

Minutes of the City Commission's September 12, 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; Cole Hoffmeister, City Attorney; David Schwenker, City Clerk/City Treasurer; Shawn Wallis, Fire Chief; Lacey Lies, Finance Director and April Nutt, Director of Housing Authority.

Visitors Present: Larry McHugh, Breanne Sanford, Nancy Clubine, Jamie Clubine, Phil Adams, Dorcas Sutton, Ned Stichman, Rita Ortolani, Cameron Mavers, Christy Mavers, Dave Lumm, Brenda Lumm, Brian Beecham, Reign Bale, Johnni Kaiser and Riley Acuff.

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. CONSENT AGENDA

Motion:

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

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

A. Consider approving City Commission minutes from August 21 and August 22, 2024.

Suggested Motion:

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I move to approve the minutes from August 21st and 22nd, 2024.

- B. Consider adopting Ordinance 4463 Standard Traffic and Ordinance 4464 Uniform Public Offense Code.**

The League of Municipalities has prepared the Uniform Public Offense Code and the Standard Traffic ordinances for 2024 for cities in Kansas. The City Attorney has reviewed and has the following recommendations.

Uniform Public Offense Code, Ordinance No. 4464.

- a. Section 10.8 is deleted**
- b. The allowable fine under Section 5.6 (c) shall be not less than \$25.00 and not more than \$500.00**
- c. Section 5.6 shall include a new subsection (d) as follows.**
 - (d) The sentence for a violation of this section may include a requirement that the defendant perform a specified number of hours of community service approved by the Court and/or completion of one or more educational classes dealing with the harmful effects of tobacco and electronic cigarettes assigned by the court.**

Standard Traffic Ordinance No. 4463.

The City Attorney recommends approval of Ordinance 4463, Standard Traffic Ordinance, and repealing Ordinance 4372. The latter shall take effect upon publication or October 1, 2024, whichever is later.

Suggested Motion:

I move to adopt Ordinances 4463 and 4464.

- C. Consider approving a change order for striping Oak Street.**

At previous Commission Meetings it was noted that the striping for the Oak Street mill and overlay project would be incorporated into the project by change order. Bid prices on a similar project were used, and a durable pavement marking was applied on Oak Street. This \$14,177.64 change order incorporates those changes into this project.

Suggested Motion:

I move to approve the change order for striping with Bettis Asphalt in the amount of \$14,177.64.

- D. Consider a supplemental agreement for geotechnical work with PEC.**

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In working with the Southern Kansas & Oklahoma Railroad (SKOL), a permit was acquired to bore underneath their line on 10th Street for our Waterline/Meter project. SKOL has requested additional geotechnical engineering evaluation including bores and a report to approve this crossing and to permit our new waterline to cross. This was outside of the scope of the contractor.

PEC, our engineering firm on this project, can perform this service for \$5,250 in the timeframe required by our contractor for construction.

Suggested Motion:

I move to approve the supplemental agreement for geotechnical bores and evaluation related to the SKOL crossing with Professional Engineering Consultants, P.A. in the amount of \$5,250.

- E. Consider adopting Resolution No. 2024-021, authorizing an emergency water agreement with Labette Health Independence Health Care Center.**

The Labette Health facility indicates that they are required by the Center for Medicare Services to have an agreement for water supply during an emergency or disaster event. They have requested for the City to engage in such an agreement with them so that they can be compliant with their requirements. The agreement has been reviewed by the City Attorney, and is attached.

Suggested Motion:

I move to adopt Resolution No. 2024-021, authorizing an emergency water agreement with Labette Health Independence Health Care Center, and authorizing the Mayor to sign all relevant documents.

- F. Consider bidding roof repair for the Street Department Quonset Hut.**

An existing Quonset Hut of indeterminate age is currently used to store Street Department tools and equipment. Over time, this hut has lost integrity to repel moisture, and leaks water into the structure from a large number of locations. Initially, pricing was sought via a number of vendors, with only one respondent. Upon further review, the respondent's price exceeded the amount that could be awarded without a formal bid and formal Commission approval, so a request for quotation was created for this work and is attached.

Suggested Motion:

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I move to approve bidding the roof repair at the Street Department's Quonset Hut.

- G. Consider approving Addendum #2 to the KwiKom-Independence Right-of-Way License Agreement.**

The City of Independence entered into a Right-of-Way License Agreement with KwiKom Communications on December 28, 2023, to allow the installation of fiber optic facilities within the city's right-of-way. During the course of installation, it was identified that existing sewer lines could potentially be damaged if the fiber optic cables were installed at standard depths. As a result, KwiKom Communications and the City have mutually agreed to modify the original agreement to allow for the installation of fiber optic facilities at a reduced depth of no less than eighteen inches (18") within specified areas. KwiKom has agreed to utilize armored cable in this area, which will help protect against future damage to the fiber and potential interruptions of customer services after it is installed.

Addendum #2 to the agreement releases the City from liability for any damage to KwiKom's facilities that may occur as a result of the reduced installation depth, except in cases of gross negligence or willful misconduct by the City. This modification is necessary to avoid conflicts with unlocated sewer lines and ensure the continued progress of the fiber optic installation project. KwiKom Communications assumes all potential risks associated with the reduced installation depth and agrees to cover any associated maintenance or repair costs.

Suggested Motion:

I move to approve Addendum #2 to the Right-of-Way License Agreement between the City of Independence and JMZ Corporation d/b/a KwiKom Communications, authorizing the modification of installation depths and the release of liability as outlined in the addendum.

III. PUBLIC HEARINGS

- A. Revenue Neutral Rate Public Hearing**

In March 2021, the Kansas Legislature passed Senate Bill (SB) 13 to establish limitations on ad valorem property tax levies by taxing subdivisions without an additional notice and hearing prior to budget adoption. Subsequently, Senate Substitute for House Bill 2104 was passed to amend the timelines in SB 13. SB 13 is retroactively effective January 1, 2021.

The bill repeals the tax lid law and computed tax limits imposed by KSA 79-2925b and KSA 79-2925c. Alternatively, the bill introduces the use of a “revenue neutral rate”(RNR), defined as the amount of ad valorem tax revenue levied in the prior year over the current year’s assessed valuation estimates, expressed as a mill. County clerks are responsible for computing and providing the estimated rates for taxing subdivisions with the budget information estimates by June 15th.

Valuations for properties participating in incentive and/or abatement programs such as Neighborhood Revitalization Districts and Industrial Revenue bonds are still included in the RNR calculation, although they will not be realized by the taxing entity. The total valuation subject to rebates as reported to the City by the Montgomery County Clerk for purposes of the 2025 budget preparation was 719,813.

Taxing subdivisions cannot levy above the RNR without holding a Revenue Neutral Rate Hearing for taxpayers to attend and provide feedback. At the end of the RNR hearing, the governing body of the taxing subdivision will publicly vote to pass a resolution to exceed the RNR for the upcoming budget year.

If the taxing subdivision adopts a budget that does not exceed the RNR, the subdivision should contact the county clerk to prepare for valuation decreases from the June 15th property valuation estimates to the November 1st property valuations certified by the county clerk. If property valuations decrease from June 15th to November 1st, the taxing subdivision would realize fewer dollars than budgeted.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission adopted Resolution 2024-020 authorizing the City of Independence to levy a property tax rate exceeding the revenue neutral rate.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

B. 2025 Budget Hearing

What is the Municipal Budget?

Each year a city must forecast the revenues it expects to receive and the expenditures it expects to incur in the upcoming year. The resulting formalized document is known as the Municipal Budget, which is submitted

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to the Kansas Department of Revenue. The budget is constantly monitored throughout the year to determine if the city's spending is within the budgeted authority as well as whether the city is spending more or less than its revenues.

What does our City's Municipal Budget Do?

Each year the Mayor, City Commission, and City staff work together to develop an Annual Budget. While the Budget is being created, all parties must make decisions on how to utilize the limited revenues that the City receives in order to produce the greatest benefits for the citizens. The Budget serves as an outline of how the monies that come into the City should be spent to maintain and improve the City.

The Mayor, City Commission, and interested citizens all serve as participants in its creation and execution. The Budget is a management and planning tool. Because the City is limited by the amount of resources available, the Budget aids officials in determining which objectives have the highest priority and will produce the greatest positive impact in the community. The Funds in which the City can levy Ad Valorem Tax dollars are as follows: the General Fund, Library, Industrial, Liability Insurance, and Debt Service. For 2025, the City does not intend to fund the Debt Service or Liability Insurance funds with current year Ad Valorem Tax levies.

Motion:

On the motion of Tim Emert, seconded by Scott Smith, the Commission adopted the 2025 Budget as presented.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- C. Public hearing to vacate an alley and a portion of Railroad Street in or adjacent to Block C, Dean's Addition.

On August 8, 2024 the City Commission set a public hearing for September 12, 2024 at 5:30 PM for the purpose of vacating an alley and a portion of Railroad Street in or adjacent to Block C, Dean's Addition. The attached staff report and relevant attachments provided for in the August 8, 2024 City Commission meeting provided the following explanation:

Jon Viets, owner of the property at 1000-1018 W Sycamore, is selling this property to MFG. During a title search, issues were identified related to old street and alley vacations carried out by the City many years ago. Mr. Viets has requested

the City take action to vacate the remaining portions of an alley and a street, and approve a quit claim deed to clear up a title issue. The requests include:

- 1. Vacating the East 64 feet of the alley located in Block C, Dean's Addition.*
- 2. Vacating the portion of Railroad Street adjacent to Block C, Dean's Addition.*
- 3. Approval of a quit claim deed to address an additional title issue.*

The City Attorney has reviewed the title background, deeds, maps, and other relevant documents provided by Mr. Viets. Additionally, a proposed ordinance and a Notice of Hearing have been prepared to facilitate the vacating process.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission adopted an ordinance vacating an alley and a portion of Railroad Street in or adjacent to Block C, *Dean's Addition*, and authorizing the Mayor to sign a *Quit Claim Deed* conveying the east 14' of Lot 4, Block C, *Dean's Addition* to the City of Independence to Vico Group, LTD.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

IV. ITEMS FOR COMMISSION ACTION

- A. Consider adopting a resolution rescinding condemnation action for 1041 North 11th Street.**

This structure at 1041 N. 11th was involved in a fire that caused extensive damage. The City condemned it as dangerous and unsafe, and JRB was contracted to remove it and clear the lot. The lot has been cleared, the sewer line capped, and the structure passed a City inspection. City Staff requests the Commission adopt a resolution rescinding the condemnation of 1041 N. 11th and returning any insurance proceeds held by the City.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission authorized the Mayor to sign a resolution rescinding the condemnation of 1041 N. 11th.

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Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- B. Consider adopting a Resolution authorizing the abatement of unhealthy and unsafe exterior conditions at 1117 N. 11th Street.

The property at 1117 N. 11th Street, owned by David Parker and Chere Parker, has violated City Code 42-66 due to the accumulation of debris, junk, vehicle parts, and appliances in the yard. Over the past five years, the Code Enforcement Officer has issued nine separate notices to the property owners, starting from October 22, 2019, and continuing through March 26, 2024. Despite these repeated notices, the property owners have failed to bring the property into compliance.

The situation has resulted in numerous complaints from surrounding neighbors regarding the unsightly and unsafe conditions of the property. The City's efforts to work with the property owners to resolve the issue without legal action have been unsuccessful. Given the ongoing nature of the violations and the lack of compliance, it is necessary to proceed with abatement to protect public health and safety.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission adopted a resolution authorizing the abatement of unhealthy and unsafe exterior conditions at 1117 N. 11th Street, Independence, Kansas, and to assess the costs of such abatement against the property in accordance with City Code 42-69.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- C. Consider adopting a Resolution authorizing the abatement of unhealthy and unsafe exterior conditions at 204 S. 1st Street.

The property at 204 S. 1st Street, owned by George A. Goodwin, Jr. and Londa J. Goodwin, has been the subject of multiple code enforcement actions due to the accumulation of debris, junk, abandoned vehicle parts, and other unsafe conditions on the property. Since October 2020, the property has been cited five times for violations of City Code 42-66, with notices issued in October 2020, November 2020, March 2021, February 2023, and August 2024. Despite these notices, the property owners have failed to alleviate the conditions.

The Code Enforcement Officer has received ongoing complaints from

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neighbors about the property's unsightly and hazardous nature. Given the property owners' lack of response and the continuing public health and safety concerns, the City must proceed with abatement measures as authorized under City Code 42-69.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission adopted a resolution authorizing the abatement of unhealthy and unsafe exterior conditions at 204 S. 1st Street, Independence, Kansas, and to assess the costs of such abatement against the property in accordance with City Code 42-69.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- D. Consider adopting a Resolution authorizing the abatement of unhealthy and unsafe exterior conditions at 604 and 608 N. 17th Street.

The properties at 604 and 608 N. 17th Street, owned by Leslie Hansen, have been in violation of City Code 42-66 due to the accumulation of debris, junk, abandoned motor vehicle parts, and appliances in the yards. The Code Enforcement Officer has issued nine notices between March 24, 2019, and August 2, 2024, in an effort to have the property brought into compliance. Despite these notifications, no substantial corrective action has been taken by the property owner.

The conditions at these properties have led to ongoing complaints from neighboring residents, who have expressed concerns about the negative impact on the neighborhood's appearance and safety. Given the persistent violations and the property owner's lack of response, the City's intervention is required to remedy the situation through abatement.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission adopted a resolution authorizing the abatement of unhealthy and unsafe exterior conditions at 604 and 608 N. 17th Street, Independence, Kansas, and to assess the costs of such abatement against the properties in accordance with City Code 42-69.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- E. Consider authorizing a lease for space in 811 W. Laurel Street.

Approximately four months ago, a Realtor representing Kansas Medical Center ("KMC") contacted the City of Independence regarding medical office space for a cardiologist's office at 811 W. Laurel Street. The proposed lease is for five years, leasing 5,400 square feet of the building to KMC, with the lessee making leaseholder improvements to the space. The City has agreed to install conventional energy-efficient HVAC in the leased space. The annual lease agreement is for \$18.00 per square foot with a \$5.00 per square foot reduction for the first five years. After several weeks of negotiation, KMC notified the City on the afternoon of September 5, 2024, that they wished to proceed with the lease prepared by the City Attorney.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission approved a lease with Kansas Medical Center, LLC for medical office space at 811 W. Laurel Street.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

F. Consider HVAC improvements to 811. W. Laurel Street.

The City has issued a Request for Proposal (RFP) to implement traditional HVAC upgrades at 811 W. Laurel Street. This former hospital building is currently served by an energy center that uses chillers and boilers for heating and cooling. However, the system, originally designed for a hospital setting, results in excessive electrical demand charges due to the size of the equipment and the associated maintenance and operational costs, making the building inefficient. The RFP aims to disconnect the eastern half of the building's first floor from the energy center and replace it with a modern, energy-efficient heating and cooling system. City staff will continue efforts to remove the building from reliance on the energy center, enhancing efficiencies and making the facility more attractive for sale, additional leases, other business opportunities, or potential housing development.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission authorized installing an HVAC system on the east half of the first floor at 811 W. Laurel Street, pending receiving a signed lease from KMC. Furthermore, I propose initiating the process of transitioning the building from reliance on the energy center to a modern, energy-efficient system.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- G. Consider adopting an ordinance amending Article III of the Environmental Code.

The Environmental Code of the City of Independence is designed to regulate exterior property conditions, address nuisances, and ensure that properties are maintained in a manner that is safe and aesthetically pleasing. The existing code has served the community well but requires updates to address evolving community needs and to streamline the enforcement process. The proposed ordinance introduces several key amendments:

- 1. Right of Entry:** Clarifies the conditions under which a code official may enter private property to enforce the provisions of the Environmental Code.
- 2. Exterior Structure Standards:** Updates and elaborates on the requirements for maintaining exterior structures, including specific standards for structural members, foundation walls, exterior walls, roofs, drainage, and other components.
- 3. Notice Procedures:** Enhances the procedures for notifying property owners or occupants of violations, including the timeline for compliance and the right to request a hearing.
- 4. Abatement Process:** Strengthens the City's ability to abate nuisances while ensuring due process for property owners and occupants, including procedures for disposing of confiscated items and assessing abatement costs.
- 5. Hardship Clause:** Introduces a new provision allowing for exemptions from strict code compliance in cases where undue hardship would result from enforcement.

The proposed amendments include detailed standards for maintaining exterior structures. These standards cover:

- Structural Members:** Must be maintained free from deterioration and capable of supporting imposed loads.
- Foundation Walls:** Must be free from open cracks and breaks, preventing the entry of rodents and pests.
- Exterior Walls:** Must be weatherproof, free from holes and rotting materials.
- Roofs and Drainage:** Must be sound and not allow rain to enter the structure, with adequate drainage to prevent interior deterioration.
- Overhang Extensions:** Must be properly anchored and in good repair.
- Stairways, Decks, Porches, and Balconies:** Must be structurally sound and capable of supporting imposed loads.

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- **Handrails and Guards:** Must be firmly fastened and in good condition.
- **Windows, Skylights, and Doors:** Must be weathertight and in good repair.
- **Basement Hatchways:** Must prevent the entrance of rodents, rain, and surface drainage water.

The hardship clause is a critical addition to the Environmental Code. It provides a mechanism for property owners or occupants to request an exemption from strict compliance with the code's requirements when unique and undue hardship would result from enforcement. The intent is to ensure that the code is applied fairly and that individuals facing genuine hardships are not unduly penalized. The key justifications of the hardship clause include:

- **Fairness:** The hardship clause ensures that the code does not impose unreasonable burdens on property owners or occupants who are unable to comply due to circumstances beyond their control.
- **Flexibility:** It allows for temporary exemptions while encouraging property owners or occupants to come into full compliance within a reasonable timeframe.
- **Protection of Public Interest:** The hardship clause includes safeguards to ensure that exemptions do not compromise public health, safety, or welfare.

The hardship clause balances the need for strict code enforcement with the recognition that some situations may require flexibility. It allows the City to maintain high standards while providing relief in appropriate cases.

The proposed ordinance amendments to the Environmental Code are essential to maintaining the health, safety, and welfare of the community. The updates to the standards for exterior property maintenance, the clarified enforcement procedures, and the introduction of the hardship clause will enhance the City's ability to address nuisances and ensure that properties are well-maintained.

Motion:

On the motion of Tim Emert, seconded by Dean Hayse, the Commission tabled this item to September 26, 2024 at 5:30 pm.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

V. REPORTS

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- A. Report on Bartlett pipeline project change orders and bid for new pump house.

Attached are change orders 2, 3, and 4 for the Bartlett "Big Straw" pipeline. These change orders are for the completion of the line. Change orders 2 and 4 will be paid for entirely by Bartlett per our agreement. Change order 3 is a change so that Rural Water District Number 6 can serve Azure if that project is built, and Rural Water District Number 6 has promised repayment in writing for this change. These are the final change orders for the pipeline portion of the project.

The Advertisement For Bids for the pump station is also attached. This provides a link to the pump station documents. Bids are due Thursday, October 3, 2024 and it is anticipated that this bid will be brought for Commission approval on October 10, 2024 provided that Bartlett likewise approves the bid, since they are providing repayment. There will be two more bids anticipated in the project, one to install the pump station and stand pipe, and one for a leak detection system. Neither of the other items can be bid until engineering documentation is received from the pump station bidder.

- B. Notice from the Kansas Historical Society that 200 ARCO Place was listed in the National Register of Historic Places on August 5, 2024.

We received a notice from the Kansas Historical Society that 200 ARCO Place was listed in the National Register of Historic Places on August 5, 2024.

- C. City Board Minutes

- 1. April 16, 2024 Combined Planning Commission/Board of Zoning Appeals and City Commission Minutes.**
- 2. May 7, 2024 Planning Commission/Board of Zoning Appeals Minutes.**
- 3. May 21, 2024 Historic Preservation Resource Commission Minutes.**

4. July 30, 2024 Planning Commission/Board of Zoning Appeals Minutes.

5. August 6, 2024 Planning Commission/Board of Zoning Appeals Minutes.

6. August 21, 2024 Recreation Commission Minutes.

D. Appropriations

VI. CITY MANAGER'S COMMENTS

City Manager Passauer mentioned the MCAC Board meeting on September 19th at 5:30 pm in Cherryvale.

VII. COMMISSIONERS' COMMENTS

None

VIII. PUBLIC CONCERNS

None.

IX. ADJOURNMENT

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission adjourned the meeting.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

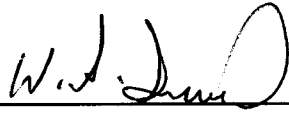
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Tim Emert, Mayor

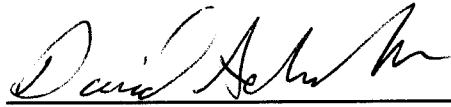


Dean A. Hayse, Commissioner



Scott Smith, Commissioner

Attest:



City Clerk/Treasurer