereto placed on first reading September 20, 2005 was again presented. The project budget, ordinance and notice of intention were deferred from the meeting of September 27, 2005.

Neil Dobler, City Manager gave the staff report. He stated that the Public Works Department determined that a portion of the project is attributable to the reconstruction of the Topeka Boulevard Bridge in the amount of \$330,000. He suggested that they ask the JEDO Board to fund the \$330,000 from half-cent sales tax revenue.

Joseph Ledbetter stated that he believes the entire Topeka Boulevard Bridge repair project should be funded from the half-cent sales tax revenue because that is what the citizens of Topeka voted for.

Councilmember Haynes asked when the project would be implemented, and when the bonds would be issued to pay for the project.

Neil Dobler stated that project is scheduled to begin in the spring of 2006.

Mike Teply, Acting Public Works Director stated that they plan to fund the project from sales tax revenue or from the Water Department Operating Budget. He also stated that the ordinance would allow the project to be bonded if necessary.

Brenden Long, City Attorney stated that a funding source must be defined to move forward with the project. He also stated that if it is necessary they could clarify the funding intent of the ordinance by deleting the option that would allow the project to be bonded.

Councilmember Haynes moved to disapprove the project budget, ordinance and notice of intention. The motion died to a lack of a second.

Councilmember Alcalá moved to approve the project budget, ordinance and notice of intention. The motion seconded by Councilmember Preisner failed. Nave, Haynes, Duffy, Blackburn and Harmon voted "no". (4-5-0)

A REVISED PROJECT BUDGET in the amount of \$39,000 and A RESOLUTION introduced by City Manager Neil Dobler amending the Project Budget of Improvement Project No. 28509-01 providing for the installation of two, twenty (20) inch water lines on the new Topeka Boulevard Bridge over the Kansas River as more specifically described herein and rescinding Resolution No. 7591 was presented. The project budget and resolution was deferred from the meeting of September 27, 2005.

Neil Dobler, City Manager requested that the Council disapprove the revised project budget and allow the original project budget to remain the same.

Councilmember Preisner moved to approve the revised project budget and resolution. The motion seconded by Councilmember Alcalá failed. (0-9-0)

A FINAL PLAT for Summer's View Subdivision located on property east of SE Downing Drive between SE 32nd Street and SE 33rd Terrace within unincorporated Shawnee County, Kansas, was presented. The final plat was deferred from the meeting of September 27, 2005. (P05/16)

Neil Dobler, City Manager gave the staff report. He stated that the Legal Department has determined that the City is obligated to provide sewer services to the area. He also stated that the applicant has granted their written consent to annexation.

Councilmember Alcalá moved to approve the final plat. The motion was seconded by Councilmember Preisner.

Councilmember Duffy expressed concern with the agreement because he believes it obligates the City to provide fire protection services to the area. He also asked why they did not have to comply with the stream buffer ordinance.

David Thurbon, Planning Director explained that the agreement references a mutual aide agreement between the City and the area fire department. He stated that in past agreements the City has not been considered the primary service provider, however, he will meet with the Fire Chief to clarify the issue. He also stated that the Planning Department determined that the area does not fall within the guidelines of a stream buffer area.

Brenden Long, City Attorney noted that the requirements regarding fire service for the area will not be recorded with the final plat.

Mike Engler, Bartlett & West Engineers stated that the applicant does not intend to receive fire services from the City. He explained that he believes it is a typographical error in the agreement.

Councilmember Blackburn stated that the City is fulfilling a contractual agreement not an exception to city policy.

The motion to approve the final plat carried unanimously. (9-0-0)

ORDINANCE NO. 18522 introduced by City Manager Neil Dobler authorizing the initiation of condemnation proceedings to acquire property by eminent domain for the City of Topeka Improvement Project No. 28527-00, for a water main extension along SW 17th Street and SW Urish Road placed on first reading October 4, 2005 was again presented.

Neil Dobler, City Manager gave the staff report.

Councilmember Blackburn asked how many properties have successfully been negotiated.

Neil Dobler stated that there are a total of eighteen properties and there are four remaining properties to negotiate.

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

ORDINANCE NO. 18523 introduced by City Manager Neil Dobler relating to Sunday sale of alcoholic liquor and cereal malt beverage in the original package within the City of Topeka, amending City of Topeka Code Section 10-37, 10-51, and 10-117 and repealing said original code sections placed on first reading October 4, 2005 was again presented.

Neil Dobler, City Manager gave the staff report.

Cliff Cormier stated that he believes that they should allow the City of Topeka citizens to vote on the issue of Sunday liquor sales. He also stated that he has a number of concerns relating to the lack of uniformity, terminology and regulations of the ordinance.

Councilmember Ortiz moved to amend Section 1, line 28 of the ordinance by adding the word "Easter." The motion seconded by Councilmember Harmon carried unanimously. (9-0-0)

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

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

ORDINANCE NO. 18524 introduced by City Manager Neil Dobler authorizing the initiation of condemnation proceedings to acquire property by eminent domain for the City of Topeka Improvement Project No. 30127-09, along the Shunga Trail between 17th Street, across the Burlington Northern and Santa Fe Railroad placed on first reading October 4, 2005 was again presented.

Neil Dobler, City Manager gave the staff report. He stated that they have requested the initiation of condemnation proceedings because they have not been successful with normal negotiations.

Councilmember Ortiz expressed concern with not reaching an agreement with the railroad.

Brenden Long, City Attorney stated that they have been negotiating the property for approximately two years with no success. He stated that they are pushing condemnation proceedings so they do not risk losing federal funding of the project.

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

AN ORDINANCE introduced by Brett Blackburn concerning public nudity in the City of Topeka placed on first reading October 4, 2005 was again presented.

Councilmember Blackburn stated that the current City Code does not prevent public nudity and this ordinance would clarify the law relating to criminal behavior.

Brenden Long, City Attorney clarified the difference between prosecution of the law and intent of the law. He stated that criminal intent would have to be required for an arrest and accidental exposure would not apply.

Webb Garlinghouse stated that he believes the ordinance would have an affect on private activities, restrict freedom of expression and create, not prevent a problem.

David Bitters stated that he believes the ordinance is not necessary because the culture of Topeka speaks for itself. He stated that we live in a free society and in his opinion government should not dictate how people live their lives.

Councilmember Blackburn moved to adopt the ordinance. The motion died due to a lack of a second.

DENIAL OF A CLAIM APPEAL by Dale L. Hitsman, 329 NW Waite Street alleging that he had an allergic reaction to chemicals sprayed on his lawn by the City of Topeka on June 7, 2005 was presented.

Councilmember Kennedy urged the Council to approve the claim to cover the cost of medicine and medical bills.

Councilmember Kennedy moved to approve the claim in the amount of \$7,000. The motion died due to a lack of a second.

Councilmember Duffy moved to deny the claim appeal. The motion seconded by Councilmember Haynes carried. Councilmember Kennedy voted "no". (8-1-0)

A COMMUNICATION recommending the appointments of Greg Allen, Helen Crow, Mark Burenheide, Elizabeth Smith, Pete Tavares, Jr., Breta Bloomberg, Jim Turner, JoAnn Peavler and Doug Jones to the Topeka Landmarks Commission was presented.

Councilmember Blackburn stated that he would like to defer the communication for two weeks. He explained that six of the members are from the same district and he believes that there should be a more broad representation.

Councilmember Blackburn moved to defer the communication for two weeks. The motion seconded by Councilmember Haynes carried. Harmon voted "no". (8-1-0)

RESOLUTION NO. 7696 introduced by City Manager Neil Dobler authorizing initiation of condemnation proceedings to acquire property for Trafficway Improvement Project No. 70142-01, for trafficway improvements on SE California Avenue from I-70 to SE 21st Street was presented.

Neil Dobler, City Manager gave the staff report.

Councilmember Ortiz asked if there were any properties protesting the proceedings.

Neil Dobler stated that the parcels of property have not been specified at this time.

Councilmember Blackburn asked if a fair price would be negotiated with landowners.

Neil Dobler stated that the City is required to follow federal procedure, which includes compensation of fair market value price and relocation costs.

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

RESOLUTION NO. 7697 introduced by Councilmember Brett Blackburn amending the provisions of the Personnel Rules and Regulations relating to the benefits provided to employees on military leave was presented.

Councilmember Blackburn explained the resolution. He stated that the resolution would help ease the financial strain City employees and their families face by supplementing the difference in base pay and military pay. He distributed a suggested amendment to begin on line 33 and end on line 35. The amendment read as follows: "For a typical forty-hour employee, for the purpose of calculating the maximum allocation, the pay period would be a maximum of fifteen working days of either 8 hours per day excluding any overtime consideration; and for twenty-four hour employees, a maximum of nine shifts to base pay, less the military pay."

Chuck Bredahl spoke in support of the resolution. He stated that it is very important to support our military and supplement their families financially.

Several Councilmembers raised a number of concerns relating to the definition of "voluntary" and "involuntary" service.

Councilmember Haynes moved to refer the resolution to the Policy and Finance Committee for thirty days. The motion seconded by Councilmember Duffy failed. Councilmembers Kennedy, Alcala, Ortiz, Nave, Preisner and Blackburn voted "no". (3-6-0)

Councilmember Blackburn moved to amend the resolution as distributed. The motion seconded by Councilmember carried. Councilmember Haynes voted "no". Councilmember Duffy abstained. (7-1-1)

Councilmember Blackburn moved to approve the resolution as amended. The motion seconded by Councilmember Alcala carried. Councilmember Haynes voted "no". Councilmember Duffy abstained. (7-1-1)

RESOLUTION NO. 7698 introduced by Councilmember Brett Blackburn establishing a policy for the naming/renaming of City facilities and specifically rescinding City of Topeka Resolution No. 6346 was presented.

Councilmember Blackburn stated that the resolution gives the City the ability to accept or negotiate contribution of funds for advertising purposes.

Councilmember Preisner asked if the resolution would affect the Gage Park memorial benches.

Brenden Long, City Attorney stated that it is policy the City would regulate.

Councilmember Blackburn moved to approve the resolution. The motion seconded by Councilmember Preisner carried. Councilmember Ortiz voted "no". (8-1-0)

A RESOLUTION introduced by City Manager Neil Dobler in accordance with Section 48-20.02(c)(5) of the Code of the City of Topeka, approving a Conditional Use Permit to establish a public use facility for outdoor storage of state and federal surplus items on property currently zoned "PUD" Planned Unit Development District (mixed use) and located at 2830 SW Kanza Drive in the City of Topeka, Kansas was presented. *(CU05/8)*

Neil Dobler, City Manager gave the staff report.

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

Councilmember Duffy stated that he does not agree with the proposed use because it does not accomplish what he hoped for the area as a main gateway to the city.

Councilmember Blackburn concurred with Councilmember Duffy. He stated that he believes a storage facility would discourage others from investing in the area.

Councilmember Kennedy stated that she believes that area residents may not be aware of the proposed use.

Mark Stock, State of Kansas Real Estate Officer stated that they conducted a public hearing on the proposal.

Councilmember Nave stated that he agrees with the original intended use and believes that a storage facility would discourage future potential development.

Dan Carol, attorney with the State Department of Administration stated that they share the desire to develop the area. He also stated that the storage facility could not be seen from the Interstate or Hummer Park.

Councilmember Alcala moved to remand the resolution back to the Planning Commission. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

A ZONING PETITION and ORDINANCE NO. 18525 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 north of SW Huntoon Street the centerline of which is approximately 195 feet west of SW Harvey Street in the City of Topeka, Kansas from "C-2" Commercial District TO "C-3" Commercial District placed on first reading October 4, 2005 was again presented.

(Z05/32)

Neil Dobler, City Manager gave the staff report.

Mayor Bunten asked if there were any additional exparte communications besides Councilmembers Preisner and Harmon. There were none declared.

Councilmember Preisner moved to approve the zoning petition 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: Kennedy, Alcalá, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

A ZONING PETITION and ORDINANCE NO. 18526 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 north of SW 8th Street between SW Lane Street and SW Washburn Avenue in the City of Topeka, Kansas from "O&I-2" Office and Institutional District TO "MS-1" Medical Service District placed on first reading October 4, 2005 was again presented. (Z05/33)

Neil Dobler, City Manager gave the staff report.

Mayor Buntin asked if there were any additional ex parte communications besides Councilmember Preisner. There were none declared.

Councilmember Preisner moved to approve the zoning petition 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: Kennedy, Alcalá, Ortiz, Nave, Haynes, Duffy, Blackburn, Preisner and Harmon -9.

PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL, were presented.

Neil Dobler, City Manager stated that they have scheduled interviews with three separate lobbyist firms to be held on October 18, 2005 at 5:30 p.m. in the Executive Conference Room. He stated that the interviews will be video taped and copies of the proposals would be available in the Council Office for review by those Councilmembers who are unable to attend. He stated that they have received thirty applications for the City Manager's position. He also stated that a meeting with Slavin Management should be scheduled in the next two weeks to discuss the

applications. He also informed Councilmember Haynes that the California Avenue Project has been approved for \$1.7 million in General Obligation Bonds.

Mayor Bunten announced that the State Legislative Delegation meeting would be held on December 5, 2005. He stated that he would contact the Council with a meeting time as soon as it is determined.

Councilmember Ortiz encouraged the community and City Council to continue to participate in the Open House Celebrations sponsored by the Fire Department.

Councilmember Alcala inquired on the status of the 10th and Washburn intersection traffic study. He asked if they could improve the crosswalk markings located on the east side of the Curtis Building and increase Police patrol in that area. He also expressed his disappointment with the Police Department and stated that he believes that all areas of the City are not treated equally. He explained that following the attempted child abduction two weeks ago he has consistently watched the area near 4th and Branner between the hours of 7:00 a.m. and 8:00 a.m., and did not see one Police Officer patrol the area. He also stated that the Brickyard Inn was flooded and asked what the procedure would be to connect them to City water and sewer service.

Neil Dobler stated that he recently received an email from the traffic engineer listing the suggested changes to the 10th and Wanamaker intersection and he would distribute a memorandum later in the week explaining the changes. He also stated that he would meet with the Chief of Police to discuss the issues regarding the Curtis Building crosswalk and the area near 4th and Branner.

Councilmember Blackburn asked for an update on the progress of the 6th and Gage, and 6th and Frazier projects. He also announced that there would be an Economic and Community

Development Committee meeting held on October 12, 2005 at 5:30 p.m. in the City Council Office.

Councilmember Duffy submitted a pending request for the annexation of Linwood Subdivision No. 6 and Summer's View Subdivision.

NO FURTHER BUSINESS appearing the meeting was adjourned at 9:55 p.m.

Iris Walker
City Clerk