City Council Minutes – January 6, 2004

COUNCIL CHAMBER, Topeka, Kansas, Tuesday, January 6, 2004. The Councilmembers of the City of Topeka met in regular session at 7:00 P.M., with the following Councilmembers present: Lane, Alcala, Nave, Haynes, Stubbs, Preisner and Price -7. Absent: Councilmember Duffy –1. Deputy Mayor Duane Pomeroy Presided -1.

AFTER THE MEETING was called to order, prayer was offered by Reverend Dave Fulton, Trinity Lutheran Church.

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

Mayor James McClinton was sworn into office by Municipal Court Administrative Judge Elsbeth Schafer. Following the ceremony, Mayor McClinton stated that Deputy Mayor Pomeroy would conduct the meeting this evening because of some things he and the Council had already been working on. He stated that he would conduct his first official meeting next week.

Councilmember Nave moved to suspend the rules to add a communication requesting approval to settle a lawsuit involving McKnight, et al to the consent agenda as #3D. The motion seconded by Councilmember Price carried. Councilmembers Alcala and Lane voted “no”. (6-2-0)

Councilmember Preisner moved to reinstate the rules. The motion seconded by Councilmember Haynes carried unanimously. (8-0-0)

Councilmember Preisner moved to defer #4D, an ordinance relating to the Monroe East Neighborhood Plan (CPA03/03) until February 10, 2004 to be considered with the down-zoning cases for the Monroe East neighborhood. The motion seconded by Councilmember Price carried unanimously. (8-0-0)
Deputy Mayor Pomeroy stated that #4C, an ordinance amending the Master PUD Plan of Northland Shopping Center has been withdrawn with the consent of the applicant, and will be placed on the agenda for January 13, 2004. He also stated that #6A, an ordinance relating to issuance of Combined Utility Revenue Bonds has been withdrawn.

THE CONSENT AGENDA was presented as follows:

A communication requesting approval of a negotiated settlement in the City v. Jim Lance Woodward et al., was presented.

Minutes of the Regular Meeting of December 30, 2003 were presented.

APPLICATIONS for Dance Hall Licenses bearing the approval of the Chief of Police and City Inspectors from Club Cosmos, 1421 SW Lane Street and Stingers, 2335 NW Clay, were presented.

APPLICATION for an Open After Midnight permit bearing the approval of the Chief of Police from The Back Door, 610 Wayne Street, was presented.

A communication requesting approval of payment of $95,000 to settle McKnight, et al. Case No. 03-4164-SAC, was presented.

Councilmember Alcala requested that #3A and #3D be voted on separately.

Councilmember Lane moved to approve #3B and #3C on the consent agenda. The motion seconded by Councilmember Alcala carried unanimously. (8-0-0)

Councilmember Stubbs moved to approve #3A, a communication requesting approval of a negotiated settlement in the City v. Jim Lance Woodward et al. The motion seconded by Councilmember Price carried. Councilmembers Lane, Alcala and Preisner voted “no”. (5-3-0)
Councilmember Haynes moved to approve #3D, a communication requesting approval of payment of $95,000 to settle McKnight, et al. Case No. 03-4164-SAC. The motion seconded by Councilmember Stubbs carried. Councilmembers Lane and Alcala voted “no”. (6-2-0)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy, relating to the licensing of alarm businesses and amending City of Topeka Code Chapter 30 and Chapter 30, Article II, Division 2 and specifically repealing said original sections placed on first reading December 30, 2003, was again presented.

Councilmember Stubbs moved to refer the ordinance to the Public Health and Safety Committee. The motion was seconded by Councilmember Haynes.

Councilmember Alcala made a substitute motion to refer the ordinance to the Policy Committee. The motion seconded by Councilmember Preisner failed. Councilmembers Pomeroy, Nave, Stubbs and Price voted “no”. (4-4-0)

The motion to refer the ordinance to the Public Health and Safety Committee carried. Councilmember Lane voted “no”. (7-1-0)

A JOINT SHAWNEE COUNTY RESOLUTION AND CITY OF TOPEKA ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to X Mixed Use District regulations and specifically amending City of Topeka Code §§ 48.31.01, 48-23a.02, 48-23a.03, 48-23a.04, and 48-23a.06 and specifically repealing said original sections placed on first reading October 7, 2003, was again presented. (ACZR03/01)

Bill Fiander, Planning Department gave the staff report. He stated that this proposal was remanded back to the Planning Commission and they recommended the same proposal be approved. He stated that the amendment establishes standards for allowable permanent signs; establishes standards for temporary real estate signs consistent with existing regulations for the
City of Topeka; establishes standards for allowable fences; allows more than one principle use per lot; and increases allowable density for multiple-family developments. He stated that no changes were made for other temporary or portable signs with this amendment.

Councilmember Stubbs gave the committee report and stated that they recommended “Do Not Pass” and to remand it back to the new Topeka Planning Commission for their input. She stated that she appreciated the Commission reviewing the proposal and getting it back in a timely manner.

Bonnie Gish appeared in opposition to the proposed amendment. She stated that she operates an automotive business and a four-foot fence would not keep people out of private property. She stated that she has to protect her property so her insurance would not be increased or even cancelled if her property is not secured.

Jerry Boyles appeared and expressed his concern that the use of portable signs would no longer be legal. He urged the Council to support existing use of portable signs to help small businesses that use portable signs, and people who use them to advertise sales, special occasions or celebrations.

Councilmember Alcala asked for clarification of the definition of temporary signs, and asked if the amendment that was distributed would impact Mr. Boyles’ portable signs.

Brenden Long, City Attorney explained the definition of temporary sign as defined in Chapter 118 of the city code and stated that this amendment would not impact portable signs.

Councilmember Haynes stated that he does not understand the difference between a temporary sign and a portable sign.

Bill Fiander explained that Chapter 118 of the city code regulates all other temporary signs including portable signs, and there were no changes made to that section. He stated that
the zoning code refers to temporary real estate signs, and they are only dealing with the zoning code with this amendment. He explained that temporary signs are banners, and advertisements used to advertise beer and other commodities, not fixed to the ground. Temporary signs are attached to a building, but not permanently.

Councilmember Haynes stated that they owe it to the public to have a clear definition in both Chapter 118 and the zoning code.

Patrick Barnes, representing Boyles Sign Company appeared and expressed his concerns that future interpretation of the code may not allow portable signs. He suggested the ordinance be amended in Section 3 (e), by deleting the language on lines 112 through 114 starting with “in addition”. He also suggested the following language be added: “Ground signs-allowable signs-include ground signs, including portable signs, which shall be used consistent with the applicable codes of the City of Topeka and Shawnee County”. He stated that this would put portable signs and ground signs in a separate category consistent with Chapter 118 of the city code. He stated that he does not agree that temporary signs are necessarily just banners affixed to a building.

Councilmember Stubbs asked if just removing the words “in addition” and leaving the rest of the language would clarify that section.

Brenden Long, City Attorney stated that they needed to look at it in a comprehensive way. He explained that every change or amendment has a significant impact on the sign regulations, and he would need some time to review the suggested amendments and see how they fit throughout the entire document.

James Davis, Custom Neon Sign and Graphics appeared and stated that sign regulations are in two different places and they should be combined to hold down confusion.
Joseph Ledbetter appeared and stated that he supports Mr. Barnes’ proposal. He expressed his concern about the height of security fences in the ordinance and stated that a four-foot fence would not deter anyone. He also stated that they should be careful how sign regulations affect small businesses who are a big part of the community.

Councilmember Nave expressed his concern about how the four-foot fence requirement would impact small businesses.

Bill Fiander, Planning Department explained that the four-foot requirement only pertains to front yards, and they could also go up to six feet with a decorative fence. He stated that they could go up to eight feet around the sides and back of the property.

Councilmember Haynes asked if that provision was included in the ordinance.

Bill Fiander stated that it is included in the ordinance. He stated that they tried to reach a compromise because they did not want six-foot fences in front yards next to a residential property.

Councilmember Alcala moved to defer action on the ordinance for two weeks until January 20, 2004 to allow the City Attorney to review the impact of the suggested amendments. The motion seconded by Councilmember Preisner carried unanimously. (8-0-0)

A PROJECT BUDGET in the amount of $1,200,000 and RESOLUTION NO. 7430 introduced by Deputy Mayor Duane F. Pomeroy, relating to City of Topeka Waterworks Project No. 28539-00 which provides for water line replacement and authorizing the same, was presented.

Neil Dobler, Public Works Director gave the staff report.
Councilmember Preisner moved to approve the project budget and adopt the resolution. The motion seconded by Councilmember Lane carried. Councilmember Haynes was out of the room. (7-1-0)

RESOLUTION NO. 7431 introduced by Mayor James A. McClinton naming banks and savings institutions that are designated as depositories for all City of Topeka accounts and authorizing signatures and rescinding City of Topeka Resolution No. 7426, was presented.

Councilmember Preisner moved to adopt the resolution. The motion seconded by Councilmember Lane carried. Councilmember Haynes was out of the room. (7-1-0)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the Capital City Downtown Business Improvement District, establishing the method of raising revenue, amending City of Topeka Code § 42-38 and specifically repealing said original section, was presented for first reading.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 the southeast corner of SW 10th Avenue and SW Robinson Avenue in the City of Topeka, Kansas, from “R-1” Single Family Dwelling District to “M-1” Two Family Dwelling District, was presented for first reading. (Z77/50)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 SE 44th Street, west of SE Michigan Avenue and either side of SE Illinois Avenue in the City
of Topeka, Kansas, from “R-1” Single Family Dwelling District to “M-1” Two Family Dwelling District, was presented for first reading. (Z03/49)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 either side of SW Woodbridge Drive, the centerline of which is approximately 385-feet north of SW 10th Avenue in the City of Topeka, Kansas from “R-1” Single Family Dwelling District, “M-1” Two Family Dwelling District, “D&O” Multiple Family Dwelling and Office District, “O&I-1” Office and Institutional District, and “PUD” Planned Unit Development District to “M-1” Two Family Dwelling District, “M-1a” Limited Multiple Family Dwelling District and “M-2” Multiple Family Dwelling District, was presented for first reading. (Z03/61)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy 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 east side of SW Arvonia Place, the centerline of which is approximately 1,100 feet north of SW 17th Street in the City of Topeka, Kansas, from “R-1” Single Family Dwelling District to “C-4” Commercial District, was presented for first reading. (Z03/62)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the vacation of a .57-foot wide street right-of-way the length of property located at 112 E. 8th Street and a 1.22 by 5-foot street right-of-way located on same property legally described as Lot 112 E. 8th Street, Original Town Subdivision, City of Topeka, Shawnee County, Kansas, was presented for first reading. (V98S/5)
AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the
vacation of a portion of a street right-of-way Bolmar Avenue located west of NW MacVicar
Avenue and north of I-70, City of Topeka, Shawnee County, Kansas, was presented for first
reading. (V03S/2)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the
vacation of a 20-foot wide public alley right-of-way located east of SW Clay Street, the
centerline of which is approximately 140-feet south of SW 8th Avenue as dedicated by the plat of
Horne’s Addition, City of Topeka, Shawnee County, Kansas, was presented for first reading.
(V04A/1)

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the
Topeka Planning Commission and specifically increasing the number of members to make a
quorum and amending City of Topeka Code § 110-35 and specifically repealing said original
section, was presented for first reading.

AN ORDINANCE introduced by Deputy Mayor Duane F. Pomeroy relating to the
amendments of the current edition of the Standard Traffic Ordinance for Kansas Cities,
amending City of Topeka Code § 142-152 and specifically repealing said original section, was
presented for first reading.

FAREWELL to Councilmember Harold Lane, was presented. Deputy Mayor Pomeroy
presented Councilmember Lane with a plaque in appreciation of his service to Council District
No. 3 and to the community.

REPORTS OF COMMITTEES AND OFFICERS were presented.

Councilmember Stubbs announced a Public Health and Safety Committee meeting
scheduled for Monday, January 12, 2004 at 3:00 p.m. in the Council office.
Deputy Mayor Pomeroy stated that Councilmember Lane submitted his letter of resignation effective Thursday, January 8, 2004. He stated that a notice that the City would take applications for the Council District vacancy would be published on Friday, January 9, 2004, and applications would be accepted until 5:00 p.m. on Friday, January 23, 2004. He stated that they plan to conduct interviews and perhaps swear in the successful candidate on January 27, 2004.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:57 p.m.

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Iris Walker
City Clerk