

COUNCIL MEETING

Minutes of May 3, 2010

City of Independence, Ky.

Opening

The City Council of the City of Independence, Kentucky met on Monday, May 3, 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 April 5, 2010 Regular Council Meeting Minutes

Mayor Moriconi called for a motion to approve the minutes of the regular meeting held on Monday, April 5, 2010. Council Member Behler so moved, with second by Council Member Bushong. No amendments were noted; roll was called and answered unanimously. Motion carried 6-0.

Privileges of the Floor

Gailen and Debra Bridges – addressed Council about their plans to work with Arcadia Publishing on writing a book on the history of the City of Independence and Southern Kenton County. Mr. Bridges stated they will be soliciting from the public memorabilia, historic photos and other material for inclusion in the book. He stated they would like and encourage participation from the community. The Bridges can be contacted at independencebook@ymail.com.

Bob Schroeder, Arlinghaus Builders – addressed Council with a request for the City to sponsor a zoning text amendment that would permit wider driveways (as wide as the width of the opening of a three-car garage). He stated that current regulations permit a maximum width of 20 feet and would like to see this increased to 30 feet. Mr. Schroeder stated that his current recourse for putting in a wider driveway is to go before the City's Board of Adjustment to request a variance. He stated it makes more sense to permit this wider driveway, especially for a three-car garage, and therefore would like to see the City change this zoning regulation.

A brief discussion ensued. General consensus of the Council was that an application should be made with the Board of Adjustment for the variance. Council Member Little felt confident that this type of variance would be approved by the Board. Council Member Behler agreed and commented that the City recently upheld the current regulations and ordered several properties that had unlawfully increased the size of their driveways to come into compliance. Mr. Schroeder's request was denied due to lack of consensus to support a text amendment.

Candace Klein, Graydon Head & Ritchey LLP – Ms. Klein addressed Council on behalf of her client, Robert Meyers who owns property in the Cherokee Shopping Center. Ms. Klein stated that Mr. Meyers is working with a potential renter – Custom Outdoor Creations – who would like to run a seasonal flowers/plants business between the LaRosa's and the drugstore. She stated that since this is a dimensional issue they cannot request a variance from the City's Board of Adjustment. Ms. Klein requested the City sponsor a zoning text amendment that would amend Section 10.15 (E6) to add seasonal garden supply stores as an exception.

Resolution No. 2010-R-06 – Supporting Text Amendment Application

Council Member Franzen moved to adopt Resolution No. 2010-R-06 that would support a zoning text amendment application that would amend Section 10.15 (E6) adding as an

exception “seasonal garden supply stores.” Motion was seconded by Council Member Yeager. Roll was called and answered unanimously. Motion carried 6-0.

Ordinance No. 2010-O-06 – Establishing ABC Regulations and License Fee Schedule – 2nd Reading

Mayor Moriconi presented for a second 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 read the ordinance.

Council Member Yeager moved to adopt Ordinance No. 2010-O-06, seconded by Council Member Behler. There being no discussion, roll was called and answered unanimously. Motion carried 6-0.

Proposed Ordinance – Amending Code of Ethics, Chapter 38 Codes of Ordinances – 2nd Reading

Mayor Moriconi presented for a second reading a proposed ordinance that would amend Chapter 38 relating to the Code of Ethics by amending the definition of “family member.” Mr. Deters gave the ordinance a second reading.

Council Member Cook moved to adopt the proposed ordinance, seconded by Council Member Behler. After a brief discussion, roll was called and answered with three ayes cast by Council Members Cook, Behler and Bushong and three no votes cast by Council Members Franzen, Little and Yeager. Mayor Moriconi broke the tie vote by casting a no vote. Motion was defeated by a vote of 4-3 and the proposed ordinance was not adopted.

Ordinance No. 2010-O-07 – Amending Nuisance Ordinance, Chapter 93 of the Code of Ordinances – 2nd Reading

Mayor Moriconi presented for a second 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. Mr. Deters gave the proposed ordinance a second reading.

Motion was made by Council Member Cook and seconded by Council Member Behler to adopt Ordinance No. 2010-O-07. A lengthy discussion ensued. Council questioned the police chief about the current nuisance regulations and the lengthy proposed changes which include definitions of noise nuisances. Chief Butler advised that the current regulations do not provide definitions of what constitutes a noise nuisance; only saying “obnoxious emission of noise.” He stated the courts will not prosecute as it is too vague. Council Member Little stated he felt that some of the proposed text was good while other sections may be difficult to enforce. Council Member Behler commented the City’s nuisance ordinance needs more substance as several complaints received over the last few years have not been resolved due to the current inadequate regulations. Council Member Yeager commented that she likes some of the proposed changes, but not all and she is not prepared to vote in favor of this as presented. Council Member Franzen agreed that some of the noises, such as loud horns, would be difficult to enforce as it would be gone by the time the police arrived. Zoning Administrator Annie Wuestefeld agreed that there is a lot of proposed text, and that much of it won’t be needed, but if it is then it will be defined in the City ordinance. She agreed that often times we need to be there to witness the violation. Council discussed making some changes, but there was concern that it was important to move forward quickly with summer approaching. Mr. Deters advised the proposed amendment has eliminated a lot of unknowns by being all-inclusive. Chief Butler stated his department will not unreasonably enforce any parts of this proposed ordinance.

There being no further discussion, roll was called and answered with five ayes and one no vote cast by Council Member Little. Motion carried 5-1.

Proposed Ordinance – Approving a Zoning Text Amendment (KCPC 200R) Adding Pawn Shops to the List of Permitted Uses within the NC Zone – 2nd Reading

Mayor Moriconi presented for a second 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.

Mayor Moriconi yielded the floor to Tom Nienaber who wished to address Council as a proponent of this text amendment. Mr. Nienaber advised he was an attorney representing his client Larry Hamilton who had requested that Council sponsor this text amendment. Mr. Nienaber stated that the proposed text amendment has received a recommendation for approval from the staff of the Northern Kentucky Area Planning Commission and the Kenton County Planning Commission. He advised that with the exception of alcohol sales there is not a more regulated business by statute than pawn shops. He stated that historically there have not been many pawn shops in Northern Kentucky, but they are starting to pop up in more areas. He stated that when looking at existing land uses permitted in this neighborhood commercial zone many of the uses already allowed are things that pawn shops deal with and the vast majority of items are purchased and sold in retail to the general public. In closing, Mr. Nienaber asked that Mr. Hamilton be permitted to open the pawn shop at the location in the Beechgrove Shopping Center. He stated that Mr. Hamilton has experience in this type of business having operated six pawn shops in Kentucky.

Mr. Deters gave the proposed ordinance a second reading. Council Member Cook made a motion to adopt the proposed ordinance. Council Member Franzen stated she opposes this text amendment that would allow pawn shops as a permitted use in the Neighborhood Commercial zone. She stated she spoke with many residents about this issue and not one person was in favor of this. No one put forth a second to Council Member Cook’s motion, therefore the motion died for lack of a second.

Ordinance No. 2010-O-08– Establishing Rental Dwelling Licenses – 2nd Reading

Mayor Moriconi presented for a second reading a proposed ordinance that would create a new chapter of the code of ordinances (Chapter 99) concerning rental dwelling licenses.

Council Member Franzen moved to adopt Ordinance No. 2010-O-08 seconded by Council Member Yeager. Mayor Moriconi then opened the floor for discussion prior to a vote.

A lengthy discussion ensued. Council Members had questions and concerns regarding the enforcement and annual inspections of the rental property, both single family houses and multi-family complexes. Zoning Administrator Annie Wuestefeld advised that it would take some planning for the annual inspections before issuing a license, but that she and the Building Inspector would work it out. Mr. Groth suggested that the police could help out if necessary. Council Member Behler suggested the police are not trained in building code to assist with inspections. Mayor Moriconi referred to a report supplied by the Police Chief regarding the number of police calls for service to apartment complexes; citing 2321 police calls which the Police Chief calculated to equate to an annual expense of \$183,000 police time. Council Member Behler stated that it is difficult to determine if that is excessive since there is no comparison to single family rental properties. Chief Butler replied that he had no way to capture info on single family house rentals. Council Member Cook asked how the City planned to license rented single family houses if we don’t know which houses are rentals. Mrs. Wuestefeld advised that initially it would have to be treated as an honor system and that it would take time before all single family rentals could be determined.

Council Member Franzen expressed concern that the City is providing services to renters who don't pay any city taxes yet take advantage of all City services. Council member Cook commented that many people cannot afford to purchase a house and that renters support local businesses and pump their earned dollars into the City's economy.

Fred Burns, Green Road, Walton – addressed Council regarding this proposed rental license and fees. He stated he is currently developing an apartment complex in the Independence Village. He stated he studied this area and chose to build here as he knew this was a strong area for this type of complex. He expressed concern that this licensing fee will cost him an additional \$6,000 per year. He didn't see the need for this program as typically this would be geared at low income housing and that there is already a federal inspection program in place for the low income housing. He suggested the City consider a flat fee charge for properties that require more police services. He stated that this license and fee seems punitive to him. He stated the City will collect a significant amount of property taxes for this development than for the vacant land.

Doug Hauke – Also addressed Council regarding his opposition to this ordinance. He expressed his displeasure that the vast majority will have to pay for the few that don't keep their properties up to code.

At this time there was a discussion on the extensive report provided to the Council by the Police Chief. He advised that the report was for the 2321 calls for service to 1300 apartment units citywide.

Council Member Behler commented that she understands this is a challenging year for the budget but doesn't want to pass this just for the revenue it would generate. She stated she is concerned that it will cost more to enforce than the revenue it will generate. She stated she would only vote for this if it would be instrumental in keeping the citizens safe. She wondered if \$40.00 per unit would even be enough to accomplish all that was actually needed to do that. Mayor Moriconi commented that it would be a net loss if taking into consideration all the police time spend on calls for service.

Council Member Behler also expressed concern that this license/fee would not be fair, since there will be no way to determine all the single family houses being rented. Council Member Cook stated that the inspection part of the licensing bothers her. She discussed the HUD inspection process and how escrowed funds are withheld causing the property owner to lose subsidy from government. She stated that additional inspections by the City would be redundant in subsidized complexes and would run off good landlords. Council Member Little asked how long it takes to inspect a unit. Council Member Cook responded 10-15 minutes per unit and that HUD requires only 10% of a complex to be inspected. Council Member Franzen commented that the HUD system does not work.

Council Member Behler asked that the second reading of this ordinance be tabled til next month until she could obtain more information. She would like to know what percentage of the rental housing in the city is subsidized, etc. She stated she feels that the way the ordinance is written that it cannot be enforced fairly. Council Member Behler made a motion to table this until the June meeting. The motion died for lack of a second.

Council Member Behler asked Mrs. Wuestefeld to look over the Police Chief's report and cross reference with the zoning/building code complaints she has received. Mrs. Wuestefeld commented that the last couple years she has not received any complaints. Council Member Little asked the Police Chief for stats on drugs and theft. He replied that the stats could have been driven higher but they were cautious in their reporting.

The discussion ended and Mr. Deters gave Ordinance No. 2010-O-08 a second reading. Roll was called and answered with four ayes and two no votes cast by Council Members Behler and Cook. Motion carried 4-2

Award Bid for Arbor Court Road Repairs

Mayor Moriconi presented to Council the tabulated results of the bids received by the City for the road improvements for Arbor Court.

City Administrator Dan Groth reported that the improvements to Arbor Court were in two parts. He stated that Part A was the City road improvements and Part B was the water main improvements that would be funded by Northern Kentucky Water District. He advised this was a collaborative bidding process with the Water District. The City received five bids for the road improvements and he, along with the Public Works Director, is recommending that the City award the project to Len Riegler Blacktop who placed the low bid of \$131,087.50. He stated the City Engineer is recommending under-surfacing, but he feels that it is not a necessary expense and would cost an extra \$38,000. Mr. Groth stated that that money could be better utilized elsewhere in the city, such as the sidewalks in the area of Simon Kenton High School.

Council Member Franzen moved to award the Arbor Court road improvements project to Len Riegler Blacktop in the amount of \$131,087.50, seconded by Council Member Yeager. Roll was called and answered with five ayes and one no cast by Council Member Cook. Motion carried 5-1.

Amendment to Rental Agreement for the Senior Center

Mayor Moriconi presented to Council for consideration a revised Senior Center Rental Agreement. He stated that Nita Brake has been researching similar agreements with other cities and the proposed amendments are a result of this research.

Mr. Groth stated the proposed increase of rental fees would cover the actual cost of cleanup of the center after each event. Ms. Brake commented that this rental agreement was last updated in 2005 and the City has seen an increase in maintenance charges over the last five years. She stated that the fee charged to residents has not been increased in eight years.

Mayor Moriconi commented that the City should not lose money on rentals which would be subsidizing private parties and events in the center. Ms. Brake stated the proposed fee increase would take effect on July 1, 2010 but would not affect existing signed agreements as the City will honor those. She distributed to Council a list of fees charged by other cities that own a Senior Center or Community Center.

A motion was made by Council Member Behler and seconded by Council Member Little to approve the amended Senior Center Rental Agreement. Roll was called and answered with five ayes and one no vote cast by Council Member Cook. Motion carried 5-1.

Proposed Ordinance – Amending Chapter 91 of the Code of Ordinances Adding a New Section Dealing with Removal of Dog Excrement – 1st Reading

Mayor Moriconi presented to Council a proposed ordinance that would amend Chapter 91 of the code of ordinances by adding a new section dealing with dog excrement removal. Mr. Deters read the proposed ordinance.

Mr. Groth explained to Council the City has received several complaints this past winter that pet owners would allow their dogs to go on the sidewalks and then not clean it up.

Proposed Ordinance – Amending the 2009/2010 Budget – 1st Reading

Mayor Moriconi presented to Council for a first reading a proposed ordinance that would amend the 2009/10 budget. Mr. Deters read the proposed ordinance.

Proposed Ordinance – Adopting the 2010/2011 Budget – 1st Reading

Mayor Moriconi presented to Council for a first reading a proposed ordinance that would adopt a budget for the 2010/2011 fiscal year. In his prepared budget message he outlined the key elements of this budget which included the following:

- The proposed budget is based on maintaining the current property tax rate
- No raises will be given to the employees
- No new capital projects
- No new fleet vehicles for the Police Department or Public Services Department
- Expenses have been reduced by over \$400,000 compared to the current year amended budget to offset declines in projected revenues from single family building permits
- Projected reserves at the end of the budget year are \$1,844,482.
- The proposed budget is balanced

Mayor Moriconi stated he feels this proposed budget maintains quality services for the citizens and continues to maintain sufficient reserves for emergencies. Council Member Cook asked if Council Members could have individual meetings with staff to review the budget closer. Mr. Groth and Mayor Moriconi commented that meetings could be arranged. Mr. Deters read the proposed ordinance.

Proposed Ordinance – Amending the Employee Pay and Classification Plan – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that will adopt a Pay and Classification Plan for the 2010/2011 fiscal year. Council Member Cook asked what percent increase was being proposed. Mr. Groth advised that generally the pay ranges increase by an average of 3-5%, but not this year. Mayor Moriconi advised Council that there is no change in the employee pay ranges this year as no pay raises will be given this year. Mr. Deters read the proposed ordinance.

City Administrator Report – Dan Groth

Mr. Groth had one announcement; he advised that the NKAPC would be holding a public forum on The Hills development, which will be held at the Lakeside Christian Church tomorrow (May 4, 2010) from 6-8:30 p.m.

Attorney's Report – Jed K. Deters

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

Mayor's Report – Christian J. Moriconi

Resolution No. 2010-R-08 – Authorizing Homeland Security Grant Applications for Mobile Data Computers and Portable Radios

Mayor Moriconi presented to Council Resolution No. 2010-R-08 that would authorize the application of a Homeland Security Grant for the purchase of mobile data computers and radios for the Police Department. Chief Butler advised this is not a matching grant and so the purchase will be fully funded by the grant, if awarded to the City. These would be replacements in some of the vehicles.

Council Member Behler moved to adopt Resolution No. 2010-R-08, seconded by Council Member Franzen. Roll was called and answered unanimously; motion carried 6-0.

Proclamation – Declaring May as Building Safety Month

Mayor Moriconi read a proclamation declaring May as Building Safety Month.

Announcement

Mayor Moriconi announced that the Memorial Day Parade would take place on Monday, May 31, 2010. The parade route will start at Memorial Park and end at the Kenton County Courthouse. The parade will begin at 10:00 a.m.

AT&T Cell Tower Opposition

Council Member Franzen made a motion to oppose the placement of the proposed AT&T cell tower at 5257 Madison Pike, which is in the heart of the historic downtown area. Council Member Yeager seconded the motion. Roll was called and answered with five ayes and one no vote cast by Council Member Cook. Motion carried 5-1.

Council Member Cook commented that she did not feel it was appropriate for the City to take a position on this cell tower issue as the City has no say in it. Council Members Franzen and Yeager responded by saying they are allowed to have an opinion.

Adjournment

There being no further business, Council Member Behler moved to adjourn the meeting, seconded by Council Member Franzen. Motion carried with all ayes and the meeting ended at 9:27 p.m.

Christian J. Moriconi, Mayor

ATTEST:

Patricia H. Taney, City Clerk