

Minutes of the Independence City Commission's March 14, 2019 Meeting

The Independence City Commission met for a regular meeting on March 14, 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
Terry Lybarger, Director of Utilities
Mike Passauer, Public Works Director
Brian McHugh, Memorial Hall Supervisor
April Nutt, Director of Housing Authority
Jerry Harrison, Police Chief
Cody Shamblin, Airport Supervisor
Barb Beurskens, Park and Zoo Director

Visitors

Jerry Bright
Barbara Crebase
Kathy Shepard
Mary Corn
Tabatha Snodgrass
Judy Ysusi
Brent Julian
Nick McBride
Christy Mavers
Dean Hayse
Tony Royse
Ned Stichman
Drew Demo
Georgianna Epps
Linda Henning

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 Cafilisch, seconded by Commissioner Hogsett the Commission adopted the agenda.

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Aye: Ysusi, Cafilisch, 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.)

A. Appropriations

1. A-1833A
2. A-1834
3. D-1902
4. P-1805

B. Consider approving the minutes of the January 24, 2019 City Commission Meeting.

C. Consider authorizing blocking the 100 block of West Myrtle Street every Saturday from 7 AM to 11 AM from May through August of 2019 for the Independence Farmers Market.

Motion:

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

Aye: Ysusi, Cafilisch, Hogsett

Nay: None

III. ITEMS FOR COMMISSION ACTION

A. Consider requests from Main Street:

1. Close the 200 block of North Penn from 4:30 PM to 8 PM on May 2nd, August 1st, September 5th; and to close the 300 block of North Penn on June 6th for First Thursday.
2. Authorize hanging baskets in the downtown area.

Tabatha Snodgrass addressed the Commission and described the prior years' First Thursday events and the upcoming events that are being scheduled. Tabatha then showed the Commission the hanging baskets that the Main Street Committee would like to hang from the light poles in the 200 block of North Penn.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Cafilisch the Commission moved to adopt a resolution allowing Main Street to close the 200 block of North Penn from 4:30 PM to 8 PM on May 2nd, August 1st, September 5th; and to close the 300 block of North Penn on June 6th for First Thursday; and (2) I moved to authorize Main Street to place hanging baskets downtown.

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Aye: Ysusi, Caflich, Hogsett

Nay: None

B. Consider ADA improvements to the baseball complex.

Director Cowan introduced Brent Julian, Recreation Commission Director, Nick McBride and Christy Mavers, Recreation Commission Board President. Director Julian outlined a plan to the Commissioners for the Recreation Commission to renovate the area between the Skate Board Park and the baseball fields.

Commissioner Caflich asked who owns the property.

Director Julian said the City owns the property and the Recreation Commission would be responsible for the maintenance and ADA compliance.

Commissioner Caflich inquired if the construction of new buildings would be performed by the Recreation Commission.

Director Julian affirmed.

Commissioner Caflich discussed ADA responsibilities.

Director Julian talked about improving the area and ADA compliance but the Recreation Commission has only so much money and time will be a factor.

Commissioner Ysusi asked about environmental concerns.

Assistant City Manager Passauer said that the environmental studies were done and there were no significant issues.

Director Cowan recommended a temporary fix for the ADA issues at the ball fields at a cost of \$10,000 that would help with during this season.

After much discussion the Commissioners agreed that the temporary fix would work for the present time.

C. Consider proclaiming April 2, 2019 as National Service Recognition Day.

Kathy Shephard appeared with her volunteers of RSVP of Four County and talked about collecting items for Veterans that are in a VA Hospital.

Mayor Ysusi thanked the volunteers for their service.

Motion:

On the motion of Commissioner Caflich, seconded by Commissioner Hogsett

the Commission moved to proclaim April 2, 2019 as national Service Recognition Day and authorized the Mayor to sign the proclamation.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- D. Consider an ordinance repealing previous ordinances creating the Independence Downtown Art & Cultural Advisory Board.

Commissioner Caflich discussed the intended purpose of the Board and possible ways of restructuring it.

Commissioner Ysusi discussed a collaboration between Main Street and other ethnic groups and believed using the Diversity Taskforce and the Chamber would be the way to go on this.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Caflich the Commission moved to approve an ordinance repealing previous ordinances creating the Independence Downtown Art & Cultural Advisory Board.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- E. Consider an ordinance to increase the miniature train, miniature golf and building rental rates as recommended by the Park Board.

City Attorney Chubb noted in the previous ordinance that a partial rental of a building was included.

Park and Zoo Director Beurskens said that those were changed a year or two ago and they no longer rent partial buildings.

Motion:

On the motion of Commissioner Caflich, seconded by Commissioner Hogsett the Commission moved to approve the signing of Ordinance 4288 amending Appendix D with regards to rates and fees charged in the park and Zoo with the deletion of items two and three under Section One, Item One.

Aye: Ysusi, Caflich, Hogsett

Nay: None

- F. Consider an ordinance reannexing Lots 14 and 15 of the West Laurel Street Industrial Park into the City limits.

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Assistant City Manager Passauer explained that the Independence Action partnership had previously asked the City to de-annex this property because of the possibility of installing wells on it. Now the City has purchased the property back and the need is there to bring it back into the city limits.

Motion:

On the motion of Commissioner Hogsett, seconded by Commissioner Cafilisch the Commission moved to approve an ordinance annexing Lots 14 and 15 of the West Laurel Street Industrial Park into the City limits.

Aye: Ysusi, Cafilisch, Hogsett

Nay: None

IV. REPORTS

A. Review neighborhood revitalization districts.

Assistant City Manager Passauer informed the Commission of three revitalization districts that had expired.

B. 2018 Annual City Report.

City Manager Whitehead presented the 2018 Annual City Report.

C. City Boards

1. December 4, 2018 Planning Commission/Board of Zoning Appeals Minutes

V. CITY MANAGER'S COMMENTS

City Manager Whitehead introduced Lacey Lies as the new Finance Director and gave an update on the new letting date for the Peter Pan road extension in May.

VI. COMMISSIONERS' COMMENTS

A. Request from Commissioner Cafilisch to discuss; current ADA project and procurement policy.

Mayor Ysusi asked when TreanorHL would return with their recommendations on the bids submitted for Phase I of City Hall. City Manager Whitehead said that they hadn't given him a firm date and that it would be the March 28th or April 11th meeting.

Commissioner Cafilisch addressed the ADA procedures and inquired about a procurement policy. City Manager Whitehead informed the Commission that a draft policy has been written and he asked for additional time in presenting it to the Commission to allow the new Finance Director time to go over it.

VII. PUBLIC CONCERNS

None

VIII. EXECUTIVE SESSION

A. Acquisition of Real Estate

Motion:

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

Aye: Ysusi, Caflich, Hogsett

Nay: None

The Commission came back into session at approximately 7:45 P.M.

Motion:

On the motion of Mayor Ysusi, seconded by Commissioner Caflich the Commission moved to authorize a "Certification by the Local Public Authority to the Kansas Department of Transportation of Real Property Acquisition Procedures, Right of Way Clearance, Utility Arrangements and other Matters" in the amount of \$9,200.00 for the North Peter Pan Road Improvements.

Aye: Ysusi, Caflich, Hogsett

Nay: None

B. Personnel matters of non-elected personnel.

Motion:

The Mayor moved to go into executive session for 20 minutes for discussion of employee performance pursuant to the non-elected personnel exception (KSA 75-4319(b)(1)) with the open meeting resuming at 8:06 PM. Commissioner Caflich seconded.

Aye: Ysusi, Caflich, Hogsett

Nay: None

The Commission came back into session at approximately 8:06 P.M.

Motion:

The Mayor moved to go into executive session for 10 minutes for discussion of employee performance pursuant to the non-elected personnel exception (KSA 75-4319(b)(1)) with the open meeting resuming at 8:16 PM. Commissioner Caflich seconded.

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Aye: Ysusi, Caflich, Hogsett

Nay: None

The Commission came back into session at approximately 8:16 P.M.

Motion:

The Mayor moved to go into executive session for 15 minutes for discussion of employee performance pursuant to the non-elected personnel exception (KSA 75-4319(b)(I)) with the open meeting resuming at 8:33 PM. Commissioner Caflich seconded.

Aye: Ysusi, Caflich, Hogsett

Nay: None

The Commission came back into session at approximately 8:33 P.M. No action was taken.

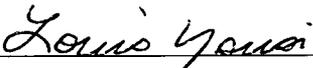
IX. ADJOURNMENT

Motion:

Commissioner Hogsett moved to adjourn. Commissioner Caflich seconded.

Aye: Ysusi, Caflich, Hogsett

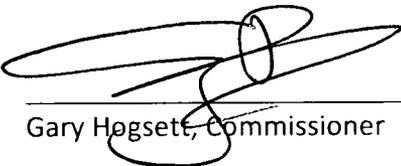
Nay: None



Louis Ysusi, Mayor



Leonhard Caflich, Commissioner



Gary Hogsett, Commissioner

Attest:



City Clerk/Treasurer

Americans with Disabilities Act

March 14, 2019

The Americans with Disabilities Act (ADA) is a federal civil rights law that prohibits discrimination against people with disabilities in everyday activities.

2010 Standards for State and Local Government Facilities Title II

ADA Update: A Primer for State and Local Government – An illustrated guide to help State and local government officials understand the requirements of the 2010 ADA regulations.

2010 Standards for Public Accommodations and Commercial Facilities Title III.

ADA Update: A Primer for Small Business – An illustrated guide to help small businesses understand the requirements of the 2010 ADA regulations.

Settlement Agreement DJ 204-29-144 between the United States of America and the City of Independence, Kansas signed by the City of Independence March 31, 2011 and by Department of Justice April 28, 2011. Item 71 on page 15 of the Agreement stipulates the length of the Agreement. The time stated in that section has expired and according to a letter stamped December 22, 2016 from The U. S. Department of Justice, Civil Rights Division states that the conditions of the Settlement Agreement have been met and the Agreement has been closed. The only requirements for the city to comply with now are the 2010 ADA Standards for Accessible Design as they apply to Title II State and Local Governments. The concern for the compliance to the Settlement Agreement ended and its reference is not necessary.

Ms Elizabeth Savage

Mr. Michele Mallozzi, Architect
Disability Rights Section, Civil Rights Division
U.S. Department of Justice.

It was my opinion that when the city began the corrective action necessary to satisfy items identified in the Settlement Agreement DJ 204-29-144 that there were misinterpretations of the ADA requirements for the construction of certain curb ramps. I discussed these concerns with Mr. Mallozzi, the following is an outline of the topics we discussed and the applicable references:

1. Where are curb ramps required? The requirements for curb ramps has been included below for reference. Curb ramps are required to eliminate the curb so that the walking surface does not have a barrier between the roadway and the connecting walk. It is only the transition between the roadway surface and the walkway. Curb ramps are only required to be provided for newly constructed or altered streets, roads and highways or newly constructed walkways. If the existing roadway is not newly constructed or is not being altered, then curb ramps are not required. The city has added curb ramps at numerous locations throughout the city where the streets have not been altered since the implementation of the Americans with Disabilities Act in 1992. These curb ramps were not necessary.

28 CFR 35.151 New Construction and Alterations

(i) Curb ramps.

(1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.
Construction of curb ramps can be found in article 406 Curb Ramps.

2. In conditions where the gradient of the walk raises rapidly how is a curb cut required? At locations where the existing gradient is non-compliant and exceeds the slope limits indicated in the 2010 ADA a curb ramp is not required because the walkway is not accessible. The 1992 and the 2010 ADA Standards for Accessible Design contain an exception that eliminates the requirement for curb ramps at such a location and the additional step/ramp construction that has been provided. The "switchback" ramps that have been construction were not requirement per the exemption cited.

28 CFR 35.151 New Construction and Alterations

(a) Design and Construction

(2) Exception for structural impracticability

- (i) Full compliance with the requirements of this section is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

3. How can walkways on steep gradients or a hill? Walkways at these locations are not requirement to be compliant based on the previous reference.
4. What is the basic requirement of the City regarding accessibility? Public accommodation is the basic requirement under Title II that the City must satisfy by either facility modification or providing Program Access. Facility modification is straight forward which removes barriers from existing facilities and new construction or renovated facilities are designed barrier free. An alternate option for existing facilities that were constructed prior to 1992, is to provide access to the programs provided to the public by the city through other means. It allows taking the service or program to an individual that has limited mobility so that they can have the same experience as an individual that is not handicapped. For example, if an existing conference is normally held in an area that is not compliant with accessibility standards the conference could be relocated to an accessible area. With the utilization of video documentaries of the non-accessible exhibits, such as those in the ravine or tours of the water treatment plan, physical modifications are not required if an individual with disabilities could have the same experience by providing Program Access. Program Access can reduce the cost incurred by physical modifications with construction and but still provide access which complies with ADA standards.

Mr. Mallozzi is one of the auditors that prepared the of the city's facilities for the Settlement Agreement. Program Access was his suggestion to consider for meeting the requirement of accessibility for programs or services that have natural terrain barriers or physical barriers in facilities constructed prior to 1992. I thought that was beneficial since he was acquainted with the city's facilities.