

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, DECEMBER 4, 2018 –6:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Grotting, Betts and McCoy

ABSENT: None

STAFF: City Administrator Kaltsas, City Administrative Assistant Horner, City Attorney Vose

VISITORS: Lynda Franklin, Jenny Flansburg, Anita Volkenant

4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council minutes From the October 31, 2018 Special City Council Meeting.
- b. Approval of City Council minutes From the November 5, 2018 Regular City Council Meeting.
- c. Approval of Accounts Payable; Checks Numbered 18393-18473.
- d. Approval of Personnel Committee Recommendation to Extend City Administrator/Planning Contract.
- e. **RESOLUTION 18-1204-01** – Certifying City Hall as the 2019 Polling Place.
- f. Approval to not waive the monetary limits on Tort Liability established by MN Statutes, to the extent of the limits of liability coverage obtained from the LMCIT.
- g. **RESOLUTION 18-1204-02** – Adopting the City of Independence Manure Management Policy.
- h. Third Quarter Financial Report (for information).

Johnson said item e. **RESOLUTION 18-1204-01** – Certifying City Hall as the 2019 Polling Place and item g. **RESOLUTION 18-1204-02** – Adopting the City of Independence Manure Management Policy would be pulled voted on separately.

Motion by McCoy, second by Betts to approve the Consent Agenda a-d and f and h. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Motion by Betts, second by Spencer to approve RESOLUTION 18-1204-01 – Certifying City Hall as the 2019 Polling Place. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Johnson asked Kaltsas if there were any items that needed to be discussed around proposed Resolution 18-1204-02- adopting the manure management policy which basically addresses the number of horses being brought into Independence. Kaltsas said phosphorous testing is required and this would let the City and the water resource consultant could consider the numbers on a case by case basis. He noted testing is done through the University of Minnesota. Spencer said Joe Baker presented the manure policy and it was well-received.

Motion by Spencer, second by Grotting to approve RESOLUTION 18-1204-02 – Adopting the City of Independence Manure Management Policy. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Met with Joe Baker on Pioneer Sarah Creek Water Management Plans

Grotting attended the following meetings:

- LMCC Meeting

McCoy attended the following meetings:

- Taught Cyber Forensics Class
- WHPS View Santa Event
- Haven Homes Advisory Committee Meeting

Betts attended the following meetings:

- Northwest League of Cities Meeting

Johnson attended the following meetings:

- Election Judge
- National League of Cities Conference in Los Angeles- plaque recognizing “Chairmanship”
- Regional Council of Mayors Meeting
- Orono School Board Meeting
- Northwest League Meeting
- Land Use Advisory Meeting
- Senior Community Services Board Meeting
- Community Action Partnership of Hennepin County Finance Meeting
- Truth in Taxation Meeting for Hennepin County
- League of Metro Cities Annual Meeting
- Scouts and Parents Meeting at City Hall
- Hennepin County Community Action Partnership Board Meeting
- WHPS View Santa Event
- Salvation Army Event
- Phone call from Congressman Phillips
- Hennepin County History Center Event

Horner attended the following meetings:

- Elections
- West Hennepin Chamber of Commerce Meeting

Kaltsas attended the following meetings:

- Met with League of Minnesota Cities Representative
- Met Council Meeting about Comp Plan and Loretto Sewer Project

7. Consider Adoption of the Final 2019 Tax Levy and General Fund Budget and Associated Actions.

- a. **RESOLUTION 18-1204-03** – Adopting the 2019 General Fund Budget.
- b. **RESOLUTION 18-1204-04** – Adopting the 2019 General Tax Levy.
- c. **RESOLUTION 18-1204-05** – Adopting the 2019 Pioneer Sarah Creek Watershed Management Commission Tax Levy.
- d. **RESOLUTION 18-1204-06** – Adopting an Amendment to the 2018 Budget to Accurately Reflect Revenues and Expenditures Based on the Receipt of Additional Revenue in 2018.

Motion by McCoy, second by Betts to approve RESOLUTION 18-1204-03 – Adopting the 2019 General Fund Budget. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Motion by Spencer, second by Grotting to approve RESOLUTION 18-1204-04 – Adopting the 2019 General Tax Levy. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Motion by Spencer, second by Betts to approve RESOLUTION 18-1204-05 – Adopting the 2019 Pioneer Sarah Creek Watershed Management Commission Tax Levy. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Johnson asked Kaltsas to outline Resolution 18-1204-06. Kaltsas explained that this Resolution addresses additional revenue brought in so that is reflected correctly against additional expenditures.

Motion by McCoy, second by Spencer to approve RESOLUTION 18-1204-06 – Adopting an Amendment to the 2018 Budget to Accurately Reflect Revenues and Expenditures Based on the Receipt of Additional Revenue in 2018. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

8. City Ordinance Amendments Pertaining to Regulation of Small Wireless Facilities:

- a. **ORDINANCE 2018-05** – Adopting an Ordinance Amendment to Chapter VIII, Section 810, Right of Way Regulations: Consider proposed amendment to the right of way ordinance relating to small cellular antennas.
- b. **SUMMARY ORDINANCE 2018-05** – Adopting a Summary Ordinance Relating to the Amendment to Chapter VIII, Section 810, Right of Way Regulations.

- c. **ORDINANCE 2018-06** Adopting an Ordinance Amendment to Chapter V, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses: Consider amendment pertaining to small cellular wireless technology in City right of ways.

Kaltsas said the State of Minnesota adopted new regulations in 2017 pertaining to the regulation of placement of small

cell technologies and distributed antennae systems (DAS) (See Example Images Below). Small cell equipment and DAS both transmit wireless signals to and from a defined area to a larger cell tower. They are often installed at sites that support cell coverage either within a large cell area that has high coverage needs or at sites within large geographic areas that have poor cell coverage overall. Situational needs dictate when cell providers use small cell towers, as opposed to DAS technology. Generally, cell providers install small cell towers when they need to target specific indoor or outdoor areas like stadiums, hospitals, or shopping malls. DAS technology, alternatively, uses a small radio unit and an antenna (that directly link to an existing large cell tower via fiber optics). Installation of a DAS often involves cell providers using the fiber within existing utility structures to link to its larger cell tower.

Historically, many cities' ordinances address large wireless tower sites, but not small cellular towers or DAS. Cities can charge rent (up to a cap for small wireless siting) under the statute for placement of cell technology or DAS on existing or newly installed support structures, like poles or water towers; and, also, can enter into a separate agreement to address issues not covered by state law or ordinance. In addition to adopting specific regulations, many city zoning ordinances recognize structures as conditional uses requiring a permit. While cities may require special permits or variances to their zoning for siting of large cell facilities, under state law, small wireless facilities and wireless support structures accommodating those small wireless facilities are deemed a permitted use. The only exception to the presumed, permitted use for small wireless is that a city may require a special or conditional land use permit to install a new wireless support structure in a residentially zoned or historic district. The City can regulate small wireless and DAS equipment in residential zoning districts by making new structures a conditional use rather than a permitted use. Based on the new legislation, the City can only regulate new equipment located in residential zoning districts and must allow new small wireless structures in all other commercial districts as a permitted use. Independence will also need to amend the City's Code of Ordinances Chapter VIII, Section 810, Right of Way Regulations. The amendment will define small wireless facilities, provide additional regulations pertaining specifically to small wireless structures and allow the City to permit, lease and charge fees associated with the location of small wireless facilities in the right of way. The state statute provides the City with specific requirements pertaining to small wireless technology in the right of way. The City Attorney has reviewed the right of way ordinance and prepared the proposed amendment. The proposed amendment includes the state statute specified fees for all small wireless as follows:

As provided by Minnesota Statutes Sections 237.162-.163, an annual fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, shall be added to the annual rent due under each Supplement at the rate of:

As provided by Minnesota Statutes Sections 237.162-.163, an annual fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, shall be added to the annual rent due under each Supplement at the rate of:

- A. \$73.00 per radio node less than or equal to 100 max watts;
- B. \$182.00 per radio node over 100 max watts; or
- C. The actual costs of electricity, if the actual costs exceed the amount in item (A) or (B).

To ensure that the City has the most control over structures being located within City rights of way, the City would need to consider adding the recommended ordinance changes. Planning Commissioners reviewed the proposed amendment to the zoning ordinance, held a public hearing and recommended approval to the City Council. The City Attorney reviewed the right of way ordinance with staff and prepared the proposed amendment. No public hearing is required to consider the right of way ordinance amendment.

Vose said the upcoming 5th generation technology will allow faster and greater data. Movies and other media will be viable on this new network. They need to have many more antennas to accomplish this and the government controlled right away is where it is planned on being deployed. State law was adopted that allows small cells or “toaster-sized” antennas to go in the rights-of-way. Cities can permit the antennas but have limited zoning authority. The cell providers can put up their own poles but no higher than 50’ and the City can impose some aesthetic conditions if it is a decorative type pole. Rent is limited at \$150/ year. Johnson asked if the poles were owned by the utility company. Vose said that is correct in Independence but the amendments will allow the City to issue a permit even if it is going on a pole owned by a utility company. We would not be able to charge rent in that instance. Grotting asked if there could be all sorts of different poles as there are four different companies. Vose said the City would have the authority to allow separation requirements which would indirectly mean the different providers would have to share poles.

Betts asked what the utility companies thought about this new legislation. Vose said they have not shown any great concern. Betts asked if this would apply to private landowners. Vose said it that has applied to downtown areas where the ROW is not applicable.

Vose noted the wireless companies went to the FCC as well and the interplay is convoluted so it is in the best interest not to wait on acting on these initiatives.

Motion by McCoy, second by Spencer to approve ORDINANCE 2018-05 – Adopting an Ordinance Amendment to Chapter VIII, Section 810, Right of Way Regulations: Consider proposed amendment to the right of way ordinance relating to small cellular antennas. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Motion by Grotting, second by Betts to approve SUMMARY ORDINANCE 2018-05 – Adopting a Summary Ordinance Relating to the Amendment to Chapter VIII, Section 810, Right of Way Regulations. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Motion by Spencer, second by McCoy to approve ORDINANCE 2018-06 Adopting an Ordinance Amendment to Chapter V, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses: Consider amendment pertaining to small cellular wireless technology in City right of ways. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

9. Consider Funding a Portion of the Engineering Study for Railroad Quiet Zone at Townline Road.

Kaltsas said Loretto received legislative funding from the 2018 bonding bill to make improvements (create quiet crossing) to the railroad crossing at the CSAH 19 railroad crossing in downtown. The funding is approximately \$350,000. Loretto has prepared plans and specs and bid out the project for spring 2019 construction. The estimated cost is \$275,000-\$300,000. The funding received can also be used for improvements to the Townline Road railroad crossing in Independence and Medina. Based on the estimated cost of \$275,000, there could be funds remaining that could be used at Townline Road. It is

anticipated that a quiet crossing at Townline Road will cost between \$200,000-\$300,000. The remaining funding would not be enough to make all the improvements necessary to provide a quiet crossing but could be used to make some of the required improvements. To understand what would need to be done to improve the crossing and how much it would cost, an engineering study needs to be completed. Loretto and Medina have already agreed to proceed with an engineering study and are asking Independence if it would like to participate. The City is being asked to participate in 1/3 of the cost of the \$5,000 study.

Council is being asked to approve funding of \$1,666 to participate in the initial engineering study. Participating in this study does not lock the City into funding any future improvements. This item is not a budgeted item for 2018, but it is anticipated that the City will have other funds available to cover this cost.

McCoy said it would give us a vested interest in the Ag crossing if we were a member. Johnson agreed that was a great point and it this is a good price as well.

Motion by Spencer, second by McCoy to approve funding of 1/3 of the cost of the Engineering Study for Railroad Quiet Zone at Townline Road. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

10. Open/Misc.

11. Adjourn.

Motion by Betts, second by McCoy to adjourn at 7:42 p.m. Ayes: Johnson, McCoy, Grotting, Betts and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary
