

OFFICIAL COUNCIL PROCEEDINGS

**Tuesday, October 3, 2017
Council Chambers
7:00 p.m.**

ROLL CALL

Present: Council Members Van Hoose, Welch, Veach, Dobson, Cogdal,
and Mayor Hark - 6

Absent: Mayor Pro Tem Knickerbocker - 1

CALL TO ORDER

There being a quorum present, Mayor Hark called the meeting to order.

INVOCATION

The invocation was given at this time by Council Member Van Hoose.

PLEDGE OF ALLEGIANCE

Council Member Cogdal led the Pledge of Allegiance to the Flag.

Council Member Dobson made a motion to excuse Mayor Pro Tem Knickerbocker. Motion seconded by Council Member Welch.

Motion carried.

APPROVAL OF AGENDA

Motion was made by Council Member Van Hoose to approve the agenda. Motion was seconded by Council Member Dobson.

Motion carried.

APPROVAL OF MINUTES 813 South Main Real Estate Negotiations

- April 19, 2016
- May 3, 2016

Motion was made by Council Member Dobson to approve the minutes for the 813 South Main Real Estate Negotiations held April 19, 2016 and May 3, 2016. Motion was seconded by Council Member Van Hoose.

Motion carried.

Closed Session Minutes - Communication Tower Lease Negotiations

- **April 18, 2017**

Motion was made by Council Member Dobson to approve the minutes for the Closed Session Minutes for the Communication Tower Lease Negotiations that was held on April 18, 2017. Motion was seconded by Council Member Cogdal.

Motion carried.

Regularly Scheduled Council Meeting – September 19, 2017

Motion was made by Council Member Welch to approve the minutes for the last regularly scheduled Council meeting that was held on September 19, 2017. Motion was seconded by Council Member Veach.

Motion carried.

APPROVAL OF PAYROLL AND CLAIMS

Second Half – September, 2017

Motion was made by Council Member Dobson to approve the payroll and claims for the second half of September, 2017. Motion was seconded by Council Member Van Hoose.

Motion carried.

JAMES R. HARK - MAYOR

Re: Municipal Judge Candidate Forum

Mayor Hark then requested the process be handled in the like manner as other council appointments, by beginning to ask each candidate to exit the room while the other was being questioned. Mr. Don Bastian then exited the room.

➤ Stephen Porter

Mr. Stephen Porter then came to the podium and provided a brief introduction of himself to the Council. He advised this was actually his first time in the Council Chambers, but has seen it on television. He is the former Mayor and Alderman of Monroe City, which is his hometown. He was also the State Representative candidate in Monroe City. He attended law school in Oklahoma, came back to Missouri in 1996, working in private practices. He tried 100 jury trials in Oklahoma before coming back to Missouri.

Mayor Hark then began asking the questions as previously approved by the City Council.

1. *As City Judge by our charter you are prohibited from taking any cases against the City. Also, it is my understanding that under the attorney ethics rules you would be prohibited from taking any criminal defense cases which involve HPD. Are you concerned about the job interfering with your regular law practice?*

He has no concerns and he agrees with both positions as the Mayor stated and agrees that it would be a conflict of interest both legally and ethically. His practice is basically criminal, family and traffic law.

- a. *(follow up question) Do you feel that the current rate of pay for City Judge is sufficient? In particular, are you concerned that it will be fair exchange to receive the current salary for you giving up a portion of your criminal law practice?*

He does feel it is fair, he is not applying for the money, obviously. He has been so blessed to have a robust private practice.

Council Member Cogdal questioned why he was applying if it wasn't for the money. He indicated he is age 59 and in the twilight of his career, he is looking for something new to do and a new passion.

2. *Certain offenses in our code have required levels of fines. For instance, property maintenance issues are a mandatory \$200 fine including costs on the first occurrence, with higher fines thereafter. Do you have any ethical objections to sentencing chronic violators under the statutory guidelines if they are found guilty?*

No problem, he is applying to be the municipal judge not a legislature.

3. *If a defendant appears before you that you are not currently representing but whom you represented at some point in the past, if your representation of them was on a completely unrelated matter, would you believe that you had a conflict of interest and that a special judge would be required?*

He feels he would consult the rules of professional conduct; he then questioned if the City attorney represented the Municipal Judge or does the AG. Lemon indicated he would probably have to refer the judge to someone else. He does know they can seek an opinion from the office of disciplinary counsel. If it was questionable, Porter would seek to recuse himself.

4. *The court clerk and staff are employees of the City, and you are not in their direct chain of command. However, as judge you are required to supervise some of their activities. Are you comfortable with this distinction?*

He responded, "Absolutely".

Mayor Hark then questioned Mr. Porter on his stance on the judgements that he would hand down as municipal judge as weighing out the best appropriate action to change the behavior

of persistent violators, there are sometimes alternative methods or different tools to be handed out to the offender. Mr. Porter advised he has been appearing in the municipal court for 21 years, defending people in the court. It has been his experience that the City attorney as the prosecutor enters plea agreements with the defense counsel and if they are reasonable they should be followed. If not, the judge becomes assistant prosecutor, defender, etc. At the same time, sometimes the judge may feel that the prosecutor or system has been taken advantage of. He does believe it appropriate to let his thoughts be known. He opposes the judge to be involved in pleas processes. An example, his great nephew, was on the Monroe city football team, came to Hannibal, attended a beer party, and was ticketed for minor in possession of alcohol. He feels he was given a sweetheart of a deal, however, Judge Cruse felt he was taking advantage of the system and he added to the agreement, which he believes he did appropriately.

He closed stating that he sincerely seeks the opportunity.

➤ Donald Bastian

Mayor Hark then asked for Don Bastian to be brought into the room.

Mr. Don Bastian began by providing a brief introduction of himself, with the Mayor explaining there is a series of questions he has been chosen to moderate. Mr. Bastian advised me knows must of the council, he was born in Hannibal, an attorney in Hannibal, and has lived here most of his life. He has been practicing law in Hannibal for 28 years, of those 19 he has been as a solo practitioner. Through that time he has had numerous opportunities to join boards and commissions here at the City, one of those being the chairman of the City planning and zoning commission. He feels it may possibly be a conflict, he will let the City Attorney make that determination. His reason for being interested in the position is that having done it before in the early 90's he looks back feeling it was a job he really enjoyed. When he served as Municipal Judge in the past he was appointed by the City Council, then running for election and continued on when he was then recruited by the Marion County prosecutor's office. He has also defended people in the Municipal Court, this puts him in a unique spot with his qualification and he is able to see the big picture and issue fair rulings if he were the judge.

1. *As City Judge by our charter you are prohibited from taking any cases against the City. Also, it is my understanding that under the attorney ethics rules you would be prohibited from taking any criminal defense cases which involve HPD. Are you concerned about the job interfering with your regular law practice?*

He has given it a lot of thought, looking at numbers and time elements. He has defended lots of people in the municipal court system, he is not concerned, as it is somewhat of a tradeoff.

- a. *(follow up question) Do you feel that the current rate of pay for City Judge is sufficient? In particular, are you concerned that it will be fair exchange to receive the current salary for you giving up a portion of your criminal law practice?*

It is enough to get his interest, he personally thinks it should be 20% higher to get it in line. He would not argue over 20%, he would prefer to see the salary more in the middle versus the low range as he feels it is. Barely, is the salary sufficient.

Council Member Cogdal then asked Mr. Bastian, if this was the next step he wants to take in his career and is willing to take these sacrifices in his career. He responded that the big difference is you have one position and that being the judge and when you are defending someone you are defending multiple clients, different personalities, etc.

- 2. Certain offenses in our code have required levels of fines. For instance, property maintenance issues are a mandatory \$200 fine including costs on the first occurrence, with higher fines thereafter. Do you have any ethical objections to sentencing chronic violators under the statutory guidelines if they are found guilty?*

No, he thinks it sometimes takes more punishment to get the defendants attention. A chronic offender that has been in several times, you need to escalate the penalty.

- 3. If a defendant appears before you that you are not currently representing but whom you represented at some point in the past, if your representation of them was on a completely unrelated matter, would you believe that you had a conflict of interest and that a special judge would be required?*

No, he does not have a conflict of interest if the representation was final and not pending and nothing to do with the case at hand. He would be thinking in his mind is how well does he know the person and can he be fair and impartial. He will also look beyond and see what the appearance of the public would be, making it necessary to recuse himself.

- 4. The court clerk and staff are employees of the City, and you are not in their direct chain of command. However, as judge you are required to supervise some of their activities. Are you comfortable with this distinction?*

Yes, he would be comfortable with that, understanding he would be working with the office clerks but making sure the office is running in accordance with the law, at the same time understanding they are employees of the City. In a sense they would have two bosses.

Mayor Hark then asked Mr. Bastian, as a judge in order to curve repeat offenders, does he feel it is appropriate to use alternative methods of correction, i.e. fines, community service, etc? Does he feel these would be appropriate rulings in his court? Mr. Bastian responded that his impression is if they were to find someone guilty he would know more about their criminal history before he assessed a penalty, unless it was a schedule fine such as a traffic. He does not really see the judge advising he was going to put them on probation, if there was a plea, it would be the prosecutor to present it.

He closed by saying he feels the council has a great interview process and asked some great questions and thanked everyone for the opportunity to interview for this position.

Re: Appointment, Municipal Judge

Council Member Dobson made a motion to appoint Don Bastian as the Municipal Judge. Motion seconded by Council Member Welch but stated he would be open for a yes or no vote for each candidate.

Roll Call

Yes: Council Members Van Hoose, Welch, Dobson, and Mayor Hark - 4

No: Council Member Veach and Cogdal - 2

Absent: Mayor Pro Tem Knickerbocker - 1

Mayor Hark made the motion to appoint Stephen Porter as the Municipal Judge. Motion seconded by Council Member Veach.

Roll Call

Yes: Council Members Welch, Veach, and Cogdal - 3

No: Council Members Van Hoose, Dobson, and Mayor Hark - 3

Absent: Mayor Pro Tem Knickerbocker - 1

The Clerk then tallied the results, advising Mr. Don Bastian receiving the majority of the yes votes by Council. Council Member Welch advised he feels either candidate would make a good judge. Council Member Cogdal agreed either would make a good candidate, she believes the City would be well served by either.

With no further questions or comments, the Mayor called for the candidates to come back into Council chambers and announced the candidate selected.

Re: Oath of Office

Mayor Hark then administered the Oath of Office to Don Bastian, being sworn in as the Municipal Judge.

Re: Approval of Appointments

Mayor Hark reminded Council of a candidate presented at the last meeting for the following Board:

INDUSTRIAL DEVELOPMENT AUTHORITY

➤ **Gordon Ipson – appointment for a term to expire, January, 2023**

He asked Council for their approval of this recommendation. Motion was made by Council Member Welch to approve the Mayor's recommendation of Gordon Ipson to the Industrial Development Authority, for appointment for a term to expire January, 2023. Motion was seconded by Council Member Dobson.

Motion carried.

DARRELL MCCOY – HANNIBAL JAYCEES
Re: Request, Street Closure – Halloween Parade
Saturday, October 28, 2017 – 6:00 p.m. – 8:00 p.m.

Jamie McCoy, on behalf of Darrell McCoy with the Hannibal Jaycees, came before Council to request street closure for their Halloween Parade. The event will take place Saturday, October 28, 2017 from 6:00 p.m. to 8:00 p.m. Motion was made by Council Member Veach to approve the request. Motion seconded by Council Member Welch.

Motion carried.

JOSEPH BOGUE – HISTORIC HANNIBAL MARKETING COUNCIL
Re: Amended Request, Additional Street Closures
Main Street Trick or Treat
Tuesday, October 31, 2017 – 5:30 p.m. – 8:30 p.m.

Joseph Bogue, with the Historic Hannibal Marketing Council, came before Council to amend their request for street closures. Additional street closures were requested for their Main Street Trick or Treat, they added the closures to the allies to help with traffic. The event will take place Tuesday, October 31, 2017 from 5:30 p.m. to 8:30 p.m. Motion was made by Council Member Dobson to approve the request. Motion was seconded by Council Member Veach.

Motion carried.

ANGEL ZERBONIA – CITY CLERK
Re: City Landline Phone Services & Features – Business Local Calling
Confirmation of Service Order
AT&T
(Resolution No. 2112-17, to follow)

Angel Zerbonia, City Clerk, informed Council that the existing AT&T *Business Local Calling* service plan has expired and upon negotiations, they have offered the City of Hannibal the continuation of services with the Business Local Calling Service plan, which provides for reduced landline phone services and features. This service plan, *Option B*, as outline in the attached, will provide a thirty six (36) month term for thirty three (33) landline services in the amount of \$27 per line, base rate. With the expiration of the current agreement, we have seen fees rise to \$75 per line, therefore the negotiations were necessary.

Prior to the expiration of the current agreement the City paid \$28 per line for a twenty four (24) month agreement, thus a minimum savings of \$33 per month. AT&T has been proven to be the provider to best suit the City's needs and also is a Missouri State Prime Vendor; therefore the bidding process is not necessary. Consideration and approval of this service plan is appreciated. Resolution No. 2112-17, to follow.

MIKE BENJAMIN – ASSISTANT FIRE CHIEF
Re: Radiation Detection Equipment Transfer – Memorandum of Agreement
Missouri Department of Natural Resources
(Resolution No. 2113-17, to follow)

Mike Benjamin, Assistant Fire Chief, informed Council that the Hannibal Fire Department took part in a radiation detection class that the MoDNR was hosting in Hannibal last August. In attending the training, MoDNR will purchase radiation detection equipment for the Hannibal Fire Department. They will hold future training for the department as well as maintain and calibrate the equipment for five years. After this period, the Hannibal Fire Department and the City of Hannibal would take ownership of the detectors. This is a great program that initially only cost a few hours of training for our department and in return we get some very valuable radiation detection equipment. This will help serve and protect the community should we ever have a radiological emergency in the future. Resolution No. 2113-17, to follow.

BILL NO. 17-023

**AN ORDINANCE AMENDING THE FISCAL YEAR 2017/2018 PAYROLL
ORDINANCE, NO. 1, RELATIVE TO THE STREET DEPARTMENT**

Second & Final Reading

Motion was made by Council Member Veach to give Bill No. 17-023 a second and final reading and call the roll for adoption. Motion was seconded by Council Member Welch.

Motion carried.

Roll Call

Yes: Council Members Van Hoose, Welch, Veach, Dobson, Cogdal,
and Mayor Hark - 6

No: -0-

Absent: Mayor Pro Tem Knickerbocker - 1

Mayor Hark declared Bill No. 17-023 duly approved and adopted on this date.

RESOLUTION NO. 2112-17

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A THREE (3) YEAR CONFIRMATION OF SERVICE ORDER, *OPTION B*, BETWEEN THE CITY OF HANNIBAL AND AT&T FOR THE PURPOSE OF PROVIDING REDUCED RATE LANDLINE PHONE SERVICES AND FEATURES IN THE BASE RATE AMOUNT OF \$27 PER LINE

Motion was made by Council Member Dobson to have the City Clerk read Resolution No. 2112-17 and call the roll for adoption. Motion was seconded by Council Member Cogdal.

Motion carried.

Roll Call

Yes: Council Members Van Hoose, Welch, Veach, Dobson, Cogdal, and Mayor Hark - 6

No: -0-

Absent: Mayor Pro Tem Knickerbocker - 1

Mayor Hark declared Resolution No. 2112-17 duly approved and adopted on this date.

RESOLUTION NO. 2113-17

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE MISSOURI DEPARTMENT OF NATURAL RESOURCES AND THE CITY OF HANNIBAL REGARDING TRANSFER OF RADIATION DETECTION EQUIPMENT

Motion was made by Council Member Van Hoose to have the City Clerk read Resolution No. 2113-17 and call the roll for adoption. Motion was seconded by Council Member Veach.

Motion carried.

Roll Call

Yes: Council Members Van Hoose, Welch, Veach, Dobson, Cogdal, and Mayor Hark - 6

No: -0-

Absent: Mayor Pro Tem Knickerbocker - 1

Mayor Hark declared Resolution No. 2113-17 duly approved and adopted on this date.

CLOSED SESSION
In Accordance with RSMo. 610-021:
▪ ***(1) – Litigation***

At this time, Mayor Hark entertained a motion to go into closed session in accordance with RSMo 610-021, sub-paragraph (1) admitting himself, City Manager Jeff LaGarce, City Council, City Attorney James Lemon, City Clerk Angelica Zerbonia, and MIRMA Representative Glenn Price. Motion was made by Council Member Welch to enter into Closed Session. Motion was seconded by Council Member Veach.

Motion carried.

Roll Call

Yes: Council Members Van Hoose, Welch, Veach, Dobson, Cogdal, and Mayor Hark - 6

No: -0-

Absent: Mayor Pro Tem Knickerbocker - 1

Motion carried.

OPEN SESSION

Motion was made by Council Member Welch to return to open session at this time. Motion was seconded by Council Member Veach.

Motion carried.

ADJOURNMENT

Motion was made by Council Member Welch to adjourn the meeting. Motion was seconded by Council Member Dobson.

Motion carried.

James R. Hark, Mayor

Angelica N. Zerbonia, MRCC - City Clerk