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City Council Agenda

**City Council Chambers
214 SE 8th Street
Topeka, Kansas 66603**

October 11, 2011
6:00 PM

Mayor: William W. Bunten

Councilmembers

Karen A. Hiller	District No. 1	Chad Manspeaker	District No. 6
John Alcala	District No. 2	Robert E. Archer	District No. 7
Sylvia E. Ortiz	District No. 3	Andrew P. Gray	District No. 8
Denise Everhart	District No. 4	Richard Harmon	District No. 9
Larry Wolgast	District No. 5		

Interim City Manager: Daniel R. Stanley

Addressing the Council: No person shall address the Council during a Council Meeting, unless they have notified the City Clerk by 5:00 P.M. on the day of any Council Meeting of their desire to speak on a specific matter on the published meeting agenda or during the public comment portion of the Council Meeting. This limitation shall not apply to items added during the course of a meeting. The Council does not take action with respect to any subject not on the agenda unless added to the agenda by a two-thirds vote of the Council

Persons addressing the City Council will be limited to four (4) consecutive minutes of public address on a particular agenda item. Debate, question/answer dialogue or discussion between Councilmembers will not be counted towards the four (4) minute time limitation. The Chair may extend time with the unanimous consent of the Council or the Council by affirmative vote of five (5) members may extend the four (4) minute limitation.

Persons will be limited to addressing the City Council one (1) time on a particular matter unless otherwise allowed by an affirmative vote of five (5) members of the City Council.

Citizens wishing to offer Public Comment may sign up by phoning the City Clerk's office at 368-3940.

To make arrangements for special accommodations please call 785-368-3940. A 48-hour advance notice is preferred.

The Federal Communications Commission (FCC) has adopted use of the 711 dialing code for access to Telecommunications Relay Services (TRS). TRS permits persons with a hearing or speech disability to use the telephone system via a text telephone (TTY) or other device to call persons with or without such disabilities. To reach the City Clerk's office using the TRS, please dial 711.

(Agendas are available on Thursday afternoon in the City Clerk's office, 215 SE 7th – Room

INVOCATION:

PLEDGE OF ALLEGIANCE:

1. PROCLAMATIONS:

"None scheduled at this time."

2. PRESENTATIONS:

"None scheduled at this time."

3. ROLL CALL:

4. CONSENT AGENDA:

A. Resolution - Randy Wheat - Noise Exception

 [ATTACHMENTS](#)

A RESOLUTION introduced by Councilmember Sylvia Ortiz, granting Randy Wheat an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions. *(Council District No. 3)*

(A Customer Appreciation event will take place during the hours of 2:00 p.m. and 8:00 p.m. on October 22, 2011 at 745 SE Golden Avenue.)

B. Resolution - ArtsConnect - Noise Exception

 [ATTACHMENTS](#)

A RESOLUTION introduced by Councilmember Karen Hiller granting ArtsConnect an exception to the provisions of City of Topeka Code Section 9.45.150. et seq. concerning noise prohibitions. *(Council District No. 1)*

(The Arty Party event will take place during the hours of 6:00 p.m. and 11:00 p.m. on October 15, 2011 at 719 S. Kansas Avenue.)

C. MINUTES of the regular meeting of October 4, 2011

D. APPLICATIONS:

5. UNFINISHED BUSINESS:

A. Ordinance - 2011 Uniform Public Offense Code

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Section 9.05.080, concerning the 2011 Uniform Public Offense Code and specifically repealing said original section as well as Section 5.135.010 in its entirety. Final Reading.

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would adopt the 2011 UPOC except for the provisions relating to domestic battery, smoking, prostitution, and animal cruelty. Approval would also include adoption of the UPOC scrap metal and funeral picketing provisions which are based

on state law.)

B. Ordinance - 2011 Standard Traffic Ordinances

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Sections 10.15.010, 10.15.020 and 10.20.170 and creating Section 10.20.127 and Section 10.05.080, all concerning the adoption of the Standard Traffic Ordinances 2011 and specifically repealing said original sections as well as Section 10.20.200 and Article 4 of Chapter 10.20 in their entirety. Final Reading.

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would adopt the 2011 STO, except for speeding in a school zone, but would include the provision relating to DUI which is based on newly enacted state law. Approval would also: (1) amend STO provisions addressing driving on sidewalks; and (2) authorize the operation of ATVs by law enforcement.)

C. Resolution - Prosecution of Domestic Battery Cases

 [ATTACHMENTS](#)

A RESOLUTION introduced by Councilmember Bob Archer, authorizing the City Manager to enter into negotiations with Shawnee County officials concerning the prosecution of domestic battery cases.

This item was added at the meeting.

(Approval would direct the City Manager to enter into negotiations with Shawnee County officials in order to seek a resolution concerning the prosecution of domestic violence cases.)

D. Ordinance - Controlled Substances

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, concerning controlled substances, amending City of Topeka Code Sections 9.50.010, 9.50.020, 9.50.030, 9.50.040, 9.50.050, 9.50.060 and 9.50.070 and specifically repealing said original sections. Final Reading.

(Approval would update references to Kansas Statutes in the City Code concerning controlled substances.)

E. Ordinance - Merchant Guard License Fee

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Councilmember Denise Everhart, amending City of Topeka Code Section 5.90.100 concerning private security guard license fees and specifically repealing said original section. Final Reading.

(Approval would exempt state certified law enforcement officers from paying annual and renewal private security guard license fees.)

F. Ordinance - Arts Connect's Arty Party

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Councilmember Karen Hiller designating a portion of the Crosby Place Parking Garage as temporarily exempt from the provisions of K.S.A. 41-719(c) and Topeka Municipal Code Section 9.15.020(d). Final Reading. (Council District No. 1)

(Approval would exempt the top level of the Crosby Place Parking Garage, located at 109 S.W. 8th Street, from the prohibition of K.S.A. 41-719(c) and TMC 9.15.020(d) for Arts Connect's Arty Party event to be held from 6:00 p.m. to 11:00 p.m. on October 15, 2011.)

G. Ordinance - NOTO BBQ and Blues

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Deputy Mayor John Alcala authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for NOTO's BBQ and Blues event on October 23, 2011, and to designate the public parking lot at Veteran's Park as exempt from the provisions of K.S.A. 41-719(c) and TMC 9.15.020(d). Final Reading. (Council District No. 2)

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would exempt the parking lot at Veteran's Park from the prohibition of K.S.A. 41-719(c) and TMC 9.15.020(d) for NOTO BBQ and Blues event to be held from 2:00 p.m. to 7:00 p.m. on October 23, 2011.)

6. NEW BUSINESS:

A. Applications - Retail Cereal Malt Beverage License

APPROVAL of Retail Cereal Malt Beverage License Applications.

Voting Requirement: Majority of the Governing Body, including the Mayor.

(Pursuant to K.S.A. 41-2702 application for license must be approved by the Governing Body prior to the issuance of the license.)

B. Final Plat - Homestead Addition Subdivision (P10/25)

 [ATTACHMENTS](#)

A FINAL PLAT for Homestead Addition Subdivision located east of I-470 Highway, between SW Drury Lane and SW 17th Street, in the City of Topeka, Shawnee County, Kansas. (P10/25)

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would accommodate a 2-block, 6-lot subdivision for office, limited commercial and residential uses.)

7. ZONING:

A. Ordinance - Homestead Addition (PUD10/11)

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC) by providing for certain changes in zoning on property generally bound on the west by I-470, on the east by SW Arrowhead Road (extended), on the south by SW 17th Street, and on the north by SW Drury Lane from "R-1" Single Family Dwelling District and "O&I-2" Office and Institutional District ALL TO "PUD" Planned Unit Development District ("O&I-2" use group, with limited "C-1" and "C-2" use group uses). Final Reading. (PUD10/11) (Council District No. 9)

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would allow for development of the property for office and limited commercial uses.)

8. FIRST READINGS:

A. Ordinance - Alley Repair Project No. T-841016.00

 [ATTACHMENTS](#)

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, authorizing Improvement Project No. T-841016.00 which provides for alley repair at various locations throughout the City, as more specifically described herein. First Reading. (All Council Districts)

(Approval of \$250,000 would authorize alley repairs to existing city alleys. The project would be funded from the Citywide Half Cent Special Purpose Retailers Sales Tax and is included in the 2011 CIB.)

9. MISCELLANEOUS:

-

10. PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL:

-

11. PUBLIC COMMENT:

-

12. ADJOURNMENT:

-



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CATEGORY/SUBCATEGORY		
CIP PROJECT:	No	
ACTION OF COUNCIL:		JOURNAL #:
		PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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No Attachments Available



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DOCUMENT DESCRIPTION:

"None scheduled at this time."

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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DOCUMENT DESCRIPTION:

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POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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DATE: October 11, 2011
CONTACT PERSON: Sylvia Ortiz DOCUMENT #:
SECOND PARTY/SUBJECT: Randy Wheat PROJECT #:
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Councilmember Sylvia Ortiz, granting Randy Wheat an exception to the provisions of City of Topeka Code Section 9.45.150, et seq., concerning noise prohibitions.
(Council District No. 3)

(A Customer Appreciation event will take place during the hours of 2:00 p.m. and 8:00 p.m. on October 22, 2011 at 745 SE Golden Avenue.)

POLICY ISSUE:

Whether or not to grant a noise exception.

STAFF RECOMMENDATION:

None

BACKGROUND:

Noise exception for amplified music during specified date and time.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

None

ATTACHMENTS:

[Resolution](#)

Item #6

1 RESOLUTION NO. _____
2

3 A RESOLUTION introduced by Councilmember Sylvia Ortiz, granting Randy
4 Wheat an exception to the provisions of City of Topeka Code
5 Section 9.45.150, et seq. concerning noise prohibitions.
6

7 WHEREAS, City of Topeka Code Section 9.45.150, et seq. makes it
8 unlawful for any person to make, continue or cause to be made or continued any
9 loud, unnecessary or unusual noise or any noise which either annoys, disturbs,
10 injures or endangers the comfort, repose, health or safety or others within the
11 limits of the city; and

12 WHEREAS, City of Topeka Code Section 9.45.170, et seq. authorizes the
13 City Council to grant exceptions to the prohibitions of this code section upon
14 request and a showing that the proposed activity does not offend the spirit of the
15 findings of City of Topeka Code Section 9.45.150, et seq.; and

16 WHEREAS, Randy Wheat has requested that he be granted an exception
17 to the provisions of City of Topeka Code Section 9.45.150, et seq. for the
18 purposes, dates and times described herein, and

19 WHEREAS, upon review of the application of Randy Wheat, the Council of
20 the City of Topeka does hereby find that the requested activity does not offend
21 the spirit of the findings of City of Topeka Code Section 9.45.150, et seq.

22 NOW, THEREFORE, BE IT RESOLVED by the Council of the City of
23 Topeka that Randy Wheat is hereby granted an exception from the provisions of
24 City of Topeka Code Section 9.45.150, et seq. for amplified music at a Customer

COUNRES
Wheat-Noise Exception
09/26/2011

Appreciation event located at 745 SE Golden Avenue during the hours of 2:00
p.m. and 8:00 p.m. on October 22, 2011.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

COUNRES
Wheat-Noise Exception
09/26/2011



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DATE: October 11, 2011
CONTACT PERSON: Karen Hiller DOCUMENT #:
SECOND PARTY/SUBJECT: Zach Snethen PROJECT #:
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Councilmember Karen Hiller granting ArtsConnect an exception to the provisions of City of Topeka Code Section 9.45.150. et seq. concerning noise prohibitions.
(Council District No. 1)

(The Arty Party event will take place during the hours of 6:00 p.m. and 11:00 p.m. on October 15, 2011 at 719 S. Kansas Avenue.)

POLICY ISSUE:

Whether or not to grant a noise exception.

STAFF RECOMMENDATION:

None

BACKGROUND:

Noise exception for amplified music and sound during specified date and time.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

None

ATTACHMENTS:

[Resolution](#)

Item #7

1 RESOLUTION NO. _____

2
3 A RESOLUTION introduced by Councilmember Karen Hiller granting
4 ARTSConnect an exception to the provisions of City of Topeka
5 Code Section 9.45.150. et seq. concerning noise prohibitions.
6

7 WHEREAS, City of Topeka Code Section 9.45.150. et seq. makes it
8 unlawful for any person to make, continue or cause to be made or continued any
9 loud, unnecessary or unusual noise or any noise which either annoys, disturbs,
10 injures or endangers the comfort, repose, health or safety or others within the
11 limits of the city; and

12 WHEREAS, City of Topeka Code Section 9.45.170, et seq. authorizes the
13 City Council to grant exceptions to the prohibitions of this code section upon
14 request and a showing that the proposed activity does not offend the spirit of the
15 findings of City of Topeka Code Section 9.45.150, et seq., and

16 WHEREAS, ARTSConnect has requested that it be granted an exception
17 to the provisions of City of Topeka Code Section 9.45.150, et seq. for the
18 purposes, dates and times described herein, and

19 WHEREAS, upon review of the application of ARTSConnect, the Council
20 of the City of Topeka does hereby find that the requested activity does not offend
21 the spirit of the findings of City of Topeka Code Section 9.45.150, et seq..

22 NOW, THEREFORE, BE IT RESOLVED by the Council of the City of
23 Topeka that ARTSConnect is hereby granted an exception from the provisions of
24 City of Topeka Code Section 9.45.150, et seq. for amplified music and sound

COUNRES
ARTSConnect
NOISE EXCEPTION
09/26/11

during its Arty Party event at Crosby Place, 719 S. Kansas Avenue, during the
hours of 6:00p.m. and 11:00p.m. on October 15, 2011.

ADOPTED and APPROVED by the City Council _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



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CIP PROJECT:	No	
ACTION OF COUNCIL:		JOURNAL #:
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DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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CIP PROJECT:	No	
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DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available



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September 29, 2011

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DATE: October 11, 2011
CONTACT PERSON: Craig Spomer, Chief of Prosecution
SECOND PARTY/SUBJECT: 2011 UPOC adoption PROJECT #:
CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 054 Criminal Code
CIP PROJECT: No
ACTION OF COUNCIL: 10-04-11 First Reading JOURNAL #: 11
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Section 9.05.080, concerning the 2011 Uniform Public Offense Code and specifically repealing said original section as well as Section 5.135.010 in its entirety. Final Reading.

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would adopt the 2011 UPOC except for the provisions relating to domestic battery, smoking, prostitution, and animal cruelty. Approval would also include adoption of the UPOC scrap metal and funeral picketing provisions which are based on state law.)

POLICY ISSUE:

Whether or not to adopt the updated UPOC and amend current City Code provisions

STAFF RECOMMENDATION:

Pass and approve

BACKGROUND:

See memo for explanation of amendments.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

Item #10

NA

ATTACHMENTS:

[Ordinance](#)

[Memo](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager, amending City of Topeka Code § 9.05.080, concerning the 2011 Uniform Public Offense Code and specifically repealing said original section as well as § 5.135.010 in its entirety.

BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:

Section 1. That section 9.05.080, Uniform Public Offense Code, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Uniform Public Offense Code.

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the city of Topeka, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of ~~2010~~2011, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except Sections 3.1.1 ("Domestic Battery"), 4.3 ("Prostitution"), 4.4 ("Promoting Prostitution"), 4.5 ("Patronizing a Prostitute"), ~~9.11 ("Picketing of Funerals")~~, 10.24 ("Smoking Prohibited"), 10.25 ("Smoking; Posting Premises"), 10.26 ("Smoking Prohibited; Penalties") and 11.11 ("Cruelty to Animals"), which are specifically deleted and omitted. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as adopted by Ordinance No. ~~49536~~____," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of said ordinance and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

29 The Uniform Public Offense Code, Edition of ~~2010~~2011, is hereby further
30 amended by adding the following exception to Section 10.6:

31 Exception: Operation of a bow and arrow is permitted in accordance with the
32 provisions set forth in TMC 6.05.070.

33 Section 2. That section 5.135.010, Information as to ownership, of The Code
34 of the City of Topeka, Kansas, is hereby repealed in its entirety.

35 ~~Information as to ownership—Records to be maintained by dealers and~~
36 ~~salvage yard owners.~~

37 ~~(a) Purpose. For the purpose of promoting public health, safety and welfare, it~~
38 ~~is hereby declared to be in the public interest and necessary to require dealers in~~
39 ~~secondhand metals to obtain information from the sellers of those secondhand metals,~~
40 ~~prior to purchasing such metals.~~

41 ~~(b) Information Required from Sellers of Junk—Exceptions. Any person who~~
42 ~~sells an item or items of junk to a salvage yard owner/operator is required to furnish to~~
43 ~~the salvage yard owner/operator information as to the ownership of such item or items~~
44 ~~of junk. Such information shall include the seller's name, address and place of business,~~
45 ~~if any. Failure to provide such information shall be deemed a violation of municipal~~
46 ~~ordinances and may be prosecuted in municipal court.~~

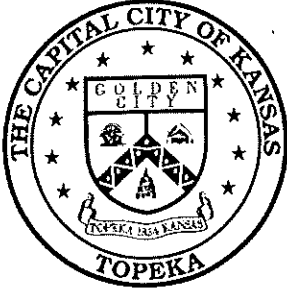
47 ~~The requirement of the seller providing the above stated information shall only apply to~~
48 ~~those instances where the seller is selling semiprecious metal items, which include, but~~
49 ~~are not limited to, copper, aluminum and brass. In no event shall the requirement of~~
50 ~~providing information as to ownership apply to the sale of rags, paper, rope and rubber~~
51 ~~debris.~~

~~(c) — Salvage Yard Owners/Operators Required to Obtain Certain Information as to Ownership — Record of Ownership. No salvage yard owner/operator shall purchase an item or items of junk without receiving from the seller information as to ownership. Such information shall include the seller's name, address and place of business, if any. Every salvage yard owner/operator shall maintain a record of ownership of items purchased pursuant to any transaction described in this section. Records kept in accordance with the provisions in this section shall be at all times open to inspection by law enforcement officers and shall be maintained on the business premises for two years. Failure to receive and/or maintain such information shall be deemed a violation of municipal ordinances and may be prosecuted in municipal court. The requirement of the salvage yard owner/operator to receive and maintain ownership information shall only apply to those instances where the seller is selling semiprecious metal items, which include, but are not limited to, copper, aluminum and brass. In no event shall the requirement of receiving and maintaining ownership information apply to the sale of rags, paper, rope and rubber debris.~~

~~(d) — Activities Not Covered. The requirements of this section shall not apply to businesses dealing in the purchase of aluminum cans as an incidental part of the operation, such as grocery stores or similar situations, nor shall it apply to automated pickup and recycling stations, such as the Golden Goat or similar operations, or recycling stations where no payment is made for scrap or waste paper, such as the scouts and churches or other charitable organizations engaged in fundraising.~~

Section 3. That original § 9.05.080 of The Code of the City of Topeka, Kansas, is hereby specifically repealed.

Brenda Younger, City Clerk



CITY OF TOPEKA *City Attorney's Office*

City Hall, 215 SE 7th St., Room 353
Topeka, KS 66603-3914
Tel.: (785) 368-3883
Fax: (785) 368-3901

MEMORANDUM

TO: Councilmembers
Mayor Buntin
FROM: Craig J. Spomer, Chief of Prosecution
SUBJECT: STO; UPOC; Controlled Substances
DATE: September 29, 2011

The intent of this memo is to explain the purpose of the proposed legislation. There are three separate ordinances proposed for approval by the Council.

1. ADOPTION OF AND AMENDMENTS TO THE 2011 UNIFORM PUBLIC OFFENSE CODE (UPOC).

The UPOC is a codification of state statutes published by the League of Kansas Municipalities. A large part of the UPOC mirrors the state criminal code but it also allows a city to modify the law to serve specific purposes unique to municipalities.

After review of the provisions of the UPOC and current City Code, the following recommendations are included in the ordinance:

DOMESTIC BATTERY

UPOC 3.1.1 is the crime of domestic battery. It is proposed that the City delete this portion of the UPOC so that this crime would not be prosecuted by the City as the City does not have the necessary support services to prosecute this crime.

SCRAP METAL

We propose adopting the UPOC provisions regarding the selling and buying of scrap metal and repealing the provisions of TMC 5.135.010. We propose this because the UPOC is based on State law and we believe it is more comprehensive.

PROSTITUTION

There are no proposed changes to the current provisions. As has been done in the past, we plan to keep TMC 9.45.120 and delete the portions of the UPOC concerning prostitution so there is no conflict between the two.

FUNERAL PICKETING

We propose that the city not opt out of the UPOC funeral picketing ordinance (9.11) as has been done in the past. It is our position that 9.11 fills in gaps that our Picketing Religious Events ordinance (TMC 9.45.140) may not cover.

CRUELTY TO ANIMALS

There are no proposed changes to the current provisions. As we have done in the past, we plan to keep the current City Code provisions (TMC 6.05.040) and delete the portion of the UPOC concerning cruelty to animals. This is recommended due to the limitations of the UPOC concerning this crime.

SMOKING PROHIBITED

We propose deletion of the UPOC smoking ordinance because Chapter 8.20 of the City Code, which was adopted by the Council before the state law was imposed, works well. The main difference is that the current City Code handles the smoking prohibition administratively, rather than criminally.

2. ADOPTION AND AMENDMENTS TO THE 2011 STANDARD TRAFFIC ORDINANCES (STO).

The STO is a codification of state traffic laws and is also published by the League of Kansas Municipalities. It is designed to provide a city with a comprehensive traffic code that can be modified to meet each city's needs.

After review of the provisions of the STO and current City Code, in addition to the STO amendments adopted in previous years, the following recommendations are included in the ordinance:

DRIVING ON SIDEWALKS

We propose deleting the STO provisions related to driving on sidewalks and substituting a version which allows only City employees to drive on sidewalks in performance of their duties. This allows for water meter readers to continue using their motorbikes to read meters without violating traffic laws.

ALL TERRAIN VEHICLES

STO 114.1(a)(2) makes it illegal to operate an all terrain vehicle in a city unless the city authorizes such operation. TMC 10.05.080 is proposed to authorize the operation of such vehicles by law enforcement for law enforcement purposes only. The passage of the new TMC would provide an exception for law enforcement while all others could be ticketed.

DUI

We recommend repealing the temporary City DUI provisions (TMC § 10.20.230 through § 10.20.260) and adopt the STO's. The current City version of DUI provisions was passed earlier this year as a stop gap measure due to the major changes in State law that went into effect on July 1, 2011. It was only intended to insure the prosecution of DUI offenses until the STO had been published and was ready for adoption.

SPEEDING IN A SCHOOL ZONE

We propose that STO 204(b) which doubles fines for speeding in a school zone be deleted so that TMC 10.20.170(a) which triples fines for speeding in a school zone is not in conflict. The proposed amendment to TMC 10.20.170 would eliminate the imposition of a jail sentence for a traffic infraction of speeding in a school zone.

3. AMENDMENTS TO CONTROLLED SUBSTANCES PROHIBITION.

The proposed amendments to the current provisions set forth in Chapter 9.50 of the City Code updates the references to Kansas statutes to bring them up to date. The State statutes have been moved or renumbered since Council first adopted the ordinance enacting the provisions related to controlled substances.

CJS/bw

cc: Daniel R. Stanley, Interim City Manager



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 29, 2011

Back Print

DATE:	October 11, 2011		
CONTACT PERSON:	Craig Spomer, Chief of Prosecution	DOCUMENT #:	
SECOND PARTY/SUBJECT:	2011 STO adoption	PROJECT #:	
CATEGORY/SUBCATEGORY	013 Ordinances - Codified / 142 Traffic and Vehicles		
CIP PROJECT:	No		
ACTION OF COUNCIL:	10-04-11 First Reading	JOURNAL #:	11
		PAGE #:	

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending City of Topeka Code Sections 10.15.010, 10.15.020 and 10.20.170 and creating Section 10.20.127 and Section 10.05.080, all concerning the adoption of the Standard Traffic Ordinances 2011 and specifically repealing said original sections as well as Section 10.20.200 and Article 4 of Chapter 10.20 in their entirety. Final Reading.

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would adopt the 2011 STO, except for speeding in a school zone, but would include the provision relating to DUI which is based on newly enacted state law. Approval would also: (1) amend STO provisions addressing driving on sidewalks; and (2) authorize the operation of ATVs by law enforcement.)

POLICY ISSUE:

Whether or not to adopt the updated STO and amend current city code provisions

STAFF RECOMMENDATION:

Pass and approve

BACKGROUND:

See memo for explanation of amendments.

BUDGETARY IMPACT:

None

Item #11

SOURCE OF FUNDING:

NA

ATTACHMENTS:

[Ordinance](#)

[Memo](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager, amending City of Topeka Code § 10.15.010, § 10.15.020 and § 10.20.170 and creating § 10.20.127 and § 10.05.080, all concerning the Standard Traffic Ordinances 2011 and specifically repealing said original sections as well as § 10.20.200 and Article IV of Chapter 10.20 in their entireties.

BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:

Section 1. That section 10.15.010, Incorporation of Standard Traffic Ordinance, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Incorporation of Standard Traffic Ordinance.

(a) Generally – Copies. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the city of Topeka, Kansas, ~~that certain Standard Traffic Ordinance known as the~~ “Standard Traffic Ordinance for Kansas Cities,” Edition of ~~2010~~2011, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections or parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of the Standard Traffic Ordinance shall be marked or stamped “Official Copy as Adopted by Ordinance No. ~~49543~~____,” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of the ordinance codified in this chapter and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at

the cost of the city, such number of official copies of the Standard Traffic Ordinance similarly marked, as may be deemed expedient.

(b) Traffic Infractions and Traffic Offenses.

(1) A traffic infraction is a violation of any section of this title or of the Standard Traffic Ordinance that prohibits or requires the same behavior as that prohibited or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118, and amendments thereto.

(2) All traffic violations which are included within this title and which are not traffic infractions as defined in subsection (b)(1) of this section shall be considered traffic offenses.

Section 2. That section 10.15.020, Amendments, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Amendments.

The current edition of the Standard Traffic Ordinance for Kansas Cities, as adopted by reference, shall be amended as follows:

(a) Section 33 of the Standard Traffic Ordinance, relating to maximum speed limits, is hereby declared to be and is omitted and deleted and the provisions set forth at TMC 10.20.060 shall be substituted therefor.

(b) Section 50 of the Standard Traffic Ordinance relating to right, left and U-turns at intersection – obedience to, is hereby declared to be and is omitted and deleted and the provisions set forth at TMC 10.20.200 shall be substituted therefor.

(c) Section 67 of the Standard Traffic Ordinance, relating to pedestrians to use right half of crosswalks, is hereby declared to be and is omitted and deleted.

(d) Section 104 of the Standard Traffic Ordinance, relating to inattentive

55 driving, is hereby declared to be and is omitted and deleted and the provisions set forth
56 at TMC 10.20.100 shall be substituted therefor.

57 (e) Section 107 of the Standard Traffic Ordinance, relating to unattended
58 motor vehicles, is hereby declared to be and is omitted and deleted and the provisions
59 set forth at TMC 10.20.125 shall be substituted therefor.

60 (f) Section 116 of the Standard Traffic Ordinance, relating to driving upon
61 sidewalks, is hereby declared to be and is omitted and deleted and the provisions set
62 forth at TMC 10.20.127 shall be substituted therefor.

63 (fg) Section 119 of the Standard Traffic Ordinance, relating to parades and
64 processions, is hereby declared to be and is omitted and deleted and the provisions set
65 forth in Chapter 10.50 TMC shall be substituted therefor.

66 (gh) Section 194 of the Standard Traffic Ordinance, relating to driving while
67 license canceled, suspended or revoked, is hereby declared to be and is omitted and
68 deleted.

69 (hi) Section 195.1 of the Standard Traffic Ordinance, relating to operation of a
70 motor vehicle when a habitual violator, is hereby declared to be and is omitted and
71 deleted.

72 (ij) Section 198 of the Standard Traffic Ordinance, relating to vehicle license –
73 illegal tag, is hereby declared to be and is omitted and deleted and the provisions set
74 forth at TMC 10.05.060 shall be substituted therefor.

75 (k) Section 204(b) of the Standard Traffic Ordinance, relating to fines doubled
76 in school zones, is hereby declared to be and is omitted and deleted and the provisions
77 set forth at TMC 10.20.170 shall be substituted therefor.

78 ~~(j) Section 1 of the Standard Traffic Ordinance, specifically the definition for~~

~~"Other Competent Evidence" is hereby declared to be and is omitted and deleted and the following provisions shall be substituted therefore: Other Competent Evidence (1) Includes alcohol concentration tests obtained from samples taken three hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.~~

~~(k) Section 30 of the Standard Traffic Ordinance, relating to driving under the influence of intoxicating liquor or drugs, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.230 shall be substituted therefor.~~

~~(l) Section 30.1 of the Standard Traffic Ordinance, relating to driving commercial motor vehicle under the influence of intoxicating liquor or drugs, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.240 shall be substituted therefor.~~

~~(m) Section 30.2 of the Standard Traffic Ordinance, relating to preliminary breath test, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.250 shall be substituted therefor.~~

~~(n) Section 30.3 of the Standard Traffic Ordinance, relating to ignition interlock devices; tampering, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.260 shall be substituted therefor.~~

Section 3. That section 10.20.170, Penalties for violation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Penalties for violation.

(a) Every person, upon a conviction of a moving violation, as defined in K.S.A. 8-249 and Kansas Administrative Regulations 92-52-9, in a school zone shall be fined three times the amount on the fine schedule as set by the municipal court in accordance

with TMC 2.110.330, with the exception of those offenses excluded by TMC 2.110.330; such fine shall not be paroled or otherwise reduced.

(b) The municipal court is hereby authorized to establish mandatory court appearances for any person charged with violating a school zone speed limit in an amount the court finds to be excessive. ~~In addition to the fine listed in subsection (a) of this section, the municipal court, upon a conviction of violation of TMC 10.20.160, may impose a jail sentence not to exceed 90 days.~~

Section 4. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 10.20.127, which said section reads as follows:

Driving Upon Sidewalk.

No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway except duly authorized city employees in the performance of their duties.

Section 5. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 10.05.080, which said section reads as follows:

Operation of All-Terrain Vehicle by Law Enforcement.

Notwithstanding the provisions of STO 114.1(a), all-terrain vehicles may be operated on streets, highways and elsewhere in the city by law enforcement officers performing law enforcement duties.

Section 6. That section 10.20.200, U-turns, of The Code of the City of Topeka, Kansas, is hereby repealed.

Section 7. That section 10.20.230, Driving under the influence of intoxicating liquor or drugs – Penalties, of The Code of the City of Topeka, Kansas, is hereby repealed.

Section 8. That section 10.20.240, Driving commercial motor vehicle under the influence of intoxicating liquor or drugs – Penalties, of The Code of the City of Topeka, Kansas, is hereby repealed.

Section 9. That section 10.20.250, Preliminary breath test, of The Code of the City of Topeka, Kansas, is hereby repealed.

Section 10. That section 10.20.260, Ignition interlock devices – Tampering, of The Code of the City of Topeka, Kansas, is hereby repealed.

Section 11. That original §10.15.010, § 10.15.020 and § 10.20.170 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 12. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 13. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 14. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

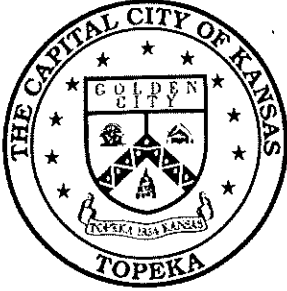
PASSED AND APPROVED by the Governing Body on _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



CITY OF TOPEKA *City Attorney's Office*

City Hall, 215 SE 7th St., Room 353
Topeka, KS 66603-3914
Tel.: (785) 368-3883
Fax: (785) 368-3901

MEMORANDUM

TO: Councilmembers
Mayor Buntin
FROM: Craig J. Spomer, Chief of Prosecution
SUBJECT: STO; UPOC; Controlled Substances
DATE: September 29, 2011

The intent of this memo is to explain the purpose of the proposed legislation. There are three separate ordinances proposed for approval by the Council.

1. ADOPTION OF AND AMENDMENTS TO THE 2011 UNIFORM PUBLIC OFFENSE CODE (UPOC).

The UPOC is a codification of state statutes published by the League of Kansas Municipalities. A large part of the UPOC mirrors the state criminal code but it also allows a city to modify the law to serve specific purposes unique to municipalities.

After review of the provisions of the UPOC and current City Code, the following recommendations are included in the ordinance:

DOMESTIC BATTERY

UPOC 3.1.1 is the crime of domestic battery. It is proposed that the City delete this portion of the UPOC so that this crime would not be prosecuted by the City as the City does not have the necessary support services to prosecute this crime.

SCRAP METAL

We propose adopting the UPOC provisions regarding the selling and buying of scrap metal and repealing the provisions of TMC 5.135.010. We propose this because the UPOC is based on State law and we believe it is more comprehensive.

PROSTITUTION

There are no proposed changes to the current provisions. As has been done in the past, we plan to keep TMC 9.45.120 and delete the portions of the UPOC concerning prostitution so there is no conflict between the two.

FUNERAL PICKETING

We propose that the city not opt out of the UPOC funeral picketing ordinance (9.11) as has been done in the past. It is our position that 9.11 fills in gaps that our Picketing Religious Events ordinance (TMC 9.45.140) may not cover.

CRUELTY TO ANIMALS

There are no proposed changes to the current provisions. As we have done in the past, we plan to keep the current City Code provisions (TMC 6.05.040) and delete the portion of the UPOC concerning cruelty to animals. This is recommended due to the limitations of the UPOC concerning this crime.

SMOKING PROHIBITED

We propose deletion of the UPOC smoking ordinance because Chapter 8.20 of the City Code, which was adopted by the Council before the state law was imposed, works well. The main difference is that the current City Code handles the smoking prohibition administratively, rather than criminally.

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After review of the provisions of the STO and current City Code, in addition to the STO amendments adopted in previous years, the following recommendations are included in the ordinance:

DRIVING ON SIDEWALKS

We propose deleting the STO provisions related to driving on sidewalks and substituting a version which allows only City employees to drive on sidewalks in performance of their duties. This allows for water meter readers to continue using their motorbikes to read meters without violating traffic laws.

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STO 114.1(a)(2) makes it illegal to operate an all terrain vehicle in a city unless the city authorizes such operation. TMC 10.05.080 is proposed to authorize the operation of such vehicles by law enforcement for law enforcement purposes only. The passage of the new TMC would provide an exception for law enforcement while all others could be ticketed.

DUI

We recommend repealing the temporary City DUI provisions (TMC § 10.20.230 through § 10.20.260) and adopt the STO's. The current City version of DUI provisions was passed earlier this year as a stop gap measure due to the major changes in State law that went into effect on July 1, 2011. It was only intended to insure the prosecution of DUI offenses until the STO had been published and was ready for adoption.

SPEEDING IN A SCHOOL ZONE

We propose that STO 204(b) which doubles fines for speeding in a school zone be deleted so that TMC 10.20.170(a) which triples fines for speeding in a school zone is not in conflict. The proposed amendment to TMC 10.20.170 would eliminate the imposition of a jail sentence for a traffic infraction of speeding in a school zone.

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The proposed amendments to the current provisions set forth in Chapter 9.50 of the City Code updates the references to Kansas statutes to bring them up to date. The State statutes have been moved or renumbered since Council first adopted the ordinance enacting the provisions related to controlled substances.

CJS/bw

cc: Daniel R. Stanley, Interim City Manager



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 12, 2011

Back Print

DATE: October 11, 2011
CONTACT PERSON: Councilmember Bob Archer DOCUMENT #:
SECOND PARTY/SUBJECT: Shawnee County officials PROJECT #:
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Councilmember Bob Archer, authorizing the City Manager to enter into negotiations with Shawnee County officials concerning the prosecution of domestic battery cases.

This item was added at the meeting.

(Approval would direct the City Manager to enter into negotiations with Shawnee County officials in order to seek a resolution concerning the prosecution of domestic violence cases.)

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

[Resolution](#)

1 RESOLUTION NO. _____
2

3 A RESOLUTION introduced by Councilmember Bob Archer, authorizing the City
4 Manager to enter into negotiations with Shawnee County officials
5 concerning the prosecution of domestic battery cases.
6

7 WHEREAS, the City of Topeka and the Shawnee County District Attorney's office
8 had a successful arrangement over the past ten years for the prosecution of domestic
9 battery crimes through the District Attorney's office; and

10 WHEREAS, over that ten year period and prior, Shawnee County has developed the
11 processes and support services necessary to prosecute domestic battery crimes; and

12 WHEREAS, the District's Attorney's office has failed to prosecute domestic battery
13 cases charged under state law since September 8, 2011; and

14 WHEREAS, the City does not have the necessary support services to prosecute
15 domestic battery crimes; and

16 WHEREAS, the District Attorney has referenced budgetary concerns as the main
17 reason for refusing to prosecute domestic battery cases; and

18 WHEREAS, the City is concerned for the safety and security of victims of domestic
19 battery crimes and is determined to resolve this issue while keeping in mind the best
20 interest of these most vulnerable citizens.

21 NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
22 TOPEKA, KANSAS, that it hereby authorizes and directs the City Manager to enter into
23 negotiations with Shawnee County officials to adopt a cost sharing arrangement with a one
24 time maximum City contribution of \$125,000.00 to assist the County in the prosecution of
25 domestic battery cases.
26

27 ADOPTED and APPROVED by the City Council on _____.

28 CITY OF TOPEKA, KANSAS

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William W. Bunten, Mayor

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35 ATTEST:

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40 _____
Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 29, 2011

Back Print

DATE: October 11, 2011
CONTACT PERSON: Craig Spomer, Chief of Prosecution DOCUMENT #:
SECOND PARTY/SUBJECT: Revise Contolled Substances provisions PROJECT #:
CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 054 Criminal Code
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, concerning controlled substances, amending City of Topeka Code Sections 9.50.010, 9.50.020, 9.50.030, 9.50.040, 9.50.050, 9.50.060 and 9.50.070 and specifically repealing said original sections. Final Reading.

(Approval would update references to Kansas Statutes in the City Code concerning controlled substances.)

POLICY ISSUE:

Whether or not to adopt the ordinance and update references to state law.

STAFF RECOMMENDATION:

Pass and approve

BACKGROUND:

See memo for explanation of amendments.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

NA

ATTACHMENTS:

[Ordinance](#)

[Memo](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager, concerning controlled substances, amending City of Topeka Code § 9.50.010, § 9.50.020, § 9.50.030, § 9.50.040, § 9.50.050, § 9.50.060 and § 9.50.070 and specifically repealing said original sections.

BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:

Section 1. That section 9.50.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

Words and phrases used in this chapter shall have the same meaning as their corresponding definitions set forth in K.S.A. ~~65-4101 and 65-4150~~21-5701, and amendments thereto.

Section 2. That section 9.50.020, Controlled substances prohibited, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Controlled substances prohibited.

Except as authorized by the Kansas Uniform Controlled Substances Act, K.S.A. ~~65-4101 through 65-4164~~21-5705 and 21-5706, and amendments thereto, it shall be unlawful for any person to possess or have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute, any controlled substance, provided the Kansas Uniform Controlled Substances Act classifies the offense as a misdemeanor.

Section 3. That section 9.50.030, Controlled substances analogs prohibited, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Controlled substances analogs prohibited.

Except as authorized by the Kansas Uniform Controlled Substances Act, K.S.A. ~~65-4101 through 65-4164~~21-5701 and 21-5705, and amendments thereto, it shall be unlawful for any person to possess or have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute, any controlled substance analog, provided the Kansas Uniform Controlled Substances Act classifies the offense as a misdemeanor.

Section 4. That section 9.50.040, Simulated controlled substances and drug paraphernalia – Use or possession prohibited, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Simulated controlled substances and drug paraphernalia – Use or possession prohibited.

(a) It shall be unlawful for any person to use or possess with intent to use:

(1) Any simulated controlled substance;

(2) Any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act; or

(3) Any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the Uniform Controlled Substances Act.

(b) The provisions of subsection (a) of this section shall apply only if the offense is classified as a misdemeanor by K.S.A. ~~65-4152(b)~~ or ~~(d)~~21-5709, and amendments thereto.

Section 5. That section 9.50.050, Simulated controlled substances and drug paraphernalia – Prohibited acts, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Simulated controlled substances and drug paraphernalia – Prohibited acts.

(a) It shall be unlawful for any person to deliver, possess with intent to deliver, manufacture with intent to deliver or cause to be delivered:

(1) Any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of K.S.A. ~~65-4162~~21-5706, and amendments thereto;

(2) Any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, except K.S.A. ~~65-4162~~21-5706, and amendments thereto; or

(3) Any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the Uniform Controlled Substances Act.

(b) The provisions of subsection (a) of this section shall apply only if K.S.A. ~~65-4153(c)~~21-5710 and 21-5713, and amendments thereto, classify the offense as a misdemeanor.

Section 6. That section 9.50.060, Factors for determining what constitutes drug paraphernalia, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Factors for determining what constitutes drug paraphernalia.

In determining whether an object is drug paraphernalia, the court shall consider the factors set forth in K.S.A. ~~65-4151~~21-5711, and amendments thereto, in addition to any other logically relevant factors.

Section 7. That section 9.50.070, Representation that noncontrolled substance is a controlled substance, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Representation that noncontrolled substance is a controlled substance.

(a) It shall be unlawful for any person to knowingly deliver or cause to be delivered any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) Under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) If any one of the following factors is established, there shall be a presumption that delivery of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal delivery of controlled substances.

(2) The delivery of the substance included an exchange of or demand for money or other consideration for delivery of the substance, and the amount of the consideration was substantially in excess of the reasonable value of the substance.

(3) The physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

(c) The provisions of subsection (a) of this section shall apply only if K.S.A. ~~65-4155(c)~~21-5714, and amendments thereto, classify the offense as a misdemeanor.

Section 8. That original § 9.50.010, § 9.50.020, § 9.50.030, § 9.50.040, § 9.50.050, § 9.50.060 and § 9.50.070 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 9. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 10. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

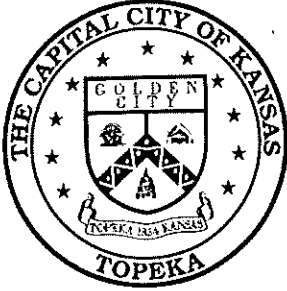
121
122 CITY OF TOPEKA, KANSAS

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



CITY OF TOPEKA *City Attorney's Office*

City Hall, 215 SE 7th St., Room 353
Topeka, KS 66603-3914
Tel.: (785) 368-3883
Fax: (785) 368-3901

MEMORANDUM

TO: Councilmembers
Mayor Buntin
FROM: Craig J. Spomer, Chief of Prosecution
SUBJECT: STO; UPOC; Controlled Substances
DATE: September 29, 2011

The intent of this memo is to explain the purpose of the proposed legislation. There are three separate ordinances proposed for approval by the Council.

1. ADOPTION OF AND AMENDMENTS TO THE 2011 UNIFORM PUBLIC OFFENSE CODE (UPOC).

The UPOC is a codification of state statutes published by the League of Kansas Municipalities. A large part of the UPOC mirrors the state criminal code but it also allows a city to modify the law to serve specific purposes unique to municipalities.

After review of the provisions of the UPOC and current City Code, the following recommendations are included in the ordinance:

DOMESTIC BATTERY

UPOC 3.1.1 is the crime of domestic battery. It is proposed that the City delete this portion of the UPOC so that this crime would not be prosecuted by the City as the City does not have the necessary support services to prosecute this crime.

SCRAP METAL

We propose adopting the UPOC provisions regarding the selling and buying of scrap metal and repealing the provisions of TMC 5.135.010. We propose this because the UPOC is based on State law and we believe it is more comprehensive.

PROSTITUTION

There are no proposed changes to the current provisions. As has been done in the past, we plan to keep TMC 9.45.120 and delete the portions of the UPOC concerning prostitution so there is no conflict between the two.

FUNERAL PICKETING

We propose that the city not opt out of the UPOC funeral picketing ordinance (9.11) as has been done in the past. It is our position that 9.11 fills in gaps that our Picketing Religious Events ordinance (TMC 9.45.140) may not cover.

CRUELTY TO ANIMALS

There are no proposed changes to the current provisions. As we have done in the past, we plan to keep the current City Code provisions (TMC 6.05.040) and delete the portion of the UPOC concerning cruelty to animals. This is recommended due to the limitations of the UPOC concerning this crime.

SMOKING PROHIBITED

We propose deletion of the UPOC smoking ordinance because Chapter 8.20 of the City Code, which was adopted by the Council before the state law was imposed, works well. The main difference is that the current City Code handles the smoking prohibition administratively, rather than criminally.

2. ADOPTION AND AMENDMENTS TO THE 2011 STANDARD TRAFFIC ORDINANCES (STO).

The STO is a codification of state traffic laws and is also published by the League of Kansas Municipalities. It is designed to provide a city with a comprehensive traffic code that can be modified to meet each city's needs.

After review of the provisions of the STO and current City Code, in addition to the STO amendments adopted in previous years, the following recommendations are included in the ordinance:

DRIVING ON SIDEWALKS

We propose deleting the STO provisions related to driving on sidewalks and substituting a version which allows only City employees to drive on sidewalks in performance of their duties. This allows for water meter readers to continue using their motorbikes to read meters without violating traffic laws.

ALL TERRAIN VEHICLES

STO 114.1(a)(2) makes it illegal to operate an all terrain vehicle in a city unless the city authorizes such operation. TMC 10.05.080 is proposed to authorize the operation of such vehicles by law enforcement for law enforcement purposes only. The passage of the new TMC would provide an exception for law enforcement while all others could be ticketed.

DUI

We recommend repealing the temporary City DUI provisions (TMC § 10.20.230 through § 10.20.260) and adopt the STO's. The current City version of DUI provisions was passed earlier this year as a stop gap measure due to the major changes in State law that went into effect on July 1, 2011. It was only intended to insure the prosecution of DUI offenses until the STO had been published and was ready for adoption.

SPEEDING IN A SCHOOL ZONE

We propose that STO 204(b) which doubles fines for speeding in a school zone be deleted so that TMC 10.20.170(a) which triples fines for speeding in a school zone is not in conflict. The proposed amendment to TMC 10.20.170 would eliminate the imposition of a jail sentence for a traffic infraction of speeding in a school zone.

September 29, 2011

Page 3

3. AMENDMENTS TO CONTROLLED SUBSTANCES PROHIBITION.

The proposed amendments to the current provisions set forth in Chapter 9.50 of the City Code updates the references to Kansas statutes to bring them up to date. The State statutes have been moved or renumbered since Council first adopted the ordinance enacting the provisions related to controlled substances.

CJS/bw

cc: Daniel R. Stanley, Interim City Manager



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 23, 2011

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DATE: October 11, 2011
CONTACT PERSON: Denise Everhart, Councilmember DOCUMENT #:
SECOND PARTY/SUBJECT: Merchant Guard License Fees PROJECT #:
CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 030 Businesses
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Councilmember Denise Everhart, amending City of Topeka Code Section 5.90.100 concerning private security guard license fees and specifically repealing said original section. Final Reading.

(Approval would exempt state certified law enforcement officers from paying annual and renewal private security guard license fees.)

POLICY ISSUE:

Whether or not to approve ordinance

STAFF RECOMMENDATION:

BACKGROUND:

State certified law enforcement officers are not required to secure a private security guard license but do have to pay the initial license fee of \$30 and an annual renewal fee of \$25. "State certified law enforcement officers" are defined in K.S.A. 74-5602(g) and include city police officers as well as sheriffs, deputy sheriffs, and campus police officers (e.g. Washburn University).

BUDGETARY IMPACT:

Less revenue from License Fees

SOURCE OF FUNDING:

NA

ATTACHMENTS:

[Ordinance](#)

Item #14

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Councilmember Denise Everhart, amending City of Topeka Code § 5.90.100 concerning private security guard license fees and specifically repealing said original section.

BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:

Section 1. That section 5.90.100, Required, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Required.

(a) It shall be unlawful for any person to engage in or conduct a private security business without obtaining a license as provided in this article.

(b) It shall be unlawful for any private security firm to allow any person to perform work as an employee, agent, or guard unless the person has obtained a license as provided in this article.

(c) It shall be unlawful for any person to perform work as an employee, agent or guard of a private security firm without obtaining a license as provided in this article.

(d) This article is intended to be in addition to all other permits or licenses vested in persons by the state, county or city, and it shall not be a defense to the failure to secure a license to protect or preserve the peace of one or more establishments that the person had such other authority.

(e) The following persons shall not be deemed to be private security guards and shall not be required to obtain a license to act as a private security guard:

(1) Persons employed exclusively and regularly by one employer in connection only with the affairs of such employer, where there exists an

29 employer-employee relationship, and where the operation is conducted solely
30 and completely on the property of the employer.

31 (2) Any officer or employee of the United States, of this state, or of a
32 political subdivision thereof, while engaged in the performance of the office or the
33 employee's official duties.

34 (3) State certified law enforcement officers as defined in K.S.A. 74-
35 5602 et seq., and amendments thereto, ~~except such officers shall not be exempt~~
36 ~~from the fee requirements of TMC 5.10.160.~~

37 (4) Any person who holds a valid commission as an officer of the
38 Topeka, Kansas, police reserves or any person who holds a valid commission as
39 an officer of the Shawnee County sheriff's office reserve and who has
40 successfully completed training as a reserve officer, except such persons shall
41 not be exempt from the fee requirements of TMC 5.10.160.

42 (5) Private detectives licensed in the state pursuant to K.S.A. 75-7b01,
43 and amendments thereto.

44 Section 2. That original § 5.90.100 of The Code of the City of Topeka, Kansas,
45 is hereby specifically repealed.

46 Section 3. This ordinance shall take effect and be in force from and after its
47 passage, approval and publication in the official City newspaper.

48 Section 4. This ordinance shall supersede all ordinances, resolutions or rules,
49 or portions thereof, which are in conflict with the provisions of this ordinance.

Brenda Younger, City Clerk



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 23, 2011

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DATE:	October 11, 2011	
CONTACT PERSON:	Councilmember Karen Hiller	DOCUMENT #:
SECOND PARTY/SUBJECT:	Arts Connect - Arty Party 2011 - Alcohol Exception	PROJECT #:
CATEGORY/SUBCATEGORY	014 Ordinances – Non-Codified / 005 Miscellaneous	
CIP PROJECT:	No	
ACTION OF COUNCIL:	JOURNAL #:	PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Councilmember Karen Hiller designating a portion of the Crosby Place Parking Garage as temporarily exempt from the provisions of K.S.A. 41-719(c) and Topeka Municipal Code Section 9.15.020(d). **Final Reading.** *(Council District No. 1)*

(Approval would exempt the top level of the Crosby Place Parking Garage, located at 109 S.W. 8th Street, from the prohibition of K.S.A. 41-719(c) and TMC 9.15.020(d) for Arts Connect's Arty Party event to be held from 6:00 p.m. to 11:00 p.m. on October 15, 2011.)

POLICY ISSUE:

Whether or not the City exempts the top level of the Crosby Place Parking Garage, located at 108 S.W. 8th Street, from the prohibition of K.S.A. 41-719(c) and TMC 9.15.020(d) for Arts Connect's Arty Party event to be held from 6:00 p.m. to 11:00 p.m. on October 15, 2011.

STAFF RECOMMENDATION:

BACKGROUND:

In accordance with the authority of K.S.A. 41-719(d) and TMC 9.15.020(d)(5), the City Council may exempt public property from the prohibitions concerning drinking or consuming alcoholic liquor and cereal malt beverages on public property. In accordance with such authority, the City exempts the top level of the Crosby Place Parking Garage, located at 108 S.W. 8th Street, from the prohibition of K.S.A. 41-719(c) and TMC 9.15.020(d). Such exemption is conditioned upon the following:

Item #15

- The occurrence of an event conducted under the auspices of ARTS Connect Topeka for its Arty Party special event to be held on October 15, 2011, between the hours of 6 p.m. and 11 p.m.;
- Arts Connect Topeka has secured a special event permit pursuant to TMC 12.05.010; and
- Arts Connect Topeka has complied with all the applicable state laws and municipal ordinances concerning alcoholic liquor and cereal malt beverage.

\

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

ATTACHMENTS:

[Ordinance](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Councilmember Karen Hiller designating a portion of the Crosby Place Parking Garage as temporarily exempt from the provisions of K.S.A. 41-719(c) and TMC 9.15.020(d).

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS, THAT:

Section 1. Pursuant to K.S.A. 41-719(d) and TMC 9.15.020(d)(5), the City Council may exempt public property from the prohibitions concerning drinking or consuming alcoholic liquor and cereal malt beverages on public property.

Section 2. That, in accordance with such authority, the City exempts the top level of the Crosby Place Parking Garage, located at 108 SW 8th Street, from the prohibition of K.S.A. 41-719(c) and TMC 9.15.020(d). Such exemption is conditioned upon the following:

A. The occurrence of an event conducted under the auspices of ARTS Connect Topeka for its Arty Party special event to be held on October 15, 2011, between the hours of 6 p.m. and 11 p.m.;

B. Arts Connect Topeka has secured a special event permit pursuant to TMC 12.05.010; and

C. Arts Connect Topeka has complied with all the applicable state laws and municipal ordinances concerning alcoholic liquor and cereal malt beverage.

Section 3. This Ordinance shall be null and void at midnight on October 15, 2011.



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2011

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DATE: October 11, 2011
CONTACT PERSON: Deputy Mayor John Alcala DOCUMENT #:
SECOND PARTY/SUBJECT: NOTO BBQ and Blues Event PROJECT #:
CATEGORY/SUBCATEGORY 014 Ordinances – Non-Codified / 005 Miscellaneous
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Deputy Mayor John Alcala authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for NOTO's BBQ and Blues event on October 23, 2011, and to designate the public parking lot at Veteran's Park as exempt from the provisions of K.S.A. 41-719(c) and TMC 9.15.020(d). Final Reading. (Council District No. 2)

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would exempt the parking lot at Veteran's Park from the prohibition of K.S.A. 41-719(c) and TMC 9.15.020(d) for NOTO BBQ and Blues event to be held from 2:00 p.m. to 7:00 p.m. on October 23, 2011.)

POLICY ISSUE:

Whether or not to approve the ordinance

STAFF RECOMMENDATION:

Pass and Approve

BACKGROUND:

In accordance with the authority of K.S.A. 41-719(d) and TMC 9.15.020(d)(5), the City Council may exempt public property from the prohibitions concerning drinking or consuming alcoholic liquor and cereal malt beverages on public property. The ordinance establishes the conditions for such exemption.

BUDGETARY IMPACT:

None

Item #16

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Deputy Mayor John Alcala authorizing the sale, consumption and possession of alcoholic liquor at a specified location and time for NOTO's BBQ and Blues event on October 23, 2011, and to designate the public parking lot at Veteran's Park as exempt from the provisions of K.S.A. 41-719(c) and TMC 9.15.020(d).

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA,

KANSAS, that:

Section 1. Authorization is given to barricade North Kansas Avenue between Laurent and Norris streets on October 23, 2011, between the hours of 2 p.m. and 7 p.m. for the NOTO BBQ and Blues special event. Attendance is open to the public between these hours.

Section 2. The barricaded area shall be temporarily removed from the City's right-of-way and exempt from the provisions of K.S.A. 41-719(c) which prohibits consuming alcoholic liquor on public property. Vendors holding the appropriate license from the State of Kansas to sell alcoholic liquor may, in accordance with all applicable state laws and municipal ordinances, sell alcoholic liquor in the specific area designated by the Division of Alcohol Beverage Control within the barricaded area during the hours identified in Section 1.

Section 3. Event attendees may buy, possess and consume alcoholic beverages in the specific area designated by the Division of Alcohol Beverage Control within the barricaded area on October 23, 2011 between the hours of 3 p.m. and 6 p.m.

Section 4. The NOTO BBQ and Blues event is hereby approved by the governing body as a special event as required by K.S.A. 41-2645.

Section 5. Pursuant to K.S.A. 41-719(d) and TMC 9.15.020(d)(5), the City may exempt public property from the prohibitions concerning drinking or consuming alcoholic liquor on public property. In the event of inclement weather which necessitates moving the event to the public parking lot at Veteran's Park, the City exempts the public parking lot from the prohibitions of K.S.A. 41-719(c) and TMC 9.15.020(d) between 3 p.m. and 6 p.m. on October 23, 2011. Such exemption is conditioned upon the following:

- A. NOTO has secured a special event permit pursuant to TMC 12.05.010; and
- B. NOTO has complied with all applicable state laws and municipal ordinances concerning alcoholic liquor.

Section 6. This Ordinance shall be null and void at 7 p.m. on October 23, 2011.

Section 7. This Ordinance shall take effect and be in force after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the Governing Body _____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk



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214 SE 8th Street
Topeka, Kansas 66603

August 26, 2011

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DATE: October 11, 2011
CONTACT PERSON: Brenda Younger DOCUMENT #:
SECOND PARTY/SUBJECT: Applications PROJECT #:
CATEGORY/SUBCATEGORY 006 Communication / 005 Other
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

APPROVAL of Retail Cereal Malt Beverage License Applications.

Voting Requirement: Majority of the Governing Body, including the Mayor.

(Pursuant to K.S.A. 41-2702 application for license must be approved by the Governing Body prior to the issuance of the license.)

POLICY ISSUE:

None

STAFF RECOMMENDATION:

Approve the licenses.

BACKGROUND:

Pursuant to K.S.A. 41-2702 as amended, license applications for retail cereal malt beverage must be approved by the governing body prior to issuance of the license.

BUDGETARY IMPACT:

None

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

No Attachments Available

Item #17



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 16, 2011

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DATE: October 11, 2011
CONTACT PERSON: Bill Hoover/David Thurbon DOCUMENT #: P10/25
SECOND PARTY/SUBJECT: Klaton Properties, LLC PROJECT #:
CATEGORY/SUBCATEGORY 017 Plats/002 Final
CIP PROJECT: No
ACTION OF COUNCIL: JOURNAL #:
PAGE #:

DOCUMENT DESCRIPTION:

A FINAL PLAT for Homestead Addition Subdivision located east of I-470 Highway, between SW Drury Lane and SW 17th Street, in the City of Topeka, Shawnee County, Kansas. (P10/25)

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would accommodate a 2-block, 6-lot subdivision for office, limited commercial and residential uses.)

POLICY ISSUE:

The proposal as herein presented is consistent with the City of Topeka Subdivision Regulations. The original subdivision proposal consisted of a two-block, five-lot subdivision. However, subsequent to approval of the final plat by the Planning Commission on December 20, 2010, owners of the property located immediately west along SW Drury Lane indicated their desire to purchase the westerly 1.0-acre of Lot 4, Block "A" which was 2.29 acres in size. The attached plat now shows Lot 4, Block "A" to be 1.29-acre in size and the 1.0-acre being purchased by the neighbor as Lot 5, Block "A". As the exterior boundary of Block "A" remained unchanged and as the only modification to the plat from what was reviewed by the Planning Commission was the splitting of the former Lot 4, Block "A" into two lots, staff deemed this change to the final plat to be within the parameters of a minor plat action and was therefore approved administratively subject to acceptance by the Governing Body.

STAFF RECOMMENDATION:

The Planning Commission recommended that the final plat phase of **Homestead Addition Subdivision** be **APPROVED** by a vote of **7-0-0** at their December 20, 2010 meeting, as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report. item #18

BACKGROUND:

Governing Body options:

Accept the plat as presented for recording by the Shawnee County Register of Deeds (6 votes).

Reject the plat so it would **not** be eligible for recording by the Shawnee County Register of Deeds.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Staff Report](#)

[Aerial](#)

[Application 2 pages](#)

[Plat p1 of 2](#)

[Plat p2 of 2](#)

[Planning Commission Minutes](#)

December 20, 2010
Agenda Item #F-1b

SUBDIVISION REPORT

(Major Plats)

CITY OF TOPEKA PLANNING DEPARTMENT

Preliminary Plat Phase

Preliminary and Final Plat Phase

Final Plat Phase

NAME: Homestead Addition Subdivision - [P10/25]

OWNER/DEVELOPER: Klaton Properties, LLC.

ENGINEER/SURVEYOR: Bartlett and West Engineers, Inc.

GENERAL LOCATION: Property is bounded on the west by I-470 Highway and lies between SW Drury Lane and SW 17th Street.

JURISDICTION: Class "A" subdivision within the City of Topeka.

ANNEXATION: N/A.

Area	# of Lots	Density	Proposed Land Use	Zoning *
19.36 acres	5			
8.42 acres	4	N/A	Office and limited commercial	"PUD" "O&I-2" use group with limited "C-1", "C-2" uses.
1.93 acres	1	N/A	Office	"O&I-1" Office and Institutional District. "R-1" Single-Family Dwelling District.
7.12 acres			Residential	
1.89 acres			Street right-of-way	

***Pending Zoning Case:** A companion zoning case [PUD10/11] is proposed for the subject property located west of the proposed extension of SW Arrowhead Road. The proposal is to rezone this area to "PUD" ("O&I-2" use group with limited "C-1" and "C-2" uses). The zoning classification for the remainder of the area east of the proposed extension of SW Arrowhead Road remains as it is currently zoned, "O&I-1" Office and Institutional District and "R-1" Single-Family Dwelling District.

Design: The subject plat contains 19.36 acres, more or less and is irregular in shape, measuring approximately 770' x 1200' with its greatest length running parallel to I-470 Highway. The proposal consists of a 2-block, 5-lot subdivision, with Block "A" containing 4 Lots, and Block "B" 1 Lot. The purpose of the plat is to accommodate further development of the property.

BACKGROUND: The preliminary plat was approved by the Planning Commission on November 15, 2010.

December 20, 2010
Agenda Item #F-1b

SERVICES AND FACILITIES:

1. **WATER SERVICE:** The development is to be serviced by the City of Topeka public water supply and distribution system by means of connection to an existing 12" water main located along SW Drury Lane, and a 10" water main located along SW 17th Street, with all water connections to be at the developer's expense.
2. **SEWAGE DISPOSAL:** The development is to be serviced by the City of Topeka public wastewater treatment plant and collection system by means of connection to an existing 8" sewer main located east of the proposed subdivision's northeast boundary on SW Drury Lane, with all sewer line extensions and connections to be at the developer's expense. No building permits shall be issued until sewer service plans are approved by the City of Topeka Public Works Department.
3. **WASTEWATER PLAN SERVICE AREA:** The property is located within the Urban Service Area as reflected by the Shawnee County Wastewater Management Plan; and the proposal appears to be in full compliance with said Plan.
4. **DRAINAGE CONDITIONS:** The drainage report as submitted by the developer to the City of Topeka Department of Public Works has been approved, per memo dated October 14, 2010.
5. **STREET PLAN/ACCESS:** The preliminary street plans as submitted to the City of Topeka Department of Public Works have been reviewed for compliance with the Street Design Criteria as described in the City of Topeka Standards and Design Criteria Manual, per memo dated December 8, 2010. The proposed plat reflects the dedication of SW Arrowhead Road which extends from SW 17th Street through to SW Drury Lane. All lots within the proposed subdivision are to take access from SW Arrowhead Road with exception of Lot 4, Block A and Lot 1, Block B which may take access from SW Drury Lane and/or SW Arrowhead Road.
6. **FIRE DISTRICT:** City of Topeka Fire District.
7. **STREAM BUFFER:** The site is impacted by a Type II Stream Buffer along the east edge of the subdivision. A Type II Stream Buffer is being dedicated with the subdivision.
8. **SCHOOL DISTRICT:** USD No. 501 – City of Topeka.
9. **PARKS/OPEN SPACE:** No public accessible parks or open spaces are proposed. The parkland development fee is calculated at \$225.00. This figure is based on 1 single-family dwelling unit being assessed for the single-family zoned portion of Lot 1, Block B.

WAIVER/VARIANCE TO STANDARDS: Design variances are being requested pursuant to TMC 18.30.040, regarding block length in excess of 1200' pursuant to TMC 18.40.040(a); the need to provide for utility easements at rear and side lot lines pursuant to TMC 18.40.120 as utilities are to be located along the lot frontages; and regarding the need to provide for a pedestrian access easement (in blocks longer than 800') pursuant to TMC 18.40.040(a), due to the existing highway right-of-way along the west side of Block A, and to allow for the granting of the easement as part of the design stage to allow flexibility in the placement of the easement within Block B. Staff supports all of the above variance requests.

CAPITAL IMPROVEMENT PLAN (CIP): There are currently no transportation projects in the City's CIP (2006-2011) affecting this area.

December 20, 2010
Agenda Item #F-1b

CONFORMANCE TO COMPREHENSIVE PLAN: Accepted planning principles dictate that land use is to be consistent with the *Comprehensive Plan*. In general, an action shall be considered consistent with the plan if, considering all its aspects; it will further the objectives and policies of the plan, not obstruct their attainment in any way, and stimulate and create a prosperous economic environment. The *Topeka Land Use and Growth Management Plan – 2025* designates this area for Commercial/Office uses. However, established patterns of land use and accepted planning principles must be recognized as basic factors which strongly influence rezoning decisions. This subdivision as proposed will have full public services and therefore, is found compliant with the Comprehensive Plan.

STAFF ANALYSIS:

The overall design appears to conform to the established standards and provisions of the subdivision regulations relative to design criteria; and the design appears compatible with existing and planned conditions.

Based upon the above findings and staff analysis, the Planning Department recommends the final plat phase of Homestead Addition Subdivision be **APPROVED** subject to:

1. The Planning Commission's approval of a design variance pursuant to TMC 18.40.040(a), regarding block length in excess of 1200' to accommodate the proposed block length of 1,270'.
2. The Planning Commission's approval of a design variance pursuant to TMC 18.40.020, regarding utility easements at side and rear lot lines to accommodate utility placement along the lot frontages.
3. The Planning Commission's approval of a design variance pursuant to TMC 18.30.040, regarding the need to provide for a pedestrian access easement (in blocks longer than 800') pursuant to TMC 18.40.040(a), due to the existing highway right-of-way along the west side of Block A, and to allow for the granting of the easement as part of the design stage to allow flexibility in the placement of the easement within Block B.
4. Remove "T.T.E." and "P.E." from the plat legend, as neither are elements of the plat.
5. "S.T.E." and "O.A.S.E." are indicated in the plat legend but are not represented on the plat graphic. This needs to be corrected by either removing the items from the legend or illustrating them on the plat graphic.

Prepared by: Dean W. Diediker
Planner II



P10/25 Homestead Addition Subdivision



APPLICATION FOR SUBDIVISION

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66603-3241
Phone 785-368-3728 Fax 785-368-2535

Office Use Only

Date Received: 10/8/10

Application #: P10/25

Fee Received: 22500

Application Type: Minor Plat ☐ Pre-application Plat ☐ Preliminary Plat ☒ Final Plat ☐

1.) Proposed Subdivision Name: Homestead Addition

2.) Common Address or Location: SW Drury Lane, Topeka, KS. 66604

3.) Legal description of property: See attached legal description

4.) Land area (acres): 19.36 Number of lots: 5

5.) Current zoning: O&I-1, O&I-2, R-1 Proposed zoning (if any) PUD

6.) Describe the planned use: Office and light commercial on Block A, possibly an office and residential mix on Block B.

7.) Water Source: City of Topeka

8.) Sewage Disposal Source: City of Topeka

9.) Is any portion of the property within an established flood plain or stream buffer? YES If Yes, check below:

- a. flood plain 100 year ☐ 500 year ☐
b. stream buffer Type I ☐ Type II ☒ Type III ☐

10.) Describe any infrastructure improvements that will not be the financial responsibility of the applicant/developer:
None

11.) Will the streets be constructed in phases? NO If Yes, is phasing plan attached (____) or on plat (____)?

12.) Are there any requested variances to the Subdivision Regulations? NO If Yes, please list on plat map.

13.) Are any common areas proposed to be privately maintained? NO If Yes, are articles of incorporation attached? NO

14.) Consent for annexation will be provided on the final plat (☐) by separate instrument (☐) or is not applicable (☒)

Subdivision Name: Homestead Addition

Applicant Information and Authorization

(attach name and contact information of any additional owners, local agents, buyers under contract, attorneys, etc. if necessary)

Owner(s) of Record 1: Klaton Properties LLC

Address: 3715 SW 29th Street, Suite 200, Topeka, KS. 66614

by James A. Klausman

Phone: _____

Owner(s) of Record 2: _____

Address: _____

Phone: _____

(if different than owner)

Developer(s): _____

Address: _____

Phone: _____

Other Contact (specify): _____

Address: _____

Phone: _____

This is to certify that all above Applicants of this subdivision have authorized me to prepare a plat of subdivision that fully complies with the provisions of the City of Topeka's Subdivision Regulations. The Applicant(s) further understands that if any contract, option, agreement, etc. with any other individual/entity is executed for purchase of said described real property prior to the recording of said plat of subdivision, such individual/entity is required to be signatory to the subdivision. The information and data indicated by this application is true and correct to the best of my knowledge and a copy of this completed application has been forwarded to the Applicant(s).

Date: 10.8.10

Angela C. Sharp, PE, LEED AP

Print Name of Submitting Consulting Engineer/Surveyor


Signature of Submitting Consulting Engineer/Surveyor

Firm Name: Bartlett & West, Inc.

Address: 1200 SW Executive Drive, Topeka, KS. 66615-3850

Phone: 785-272-2252 ext 3313, 785-633-8933cell Fax: 785-273-8735

e-mail: angela.sharp@bartwest.com

**Minutes of the
Topeka Planning Commission
Monday, December 20, 2010**

Homestead Addition Subdivision (Final Plat Phase)(P10/25) by Klaton Properties, L.L.C., James A. Klausman managing member on property generally bound on the west by I-470, on the east by SW Cheyenne Road (extended), on the south by SW 17th Street and on the north by SW Drury Lane. **(Diediker)**

Homestead Addition Development – Bill Hoover summarized the zoning and subdivision reports together. Discussion for both is together below but voting was separate on each item.

Proponents:

Angela Sharp, Bartlett & West Engineers, spoke in favor of the proposal. She stated the left turn lane off of 17th Street into the development is needed. She said pavement will be widened to provide the turn lane and the additional right-of-way will come from the subject property. The traffic circle between Drury and Arrowhead may be beneficial. She stated she talked to the neighbors about their concerns regarding drainage and traffic and reassured them it will be taken care of.

Mike Lackey asked what the applicant thought of the traffic calming devise. Ms. Sharp replied she isn't sure how effective it would be but if it is required she didn't think the applicant would be against putting it in. She said there are curves in the road that will provide some traffic calming. As small as the traffic circle would be I am not sure it would help or not. If there is a landscape feature in the middle of the circle it would be within the right-of-way and maintained by the city, which would cost more. Rich Beardmore asked if speed bumps are considered traffic calming? Ms. Sharp replied, yes, but the traffic engineer would have to decide if they would work in this area. Ms. Sharp said originally cutting through the neighborhood to the south was a concern but since the island was put in on 17th Street it shouldn't be much of an issue and I don't think anyone from that area has a problem with this development.

No one spoke in opposition.

Mr. Beardmore asked if the applicant in agreement with the conditions in the staff report? Mr. Hoover said the only thing that is unknown is the traffic calming devise. Mr. Lackey said he doesn't think it is needed due to the curved road and not much traffic will be generated from a development like this. He said if necessary speed humps could be added later. Lee Williams agreed, he didn't feel the traffic calming devise is needed. Kevin Beck added the T intersection on Drury Lane is calming in itself.

Richard Beardmore moved approval as written by staff, seconded by Kevin Beck. **APPROVAL. (7-0-0)**



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September 23, 2011

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DATE:	October 11, 2011		
CONTACT PERSON:	David Thurbon/Bill Hoover	DOCUMENT #:	
SECOND PARTY/SUBJECT:	Klaton Properties LLC, James A. Klausman, Managing Member	PROJECT #:	PUD10/11
CATEGORY/SUBCATEGORY	014 Ordinances – Non-Codified / 007 Zoning		
CIP PROJECT:	No		
ACTION OF COUNCIL:		JOURNAL #:	
		PAGE #:	

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC) by providing for certain changes in zoning on property generally bound on the west by I-470, on the east by SW Arrowhead Road (extended), on the south by SW 17th Street, and on the north by SW Drury Lane from "R-1" Single Family Dwelling District and "O&I-2" Office and Institutional District ALL TO "PUD" Planned Unit Development District ("O&I-2" use group, with limited "C-1" and "C-2" use group uses). Final Reading. (PUD10/11) (Council District No. 9)

Voting Requirement: Majority vote of the Governing Body, including the Mayor.

(Approval would allow for development of the property for office and limited commercial uses .)

POLICY ISSUE:

Request is consistent with the land use principles of the Comprehensive Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **7-0-0** at their December 20, 2010 meeting, as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

See Staff Report.

Governing Body options:

Adopt the recommendation of the Planning Commission by Ordinance (6 votes);

Override the Planning Commission's recommendation by a two-thirds majority (7 votes) of the Governing Body membership; or,

Return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or disapprove.

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

[Ordinance](#)

[Staff Report](#)

[Codicil to Staff Report](#)

[Aerial](#)

[Zoning Map](#)

[PUD Plan p1 of 2](#)

[PUD Plan p2 of 2](#)

[Planning Commission Minutes](#)

[Traffic Information](#)

[Planning Commission Minutes](#)

[Planning Commission Minutes](#)

(Published in the Topeka Metro News _____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC), by providing for certain changes in zoning on property generally bound on the west by I-470, on the east by SW Arrowhead Road (extended), on the south by SW 17th Street and on the north by SW Drury Lane from "R-1" Single Family Dwelling District and "O&I-2" Office and Institutional District **ALL TO** "PUD" Planned Unit Development District ("O&I-2" use group, with limited "C-1" and "C-2" use group uses). **(PUD10/11) (Council District No. 9)**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 18.50.050 of the Topeka Municipal Code (TMC), be and the same is hereby amended, by reclassifying the follow described property:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M. IN SHAWNEE COUNTY, KANSAS BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED RECORDED IN THE OFFICE OF THE SHAWNEE COUNTY REGISTER OF DEEDS IN BOOK 1466, AT PAGE 633 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 4; THENCE ON AZ. 90 DEGREES 34 MINUTES 48 SECONDS, 1,631.87 FEET; THENCE ON AZ. 344 DEGREES 55 MINUTES 48 SECONDS, ALONG AN EXTENSION OF THE EAST RIGHT OF WAY LINE OF INTERSTATE 470, 41.54 FEET TO THE INTERSECTION OF SAID RIGHT OF WAY AND THE NORTH RIGHT OF WAY LINE OF SW 17TH STREET, SAID INTERSECTION BEING THE POINT OF BEGINNING; THENCE ON AZ. 344 DEGREES 55 MINUTES 48 SECONDS, ALONG SAID EAST RIGHT OF WAY LINE, 444.50 FEET; THENCE CONTINUING ALONG SAID EAST RIGHT OF WAY LINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 3045.37 FEET, AN ARC DISTANCE OF 442.06 FEET, A CHORD AZ. OF 340 DEGREES 46 MINUTES 17 SECONDS, A CHORD DISTANCE OF 441.68 FEET TO THE SOUTH LINE OF SHAWNEE HILLS SUBDIVISION AS RECORDED IN THE OFFICE OF THE SHAWNEE COUNTY REGISTER OF DEEDS IN BOOK 31 AT PAGE 36; THENCE ON AZ. 02 DEGREES 36 MINUTES 06 SECONDS, ALONG SAID SOUTH SUBDIVISION LINE, 41.31 FEET TO THE SOUTHWEST CORNER OF LOT 5, BLOCK D, SHAWNEE HILLS SUBDIVISION; THENCE ON AZ. 90 DEGREES 30 MINUTES 19 SECONDS, ALONG SAID SOUTH SUBDIVISION LINE AND THE SOUTH LINE OF SAID LOT 5, 139.96 FEET; THENCE ON AZ. 02 DEGREES 29 MINUTES 16 SECONDS, ALONG SAID SOUTH SUBDIVISION LINE AND THE EAST LINE OF SAID LOT 5, 363.60 FEET TO THE NORTHEAST CORNER OF

LOT 5, BLOCK D, SHAWNEE VILLAGE SUBDIVISION; THENCE ON AZ. 90 DEGREES 42 MINUTES 24 SECONDS, ALONG SOUTH RIGHT OF WAY LINE OF SW DRURY LANE ACCORDING TO SAID PLAT, 312.46 FEET; THENCE ON AZ. 180 DEGREES 42 MINUTES 24 SECONDS, PERPENDICULAR TO SAID RIGHT OF WAY LINE, 97.51 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 355.00 FEET, AN ARC DISTANCE OF 92.26 FEET, A CHORD AZ. 188 DEGREES 09 MINUTES 08 SECONDS AND A CHORD DISTANCE OF 92.00 FEET; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 600.00 FEET, AN ARC DISTANCE OF 301.46 FEET, A CHORD AZ. 181 DEGREES 12 MINUTES 13 SECONDS, A CHORD DISTANCE OF 298.31 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 525.00 FEET, AN ARC DISTANCE OF 120.67 FEET, A CHORD AZ. 173 DEGREES 23 MINUTES 39 SECONDS, A CHORD DISTANCE OF 120.40 FEET; THENCE ON AZ. 179 DEGREES 58 MINUTES 44 SECONDS, 56.67 FEET; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 525.00 FEET, AN ARC DISTANCE OF 163.26 FEET, A CHORD AZ. 171 DEGREES 04 MINUTES 12 SECONDS, A CHORD LENGTH OF 162.61 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 355.00 FEET, AN ARC LENGTH OF 239.03 FEET, A CHORD AZ. 181 DEGREES 27 MINUTES 01 SECONDS, A CHORD DISTANCE OF 234.54 FEET; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 355.00 FEET, AN ARC DISTANCE OF 124.91 FEET, A CHORD AZ. 190 DEGREES 39 MINUTES 35 SECONDS, A CHORD DISTANCE OF 124.27 FEET; THENCE ON AZ. 180 DEGREES 34 MINUTES 48 SECONDS, 67.40 FEET TO THE NORTH RIGHT OF WAY LINE OF SW 17TH STREET; THENCE ON AZ. 270 DEGREES 34 MINUTES 48 SECONDS, ALONG SAID RIGHT OF WAY LINE, 198.03 FEET TO THE EAST RIGHT OF WAY OF INTERSTATE 470 AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 407,503 SQUARE FEET (9.35 ACRES) OF LAND, MORE OR LESS.

Section 2. The development of the site is from "R-1" Single Family Dwelling District and "O&I-2" Office and Institutional District **ALL TO** "PUD" Planned Unit Development District ("O&I-2" use group, with limited "C-1" and "C-2" use group uses). **Subject to:**

- 1. Use and compliance of the site in accordance with the recorded Master Planned Unit Development Plan for Homestead Addition.**

Section 3. The Master PUD Plan for Homestead Addition shall be recorded with the Shawnee County Register of Deeds in accordance with Section 18.190.060(b) of the Topeka Municipal Code (TMC). Following the recording of the Master PUD Plan and prior to any building and/or land development on the site, a site development plan shall be submitted for review and administrative approval by the Planning Director.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

Section 5. This Ordinance Number shall be fixed upon the "District Map".

Section 6. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

PASSED AND APPROVED by the Governing Body of the City of Topeka,
_____, 2011.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

To Be Codified _____

Not To Be Codified **X**

November 15, 2010
Agenda Item #F-1a

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: PUD10/11 Homestead Addition PUD **by:** Klaton Properties, L.L.C.

PROPOSAL: Amend the District Zoning Classification from "O&I-2" Office and Institutional District, and "R-1" Single-Family Dwelling District **TO** "PUD" Planned Unit Development District ("O&I-2" Office and Institutional District use group with limited "C-1" and "C-2" uses).

LOCATION: Property is bounded on the west by I-470 Highway, on the east by SW Arrowhead Road (extended) and lies between SW Drury Lane and SW 17th Street.

PRESENT USE: The property is an approximate 9.35-acre vacant tract.

PROPOSED USE: The applicant is seeking rezoning to allow the property to be developed for professional office and light retail uses focused primarily toward the health care sector and possibly a hotel, motel, apartment hotel development.

CHARACTER OF NEIGHBORHOOD: The property is located to the north and west of established single-family residential neighborhoods and is bordered by I-470 on the west. The area serves as the transition between the Wanamaker commercial corridor to the west and single-family residential uses to the east. Restaurant, hotel, and office uses are located to the far northwest of this property at the I-470/SW Huntoon egress ramp. Immediately to the northeast, (across SW Drury Lane) are the offices of Koss Construction and the Kansas Corporation Commission (KCC).

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	"O&I-2" Office & Institutional District "O&I-1" Office & Institutional District "C-4" Commercial District	KCC Offices Offices of Koss Construction Hampton Inn Motel
South:	"R-1" Single-Family Dwelling District	Single-family residences
East:	"R-1" Single-Family Dwelling District	Applicant's vacant land Single-family residences
West:	Right-of-Way	Highway I-470

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LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: The property has remained unimproved since being annexed into the City in 1979. That portion which is zoned for single-family residential uses has existed since the property was annexed. The portion currently zoned for office use was rezoned by Ordinance 17965, in 2003.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: The property may still be suitable for uses as presently restricted. The site's present classification is consistent with the established pattern of zoning and land uses in the area. The property is adjacent to established single-family residential areas on both the south and east, and office uses on the north across SW Drury Lane. The interstate (I-470) serves as a logical physical barrier between the subject property and the Wanamaker commercial district. The eastern edge of I-470, between SW 17th Street and SW 29th Street follows a pattern of low density residential zoning/uses except at interchanges along the Interstate. The subject property is not at an intersection of two arterials, but lies 1/3 mile east of a major highway interchange (SW Wanamaker Road and SW 17th Street). Traveling easterly, access to the site from either the north or south is through office and commercial districts while access from the east is through residential neighborhoods. The property serves as a strategic transition area for the single-family residential uses to the east and south. Therefore, the area may be considered suitable for somewhat more intense uses, such as office and limited commercial, **if** appropriate mitigating measures are employed through utilization of a "PUD".

CONFORMANCE TO COMPREHENSIVE PLAN: The *Topeka Land Use and Growth Management Plan – 2025* designates this area for Commercial/Office uses. However, established patterns of land use and accepted planning principles must be recognized as basic factors which strongly influence rezoning decisions. The area to the east and south of the subject property has been developed entirely for single-family residential uses. The Comprehensive Plan encourages that commercial zoning be located at arterial intersections with a gradual stepping down in zoning intensity the farther removed from the intersection. (This may be achieved through the establishment of office or multiple-family uses which serve to transition into adjacent single-family residential neighborhoods.) The intensity of commercial zoning which the PUD is proposing for this property would provide little land use transition between commercial uses and the existing single-family residences. Although a commercial node has developed on the east side of I-470 at the intersection of I-470/SW Huntoon, this is only due to its location at the egress ramp. In accordance with Comprehensive Plan principles, a land use transition should exist between the existing commercial zoning and the single-family zoning to the east and south which can be provided by placing more emphases on the office and medical related components of the proposed PUD plan rather than on general retail.

Planning staff proposes that the commercial element of the plan be consolidated in a possible hotel, motel, apartment hotel development located only on the proposed Lot 4, Block A, with no other commercial uses being permitted within the limits of the PUD, except those directly related to the "medical" theme associated with the office element of the plan. This would facilitate the desired stepping down in zoning classifications between the existing commercial west of I-470, the limited commercial existing immediately east of I-470 at the egress ramp, and the well established single-family residential developments to the south and east. A more intense commercial zoning on this property jeopardizes and threatens to break this long established transition area and disrupt the integrity of the existing single-

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family neighborhoods in the vicinity of SW 17th Street. General retail/commercial zoning at this location is contrary to the City's adopted *Comprehensive Plan*.

The PUD should implement some measures to discourage cut through traffic from using SW Arrowhead and have appropriate landscaping along the extension of SW Arrowhead Road to reduce potential impacts resulting from traffic noise and distracting lighting that would otherwise affect the environment and serenity of a residential neighborhood located adjacent to a major traffic thoroughfare. The design principles in the City's *Comprehensive Plan* state that collector streets should not connect two arterials. The future land use element of the *Comprehensive Plan* illustrates this principle of requiring collector streets to "jog" at least one time to discourage cut-through traffic. Arrowhead Road currently runs from SW 17th Street to SW 21st Street. Further extension of SW Arrowhead Road through this PUD to connect to SW Drury Lane without some type of traffic calming measure would not be appropriate. SW Arrowhead Road will most likely become a bypass of SW Wanamaker Road through the residential neighborhood south of SW 17th Street if a straight and unimpeded connection of SW Arrowhead Road between SW 17th Street and SW Drury Lane is allowed to occur.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: Removing the present restrictions without implementation of mitigating measures would permit the property to develop up to a level of commercial intensity inconsistent with accepted planning principles, which dictate that commercial uses should be located at arterial intersections and there should be a transitional area between uses of such varied intensity as commercial and single-family residential. As I-470 serves as the strategic physical barrier between the subject site and the Wanamaker commercial district, the site itself has served as an additional buffer between that commercial district and the interstate highway with the existing single-family residential areas to the east. Therefore, to permit this present transitional area to be breached in the manner proposed could potentially disrupt the health and viability of the existing single-family neighborhoods. Residential development exists that abuts the interstate between SW 17th Street and SW 29th Street as well as along many other interstate highway segments throughout Topeka. However, introducing an element of office and medical related uses immediately abutting the interstate may be appropriate in this area.

PREVIOUS ACTIONS:

In 2007, owners of the subject property sought to rezone the site to "C-4" Commercial District [Z07/24]. The proposal was disapproved by the Planning Commission by a vote of 1-6-0.* The subject property currently only has access on the south onto SW 17th Street (a two-lane arterial not currently built to urban standards) and on the north onto SW Drury Lane (a local street). On September 19, 2007, traffic counts were taken by the City of Topeka Engineering Division – Traffic Section for the east and west legs of SW 17th Street and the south leg of SW Arrowhead Road. Traffic engineering standards generally indicate the maximum carrying capacity of a two-lane arterial is approximately 12,000-14,000 ADT. Based upon these standards, SW 17th Street was shown on the date the counts were taken to already be nearing its maximum capacity with approximately 10,400 ADT at this location.* As mentioned previously the impact to local streets (e.g. extension of SW Arrowhead Road) could be significant given the amount of cut-through traffic that will be possible once SW Drury Lane and SW 17th Street are connected providing access clear to SW 21st Street. This information coupled with estimated trip generations compiled by planning staff based on this current proposal for the site, indicates that a traffic study is warranted for the project.* (* See Attached - Planning Commission Minutes from October and November 2007 meetings. - Traffic count for SW 17th is an ADT count taken by City of Topeka Traffic Engineering on September 19, 2007 - Memo regarding Preliminary Estimate for Trip Generation

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Numbers.) The applicant has agreed to conduct a traffic study but the results were not available in time to be included in this staff report. It can be expected the removal of the present restrictions without implementation of mitigating measures could have a detrimental effect upon the surrounding area and land uses. Staff recommends revisions be made to the PUD proposal in order to minimize any adverse effects on the surrounding area by limiting the intensity of use so they are more in keeping with what is considered appropriate for a transitional area, between commercial and residential zoned properties. These revisions are in the STAFF RECOMMENDATION section of this staff report.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER:

As proposed, the reclassification of the subject property, to permit commercial retail is inconsistent with the majority of the zoning and land uses of the surrounding properties. Such action is generally viewed as having a detrimental effect on the surrounding residential properties and undermines the expectations of homeowners located within the immediate area to the south and east. Denial of the proposal would allow the property to remain for uses as presently zoned for office and single-family residential, and both may still be suitable at this location. The gain to the public health, safety, and welfare would be to retain the established transitional zone between commercial and residential uses and not allow the single-family neighborhood to the east and south to be compromised from conflict that can occur with commercial in such close proximity. Therefore, there would appear to be no particular gain to the public health, safety, and welfare in removing the present restrictions to permit the level of commercial expansion as suggested in the applicants' PUD proposal. On the contrary, if more than a moderate increase of the present restrictions as supported by staff were permitted the property could be developed inconsistent with the surrounding uses, the adopted *Comprehensive Plan*, and accepted planning principles. The hardship imposed upon the landowners in implementing staff's recommendations is not as evident as the hardship imposed by the applicants' proposal on those properties to the east and those to the south of SW 17th Street located nearby the Interstate that have developed as single-family residential.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area however; a sewer line extension will be necessary to serve the development with all sewer main installation being at the developer's expense.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Application: **Incomplete** – A Traffic Impact Analysis "TIA" is required.

Minimum Lot Area: **Compliant.**

Setbacks: **N/A** (vacant property)

Platting: **Non-Compliant** – This request is accompanied by the preliminary plat [P10/25] Homestead Addition Subdivision, which proposes to plat the subject property into a five lot, two block subdivision.

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CONCERNS OF STAFF AND REVIEWING AGENCIES: No other significant issues or concerns were expressed by reviewing staff relative to code compliance or the provisions of public services with exception of those concerns expressed by planning staff and contained in this report.

ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: Not Applicable.
2. Capitol Plaza Area: Not Applicable.
3. Flood Hazard Area: Not Applicable.
4. Airport Hazard Area: Not Applicable.
5. Historic Properties: Not Applicable.

STAFF RECOMMENDATION:

Based upon the above findings and analysis Planning Staff recommends **DISAPPROVAL** of this proposal as presented by the applicant.

However, staff would recommend **APPROVAL**, with the applicant's consent to submission of a revised "PUD" Master Planned Unit Development Plan for "O&I-2" Office and Institutional District use group (with limited "C-2" uses directly related to the medical complex theme proposed for this site and a hotel, motel and apartment hotel only on the proposed Lot 4, Block A). **Subject to the following conditions:**

1. The **PROJECT PERFORMANCE OBJECTIVE** statement needs to remove reference to *"Light Commercial."*
2. Under the heading, **GENERAL NOTES** the following notes are to be changed.
 - Note No. 2 is to be changed to read as follows: *"Pursuant to TMC 18.190.060, the applicant must record the Master PUD Plan with the Shawnee County Register of Deeds within 60 days upon approval of the Governing Body. Failure by the applicant to record the plan within the prescribed time period or provide the Planning Department fifteen (15) copies of the recorded plan within ninety (90) days of the date of action by the Governing Body shall deem the zoning petition null and void."*
 - Note No. 5 is to be changed to read as follows: *"All applicable base use group regulations apply unless stated otherwise."*
 - Note No. 7 is to be changed to read as follows: *"The location, height, type of fixture and intensity of site lighting shall be determined at the site development plan stage but shall not exceed 3 foot-candles at the lot line. All site lighting shall be directed away from adjacent properties and the source of the illumination shall not be visible from adjacent properties."*

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3. Under the heading, **CIRCULATION, PARKING AND TRAFFIC NOTES** all references to commercial and warehouse parking ratios under Note No. 1 are to be removed. In addition, the last sentence of Note No. 2 is to be changed to read as follows: *"All accessways providing general accessibility to, and circulation among the buildings and uses within the planned unit development shall be maintained at all times in good serviceable condition with the maintenance of said accessways being the responsibility of the owner upon whose property they lie."*
4. The PUD shall indicate on-site and/or off-site traffic calming measures to discourage cut-through traffic, which should also be included on the companion proposed subdivision plat.
5. Submit a traffic study for the project.
6. Under the heading, **SIGNAGE NOTES** the following notes are to be changed.
 - Note No. 2 is to be changed to read as follows: *"One advertising sign shall be allowed on either Lot 3 or Lot 4, Block A, not to exceed a maximum height of 35 feet and a maximum of 250 square feet per single sign face with only that portion of the sign facing west (toward the interstate) being internally or otherwise illuminated."*
 - Note No. 3 is to include the following statement: *"There shall be no illuminated signage above the height of 8 feet which faces east."*
 - Add a Note No. 4 to read as follows: *"Within the Planned Unit Development there shall be no type of electronic message center signage allowed above a height of 8 feet."*
7. Under the heading, **PROJECT PROGRAM** for Lots 1-3, Block A: ZONING USE GROUPS: should be changed to read as follows: *"BASE ZONING USE GROUP:" O&I-2 USE GROUP: All permitted uses "in addition to orthopedic, medical appliance and prosthesis stores; optician and the sale of eyeglasses; hearing aid evaluations, fitting and sales."*
8. Under the heading, **PROJECT PROGRAM** for Lot 4, Block A: ZONING USE GROUPS: should be changed to read as follows: *"BASE ZONING USE GROUP:" O&I-2 USE GROUP: All permitted uses "in addition to hotel, motel and apartment hotel; orthopedic, medical appliance and prosthesis stores; optician and the sale of eyeglasses; hearing aid evaluations, fitting and sales."*
9. Under the heading, **PROJECT PROGRAM** for Lot 4, Block A: STRUCTURE DENSITY AND HEIGHT - *MAXIMUM HEIGHT*: should be changed from 70 to *"50"* feet.
10. Under the heading, **BUILDING AND STRUCTURAL NOTES** Note No. 2 is to be changed to read as follows: *"Side yard setbacks and the minimum distance between two principal structures on the same lot shall be ten feet."*

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11. Master PUD Plan needs to reflect restricted access as established by the subdivision plat.
12. Master PUD plan needs to reflect the stream buffer, graphics and notes as on the subdivision plat.
13. Correct typo under General Notes No. 6 and Note No. 3 under Signage Notes.

Prepared by: Dean W. Diediker
Planner II



CITY OF TOPEKA

PLANNING DEPARTMENT
620 SE Madison Street, Unit 11
Topeka, Kansas 66607-1118
Tel.: (785) 368-3728
Fax: (785) 368-2535

MEMORANDUM

To: Topeka Planning Commission

From: David Thurbon, Director

Re: PUD10/11 Homestead Addition PUD – Update of Staff Report (Agenda Item F-1a)

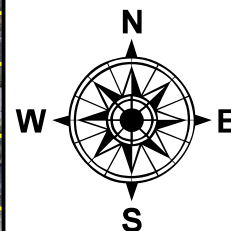
Date: December 9, 2010

SUMMARY: This item was discussed by the Planning Commission at their November 15, 2010 public hearing. The Planning Commission voted 7-0-0 to continue the matter to their December 20, 2010 public hearing, to allow City staff time to evaluate the traffic study that was submitted to the City staff just prior to the November 15th public hearing. The City Traffic Engineer has since reviewed the Traffic Impact Study and in her memo dated December 1, 2010 (copy attached), indicated a traffic calming feature would be desirable on SW Arrowhead, between SW Drury Lane and SW 17th Street. The engineer mentioned a "traffic circle" as being one option if the traffic calming measure was implemented by the applicant. Planning staff also thinks a traffic calming feature may be beneficial to both the project and the nearby residential neighborhoods but defers this decision to the Planning Commission.

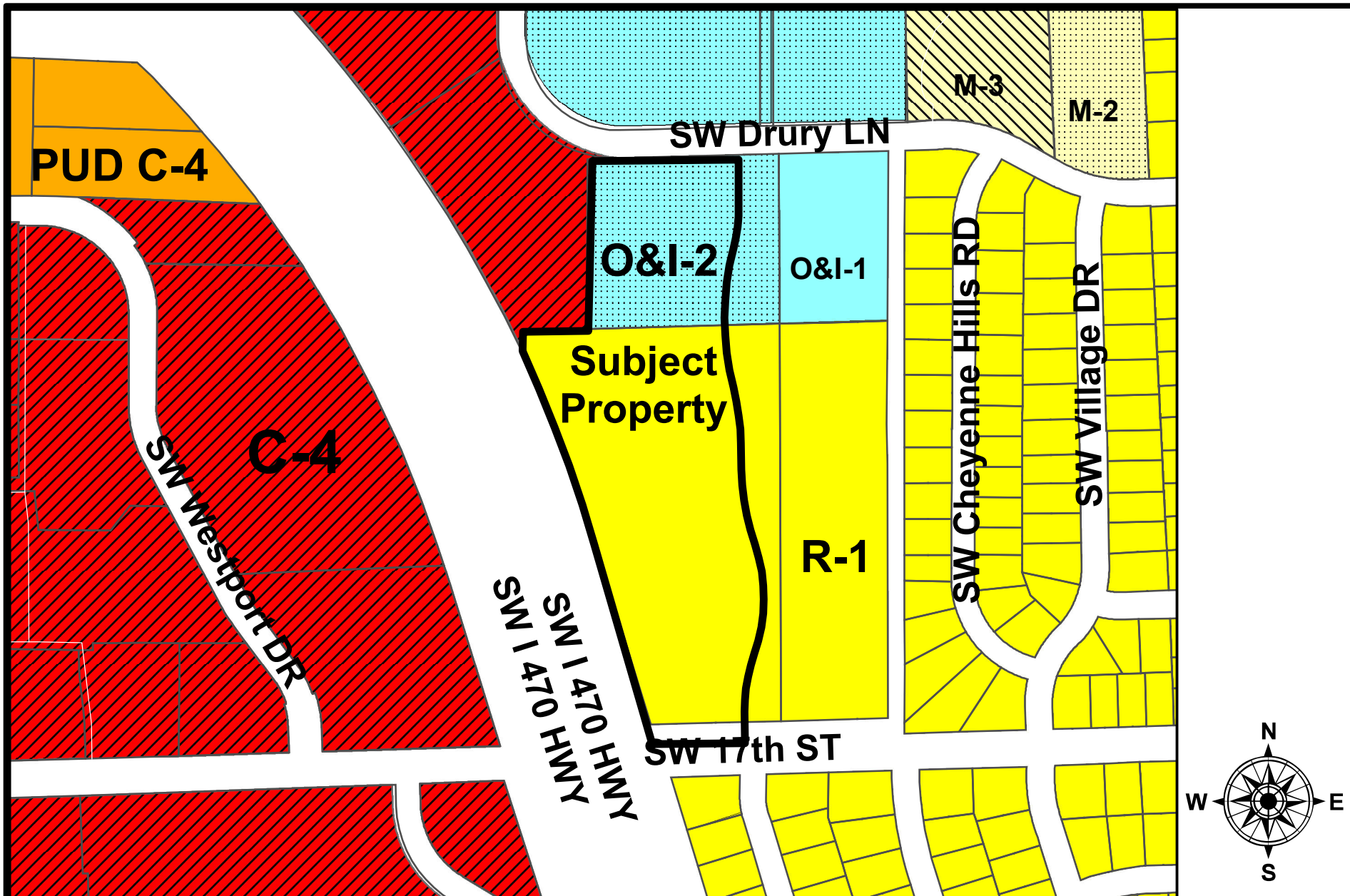
The applicant has addressed to Planning staff's satisfaction all previous concerns with the exception of those conditions of approval described below.

STAFF RECOMMENDATION: Based upon the previous findings and analysis and this update, Planning staff recommends **APPROVAL** of this proposal **subject to the following conditions:**

1. Use and development of the site in accordance with the recorded Planned Unit Development Master Plan of the Homestead Addition PUD.
2. Remove "T.T.E." and "P.E." from the plan legend, as neither are elements of this plan.
3. "S.T.E." and "O.A.S.E." are referenced in the plan legend. But are not indicated on the plan graphically. The plan needs to either indicate these areas graphically or remove their references from the legend.
4. Note No. 1 under the heading, **CIRCULATION, PARKING AND TRAFFIC NOTES** regarding the hotel is to be changed to read as follows: *"Hotel : 1 space per sleeping room. For an ancillary restaurant, reception, conference or assembly use contained entirely within the hotel building footprint, 1 space per 150 square feet of floor area or 1/3 the occupancy load of that area."*
5. Planning Commission decision regarding any required traffic calming for SW Arrowhead Road, between SW Drury Lane and SW 17th Street.



PUD10/11 Homestead Addition PUD



PUD10/11 Homestead Addition PUD

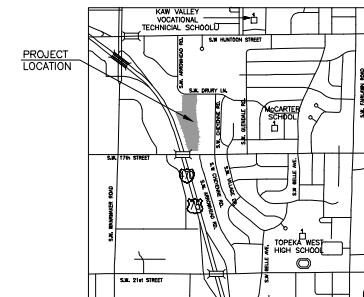
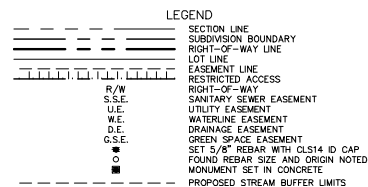
CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS

DATE : _____ TIME : _____

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M. IN SHAWNEE COUNTY, KANSAS BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED RECORDED IN THE OFFICE OF THE SHAWNEE COUNTY REGISTER OF DEEDS IN BOOK 1466, AT PAGE 633 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 4; THENCE ON AZ. 90 DEGREES 34 MINUTES 48 SECONDS, ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 4, 1,631.87 FEET; THENCE ON AZ. 344 DEGREES 55 MINUTES 48 SECONDS, ALONG AN EXTENSION OF THE EAST RIGHT OF WAY LINE OF INTERSTATE 470, 41.54 FEET TO THE INTERSECTION OF SAID RIGHT OF WAY AND THE NORTH RIGHT OF WAY LINE OF SW 7TH STREET; SAID INTERSECTION BEING THE POINT OF BEGINNING OF SAID 180 DEGREE 42 MINUTES 24 SECONDS CHORD CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 444.50 FEET; THENCE CONTINUING ALONG SAID EAST RIGHT OF WAY LINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 3045.37 FEET, AN ARC DISTANCE OF 442.07 FEET, A CHORD AZ. OF 340 DEGREES 46 MINUTES 17 SECONDS, A CHORD DISTANCE OF 447.68 FEET TO THE SOUTH LINE OF SHAWNEE HILLS VILLAGE SUBDIVISION NO. 2, BLOCK 5 AS RECORDED IN THE OFFICE OF THE SHAWNEE COUNTY CLERK; THENCE SOUTHERLY ALONG SAID SOUTH LINE OF SHAWNEE HILLS VILLAGE SUBDIVISION NO. 2, BLOCK 5, SOUTH SUBDIVISION LINE, 41.31 FEET TO THE SOUTHWEST CORNER OF LOT 5, BLOCK 4, SHAWNEE HILLS VILLAGE SUBDIVISION NO. 2; THENCE ON AZ. 90 DEGREES 30 MINUTES 19 SECONDS, ALONG SAID SOUTH SUBDIVISION LINE AND THE SOUTH LINE OF SAID LOT 5, 139.96 FEET; THENCE ON AZ. 02 DEGREES 29 MINUTES 16 SECONDS, ALONG SAID SOUTH SUBDIVISION LINE AND THE EAST LINE OF SAID LOT 5, 363.60 FEET TO THE NORTHEAST CORNER OF LOT 5, BLOCK 4, SHAWNEE HILLS VILLAGE SUBDIVISION NO. 2; THENCE ON AZ. 180 DEGREES 42 MINUTES 24 SECONDS, ALONG SAID SOUTH RIGHT OF WAY LINE OF INTERSTATE 470, 97.51 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 355.00 FEET, AN ARC DISTANCE OF 92.26 FEET, A CHORD AZ. OF 188 DEGREES 09 MINUTES 08 SECONDS AND A CHORD DISTANCE OF 92.00 FEET; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 355.00 FEET, AN ARC DISTANCE OF 92.26 FEET, A CHORD AZ. OF 91 DEGREES 51 MINUTES 52 SECONDS, A CHORD DISTANCE OF 92.00 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 525.00 FEET, AN ARC DISTANCE OF 120.67 FEET, A CHORD AZ. OF 173 DEGREES 23 MINUTES 39 SECONDS, A CHORD DISTANCE OF 120.40 FEET; THENCE ON AZ. 179 DEGREES 58 MINUTES 44 SECONDS, 56.67 FEET; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 525.00 FEET, AN ARC DISTANCE OF 120.67 FEET, A CHORD AZ. OF 171 DEGREES 44 MINUTES 34 SECONDS, A CHORD DISTANCE OF 120.40 FEET; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 525.00 FEET, AN ARC LENGTH OF 239.67 FEET, A CHORD AZ. OF 181 DEGREES 27 MINUTES 01 SECONDS, A CHORD DISTANCE OF 234.54 FEET; THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 355.00 FEET, AN ARC DISTANCE OF 124.91 FEET, A CHORD AZ. OF 190 DEGREES 39 MINUTES 35 SECONDS, A CHORD DISTANCE OF 124.27 FEET; THENCE ON AZ. 180 DEGREES 34 MINUTES 48 SECONDS, 67.40 FEET TO THE NORTH RIGHT OF WAY OF SW 7TH STREET; THENCE ON AZ. 180 DEGREES 34 MINUTES 48 SECONDS, 198.03 FEET ALONG SAID RIGHT OF WAY LINE, 198.03 FEET TO THE EAST RIGHT OF WAY OF INTERSTATE 470 AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 407,503 SQUARE FEET (9.35 ACRES) OF LAND, MORE OR LESS



VICINITY MAP

PLANNED UNIT DEVELOPMENT

HOMESTEAD ADDITION
SW DRURY LANE & SW 17TH STREET
TOPEKA, SHAWNEE COUNTY, KANSAS

BARTLETT & WEST

DESIGNED BY:	ACS
DRAWN BY:	DJS/JMD
APPROVED BY:	RJE
DESIGN PROJ:	16887.100
CONST PROJ:	16887.100
SCALE:	1" = 100'
DATE:	10/01/2010
DRAWING NO:	PUD 10/11

DATE : _____ TIME : _____

2 of 2

**Minutes of the
Topeka Planning Commission
Monday, December 20, 2010**

PUD10/11 Homestead Addition PUD by Klaton Properties, L.L.C., James A. Klausman, managing member requesting to amend the District Zoning Classification from “R-1” Single Family Dwelling District and “O&I-2” Office and Institutional District **ALL TO** “PUD” Planned Unit Development (“O&I-2, C-1 and C-2” use groups) on property generally bound on the west by I-470, on the east by SW Arrowhead Road (extended), on the south by SW 17th Street and on the north by SW Drury Lane. **(Diediker)**

Homestead Addition Development – Bill Hoover summarized the zoning and subdivision reports together. Discussion for both is together below but voting was separate on each item.

Proponents:

Angela Sharp, Bartlett & West Engineers, spoke in favor of the proposal. She stated the left turn lane off of 17th Street into the development is needed. She said pavement will be widened to provide the turn lane and the additional right-of-way will come from the subject property. The traffic circle between Drury and Arrowhead may be beneficial. She stated she talked to the neighbors about their concerns regarding drainage and traffic and reassured them it will be taken care of.

Mike Lackey asked what the applicant thought of the traffic calming devise. Ms. Sharp replied she isn't sure how effective it would be but if it is required she didn't think the applicant would be against putting it in. She said there are curves in the road that will provide some traffic calming. As small as the traffic circle would be I am not sure it would help or not. If there is a landscape feature in the middle of the circle it would be within the right-of-way and maintained by the city, which would cost more. Rich Beardmore asked if speed bumps are considered traffic calming? Ms. Sharp replied, yes, but the traffic engineer would have to decide if they would work in this area. Ms. Sharp said originally cutting through the neighborhood to the south was a concern but since the island was put in on 17th Street it shouldn't be much of an issue and I don't think anyone from that area has a problem with this development.

No one spoke in opposition.

Mr. Beardmore asked if the applicant in agreement with the conditions in the staff report? Mr. Hoover said the only thing that is unknown is the traffic calming devise. Mr. Lackey said he doesn't think it is needed due to the curved road and not much traffic will be generated from a development like this. He said if necessary speed humps could be added later. Lee Williams agreed, he didn't feel the traffic calming devise is needed. Kevin Beck added the T intersection on Drury Lane is calming in itself.

Lee Williams moved approval as written by staff but removing the condition requiring the traffic calming devise, seconded by Dawn Wright. **APPROVAL. (7-0-0)**

City of Topeka

Page 1

Public Works Department

Engineering Division - Traffic Section

Site Code: 000000000022

Station ID:

SW 17th St

SW Arrowhead Rd.

Intersection Leg: East
Counted By: KAP & CDR
Counter #: JT-111S
Hose Set #: 18

Start Time	19-Sep-07 Wed	WB		Hour Totals		EB		Hour Totals		Combined Totals	
		Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon
12:00		5	152			9	97				
12:15		4	93			6	98				
12:30		2	105			3	113				
12:45		4	92	15	442	3	86	21	394	36	836
01:00		8	113			5	97				
01:15		2	81			5	114				
01:30		3	91			6	82				
01:45		3	80	16	365	2	85	18	378	34	743
02:00		3	92			4	81				
02:15		3	81			2	90				
02:30		1	110			2	99				
02:45		1	105	8	388	1	107	9	377	17	765
03:00		3	87			2	99				
03:15		1	106			2	125				
03:30		3	113			4	84				
03:45		3	115	10	421	1	91	9	399	19	820
04:00		2	102			2	115				
04:15		6	119			1	105				
04:30		1	127			0	93				
04:45		7	116	16	464	2	110	5	423	21	887
05:00		3	137			2	111				
05:15		7	149			1	125				
05:30		11	143			6	111				
05:45		15	123	36	552	6	98	15	445	51	997
06:00		19	88			7	98				
06:15		15	123			8	91				
06:30		25	115			17	114				
06:45		31	87	90	413	17	101	49	404	139	817
07:00		28	89			28	89				
07:15		42	88			35	92				
07:30		52	78			43	92				
07:45		78	41	200	296	56	88	162	361	362	657
08:00		60	57			47	85				
08:15		55	56			34	73				
08:30		55	43			41	83				
08:45		65	33	235	189	44	58	166	299	401	488
09:00		81	37			39	64				
09:15		66	20			41	58				
09:30		60	29			50	53				
09:45		79	26	286	112	35	38	165	213	451	325
10:00		61	21			55	39				
10:15		74	23			58	30				
10:30		61	15			55	29				
10:45		92	11	288	70	69	17	237	115	525	185
11:00		94	11			63	28				
11:15		91	11			77	13				
11:30		135	10			77	18				
11:45		96	3	416	35	114	8	331	67	747	102
Total		1616	3747			1187	3875			2803	7622
Percent		30.1%	69.9%			23.4%	76.6%			26.9%	73.1%
Grand Total		1616	3747			1187	3875			2803	7622
Percent		30.1%	69.9%			23.4%	76.6%			26.9%	73.1%

ADT

ADT 10,425

AADT 10,425

City of Topeka

Page 1

Public Works Department

Engineering Division - Traffic Section

Site Code: 000000000024

Station ID:

SW 17th St.

SW Arrowhead Rd.

Intersection Leg: West

Counted By: KAP & CDR

Counter #: 03767

Hose Set #: 2

Start Time	19-Sep-07 Wed	EB		Hour Totals		WB		Hour Totals		Combined Totals	
		Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon
12:00		7	90			3	154				
12:15		5	108			5	99				
12:30		3	118			2	107				
12:45		4	79	19	395	5	101	15	461	34	856
01:00		5	109			8	112				
01:15		4	113			2	74				
01:30		6	93			4	92				
01:45		2	80	17	395	3	79	17	357	34	752
02:00		5	84			4	97				
02:15		2	99			2	66				
02:30		4	94			1	107				
02:45		1	106	12	383	1	94	8	364	20	747
03:00		3	99			3	94				
03:15		2	118			1	107				
03:30		4	86			5	106				
03:45		2	88	11	391	3	113	12	420	23	811
04:00		3	117			3	95				
04:15		1	104			7	118				
04:30		0	90			2	134				
04:45		2	105	6	416	7	121	19	468	25	884
05:00		2	118			3	137				
05:15		1	120			9	155				
05:30		6	108			10	142				
05:45		6	103	15	449	14	117	36	551	51	1000
06:00		5	104			16	96				
06:15		8	97			16	122				
06:30		16	115			22	102				
06:45		19	105	48	421	30	91	84	411	132	832
07:00		28	81			28	85				
07:15		30	87			41	84				
07:30		44	95			47	79				
07:45		54	89	156	352	85	44	201	292	357	644
08:00		40	88			58	57				
08:15		33	73			54	54				
08:30		46	81			55	45				
08:45		41	56	160	298	62	31	229	187	389	485
09:00		40	62			84	35				
09:15		38	59			67	21				
09:30		49	50			55	28				
09:45		35	38	162	209	79	25	285	109	447	318
10:00		53	35			63	21				
10:15		64	32			76	22				
10:30		54	30			65	15				
10:45		66	18	237	115	97	12	301	70	538	185
11:00		66	30			98	8				
11:15		83	13			90	12				
11:30		73	24			136	10				
11:45		124	7	346	74	98	3	422	33	768	107
Total		1189	3898			1629	3723			2818	7621
Percent		23.4%	76.6%			30.4%	69.6%			27.0%	73.0%
Grand Total		1189	3898			1629	3723			2818	7621
Percent		23.4%	76.6%			30.4%	69.6%			27.0%	73.0%

ADT

ADT 10,439

AADT 10,439

Two-lane
arterial
max
capacity =
12,000 -
14,000
AADT

City of Topeka

Page 1

Public Works Department

Engineering Division - Traffic Section

Site Code: 00000000023

Station ID:

SW Arrowhead Rd.

SW 17th St.

Intersection Leg: South

Counted By: KAP & CDR

Counter #: 03768

Hose Set #: 4

Start Time	19-Sep-07	NB		Hour Totals		SB		Hour Totals		Combined Totals	
		Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Morning	Afternoon
12:00	Wed	2	13			2	8				
12:15		1	9			0	7				
12:30		0	9			0	4				
12:45		1	11	4	42	0	11	2	30	6	72
01:00		0	6			0	16				
01:15		0	8			0	11				
01:30		1	5			0	9				
01:45		0	10	1	29	0	6	0	42	1	71
02:00		1	6			1	5				
02:15		0	8			1	16				
02:30		0	12			2	10				
02:45		0	5	1	31	0	8	4	39	5	70
03:00		0	9			1	7				
03:15		0	15			0	16				
03:30		1	9			0	17				
03:45		1	8	2	41	0	11	1	51	3	92
04:00		2	11			0	15				
04:15		1	8			1	8				
04:30		1	14			0	7				
04:45		1	12	5	45	1	9	2	39	7	84
05:00		0	13			0	12				
05:15		2	14			2	14				
05:30		0	8			0	12				
05:45		0	8	2	43	2	10	4	48	6	91
06:00		4	10			4	11				
06:15		1	5			1	10				
06:30		0	12			2	14				
06:45		2	8	7	35	6	7	13	42	20	77
07:00		3	8			5	8				
07:15		6	4			4	8				
07:30		6	8			12	6				
07:45		8	10	23	30	6	6	27	28	50	58
08:00		9	5			5	8				
08:15		5	6			8	7				
08:30		2	2			4	5				
08:45		4	4	20	17	5	2	22	22	42	39
09:00		9	4			5	7				
09:15		10	2			3	2				
09:30		4	4			9	2				
09:45		6	3	29	13	6	3	23	14	52	27
10:00		9	4			6	2				
10:15		4	3			9	5				
10:30		10	1			4	2				
10:45		17	1	40	9	7	1	26	10	66	19
11:00		9	0			10	5				
11:15		8	1			11	2				
11:30		12	1			9	4				
11:45		10	1	39	3	20	2	50	13	89	16
Total		173	338			174	378			347	716
Percent		33.9%	66.1%			31.5%	68.5%			32.6%	67.4%
Grand Total		173	338			174	378			347	716
Percent		33.9%	66.1%			31.5%	68.5%			32.6%	67.4%

ADT

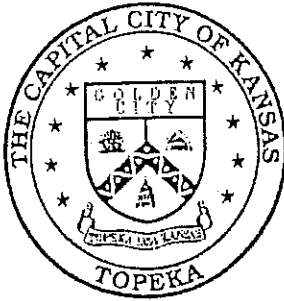
ADT 1,063

AAOT 1,063

COT 200-1500 car

1500 ADT?

Arrowhead 17th



CITY OF TOPEKA

PLANNING DEPARTMENT
620 SE Madison Street, Unit 11
Topeka, Kansas 66607-1118
Tel.: (785) 368-3728

David Thurbon, Director
Email: dthurbon@topeka.org
Fax: 785-368-2535
www.topeka.org

October 25, 2010

Re: Homestead Addition PUD – Preliminary Estimate for Trip Generation Numbers

The site has 4 tracts totaling 9.35 acres and Trip Generation 7th Edition was used for these estimated numbers. This is just one possible way of many possible ways of estimating the proposed project's trips.

Tract 1 (0.71 acres) Medical-Dental Office Building (720) estimated at 7,000 Sq. Ft.

<u>X=1,000 Sq. Ft.</u>	<u>Ave. Rate</u>	<u>#Trips</u>	<u>Entering</u>	<u>Exiting</u>
7	36.13	253 Weekday daily	127 (50%)	126 (50%)
7	2.48	17 Weekday AM Pk Hr.	13 (79%)	4 (21%)
7	3.72	26 Weekday PM Pk Hr.	7 (27%)	19 (73%)

Tract 2&3 (5.48 acres) General Office Building (710) Estimated at 55,000 Sq. Ft.

<u>X=1,000 Sq. Ft.</u>	<u>Ave. Rate</u>	<u>#Trips</u>	<u>Entering</u>	<u>Exiting</u>
55	11.01	606 Weekday daily	303 (50%)	303 (50%)
55	1.55	85 Weekday AM Pk Hr.	75 (88%)	10 (12%)
55	1.49	82 Weekday PM Pk Hr.	14 (17%)	68 (83%)

Tract 4 (2.28 acres) Hotel (310) Estimated at 100 Rooms

<u>X= # Rooms</u>	<u>Ave. Rate</u>	<u>#Trips</u>	<u>Entering</u>	<u>Exiting</u>
100	8.17	817 Weekday daily	408 (50%)	409 (50%)
100	0.56	56 Weekday AM Pk Hr.	34 (61%)	22 (39%)
100	0.59	59 Weekday PM Pk Hr.	31 (53%)	28 (47%)

Tract 1-4 (9.35 acres) Estimated Project Totals

<u>Numbers from Above</u>	<u>#Trips</u>	<u>Entering</u>	<u>Exiting</u>
253 + 606 + 817 =	1676 Weekday daily	838	838
17 + 85 + 56 =	158 Weekday AM Pk Hr.	122	36
26 + 82 + 59 =	167 Weekday PM Pk Hr.	52	115

Preliminary Warrants

1. 2,000 weekday trips (no, only 1676 weekday trips)
2. 200 peak hour trips (no, only 167 in PM Peak Hour)
3. 100 peak hour peak direction trips (yes, 122 in AM Peak Hr & 115 PM Peak Hr)

Prepared by:

Bill Hoover
Bill Hoover, AICP
Planner III

**Minutes of the
Topeka Planning Commission
October 15, 2007**

Z07/24 by South Knollwood Baptist Church requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District TO "C-4" Commercial District on property located at the northeast corner of I-470 Highway and SW 17th Street. **(Driver)** Annie Driver summarized the staff report.

Discussion by members:

Terry Simnitt asked if the property remains zoned R-1 will there be a TIA created or when the property starts to develop would one be done at that time? Mrs. Driver said one needs to be done if it is proposed for commercial. Mark Boyd said isn't there a point where a TIA would be needed depending on the trip count. Mr. Fiander replied yes.

Proponents:

Henry McClure, McClure Real Estate, spoke in favor of the proposal. He said he is representing future owners of this real estate. I am going to have to do a good job to sell this one. In the last case it didn't fit the plan but it fit the accepted principles. The way that area had developed is what helped get the approval. Talking about the area, this is an infill development. We have turned this area into a regional shopping area. Most of the properties in the area to the west are zoned commercial or are in a PUD with commercial uses. This property has been vacant for a long time. Since it came into the city it has sat vacant zoned residential. We are contiguous to C-4 development. I don't think office zoning is the best choice in this area. What are the major concerns? One is the neighborhood to the east. There is a natural 200-300 feet of stream buffer. You can't see it except from the interstate and possibly from the north to the south but not from 17th Street. I need your approval. The step down approach for this property doesn't work. You have C-4 on the north boundary which transitions this naturally to commercial zoning. The area does have a lot of traffic.

He said he disagrees that this proposal will make the area deteriorate as stated in the staff report. He gave a brief run down of when the homes were built in the area. Staff said multiple family would be more controversial than commercial and I agree. He said he asks for a stop to a no growth mentality. We need to think of economic development. I asked for C-4, I am not stuck on that. It will just help to promote the property easier. We won't touch the natural buffer to the east. It is not our fault that 17th Street isn't built to urban standards. We would construct a right turn in if necessary. We will help to do what is necessary. Let's put this one on the tax rolls. Jim Brown asked if there is any way to get access from Drury Lane? Mr. McClure said there is a road platted through there on the very easterly side of the property. I think we should vacate that road during the platting process to make the neighborhood feel better. We may talk to the hotel people to see if there is a way for access from their property. Mr. Brown asked if the C-4 zoning was approved how quickly would development start? Mr. McClure said very quickly. Howard Blackmon asked if there is a stream that acts as a natural buffer? Mr. McClure said in the tree line to the east of the property which is approximately 150 to 200 feet away.

Opponents:

Terry Cobb, has ownership in the area and his mother and two aunts live in the area, spoke in opposition to the proposal. He stated this is a great piece of property. It is high up. I think it needs something more than residential. He suggested a gated residential community, but the C-4 zoning is very questionable. I could see duplexes and four-plexes. The buffer is a sumac patch not a stream. Why do you think C-4 works here? This is a prime case for transitional zoning. You can't go residential to C-4 zoning. There needs to be some kind buffer.

Al Herman, 1551 SW Cheyenne, spoke in opposition to the proposal. He said there are many concerns because we don't know what is going in there. He said the trees run most of the way through the property. It is a cement water way east of this property from 17th Street to Drury lane. You can see the property from Cheyenne Lane when there are no leaves. He said he worries about added traffic in the area. He said Cheyenne Hills Road currently has a lot of traffic and this development may make it worse. He said in the C-2 zoning it requires buffer but it says nothing in the C-4. He added as long as there are trees there are buffers. He said he contacted the pastor of the church that owns the property and he said the church sold the property. My question is why aren't the new owners here and why aren't they listed as the applicants? He asked if all that are in opposition stand in the audience. Mr. Sanders asked if the neighborhood would oppose C-2 zoning? Mr. Herman replied yes he would oppose C-2. He said he thinks an office building would be good. He added in C-4 zoning you can have up to 7 stories, which you would be able to see that from everywhere. Mr. Sanders asked what is the height limit on O&I-1 and O&I-2? Fred what is height limit on O&I? Mr. Diediker replied 42 feet in O&I-1 and 75 feet in O&I-2.

Ron Kaufman, property owner in the area, spoke in opposition to the proposal. He said he would like to see a PUD on this property which would require a TIA. He said he has lived in the area since 1990. We enjoy the field behind us and realize it is unrealistic to think it would remain that way. There should be a plan developed to help the neighborhood understand it. Need something to restrict building height and sign height. We need a better transition area than commercial. I am concerned with the traffic. There is a site distance problem from Arrowhead going west onto 17th Street it is quiet challenging. He said it is hard to turn onto 17th Street due to traffic. The location of the bridge over I-470 will make difficult for left turns into this property. Lighting is another issue. If it is a high use area, it will need pretty tall signs and lights which could affect the residential to the east and south. He asked the Commission to concur with staff's recommendation for disapproval. Mr. Simnitt asked if the neighborhood has contacted the city regarding the traffic danger? Mr. Kaufman replied he is not worried right now but with this development it will be much more.

Gary Clarke, lives on Cheyenne Hills Road, spoke in opposition to the proposal. He said we built our home in 1988 in this area. And since then there have been many more single family homes built. We plan to remain here. I am concerned with this rezoning to C-4. This is the highest intensity commercial uses allowed and it would be a detriment to our neighborhood.

Floyd Graham, 1548 Cheyenne Hills Road, spoke in opposition to the proposal. He said he as lived here for almost 20 years. I enjoy looking out at the field. My concern is there is no buffer zone addressed in the C-4 zoning. There is traffic to the office buildings in the area. This c-4 would be detrimental to our neighborhood. I wish for you to follow staffs recommendations. I oppose the c-4 zoning.

Ed Thomason, 1701 Arrowhead, spoke in opposition to the proposal. He said his house is right on the corner of 17th & Arrowhead across the street from the proposal property. He said on subject the property it is not a big tree line it is a bunch of brush. There is a lot of traffic on 17th Street. I can't see where C-4 would be beneficial to anyone in this area. He said he never thought of all the light that could be produced on this property. The property to the north of the subject property has been sold. The only entrance onto the property would have to be across from intersection of 17th & Arrowhead. 17th Street would need to be widened, stop lights and many other changes would need to be made to accommodate the extra traffic. I oppose the c-4 zoning.

Mr. Boyd said he received a phone call from the applicant's representative asking if there is anything I didn't understand or any questions. He asked that I be open minded to C-4 zoning. He said the question is how to get access to the property. He said one access to 12 ½ acres of commercial property is not realistic. With all the opposition from the neighborhood, I can't support this.

Mr. Blackmon stated he had visited with the applicant's representative regarding access. He also asked me to be open minded. It is hard to be open minded about C-4 zoning up against a residential neighborhood. I think it would be better to come in with a PUD the way this sits.

Mr. Sanders said this is a tough piece of ground because it is adjacent to I-470. It butts up to C-4 and office zoned properties. There is limited access. He said I can't see C-4 for the more intense uses that are allowed. He said he could see C-2 on this property. I think people should be allowed to use their property. Don't know if there is a market for multiple-family on this property. I could see the possibility of a PUD, but I don't like to restrict the owner with that.

Theron Sims said he agrees with many of the commissioners. I think C-4 is too intense. Maybe C-2 or mixed uses. He said he would like to know if the applicant would be willing to pursue a PUD or modifications. A TIA is justifiable in this area. Maybe we should table this or maybe go to C-2. I would like to work with them rather than kill it today.

Mr. McClure said he is not married to C-4. He said C-2 would fit and I am willing to work around it. He said he doesn't think a PUD is needed. We are willing to step down to C-2.

Michelle Hoferer asked if improvements to 17th Street are in the CIP? Mr. Thurbon replied no.

Mr. Thurbon said denial of this zoning change request would not kill it. They could re-apply for a different zoning next month. Mr. Sims said there still needs to be some type of buffer no matter what the zoning, possibly in landscaping.

Kathy Thomason, 1701 Arrowhead, spoke in opposition to the proposal. She stated homes near I-470 sell quickly so the highway is not a deterrent.

Terry Cobb, developed the subdivision to the east, spoke in opposition to the proposal. He stated he met with the neighborhood prior to development and maybe the applicant should do the same. He said he thinks a PUD is needed on this property.

Ms. Hoferer said what is the process if we disapprove the proposal where does it go? Mr. Thurbon stated that is up to the applicant. He said normally we would forward onto the City Council or the applicant can withdraw the proposal prior to that. Mr. Thurbon said the Commission can change the zoning tonight as long as they stay within the proposed zoning group, which in this case C-1, C-2, C-3 or C-4 can be voted on then forwarded to the City Council. If the council wants anything other than what the Commission recommended they have to remand the proposal back to the Planning Commission. Once it is before them again they can suggest it be zoned a different classification.

Mr. Sanders stated we haven't talked much about transition from this property to the residential. He asked what is the process to change what they have requested to something lower. He said if staff doesn't think C-2 zoning is a proper buffer, what is? Mr. Thurbon said there is a buffer to the east and it was suggested to have an access from the north to address any of those concerns then it would require a PUD because you can't place stipulations on straight zoning. Mr. Sims stated he wouldn't want to draw out a PUD tonight. It is not appropriate to change the zoning at this meeting. Mr. Thurbon said there is not proposed use at this point and it will be promoted at whatever zoning it is given. Mr. Sanders asked if it is the Commission's responsibility to request 17th Street be improved? Mr. Thurbon said that is what will be discussed with the CIP. Mr. Sanders said the Commission needs to have more input regarding streets that need to be widened. We have had a lot of discussion about inappropriate infrastructure tonight. Mr. Sanders said we can't make the recommendation for C-2 and O&I-1 on this property? Mr. Thurbon said if you go outside the requested zoning classification you will have to bring it back at another meeting.

MOTION:

Theron Sims moved to continue the proposal to the November 19th Planning Commission meeting, seconded by Fred Sanders.

Exparte communications:

Blackmon – yes
 Boyd – yes
 Brown - yes
 Hoferer - no
 Sanders – yes
 Scott – no
 Simnitt – no
 Sims – yes

RESTATED MOTION:

Theron Sims moved to continue the proposal to the November 19th Planning Commission meeting, seconded by Fred Sanders. **CONTINUED to the November 19th Planning Commission meeting. (9-0-0)**

**Minutes of the
Topeka Planning Commission
November 19, 2007**

207/24 by South Knollwood Baptist Church requesting to amend the District Zoning Classification from "R-1" Single Family Dwelling District TO "C-4" Commercial District on property located at the northeast corner of I-470 Highway and SW 17th Street. **(Driver) Continued from the October 15th Planning Commission meeting.**

David Thurbon summarized the staff report and stated this case was continued from last month's meeting. The applicant now wants to rezone the western portion of the tract C-2 and they would come back at a later date to re-zone the eastern portion. A letter was passed out stating there has been an ownership change since the last meeting. Mr. Thurbon stated however, we don't have a letter from the new owner stating they want the zoning change and we would like to have that prior to going to City Council.

Discussion by members:

Fred Sanders said 17th Street traffic issue was mentioned at the previous and there is nothing the developer can do to help it. Mr. Thurbon said they could put in turn lanes. Mr. Sanders said then would staff accept it? Mr. Thurbon said no, we don't feel this is a good location for commercial except maybe at the northern portion of the property. Mr. Sanders stated 17th Street needs to be widened. He said there is a lot of residential property in Topeka. We need to give a little when it comes to commercial developments close to highways. Mr. Thurbon said there is a negative absorption rate for commercial properties. There is too much commercial land for the demand. Even if 17th Street was up to standards this property should not be zoned commercial according to land use principals. Staff recommends this location have an office zoning. He added a higher use could be accommodated through a PUD, which could include office, multi-family and small commercial.

Kimberly Scott asked if there should be a public hearing on this case since we don't have a signed authorization from the current owners? Mr. Thurbon said the new owners have the same representative as the previous owners (the church) and there maybe someone from the new ownership in the audience who could make a verbal statement supporting the rezoning application. Mr. Thurbon said the Commission could table this item until we have a signed document from the new owners or make a recommendation and staff will make sure a statement signed by the new owners authorizing the requested zoning change is provided prior to being placed on the City Council agenda. Mr. Sanders asked if the commission has to take into consideration any testimony from those opposing? Mr. Thurbon said, going back to the "golden criteria" there are seven criteria you must consider and public comment is not one of them but it does state there must be a public hearing. It is up to you how much that weighs on your decision. Howard Blackmon said he would like to follow up on Ms. Scott's question. He stated if we have any doubt this is not a proper procedure, we should stop it now. Mr. Thurbon said state law states the zone change must be initiated by the property owner but there is no reference to a procedure if the property changes hands during a zone change procedure. He said the commission can proceed but the item will not be sent on to council without the new property owner signatures.

Proponents:

Henry McClure, McClure Real Estate, representative for the new property owners. He said he doesn't understand the comment Mr. Thurbon made about commercial absorption. Mr. McClure said we have to continually grow. There are more commercial properties being built because the existing properties don't work for what is being developed. He said this problem will correct itself in time. This fits into the Comprehensive Plan. We have decided to come off the back of the houses 201 feet to the west and we request C-2. We will bring the eastern section back for rezoning at a later date. I will probably come back for M-2 for the eastern portion but for now it will remain R-1. I would like to have C-2 on the western portion. Staff said this property does deserve some commercial zoning. It will be far enough away from the residential properties to not bother them. He said he did have a party interested in C-4 on the property if was approved. If you are standing at the northwestern portion of the hotel property the houses to the east can't be seen due to topography. This project will have minimal effect on the residential properties. I think turn lanes will help solve the traffic problems. We will do anything to help our commercial property thrive. Michelle Hoferer asked how wide the property is that Mr. McClure wants to rezone to C-2? Mr. Thurbon said there is a total of 516 feet along 17th Street. He will be moving 30 ft to the west. Mr. McClure said we will be 201 feet from the property line and will be just outside the protest area. Ms. Scott said she would like staff to have time to review the new proposal. Ms. Hoferer asked if property can be split in zoning? Mr. Thurbon replied yes.

Michelle Hoferer asked those in opposition to state if their property is within the protest area.

Opponents:

Ron Coffman, lives within the protest area at 1547 SW Cheyenne Hills Road, spoke in opposition to the proposal. He said the commission has received the neighbor's letter outlining their objections. He said as we drive along Wanamaker there is a well stated commercial corridor. I-470 is a significant barrier between residential and commercial. We shouldn't let the Wanamaker corridor leak over the I-470 Highway. Even rezoning the western portion to C-2 will not work. It will be too close to residential area and the traffic will still be an issue. I can see the new hotel from my home. Mr. Sanders asked Mr. Coffman if C-2 would work on this property? Mr. Coffman said it is worth discussion but I think a PUD would work better.

Mr. McClure said as a point of clarity, with the proposal we are discussing, anyone who lives on Cheyenne Hills Road will be outside the protest area. Only those directly across 17th Street will be within the protest area.

Al Herman, lives within the protest area at 1551 SW Cheyenne Hills Road, spoke in opposition of the proposal. He said according to Shawnee County appraiser's website the eastern portion is 230 feet and the other is 850 feet. There are two parcel identifications on this property. He showed a picture of the view from the homes on Cheyenne Hills Road to the new hotel. It can be seen from our homes. He said we live in a well kept area. There is an assisted living home in this area. There are other uses for properties in this area. There was talk of a buffer in this area but it is simply over grown trees. You can see Wanamaker properties through the trees. They are a buffer and we would like to keep them. To the north there is no buffer. He said there is a drainage ditch that runs between the properties. There is a lot of water in the ditch now, with further development it will cause more run off and flood some of the properties in the area. Mr. Coffman showed pictures looking toward the south along 17th Street it is just open ground with no buffering. We can hear the trash containers being emptied on Wanamaker. How loud will that be on this property? He said there is a 35 foot easement between our property and theirs. We just don't think any commercial will work on this property. South of 17th Street along the interstate are all homes. There is some commercial once you approach 21st and 29th Streets but for the most part there are homes. There are two gated communities right next to the highway, so it is not true that homes don't belong next to the highway.

Floyd Grant, lives within the protest area at 1548 SW Cheyenne Hills Road, spoke in opposition to the proposal. He said there has been talks of a right turn out of the property but what about coming east on 17th Street into the property? Traffic will back up. He said staff recommended a PUD and that is what the neighborhood wants. He said we are very opposed to commercial on this property. He said he would come back for residential zoning on the property to the east but if the commercial is approved on the western portion, will this happen? Mr. Sanders asked Mr. Grant if he understands a PUD on the property could include some commercial? Mr. Grant replied yes but there will be a controlled plan.

Ed Thomason, lives within the protest area at the corner of 17th Street and Arrowhead, spoke in opposition to the proposal. He stated we have a nice neighborhood and would like to keep it that way. We like to live here because it is close to but separated from the commercial. I still get some of the effects of commercial being close, like trash. Coming out of my drive directly across 17th Street is the entrance to this property. He said if there was a traffic count done and I am sure around the holidays it could get to be 14000 to 15000. He said having commercial zoning on this property will devalue our homes. Traffic will get much worse. He said it currently gets backed up at times and the subject property is vacant.

Robert Calderwood, lives within the protest area at 1573 SW Cheyenne Hills Road, spoke in opposition to the proposal. He said he has a full view of the stores on Wanamaker from his home. He said the buffer trees are not over 20 feet high. I moved here in 1998 and there have been 3 owners on this property and the zoning has remained residential this whole time. He said the property could tap into sewer in his front yard. He said the drainage ditch is just that. It can get 5 feet deep and has been called a creek at times. He said it floods quite often. Any development on this property will make this problem worse. He said behind his house there is simply a runoff area; there isn't the cement drainage area. He said he can hear the noise from Wanamaker at his house, like the dumpsters being emptied and car alarms, He said with the increase in businesses on Wanamaker crime has also increased and commercial development on this property would only make it worse. He said the new hotel will probably bring in more undesirables. The creek area amplifies noise from Wanamaker.

Terry Cobb, his mother lives within the protest area at 1613 SW Cheyenne Hills Road, spoke in opposition to the proposal. He said he doesn't live at this location but has interest in the property. He said his mother's home has had real problems with the overflow from the drainage ditch. He stated after last month Planning Commission meeting the neighbors have been meeting every week to discuss this property. He said he and the neighbors would like to see a plan showing traffic, drainage and transitioning. He said at the last meeting he misspoke saying the treed area was nothing more than a sumac patch when in actuality there is a very nice line of trees there. Mr. McClure said there will be a minimum effect due to topography. Mr. Cobb said he thinks he misspoke on that one. We can see the hotel from the residential properties. It seems sloppy to rezone property C-2 on an imaginary line to the west. There has been a lot of sketchy information tonight. He said there have been a lot of promises made but let's see them in writing on a PUD.

There needs to be a plan. He said we realized it still could have some commercial on it if it is a PUD but at least there would be a plan. Mr. Sanders asked Mr. Cobb if M-2 would be a suitable buffer on the eastern portion of the property? Mr. Cobb said, personally, I would rather see offices or maybe single family homes but that could be outlined in a PUD. Mr. Sanders said the property owners are saying they can see commercial along Wanamaker from their homes. He said they are always going to see something. Mr. Cobb said that is true but it is a ways in the distance and not butting right up to the residential properties. A PUD would be the best plan. Terry Simnitt asked if the original plan for the property was to build a church? Mr. Cobb replied I am guessing yes, they thought it would be there, but the neighbors would know more than me. Mr. Simnitt stated a church would have been a very high traffic use. Mr. Cobb said you are really talking Sunday morning when not a lot of people are out and some nights. A church would be fine here. I guess there was a monument company that came to rezone in the past with a plan for the neighbors to look at and they were in support of it. Mr. Cobb said a little more work on this and a plan would make this a better development that maybe the neighbors could support.

Commissioner Howard Blackmon excused himself at approximately 7:30pm.

James Lotter, 1805 SW Arrowhead Road, spoke in opposition to the proposal. He said the interstate does make a nice buffer. He said due to topography the separation between residential and commercial has been pretty good. Now with the new hotel, fire trucks and trash trucks the noise has increased a lot. That is on Wanamaker if it is on this property it is much louder. The traffic on 17th Street is horrible even ambulances have trouble getting around. This will cause more noise, traffic and it won't be a quiet community anymore. There are businesses in the area that are 8-5 so they don't pose a lot of problems in the evening. With access on this property it will cause people to cut through the property. Drivers use Arrowhead as a cut through. Along Arrowhead there are a lot of families with children. A multi-family rental area won't help the traffic situation. There is a risk for the kids playing in the area. He added an 8-5 office would work on this property more so than multi-family housing.

Mr. Sanders asked if 17th Street is considered a minor arterial or collector street? Mr. Thurbon replied a minor arterial. Mr. Sanders said in the plan it states minor arterials can take commercial? Mr. Thurbon replied at an intersection. Mr. Sanders stated to the west of I-470 it is solid C-4 zoning and to the east is partial C-4 and residential. Mr. Thurbon said the zoning isn't running along I-470 but along Wanamaker Road. I-470 doesn't have access to the properties. Mr. Sanders asked what the traffic count is on 17th Street? Mr. Thurbon replied 10,000. Mr. Sanders asked if C-4 zoning is allowed on this property it would add an additional 3,400 trips a day or does it blend with what is already there? Mr. Thurbon said we don't have anyway to know that without a TIA. He said for now we look at engineering models to estimate the counts.

Ms. Scott asked if staff is comfortable with C-2 on the western portion of the property? Mr. Thurbon replied no. He said we think any C-2 should be along the north property line to tie in with existing c-2. We would like to see office or a large multi-family and some commercial on the remaining portion. Mr. Sanders asked for Mr. Thurbon to define C-2 that would be supported. Mr. Thurbon said a plan is needed to know for sure. Without a PUD or working with a developer it is hard to say. Ms. Scott said she doesn't think the commission can make a decision until all of these points are worked out. We have a zoning report for C-4, tonight they want C-2 on the western portion but that is only a verbal request, there is nothing in writing. Mark Boyd said with this property changing hands several times over the years there is a want/need on this property. The way this is being presented is hard to make a decision. There is changing of the lots lines and partial zoning is not good. There are too many issues on this property and I think this should be a PUD. A TIA is needed for this development. I won't support this until something more planned is presented. A PUD doesn't have to show a lot of detail, but it will show the important items to the neighborhood, staff, Planning Commission and City Council. He said he would like to table this one more time for the applicant to work on the plan. We can either vote it down or the applicant can come back with a PUD. Mr. Thurbon said if the commission takes action on this proposal and it is voted down, he has to wait a year to resubmit the same proposal unless he presents a plan that is substantially different there is no waiting period. Mr. Sanders said this project really needs to have a TIA. He said he thinks 17th Street will always be a two lane street due to the bridge over I-470 and it would cost a lot for widening. He added with the property being adjacent to residential we must listen to the residents. He said he thinks it would be a good idea to bring a plan forward for review by the neighborhood for their input. Mr. Thurbon said a neighborhood review is not required but it does help to work out all the issues. City Council likes to see developers that have presented their plans to the neighborhood prior to going to them. Mr. Sanders said how does a developer go about meeting with a neighborhood? Mr. Thurbon replied the Planning Department can help by supplying them with a listing of property owners in the area for meeting announcements. This has been done many times in the past with other developments. Mr. Sanders said he would like to hear from the applicant's representative to see what he would like the Commission to do. Ms. Hoferer said at this point it doesn't seem likely the requested commercial zoning will be approved by the commission. Mr. McClure said this property has changed ownership four times in the past few years. What if they read the comprehensive plan thinking they could get commercial zoning? He stated 90% of the complaints tonight are on the eastern part of the property and I only want to rezone the western portion. He said office zoning will not work on this property. It is up against an interstate. This property has been vacant for years. If it was such a great residential area

then it would have already developed. He said there is a gap because residential properties won't work up against the highway. He said C-2 zoning is a reasonable request for the area, right by the interstate. I don't want to do a TIA. I won't be able to get a building permit once a TIA is done. This property is not suited for residential. I will bring the eastern portion back in the future for M-2, you have my word. I would like you to vote C-2 up or down tonight for the western property.

Ms. Scott said she would like to have had a new staff report written up based on the request for C-2 on the western portion up to the highway. I am not for this or against I would like to see more work done on the staff report before making a decision.

Exparte communication – none

Mark Boyd moved approval of C-4 zoning as originally requested by the applicant, motion failed due to a lack of a second.

Mark Boyd moved approval of C-2 zoning as requested by the applicant on the western portion of the property along I-470 highway, seconded by Fred Sanders. **DISPPROVAL. (1-6-0) Commissioner Sims voted yes.**



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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

September 29, 2011

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DATE:	October 11, 2011		
CONTACT PERSON:	Braxton Copley	DOCUMENT #:	
SECOND PARTY/SUBJECT:	Citywide Alley Repair Project	PROJECT #:	T-841016.00
CATEGORY/SUBCATEGORY	014 Ordinances – Non-Codified / 004 Public Improvements		
CIP PROJECT:	No		
ACTION OF COUNCIL:		JOURNAL #:	
		PAGE #:	

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, authorizing Improvement Project No. T-841016.00 which provides for alley repair at various locations throughout the City, as more specifically described herein. **First Reading.** *(All Council Districts)*

(Approval of \$250,000 would authorize alley repairs to existing city alleys. The project would be funded from the Citywide Half Cent Special Purpose Retailers Sales Tax and is included in the 2011 CIB.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Approve the Project Budget and Ordinance as presented.

BACKGROUND:

This project will provide maintenance and improvements to existing alleys. Maintenance and improvements will be limited to elements which are already in place and in need of maintenance, repair or replacement. Locations and scope of construction to be determined by the Street Maintenance and Traffic Operations Division.

The project is included in the 2011 CIB under the title "Alley Repair".

BUDGETARY IMPACT:

Project Budget: \$250,000.00
Projects will be constructed as funding becomes available.

Item #20

SOURCE OF FUNDING:

Citywide Half Cent Special Purpose Retailers' Sales Tax

ATTACHMENTS:

[Budget](#)

[Fact Sheet](#)

[Ordinance](#)

[2010-2011 Alley Rehab List](#)

[2012 Alley Rehab List](#)

PROJECT BUDGET
Project No. T-841016.00
Alley Repair

LOCATION:

City-Wide.

DESCRIPTION OF PROJECT:

This project will provide maintenance and improvements to existing alleys. Maintenance and improvements will be limited to elements which are already in place and in need of maintenance, repair, or replacement. Locations and Scope of construction to be determined by the Street Maintenance and Traffic Operations Division.

SOURCE OF FUNDS:

CIP 2011 - Special 1/2 Cent Retailers' Sales Tax

COST ESTIMATE:

	<u>1/2 Cent Sales Tax</u>	<u>Other</u>	<u>Total</u>
Construction:	\$187,500.00	\$0.00	\$187,500.00
Design:	\$30,000.00	\$0.00	\$30,000.00
Construction Service Fees:			\$0.00
<i>Construction Inspection:</i>	\$5,000.00	\$0.00	\$5,000.00
<i>Construction Staking:</i>	\$10,000.00	\$0.00	\$10,000.00
Administrative Fees:			\$0.00
<i>Legal Dept. Admin.</i>	\$2,500.00	\$0.00	\$2,500.00
<i>Engineering Admin.</i>	\$10,000.00	\$0.00	\$10,000.00
Right-of-Way	\$0.00	\$0.00	\$0.00
Contingency Amount:	\$5,000.00	\$0.00	\$5,000.00
Temp. Notes & Cost of Issuance:	\$0.00	\$0.00	\$0.00
Total:	\$250,000.00	\$0.00	\$250,000.00

FACT SHEET

CITYWIDE ALLEY REPAIR PROJECT NO. T-841016.00

General Nature of Improvement:

This project will provide maintenance and improvements to existing alleys. Maintenance and improvements will be limited to elements which are already in place and in need of maintenance, repair, or replacement. Locations and scope of construction to be determined by the Street Maintenance and Traffic Operations Division.

CIP Years: 2011

Total Project Budget Cost: The Project Budget is \$250,000. Projects will be constructed as funding becomes available.

Source of Funding:

Special ½ cent retailers' sales tax revenue.

Council District: Citywide**City Project Administration:**

Braxton Copley, Director of the Office Of Utilities and Transportation

Project Schedule:

Design: 2011-2012

Right-of-Way Acquisition: none anticipated

Construction: 2011-2012

(Published in the Topeka Metro News_____)

ORDINANCE NO. _____

AN ORDINANCE introduced by Interim City Manager Daniel R. Stanley, authorizing Improvement Project No. T-841016.00, which provides for alley repair at various locations throughout the City, as more specifically described herein.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That it hereby deems advisable and necessary Improvement Project No. T-841016.00 and also hereby authorizes that the public improvement be made as follows:

A. GENERAL NATURE OF IMPROVEMENT:

This project will provide maintenance and improvements to existing alleys. Maintenance and improvements will be limited to elements which are already in place and in need of maintenance, repair or replacement. Locations and Scope of construction to be determined by the Street Maintenance and Traffic Operations Division.

B. TOTAL PROJECT BUDGET COST:

\$250,000.00

C. SOURCE OF FUNDS:

Citywide Half Cent Special Purpose Retailers' Sales Tax or any other lawfully available funds.

Section 2. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council_____.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST

Brenda Younger, City Clerk

2010-2011 Half Cent Sales Tax Alley Rehabilitation Projects

2010 Original Locations

<i>Location</i>	<i>linear feet</i>	<i>Contractor</i>	<i>Comments</i>	<i>Start Date</i>	<i>Finish Date</i>	<i>Cost Est.</i>
400 Block Between Lincoln and Buchanan	420' X 12		Aggregate			\$20,300
1600 Block Between Medford and High	320' X 12'		Aggregate			\$27,300

2010 Revised Locations

2050 Block Between Filmore and Western (2000 block Filmore/Western)	350' X 16'		Aggregate			\$19,400
700 Block between Parkview and Cambridge (800 Block Fraizer/Orleans)	370" X 12'		Aggregate w/concrete approach			\$18,000
Contingency Design and Emergency Alley Projects						\$10,000
Total						\$95,000

2011 Locations

<i>Location</i>	<i>linear feet</i>	<i>Contractor</i>	<i>Comments</i>	<i>Start Date</i>	<i>Finish Date</i>	<i>Cost Est.</i>
900 Block Between Kansas & Jackson and N. Alley Approach	475' x 16'		7" concrete alley 8" approach			\$61,700
SW 12th Street Between Washburn and Lane South Alley	600' x 16'		7" concrete alley 8" approach			\$73,900
400 block of East Alley Between Elmwood and Jewell	350' x 12'		aggregate			\$15,000
1600 blk between MacVicar and Wayne	475 X 20		7" concrete alley 8" approach			\$75,000
Contingency Design and Emergency Alley Projects						\$20,000
Total						\$245,600

2012 Future Half Cent Alley Rehabilitation List

<i>Location</i>	<i>linear feet</i>	<i>Contractor</i>	<i>Comments</i>	<i>Start Date</i>	<i>Finish Date</i>	<i>Cost</i>
1600 blockbetween MacVicar and Wayne	475' x 20'		concrete			\$68,000
2800 Sardou North Side Alley Approach	12'x15'		aggregate w/ concrete approach			\$2,500
2800 Sardou South Side Alley Approach	12'X15'		aggregate w/ concrete approach			\$2,500
2900 Sardou North Side Alley Approach	12'x15'		aggregate w/ concrete approach			\$2,500
2900 Sardou South Side Alley Approach	12'x15'		aggregate w/ concrete approach			\$2,500
200 Block between Woodlawn and Elmwood	500' x 12'		concrete			\$45,000
1200 Block Between Polk and Taylor	480' x 18'		concrete			\$64,500
900 Block Between Filmore and Clay	285' x 18'		concrete			\$38,500
12th to Huntoon Between Topeka and Tyler	185' x 20'		brick			\$28,000
1200 Block Bewteen Kansas and Jackson	430' x 18'		concrete w/ N/S conc approach			\$64,000
400 Block Between Topeka and Harrison						



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