

## City Council Minutes – January 31, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 31, 2006. The Councilmembers of the City of Topeka met in regular session at 6:00 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, Councilmember Duffy, gave the invocation.

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

THE CONSENT AGENDA was presented as follows:

A COMMUNICATION recommending the appointments of Doug Jones, Terry Simnitt and Greg Allen to the Topeka Landmarks Commission for a one-year term that would expire on December 31, 2006 was presented.

A COMMUNICATION recommending the re-appointments of Rick Jackson, Gary Yager, Ed Carmona and James Parrish to the Downtown Business Improvement District Advisory Board for a two-year term that would expire on December 31, 2007 was presented.

MINUTES of the Regular Meeting of January 24, 2006 were presented.

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

RESOLUTION NO. 7749 introduced by City Manager Neil Dobler establishing a Relocation Assistance Policy for certain projects undertaken by the City of Topeka and specifically rescinding City of Topeka Resolution No. 6222 was presented.

Neil Dobler, City Manager gave the staff report.

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

AN ORDINANCE introduced by City Manager Neil Dobler, relating to streetlights, amending Topeka City Code Chapter 130, and Code Sections 134-77, 134-167 and 134-175 and specifically repealing said original section placed on first reading December 6, 2005 was again presented. The ordinance was referred to the Policy and Finance Committee on December 13, 2006.

Neil Dobler, City Manager requested that the ordinance be deferred for one week to incorporate the suggested amendments made by the Public Work's Department.

Councilmember Haynes stated that the Policy and Finance Committee initially recommended approval of the ordinance on January 12, 2006, however, since then a number of questions have arose that the Council would like answered. He asked if the regulations would only apply within city limits, who is responsible for the maintenance and operation of the streetlights, and how it would be funded.

Neil Dobler stated that they would only have jurisdiction to enforce the regulation within city limits. He also stated that the City would be responsible for the maintenance and operation of the streetlights, which would be funded through the Traffic Operations annual operating budget.

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

A DEVELOPER AGREEMENT between the City of Topeka and Washburn-Lane Parkway Renovation L.L.C. was presented.

AN ORDINANCE introduced by Councilmember Clark Duffy authorizing the College Hill Redevelopment Plan public improvement project, providing for certain infrastructure improvements and the acquisition of real property for economic development purposes within the City of Topeka, Kansas placed on first reading January 17, 2006 was again presented. The ordinance was deferred from the meeting of January 24, 2006.

Brenden Long, City Attorney gave an overview of the developer agreement. He discussed the following points:

- The contract would not be fully implemented until the Council adopts the TIF District and the Redevelopment Project Plan.
- The City will pay all TIF expenses including public infrastructure, land acquisition and site preparation. He noted that the expenses do not include actual construction of buildings or the furnishings of buildings.
- The City will spend no more than the \$4 million on the project.
- The City will agree to spend \$1.5 million in General Obligation Bonds for other public infrastructure such as, sidewalks, curbs and public utilities.
- The developer will agree to build the project as approved by the City in the redevelopment plan.
- The developer will be reimbursed from TIF Bond proceeds for real property acquired by the developer. Also if the City acquires property prior to the TIF Bonds being sold they will be reimbursed. All property acquired by the City will be conveyed to the developer for the project.
- The developer will provide the City a financial guarantee most likely in the form of a letter of credit or a similar document in the amount of \$5.5 million.
- The developer could not sell, transfer or otherwise convey any interest of the development without consent of the City.
- The developer agrees to begin site preparation of the project by July 1, 2006 and complete a substantial portion of the project by December 31, 2007.
- If the City initiates condemnation of property prior to the adoption of the plan the developer will reimburse the City for all costs incurred.
- The agreement will be terminated if the developer decides that the project is not financially feasible without the City being penalized.

Councilmember Haynes asked if the agreement identifies a funding source.

Brenden Long stated that the agreement does not specify a funding source.

Councilmember Haynes moved to adjourn into executive session for a period not to exceed fifteen minutes to discuss legal matters relating to the project. The motion was seconded by Councilmember Alcala.

Councilmember Alcala stated that he questions the amount of the estimated project cost because a funding source has not been identified.

Brenden Long stated that the amount is based on the estimated cost of the property value.

Neil Dobler, City Manager distributed amendments to the ordinance. The amendments read as follows:

- (1) Amend line 29 to reflect a project cost of \$500,000 instead of \$4 million.
- (2) Delete lines 22 through 25, and beginning on line 19 insert, "The acquisition of real properties within the City of Topeka, located at 1411, 1414 and 1415 SW Lane Street, for the economic development purposes as part of the College Hill Redevelopment."

Councilmember Kennedy and Councilmember Duffy questioned the necessity of an executive session.

Brenden Long stated that he could answer questions regarding the funding source of the project in open session. He explained that the concern lies with the City's liability in later negotiations if property is acquired through eminent domain prior to establishing a TIF District.

Councilmember Haynes called the question.

Councilmember Duffy challenged the call.

The motion on if the question shall be called carried. Councilmembers Duffy, Blackburn and Preisner voted "no". (6-3-0)

The motion to adjourn into executive session carried. Councilmembers Kennedy and Preisner voted "no". (7-2-0)

Following a fifteen minute time period, Councilmember Blackburn moved to reconvene into regular session and announced that no action had been taken. The motion seconded by Councilmember Nave carried unanimously. (9-0-0)

Councilmember Duffy moved to adopt the amendments to the ordinance as distributed by the City Manager. The motion was seconded by Councilmember Preisner.

Councilmember Alcalá asked for clarification on TIF District laws.

Phil Wolfe, Bond Counsel for the City of Topeka gave a brief overview of TIF District laws and what powers are provided to the City by the laws. He explained that the law gives the City the power to acquire property through eminent domain if it is to accomplish a public purpose.

Councilmember Alcalá stated that he believes they should defer the proposal for one week to allow for the property owners and developer to reach agreement. He explained that if an agreement is reached it could eliminate the risk of killing the project or a possible lawsuit for the City.

Brenden Long stated he believes the approval of the amendments would not have a legal impact on the project. He also suggested that the proposal be deferred for one week to clarify questions, and allow more time for the remaining property owners and developer to reach an agreement.

Councilmember Alcalá made a substitute motion to defer the agreement and ordinance for one week. The motion was seconded by Councilmember Kennedy.

Councilmember Haynes questioned why the proposal is being considered when the TIF District has not been established.

Neil Dobler stated that the proposal is a parallel process in establishing a TIF District because it is a specific project acquiring property through the funding of the developer not the TIF District.

Councilmember Haynes stated that he would not support the proposal because he believes it may generate a lawsuit for the City.

Councilmember Duffy suggested that they adopt the amendments prior to deferring the ordinance to allow the project budget to be considered at the same time as the agreement and ordinance.

Brenden Long stated that if an agreement is reached between the property owners and developer they may not need the ordinance. He also stated that they must have an agreement with the developer before they can initiate condemnation proceedings.

Councilmember Alcalá withdrew the motion to defer one week. The second concurred.

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

Councilmember Alcalá moved to defer the agreement and the ordinance as amended for one week. The motion was seconded by Councilmember Blackburn.

Neil Dobler noted that this meeting would be considered the first reading of the ordinance.

The motion to defer one week carried. Councilmember Alcalá and Kennedy voted "no". (7-2-0)

Mayor Bunten stated that those people who have signed up to speak under public comment will be allowed to speak at next week's Council meeting.

Councilmember Kennedy moved to challenge the ruling of the chair. The motion was seconded by Councilmember Ortiz.

Councilmember Alcala and Councilmember Kennedy stated that they believe the public should be allowed to speak because it is the second time the item has been deferred.

The motion to sustain the ruling of the chair carried. Councilmembers Kennedy, Alcala and Ortiz voted "no". (6-3-0)

Councilmember Kennedy announced that she would stay after the meeting is adjourned to listen to those individuals who would like to speak to the issue. She stated that no action would be taken.

Mayor Bunten noted that a work session would be held on February 7, 2006 at 5:30 p.m. in the Council Chambers to discuss the agreement.

A REVISED PETITION, A PROJECT BUDGET in the amount of \$619,650, and RESOLUTION NO. 7750 introduced by City Manager Neil Dobler, relating to Street Improvement Project No. 60599-02 which provides for the pavement of the adjacent streets of SE Scorpio Avenue, SE Taurus Avenue, SE Virgo Avenue, and SE Aries Avenue, and authorizing an amendment to the original project budget and specifically rescinding Resolution of Advisability and Authorization No. 7661 was presented.

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

A COMMUNICATION designating the "Official City Newspaper" and award of contract for publication of legal notices to the Topeka Metro News was presented.

Neil Dobler, City Manager gave the staff report.

Denise Hall, Topeka Metro News thanked the Council and City staff for allowing them to continue doing business with the City of Topeka.

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

CONTRACT NO. 36069 providing for an inter-local agreement between the Board of Shawnee County Commissioners and the City of Topeka relating to road reconstruction of the intersection of SE 45<sup>th</sup> and SE Croco Road and SE Croco Road between SE 45<sup>th</sup> Street and SE 39<sup>th</sup> Street was presented.

Neil Dobler, City Manager gave the staff report on items 5C and 5D, inter-local agreements between Shawnee County and the City of Topeka. He stated that the improvements to the SE 45<sup>th</sup> and Croco Road Intersection, and the SW 29<sup>th</sup> and Fairlawn Intersection would save the City a total of \$709,000. He explained that Shawnee County has agreed to contribute \$1,048,000 of their federal funding obligation for the projects.

Councilmember Duffy stated that he supports the improvements proposed for the SW 29<sup>th</sup> and Fairlawn Intersection, however, he does not support the upgrades to the SE 45<sup>th</sup> and Croco Intersection because he was told last year that it was not needed.

Tom Flanagan, Shawnee County stated that the traffic study shows that future improvements need to be made. He also stated that it would be a financial advantage for both the City and County to have a concentrated effort in upgrading the SE 45<sup>th</sup> and Croco area before development begins.

Councilmember Alcalá moved to approve item 5C, an inter-local agreement to improve SE 45<sup>th</sup> and Croco Road Intersection. The motion was seconded by Councilmember Kennedy.

Councilmember Haynes questioned if the City is focusing on the areas that need to be a priority regarding infrastructure.



Councilmember Blackburn commended the County and the City for consolidating their efforts to create a project that saves the taxpayers money.

Councilmember Alcalá stated that he believes that both of the projects should be considered high priority because of the traffic issues involved with each area.

The motion to approve the inter-local agreement carried. Councilmember Duffy voted "no". (8-1-0)

CONTRACT NO. 36068 providing for an inter-local agreement between the Board of Shawnee County Commissioners and the City of Topeka relating to road reconstruction of SW 29<sup>th</sup> and SW Fairlawn Road Intersection was presented.

Councilmember Alcalá moved to approve the inter-local agreement. The motion seconded by Councilmember Kennedy carried unanimously. (9-0-0)

AN ORDINANCE introduced by City Manager Neil Dobler repealing City of Topeka Code Sections 102-301, 102-302, 102-303, 102-304, 102-305, 102-306, 102-307 and 102-308, and creating City of Topeka Code Chapter 164 was presented for first reading.

AN ORDINANCE introduced by City Manager Neil Dobler adding City of Topeka Code Section 2-156 hereby creating a Department of the Zoological Park 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 2641 SW Wanamaker Road in the City of Topeka, Kansas from "O&I-2" Office and Institutional District TO "C-2" Commercial District was presented for first reading. (Z06/2)

A COMMUNICATION to consider the recommendations made by the Economic and Community Development Committee regarding the Business Friendly Report was presented.

Councilmember Blackburn requested that the Council review the list of recommendations distributed by the committee and submit any suggested changes at a Committee of the Whole meeting.

Councilmember Preisner moved to accept the communication. The motion seconded by Councilmember Blackburn carried unanimously. (9-0-0)

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

Neil Dobler, City Manager stated that the ordinances on the agenda relating to establishing the Zoo as a separate department are part of the restructuring of several city departments.

Councilmember Kennedy asked for a status report on the Friends of the Topeka Zoo agreement and the Zoo Panel Committee's recommendations.

Neil Dobler stated that all committees have completed their recommendations and a timeline has been developed for implementation. He explained that the Zoo Panel Committee's recommendations would be presented in two weeks, and the Friends of the Topeka Zoo agreement would be presented in two or three weeks.

Councilmember Duffy noted that the Mayor supported the introduction of two House Bills relating to the consolidation of government and the Riverfront Taskforce. He asked why the Council did not review the proposed legislature prior to introduction.

Councilmembers Duffy, Kennedy, Alcalá, Haynes, Nave, Preisner and Blackburn questioned the City's role in the introduction of House Bills to State Legislature. Following discussion, the consensus of the Council was to establish a House Bill Policy that would include the following items:

- A review process
- A legislative agenda that is approved by the City Manager, the Council and the Mayor
- A clear definition of the City Manager's role and the Council's role in the introduction of House Bills
- Clarify the role of the City Manager in providing direction to lobbyists

Mayor Buntin stated that it was his understanding that the Council supported the House Bills or he would not have supported submitting them to legislature. He requested that the Council establish a committee that would review the legislative agenda prior to submission.

Neil Dobler stated following the change in the form of government there has been some confusion regarding the policy of submitting House Bills. He suggested that a clear policy be established prior to presenting the next legislative agenda.

Brenden Long, City Attorney concurred with the City Manager and Mayor and encouraged the Council to establish a policy.

Councilmember Alcalá stated that he would introduce a resolution that would establish a policy and create a committee to ensure that the process remains consistent.

Councilmember Blackburn announced that there would be an Economic and Community Development Committee meeting held on February 8, 2006 at 1:00 p.m. in the City Council Office.

David Owen appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:29 p.m.

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Iris Walker  
City Clerk