

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, OCTOBER 25, 2011 – 7:30 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 7:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL.

PRESENT: Mayor Johnson, Councilors Betts, Spencer, and Wenck

ABSENT: Councilor Wallace

STAFF: City Attorney Vose, City Planner Kaltsas, Admin. Asst. Olson

VISITORS: Joseph Zimmerley, Kendal Kalamaha, Myron Boll, Hennepin County Commissioner Jeff Johnson

4. CONSENT AGENDA.

Approve:

- Approval of Council Minutes – October 11, 2011
- Approval of Ordinance No. 2011-13 Amending the City of Independence City Code, Chapter XI, adding the following Section 1135- Body Art Establishments

**Motion by Wenck, seconded by Betts, to approve the consent agenda. Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

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

Johnson added Hennepin County SCORE Recycling Funding Policy changes.

6. REPORTS OF BOARDS & COMMITTEES BY COUNCIL AND STAFF

Spencer: Pioneer-Sarah Creek Watershed Management Meeting

Wenck: Executive Meeting of Lake Minnetonka Cable Commission

Betts: Meeting with Delano regarding possible big box store, Open House for Reserve Officers

Johnson: Meeting with Delano regarding possible big box store, Northwest League of Municipalities Meeting, Orono Healthy Communities, Open House for Reserve Officers, Community Action Partnership Suburban Hennepin County Finance Committee Meeting, Orono

School Board League of Women Voters Forum, Enough for All Events in Edina and  
Minnetonka, Senior Community Services Finance Committee Meeting  
Olson: City Recycling Coordinator Meeting with Hennepin County

7. HENNEPIN COUNTY COMMISSIONER JEFF JOHNSON

Commissioner Johnson reported the County is in the middle of their budgeting process. The County is looking to cut two to three percent for 2012-2013. He stated they have three levies and all have been capped at a zero percent increase and he anticipates they may actually decrease a small amount.

Commissioner Johnson reported on a long term transportation plan that must be submitted to the Met Council that he voted against. He stated that it was a well written document, but he has some concerns on the focus of the money to be spent. As constituents in this area of the County mainly use roads as their means of transportation, he felt more funds should be directed toward road growth instead of focusing mainly on the growth of other modes of transportation such as light rail.

Mayor Johnson inquired how the market value exclusion will affect businesses and home. Commissioner Johnson replied that higher value home taxes will go up, even when the counties and cities do not increase taxes. It will affect businesses but not those homes under \$417,000.

Mayor Johnson inquired about property home values. Commissioner Johnson replied that it will probably be a small single digit decrease like the previous year.

Mayor Johnson commented on the changes to the recycling funding policy. Commissioner Johnson replied that they cannot penalize cities that are already operating a good recycling program. The intent of the changes is to provide an incentive to those cities that are not doing a good job.

Wenck thanked Commissioner Johnson and encouraged him to continue looking for ways to reduce the budget.

8. PUBLIC HEARING - MRYON BOLL, OWNER OF PROPERTY LOCATED AT 1915  
COPELAND ROAD (PID# 19-118-24 41-0005), REQUESTS AN AMENDMENT TO THE  
CONDITIONAL USE PERMIT TO CONTINUE TO ALLOW STORAGE OF BOATS IN THE  
EXISTING AGRICULTURAL BUILDING LOCATED ON THE SUBJECT PROPERTY.  
RESOLUTION NO. 11-1025-01

Johnson opened the public hearing.

Kaltsas reported on the site. He stated that the applicant is looking for an amendment to the current CUP to continue to allow commercial indoor storage in existing farm buildings. There has been a history of this use by previous owners. Kaltsas described past litigation with the previous owner that resulted in a judgment placing a 10 year sunset on the CUP. He reported that since that time, the property has been brought into compliance and is in good standing. He stated that even though there is no residence on the property to comply with the provisions set in the ordinance, the Council may approve the CUP based on historical use of the property to store boats. The applicant provided a petition from surrounding neighbors supporting the continued use and no other comments have been received. Kaltsas reported the Planning

Commission had concerns about open ended hours of operation and suggested a condition that limits the hours from 9 a.m. to 6 p.m. The applicant was agreeable to that condition.

There was no comment from the public.

**Motion made by Wenck, seconded by Spencer, to close the public hearing. Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

Johnson stated his concern with the condition on operating hours. He felt that 9 a.m. was too late in the morning. Wenck agreed. The applicant agreed that 8:00 a.m. would work.

Betts asked the City Attorney if the request was approved if it would have bearing on other properties. Vose replied that if they treated the case as a new CUP, it could set precedence for other CUP applications. However, they are able to address this case as an existing CUP based on the ordinances that were in place at that time and it would not be setting precedence.

**Motion by Betts, seconded by Wenck, to approve the requested amendment to the Conditional Use Permit with the following findings and conditions:**

- 1. The proposed Conditional Use Permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.**
- 2. The Conditional Use Permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.**
- 3. There should be no commercial outdoor storage permitted.**
- 4. Any modifications and additions to the structures on the property will be reviewed by the City's Building Official and will be subject to all applicable standards and requirements.**
- 5. The additional uses proposed should not create an increase (beyond that of the existing farm operations) in noise or offensive odors, fumes, dust or vibrations for the surrounding properties**
- 6. Hours of operation, specifically, the hours that the applicant schedules the drop-off and pick-up of boats and vehicles should be limited to between 8:00 a.m. and 6:00 p.m., seven days a week and shall not unreasonably impact the use or enjoyment of the surrounding properties.**

**Ayes: Betts, Johnson, Spencer and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

9. PUBLIC HEARING - JOSEPH M. ZIMMERLY, 7914 COUNTY ROAD 6 (PID# 33-118-24 22-0011), REQUESTS THE CITY TO CONSIDER THE FOLLOWING ACTIONS FOR THE PROPERTY LISTED ABOVE:
  - a. Approval of Ordinance No. 2011-15 Amend Section 530.01, Subd. 4 Conditional Use Permit, to allow for a Catering Business in the agricultural zoning district as a conditional use permit.

- b. Approval of Resolution No. 11-1025-02 to allow a proposed catering business to operate from the subject property.

Johnson opened the public hearing.

Kaltsas reported the applicant is looking to purchase the property at 7914 County Rd 6 to operate a catering business.

Kaltsas reported the property had two previous conditional use permits – one for welding and one for a chiropractic office. Staff did not feel the CUP could be amended because of the difference in use from the original CUP. In order to allow a catering business as a conditional use, the Zoning Ordinance must be amended. The applicant is proposing to remodel a portion of the garage into a commercial kitchen and the remainder will house the delivery van. The site will also consist of 2-3 on-site employees who will rent the home. There will be no commercial deliveries and the type of event they cater are small dinner parties (20-30 people).

Kaltsas reported the on-site septic is non-compliant because of lack of separation and bottomless tank. The City had granted a two year period from date of sale to become compliant. He stated the Planning Commission recommended the septic become compliant prior to the issuance of final building inspection approval of commercial kitchen renovations or within one year from the time of sale, whichever occurs first. Kaltsas stated that to put in the new septic, it would push the set back limits but the City's Building Official said it could be done. The owner may need to apply for a setback variance at that time.

Kaltsas stated the Planning Commission held discussion on the amount trash generated by the catering business. They were concerned about having a large dumpster at the property. The Planning Commission recommended another condition that trash service and containers be consistent with residential service. Zimmerley stated they always try to prepare the correct amount of food and often the customers will take any leftovers.

The third condition the Planning Commission discussed was having a review of the CUP if the use intensified at the catering business.

Johnson stated that prior to welding the shop; there was an old auto repair filling station at the site. He stated that as long as he can remember there has always been a business at the site.

Wenck asked the City Attorney if there were any legal issues. Vose replied that years ago they removed language in the Zoning Code dealing with like uses, so that the Council would have to put specific uses in the Zoning Code.

**Motion by Wenck, seconded by Betts, to close the public hearing. Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

**Motion by Wenck, seconded by Johnson, to approve the proposed text amendment allowing Catering Business as a Conditional Use in the Agriculture Zoning provided that:**

- 1. The business is subordinate to the principle use of the property as a residence.**
- 2. No materials, equipment, vehicles or parts used in the business may be stored on the premises other than within in the dwelling.**

3. No signs relating to the business may be visible from the exterior of the dwelling unit or accessory structure except signs that are permitted under subsection 550.09, subdivision 2 of this zoning ordinance.
4. No exterior alterations may be made to the dwelling unit to accommodate the business except those alterations customarily found with the dwelling units on lots of similar size within the district.
5. No traffic shall be generated by the business beyond which is reasonable and normal for the area in which it is located.
6. The hours and days during which the business is conducted on the premises is limited so as to not unreasonably interfere with the residential character of the surrounding areas.
7. No over the counter retail sales may occur on-site.

**Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

**Motion by Spencer, seconded by Betts, to approved the Conditional Use Permit with the following conditions:**

1. The proposed Text Amendment and Conditional Use Permit request meet all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The Conditional Use Permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
3. There should be no commercial outdoor storage permitted on the property.
4. Any modifications and additions to the structures on the property will be reviewed by the City's Building Official and will be subject to all applicable standards and requirements.
5. The additional uses proposed should not create an increase (beyond that of the existing home) in noise or offensive odors, fumes dust, or vibrations for the surrounding properties.
6. The hours and days during which the business is conducted on the premises shall be limited so as to not unreasonably interfere with the residential character of the surrounding areas.
7. Trash service levels, the size and number of containers should be consistent with residential properties. Any intensification of the level of service, size and/or number of containers will require the additional review and approval by the City.
8. Prior to the City Council final approval of the Conditional Use Permit, the applicant shall complete the following items:
  - a. The septic system shall be replaced with an approved system prior to the issuance of final building inspection approval of the renovations relating to the commercial kitchen or within one year, whichever event occurs first.

**Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

#### 10. HENNEPIN COUNTY SCORE RECYCLING FUNDING POLICY CHANGES

Olson reported on the changes in the funding policy and the issues that would affect the City such as meeting the 2015 goals set in the policy.

Betts expressed her concerns regarding plastics that are no longer picked up as well as containers left in the roadway after pickups. Olson stated she would follow up and respond to the Council at a later time.

Wenck stated he would like to make the concerns official by sending them to the County. Council directed staff to submit the staff report outlining concerns along with a cover letter to Hennepin County.

**Motion by Wenck, seconded by Betts, to send official comments to Hennepin County. Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

Johnson inquired about the participation rate. Olson replied it is calculated during the month of October and when those figures are released she will inform the Council. Johnson suggested putting an item in the newsletter next fall to encourage people to recycle.

11. OPEN/MISC.

Johnson stated the next City Council meeting will be held on November 15<sup>th</sup> because Election Day falls on their regularly scheduled meeting on the 8<sup>th</sup>.

Vose reported that staff was in receipt of a letter from Medina stating Medina is not interested in allowing lines for sewer expansion to Vinland Center and the YMCA. He stated that it is a capacity issue on Medina's side. Wenck suggested a meeting between the two mayors and one other councilor from each city plus staff.

**Motion made by Wenck, seconded by Betts, to direct staff to initiate a meeting with Medina. Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

12. ADJOURN

**Motion made by Spencer, seconded by Betts, to adjourn the meeting at 8:38 p.m. Ayes: Betts, Johnson, Spencer, and Wenck. Nays: None. Absent: Wallace. MOTION DECLARED CARRIED.**

Respectfully submitted,

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Kimberly A. Olson, Recording Secretary