

Minutes of the City Commission's September 26, 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; John Garris, City Engineer/Director of Public Works and Utilities; Dustin Stafford, Chief of Police; Chad Simmons, Police Officer; Blake Kirk, Police Officer and April Nutt, Director of Housing Authority.

Visitors Present: Larry McHugh, Breanne Sanford, Megan Foster, Samantha Ringle and Cade Miller.

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

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

II. PRESENTATIONS

A. Introduction and swearing-in of Independence Police Department's new officers, Officer Chad Simmons and Officer Blake Kirk.

The following officers were selected to serve the citizens of Independence as police officers, and both have graduated from the Kansas Law Enforcement Training Center; Officer Chad Simmons and Officer Blake Kirk.

Officer Chad Simmons got into law enforcement because after he got out of the army, he wanted to get into a job that was bigger than himself and that also had a family element to it. He has been married for one year, and in his off time, he enjoys fishing, rodeo and dirt track racing.

Officer Blake Kirk is originally from Lawrence, KS. He moved to Independence in early March. He enjoys going camping and anything that involves doing anything outside with his dog, Clifford. Another hobby that he recently got into is visiting national parks. The reason he got into law enforcement, was to build relationships with the community, as well as being there when needed to have a positive impact on people.

III. CONSENT AGENDA

Motion:

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

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- A. Consider extending curfew on Tuesday, October 22, 2024.

Molly Reynolds and Abby Emert, on behalf of Neewollah Queens, have requested that the City of Independence extend curfew on October 22, 2024, so that the attendees can attend the Neewollah Coronation Dance at ICC West. The dance is from 10:30 p.m. until 1:00 a.m.

Suggested Motion:

I move to extend the curfew on October 22, 2024, until 2:00 am.

- B. Consider requesting proposals for engineering services related to design and inspection of the low-head dam at the Verdigris River.

Previous inspections of the low-head dam at the Verdigris have been at the surface and visual. To fully inspect the dam, a diversion structure is necessary, along with permitting. In order to obtain permitting, a designed diversion structure is required.

Suggested Motion:

I move to request proposals for engineering services related to the design and inspection of the low-head dam at the Verdigris River.

- C. Consider authorizing street closure during Zoolloween fundraising event on October 12, 2024.

Zoolloween is an annual fundraising event hosted at Ralph Mitchell Zoo and operated by Zoo staff. The event is always held on the second Saturday in October. In the interest of public safety, to prevent traffic congestion, and to allow an accessible route for emergency vehicles in and out of the Zoo, we request permission to close the section of Miss Able Ave between Mickey Mantle Way and North 5th Street from 4:00 p.m to 8:00 p.m on October 12, 2024.

Suggested Motion:

I move to authorize the closure of Miss Able Avenue from Mickey Mantle Way to North 5th Street from 4:00 pm to 8:00 pm on October 12, 2024 for the annual Zoolloween event.

IV. PUBLIC HEARING

- A. Public Hearing to consider the condemnation of 200 Arco Place as dangerous and unsafe.**

On September 8, 2022, City staff recommended initiating the condemnation process for the Arco Building due to broken windows, occupancy by homeless individuals, vandalism, and multiple complaints from residents.

On May 16, 2023, Daniel Regan, from Tulsa, Oklahoma, contacted the City and identified himself as the new owner of the building. Mr. Regan has been working on securing financing and preparing the Part 1 application for historical tax credits, with the goal of placing the property on the National Register of Historic Places.

On August 5, 2024 the structure was added to the National Register of Historic Places, making it eligible for historic tax credits, supporting the rehabilitation of this building.

On September 20, 2024, Mr. Regan informed me that the Part 1 application is nearing completion and is expected to be finalized by January 2025. He is also pursuing additional financing and working with the Kansas Housing Resource Commission. His current timeline anticipates starting the design phase in the second quarter of 2025, with the project commencing in the fourth quarter of 2025. However, Mr. Regan emphasized that this timeline is subject to change as he continues to navigate the financing process, building design, and responses from relevant organizations.

Motion:

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

adjourned the public hearing until May 22, 2025 at 5:30 PM.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

V. ITEMS FOR COMMISSION ACTION

- A. Consider approving a Proclamation and Resolution for Neewollah and authorizing street closures in the downtown and Riverside Park areas from October 18th through October 26th for the 2024 Neewollah festival, which includes the carnival, food vendors, parades, and other associated activities.

The Neewollah Festival has been a great source of pride for the City of Independence since 1919. The festival includes numerous activities for families, entertainment for the citizens of Independence, and for the neighboring communities to enjoy.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission authorized the Proclamation and Resolution for the Neewollah Celebration.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- B. Consider adopting a Resolution for a Conditional Use Permit for a Recreation Center in the C-3, Central Business District at 106-108 E. Main Street.

The applicant, Samantha Ringle, has requested a CUP to establish a Recreation Center at 106-108 E. Main Street, which will include an indoor playroom for youth aged 1-11 years and a birthday party venue. The property is located in the C-3 Central Business District, and the proposed use is consistent with the goals and objectives outlined in the City's Comprehensive Plan.

The Planning Commission held a public hearing on September 3, 2024, to consider the application for the CUP. The staff report to the Planning Commission included a thorough analysis of the proposal based on the criteria set forth in the City's zoning regulations. The Planning Commission found that the proposed use met all necessary requirements and would contribute positively to the community by providing a needed recreational service for children.

The Planning Commission recommended approval of the CUP subject to the following conditions:

- 1. Operating Hours:** The Recreation Center shall operate no earlier than 7:00 a.m. and no later than 11:00 p.m.
- 2. Compliance with Noise Ordinance:** The applicant shall comply with the City's noise ordinance to minimize potential disturbances to neighboring businesses and residences.
- 3. Site Maintenance:** The applicant shall maintain the property in a clean and orderly condition, including regular upkeep of the interior and exterior.
- 4. Safety Measures:** The applicant shall implement safety measures, including the installation of child-safe equipment and fixtures in accordance with relevant safety standards.
- 5. Code Compliance:** The applicant shall comply with all City codes, including the Building and Fire Codes, and obtain an occupancy license, which shall be renewed annually. All signage shall meet the sign regulations for the C-3 district unless a variance is granted by the Board of Zoning Appeals.
- 6. Certificate of Appropriateness:** Any permits for signs or building modifications will require a Certificate of Appropriateness from the Independence Historic Preservation and Resource Commission, ensuring that proposed signage and alterations are compatible with the historical character of the district.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission adopted the resolution approving the Conditional Use Permit for a Recreation Center at 106-108 E. Main Street, subject to the conditions as recommended by the Planning Commission.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- C. Consider adopting a Resolution for a Conditional Use Permit for multi-family dwellings (apartments) in a nonresidential structure in the C-3, Central Business District at 113 W. Myrtle Street.**

The applicant, Steve Morrison, through his architect Russ Ehnen, has requested a CUP to convert the building at 113 W. Myrtle Street into a mixed-use structure, featuring eleven studio apartments and one commercial space. The building, originally constructed as a hotel in 1910, is a historical structure

and is exempt from many modern building codes, though it has been reviewed under the standards of the International Existing Building Code (IEBC). The project aligns with the City's Comprehensive Plan by promoting a healthy mix of land uses, encouraging the adaptive reuse of a historic property, and contributing to the residential diversity within the downtown area.

The Planning Commission has recommended approval of the Conditional Use Permit, subject to the following conditions:

1. **Storefront Maintenance:** The applicant must maintain a storefront on the first floor, which will consist of not less than 50% of the entire first floor area.
2. **Separate Entrances:** The resident's entry into the building must be separated from the entryway utilized by the storefront, ensuring distinct access for commercial and residential uses.
3. **Preservation of Historical Features:** The applicant shall maintain and preserve the historical features of the building as much as possible, ensuring that any renovations or modifications are in keeping with the building's historical character.

The applicant has received variances from the C-3 regulations regarding the 900 sq. ft. lot requirement per unit and the elevator requirement, so that condition was not included as it has already been met. However, City staff would like to add three additional conditions:

1. **Landlord License:** The applicant must maintain a current Landlord license and any other licenses as required by City Code.
2. **Certificate of Appropriateness:** Any exterior modifications or signage will require a Certificate of Appropriateness from the Independence Historic Preservation and Resource Commission to ensure compatibility with the historical character of the district.
3. **Compliance with City Codes:** The applicant shall ensure that all renovations and operations comply with the applicable City codes, including but not limited to the Building Code, Fire Code, and any other relevant regulations.

Motion:

On the motion of Dean Hayse, seconded by Scott Smith, the Commission adopted the resolution approving the Conditional Use Permit for multi-family dwellings at 113 W. Myrtle Street, subject to the conditions as recommended by the Planning Commission and City staff.

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Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- D. Consider adopting an Ordinance amending the zoning code relating to dwellings in the C-3, Central Business District.

The City of Independence has been experiencing a growing interest in downtown development, with particular focus on converting existing nonresidential buildings into mixed-use structures. Currently, the zoning regulations do not allow any type of dwelling in structures located in the C-3, Central Business District, that is not already grandfathered in without a conditional use permit. Recognizing the need to support ongoing and future downtown development, the Planning Commission initially recommended a 24-month moratorium on the requirement to obtain a conditional use permit for upper-story dwellings in the C-3 District, which expired on May 17, 2024.

In response to the expiration of the moratorium and the continued interest in upper-story residential development, City staff has proposed a permanent text amendment to the zoning code. The proposed amendment would allow upper-story dwellings (located on the second floor and above) as a permitted use in the C-3 Central Business District, while retaining the requirement for a conditional use permit for dwellings on the ground floor and basement levels. This amendment aligns with the City's Comprehensive Plan, which emphasizes the importance of mixed-use development, historic preservation, and increasing housing options in the downtown area.

Additionally, the proposed amendment includes the removal of the elevator requirement for buildings more than 2 1/2 stories in the C-3 District. This requirement currently conflicts with the International Existing Building Code (IEBC), which only mandates elevators for buildings more than four stories. By removing this requirement, the amendment aims to reduce barriers to redevelopment and support the adaptive reuse of older structures.

The proposed text amendment is consistent with the City's goals to promote a vibrant downtown, increase residential diversity, and encourage the adaptive reuse of historic buildings. With two developers currently working on upper-story housing projects involving seven downtown buildings, the adoption of this ordinance will provide a clear regulatory path for these and future developments.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission adopted an ordinance amending the zoning code to allow upper-story

dwellings as a permitted use in the C-3 Central Business District and to remove the elevator requirement for buildings more than 2 1/2 stories within the C-3 Central Business District, as recommended by the Planning Commission.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- E. Consider the status of condemned structures at 501 S. 15th and 600 S. 15th Street.**

The properties located at 501 S. 15th Street and 600 S. 15th Street were condemned, and demolition bids were awarded on March 14, 2024. Subsequently, the structures were sold at the County tax sale. Brett Hein then requested that the commission halt the demolition and allow 60 days for revitalization efforts. On June 13, 2024, we informed the Commission that Mr. Hein was experiencing difficulties obtaining legal title to the properties. As a result, the Commission granted an additional 60 days for the restoration of 600 S. 15th Street and the removal of the structure at 501 S. 15th Street.

As of September 20, 2024, the staff has not received a response from Brett Hein regarding the structures. If we receive an update before the Commission meeting on the status of these structures, staff will report at the meeting.

Staff recommends that JRB remove the structure at 501 S. 15th for \$6,500.00 if the contractor agrees to honor his previous bid. The structure at 600 S. 15th has been secured, a new roof installed, and the debris removed from the yard. It is staff's recommendation to work with the owner on a timeline to complete this structure.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission awarded the demolition of 501 S. 15th Street to JRB in the amount of \$6,500.00, and have staff work with the owner on a timeline for 600 S. 15th Street.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- F. Consider adopting an ordinance amending 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.
- **Chimney and Towers:** Must be maintained structurally safe and in good repair.
- **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 Dean Hayse, seconded by Scott Smith, the Commission adopted Ordinance No. 4466, amending the Environmental Code, as revised by the City Attorney.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

- G. Consider rescheduling the November 21, 2024 City Commission Meeting.

While attending the MCAC Quarterly meeting last week in Cherryvale, staff learned that the next quarterly MCAC meeting is scheduled in Independence on November 21, 2024, the same evening as the City Commission meeting. If

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the Commission wishes to reschedule the November 21, 2024 City Commission meeting at 5:30 PM, here are some options:

1. Tuesday, November 26, 2024, at 5:30 PM - Rescheduling for the following week would also allow the items from the November 12th Planning Commission meeting (delayed one week due to the general election) to be considered before the December 12th City Commission meeting due to the 14-day protest period. However, it is also two days before Thanksgiving, and if any Commissioners are traveling for the holidays, this may not be possible.
2. Move the time of the November 21, 2024 meeting to 4 PM—Since there is already a City Commission meeting on November 14th, the November 21st meeting is anticipated to have a light agenda. This should allow staff and Commissioners to attend the MCAC meeting at 5:30 PM.

Motion:

On the motion of Scott Smith, seconded by Dean Hayse, the Commission rescheduled the November 21, 2024, City Commission meeting to November 21, 2024, at 4:00 pm.

Aye: Tim Emert, Dean Hayse, Scott Smith

Nay: None

VI. REPORTS

A. City Board Minutes

1. September 18, 2024 Recreation Commission Minutes

B. Projects and Public Works Report

Engineer Garris presented the report.

C. Quarterly Admin and Housing Goals Update

Director Nutt and City Manager Passauer presented the updates.

VII. CITY MANAGER'S COMMENTS

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City Manager Passauer noted that the City is looking for applicants for the position of Fire Chief with the retirement of Chief Wallace upcoming and also noted the upcoming retirement of Chief Water Plant Operator Ed Sykes who is being replaced by Kevin Henry and the promotion of Derek Bryant to Assistant Police Chief. Other items of note include upcoming events like the sip and shop which will be held downtown on October 3rd, a haunted bike ride on October 19th and zoolloween on October 12th to be held at the Riverside Zoo.

VIII. COMMISSIONERS' COMMENTS

Mayor Emert encouraged everyone to read an article published in Kansas magazine about the Riverside Park.

Commissioner Hayse pleaded with motorists to mover over to the side of the road when they see an emergency vehicle approaching.

IX. PUBLIC CONCERNS

None.

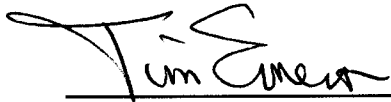
X. ADJOURNMENT

Motion:

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

Aye: Tim Emert, Dean Hayse, Scott Smith

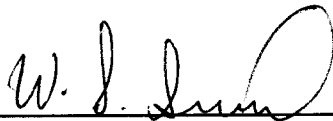
Nay: None



Tim Emert, Mayor



Dean A. Hayse, Commissioner



Scott Smith, Commissioner

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Attest:

A handwritten signature in black ink, appearing to read "Daini Schmitt", is written over a horizontal line.

City Clerk/Treasurer