

City Council Minutes – March 14, 2006

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, March 14, 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 Buntен presided -1.

AFTER THE MEETING was called to order, Councilmember Preisner gave the invocation.

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

Norton N. Bonaparte, Jr., City Manager was sworn in by Municipal Court Judge Steve Ebberts.

Councilmember Alcala requested to pull item 3B, a final plat for Kaw Valley Plaza Subdivision No. 3 from the consent agenda for separate discussion.

THE CONSENT AGENDA was presented as follows:

RESOLUTION NO. 7770 introduced by Councilmember Lana Kennedy granting Everywoman's Resource Center and Referral, an exception to the provision of the City of Topeka Code Section 54-148 concerning noise prohibitions was presented.

MINUTES of the Regular Meeting of March 7, 2006 were presented.

Councilmember Alcala moved to approve the remainder of the consent agenda. The motion seconded by Councilmember Ortiz carried. Councilmember Duffy voted "no". (8-1-0)

Mayor Buntен stated that item 3B would be considered following item 4A, a public hearing relating to Lateral Sanitary Sewer District No. 40917-01H.

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, March 14, 2006, at 6:00 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 the improvement, same being Lateral Sanitary Sewer District No. 40917-01H, authorized by Resolution No. 7439, adopted and approved February 3, 2004.

ORDINANCE NO. 18589 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 No. 40917-01 H, with piping, manholes, engineering and all other contingencies needed to complete Lateral Sanitary Sewer District No. 40917-01 H, as defined and described in Resolution No. 7439, adopted and approved on February 3, 2004, effective February 11, 2004 placed on first reading March 7, 2006 was again presented.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Preisner moved to close the public hearing and 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.

A FINAL PLAT for Kaw Valley Plaza Subdivision No. 3 located at 635 NW US 24 Highway within the City of Topeka, was presented. (P05/1)

Harold Houck, attorney representing the Animal Clinic of North Topeka appeared and asked that access to the current parking lot for the clinic not be removed. He stated that he doesn't believe there is sufficient room in front of the building to meet parking requirements.

Bill Fiander, Planning Department appeared to answer questions. He stated that the lot in question is not on the plat being considered, and the issue being raised is a private legal matter.

Councilmember Harmon asked how the site plan could expand the limits of the final plat.

Bill Fiander explained that they could cross lot lines because part of the property has already been platted.

Councilmember Preisner and Councilmember Blackburn expressed concern about the increase in traffic in the area and infrastructure improvements.

Ben Swinnen, attorney for the applicant stated that the clinic has no recorded right to the easement, and they are asking the Council to recognize an easement that is not recorded. He also stated that he would like to have a discussion with Mr. Houck and see if they could reach an agreement. He asked the Council to approve the plat and allow them to move to the next step of the project.

Councilmember Alcalá moved to defer the final plat for one week. The motion seconded by Councilmember Ortiz carried unanimously. (9-0-0)

ORDINANCE NO. 18590 introduced by City Manager Neil Dobler relating to the Capital City Downtown Business Improvement District, establishing a service fee levy for 2006, amending City of Topeka Code Section 42-38 and specifically repealing said original section placed on first reading March 7, 2006 was again presented.

Jim Parrish, Business Improvement District Advisory Board Member appeared to answer questions.

Councilmember Blackburn stated that he spoke with some constituents who expressed their concern that businesses in the outlying district are not getting their fair share of improvements for the fees they pay.

Jim Parrish stated that the main focus of attention is in the core area of downtown. He stated that the board is open to suggestions from the businesses in the outskirts of the district, and if they have a specific concern, they would like to try and address those concerns.

Councilmember Alcalá moved to 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 \$257,197 and AN ORDINANCE introduced by City Manager Neil Dobler, authorizing Improvement Project No. 14115, which provides for the removal of the existing traffic signals, installation of stop signs on Kansas Avenue, replacing sidewalk and ramps as needed, and creating a cul-de-sac on Central Avenue at the location of North Kansas Avenue and Gordon Avenue and Central Avenue, as more specifically described herein, all pursuant to Section A12-1 of the City of Topeka Code placed on first reading March 7, 2006 was again presented.

A RESOLUTION introduced by City Manager Neil Dobler authorizing initiation of condemnation proceedings to acquire property for Improvement Project No. 14115, for traffic signal removal and installation of stop signs and the creation of a cul-de-sac on Central Avenue at the location of North Kansas Avenue and North Gordon Avenue and Central Avenue, was presented.

Councilmember Alcalá moved to refer the project budget, ordinance and resolution to the Policy and Finance Committee. The motion was seconded by Councilmember Ortiz.

Neil Dobler, Public Works Director gave the staff report.

Councilmember Blackburn expressed concern with the continued deterioration of area streets. He stated that as a result of area construction there have been a number of detours increasing traffic flow.

Darrell Six appeared in support of the project, and stated that the North Topeka Business Alliance approved of the project.

The motion to refer the project to the Policy and Finance Committee carried unanimously. (9-0-0)

A PROJECT BUDGET in the amount of \$1,750,000 and ORDINANCE NO. 18591 introduced by City Manager Neil Dobler, authorizing Improvement Project No. 26054-00, which provides for sanitary and storm sewer improvements, waterline improvements, street improvements, public parking, street light relocation, sidewalks, public landscaping and other appurtenances needed at the location generally bounded by SW 17th Street to SW 13th Street and SW Washburn Avenue and SW Lane Street, as more specifically described herein, all pursuant to Section A12-1 of the Code of the City of Topeka placed on first reading March 7, 2006 was again presented.

Neil Dobler, Public Works Director gave the staff report.

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

Mary Lou Herring stated that the project is slated for the College Hill Redevelopment Project that has not yet been approved, since the public hearing is scheduled for April 4, 2006. She raised several questions regarding the project and the funding source for the project.

David Morgan suggested that additional green space be added to the project. He noted that other cities have incorporated green roofs, which also allowed them to reduce the size of the

sewers for the project. He also noted that the Topeka Turn Around Team may be able to assist with streetlights for the project.

Councilmember Haynes made a substitute motion to defer action on the project budget and ordinance until April 11, 2006. The motion was seconded by Councilmember Kennedy.

Councilmember Duffy asked if a delay would have an affect the project.

Neil Dobler stated that he believes it would not have a significant affect on the project at this point.

Councilmember Blackburn stated that he believes they need to be cautious when making suggestions to enhance private projects, especially when it could have a financial impact on the project.

Councilmember Duffy stated that he believes a delay would put the Public Works Department in an awkward position in regards to moving the project forward.

The motion to delay the project until April 11, 2006 failed. Councilmembers Nave, Duffy, Blackburn, Preisner and Harmon voted "no". (4-5-0)

The motion to approve the project budget and adopt the ordinance carried. Councilmember Haynes voted "no". (8-1-0)

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

ORDINANCE NO. 18592 introduced by City Manager Neil Dobler relating to alcoholic beverages amending Topeka City Code Section 30-52 and repealing said original section placed on first reading March 7, 2006 was again presented.

Cliff Cormier stated that he does not believe that the City can charge more than \$250 for a retail liquor license according to State statute. He stated that he asked for a refund for the years he has paid the \$300 that the City charges, and his request was denied.

Brenden Long, City Attorney stated that the State statute allows the City to charge up to \$300 for a retail liquor license.

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

CONTRACT NO. 36210 and Memorandum of Understanding AGREEMENT NO. 36225 between the City of Topeka and the Friends of the Topeka Zoo, Inc., for 2006, was presented. The agreements were deferred from the Meeting of March 7, 2006.

Councilmember Preisner moved to approve the agreement and the memorandum of understanding. The motion was seconded by Councilmember Harmon.

Councilmember Blackburn stated that he still has some concerns with the agreement. He stated that he believes that a stronger attempt needs to be made regarding private fund raising.

The motion to approve the agreements carried. Councilmembers Kennedy, Alcalá, Ortiz and Blackburn voted "no". (5-4-0)

ORDINANCE NO. 18593 introduced by City Manager Neil Dobler annexing land to the City of Topeka, Kansas, in accordance with K.S.A. 12-520, as amended, generally located on the south side of the Kansas Turnpike, approximately ¼ mile west of West Edge Road within unincorporated Shawnee County, Kansas and adjacent to the City of Topeka corporate limits,

and said land being annexed for all City purposes placed on first reading March 7, 2006 was again presented. (A06/3)

Councilmember Preisner moved to adopt the ordinance. The motion was seconded by Councilmember Alcalá.

Councilmember Duffy noted two parcels that were surrounded by the City, and asked what the procedure is to annex the property. He asked that the property owners be contacted to see if they were agreeable to being annexed.

Bill Fiander, Planning Department stated that he would check into the process and let him know.

The motion to adopt the ordinance 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.

AN ORDINANCE introduced by Councilmember Lana Kennedy concerning prohibitions on certain activities and the residency of registered sex offenders placed on first reading January 10, 2006 was again presented.

Councilmember Preisner gave the committee report and stated that the committee recommended "Do Not Pass" by vote of 3-0-0 on March 13, 2006. He explained that according to the testimony heard in Committee regarding interviews conducted in Topeka, the largest percentage of victims interviewed knew their offender. He stated that the ordinance does raise awareness of the issue in the community, but it would be hard to implement. He also stated that sexual abusers, as well as other criminals, have no boundaries.

Councilmember Preisner moved to adopt the committee report. The motion was seconded by Councilmember Haynes.

Terry Jowett spoke for Lover Chancler who had to leave. She stated that Ms. Chancler questioned who would monitor the offenders, and who would be grandfathered in. She also expressed a concern about boundary changes and how that information would be updated.

Tonya Smith appeared in support of the ordinance and shared a study done by the FBI. She stated that “situational offenders” are those who look for every opportunity to leer children to them, and they like to live near schools.

Dr. Susan Voorhees, Prairie Advocacy Center expressed her concern that the ordinance would give a false sense of safety to parents and adults in Topeka. She stated that situational offenders put themselves in a situation to have access to children. She noted that this could happen by becoming a step-parent, or putting themselves in a position as a friend of the family. She stated that she would rather have the efforts focused on additional investigators in the Police Department to help with the prosecution of sexual offenders.

Roger Werholtz, Secretary of the KDOC appeared in opposition to the ordinance and submitted a document titled *Twenty Findings of Research on Residential Restrictions for Sex Offenders and the Iowa Experience with Similar Policies*. He highlighted some of the issues in the document that were raised when residential restrictions were placed on sex offenders in other cities. He stated that residential restrictions also make it more difficult to track the offenders, and close supervision, treatment and surveillance would be better issues to focus on for a safer community.

Councilmember Nave stated that they are all concerned about this issue, and they need a workable, manageable plan. He stated that he supports tougher legislation.

Steve Harsha, Acting Police Chief stated that if the ordinance were approved, the Police Department would have to be involved in tracking, enforcement and putting together a strong

prosecutable case. He stated that they would need to designate a squad of at least two detectives, create a database for tracking purposes, and get updated information out to patrol on a regular basis.

Councilmember Kennedy made a substitute motion to accept the committee report as amended. The motion seconded by Councilmember Blackburn carried. Councilmember Preisner voted “no”. (8-1-0)

Councilmember Alcalá moved to approve the ordinance as amended. The motion was seconded by Councilmember Kennedy.

Councilmember Blackburn stated that they are charged with protecting the citizens of Topeka, and it is not their job to be concerned with where the sex offenders go. He stated that there is no evidence that approval of the ordinance would harm the community. He also said that the cost of enforcing the ordinance should not be an issue, because safety of the community should be their first priority.

Councilmember Duffy stated that he appreciated all of the information received on this issue. He stated that the majority of the professionals and experts in law enforcement and child advocacy groups did not perceive residential restrictions helpful, and for that reason he would not support the ordinance, because he does not believe it is the right thing to do. He stated that in fact, they have heard it might cause more harm than good. He stated that this is a very important issue involving the safety of everyone in the community, and they should work with the legislature to get State laws adopted.

Councilmember Haynes stated that the council has given a lot of concern and consideration to a serious problem. He stated that he could not support the ordinance at this time, because he does not believe the ordinance could be enforced.

Councilmember Ortiz noted that it was nearly 10:00 p.m., and moved to extend the meeting until the end of the agenda. The motion seconded by Councilmember Alcalá carried. Councilmember Duffy voted “no” (8-1-0)

Councilmember Alcalá stated that the victim’s scars could not be healed. He stated that if only one person could be saved from being sexually offended, it would be worth it.

Councilmember Harmon commended Councilmember Kennedy for bringing the issue to the forefront, not only for the Council, but also for the Community. He stated that they would need to give law enforcement the resources they need to investigate and prosecute these cases, if the ordinance were adopted. He stated that he could not support the ordinance because if just one parent thinks this takes care of the problem, becomes less vigilant, and a child is harmed, he could not live with that.

Councilmember Haynes also thanked Councilmember Kennedy for her efforts in bringing the issue to the Council for discussion.

The motion to adopt the ordinance as amended failed. Councilmembers Nave, Haynes, Duffy, Preisner and Harmon voted “no”. (4-5-0)

A PROJECT BUDGET in the amount of \$527,200 and RESOLUTION NO. 7771 introduced by City Manager Neil Dobler authorizing Main and Lateral Sanitary Sewer Improvement Project No. 40898-01 in the area bound by SW Huntoon, SW Urish Road, SW 21st Street and Executive Drive, as more specifically described herein was presented.

Councilmember Preisner moved to approve the project budget and the resolution. The motion seconded by Councilmember Haynes carried. Councilmember Kennedy was out of the room. (8-1-0)

RESOLUTION NO. 7772 introduced by City Manager Neil Dobler setting the public hearing for Trafficway Improvement Project No. 70203-00, which provides for improvements to the intersection of SE 45th Street and Croco Road and SE 39th Street to SE 44th Street as more specifically described herein was presented.

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

A DANCE HALL LICENSE APPLICATION for J's Bar and Grill located at 320 SE 29th Street was presented.

Councilmember Duffy moved to support the recommendation of the Police Department to deny the application. The motion was seconded by Councilmember Preisner.

Councilmember Ortiz asked the Council to support the Police Chief's recommendation and deny the application until the applicant worked on getting their problems resolved.

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

A PUBLIC IMPROVEMENT PETITION, A PROJECT BUDGET in the amount of \$309,160 and RESOLUTION NO. 7773 introduced by City Manager Neil Dobler authorizing Improvement Project No. 60626-00 located at approximately SW 30th Terrace from SW Wanamaker Road to the West approximately 772 feet 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 ZONING PETITION and ORDINANCE NO. 18594 introduced by City Manager Neil Dobler amending the Master PUD Plan of Paradise Plaza Townhomes by allowing for placement of an illuminated building identification sign and message center on property located at 2046 SE

11th Street in the City of Topeka, Kansas placed on first reading March 7, 2006 was again presented. (Z63/56B)

Norton Bonaparte, Jr., City Manager gave the staff report.

Councilmember Ortiz stated that the petition was consistent with the East Topeka Neighborhood Revitalization Plan.

Mayor Bunten asked if there were any addition exparte communications besides Councilmember Duffy. There were none declared.

Councilmember Ortiz moved to approve the zoning petition and adopt the ordinance. The motion seconded by Councilmember Nave carried. Councilmember Duffy voted "no". (8-1-0)

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

A ZONING PETITION and ORDINANCE NO. 18595 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 1110 SE Monroe Street and property located on the west side of SE Madison Street the centerline of which is approximately 100 feet south of SW 11th Street in the City of Topeka, Kansas from "E" Multiple Family Dwelling District, "M-3" Multiple Family Dwelling District and "O&I-2" Office and Institutional District ALL TO "D-1" Downtown District placed on first reading March 7, 2006 was again presented. (Z06/3)

Norton Bonaparte, Jr., City Manager gave the staff report.

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

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

The motion to approve the zoning petition and adopt the ordinance 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.

AN ORDINANCE introduced by City Manager Neil Dobler authorizing Improvement Project No. 30257-00, which provides for the design and construction of a building addition to the Crestview Community Center 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 authorizing Improvement Project No. 30172-04, which provides for the design and construction of new heating, ventilation, and air conditioning (HVAC) systems for both Oakland and Hillcrest Community Centers 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 relating to the National Electrical Code, amending City of Topeka Code Section 26-341 and 26-343, and specifically repealing said original sections was presented for first reading.

AN ORDINANCE introduced by City Manager Neil Dobler, relating to the vacation of a portion of a ten-foot wide utility easement located at 5501 SW 19th Street, City of Topeka, Shawnee County, Kansas was presented for first reading. (V06E/1)

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

Norton Bonaparte, Jr. stated that he was delighted to spend the evening with the Council. He distributed information relating to the city's debt service in response to a request made last week.

Councilmember Kennedy asked for an update on the RFP for Summer School. She also asked how soon all city offices could be open during the noon hour.

Councilmember Ortiz announced that Teen Topeka Youth jobs are available. She stated that the deadline to apply is April 7, 2006, and applicants must be 14 or 15 by May 30th.

Councilmember Duffy stated that he heard that the Council took action at an informal work session, and asked if there were minutes to verify that rumor. He also asked what are they trying to accomplish with the Senate Bill relating to the River Front Committee.

Councilmember Preisner thanked Jim Langford for putting the numbers together for the Council on the city's debt service in an informative way.

Councilmember Harmon congratulated Emporia State for their win, and commended the Lady Blues and their Coach for their great season.

Bonnie Gish appeared to speak under public comment.

NO FURTHER BUSINESS appearing the meeting was adjourned at 11:03 p.m.

Iris Walker
City Clerk