



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**July 11, 2019**

**Department** Administration

**Director Approval** *Kelly Passauer*

**AGENDA ITEM** Consider text amendments to Appendix B-Zoning of the City Code relating to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Bed and breakfast", "Boarding and rooming houses" and other new additional uses.

**SUMMARY RECOMMENDATION** Approve the text amendment.

**BACKGROUND** On June 4, 2019 the Planning Commission held a public hearing regarding the above listed item. The Planning Commission recommended the following modifications on a unanimous vote which included the nature and effect of such proposed amendment and determinations as described by staff at the meeting:

1. Modify "Bed and breakfast" in the permitted and conditional use table to add O/P as a conditional use and C-4 as a permitted use.
2. Modify "Boarding and rooming houses" in the permitted and conditional use table to:
  - a. Add A-1, R-1, R-2, R-3 and C-1 as conditional uses,
  - b. Add C-2 and C-4 as permitted uses, and
  - c. Modify R-4 and R-5 from permitted uses to conditional uses.
3. Add "Short term rentals not elsewhere listed" to the permitted and conditional use table to include:
  - a. A-1, R-1, R-2, R-3, R-4, R-5, O/P and C-1 as conditional uses, and
  - b. C-2, C-3 and C-4 as permitted uses.
4. Add the definition: "Short term rentals -- means a property or space offered for rent to transient guest(s) for overnight stays consisting of 30 consecutive days or less that is not located in a hotel, tourist court, or motel."

See table below (proposed changes in yellow):

Proposed	Permitted Zoning District												
	A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Land Use Category													
Bed and breakfast	C	C	C	C	C	C	C	C	P	P	P		
Boarding and rooming houses	C	C	C	C	PC	PC	C	C	P	P	P		
Short term rentals not elsewhere listed	C	C	C	C	C	C	C	C	P	P	P		

Below is the excerpt from the June 4, 2019 Planning Commission minutes regarding the requirements of Section 1604.2 Amendments to text which was included in the motion approved by the Planning Commission:

*“Zoning Administrator Passauer stated as included in the staff report that the recommended modifications are consistent with the intent and purpose of the zoning regulations and will align the permitted and conditional uses for these similar type uses. A chart showing the zones being modified and a zoning map identifying where the zones were located was included in the Powerpoint presented. It was noted that this use was recommended in the residential districts as a conditional use only to further protect the property owners within the notification area and provide them an opportunity to voice any concerns prior to a conditional use being approved in those residential zones. It was also noted that this amendment was made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected, as the short terms rentals such as AirBnB’s and VRBO’s were a new concept to Independence.*

*“With no further discussion, the public hearing was closed.*

*“On a motion by Barb Emert, seconded by Tony Royse, the Planning Commission accepted the text amendment as recommended by City staff which included the nature and effect of such proposed amendment and determinations as described by staff. The motion carried 7-0.”*

**BUDGET IMPACT** Short term rentals are subject to sales tax and transient guest tax. There will be additional revenues generated from City sales tax.

**SUGGESTED MOTION** I move to approve the recommendation of the Planning Commission and adopt an ordinance making the following modifications to Appendix B-Zoning of the City Code:

1. Modify “Bed and breakfast” in the permitted and conditional use table to add O/P as a conditional use and C-4 as a permitted use.
2. Modify “Boarding and rooming houses” in the permitted and conditional use table to:
  - a. Add A-1, R-1, R-2, R-3 and C-1 as conditional uses,
  - b. Add C-2 and C-4 as permitted uses, and
  - c. Modify R-4 and R-5 from permitted uses to conditional uses.
3. Add “Short term rentals not elsewhere listed” to the permitted and conditional use table to include:
  - a. A-1, R-1, R-2, R-3, R-4, R-5, O/P and C-1 as conditional uses, and
  - b. C-2, C-3 and C-4 as permitted uses.

4. Add the definition: “Short term rentals -- means a property or space offered for rent to transient guest(s) for overnight stays consisting of 30 consecutive days or less that is not located in a hotel, tourist court, or motel.”

## **SUPPORTING DOCUMENTS**

1. June 4, 2019 Approved Minutes of the Planning Commission
2. Proposed Ordinance

## MINUTES

Independence Planning Commission

Independence Board of Zoning Appeals

Tuesday, June 4, 2019

Veterans Room

Memorial Hall

5:30 p.m.

### **Call to Order**

The Planning Commission meeting was called to order by Chair Mary Jo Meier. She expressed her appreciation to the City staff for their great work regarding the recent flood.

### **Planning Commissioner Present**

Mary Jo Meier, Steve McBride, Tony Royse, Michelle Anderson, Barb Emert, Brent Littleton (outside), and Andy McLenon (outside).

### **Planning Commissioners Absent**

Brian Beecham and Philipp Umlauf

### **Staff Present**

Kelly Passauer, Assistant City Manager/Zoning Administrator

### **Visitors**

James McCuistion, Connie and Sidney Pouncil, Danny Kinnamon, Renita Butler, George Eisele, Lori Kelley and Brad Oakes.

### **Minutes**

- a. Consider approving minutes from the May 7, 2019 meeting.

Barb Emert made a motion to approve the minutes of the May 7, 2019 meeting, Andy McLenon seconded the motion. The motion carried 7-0.

### **Planning Commission**

- b. Public hearings to consider a request to rezone tracts of land from County P-1 and Agricultural districts to M-2, Heavy Industrial district at the following locations:
  1. Tract #1: Southwest corner of County Road 3300-Russ Meyer Boulevard/Freedom Drive (Estimated 8.5 acre tract in the Airport Industrial Park)
  2. Tract #2: 730 North Peter Pan Road (Estimated 39-acre tract in the West Laurel Industrial Park)

Chair Meier opened the hearing and asked if any of the Commissioners had received any outside contact regarding this zoning case, in which no one replied that they

had. She further asked if any of the Planning Commissioners had a conflict of interest, in which no one indicated that they did.

The following staff report was previously provided and reviewed:

***Summary Regarding Rezoning Request:***

The City Commission annexed Tract #1 at their June 21, 2012 meeting. The City Commission reannexed Tract #2 at their March 14, 2019 meeting. The Planning and Zoning Commission initiated rezoning of both tracts at their April 2, 2019 meeting. The hearing was originally scheduled for May 7, 2019, however, the publication was not published in time by the official City newspaper so it was rescheduled for June 4, 2019.

The legal descriptions are included with the attached hearing notice.

***Description of the Tract(s):***

Tract #1: The property consists of an estimated 8.5 acre tract located in the Airport Industrial park. This property was previously annexed into the City in 2012 but has not been rezoned.

Tract #2: This property consists of an estimated 39 acre tract located in the West Laurel Industrial Park. Several years ago, this property was annexed into the City and rezoned to M-2, Heavy Industrial. At the February 25, 2016 meeting the City commission approved a request of the property owner (Independence Action Partnership) to deannex the property so that they could drill oil and/or gas wells. No producing wells were developed. The property was then offered for sale to the City and is currently in a lease purchase agreement. The City reannexed the property into the City earlier this year and it will need to be officially rezoned.

***Zoning and Uses of Property Nearby:***

Tract #1: This property is zoned as County P-1 (Public Use) District and is included in the Airport Industrial Park. The property to the north is in the County and in the Airport Industrial Park and is utilized for manufacturing. The property to the east is in the County and is used for residential and agricultural purposes. The property to the south is zoned City M-2, heavy industrial and is included in the Airport Industrial Park. The property to the west is in the County and is used for manufacturing and is included in the Airport Industrial Park, and further west the property is zoned City M-2 and included in the Airport Industrial Park.

Tract #2: This property is zoned as County Agricultural District and is included in the West Laurel Industrial Park. The property to the north is in the County and is utilized for agricultural and residential purposes. A portion of the property to the east is in the County and is used for residential and agricultural purposes, while another portion of the property to the east is in the West Laurel Industrial Park and is zoned M-2, heavy industrial and is utilized for industrial type purposes. A portion of the property to the south is zoned C-2 and is utilized for a medical facility, while another portion of the property to the south is included in the West Laurel Industrial Park and is zoned M-2 and is utilized for manufacturing. The property to the west is in the County and is used for residential and agricultural purposes.

***Character of the Neighborhood:***

Both areas generally consist of manufacturing, agricultural and some residential uses.

***Suitability of the Subject Property for the Uses to which it has been Restricted:***

Both properties are suitable for the proposed use, although they have never been formally developed as they are both being utilized for agricultural purposes.

***Length of Time the Property has Remained vacant as Zoned:***

Both properties are currently vacant and have been utilized for agricultural purposes for several years.

***Extent to which Removal of Restrictions will Detrimentally affect Nearby Property:***

The adjoining areas are not densely populated, so it is not believed there will be a detrimental effect on those properties. These properties are part of existing Industrial Parks that were established many years ago and are intended for future industrial development.

The M-2 industrial district includes the following use limitations which will apply to these parcels if rezoned:

***513.8. Use limitations:***

- a. No retail sales or services shall be permitted, except as are incidental or accessory to a permitted use.
- b. No building shall be used for residential purposes except that a watchman may reside on the premises.

***Relative Gain to the Public Health, Safety and Welfare by the Destruction of the Petitioner's Property as Compared to the Hardship Imposed upon the Individual Landowners:***

Denial of the proposed rezoning will impact the planned development of these tracts for industrial use.

***Conformance with the Comprehensive Plan:***

Tract 1: The airport is not included in the Comprehensive Plan.

Tract 2: The general development plan map recommends the area requested to be rezoned be developed as commercial with industrial nearby.

***Objective I-1: Target industrial development to locations which maximize efficient usage of public and semi-public land and semi-public facilities necessary and minimize the cost of development.*** The proposals under consideration will minimize development costs as existing infrastructure is nearby.

***Policy I-12: Industrial sites shall have access to arterial streets; preferably those leading directly to major highways.*** Tract 1: The airport streets are not classified in the Comprehensive Plan. However, improved roads exist which

connect to a highway. Tract 2: The proposal under consideration is on a collector street that is utilized as a minor arterial due to the traffic in this area.

*Policy I-13: In addition to highway access, industrial parks and sites preferably shall have access to railroad and airport facilities.* Tract 1: This property is located at the airport. Tract 2: A spur line adjoins a portion of this property.

*Policy I-14: Whenever possible, public water and sewer service should be provided.* City water and sewer service are existing in the area and can be extended to serve these tracts.

*Objective I-2: Direct industrial activities to locations offering the least negative impact on surrounding land uses and the environment.* The proposed rezoning under consideration should have little impact on the surrounding area if proper screening is implemented.

*Police I-21: New industrial uses shall be separated or buffered from surrounding non-industrial uses. Heavy industrial uses shall be located away from existing or projected residential growth areas and opposite the prevailing winds.* There are areas with residential structures that are sparsely populated nearby, however, there are no densely populated areas adjoining the tracts.

*Policy I-23: Access should be provided to industrial areas in a manner which prevents traffic through residential areas.* Neither area is designated primarily as a residential neighborhood.

The proposal is consistent with industrial goals and objectives of the comprehensive plan which primarily set out general geographic criteria for locating industrial facilities.

***Staff Recommendation***

City staff recommends rezoning both tracts located in existing industrial parks to M-2, heavy industrial district.

Chair Meier asked if anyone in the audience wished to speak.

James McCuistion, 3247 CR 3300 – wanted to know why Tract 1 had not already been rezoned. Zoning Administrator Passauer indicated that the property had previously been included as part of a lease by a private company for several years, and since it was no longer leased it had been annexed, but the zoning had not been completed.

Brad Oakes, George Eisele and Lori Kelly represented Montgomery County Action Council (MCAC). Lori Kelly stated that the tract in the West Laurel Industrial Park is the only area available for new construction served by rail which is highly critical for economic development that requires rail. It was stated that our industrial land is very valuable to our economy. Not having the property zoned as industrial would have a

huge negative impact on future economic development opportunities. Brad Oakes said we have very limited opportunities for economic development, and it is critical to keep this land available and that MCAC was pushing hard to get development in the County.

Chair Meier asked the board if there was any further discussion, to which there was none. The public hearing was closed.

Andy McLenon moved to accept the zoning requests for both tracts from County P-1 and Agricultural districts to M-2, Heavy Industrial district. The motion was based on the following findings: Conformance with the Comprehensive Plan, Character of the Neighborhood, Zoning and uses of properties nearby, Availability and adequacy of required utilities and services to serve the proposed use, and staff recommendation. The motion was seconded by Tony Royse. The motion carried 7-0.

c. Public hearings to consider text amendments to Appendix B-Zoning of the City Code relating to:

1. Article IV. Rules and Definitions.
2. Article VI. Supplementary District Regulations
3. Article X. Special provisions applying to miscellaneous conditional uses; and
4. Appendix A. "Listing of Permitted and Conditional Uses" including, but not limited to "Bed and breakfast", "Boarding and rooming houses" and other new additional uses.

Chair Meier opened the hearing and asked if any of the Commissioners had received any outside contact regarding this zoning case, in which no one replied that they had. She further asked if any of the Planning Commissioners had a conflict of interest, in which no one indicated that they did.

The following staff report was previously provided and reviewed:

The City Commission or Planning Commission may initiate text amendments to the zoning code. On May 7, 2019 the City Commission accepted staff's recommendation to initiate a public hearing for text amendments to Appendix A. "Listing of Permitted and Conditional Uses" and any related definitions in Article IV of the zoning ordinance including, but not limited to "Bed and breakfast", "Boarding and rooming houses" and other new additional uses. The other additional uses referred to short term rentals, such as AirBnB's.

Specifically, the recommended modifications are as follows:

1. Modify "Bed and breakfast" in the permitted and conditional use table to add O/P as a conditional use and C-4 as a permitted use.
2. Modify "Boarding and rooming houses" in the permitted and conditional use table to:
  - a. Add A-1, R-1, R-2, R-3 and C-1 as conditional uses,
  - b. Add C-2 and C-4 as permitted uses, and

- c. Modify R-4 and R-5 from permitted uses to conditional uses.
- 3. Add “Short term rentals not elsewhere listed” to the permitted and conditional use table to include:
  - a. A-1, R-1, R-2, R-3, R-4, R-5, O/P and C-1 as conditional uses, and
  - b. C-2, C-3 and C-4 as permitted uses.
- 4. Add the definition: “Short term rentals -- means a property or space offered for rent to transient guest(s) for overnight stays consisting of 30 consecutive days or less that is not located in a hotel, tourist court, or motel.”

See table below (proposed changes in yellow):

Proposed	Permitted Zoning District												
	A-1	R-1	R-2	R-3	R-4	R-5	O/P	C-1	C-2	C-3	C-4	M-1	M-2
Land Use Category													
Bed and breakfast	C	C	C	C	C	C	C	C	P	P	P		
Boarding and rooming houses	C	C	C	C	PC	PC	C	C	P	P	P		
Short term rentals not elsewhere listed	C	C	C	C	C	C	C	C	P	P	P		

Staff believes this change is consistent with the intent and purpose of the zoning regulations and will align the permitted and conditional uses for these similar type uses.

Chair Meier asked if anyone in the audience wished to speak.

Renita Butler, 2712 Rolling Green – stated that she has had one in her home for a while. Further stating; “Parking is off street, no parties, quiet. Most of the people are here to work for a short amount of time, staying from one AirBnB to the next. It is inexpensive, clean and well maintained. Why am I doing it? Meeting interesting people, linemen, musicians. Specific rules put into place, no alcohol, no street drugs, no parties. Only registered people can come in, I am very strict.”

George Eisele, AirBnB Owner – stated that their home is similar to Renita’s as far as rules and regulations. All the guests have an option to stay in a hotel, but they also have an option to have access to an entire house and office which makes it a great opportunity for a family coming into town for a funeral, etc. Offering a facility, or home, so that they are comfortable during their stay in Independence. This allows bringing multiple people in for a gathering. He further stated; “The people coming into our residences are pre-approved, if they get bad reviews, they don’t get to use these facilities. We get graded when they stay through AirBnB, how well we maintain our properties, and I would challenge any other rental owner in this town to provide the same level of our property. Our property is top notch, and we get graded on it. A lot of people in normal rentals live in bad conditions, because they are forced to, and they can’t come to a Commission and file a complaint because they have no place else to go. What we are doing is completely different, it is a specific use for a need not filled by a traditional hotel.”

Renita Butler stated that AirBnB offers a million dollars' worth of insurance as hosts. George Eisley indicated the insurance was in case someone tears their property up.

Renita Butler indicated that she pre-interviews guests before they stay and; "If I don't like what they say I don't let them come."

George Eisele stated; "We are offering a better solution."

Planning Commissioner Andy McLenon asked what the difference was between AirBnB and VRBO.

George Eisley stated that they are kind of the same.

Planning Commissioner Andy McLenon asked if they were the broker. It was clarified that they are the property manager that handles the reservation, and VRBO.com is a different company than AirBnB. However, it is a similar concept.

George Eisele stated; "We set our own schedules and the booking is done online by AirBnB. We set when they have to come in and leave. We have control over it. The company (AirBnB) collect taxes automatically. The City is getting revenue [off of the short-term rentals] which you don't get off a normal rental property."

Planning Commissioner Andy McLenon asked if a guest can request a 33-day visit, and it was answered yes if there was availability.

Zoning Administrator Passauer stated that is why the recommended definition of "Short term rentals" states that the property is "*offered* for rent to transient guest(s) for overnight stays consisting of 30 consecutive days or less that is not located in a hotel, tourist court, or motel." So that it will still cover those stays that exceed 30 consecutive days as they have the option of renting it for less days.

Renita Butler stated that she has two interns that will be staying with her all summer, or for two months.

George Eisele stated that so far, his guests have been staying here for a short time. However, if they are staying in a hotel or apartment for a longer period, they would have no kitchen access and you can't get a traditional rental for just two months.

Planning Commissioner Brent Littleton stated that his daughter stays at an AirBnB. Most of the people that utilize them are professionals and it is a new concept that is widely used by younger people.

Zoning Administrator Passauer stated as included in the staff report that the recommended modifications are consistent with the intent and purpose of the zoning regulations and will align the permitted and conditional uses for these similar type uses. A chart showing the zones being modified and a zoning map identifying where the zones were located was included in the Powerpoint presented. It was noted that this use was recommended in the residential districts as a conditional use only to further protect the property owners within the notification area and provide them an opportunity to voice any concerns prior to a

conditional use being approved in those residential zones. It was also noted that this amendment was made necessary because of changed or changing social values, new planning concepts or other social economic conditions in the areas and zoning districts affected, as the short terms rentals such as AirBnB's and VRBO's were a new concept to Independence.

With no further discussion, the public hearing was closed.

On a motion by Barb Emert, seconded by Tony Royse, the Planning Commission accepted the text amendment as recommended by City staff which included the nature and effect of such proposed amendment and determinations as described by staff. The motion carried 7-0.

The Planning Commission portion of the meeting was closed.

### **Board of Zoning Appeals**

The Board of Zoning Appeals portion of the meeting was opened. Chair Meier reminded the board that the Board of Zoning Appeals does not include the outside Planning Commissioners and the outside Planning Commissioners may not vote on this item.

- d. Public hearing to consider a variance request to decrease the setbacks in an R-2 (P.U.D.) zoned district at 507 Sinclair Drive.

Chair Meier opened the public hearing. She asked if any of the Commissioners had received any outside contact regarding this zoning case, in which no one replied that they had. She further asked if any of the Planning Commissioners had a conflict of interest, in which no one indicated that they did. She asked if the applicant was present, and Sidney Pouncil appeared and stated that he resided at 507 Sinclair Drive and that he wished to "build a shed to have some place to occupy myself. I have tools from my father in storage and want to build something to put them in and get them off the ground and have a table inside on the cement slab." Board of Zoning Appeals member Steve McBride asked about encroaching on the neighbors. Mr. Pouncil indicated that his neighbors have a privacy fence.

The following staff report was previously provided and reviewed by staff:

#### ***Overview of Variance Requested***

The Board of Zoning Appeals has received an application from Sidney and Connie Pouncil to grant a variance from the setback regulations as provided for in the zoning ordinance.

#### ***Review of Request***

Their request is to encroach upon the west side yard setback from 8' to 2' in order to construct 21' X 16' metal shed.

#### ***Board of Zoning Appeals Considerations***

In considering the providing of a variance we wish to provide the following information:

- a. *That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by any action or actions of the property owner or the applicant;* There is an existing structure that is already encroaching on the side yard setback on the west side that is grandfathered in. The applicant simply wishes to replace this existing structure.
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents;* It is not believed that this encroachment will create any adverse effects to adjacent property owners.
- c. *That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;* The applicants feel that meeting the 8' side yard setback would restrict their ability to replace an existing structure.
- d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;* It does not appear that the variance will affect public health, safety or general welfare.
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* City staff feels it is not opposed to the general spirit and intent of the zoning regulations.

***Staff Recommendation***

Staff recommends approving the variance and reducing the west side yard setback 6', from 8' to 2'.

Chair Meier asked if there was anyone in the audience that wished to comment on this case, in which case there was none. Chair Meier asked the Board of Zoning Appeals if there was any further questions or discussion, and there was none. The public hearing was closed. Chair Meier stated that acceptance of a variance must be based on the following factors:

- a) Unique condition to the property in question which is not ordinarily found in the same zone and is not created by any action of the property owner,
- b) The variance will not adversely affect the rights of adjacent property owners,
- c) The strict enforcement of the regulations would cause an unnecessary hardship,
- d) The variance would not adversely affect public health, safety and morals,
- e) The variance will be in keeping with the general intent and spirit of the zoning regulations.

The Chair stated that she would entertain a motion on this case.

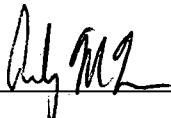
Steve McBride made a motion to approve the variance and reduce the west side yard setback 6', from 8' to 2' based on the finding that each of the five conditions are found to be present. The motion was seconded by Michelle Anderson. The motion carried 5-0.

**Adjournment**

The meeting was adjourned with a motion by Brent Littleton, seconded by Tony Royse. The motion carried 7-0.



Mary Jo Meier, Chair



Andy McLenon, Secretary

## **ORDINANCE NO. 4302**

### **An Ordinance Setting Forth Text Amendments to the Zoning Code on the Subject of Short Term Rentals**

*BE IT ORDAINED* by the Governing Body of the City of Independence, Kansas:

**Section 1.** Appendix B. – Zoning - Appendix A. - List of Permitted and Conditional Uses is amended as follows:

- a. “Bed and breakfast” shall be added as a conditional use in the O/P district and as a permitted use in the C-4 district.
- b. “Boarding and rooming houses” shall be added as a conditional use in the following zoning districts: A-1, R-1, R-2, R-3 and C-1.
- c. “Boarding and rooming houses” shall be added as a permitted use in the following zoning districts: C-2 and C-4.
- d. In the R-4 and R-5 zoning districts, “boarding and rooming houses” shall be changed from a permitted use to a conditional use.
- e. “Short term rentals not elsewhere listed” shall be added as a conditional use to the following zoning districts: A-1, R-1, R-2, R-3, R-4, R-5, O/P and C-1.
- f. “Short term rentals not elsewhere listed” shall be added as a permitted use to the following zoning districts: C-2, C-3 and C-4.

**Section 2.** Appendix B. – Zoning – 403.0 – Definitions shall be amended to add the following definition:

“Short term rentals not elsewhere listed – means a property or space offered for rent to a transient guest(s) for overnight stays consisting of 30 consecutive days or less that is not located in a hotel, tourist court, or motel.”

**Section 3.** This Ordinance shall take effect upon its publication in the official City newspaper.

*Adopted by the Governing Body of the City of Independence, Kansas, on the 11<sup>th</sup> day of July, 2019.*

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LOUIS YSUSI, Mayor

ATTEST:

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DAVID W. SCHWENKER, City Clerk