

Minutes of the Independence City Commission's February 28, 2019 Meeting

The Independence City Commission met for a regular meeting on February 28, 2019 at 5:30 P.M. in the Veterans Room at the Memorial Hall. Mayor Louis Ysusi, Commissioner Leonhard Cafilisch, 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
Jerry Harrison, Chief of Police
Jim Bennett – Cemetery Sexton

Visitors

Ellie Davis
Vic Gorman
Jim Bennett
Kathy Bennett
Frank Miller
Sharon Miller
Jerry Bright
Judy Ysusi
Drew Demo
Jeri Hopkins
Betsy Fisher
Ned Stichman
Caleb Johnson
Geo Eisele
Lisa Wilson
Lacey Lies
Dean Hayse
Will Wilkinson
Andrew Demo
Dorcus Sutton
Larry McHugh
Spencer Toomey
Paul Horbath

Minutes of the Independence City Commission's February 28, 2019 Meeting

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 Caflich, seconded by Commissioner Hogsett the Commission adopted the agenda with the modification that item "A #1" be removed from the consent agenda and moved to items for Commission action.

Aye: Ysusi, Caflich, Hogsett

Nay: None

II. 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/GH

A. Appropriations

1. A-1833 – Remove from Consent Agenda

This item was removed from the consent agenda and moved to items for Commission action.

2. D-1901

3. P-1804

- #### B. Consider a request from the Library to authorize blocking East Maple Street from 5th Street west to the AT&T Driveway from 9 AM to 11 AM on March 9, 2019 with a rain date of 5 PM to 7 PM on March 15, 2019 for the teen library patrons to drive their Go-Karts.

Motion:

On the motion of Commissioner Caflich, seconded by Commissioner Hogsett the Commission adopted the consent agenda with the exception of item "A #1" which was moved to items for Commission action.

Aye: Ysusi, Caflich, Hogsett

Nay: None

III. PRESENTATION

- #### A. Recognition of Spencer Toomey for assisting at the scene of a structure fire.

Police Chief Harrison recognized Spencer Toomey for helping officers notify neighbors

Minutes of the Independence City Commission's February 28, 2019 Meeting

of a structure fire and assisting firefighters with a hose that had gotten hung up on a fence.

IV. PUBLIC HEARINGS

- A. Public hearing to consider condemnation of 301 N. 11th Street as dangerous and unsafe.

Public Safety Director Cowan reported that the roof had been replaced, repairs made to the outside of the structure and the owners were preparing to repair items on the inside. Director Cowan recommended a 60-day adjournment. The public hearing was opened. The public hearing was closed.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflich the Commission adjourned the public hearing for 301 N. 11th Street to 5:30 P.M. on April 25th, 2019.

Aye: Ysusi, Caflich, Hogsett

Nay: None

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

Director Cowan said the owners informed the Building Inspector that they wanted to repair the structure and recommended staff to work with them if they are willing. The public hearing was opened. The public hearing was closed.

Motion:

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

Aye: Ysusi, Caflich, Hogsett

Nay: None

V. ITEMS FOR COMMISSION ACTION

- A. Appropriations

1. A-1833

This item was removed from the consent agenda and moved to items for Commission action.

Commissioner Hogsett excused himself from the discussion.

Mayor Ysusi inquired if the new ramp meets the standards the ADA requires.

Minutes of the Independence City Commission's February 28, 2019 Meeting

City Manager Whitehead gave a brief history of the repairs and reimbursement to Commissioner Hogsett

Director Cowan informed the Commissioners that he asked the Department of Justice for help on this issue and agreed with City staff that this was a reimbursable expense.

Commissioner Cafilisch disagreed with that assessment and said that the City's responsibility is accessible route of the sidewalk and that access into the building is the building owner's responsibility.

Director Cowan stated he had posed those same questions with the Department of Justice and they said it's the City's job to get them to the door.

Commissioner Cafilisch again disagreed with that assessment.

Director Cowan noted that there was a cross slope issue with that sidewalk and the City would have to replace it.

Commissioner Cafilisch stated that the City is responsible for the sidewalk but not access into the building.

Director Cowan stated that the Department of justice feels that it is the City's responsibility to get people to the building on the City sidewalk.

Commissioner Cafilisch noted other curb ramp projects did not specifically accommodate other businesses, it was only for access to the sidewalk.

City Attorney Chubb asked about the Streetscape Project and if it would have been the owner's responsibility at that time to put a ramp in.

Director Cowan said that it was a cost share between the City and the building owners.

City Manager Whitehead suggested aiding other downtown building owners as an economic development incentive.

Commissioner Cafilisch noted Public Purpose Doctrine and repeated that the City's responsibility is for access to sidewalks and parking areas and a complaint can't be made to the City to access a private building.

City Manager Whitehead suggested that vacant buildings downtown would be the only buildings that would qualify for the incentive.

Commissioner Cafilisch stated that the City should stay focused on their responsibilities. City Manager Whitehead wondered if a complaint would be filed would the City be held liable.

Minutes of the Independence City Commission's February 28, 2019 Meeting

Commissioner Cafilisch disagreed, saying the Justice Department cannot cite the City for access into a private building, only public buildings.

City Attorney Chubb said based on the conversation between the Justice Department and Director Cowan that if a complaint had been filed the Justice Department would tell the City to fix it

Commissioner Cafilisch disagreed and said that it is the responsibility of the property owner to provide accessibility to their buildings.

Mayor Ysusi said that when the building was bought a determination was made that building a ramp would have to be put in for customer access as well as any plumbing or electrical issues to bring the building up to code and now the debate is whether this is a reimbursable expense or not.

City Attorney Chubb wondered if the Commissioners should talk to the Justice Department and asked if it is a different building that hasn't made this improvement and a complaint is filed would the Department of Justice say the City has to fix it.

Mayor Ysusi also inquired about the possibility of getting clarification from the Justice Department.

Director Cowan said the Justice Department official he talked to said that it was clear to him that the City accepted this responsibility but, they will not get involved unless a complaint is filed.

Mayor Ysusi wondered that if the reimbursement was approved does that put the City on the hook for other areas of downtown that need this improvement and was debating where the City's responsibility ends, and the owner's begin.

City Manager Whitehead wondered about using the ADA funds to incentivize someone to make improvements to a downtown building and to bring another business downtown.

Commissioner Cafilisch noted that the Special Use Sales Tax was presented to the community to make City facilities comply with the Department of Justice ruling not to provide access into a building that is not owned by the City.

Mayor Ysusi wondered if maybe the funds should come out of the Economic Development Fund.

Commissioner Cafilisch responded that it was not the City's responsibility and it should not come out of Economic Development unless there was a program that is accessible to every store and property owner.

Minutes of the Independence City Commission's February 28, 2019 Meeting

Mayor Ysusi was inclined to go along with the fact that this is the owner's responsibility.

Motion:

On the motion of Commissioner Caflisch, seconded by Mayor Ysusi the Commission authorized payment of the appropriations with the exception of \$12,120 relating to the installation of the handicap ramp to the West Laurel Street Bakery on City right-of-way.

Aye: Ysusi, Caflisch

Nay: None

Abstain: Hogsett

- B. Consider approving a request for electronic signs in the C-3, Central Business District from United Methodist Church to be located at 200 South Pennsylvania Avenue and 111 East Maple Street.

Vic Gorman representing the United Methodist Church presented information about the signs they would like to install. Mr. Gorman also mentioned that they would have to go before the Planning and Zoning Commission to ask for a variance on the electronic portion of the sign.

Motion:

On the motion of Commissioner Caflisch, seconded by Commissioner Hogsett the Commission approved a request for electronic signs in the central business district from United Methodist Church to be located at 200 South Pennsylvania Avenue and 111 East Maple Street.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

- C. Consider approving the recommendation from the Park Board to increase the miniature train, miniature golf and building rental rates.

Park and Zoo Director Barb Beurskens and Park Board President Jim Hogan presented their recommendation to increase rates for the miniature train, miniature golf and park building rental rates. Based on the usage for those facilities in the prior year the increase in revenues would be about \$36,000.

Mayor Ysusi liked what was presented.

Commissioner Caflisch expressed his desire to leave the miniature train and miniature golf prices the same and increase the building rentals a little more.

Minutes of the Independence City Commission's February 28, 2019 Meeting

Director Beurskens noted that more local people use the park buildings and more people from out of town will ride the train or play golf. It is her desire to have the out of town people help more with the park.

City Manager Whitehead supported the recommendation of the Park Board.

Commissioner Hogsett expressed his support of the recommendation.

Mayor Ysusi mentioned how cheap the building rental rates are considering other rates around town.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflisch the Commission approved the rate increases for the train, golf and rental buildings as recommended by the Park Board.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

- D. Consider amending City ordinance to prohibit discharge of fireworks within the fire limits, streets, City parks, City parking lots or City owned property, excluding the contracted commercial display.

Director Beurskens presented a recommendation from the Park Board prohibiting fireworks in the park and zoo except for the commercial display and other city owned property.

Commissioner Caflisch inquired if the Ordinance had been modified and the City Attorney informed him that it had not.

Commissioner Caflisch agreed that the Ordinance needed to be modified to take fireworks out of the park.

Mayor Ysusi and Commissioner Hogsett agreed as well.

Motion:

On the motion of Commissioner Caflisch, seconded by Commissioner Hogsett the Commission authorized the City Attorney to review and modify the Ordinance as discussed and bring it back to the Commission for approval.

Aye: Ysusi, Caflisch, Hogsett

Nay: None

Minutes of the Independence City Commission's February 28, 2019 Meeting

E. Consider awarding a bid for a mower for use at Mount Hope Cemetery.

Director Beurskens presented the bids received for the purchase of a lawnmower to be used at the cemetery. City staff's recommendation is for the Hustler mower. She presented reasons for not selecting the lowest bid.

Commissioner Cafilisch inquired about the replacement schedule for the mowers.

Cemetery Sexton Bennett said they try to replace two mowers every two years but because of how well the Hustlers are built sometimes they only replace one. He said they usually run them for 1300 to 1500 hours before they are given to other departments.

Mayor Ysusi asked if they get good service from the dealer. He replied yes.

Commissioner Hogsett asked how two bids were within 25 cents of each other.

Cemetery Sexton Bennett replied that they were both Hustler dealers.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Cafilisch the Commission approved the bid from Sandbagger Golf & Turf in the amount of \$10,749.

Aye: Ysusi, Cafilisch, Hogsett

Nay: None

F. Consider whether or not to move forward with the demolition of 606 Fountain.

Director Cowan introduced Paul Horbath from Morning Star Management and noted that the house is included in the demolition bid that will be brought to the Commission next month.

Mr. Horbath stated that he was trying to sell some properties in Coffeyville and then he would take the proceeds and remodel this house because he feels that it is worth saving. He noted that the winter made it harder for him to work on the property as much as he would have liked but, there would be more progress made in the coming months.

Commissioner Hogsett inquired if Mr. Horbath lived in Independence. He replied that he lived in Lawrence.

Commissioner Cafilisch asked if the building was mistakenly put on the bid list.

Director Cowan noted that at the November 29th meeting the Commission gave Mr. Horbath 60 days to show progress on the building. Mr Horbath was not able to attend

Minutes of the Independence City Commission's February 28, 2019 Meeting

the January 24th meeting and Building Inspector Cushing had recommended this building be put on the bid list.

Each Commissioner expressed their desire to see the house fixed up.

Motion:

On the motion of Commissioner Caflich, seconded by Commissioner Hogsett the Commission removed 606 Fountain Street from the approved demolition list.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- G. Consider authorizing City staff to notify the owner of 2012 N. 10th Street that the City will seek bids for demolition if a timeline is not received within 30 days and work is resumed.

Director Cowan informed the Commission that this house had been on the condemnation list since 2012 and the Building Inspector is frustrated because no progress has been made in three years.

After much discussion it was decided to let the house remain as is and wait to see if it will be offered up for sale at the County's next tax sale in 2020.

- H. Consider setting the date of April 25, 2019 at 5:30 PM for a Public Hearing to consider condemnation of a fire damaged property located at 517 W. Chestnut Street.

Director Cowan informed the Commission that this house was involved in a fire and the owners are aware the City is starting the condemnation process.

Commissioner Hogsett said he would like to get the process started and believed that nobody would save this house.

Motion:

On the motion of Commissioner Caflich, seconded by Commissioner Hogsett the Commission set the date of April 25th, 2019 at 5:30 p.m. for a public hearing to consider condemnation of the structure located at 517 West Chestnut Street.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- I. Consider adopting a resolution to place a question on the ballot to increase the number of Commissioners to be elected "at large" or "by district."

Minutes of the Independence City Commission's February 28, 2019 Meeting

Commissioner Hogsett explained that he had requested this be put on the agenda and would like to see it on the November ballot.

Commissioner Cafilisch discussed having a public forum in May which would give the Commissioners time to research the different options for the election process.

City Attorney Chubb said he had called the County Clerk and they would need a Resolution for publication purposes at least 90 days in advance of the election date. He recommended that if the Commission wanted this on the November ballot, they would need a Resolution passed by July 11th. He then stated that the Commission could establish the terms by Ordinance later.

It was decided that a Public Forum would be held on April 17, 2019 at 5:30 p.m.

VI. REPORTS

A. City Boards

1. City Board List

Assistant City Manager Passauer went over the open City Board positions.

2. February 20, 2019 City Recreation Commission Minutes

VII. CITY MANAGER'S COMMENTS

City Manager Whitehead mentioned the increase in sales tax revenue and wanted to thank all the shoppers who shopped locally.

VIII. COMMISSIONERS' COMMENTS

Commissioner Cafilisch inquired about the status of various City projects.

Commissioner Ysusi inquired about the Whiskey Creek Hydrology Study and City Manager Whitehead informed him that the meeting was rescheduled due to an ice storm in Kansas City.

IX. PUBLIC CONCERNS

None

X. EXECUTIVE SESSION

A. Personnel matters of non-elected personnel.

Motion:

The Mayor moved to go into executive session for 25 minutes for discussion of

Minutes of the Independence City Commission's February 28, 2019 Meeting

employee performance pursuant to the non-elected personnel exception (KSA 75-4319(b)(1)) with the open meeting resuming at 8:00 PM. Commissioner Hogsett seconded.

Aye: Ysusi, Caflich, Hogsett

Nay: None

XI. ADJOURNMENT

Motion:

Commissioner Caflich moved to adjourn. Commissioner Hogsett seconded.

Aye: Ysusi, Caflich, Hogsett

Nay: None

Louis Ysusi, Mayor

Leonhard Caflich, Commissioner

Gary Hogsett, Commissioner

Attest:

City Clerk/Treasurer