

Minutes of the City Commission's January 25, 2024 Meeting

I. REGULAR SESSION

Commissioners Present: Mayor Tim Emert , Vice-Mayor Scott Smith and Commissioner Dean Hayse

City Staff Present: Kelly Passauer, City Manager; David Cowan, Assistant City Manager; Jeff Chubb, City Attorney; David Schwenker, City Clerk/City Treasurer; Shawn Wallis, Fire/EMS Chief; Lacey Lies, Director of Finance; Jerry Harrison, Chief of Police; Matthew Wright, Police Officer; Jordan Bagley, and John Garriss, City Engineer/Director of Public Works and Utilities

Visitors Present: Breanne Sanford, Scott Mills and Mike McCambridge.

A. Call to Order

Mayor Emert called the meeting to order.

B. Pledge of Allegiance to the United States of America

C. Adoption of Agenda

Motion:

On the motion of Dean Hayse, seconded by Scott Smith the Commission adopted the agenda.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

II. APPOINTMENTS

A. Consider appointing Justin Wren as the Atmos Representative to the Board of Examiners - Plumbers.

Chris Fry was the previous Atmos representative on the Board of Examiners - Plumbers. He has moved and Atmos has been sending Laramie Ruark to the latest meetings.

BOARD OF EXAMINERS - PLUMBERS (3 year terms -- 5 members)			
Members	Term	Expires	Appointed/ Eligible to be Reappointed
Paul Lemon Phone: 332-9010	4th term*	August 15, 2025	
Doug Rinck Phone: 331-6621	8th term	August 15, 2025	
Wayne Sundquist 400 South 9th	9th term	August 15, 2025	
Chris Fry/Atmos	1st term*	August 15, 2023	5/9/2019 Yes
Pat Howe Phone: 331-1829	9th term	August 15, 2025	
Meeting Place: City Commission Room Meeting Date: As Needed Meeting Time: TBD			

Motion:

On the motion of Tim Emert, seconded by Dean Hayse the Commission appointed Justin Wren as the Atmos Representative to the Board of Examiners - Plumbers. This term will expire on August 15, 2026.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- B. Consider reappointing Rick Kiister, Travis Blankinship and Daniel Johnston to the Electrical Board.

Rick Kiister, Travis Blankinship and Daniel Johnston have all completed a first full term on the electrical board. All are eligible to serve a second full term.

Minutes of the City Commission's January 25, 2024 Meeting

ELECTRICAL BOARD (3 year terms -- 5 members)			
Members	Term	Expires	Appointed/ Eligible to be Reappointed
Rick Kiister Phone:	1st term*	1-Oct-23	
Travis Blankinship Phone: 330-2527	1st term*	1-Oct-23	
Kenneth Evans	Unexpired	1-Apr-24	Appointed 10/13/2022
Daniel Johnston	1st term	1-Oct-23	14-Jan-21
Dennis Royer/Everygy Phone: 331-	1st term*	1-Apr-24	
Meeting Place: City Commission Room, City Hall Meeting Time: As Needed Meeting Date: TBD			

Motion:

On the motion of Tim Emert, seconded by Scott Smith the Commission reappointed Rick Kiister, Travis Blankinship, and Daniel Johnston to the Electrical Board. Their second term will end on October 1, 2026.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

III. PRESENTATIONS

- A. Introduction and swearing-in of Independence Police Department's newest officer, Officer Matthew Wright**

Matthew Wright was selected to serve the citizens of Independence as a police officer in July 2023. He graduated from the Kansas Law Enforcement Training Center's Basic Training Course on January 12th, 2023.

Matt is 25 years old and has wanted to be in law enforcement since he was a child. He is a second-generation officer and hopes to serve the people of Independence well, and for a long time to come.

City Clerk Schwenker swore in Officer Wright.

IV. CONSENT AGENDA

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission approved the consent agenda.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- A. Consider a resolution exempting the City from GAAP (Generally Accepted Accounting Principles) requirements.

Each year the Commission adopts a resolution exempting the City from all requirements of GAAP. The GAAP requirement provides for a fixed asset accounting system in lieu of just an inventory system, as well as other financial reporting requirements. This action is taken based on past recommendations of the auditors that the GAAP requirements would cost the City additional funds to prepare the City audit and would not provide any additional benefit to the City.

Suggested Motion:

I move to adopt Resolution No. 2024-003, waiving the requirements of K.S.A. 75-1120a(a) as they apply to the City of Independence, Kansas for the year ended December 31, 2024.

- B. Consider a request from Independence Rotary to authorize an agreement with Rainbow Fireworks for the annual 4th of July Fireworks Display.

Each year the City contracts for the annual 4th of July Fireworks display. Until last year, Jim Kelly previously raised funds to reimburse the City. Jim retired from this fundraising activity after 31 years in 2022. The Independence Rotary Club volunteered to take on this fundraising effort for the community display last year and was able to raise enough funds to fully reimburse the City. However, there is no guarantee the funds raised in future years will cover the total cost. Any deficit is covered by the City. In addition, the City also acquires additional insurance for this community event. The Rotary Club Board met last week, and they recommended approving the attached contract which provides for a \$20,500 show which provides for the same shell count as last year.

Suggested Motion:

I move to authorize the Mayor to sign a contract with Rainbow Fireworks for the 2024 4th of July Fireworks display.

Minutes of the City Commission's January 25, 2024 Meeting

- C. Consider accepting the annual submission of the Independence Land Bank 2023 Year-End Report.

The Independence Land Bank is required to present a year-end report annually.

Suggested Motion:

I move to accept the Independence Land Bank's 2023 year-end report as presented.

- D. Consider adopting an ordinance approving the appropriations for 2024 authorized expenditures.

The purpose of this ordinance is to allow for transactions to be fully processed through to payment in a timely manner, up to the budgeted authority in each fund or as otherwise previously authorized by Commission approved contract. Approving one ordinance authorizing payment up to previously approved amounts will allow for a more streamlined process as it will save staff time re-preparing ordinances, as well as allow the City to pay its vendors, reconcile accounts, and operate in a more efficient manner. In addition to accounts payable, this will also allow for the processing of payroll. All payment records may still be provided to the Commission as a report on a monthly basis at either the first or second monthly Commission meeting. As always, procurement policies must also be followed.

Suggested Motion:

I move to adopt Ordinance 4445, approving appropriations for 2024 authorized and budgeted expenditures.

- E. Consider a three-year contract for mowing services.

The City of Independence has been utilizing a mowing service for the past three years to maintain flood lots, handle nuisance mowing, and care for City-owned properties. Recently, the City initiated a rebidding process for both mowing and snow removal services, aiming for another three-year contract. Following this call for proposals, three submissions were received.

Over the past two years, the City has faced a drought, resulting in a mowing expense of \$47,757.00 in 2023, paid to J&S Enterprise. It is crucial to acknowledge that if the rainfall in 2024 returns to normal levels, the demand for nuisance mowing is expected to rise. There is a potential for a significant increase, possibly doubling the number of yards mowed.

Minutes of the City Commission's January 25, 2024 Meeting

Furthermore, it's important to highlight that the City has specific requirements for flood lots and vacant lots to be mowed on a monthly basis. This involves approximately 83 properties scattered along the floodplain. Additionally, the City has requirements for ten properties to be mowed bi-weekly and weekly as needed, especially during wet periods. The weekly estimate represents a worst-case scenario, assuming that these 10 yards have to be mowed weekly throughout the 2024 mowing season. The estimates below are based on services starting in April and ending in November or eight months of mowing.

J&S	8	Simpso	8	TLC	8
Enterpr	months	n Lawn	months		months
ise					
\$4,895.5	\$39,164.	\$6,672.0	\$53,376.	\$3,931.7	\$31,454.
0	00	0	00	7	16
Weekly	\$10,904.	n/a	n/a	Weekly	\$14,160.
Mowing	00			Mowing	00
Nuisanc	\$12,425.	Nuisanc	\$19,525.	Nuisanc	\$106,50
e - 355	00	e - 355	00	e - 355	0.00
Total	\$62,493.	Total	\$66,229.	Total	\$152,11
	00		00		4.16

It is the staff's recommendation to award the mowing to J&S Enterprise.

The City also asked for bids for snow removal at the Independence Library, City Hall and Memorial Hall. The City received two proposals for this service. The low bid was TLC at \$415.00 - Library, \$302.50 for City Hall and \$310.00 for Memorial Hall.

It is staff recommendation to award TLC a 3-year contract for snow pre-treatment and removal at these locations.

Suggested Motion:

I move to authorize the Mayor to sign three (3) year agreements with J&S Enterprise for mowing and TLC for snow removal.

F. Consider authorizing award of the annual concrete patching bid.

The City requires concrete patching work to be completed at various locations due to utility repair activity and required pavement maintenance (including pavement flowline repair). Additionally, pricing for sidewalk work is required for incidental repairs. Adding in ADA ramps and curb and gutter replacement complete the work items that we would generally need to do for small repairs around the City.

Minutes of the City Commission's January 25, 2024 Meeting

The City requested bids for these four categories of work, and received two responses, one from J. Graham Construction, Inc., and one from Recrete Design Concrete + Construction. Other competent contractors were contacted, but declined to bid.

J. Graham Construction, Inc. was not the low bid on the aggregate quantities used for comparison purposes, as compared to Recrete, as shown in the comparison (below), and is approximately 3% higher in cost on the mix of quantities used for comparison. Although it is certain that the actual quantities used during the year will vary from these quantities, the ultimate total used cannot be predicted.

J Graham	Unit Price	Unit	Street	Water/Sewer	Total Quantity	Total
Pavement	\$ 190.00	per square yard	0	220	220	\$ 41,800
Curb and Gutter	\$ 100.00	per linear foot	40	20	60	\$ 6,000
Sidewalk	\$ 120.00	per square yard	40	20	60	\$ 7,200
ADA Ramp	\$ 235.00	per square yard	80	0	80	\$ 18,800
					Total	\$ 73,800

Recrete	Unit Price	Unit	Street	Water/Sewer	Total Quantity	Total
Pavement	\$ 180.00	per square yard	0	220	220	\$ 39,600
Curb and Gutter	\$ 121.00	per linear foot	40	20	60	\$ 7,260
Sidewalk	\$ 112.00	per square yard	40	20	60	\$ 6,720
ADA Ramp	\$ 228.00	per square yard	80	0	80	\$ 18,240
					Total	\$ 71,820

Difference	\$ 1,980
Difference (%)	3%

Generally, the low competent bidder is recommended for award. In this case, recent history with Recrete (they were awarded the work in 2022) shows that they were unable to complete the initial work assigned to them at the start of the contract, let alone the additional work that showed up later in the year. There were several “rush” projects that they were assigned that they did complete, but the overall schedule performance was unsatisfactory.

J. Graham Construction, Inc. was the low bidder in 2023, and performed adequately. For that reason, it is suggested that the 2024 bid be awarded to J. Graham Construction, Inc., since the cost difference is minimal, but the public perception that is created through unrepaired roads is extremely negative.

The work will be awarded in multiple contracts for work via the Street Department as well as Water/Sewer work (and to other departments as required).

Suggested Motion:

Minutes of the City Commission's January 25, 2024 Meeting

I move to authorize award of the 2024 concrete patching bid contracts to J. Graham Construction, Inc., at the unit costs as specified on the bid documents.

G. Consider awarding disposal of the Water Treatment Plant residuals.

As a part of the Water Treatment Plant's processes, a sediment is generated. Since this sediment exits the process after the water treatment has begun (i.e., chemicals are introduced) it cannot be reintroduced back into the water. This sediment ("residuals") is stored in basins prior to being appropriately disposed of. These basins must be periodically cleaned.

A bid opening for this work was held January 18, 2024. The sole bid was from MEGA, LLC for \$122,000. This contractor has done this type of work before and is familiar with our basins, and was the low of three bids last year. It is recommended that we award to this contractor. A contract will be drawn up for this work with the City Attorney.

Suggested Motion:

I move to approve award of the Water Treatment Plant residual disposal for \$122,000 to MEGA, LLC.

V. ITEMS FOR COMMISSION ACTION

A. Consider a request to waive or modify Section 705.1 relating to surface material in the Off-Street Parking and Loading Regulations for construction of a gravel parking lot at 1920 W. Main Street.

Mr. Scott Mills, the owner of Quality Paint and Body, is requesting a waiver from the surface material required in the Off-Street Parking regulations for his business located at 1920 W. Main Street. Quality Paint and Body has recently applied for a building permit to add a 5,500-square-foot new building behind their current location at 1920 W. Main. Upon reviewing the building applications, it was identified that the two parking areas associated with the building did not meet the C-2 requirement for a hard surface. According to the regulations, hard surfaces can include concrete, asphalt concrete, or asphalt double-sealed surfaces *[Also Known As Chip and Seal]*, maintained adequately for all weather use, and so drained as to avoid flow of water across sidewalks.

Upon discussion with Koehn Construction and Mr. Scott, it was clarified that the additional space would be utilized for storing vehicles and equipment undergoing preparation for paint in the new building. The proposed surface for this area would consist of 5-6" of compacted stone with a sturdy sub-base, ensuring that it

does not create any dust-related issues for the neighborhood.

In consideration of the zoning code, Mr. Mills is eligible to seek a waiver from the Commission per Section 701.0 if "*the City Commission deems it in the public interest to waive or modify this requirement.*" The applicant could also request the Planning Commission rezone the property industrial, or they could request a variance from the Board of Zoning Appeals if the Commission does not wish to consider this request. However, all the surrounding property is either commercial or residential. Because the Off-Street Parking and Loading Regulations are in the zoning code, it is odd that the Commission has the authority to waive these requirements rather than referring it through the normal variance process with a hearing before the Board of Zoning Appeals. This is another area that should be reviewed when the zoning regulations are updated, as it is inconsistent with how requests to vary from the zoning code are handled in the remainder of the zoning regulations.

Mr. Mills states the reason for their request is due to the substantial cost associated with meeting the surface material requirement coupled with the investment in the new building. Therefore, Mr. Mills is requesting the Commission waive this requirement. Mr. Mills' request is attached.

It should be noted that when the off-street parking regulations were modified last year, the modifications that allowed gravel were specifically for parking areas in industrial zones or off alleys in residential areas. There is already an exemption to the surface material requirement for parking of vehicles under one ownership that applies to all zones; however, it is unknown to current staff why this exemption was initially allowed. However, the vehicles that will be parked in these parking areas are not under one ownership, so this exemption does not apply. If the Commission wishes to grant this request, this would be the first time staff recalls that this waiver was granted for a parking lot in a commercial zone. It should also be noted that if the plan is to park wrecked or damaged vehicles, some screening should be required to obstruct them from public view or from the adjoining neighborhood.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission approved the request to waive the surface material in the Off-Street Parking and Loading Regulations with the condition that the off-street parking surface be maintained 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, that the area must be contained at the rear of the building, and the area be screened from public view or from the view of the adjoining neighborhood.

Minutes of the City Commission's January 25, 2024 Meeting

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- B. Consider approving award of the contract for renovation of the parking lot north of City Hall to Heck & Wicker, Inc.

The City has completed renovating City Hall. As such, the parking configuration has changed around the building. The lot due north of City Hall, which is part of the Consent Decree with the DOJ, does not have sufficient numbers of ADA spaces to support the new building.

The Commission selected a large, plain footprint replacement of the lot. Bids were received on January 18th, 2024 from two firms and a bid tabulation is attached. The low bid was \$593,351.20, by Heck & Wicker, Inc., versus the second bid of \$621,588.25 by Muller Construction, Inc. The engineer's estimate was \$550,000.

The total incremental cost of this decision would include the construction engineering and inspection, which has previously been contracted to TranSystems, Inc at a maximum fee of \$68,000. This \$68,000 is not included in the bid amount, but is an expense that would not be incurred if the parking lot were not renovated.

It is anticipated that construction will take place in the second or early third quarter of 2024.

Motion:

On the motion of Scott Smith, seconded by Tim Emert, the Commission authorized award of the renovation of the parking lot north of City Hall to Heck & Wicker, Inc. for the unit price bid of \$593,351.20.

Aye: Tim Emert, Scott Smith

Nay: Dean Hayse

- C. Consider initiating a text amendment relating to "Restaurants, drive-in" in the C-3 Central Business District.

The Zoning Code defines "*Drive-in establishment*" as follows: "*Any restaurant, financial institution or product-vending enterprise where the patron does not enter and remain within a building during the transaction of his [their] business. Food vending establishments, where the food is not normally consumed within a building or where facilities are provided for eating outside a building, shall be included in this definition.*"

Minutes of the City Commission's January 25, 2024 Meeting

In addition, "*Restaurants, drive-in*" is defined as: "*An establishment whose primary purpose is the sale, dispensing or serving of food, refreshments or beverages in automobiles, including those establishments where customers may serve themselves, except that this shall not be construed as to include what is commonly called a cafeteria.*"

We have had a request for a drive-through and possibly a walk-up counter beverage business in the C-3 district. Customers would not enter the building. Since "*refreshments or beverages*" are included in the definition of "*Restaurants, drive-in*", we have used that definition to review this proposed use.

The Permitted and Conditional Use table provides the following for "*Restaurants, drive-in*":

		Permitted Zoning District												
Land Use Category	Code	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
Restaurants	SE10								C	P	P	P	P	
Restaurants, drive-in	SE10									P		P		

"*Restaurants, drive-in*" are currently not permitted in the C-3, Central Business District.

It should also be noted that because this proposed project is located in the Downtown Historic District it will also require a Certificate of Appropriateness from the Independence Historic Preservation and Resource Commission before a building permit can be issued.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission initiated a public hearing before the Planning Commission to consider modifying the permitted and conditional use table to allow "*Restaurants, drive-in*" as a conditional use in the C-3 District.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

D. Consider termination of the Stage 2 Water Warning.

The City declared a Stage 2 Water Warning on September 28, 2023 when the water level at Elk City Reservoir dropped to below its normal level by over 5.0 feet in accordance with our Municipal Water Conservation Plan, as approved by the Division of Water Resources.

The level in Elk City is now above the level where a Stage 2 Water Warning is required. As such it is recommended that we terminate the Stage 2 Water Warning at this time. The State Water Office was contacted, and they concurred

that this is prudent, since there is more than adequate natural flow in the Verdigris to support anticipated City water use without restriction.

The Stage 1 Water Watch would remain in effect, which requests that the public make efficient use of water.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission approved Resolution 2024-004, terminating the Stage 2 Water Warning.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- E. Consider the execution of a document releasing the right of first refusal on Lot #10 in the West Laurel Industrial Park.

Last September the City sold a 2.2 acre Lot in the West Laurel Industrial Park to Phillip Fienen and Wendy Fienen, husband and wife, also known as "BUYER." Since then the BUYER has determined that they no longer need the property and has located another buyer. The original agreement included a right of first refusal. In order for the sale of the property to go through to the next buyer, the City needs to execute a document releasing the first right of refusal. The City Attorney will be preparing the document for the Mayor's signature.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission authorized the execution of a document releasing the right of first refusal on Lot #10 in the West Laurel Industrial Park.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

VI. REPORTS

- A. CRS 2023 Year End Report

Assistant City Manager Cowan presented the report.

- B. January Public Works Projects Report

City Engineer Garris presented the report.

Minutes of the City Commission's January 25, 2024 Meeting

VII. CITY MANAGER'S COMMENTS

Chief Harrison reported on the police force.

City Manager Passauer reported on upcoming meetings.

VIII. COMMISSIONERS' COMMENTS

None

IX. PUBLIC CONCERNS

X. EXECUTIVE SESSION

A. Personnel matters of non-elected personnel.

Motion:

On the motion of Tim Emert, seconded by Scott Smith, the Commission recessed for an executive session for discussion of an employee performance pursuant to the non-elected personnel exception, KSA 75-4319(b)(1). The open meeting will resume at 6:20 pm.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

The open meeting resumed at 6:20 pm with no action taken.

XI. ADJOURNMENT

Motion:

On the motion of Tim Emert, seconded by Dean Hayse the Commission adjourned the meeting.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

Minutes of the City Commission's January 25, 2024 Meeting



Tim Emert, Mayor

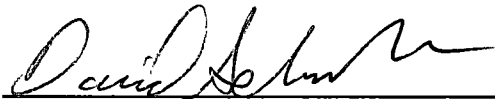


Dean A. Hayse, Commissioner



Scott Smith, Commissioner

Attest:



City Clerk/Treasurer