

City Council Minutes – February 7, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, February 7, 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. Absent: Mayor Bunten -1.

AFTER THE MEETING was called to order, Michael Frausto, New Life Church of God Holiness, gave the invocation.

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

Councilmember Duffy moved to suspend the Council Rules to add a communication relating to an appointment to the Topeka Human Relations Commission to the consent agenda. The motion seconded by Councilmember Alcala carried unanimously. (9-0-0)

Councilmember Alcala moved to reinstate the Council Rules. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

THE CONSENT AGENDA was presented as follows:

MINUTES of the Regular Meeting of January 31, 2006 were presented.

An Open After Mid-Night License application bearing the approval of the Chief of Police and City inspectors for Hot Pockets, located at 1909 NW Seward, was presented.

A Dance Hall License application bearing the approval of the Chief of Police and City inspectors for Jul's Grill Room & Cocktail Club, located at 4117 SW Huntoon, was presented.

A COMMUNICATION recommending approval of the appointment of Margo Rangel to the Topeka Human Relations Commission was presented.

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

ORDINANCE NO. 18562 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 placed on first reading January 31, 2006 was again presented.

Neil Dobler, City Manager gave the staff report for items 4A and 4B. He stated that both ordinances officially create a Zoo Department, which was formerly a division of the Parks and Recreation Department.

Councilmember Ortiz expressed concern with the unresolved issues regarding the Zoo's loss of AZA accreditation. She asked why the Zoo is being created as a separate department instead of remaining under the Parks and Recreation Department.

Mike Coker, Zoo Director stated that the AZA accreditation was tabled when he became the Zoo Director. He explained that for the past several years the Zoo has basically been operating on their own as a separate department providing the stability required to receive AZA and USDA approval.

Councilmember Haynes asked if a budget has been established for the department.

Neil Dobler stated that a departmental budget is already in place.

Frank Kirtdoll questioned why the rush in establishing the Zoo as a separate department prior to placement of the new City Manager.

Joseph Ledbetter stated that the Citizen's Zoo Panel Committee recommended turning the Zoo over to Shawnee County. He also questioned the legal ramifications of the change.

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

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

ORDINANCE NO. 18563 introduced by City Manager Neil Dobler adding City of Topeka Code Section 2-156 hereby creating a Department of the Zoological Park placed on first reading January 31, 2006 was again presented.

Frank Kirtdoll stated that he believes the Council should wait for the new City Manager to make the departmental change.

Joseph Ledbetter stated that he thought the issue was taken care of three years ago. He also stated the Citizen's Zoo Panel Committee was told that the Zoo was a separate department from the Parks and Recreation Department.

Councilmember Preisner moved to adopt the ordinance. The motion seconded by Councilmember Haynes carried. Councilmembers Kennedy and Ortiz voted "no". (7-2-0)

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

THE FACT FINDER'S REPORT for AFSCME Water Department Local Union No. 1294, was presented.

Neil Dobler, City Manager gave the staff report and recommended that the Council accept the report in its entirety.

Jerry Powell, Water Department Union representative stated that the Union does not agree with the fact finder's report, however, they will withdraw their opposition to all the issues except for the wage dispute.

Pete VoBach, Union President asked the Council to consider the wage increase to keep them equal with other union pay scales.

Councilmember Duffy moved to accept the report in its entirety. The motion seconded by Councilmember Haynes 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.

Neil Dobler, City Manager stated that the Legal Department has recommended that the Council refer the ordinance to the Planning Commission for their recommendation.

Councilmember Duffy moved to refer the ordinance to the Planning Commission. The motion seconded by Councilmember Haynes carried unanimously. (9-0-0)

CONTRACT NO. 36091 a developer agreement between the City of Topeka and Washburn-Lane Parkway Renovation L.L.C., was presented.

ORDINANCE NO. 18564 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 31, 2006.

Neil Dobler, City Manager gave the staff report.

The following individuals appeared and stated that they supported the project, but were opposed to the use of eminent domain for the project: Mary Lou Herring, Jeannie Swanson, Joseph Martin, Howard Blackmon, Alvin Simon, Linda Windler, David Melechinsky, John Cooney, Frank Kirtdoll, James Armfield and Robert Sherburne.

The following individuals appeared and spoke in support of the project and stated that the project would have a positive influence on the area and eliminate blight; Lori Church, Ann Craig, Kate McCowen, Joseph Ledbetter, John Floyd, Henry McClure, Tom Benaka, Jeff Amrein, Betty Bomar, Caryl Hines, Mark Galbraith, Maria Cuevas, Patrick Vogelberg, Patrick Muenks, Deborah Swank, Elise Short, Kaeyln Seymour, Sue Fackler, Sarah Wallace, Rachel Will, Pam Mullins, Charlotte Bates and Emily Roby.

Frank Kirtdoll questioned the Council regarding policy procedure of the project.

Bob Tolbert stated that he believes that there is a flaw in the feasibility study of the project.

Bill Newsome, developer explained the schedule that they planned to pursue regarding the project. He stated that the items on the agenda would not allow for the use of eminent domain without due process. He also stated that he is trying to reach reasonable agreements with the last two property owners by Friday of this week, or they will ask for the use of eminent domain because of the timeframe of the project. He asked the Council to support the agreement and the ordinance to allow the project to move forward.

Grant Glenn, attorney representing the developer explained the timelines of the project and the importance of approving the development agreement as soon as possible.

Councilmember Preisner moved to approve the developer agreement and the ordinance. The motion was seconded by Councilmember Nave.

Councilmember Haynes stated that he has a number of questions that he would like answered regarding the project. He suggested that they schedule a special meeting of the Committee of the Whole on Saturday, February 11, 2006 to discuss the project.

Councilmember Haynes made a substitute motion to defer the developer agreement and the ordinance until the next Committee of the Whole meeting on February 11, 2006. The motion seconded by Councilmember Ortiz failed. Councilmembers Kennedy, Nave, Duffy, Blackburn, Preisner and Harmon voted "no". (3-6-0)

The motion to approve the developer agreement and the ordinance carried.
Councilmembers Alcalá, Ortiz and Haynes voted "no". (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Kennedy, Nave, Duffy, Blackburn, Preisner and Harmon –6. Noes: Alcalá, Ortiz and Haynes –3.

RESOLUTION NO. 7751 introduced by City Manager Neil Dobler amending Article IX, Section 1 of the City of Topeka Personnel Code was presented.

Neil Dobler, City Manager gave the staff report.

Councilmember Haynes questioned the Human Relations Director's role in management.

Councilmember Blackburn asked if the amendment would increase the salary of the HRC Director.

Neil Dobler stated that the amendment would clarify the line of authority. He also stated that he would review the policy regarding salary and inform the Council of any changes.

Councilmember Alcalá stated that he supports the resolution because it would enforce consistency throughout each department.

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

RESOLUTION NO. 7752 introduced by City Manager Neil Dobler amending Article IX, Section 1 of the City of Topeka Personnel Code was presented.

Joseph Ledbetter stated that he believes that the Zoo should be the County's responsibility. He also questioned the credibility of City staff because he was informed by City Staff that the Zoo was already a separate department.

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

CONTRACT NO. 36113 a land lease agreement between the City of Topeka and Mohler Farms to lease 117-acres of land located at NW 17th Street and NW Landon Road was presented.

Neil Dobler, City Manager gave the staff report and stated that the lease agreement is for one year.

Councilmember Kennedy questioned why the City still owned the property and encouraged staff to sell the property in the near future.

Councilmember Preisner moved to approve the land lease agreement. The motion seconded by Councilmember Kennedy carried. Councilmember Harmon abstained. (8-0-1)

A RESOLUTION introduced by Councilmember Brett Blackburn concerning the Joint Economic Development Organization (JEDO) and the casting of votes by City Councilmembers who are voting members of the JEDO was presented.

Councilmember Alcala moved to extend the meeting through the end of the agenda. The motion seconded by Councilmember Preisner carried. Councilmember Duffy voted "no". (8-1-0)

Councilmember Blackburn moved to refer the resolution to the Economic and Community Development Committee. The motion was seconded by Councilmember Kennedy.

Councilmember Duffy noted that the resolution would reaffirm Resolution No. 7279.

Councilmember Alcala stated that he would not support the resolution because he does not agree with the context.

Councilmember Haynes concurred with Councilmember Alcala and stated that he would not support the resolution.

Joseph Lebetter stated that he believes it would be difficult to make amendments to a resolution of this context.

The motion to refer the resolution to the Economic and Community Development Committee failed. Councilmembers Alcala, Kennedy, Ortiz, Nave, Haynes and Harmon voted "no". (3-6-0)

Councilmember Duffy stated that he believes that whoever serves as a voting member of the JEDO Board has a responsibility to represent the majority of the Council's wishes, not their own personal wishes.

Councilmember Alcala moved to approve the resolution. The motion seconded by Councilmember Blackburn failed. Alcala, Ortiz, Nave, Haynes and Harmon voted "no". (4-5-0)

A COMMUNICATION from Daniel D. Kull requesting an exemption from requiring annexation prior to sewer service from the City on property located at 6040 SW Topeka Boulevard within unincorporated Shawnee County, Kansas was presented.

Neil Dobler, City Manager gave the staff report. He stated that approval of the request would allow sewer service to the property with a consent to annexation.

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

A ZONING PETITION and ORDINANCE NO. 18565 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 placed on first reading January 31, 2006 was again presented. (Z06/2)

A FINAL PLAT for Wanamaker Place Subdivision located at 2641 SW Wanamaker Road in the City of Topeka, Kansas was presented. (P06/1)

Deputy Mayor John Alcala asked if there were any additional exparte communications besides Councilmember Duffy and Councilmember Blackburn. There were none declared.

Neil Dobler, City Manager gave the staff report.

Councilmember Preisner asked the Council to support the zoning change.

Councilmember Blackburn asked the applicant to explain why he chose the area for development.

Gene Young, applicant stated that after researching the area he chose “C-2” Commercial zoning because of the type of businesses that showed interest in the area. He also stated that the proposed project would support the area without changing the appearance of the area.

Councilmember Duffy asked why the Planning Department expressed opposition to the project.

David Thurbon, Planning Director stated that the Planning Commission recommended disapproval by a vote of 5-2-0 on January 18, 2006 due to:

1. The inconsistency of the proposal with the Comprehensive Plan.
2. The effect commercial zoning would have on surrounding properties and the lack of transition to the multi-family residential properties.
3. The suitability of the property for office and institutional uses.
4. A “C-2” classification of the site would cause the appearance of spot zoning.

Councilmember Blackburn expressed concern with the policy issues of the proposed zoning.

Councilmember Preisner moved to approve the zoning petition, adopt the ordinance and approve the final plat. The motion was seconded by Councilmember Kennedy.

Councilmember Ortiz called the question.

The motion to approve the zoning petition, ordinance and final plat carried.

Councilmembers Ortiz, Duffy and Harmon voted "no". (6-3-0)

The ordinance was adopted on roll call vote as follows: Ayes: Alcala, Kennedy, Nave, Haynes, Blackburn and Preisner –6. Noes: Ortiz, Duffy and Harmon –3.

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 2701 North Kansas Avenue in the City of Topeka, Kansas from "R-1" Single Family Dwelling District with Resolution of Intent for "C-4" Commercial District TO "C-4" Commercial District was presented for first reading. (Z81/19)

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 6424 SW Huntoon Street in the City of Topeka, Kansas from "RR-1" Residential Reserve District TO "O&I-1" Office and Institutional District was presented for first reading. (Z05/17)

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 3620 and 3626 SW

Wanamaker Road in the City of Topeka, Kansas from “PUD” Planned Unit Development District to “R-1” Single Family Dwelling District ALL TO “PUD” Planned Unit Development District (O&I-1 use group) was presented for first reading. *(PUD05/5)*

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 2824 NW Rochester Road in the City of Topeka, Kansas from “R-1” Single Family Dwelling District TO “PUD” Planned Unit Development District (M-1a use group) was presented for first reading. *(PUD06/2)*

AN ORDINANCE introduced by City Manager Neil Dobler establishing a Redevelopment District for the Washburn Lane College Hill area pursuant to K.S.A. 12-1773 et. seq., as amended was presented for first reading.

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

Councilmember Alcalá announced that he attended a forum to reduce gang violence in the City of Topeka. He stated that he received a lot of valuable information and commended Curtis Pitts for organizing the event.

Councilmember Haynes stated that he received an email from a constituent expressing concern with maintenance of the area west of 49th Street and Topeka Boulevard.

Neil Dobler stated that he would have the Public Work’s Department check the area out as soon as possible.

Councilmember Blackburn announced that there would be an Economic and Community Development Committee meeting held on February 10, 2006 at 1:00 p.m. in the City Council Office.

Frank Kirtdoll, Joseph Martin and David Owen appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 10:55 p.m.

Iris Walker
City Clerk