

The Independence City Commission met for a regular meeting on January 24, 2019 at 5:30 P.M. in the Veterans Room at the Memorial Hall. Mayor Louis Ysusi, Commissioner Leonhard Caflisch, and Commissioner Gary Hogsett were present. Others present included:

City Staff

Craig Whitehead, City Manager
Jeff Chubb, City Attorney
Kelly Passauer, Assistant City Manager/Zoning Administrator
David Schwenker, City Clerk/City Treasurer
David Cowan, Director of Safety/ADA Coordinator
Shawn Wallis, Fire/EMS Chief
Michael Borovetz, Finance Director
Terry Lybarger, Director of Utilities
Mike Passauer, Public Works Director
Barb Beurskens, Park and Zoo Director
Barry Beurskens, Maintenance
Brian McHugh, Memorial Hall Supervisor
April Nutt, Director of Housing Authority

Visitors

Ellie Davis
Robert Meadows
Jerry Bright
Blake Escritt
Leslie Fox
Rowan Fox
Judy Ysusi
Charlotte Muse
Michelle Anderson
Larry Kaiser
Jake Dye
Michelle Driscoll
Calvin Simmons
Dean Hayse
Brent Littleton
Shawn Turner
Larry McHugh
Drew Demo

I. REGULAR SESSION

- A. Call to Order
Mayor Ysusi called the meeting to order at 5:30 P.M.
- B. Pledge of Allegiance to the United States of America
- C. Adoption of Agenda

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflisch the Commission adopted the agenda.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

II. APPOINTMENTS

A. Planning Commission

1. Two terms expired (one inside City limits, and one outside City limits within 3 miles)

Motion:

On the motion of Mayor Ysusi, seconded by Commissioner Caflisch the Commission approved the appointment of Brent Littleton for one of two open positions on the Planning Commission/Board of Zoning Appeals.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

B. Tree Board

1. Two existing terms expired
2. Two new terms created due to the board increasing from 5-7 members

Motion:

On the motion of Mayor Ysusi, seconded by Commissioner Hogsett the Commission approved the appointment of Twila Hawthorne for one of two open positions on the Tree Board.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

III. COMMON CONSENT AGENDA

(*Consent* is that class of Commission action that requires no further discussion or which is routine in nature. All items on the Consent Agenda are adopted by a single motion unless removed from the Consent Agenda.) LC/Gary

A. Appropriations

1. A-1831
2. P-1801

B. Consider approving minutes of the December 27, 2018, December 31, 2018 and January 10, 2019 City Commission Meetings.

C. Consider approving corrected minutes of the February 9, 2017 City Commission Meeting.

Motion:

On the motion of Commissioner Caflisch, seconded by Commissioner Hogsett the Commission adopted the consent agenda.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

IV. PUBLIC HEARINGS

- A. Public hearing to consider condemnation of 215 Earl Street as dangerous and unsafe.

The public hearing was opened. Building Inspector Don Cushing stated that he had numerous complaints about the property, and he recommends proceeding with condemnation. The public hearing was closed.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflisch the Commission condemned the structure located at 215 Earl Street as dangerous and unsafe.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

- B. Public Hearing to consider condemnation of 417 S. 6th Street as dangerous and unsafe.

The public hearing was opened. Building Inspector Don Cushing stated that he has not had any contact with the owner of the property since the last meeting and he recommends proceeding with condemnation. The public hearing was closed.

Mayor Ysusi asked if they previously said they were going to repair it. The Building Inspector said it is his understanding they are purchasing another home.

Commissioner Caflisch asked if the structure has been shored up and secured, that he is hesitant to condemn. The building Inspector said that it is only temporary bracing and not permanently repaired. Commissioner Caflisch said that the temporary shoring should be sufficient to carry the load and that he was hesitant to proceed with condemnation because it is a safe structure. The Building Inspector stated that he had no issues if the Commission wanted to adjourn for 30 to 60 days

Commissioner Hogsett agreed that 30 days would be enough time.

Commissioner Caflisch stated that since the property owner did respond as soon as the problem developed and did satisfactorily support the structure that he did not see the urgency to have it removed.

Motion:

On the motion of Commissioner Caflisch, seconded by Commissioner Hogsett the Commission adjourned the public hearing for 417 S. 6th Street to 5:30 P.M. on February 28, 2019.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

- C. Public Hearing to consider condemnation of 905 W. Sycamore as dangerous and unsafe.

The public hearing was opened. Building Inspector Don Cushing stated that the owner is trying to finalize this structure and he recommends adjourning for 60 days. The public hearing was closed.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflisch the Commission adjourned the public hearing for 905 W. Sycamore to 5:30 P.M. on March 28, 2019.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

- D. Public Hearing to consider condemnation of 1701 N. 10th Street, Building #4 as dangerous and unsafe.

The public hearing was opened. Building inspector Don Cushing stated that he met with the leaders of the apartment complex and the estimates are with the USDA rural development. Due to the Federal government shutdown that process is now on hold. The Building Inspector recommends adjourning for 60 days. The public hearing was closed.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflisch the Commission adjourned the public hearing for 1701 N 10th Street, Building #4 to 5:30 P.M. on March 28, 2019.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

V. ITEMS FOR COMMISSION ACTION

- A. Consider modified recommendation from the Planning Commission to adopt an ordinance implementing text amendments to the Code of the City of Independence, Kansas, specifically Appendix B – Zoning Code relating to Off-street parking requirements.

Assistant City Manager went through the following timeline:

- July 2, 2018 – Original public hearing was held, Planning Commission adjourned the hearing until October 2, 2018.
- October 2, 2018 -- The Planning Commission made a recommendation to the City Commission to modify the language, adding additional definitions related to ADA requirements and gravel, and modified the design requirements in the off-street parking regulations to allow gravel meeting certain specifications in M-1 and M-2 (industrial) districts.
- November 5, 2018 – The City Commission tabled action and returned this item back to the Planning Commission for clarification on specific elements of the original recommendation and provided suggestions.
- December 4, 2018 -- The Planning Commission reviewed and responded to the feedback from the City Commission and modified their original recommendation.
- December 13, 2018 – The City Commission reviewed the Planning Commission's modified recommendation and tabled action until after a joint Worksession with the Planning Commission.
- January 15, 2019 – The City Commission hosted a joint Worksession with the Planning Commission.

The Assistant City Manager then went through the discussion between the City Commission and Planning Commission regarding the proposed text amendments at the January 15th worksession as follows:

- No specific issues raised regarding the following modifications (modifications highlighted in yellow):
 - **ARTICLE IV. – RULES AND DEFINITIONS**
 - **403.0. – Definitions.**
 - **ADA:** The Americans with Disabilities Act of 1990 and any subsequent revisions and updates as administered by the United States Department of Justice.
 - **Gravel:** Any use of the term gravel shall be defined as crushed stone, AB3, or any other rock that is ADA compliant for the use of off-street parking materials compacted enough to be compliant with ADA guidelines for levelness, materials, and accessibility.
 - **Parking space, off-street:** A permanently surfaced dust free area (concrete, asphaltic concrete, or other comparable surface), located on property other than a public street, enclosed or unenclosed, to store one automobile, to which an automobile has direct access from a permanently surfaced drive. Such parking space shall meet the minimum "off-street parking standards" contained in article VII of this ordinance. (See also Exceptions to Section 705.1 of the Code, Gravel, and Vehicle storage lots and M-1 and M-2 districts.
 - 705.4. Service drives:
 - c. Service drives shall be from the street to the parking and shall have concrete, asphalt concrete, or asphalt double-seal surfaces, maintained adequately for all-weather use, and so drained as to avoid flow of water across sidewalks.
 - **Exception:** In M-1 and M-2 districts gravel may be substituted in lieu of concrete, asphalt concrete, or asphalt double-sealed surfaces for service drives and the required accessible path to an entrance to the facility served by such service drive. Such gravel shall be compliant with ADA guidelines, including, but not limited to materials, levelness, compaction and accessibility; maintained adequately for all weather use; and so drained as to avoid flow of water across sidewalks.
 - 705.5. Minimum parking space dimensions:
 - f. If 90-degree ADA car accessible space,
 - stall depth—19' 0"
 - stall width—9' 0" with 5' 0" access aisle
 - aisle width—25' 0"
 - g. If 90-degree ADA van accessible parking space,
 - stall depth—19' 0"
 - stall width—11' 0" with 5' 0" access aisle
 - Vertical clearance – 8' 2"
 - aisle width—25' 0"
 - 705.6. Striping required: Open Parking spaces for dwellings (containing three or more dwelling units) shall be delineated by pavement striping and must meet minimal parking stall sizes as described above in section 705.5.
 - **Exceptions:**
 1. Open parking spaces for one- and two-family dwellings.
 2. Gravel Parking lots meeting an exception in 705.1, except for

markings and identifying signage for any required ADA accessible stalls.

- 705.7. ADA Accessibility:
 - All off-street parking lots or garages shall meet the minimum number of accessible parking spaces as required by the ADA.
 - Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance.
 - Accessible parking spaces shall have markings and identifying signage as required by the ADA.
Exception: Open parking spaces for one- and two-family dwellings.

- Concerns were raised regarding the following:
 - 705.1 Surface material – added exception to:
 - Allow materials other than hard surface for non-ADA parking.
 - Allow expansion of non-hard surfaced parking areas that are grandfathered in.
 - Concerns were brought up on aesthetics, maintenance and enforcement.
 - Possible solutions were brought up that would require ADA and visitor parking to be paved and would require any areas that were not hard-surfaced to be behind the facility and screened. Also brought up was to consider limiting the size of the non-hardsurfaced parking.
 - Allow expansion of hard surfaced parking area with non-hard surface for up to two years, then it must be hard surfaced or removed.
 - Concerns were brought up on how this would be enforced.
 - Possible solution was brought up by the City Attorney regarding daily fines until the parking lot is brought into compliance.
 - Non-ADA off-street parking areas shall be *graded*, paved or otherwise improved with an all-weather, *dustless* material that is contained in such a manner as to not allow surface material to wash off during heavy rains, and so drained as to avoid flow of water across sidewalks.
 - Concerns were raised about being able to contain the gravel, and also the chemical utilized to maintain the dustless condition could cause clumped dust to be tracked into the facility and vehicles.
 - Possible solutions were brought up to require the ADA and visitors parking to be hard surfaced, and the employee parking would be screened and contained behind the building and any issues with the dustless requirement would be up to the business to address.

The Assistant City Manager then reviewed research from Chanute and McPherson:

- Chanute – Ryan Follmer – “Ours says must be an ‘improved surface’ but unfortunately does not define what an ‘improved surface’ is, so without a clear definition one could say that gravel is an “improved surface”. We are lucky enough that this has not become an issue in Chanute, might be a long shot but I would see if the state has regulations on newly constructed parking area’s being a surface that is impervious to oil’s and automotive fluids. Orizon annexed into the city limits.”

- McPherson – Code – “Surfacing: All open off-street parking spaces, whether required spaces or not, and driveways shall be graded and paved with an asphalt, asphaltic concrete, concrete or other comparable hard-surfaced, all weather, dustless material according to specifications of the City Engineer and shall be maintained in good condition, provided, however, **graveled parking areas are permitted in the industrial districts**. Driveways, parking spaces and display areas for all open sales or rental lots for motor vehicles, trailers, recreational vehicles and manufactured and mobile homes shall be paved or gravelled.”

The Assistant City Manager stated that she had visited with MCAC Executive Director, Trish Purdon who agreed that allowing non-dust generating porous surface areas for parking was reasonable.

The Assistant City Manager reviewed the following suggested modifications to address the concerns raised at the January 15, 2019 worksession with the Planning Commission (new suggested modifications in blue):

- **ARTICLE VII. – OFF-STREET PARKING AND LOADING REGULATIONS**

- 705.0. - Design requirements.

- *705.1 Surface material:* Areas used for standing or maneuvering of vehicles shall have concrete, asphalt concrete, or asphalt double-sealed surfaces, maintained adequately for all weather use, and so drained as to avoid flow of water across sidewalks.

- *Exceptions:*

- Vehicle storage lots for the overnight storage or long-term warehousing of vehicles under one ownership.
- In M-1 and M-2 districts gravel may be substituted in lieu of concrete, asphalt concrete, or asphalt double-sealed surfaces for off-street parking and the required accessible path to an entrance to the facility served by such off-street parking. Such gravel shall be compliant with ADA guidelines, including, but not limited to materials, levelness, compaction and accessibility; maintained adequately for all weather use; and so drained as to avoid flow of water across sidewalks. In M-1 and M-2 districts other material may be substituted in lieu of concrete, asphalt concrete, or asphalt double-sealed surfaces for non-ADA **[employee] off-street parking spaces [and loading zones as long as such areas are located behind the facility and are screened from public view]** for new parking areas and expansion of non-hard surfaced parking areas that are grandfathered in. If a business currently has

a hard-surfaced parking lot, and needs to expand that parking area, they can expand it using a non-hard surfaced parking material for up to 2 years, at which time they will need to hard surface the expanded parking area [meeting the surface material requirements of 705.1] or remove the expanded parking area.

- **The exceptions do not apply to visitor parking, any required ADA parking, and any other parking or loading zones located in front of the facility.**
- The exceptions only apply to new or expanded parking areas and do not allow for the removal and replacement of existing concrete, asphalt concrete, or asphalt double-sealed surfaces with other material.
- The exceptions shall meet the following requirements:
 - **Non-ADA** off-street parking areas shall be graded, paved or otherwise improved with an all-weather, dustless material that is contained in such a manner as to not allow surface material to wash off during heavy rains, and so drained as to avoid flow of water across sidewalks.
 - ADA compliant parking and accessible paths to an entrance to the facility served by off-street parking shall be hard-surfaced.

Commissioner Caflich stated that he would like to leave the ordinance as it is. Further stating that the hard surfaces will create less headaches in the future. He further stated that you cannot modify every code to make it economically beneficial to soften the cost of development. Further stating that you have costs that affect your construction and long-term paved parking areas cause the City the least amount of problems. He stated that the ADA option does allow gravel, however, it is an inferior surface and causes problems. The minimum standard for that area, which is paved surface, causes no additional hardship. He further stated it is simpler to keep the ordinance with paving required and asked where it would end. He further stated that he thought the best is what we've got when looking at other towns overall. The City Manager confirmed and stated that he thought we should leave the ordinance as it is.

Commissioner Hogsett stated that if you are going to build in Independence, paving is expensive, so businesses locate outside the City to avoid that expense. He further stated that he would like to require paving a drive that connects to the street. He further stated that he liked the idea of paved parking in front, but parking behind that is screened would not have to be paved. He further stated that the Planning Commission had some good points, as he was concerned that we were not seeing any industrial development.

Mayor Ysusi stated that he visited Chanute and it was “hodge podge”, as one entire facility had a concrete base parking area, while another had cinders, or their driveway was concrete, and the rest of the parking was gravel. He noted the gravel was washing out into the street. He further state that we have gravel that gets into the street now from temporary repairs. He stated that he agreed with the City Manager's comment at the last meeting when he said that he had been in a lot of areas in the country and hard surfacing was not brought up as a factor as far as businesses relocating in other cities he worked for. He further stated that he was concerned about setting precedence by allowing the exception. He further stated that in addition to Chanute and McPherson, he also looked at Arkansas City and Pittsburg, who have stayed with the hard surface rule. He then spoke about understanding the need to encourage industry, and that there were many factors that played into that. He said one example was that McPherson has their own utility which is an external source of funding and constant revenue, which allows them to have the lowest rates in Kansas for electricity. He further stated that he visited with a previous City Manager about why the current code requires hard surface. He further stated that it seems like we are trying to modify something towards economic development when basically we should be deciding if it is a requirement that benefits the City overall.

Commissioner Caflisch recommended tabling it and taking no action. The City Attorney stated that he thought they had to act.

Motion:

On the motion of Commissioner Caflisch, seconded by Commissioner Hogsett the Commission rejected the text amendments recommended by the Planning Commission, leaving the ordinances as they currently exist.

Aye: Ysusi, Caflisch

Nay: Hogsett

- B. Consider proclaiming April 29, 2018 and April 27, 2019 as Arbor Day.

Motion:

On the motion of Commissioner Caflisch, seconded by Commissioner Hogsett the Commission proclaimed April 29, 2018 and April 27, 2019 as Arbor Day and authorized the Mayor to sign the proclamation.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

- C. Consider authorizing staff to set the date to receive bids for removal of 606 Fountain.

Building Inspector Don Cushing had visited with the owner and the owner sent him an email saying he had cleaned up the yard, he was getting proposals to rehabilitate the house and the plan was to restore the residence for the owner or his son to live in. The owner is requesting deferral of discussion of the property until February 28th, 2019.

Commissioner Caflisch stated that the item shouldn't have been on the agenda

and that no action needs to be taken.

- D. Consider setting the date of March 28, 2019 for a public hearing to consider condemnation of the structures located at 208 North 17th Street as dangerous and unsafe.

Building Inspector Don Cushing stated that there was an electrical fire at this location and recommends setting the date for the public hearing for March 28, 2019.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflich the Commission set the date of March 28, 2019 at 5:30 PM for a public hearing to consider the condemnation of the structures located at 208 N. 17th Street.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- E. Consider awarding the low bid to Jeff Graham Construction, Inc. for 2018 ADA Sidewalk and Ramp Improvement, Phase 4.

David Cowan and Shawn Turner presented the bids received. Commissioner Caflich asked how many bidders were contacted. Shawn Turner said there were three plan holders and 1 bid received. Shawn has worked with Mr. Graham before

Motion:

On the motion of Commissioner Caflich, seconded by Commissioner Hogsett the Commission moved to award the bid to Jeff Graham Construction, Inc. in the amount of \$487,199.50.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- F. Consider modifying the Memorial Hall policy.

Brian McHugh presented the recommended policy changes to the Memorial Hall policy and rental rates

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflich the Commission moved to authorize modifications to the Memorial Hall Policy and Rental Rates as recommended by City staff with the City Attorney's modifications.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- G. Consider First Amendment to the City Manager's Employment Agreement.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Cafilisch the Commission moved to adopt the First Amendment to the City Manager's Employment Agreement

Aye: Ysusi, Cafilisch, Hogsett

Nay: None

VI. REPORTS

A. Peter Pan Road Project Update

Shawn Turner and the Commissioners discussed the update.

B. State Safety Inspection

VII. CITY MANAGER'S COMMENTS

None

VIII. COMMISSIONERS' COMMENTS

Commissioner Cafilisch talked about looking at our projects bidding, policies relating to awarding of contracts, bid standards, contracting with consultants, procurement policies, minimum bid standards, that can be adopted into standard practice. City Manager Craig Whitehead informed the Commission that we have a draft procurement policy and will be bringing that before the Commission for their approval.

Commissioner Cafilisch and City Staff discussed the ADA transition plans, condemnations, committees and streets.

Mayor Ysusi discussed condemnations and having a spreadsheet to track them. The City Manager stated that there was such a spreadsheet and David Cowan said he would share it. He then asked about plans and specifications for 1916 City Hall Phase I, to which the City Manager said they were online and he would send him a link. He then asked about the leaf project, and the City Manager said that when it snows they have to stop, but they were currently in Area 12, which is the largest area.

IX. PUBLIC CONCERNS

None

X. EXECUTIVE SESSION

A. Acquisition of Property

Motion:

On the motion of Mayor Ysusi, seconded by Commissioner Cafilisch the Commission moved to go into executive session for discussion of possible acquisition of real estate for economic development purposes pursuant to the preliminary discussion on acquisition of real estate exception (KSA 75-4319(b)(6)) with the open meeting resuming at 7:45 PM

Aye: Ysusi, Cafilisch, Hogsett

Nay: None

The Commission came back into session at 7:45 PM with no action being taken.

XI. ADJOURNMENT

Motion:

Commissioner Hogsett moved to adjourn. Commissioner Caflisch seconded.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

Louis Ysusi, Mayor

Leonhard Caflisch, Commissioner

Gary Hogsett, Commissioner

Attest:

City Clerk/Treasurer