

COUNCIL MEETING

Minutes of April 5, 2010

City of Independence, Ky.

Opening

The City Council of the City of Independence, Kentucky met on Monday, April 5, 2010 at 7:00 pm in the Council Chambers of the Independence Municipal Center, 5409 Madison Pike, Independence, Kentucky with Mayor Christian J. Moriconi presiding. Mayor Moriconi called the meeting to order and opened with the Pledge of Allegiance. An invocation was given by Council Member Jim Bushong. Roll was called and the following Council Members registered present: Mary Pat Behler, Jim Bushong, Margaret Cook, Carol Franzen, Mike Little and Donna Yeager. Also present was City Attorney Jed K. Deters.

Approval of the February 1, 2010 Regular Council Meeting Minutes

Mayor Moriconi called for a motion to approve the minutes of the regular meeting held on Monday, February 1, 2010. Council Member Behler so moved, with second by Council Member Bushong. Council Member Little put forth two amendments; there being no objection the roll was called and answered unanimously. Motion carried 6-0 in favor of accepting the minutes as presented with amendments by Council Member Little.

Approval of the February 11, 2010 Special Council Meeting Minutes

Mayor Moriconi called for a motion to approve the minutes of the Special meeting held on Thursday, February 11, 2010. Council Member Franzen so moved, with second by Council Member Yeager. No amendments were noted; roll was called and answered unanimously. Motion carried 6-0.

Approval of the March 22, 2010 Special Council Meeting Minutes

Mayor Moriconi called for a motion to approve the minutes of the Special meeting held on Monday, March 22, 2010. Council Member Little so moved, with second by Council Member Franzen. No amendments were noted; roll was called and answered unanimously. Motion carried 6-0.

Privileges of the Floor

Marty Nie, 12013 Southridge Drive, Walton, Kentucky – As Chairman of the American Legion Moon Brothers Post 275, Mr. Nie extended an invitation to the Mayor and Council Members to participate in this year's Memorial Day parade which will be held on May 31st and begin at 10:30 a.m. He requested that there be a limit of one car per candidate for elected office and in the interest of safety asked that no one throw candy from their vehicle.

Tom Nienaber, 401 Madison Ave., Covington, Kentucky – stated he was representing his client Larry Hamilton regarding the proposed zoning text amendment that would permit "pawn shops" to the list of permitted uses within the NC (Neighborhood Commercial) zone. He stated that Mr. Hamilton appeared before Council in February to request the City sponsor the text amendment application. Mayor Moriconi advised that a proposed ordinance to approve the text amendment was on tonight's agenda for a first reading.

Ray Baldwin, 34 Sidney Drive, Independence – Mr. Baldwin addressed Council with concerns he had regarding talk of a neighbor that may ask for a zone change so that they could begin a pottery business. He stated that Sidney Drive is too narrow to accommodate business traffic. He stated he also feels that allowing a business in this residential area would hurt property values. Mayor Moriconi advised that the City has not received such a request at this time. Mr. Deters advised Mr. Baldwin that if a zone change was requested all adjacent property owners would receive notice in the mail advising them of this request.

Donald Barnett, 788 Jimae Avenue, Independence – Mr. Barnett spoke against the proposed text amendment that would permit “pawn shops” in the Neighborhood Commercial (NC) zone. He stated that he feels that “pawn shops” would not be a good reflection on the City and approving this would allow this type of business in all the neighborhood shopping centers throughout the City.

Ordinance No. 2010-O-05 – Amending Ordinance No. 1-10-84 that Regulates Solicitor’s License and Fees & Amending Same to Exempt Farmers’ Market Vendors from Compliance – 2nd Reading

Mayor Moriconi presented for a second reading Ordinance No. 2010-O-05 that would amend Ordinance No. 1-10-84 which regulates solicitor’s license and fees. He stated the proposed amendment would include vendors participating in the Farmers’ Market to the list of exempted businesses required to purchase a business license. Mr. Deters gave Ordinance No. 2010-O-05 a second reading.

A motion was made by Council Member Bushong and seconded by Council Member Franzen to adopt Ordinance No. 2010-O-05. There being no discussion, roll was called and answered with five ayes and one no vote cast by Council Member Cook. Motion carried 5-1.

Award Bid for Lawn Maintenance Contract

Mayor Moriconi presented to Council the results of the bids received for the lawn and park maintenance. He stated that a total of ten bids were submitted. He advised the City is currently in contract with Malco Services and while the bid submitted by Malco was not the lowest, it does reflect an overall decrease from the current 2010/2012 contract extension rates that were submitted in June 2008. Mayor Moriconi commented that Malco has provided good service for the City.

Council Member Franzen moved to award the lawn and park maintenance contract to Malco Services as the best bid, seconded by Council Member Yeager. A brief discussion ensued. Some of the Council Members agreed with Mayor Moriconi that Malco has provided the City with good service over the years. Council Member Behler commented that the low bid is not always the best bid. Mayor Moriconi stated that Malco is a business located in Independence and the owner takes a personal interest in doing a good job for the City and at times does not charge for some of the services he renders. He also commented that some of the bids submitted seemed unrealistically low. Council Member Cook asked if it was legal to not accept the low bid. Mr. Deters advised that the low bid is just one of the criteria considered when awarding a bid and the City is not legally obligated to award the contract to the lowest bidder. Mr. Groth commented that the City has awarded bids in the past that were not the low bid.

In closing Mayor Moriconi commented that the processed work; in choosing to re-bid this service instead of extending the current contract the City was able to save money by receiving bids that were lower overall. There being no further discussion roll was called and answered unanimously to award the bid to Malco Services. Motion carried 6-0.

Independence Village – Stage II Development Plan (NKAPC # 10-02-05/2002R)

Mayor Moriconi presented to Council a recommendation from the Northern Kentucky Area Planning Commission to disapprove the Stage II Development Plan for an approximate 13.3 acre area located at the northwest corner of the intersection with Madison Pike (new) and Centennial Boulevard. It is being presented to the City for final action to approve or disapprove the plan. Mayor Moriconi opened the floor for discussion.

Developer Jim Bertram explained to Council that the Planning Commission recommended disapproval because of the following three issues:

- The plan indicated off-street parking spaces directly in front of rental detached garages
- The plan omitted a section of the walking trails that were included in the Stage I development plan
- The plan indicates an emergency access gate which would be contradictory in providing vehicular access throughout the development.

Mr. Bertram advised that they have removed the off-street parking spaces that were directly in front of the garages and still have the required number of parking spaces for this development. He stated the walking trails were inadvertently left off of the plan rendering submitted to the Planning Commission and would be developed in its entirety as shown in the Stage I Development Plan. Regarding the emergency gate, Mr. Bertram advised that this gate was on the Stage I Plan, but they would like to control public access to this residential section of the development. He stated this could deter criminal activity yet still provide access for public safety (police/fire) vehicles. There was a brief discussion on how the gate would be controlled. Mr. Bertram stated the police and fire agencies will have keys for the gate lock. He stated that criminals don't like to have only one way in and one way out, so this gate could deter vandals/robbers in this private community. Captain Tony Lucas advised Council that the owners of this development have been meeting with the police depart to review various types of locks to determine which would work best for this gate. Council Member Little asked if this would be a liability for the City. Mr. Deters advised it would not and commented that the fire department carries big universal keys.

Zoning Administrator Annie Wuestefeld advised Council that the three issues, which Mr. Bertram has addressed, would be considered minor changes.

Mr. Bertram advised that improvement drawings would be submitted to the Planning Commission after approval from the City on this Stage II Plan. He stated they hope to begin the construction of this project in a couple of weeks.

There being no further discussion and having received satisfaction regarding the three issues discussed Council Member Yeager moved to override the Planning Commission's disapproval of the Stage II Development Plan by approving the Plan based on the following:

1. A section of the proposed walking trail along the new Madison Pike was inadvertently omitted from the Stage II Development Plan submitted to the Planning Commission. The developer has agreed to develop the walking trail in its entirety.
2. To waive vehicular access throughout the proposed development thereby permitting an emergency access gate in the vicinity of Lot 12/Building #4.
3. The developer has agreed to remove the inappropriate off-street parking spaces directly in front of any detached garage.

A second was made by Council Member Behler. Roll was called and answered unanimously. Motion carried 6-0.

Proposed Ordinance – Approving a Zoning Text Amendment (KCPC 200R) Adding Pawn Shops to the List of Permitted Uses within the NC Zone – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would approve a zoning text amendment adding "pawn shops" to the list of permitted uses within the NC (Neighborhood Commercial) zone. Mr. Deters gave the ordinance a first reading.

Proposed Ordinance – Establishing ABC Regulations and License Fee Schedule – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would establish an alcoholic beverage control license and the respective fees and licenses required for alcohol sales within the City limits and revising the hours when alcohol sales are permitted. Mr. Deters gave the proposed ordinance a first reading.

Proposed Ordinance – Establishing Rental Dwelling Licenses – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would create a new chapter of the code of ordinances (Chapter 99) concerning rental dwelling licenses. He stated this ordinance will pertain to both residential and commercial rental properties. Mayor Moriconi stated that this is more than just establishing a rental fee but will lay out standards for maintaining rental property. He stated that one issue that prompted the proposal of this ordinance is the inordinate amount of calls for service received by the Police Department at rental properties. He stated that he does not want to put rental property in a negative light, but the majority of the police calls are from apartment complex units. Mayor Moriconi stated that other cities have this type of ordinance.

Mr. Bertram expressed his concern about adopting this ordinance and commented that this license and associated fees will affect him and others that own rental property. Police Captain Tony Lucas advised Council that his department would submit an exact breakdown of calls for service to the various apartment complexes at the next Council meeting.

There being no further discussion, Mr. Deters gave the proposed ordinance a first reading.

Proposed Ordinance – Amending Code of Ethics, Chapter 38 Codes of Ordinances – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would amend Chapter 38 relating to the Code of Ethics by amending the definition of “family member.” Council Member Franzen asked the Mayor who was sponsoring this proposed amendment. Council Member Cook responded that she requested this amendment. She stated she attended a recent Board of Ethics meeting where this was discussed and it was the Board’s recommendation that this definition be updated to include more family members. Mr. Deters commented that the proposed amendment expands the definition of family member. There was a brief discussion wherein Council Member Little suggested changing the proposed amendment to include all “step” relations. The Council Members concurred. There being no further discussion, Mr. Deters gave the proposed ordinance a first reading.

Proposed Ordinance – Amending Nuisance Ordinance, Chapter 93 of the Code of Ordinances – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would amend Chapter 93 of the code of ordinances relating to nuisances by clarifying and more specifically defining activities to be considered a nuisance. A brief discussion ensued. Some Council Members questioned the need for the additional text and whether it would be enforceable. Council Member Behler commended that she understood that the Police Chief approved this text and that the department had an instrument that would register decibel levels. Captain Tony Lucas advised that they have reviewed the proposed text and it is comparable to other cities, such as Covington and Erlanger. He stated that Chief Butler is comfortable with this proposal. He stated they would need to purchase the decibel meter equipment, but advised having the equipment would not prevent all noise.

Mr. Deters commented that the proposed text better delineates nuisance types and provides specifics on what can be declared a nuisance and that it all comes down to establishing

reasonable standards. Council Member Little expressed concern that the proposed text may be too specific and stated that he feels the current laws, if enforced could do the same. Captain Lucas commented that the current ordinance is not specific enough and because it is too broad would get thrown out of court. Council Member Franzen suggested postponing the first reading so Council would have more time to review the proposal. After a brief discussion it was decided to go ahead with the first reading of the proposed ordinance. Mr. Deters gave the ordinance a first reading. Mayor Moriconi advised Council that Chief Butler would be at the next meeting and give his input on this proposed ordinance before the second reading.

He stated that the Police Chief feels comfortable with this proposal **Resolution No. 2010-R-04 – Supporting Federal Legislation that would Require EPA to Consider Affordability and the Financial Capabilities of Communities when Implementing its Combined Sewer Overflow Control Measures**

Mayor Moriconi presented to Council Resolution No. 2010-R-04 that would support federal legislation that would require the EPA to consider affordability and the financial capabilities of communities when implementing Combined Sewer Overflow control measures. Mr. Groth advised that this resolution basically opposes unfunded mandates which forces communities to pass on the costs of conforming to federal law to the consumers by way of increasing taxes and/or utility rates. He stated this resolution supports the need for communities to have more flexibility in the development and implementation of long-term control measures for combined sewer overflow. Mr. Deters read Resolution No. 2010-R-04.

A motion was made by Council Member Behler and seconded by Council Member Cook to adopt Resolution No. 2010-R-04. Roll was called and answered unanimously. Motion carried 6-0.

Resolution No. 2010-R-05 – Accepting Ownership & Maintenance Responsibility for the By-passed Segments of KY 1829 (Turkeyfoot

Mayor Moriconi presented to Council Resolution No. 2010-R-05 that approves the City accepting title to ownership and maintenance responsibility for the bypassed segments of KY 1829 (Industrial Road) and reconstructed city streets, which include West Richardson Road, Beechgrove Drive, Wedgewood Drive, Clubhouse Drive, Fox Run Drive, Hunters Green Drive, Independence Station Drive, Lily Drive and East Richardson Road due to the reconstruction of KY 1303 (Turkeyfoot Road).

Mr. Groth advised Council that City staff has met with the State to review the sections described in the Resolution. He stated that while the City would assume ownership there would be no real maintenance of these sections of roadway. There was a brief discussion regarding the section of Independence Station Drive. Mayor Moriconi stated that this section is maintained by Kenton County and should be stricken from the Resolution. All were in agreement and the Independence Station Drive section was stricken from the Resolution.

There being no further discussion, Council Member Franzen moved to adopt Resolution No. 2010-R-05, seconded by Council Member Behler. Roll was called and answered unanimously. Motion carried 6-0.

City Administrator's Report – Dan Groth

Mr. Groth reported that congratulations go to two employees in the Police Department - Joseph Moffett who graduated on Friday from the Police Academy and Captain John Lonaker who recently graduated from a ten-week management course sponsored by the FBI Academy.

Mr. Groth also announced that the new Frisch's restaurant will officially open on Monday, April 12th at 7:00 a.m.

Mr. Groth reported that single family residential building is up significantly over this time last year.

Update on Marshall Road improvements – Mr. Groth stated that the final work to put down an asphalt overlay would level out the road and expend the remaining emergency funds received from the State. Council Member Cook expressed concern that some ditching needs to be done as well.

Attorney’s Report – Jed K. Deters

Mr. Deters stated he did not have anything to report.

Mayor’s Report – Christian J. Moriconi

Executive Order No. 2010-EO-01 – Appointment to Senior Board of Directors

Mayor Moriconi presented Executive Order No. 2010-EO-01 appointing Tom Collins to the Independence Senior Center Board of Directors.

Mayor Moriconi shared some good news - that he received a letter today from the State Transportation Department notifying the City that they have re-evaluated the intersection of SR17 (new) and McCullum Road and based on the present factors they have determined that the intersection warrants a traffic signal. He stated they did not provide a date by when the signal would be installed but said it would be in upcoming months. Mayor Moriconi stated that he received several scary letters about “near misses” at that intersection and thanked Representative Tom Kerr and Senator Damon Thayer for supporting the City’s efforts to get a light installed at that intersection.

Mayor Moriconi announced that the City’s Building Inspector Kevin Barbian recently completed the evaluation process with the ISO (International Organization for Standardization) Building Code Effectiveness Grading Schedule which assesses the building codes in effect in a particular community. He stated Mr. Barbian received a good evaluation grade which will be used in insurance underwriting. He stated that residents will benefit by this good rating in the form of a reduction in their property insurance rates.

Adjournment

There being no further business before the Council, Council Member Franzen moved to adjourn the meeting, seconded by Council Member Yeager. Motion carried with all ayes and the meeting ended at 8:19 p.m.

Christian J. Moriconi, Mayor

ATTEST:

Patricia H. Taney, City Clerk