In the Council Chambers of the Showers City Hall on Wednesday, March 25, 2015 at 7:40 pm with Council President Dave Rollo presiding over a Regular Session of the Common Council. This session started after a Special Session that was held from 7:30 to 7:36 pm.

COMMON COUNCIL
REGULAR SESSION
March 25, 2015

Roll Call: Rollo, Ruff, Sandberg, Volan, Granger, Sturbaum, Neher, Spechler, Mayer
Absent: None

ROLL CALL

Council President Rollo gave the Agenda Summation

AGENDA SUMMATION

There were no minutes to be approved at this meeting.

APPROVAL OF MINUTES

REPORTS

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Darryl Neher noted bills that were being considered in the General Assembly: SB466, what he called a direct attack on students and their ability to vote in communities in which they live, and SB101 which he said the governor had announced would be signed the next day in a private ceremony.

Religious Freedom & Restoration Act. pwl

Neher lauded citizen Trent Deckard for speaking out regarding the SB466 attempt at disenfranchisement of young voters. Neher said that SB101 would institutionalize discrimination into the laws of the State of Indiana. He said this was an attack on local authority. He questioned the governor's actions with respect to the powers within our local human rights ordinance. He noted a negative economic impact to the state as a result of this legislative action. He said our state and community was better than this, and he asked that people make statements that SB101 was fundamentally wrong.

Dorothy Granger said SB101 was unconscionable, embarrassing and that the action of Governor Pence to sign this bill in a private ceremony said so much. She said this would impact the state of Indiana in a negative way.

Dave Rollo said that it was a dark day for Indiana. He predicted Indiana would be on the wrong side of history with the passage of SB101.

Rollo said that in the coming weeks the council would be considering a Food Charter, which would promote the production and consumption of local food. He wanted to disclose his family was a co-owner of an organic farm that could, along with other farms in the community, benefit from policies associated with the Food Charter. He said he had submitted his Disclosure of a Conflict of Interest form to the council administrator. Rollo asked that his disclosure be accepted by the council.

It was moved and seconded to accept Rollo's Disclosure of Conflict of Interest as filed with the council attorney.
The motion to accept Rollo's disclosure was approved by a voice vote.

There were no reports from the mayor or city offices at this meeting.

- The MAYOR AND CITY OFFICES

Dan Sherman, Council Administrator/Attorney, gave the 2015 Sidewalk Committee Report.

- COUNCIL COMMITTEES
  - Council Sidewalk Committee Report

Sherman noted that he had submitted a Disclosure of a Conflict of Interest form in the interest of his facilitating the Sidewalk Committee meetings and the possibility that the committee would consider a sidewalk in front of his residence. He asked that the council accept the disclosure. A motion to accept Sherman's disclosure was approved by a voice vote.

Sherman noted that the committee of council members had met to decide the allocation of $300,000 for sidewalks. He noted the committee recommendations for

- $143,000 to the east side of Kinser Pike north of 17th Street,
- $70,000 for acquisition of right-of-way for a segment of road on 17th Street,
- $75,000 for a sidewalk to fill in missing links along the west side of Sheffield Road, for right-of-way purchase and sidewalk construction,

- $5,000 for traffic calming devices set for a crosswalk at Mitchell and Maxwell Lanes.
- $49,150 for construction of steps and ramp at 7th Street and the Bypass west side for crossing the bypass. This total included $43,000 of unspent funds from 2014.

Sherman noted that the figures above were based on estimations, were meant to establish priorities, were meant to control overages, and that the committee requested a progress report from Planning and Transportation staff in September of 2015.

Volan asked for clarification of the financing on the 7th Street project. Sherman said the actual cost for the project would be about $54,000, and that that the committee asked that the rest of the funds needed be sought from the administration. Volan asked about the health of the Alternative Transportation Fund and why the extra funds were not being taken from that fund. Sherman said that the amount of money budgeted was only $300,000, with a bit of reversion from last year. Volan asked if the reversions were the result of projects coming in under budget. Sherman said there were problems with acquisition of right-of-way and outsourced design of the project. He said the new department consolidation also contributed to this.

Rollo noted one project that could not be completed last year, and asked Sherman to clarify this. Sherman noted that the Sheffield sidewalk project design was outsourced, but the project itself was not completed.

Spechler said that he was a member of the committee, and his understanding was that the Sheffield project design had been done and that the construction was to be done in 2015 instead of 2014. He said he had a different recollection of the use of reversions from 2014. Sherman said he could be confusing the previous year's recommendation for reversions to be dedicated to the W 17th Street project with this year's. He said the costs were higher for the 7th Street steps and ramp than the previous years. Spechler said this was an excessive cost for a simple project. Sherman said the estimates from staff were $54,000. Spechler asked if there would be any money left from this project and if it could be applied to the W 17th Street project. Sherman noted that there was no extra money (and no recommendation for extra money), and that the committee recommendation from the previous week's meeting echoed the recommendations from their December meeting.

Rollo and Volan asked for the elevation change between 7th Street and the bypass wondering if it was more than 1 story difference in height. Sherman said he didn't have the designs present to answer at this time.

Mayer thanked Sherman for giving the report and urged the completion of the project at the bypass. He noted that this was a long-time project request to the State of Indiana, and he regretted that they left this task for the city to complete.

Volan thanked the committee and said every project was worthy.

Granger noted that there were 44 potential sidewalk projects throughout the city. She said the decisions were difficult but were made keeping citizen needs, pedestrians, traffic, and safety in mind.
Rollo said this process took many meetings to review projects and make recommendations. He said the matrix used by the committee ranked walk scores, connectivity, and urgency for safety among other things. He noted that if the public had requests for sidewalks they should contact the council office. He said that some projects were so enormous that they would need funding from other sources, specifically noting MPO and TIF funding for this need. He thanked Sherman.

Motion to adopt the 2015 Sidewalk Report was approved by a roll call vote of Ayes: 9, Nays: 0.

President Rollo called for public comment:

- PUBLIC COMMENT

Gabe Colman noted he was a candidate for city council in District 5 and the owner of The Venue. He said his business was open for any person regardless of sexual orientation or gender identity.

Chaim Julian said Monroe Hospital should be encouraged to take over the Bloomington Hospital property when it moves out of the city.

Kathleen McConahay, board member for Court Appointed Special Advocates (CASA) spoke about child abuse and informed the council of a CASA forum to be held on April 11, 2015 to increase public awareness on child abuse. She invited folks to participate and to consider becoming a CASA.

Daniel McMullen asked for the council to help escape the downfall of government. He asked for a Convention of States.

Marc Haggarty read a poem entitled "The Little Deer That Was Not There." He discussed the lack of deer at Griffy and asked the council to go out to look for signs of deer there.

APPOINTMENTS TO BOARDS AND COMMISSIONS

It was moved and seconded that the following people be appointed to the following boards and commissions:

Viviana Hernandez	Commission on Hispanic and Latino Affairs.
Teddy Mowrey	Environmental Commission
Gwendolen White	Environmental Commission
Patricia Cole	Commission on the Status of Children and Youth.
Penny Githens	Commission on the Status of Women.

It was moved and seconded that the following people be reappointed to the following boards and commissions:

Cathi Crabtree	Commission on the Status of Women.
Derek Richey	(advisory member) Historic Preservation Commission
Jeff Goldin	(advisory member) Historic Preservation Commission

All appointments and reappointments were approved by a voice vote.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Resolution 15-06 - To Designate an Economic Revitalization Area Approve the Statements of Benefits, and Authorize Period of Abatement for Personal Property Improvements - Re: Properties at 1501 South Strong Drive (Cook Pharmica, LLC, Petitioner)

It was moved and seconded that Resolution 15-06 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee Do Pass recommendation of 8-0-1.
It was moved and seconded that Resolution 15-06 be adopted.

Danise Alano-Martin, Director of the Department of Economic and Sustainable Development, said the resolution proposed an Economic Revitalization Area that would extend until 2029, and included related measures to allow a tax abatement for this petitioner. She noted that the company had already added 550 jobs at their site. She noted that the project would allow the company to expand their drug, vial and syringe filling capacity at this site with $25M in new equipment, and $2.5M in building improvements to accommodate this new production line.

She said that the city Economic Development Commission and the administration recommended the 10-year abatement for personal property tax with an annual 70% deduction each year. She noted that the petitioner was seeking this tax abatement rather than a council approved Enterprise Zone Investment Deduction (EZID) which would abate 100% of taxes over the same period of time, with the 30% difference paid to the state and for local participation fees. She noted the tax payments over that 10-year period would be $544,793 and the company would be saving $1,271,183 in taxes.

Alano-Martin noted that 70 jobs would be created with an average wage at $24.36 per hour after build-out was completed. She said the median wage for the company was $23/hour. She gave details about the types of jobs to be created, training, and the education needed to fill the jobs. She gave information on the tax abatement general standards with regards to this project in terms of living wage requirements, enhancement of the tax base, job creation and other public good that would come from this project.

She noted that the tax abatement had no impact on the TIF revenues because personal property taxes were not collected and would not contribute to the TIF as real estate taxes would. She outlined the procedure to be followed for this proposal and accompanying legislation. She spoke about a memorandum of understanding to accompany the legislation.

Ruff noted that the application listed the five largest vendors or suppliers and asked if the petitioner would consider using local suppliers when the local biotech sector grew large enough. Tedd Green, President of Cook Pharmica, said that spending in the community would grow with the growth of the business but added that clients had specifications for their products and their regulatory approvals. Ruff asked if the main clients would be aware of what would be available in the local supply chain, to which Green noted there was no way to assure the council that it would happen.

Rollo asked if the facility created incentives for recruitment with regards to other biotech companies, and if this would be attractive for another company to use. He asked if other companies used their facility. Green said the expansion would allow them to gain new clients and would bring international companies into the community for weeks at a time. Rollo asked if a company would move here to be proximate to Cook Pharmica's activities. Green said he could not speculate on that.

Public comments:
Larry Jacobs, Chamber of Commerce Government Relations Manager, said the chamber advocated for this proposal. He said Mr. Cook's vision came from the redevelopment of the downtown and this older manufacturing area. He said Cook Pharmica was a quality company and would do well with this expansion.

Council comments:
Rollo noted previous extensive discussions on the topic.

Granger thanked Alano-Martin for her response to questions from council members, and added that the answers clarified issues for her.

Mayer thanked Alano-Martin and staff for their work on this proposal. He added that the council and administration had limited resources for activities like this, and wanted citizens to know that the tax abatement was used with great discretion, and to enhance economic development for the future.

Ruff noted that several council members had talked about economic development for job creation and hiring from within the workforce of the community in order to grow the quality of life and opportunities for existing residents versus hiring from outside the community. He said it was refreshing to hear of a partnership that he considered true economic development.

Ruff read a portion of an answer supplied to the council in response to questions they had about the proposal. He noted his thanks for the answers and said the portion he was going to read was in reference to the Ivy Tech's biotech program:

> *From an economic development perspective, the success of the biotech program in preparing our local workforce is one of the many important factors helping to attract and retain quality jobs like those being proposed in Cook Pharmica's proposed expansion. Dr. Lee (faculty member in charge of the biotech program) reminded me that many Ivy Tech students are "home grown" and tend to stay in the Bloomington area after finishing their education. Many are also career changers, either displaced or underpaid workers within our community gaining new skills to transition to different careers. Ivy Tech and its partnership with local companies like Cook Pharmica is vitally important to our regional economy.*

Resolution 15-06 *(cont'd)*

Ruff said that was a persuasive statement and convinced him this proposal would create the type of economic development and the type of growth and community based economic development he supported.

Rollo noted that in the 1980s there were few opportunities in molecular biology in the immediate area. He was pleased to see the sector growing with an educational link to this work.

Resolution 15-06 received a roll call vote of Ayes: 9, Nays: 0.

Resolution 15-08 - To Authorize Expenditures From the Industrial Development Fund to Support an Economic Development Project - Re: Cook Pharmica, LLC, 1501 South Strong Drive

It was moved and seconded that Resolution 15-08 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee Do Pass recommendation of 7-0-1. It was moved and seconded that Resolution 15-08 be adopted.

Danise Alano-Martin, Director of the Economic and Sustainable Development Department, said the resolution comprised the second part of the economic incentive package proposed for Cook Pharmica. The proposal would authorize the city to monetarily support a building expansion for Cook Pharmica with $250,000.

Alano-Martin gave an overall review of the Community Revitalization Enhancement District (CRED), showed a map, noted the majority of the assessed value in the CRED was on property held by Cook Pharmica, and explained financial details of the Industrial Development Fund (IDF). She noted that the IDF was funded through payroll and sales tax increments collected in the CRED and it was to be used within the district. She noted the fund balance was $2.66M. She noted the 2014 deposit was still to be received and it would total about $1M.

Alano-Martin noted previous discussions of projects funded from this resource and said the only ongoing project was with Cook Pharmica. She said a local unit of government was permitted to pay a fee to support certain site infrastructure improvements to support the building for the project according to a set of benchmarks. She projected $343,000 would be added to this fund over the next five years through increased payroll.

She outlined benchmarks that would start the payments from the city. She said that when the petitioner's expenses on the qualifying items totaled $1M, the IDF would pay them $250,000 to offset some of their costs. She said that there would be a separate Memorandum of Understanding for this proposal, in addition to the MOU for the tax abatement.

Council questions:

Rollo asked if Bloomington based contractors were employed in the build-out. Mr. Green said Cook had a history of using local contractors.

Spechler asked Alano-Martin for the balance of the CRED fund at this time. Alano-Martin said there was $2.66M in the fund, as she had showed on the slide presentation and there would be additions to the fund each year. Spechler asked if there would be sufficient balance left for other projects to which Alano-Martin said there would be.

There were no comments from the public on this resolution.

Council comments:

Spechler said he would support this proposal as Cook had been a leader in the community in employment of disabled people, who, he said, needed productive employment with good wages.

Ruff repeated a comment from a previous discussion saying that the capture of increased sales and income taxes would not necessarily be retained locally; if it were not for the CRED, they would go to the state. He said that at a different time he might feel differently about capturing revenues that would benefit the whole state, but given the philosophy of the current state government, he was happier to retain local influence and control over these funds.

Rollo thanked Alano-Martin for her work on the proposal and Cook Pharmica for investing in the community.

Resolution 15-08 received a roll call vote of Ayes: 9, Nays: 0.

It was moved and seconded that Ordinance 15-05 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee Do Pass recommendation of 1-0-8.
It was moved and seconded that Ordinance 15-05 be adopted.

Ordinance 15-05 - To Amend Title 4 of the Bloomington Municipal Code Entitled "Business Licenses and Regulations" - Re: Chapter 4.16 (Itinerant Merchants, Solicitors and Peddlers – *deleted and replaced*); Chapter 4.28 (Mobile Vendors - *added*); and Chapter 4.30 (Pushcarts - *added*)

Patty Mulvihill, City Attorney, noted the proposals in this ordinance and Ordinance 15-06 were the culmination of long and concerted effort on the part of city staff to update this portion of Title 4. She noted that everyone knew that there wouldn't be total satisfaction by staff members or citizens, but that this reflected a balance of competing interests. She said issues would be studied, monitored and updated if needed.

She highlighted the overall problem of categorizing businesses regulated by Title 4 and said there was an overlap of requirements that was cumbersome and duplicative for businesses. She noted the proposal would delete the current code Chapter 4.16 and add three new titles to deal with Solicitors, Mobile Food Vendors and Pushcarts. She also noted overall changes as the necessity for all of the above categories of businesses to register with the Indiana Secretary of State and provide an Employer Identification Number. She added that licenses would not be transferable and that they would not apply to 'special events.' She outlined the following locations as being prohibited for these businesses: public spaces (without Board of Public Works approval), within a one block radius of a special event (unless a permit is obtained), neighborhoods, properties with signage similar to "no solicitation," and portions of the B-Line Trail. She noted that vendors were limited to operating within commercial zoning districts and that they must be located at least 50 feet away from a ground floor food or beverage establishment.

Mulvihill noted previous discussion included a request for a pod or specific location for food vendors. She said the administration was not prepared to support that at this point in time, but would continue to monitor the situation and study other models. She said another request was that generators not be used by mobile vendors. She said that would not be supported either, for a host of reasons. Mulvihill noted that the staff had studied other communities' policies on this issue, paying particular attention to those with state colleges and universities.

With regard to a difference between two measures of restriction, 50 feet and 75 feet, she noted that there would be 182 more spaces available at the 50 foot restriction than the 75 foot restriction in one particular area of the commercial district.

Mulvihill noted that standards of conduct for these vendors included health, safety, trash, noise issues and hours of business. She addressed the decibel level of noise and measurement of that and reasons for the standard. She also noted that the fire department would not favor using electricity from private businesses because of overloading capacity and danger of fire in either the vendor or the electrical outlet location.

Mulvihill discussed reporting violations either during or after business hours and enforcement of illegally parked vendors.

Council questions:
Volan asked if all bars in Indiana could be restaurants, referring to the stipulation about "food or beverage establishments.' Mulvihill said she didn't have the statute at the meeting; Volan said he used to own one and knew that bars had to serve food.

Volan asked about the width of streets with relation to distances between fixed establishments and mobile vendors. Mulvihill said widths varied.

Volan asked if other cities with the 50 foot rule took the measurement from the door or the perimeter of the establishment. Mulvihill said most cities were not specific regarding that measurement.

Volan asked how many spaces on Kirkwood and the square would be available at the 75 foot restriction. Mulvihill said on the square they would be on the courthouse sides of the streets. She said she only had prohibited spaces counted on Kirkwood, not available spaces.

Spechler asked about the attitude of staff about prohibiting the operation of food trucks near restaurants that were known to be closed. Mulvihill said

Ordinance 15-05 *(cont'd)*

staff was opposed to that because of enforcement issues. She said to allow this would be to encourage operation of a type of business that operated mainly at night. She enumerated a few problems with noting whether a restaurant was closed at slow times or when hours fluctuate, and added that the proposed wording would be clearer for enforcement officers. She also noted that smaller signs listing hours of operation had replaced larger lit "open/closed' signs. Volan asked if posting of hours could be required. Mulvihill said it wouldn't help with consistency, but recognized that there were differences of opinion on this issue.

Ruff noted that establishments with fixed locations often paid a premium for their visibility, and pushcarts didn't really affect them like a larger food truck in terms of noise, parking, and blocking visibility. He asked why they weren't looked upon differently than food trucks. Mulvihill said they still had an effect in that they used public property, blocked sidewalks, still could block a façade, and could impact a streetscape although not as much as a food truck.

Ruff asked if busking was legal on city sidewalks. Mulvihill said if the busker were situated in a manner that people could not walk on the sidewalk a permit was needed, but busking was not in the same category as food carts.

It was moved and seconded that Amendment #1 be adopted.

Amendment #1 This amendment to Ordinance 15-05 sponsored by council member Neher adds two Whereas clauses requesting the Administration explore the idea of food trucks and pushcarts setting up on public and private property, evaluate the feasibility, costs and benefits of the initiative, and report its findings and recommendations to the Council.

Neher said the amendment addressed the creation of pods for vendors, and read the two Whereas clauses. He said this reflected recent conversations that had arisen while discussing the larger food truck issue. Mulvihill said the administration supported the amendment and would continue to research and develop it in the coming years.

Public Comment

Jackie Howard, owner of Bea's Soda Bar, said she appreciated this amendment and would like to help create the congregating areas. She asked for a time frame for 'reasonable amount of time.'

Jared Eisenberg said he was supportive of this amendment.

Larry Jacobs, Chamber of Commerce, said that this amendment was worthy of support.

Council comments:
Sturbaum said he would support the amendment.

Spechler said he would support the amendment to move the opportunity for congregate site proposals forward.

Neher said that the 'reasonable' timeline was included to allow the administration to be flexible, and he liked this model and would be watching carefully.

Rollo said that congregating mobile food vendors in a pod was good, and he would like to see it actually happen.

Amendment #1 to Ordinance 15-05 received a vote of Ayes: 9, Nays: 0

It was moved and seconded to adopt Amendment #2 to Ordinance 15-05.

Amendment #2 This amendment sponsored by councilmember Rollo. It changes the minimum distance between the location of a food truck and pushcart and a ground level establishment that sells food or beverages (and any associated outdoor seating area) from 50 feet to 75 feet.

Rollo said that Mr. Eisenberg's previous statements had prompted him to propose this amendment. He said he also looked at other communities' approach to this issue. He noted restaurants in a permanent structure had a considerable investment in their structure, were mostly local businesses, and so he offered a conservative approach to mobile businesses with this amendment.

Volan asked if, under this 75 foot proposal, there would be any eligible spaces for mobile food trucks on the square or Kirkwood. Rollo said yes.

Amendment #2 to Ord 15-05 *(cont'd)*

Volan said with an amendment of this importance concrete data should be presented. Rollo said there were maps available that showed these spaces. Volan contended that there actually would be no spaces available. He said this was an oblique way of banning food trucks from the area. Rollo said he had spoken to many brick-and-mortar establishments that preferred this approach, and it wasn't directed specifically to Kirkwood and the square. Volan said he understood preferences but said the number of available spaces should be known. He questioned Rollo about his stance on food trucks and their positioning by asking him if there had ever been 24, the maximum number of trucks allowed, in operation in the areas at one time.

Rollo contended that the regulation was an evolving process. He said that with respect to brick-and-mortar establishments that had invested in their outdoor cafes, façades, and street appearance, he would prefer this more conservative approach to begin with, as it did allow spaces to be used. Volan asked if there would be eligible spaces at 75 feet.

Mulvihill said with the types of mobile units used in the city at this time, the available spots on the square would be located at its corners. She said different type of units could possibly allow up to 50 spaces. She noted that 21 spaces would be available on Kirkwood but not in front of the restaurants on the east end. Volan asked the location of available spaces. Mulvihill answered off microphone, but Volan repeated that all 21 spaces under this plan would be located west of Grant Street.

Rollo asked if it would be a hardship for a customer to walk a couple of blocks west to Grant Street to patronize a mobile food truck. Volan said that ample testimony had been given by vendors about why they chose the current locations to operate. He added that this amendment would have the effect of banning them from the current most popular spots. He again stated that banning food trucks from that area altogether would be a more straightforward statement of preference regarding the matter.

Spechler asked if anyone had any direct evidence of the reduction in business if the patrons had to walk a block or two to a different location.

Cory Sampson, associated with The Big Cheeze food truck, said that brick and mortar establishments had the opportunity to create and operate a food truck. He noted the food industry had both location and destination based businesses and gave examples of Kilroy's or Olive Garden as destination based businesses that had unique offerings and strong branding. New entries into the market did surveys to locate near destination based businesses to take advantage of the foot traffic. He said The Big Cheeze was a location based business as it took the product to the customer, not expecting that the customer would come to them. He said he'd like to see a study done that analyzed the reduction of competitiveness as mobile businesses move away from fixed businesses. He said the mere movement of a mobile business away from the façade achieved the goal of protection, and that each foot beyond that really didn't add to the protection of that business.

Jared Eisenberg, owner of Butch's Grillacatessen & Eatzeria located on 7th Street, noted that he favored the 75 foot rule. He noted his original stance of keeping food trucks on private property, but said that 75 feet was a fair compromise. He said that of 35 cities with universities or colleges, two had no restrictions and three had 50 foot restrictions on mobile food truck locations. He said that 30 of these 35 cities had more restrictive regulations than that proposed in Bloomington.

Eisenberg said that there was too much focus on Kirkwood in general. He said his restaurant was the only business on the block that had a front door on that block. Eisenberg related that he had been approached to put a restaurant in a proposed new hotel on Kirkwood, but considered the number of food trucks between that location and the bars on the east end of Kirkwood and determined the proposal was not viable. He added that the future was important to consider as the food truck businesses could expand.

Amendment #2 to Ord 15-05 *(cont'd)*

Eisenberg said while the discussion of the ordinance focused on the noise and emissions from generators and the visual appearance of Kirkwood from the Sample Gates looking toward the Courthouse, there had been little mention of the competitive landscape. He wondered about a study to determine how many businesses and food trucks the downtown could support. He worried that his business could suffer because a competitor could set up just outside his door. He said it was not just about façades and appearances, but about investments in the fixed locations and the competitive landscape was being altered by a 'shock' to supply by a different type of business that didn't have those types of investments.

Council comments:

Ruff said that food trucks were 'cool' and part of the downtown experience, but said that having them create a line-up on city streets was not desirable. He said he was motivated to think about this because of his desire to protect the fixed establishments, but he had some aesthetic goals also.

He said the question of an analysis on a foot by foot distance from a façade of a restaurant simply reduced the number of spots, it didn't change the competitive advantage. He said that food trucks shouldn't be able to operate at any location at any time with almost no cost related to that location. He said the location of a restaurant was based on the cost and what the owner could afford. He said he was happy to see Butch's where it was located, on 7th Street, and wanted to see it succeed. He noted that the next amendment to be discussed was important because the 75 foot or 50 foot rule would not apply when a restaurant was closed and was relevant in this discussion for the creation of spaces for both types of food establishments to survive and prosper. He said these two amendments could work together to create the best solution right now to create niches for both ventures to succeed. He said he would support this amendment hoping that the next one would pass also.

Volan said he was disappointed in the amendment, and that was actually an understatement of his feeling. He said he was the only one on the council to have a business in a building and made sure his property taxes were included in his lease. He wanted to make sure that the tax situation was understood.

He said that food trucks had investments, also, and he said that the discussion was conducted as if food trucks were leeches on downtown businesses. He noted that the cost of parking on the street was higher than the square foot cost of a fixed establishment. He said both types of businesses took advantage of the public right-of-way.

Volan said the discussion was basically asking food trucks to pioneer in other areas of downtown where there was no action. He said there had never been a time when Kirkwood had been lined with food trucks. He said that if people were asking that food trucks pay their fair share, they should define what that 'fair share' was. He said that some aspects of the ordinance were utterly arbitrary with no science or data behind the words. He said if bias against food trucks and mobile business was the actual case, people should just say they don't like food trucks upfront and not use a backhanded way of saying that.

Sturbaum said he felt that 75 feet was too restrictive, and said he preferred the 50 foot compromise.

Granger said that the restriction of 75 feet was too much.

Spechler said Ruff saw the issue as more than the fact that food trucks were less costly than brick and mortar establishments. He said that as an economist he understood that people think that the enterprises that have lower costs should be able to offer things to the public at a lower price, and that's what they want… or a greater variety at the same cost. He disregarded the idea that the food trucks were not paying their fair share. He expressed concern about what would happen to the streetscape of the University Village area with 50 or 75 ft. location restrictions. He agreed with Ruff that if food truck operations were limited to times when other restaurants were not operating by the next amendment, this amendment

Amendment #2 to Ord 15-05 *(cont'd)*

looked better. He said he would support the 75 foot restriction in hoping that the next amendment would complement it.

Sandberg said Amendment #3 did not appeal to her with respect to the work that had been done by the staff on this issue. She said she was happy with Amendment #1, and would vote against both of the other amendment proposals.

Sandberg said that she didn't appreciate being mischaracterized by the statement saying she was biased against food trucks or that she considered them leeches. She said everyone involved in the discussion had a legitimate concern regarding the quality and character of the downtown, and it was an important issue. She said 'cautious and conservative' was the best approach.

Neher said that the process was about a sense of place-making, how people envisioned the downtown corridors, how the community could create a sense of vibrancy, and the balance of competing interests. He said he appreciated the entrepreneurial spirit of the food truck culture, but that it was also a disruptive business model similar to Uber or Airbnb. He said that in trying to balance these business models, he appreciated the attention to the sense of place and the attempt of Amendment #2, but said that 75 feet was too restrictive.

Mayer quoted Mulvihill who, early in discussions had said, 'nobody will be happy.' He said the discussion was about trying to control commerce by the square linear footage at this point, and maybe that approach was all wrong. He said one idea would be to designate three spots on Kirkwood between Indiana and Grant, figure the square footage on that spot, and compare it to a retail square footage charge in the area and apply it to the spot with a lease with the city for a year. He said this would eliminate vying for spots and the city could charge more in some locations. He said he didn't like the current methods.

He said he didn't support the 75 foot restriction because in encouraging people to start these types of businesses, this would actually restrict the places they could operate by 182 spots.

Mayer threw out a thought about a food truck gathering area and said that 6th Street between Indiana and Dunn Street was a one way street with no residences. He wondered if that street could be blocked off on a regular basis on Thursday, Friday and Saturday nights and have all the food trucks congregate there. He said these spaces could be paid for with a standard fee.

Rollo said he recognized the provisional nature of this issue and that it would be revisited. He felt that this was a good first attempt and that this was generally understood. He said it was not arbitrary, but rather liberal when compared to other communities. He added that his interactions with proprietors of restaurants indicated they lost business because of parking meters, and the competitive business landscape was changing with food trucks. He noted mobile food vendors were not relegated to one place, that this was the nature of their business.

He said his intentions were to protect the Kirkwood and Courthouse square area. He said the restauranteurs were concerned with food trucks near their outdoor seating, and the council was concerned about this also. He said that fumes and sound were better for those people eating outdoors at 75 feet rather than at 50 feet. He said he felt most of the council was in favor of food pods, and it made sense for underused or underserved areas to become destinations with a variety of choices. He maintained that this was a conservative approach to protecting brick and mortar restaurants.

Amendment #2 received a roll call vote of Ayes: 3 (Spechler, Ruff, Rollo), Nays: 6 (Neher, Granger, Mayer, Sturbaum, Sandberg, Volan) and thus failed.

It was moved and seconded to adopt Amendment #3 to Ordinance 15-05.

Amendment #3 This amendment is sponsored by Council member Ruff. The ordinance prohibits mobile food vendor units and pushcarts (which sell food or beverages) from operating within a fifty-foot area of any ground level establishment also selling food or beverages. With this amendment, the distance restriction only applies from an hour before the opening time to an hour after the closing time posted by a ground level establishment on the façade of its building.

Ruff noted this amendment had been discussed in December as part of Ordinance 14-24. He said the proposal would allow mobile vendors to operate anywhere near an established restaurant an hour after the closing of that business, and an hour before the business opened. He said this would be reasonable. Ruff noted that it wouldn't be as easy to enforce as a complete prohibition, but that inconvenience in enforcement should not drive the policy. He said a change could be made if the provision became problematic. He felt that mobile vendors would appreciate the provision and would work to comply with the rule to keep it from being a complete prohibition.

Ruff said he was not motivated to speak on this issue because he didn't like food trucks. He noted his support for staff work on the whole ordinance and was not eager to go against the administration to propose this. He said he would be happy to hear the staff and administration thoughts on this provision.

Rollo asked Mulvihill for her thoughts. Mulvihill said that she had already made it clear on several occasions that the administration was opposed to the proposal. She said she respectfully disagreed with Ruff, and said although it may appear simplistic, it was not. She added that she was looking at a clean, easy to enforce policy, and that there were real and true costs when a policy was unclear or difficult to enforce.
Ruff said he appreciated that the administration had always been direct in this issue.

Spechler said he was sympathetic to the amendment, but questioned what would be permitted when two establishments close together had different hours of operation. Ruff said a mobile vendor would not be allowed if it were within 50 feet of a restaurant that was open and that was simple to determine. Mulvihill said that there would have to be multiple maps used depending on the time of day and it would be harder to make clear the spots where mobile food sales would be permitted at some time and not others. She said it seemed simplistic, but it was not. Ruff said he appreciated that it wouldn't be as clear cut as a complete prohibition. Mulvihill said the problem wasn't as easy as saying that the business looked open or closed. Ruff asked about mobile data terminals in officers' cars. Mulvihill said that even with electronic maps, staff felt that enforcement would be time consuming on the part of an officer. She said the open or closed determination would be more time consuming than it looked.

Volan asked how the eligible spaces would be marked. Mulvihill said it had not yet been determined, but they would work with the facilities division of Public Works Department and would notify businesses and mobile food vendors. She said there would be a discrete mark on each space.

Volan suggested two maps, with the second having spaces marked that would be eligible when the business adjacent to it is closed. If there were two businesses adjacent there would be some indication of that. Mulvihill said again, it was not a good use of the officer's time to determine if a business was closed or not. She added it was not uncommon for some businesses to amend hours for different occasions and holiday weekends, and that would require additional hours and additional work.

Volan asked if the ordinance was to be enforced by patrol or by complaint. Mulvihill said it would be by both. Volan asked what she meant by 'patrol.' Mulvihill said that they would not be out specifically patrolling the food trucks only, but would be working their beat. She said this would be part of their routine, and as in the noise ordinance violations, they would respond to complaints also. Volan said he suspected this would be mainly complaint driven.

Public comment:
Cory Sampson, The Big Cheeze, asked about the cost of having a busy police department take the time to measure distances between establishments and food trucks or taking time to check hours of operation.

Amendment #3 to Ordinance 15-05 *(cont'd)*

He said that was a cost to the public in order to open a market he claimed was generating hundreds of thousands of dollars. He said the administration should be able to think outside the box of having maps. He said there were solutions outside that box, and liked Mayer's idea of having a few gathering spots. Sampson said that if the parking meters were paid, he didn't see a need for a map for enforcement. He called a map 'a static resource in a mobile industry.' He said the point of food trucks was to move around.

Sampson said that a good business would serve a customer who came in just before closing. He said the two main markets were Kirkwood and North Walnut and that a couple of vendors might work on South College near Atlas. He said the mobile food trucks needed an hour each for prep and closing activities, and that, along with the hour before and after a fixed establishments business hours, and the regulations of moving the truck by 4:30 am would only allow for a mobile truck to be operating for 3.5 to 4 hours. He asked the council to think about allowing mobile vendors to park on the street for prep but not be open until after a business closed.

Jared Eisenberg, Butch's, thanked Ruff for his time and attention to this matter, but said he was not in support of this amendment. He wondered why the food trucks weren't happy with it.

Eisenberg said that he had called the police after hours and that they had better things to do than receive calls that a food truck was parked too close. He told of interactions where police were responding to other calls of more importance. He said that taking pictures and documenting the situation for later action by the BPD was not as effective.

He said he was in favor of pods, a specific location for mobile vendors, or bidding for prime, desirable locations. He suggested a point system, and thinking outside the box, also. He said that his experience was that calls to the police were not an effective way to enforce this measure.

Larry Jacobs, Chamber of Commerce, thanked the council for their help in keeping the downtown vibrant. He also said he appreciated the entrepreneurs' and Mulvihill's work on the mobile food vendor issue. He read the following statement:

> *As the Chamber of Commerce we recognize that each stakeholder group in the downtown approaches issues from a different perspective. As a voice of business for the past century, the Chamber believes that much of the success in the downtown is due to a wide and varied business sector that continued to invest and add quality to the life that we are so proud of. The continued success of the downtown is tied directly to the ability of our businesses to thrive and grow.*
>
> *The Chamber's Advocacy Council is comprised of a group of chamber member volunteers and represents a broad range of interests within the local business community. We've been following the discussion about food trucks for the past several months. At its most recent meeting, the Advocacy Council members determined that the current ordinance will be very burdensome and these entrepreneurs that have already made significant investments in their food truck businesses. Because food trucks primarily target the bar crowd, most of the business occurs when the majority of the downtown restaurants are closed. The majority of the trucks are not disrupting regular business customers and really catering to a different client than the retail customer.*
>
> *Owning and operating a food truck is an enterprise that has much lower financial barriers than starting up a restaurant in a brick and mortar establishment. For instance, these entrepreneurs, if successful, could go on to start other businesses within the community. This ordinance could harm these small business owners, preventing further investment while discouraging others who may want to start a food truck business or some other type of business.*
>
> *Somehow a balance must be achieved that addresses the council members' concerns while not harming the interests of the legitimate small business or disrupting businesses in our existing brick and mortar retail members. We contend that there is and should be opportunity for both food trucks and brick and mortar establishments to co-exist in this zone.*

He concluded by again expressing appreciation for the council's work.

Jackie Howard, Bea's Soda Bar, said that most of the discussion on this issue centered on Kirkwood and the late night crowd; her business did not operate on that business model. She said she operated during daytime hours and the amendment affected her business as well. She said they set up during the Farmer's Market near Janko's which didn't open until 4 pm. She said if mobile vendors were not allowed to set up near closed businesses, they would not be able to set up during that time and in that proximity at all.

Amendment #3 to Ordinance 15-05
(cont'd)

She said that her business also operated with businesses while they were open, to provide things they did not, and to help create a destination. That would also not be allowed unless vendors were allowed to set up near closed businesses. She added that one hour on either side of the fixed establishment's business hours was completely reasonable. She said the amendment offered clarity in the proposal so that everyone could operate fairly and within the law.

Spechler said compromise was in order for food trucks to operate within the community, something that he wanted to see. He said late night drinkers needed food to avoid illness or intoxication. He also liked the trend of offering new items.

He said the council had to legislate according to the consensus in the community and in his mind the consensus was that food trucks should be allowed to operate. He supported the amendment because he said the enforcement issue had been overblown. He said the understanding of the issue of permitted spaces on the part of police officers was underestimated.

He said that food trucks should be permitted to set up while the fixed restaurants were still open so that when they closed the food trucks would be ready.

Spechler said that the effect of small violations was being exaggerated, and that nothing was enforced 100% of the time. He concluded by saying that this was a good compromise between different types of businesses, and the appearance of the downtown during the day and the evening hours.

Granger said she supported this measure all along. She said that there were opportunities to grow the market for mobile food vendors beyond the few areas being used. She liked the clarity of the 50 foot rule, the hours of operation, and added that it was possible to regulate the amendment with the addition of some technology.

Volan said he didn't feel that enforcing permitted spaces would be a problem as they could be clearly labeled. He noted the complaint basis of enforcement, and said that after there were a couple of cases in this realm, the policies could be tweaked. He said that the food trucks were licensed because they used the public right-of-way, a shared resource.

In regards to enforcement late at night when police would be busy with more pressing matters, he said the cell phone picture was a good tool to start building a case against a particular activity. He was curious about a food truck being able to 'rent' a particular space. He pointed to the 15 minute spaces in front of the Hyatt or the special permits given for tour buses on the city streets as 'renting' spaces to benefit a particular business. He likened it to 24/7 permits in a garage to 'rent' a space in a parking garage, a public amenity. He said parking, food trucks and downtown issues would never be simple, and that to try to reduce the regulation of them to be simple was wrong sighted.

Mayer stated the non-emergency number for the police was available for non-911 calls.

Neher said he was concerned about law enforcement's being otherwise occupied during the late night hours and the recourse for brick and mortar establishments' concerns. He said an officer dedicated to this area during that time would be a wonderful option.

He said he liked the flexibility of the proposal, but asked if a higher fine or revocation of a license for violations would reflect the importance of the regulations. He hoped there could be a way to put the enforcement part of the proposal together so that it worked.

Sturbaum expressed his support.

Mayer said the definition of a restaurant being closed was very important, as often the lights were on, there were people, even customers, inside and it could actually look open. He added that enforcement was an issue. The police department would have to balance it with accidents and life

threatening incidents elsewhere in the city. He asked that enforcement be considered as this proposal went forward.

Amendment #3 to Ordinance 15-05 *(cont'd)*

Sandberg said enforcement, first responders, and the administration's efforts in putting together this proposal were all big deals to her. She said that many things could go wrong after midnight, and that she wanted to make sure that the police were responding to the right things and providing the right protections. She said the matter of enforcing this provision would be trivial to her when there were other, more serious, matters the police needed to attend to. She felt that the compromise made with the 50 foot rule was enough and preferred the administration's clear cut, clean language and provisions.

Ruff noted again his appreciation for the sincerity of the staff and administration. He acknowledged that the ordinance and amendments were not perfect, and noted again that no one would be totally happy with everything that was passed in the end.

He said with this amendment he wanted to create a compromise to help offset restrictions on mobile vendors in other parts of the ordinance. He expressed his appreciation for Volan's alternatives and innovative ideas for enforcement, including having cell phone photos and videos act to document a complaint or charge. He noted his agreement with Neher that the fines for violations of these provisions be weighty.

Ruff said he didn't believe that police were significantly less available to patrol these areas, and understood that they could be called away from situations regarding this ordinance if need be.

Rollo said there were good arguments on both sides of this issue, and that this was a good attempt at creating spaces for the mobile vendors. He said he supported the restricted space to protect investments by fixed establishments and that it also served to reduce 'clutter' by having zones where these businesses could set up.

Rollo said he was sympathetic to mobile vendors as there were restrictions imposed, and he was sympathetic to the administration for wanting a simplified plan for enforcement. He said that night runs with police officers were wide and varied. He said that adding enforcement for the food vendor issue on top of that should be made plain and simple. He noted his opposition to this amendment.

Amendment #3 received a roll call vote of Ayes: 5 (Granger, Ruff, Sturbaum, Volan, Spechler), Nays: 4 (Neher, Mayer, Rollo, Sandberg)

Consideration of Ordinance 15-05 as amended (by Amendments #1 & #3)

Ordinance 15-05 as amended (by Amendments #1 & #3)

Rollo asked Mulvihill if she had any further presentation. She said she didn't.

Mulvihill made a point for the record that, as the attorney for the police department, she believed the police to be fully utilized at all times, particularly on the hours and nights in question. She said she wanted to respect and defend those officers for the duty that they performed. She said she found the comment that questioned if the police were used enough, or were they so busy that they couldn't help with this enforcement easily, to be particularly offensive to those men and women who actively and respectfully served the community on a daily basis. She noted that as an employee who worked closely with the officers, she had a duty to say something in their defense.

She said she could answer questions if there were any at this time.

Upon questioning from Ruff, Mulvihill noted that the comment she was referring to was from a member of the public who questioned whether or not the officers were so highly utilized that they couldn't take the time to enforce this policy.

Spechler asked for the fine schedule for a violation of this ordinance. Mulvihill said the first offense was $250, the second offense was $500, and the third offense was $1000. She said the public may have been misled to

Ordinance 15-05 as amended (by Amendments #1 & #3) *(cont'd)*

think they could simply take a picture on their cell phone or send an email that complained about a violation. She said that was an initial stage and that a violation couldn't be issued on just that. She said that might initiate the process, but the complainant should be willing to sign a sworn affidavit under penalty of perjury and be willing, and understand, that they might be called and subpoenaed to testify in front of a Board of Public Works hearing or possibly in Monroe County Circuit Court. She said it sounded easy, but the vast majority of the community would refrain from doing this. She said in lieu of a city staff member witnessing this and testifying to the violation action, the affidavit and possible testimony by a member of the pubic was necessary to meet the burden of proof under the law.

Volan and Mulvihill fleshed out what would be acceptable evidence in revoking a permit for a mobile vendor who was accused of violation of these rules. Volan said this would be a record of a violation. Mulvihill said that the permits couldn't be revoked with just complaints, and couldn't be revoked unless due process had been given. Volan said that he was trying to make it known that there was some recourse.

Rollo asked about Amendment #3 placing a burden on public safety. He asked if Mulvihill could report back on the police reaction to this regulatory landscape. Mulvihill asked if Rollo wanted opinions or a status report. Rollo specified that he wanted to know how the officers found the terms of enforcement and what kind of burden they felt were placed on them after the initial few months of this being in place. Mulvihill said she could work with the Chief and a Lieutenant to get information.

Public comments on the ordinance as amended:

Ron Walker spoke on behalf of CFC Properties. He expressed concern about potentially negative impacts from the food trucks in the historic downtown square, in particular in front of Fountain Square on Kirkwood. He recommended that the council consider an exclusionary zone and noted it would at least be easy to enforce.

He said they did not make this statement lightly as it might limit entrepreneurs, and referred to many qualities of the city that were in place because of a risk taken by the entrepreneur who founded CFC.

He said that CFC tried to help businesses succeed in all kinds of properties, some with real challenges. He said that the downtown was a niche in the community and state, and it garnered special attention. He said there had not been mobile vendors in the Fountain Square block up to this point. He said if there were he was concerned about lost parking, a modification of the view-scape, blocked signage, lessened visibility for the area, with a different competition for patronage. He asked if mobile vendors would have a negative impact on this special area that was supported by both public and private investment.

Walker said that the 50 or 75 foot restriction would not make a difference in this block face, and it would be one of the few areas that would not be restricted by the presence of a fixed establishment. He said the concern of CFC was the visibility and access for retailers during operating hours. He said the retailers would attest to the fact that the market was a delicate balance.

Walker concluded by saying that this was a complicated issue and he appreciated the council's discourse on the issue.

Jared Eisenberg, owner of Butch's, said that in January he felt that while the ordinance was better than the status quo, he felt it could have gone further in the regulation of mobile food vendors. He said the 50 foot restriction from brick and mortar restaurants, for him, was a step backwards. He did not encourage the passage of this ordinance as amended because he said it was actually worse than the status quo.

He said he paid rent and overhead for twelve months of the year when there were just a few actual weekends when he could make his money back. He said he lost money staying open over the summer by keeping staff but felt he had to for big activity weekends. He said those weekends were the

Ordinance 15-05 as amended (by Amendments #1 & #3) *(cont'd)*

ones where police departments from other jurisdictions came to help the Bloomington police with crowd and behavior issues related to the event, and he knew he'd never get an officer to come out at that time when they were actually trying to protect public safety. He said the food truck might eventually be fined, but it probably didn't matter to them.

Eisenberg asked how he was to survive when half of his business was siphoned off by an out-of-town food truck that was willing to absorb a fine as part of their doing business that big weekend. He said it amounted to the mobile vendor taking his location away from him.

He read a message he had sent to councilman Ruff in response to comments made by Bea's Soda Bar at a previous meeting:

I'm sorry it's taken a few days to get back to you, I've been out of town visiting friends and family while students are on Spring Break. Thank you for being open minded and taking the time to engage local stakeholders. I continue to believe there is a way to come together around a better ordinance that puts all stakeholders in a position to succeed. On the way out of the council meeting last Wednesday night, I approached the owner of Bea's Soda Bar, an attendant, and expressed that same sentiment. We agreed there were places we could find common ground and I still feel that way after reading Jackie's email.

Jackie's main argument is the city needs to "protect and encourage the local food truck industry" because "the investment to open a restaurant is massive" (and he noted he was paraphrasing this portion: thus cost prohibitive to entrepreneurs such as she). Based on her same reasoning, somebody who wants to live in a particular neighborhood, but cannot afford a house, should be entitled to park an RV camper 51 feet from someone else's house just to gain access to that neighborhood's schools and amenities.

I understand that food trucks are small businesses, but let's not forget that Butch's is a small business. In Jackie's narrative, I cannot help but feel that restaurants like Butch's are being portrayed as the Walmart's of the restaurant industry, making it impossible for the smaller guy to earn an honest buck. I feel she overlooks the tremendous hours that I put in, the very personal financial risk I made by securing the loans and funding necessary to open a restaurant in downtown Bloomington and the economic benefit that Bloomington receives from that investment.

So as a small business that invested hundreds of thousands of dollars in downtown Bloomington, I'm similarly asking you to protect and encourage the restaurants, most of which are independent and locally owned, that line our downtown.

Allow me to explain the investment it takes to open even a small restaurant like Butch's and the ongoing impact we have on the local economy and community.

They say the three rules to real estate are location, location and location. I conducted market research and made a commitment to the best location I could afford. Jackie's correct that the cost of opening a restaurant in downtown Bloomington is massive. Meeting downtown building codes for new construction and fire codes associated with having two floors of residential apartments above the restaurant doubles the construction budget compared to a typical stand alone or strip mall location. During the six months it took to build Butch's in 2008, in the midst of the economic recession, our investment employed crews of local tradesmen from local small businesses like All Seasons HVAC, Electrical Services and Plumbing, Mann Plumbing, Hewitt Interiors, Shipps Countertops, Koorsen, Gooldy & Sons, just to name a few.

There was an additional investment made in equipment, technology, graphic design, furniture and marketing, also spread among various small local businesses.

Today, as we debate food trucks and public parking spots, I cannot help but look back to the build-out of Butch's and find irony in the fact that the Public Works department would not issue me a permit to place a construction dumpster in a parking spot. So here I am, employing all these construction people for six months, and I go to the city needing a dumpster for three days while we were doing drywall. And they say, 'we issued a permit during the construction of the building and we aren't going to take up that spot any longer'. So I had to bring a dumpster in from 5am to 6 am, before anyone knew what was going on, and my business partner and I at the time literally hauled out the junk while the roll-off truck was standing there. Now we are talking about parking spots again, and again, I'm going to be on the wrong side of that equation.

For the last six years I've steadily employed an average of twenty people, a mix of mostly full time local residents and part time college students. My managers have been with me for an average of four years. In addition to the economic benefit of the jobs and payroll taxes my small business provides, we purchase groceries and supplies from local vendors, and use the services of local small businesses to maintain that equipment. Every month, on top of rent, we pay property tax on our square footage and generate considerable sales tax.

Ordinance 15-05 as amended (by Amendments #1 & #3) *(cont'd)*

Despite what Mr. Volan might think, restaurants, one way or another, do pay property tax. We pay property tax on both our fixed assets and property tax on our square footage. Whether it's triple net, or a gross lease, however you want to put it, that fee is being put on every restaurant, every retail operator in this downtown. And because a food truck is on wheels, they don't have to pay property tax on their assets? I could be wrong about that but I believe that, if I were on wheels I would not have to pay property tax on my equipment. I have to pay property tax on my oven and my refrigeration because I am in a retail space.

So every year we pay property tax on our fixed asset equipment. We also take pride in our contributions to the community over the years -- local charities and organizations like Monroe County Red Cross, Jill's House, The Boys and Girls Club, Riley Children's Hospital and Hoosier Hills Food Bank.

When Jackie broke down the cost of operating a food truck, one thing stuck out to me, helping me prove my point. The market rate to rent time in a commissary or kitchen is $12-$15 an hour. If the rate to rent time in a parking spot in the most desirable downtown locations is only $1, I'm having trouble understanding how paying market rate for prep time in a commissary kitchen entitles a food truck to sell that food in a different location for below market rates. I'm not even sure that every food truck requires daily commissary time. But rates paid to a commissary do not change that this ordinance allows food trucks access to Bloomington's best locations to compete for sales with restaurants, and we pay substantially more for our right to be there.

By Jackie's example of operating 72 hours a week, the $288 they pay for parking, or rent as they want you to believe it should be called, is about equal to the amount I pay each month to lease three off street parking spots for myself and my delivery drivers. At any given time, I may have up to four employees choosing to park on the street providing significantly more parking revenue for the city on a weekly basis than a food truck does. And it's not just Butch's employees parking on the street. Every day I see service industry employees from Brothers and Scotty's and other local restaurants getting in and out of their cars. If service industry employees making $10 an hour are willing to pay $1 an hour, or 10% of their gross income, just to use a parking spot close to their job, how is it fair that a food truck can do $100 an hour or more, park 51 feet up the street from me, for $1 per hour or 1% of their revenue.

And let's not forget that the city sees limited, if any, incremental revenue from food trucks paying for public parking. During prime times I see most food trucks out, I have customers and employees circling the block looking for parking that would gladly pay for the spots that food trucks occupy. Jackie's example that adds commissary costs to the equation which had nothing to do with the real estate costs associated with selling goods and services out of a prime downtown location.

The Scholars Inn Bakehouse moved their baking operation to a facility by the highway. That doesn't mean they get a discount toward their prime retail location on the square. Jackie's equation also ignores the fact that if a food truck's twelve hour days are 4pm to 4am, parking is free for half of those hours, and free on Sunday. Conceivably, a food truck can operate 40+ prime selling hours each week, without paying a single dollar for its operation out of a prime location.

I compete with Rockets, and I compete with Trailhead Pizza. I can even compete with Domino's and Papa Johns, because we all pay market rate for our rent, and because competition used to be limited to the amount of retail space available in our section of downtown. Now food trucks are adding to supply this area without any additional demand to support that supply. And I'm very concerned that the prospect of competing at a cost disadvantage to several food trucks operating 51 feet away could put me out of business and put my twenty employees out of work.

I have maintained all along that it is not my intent to put food trucks out of business in Bloomington. I just think more creative approaches could produce an ordinance which either finds a better home for food trucks or asks food trucks to a pay market rate to keep their locations in their prime parking spots. I don't think this ordinance provides brick and mortars enough assurance that food trucks will not encroach on the sizable investments we made in our locations. Unlike food trucks, if my location becomes compromised, I don't have the ability to move my restaurant down the street or to a different city without abandoning a sizable investment I made in my location in downtown Bloomington. The proposed ordinance used to allow food trucks access to prime locations at below market rate encourages entrepreneurs to open food trucks while discouraging entrepreneurs from opening quick service restaurants. How many food trucks need to open to provide the same local economic impact and benefit as just one restaurant opening.

Jackie also suggested she should be allowed to operate closer than 50 feet because her generator is solar and makes less noise. While I applaud their use of sustainable technology, or sustainable energy, my concern about proximity of

food trucks to my restaurant is more about unfair competition and cannibalized sales than the noise of their generators or fumes that they exhaust.

I was satisfied when I thought the administration struck a compromise at 75 feet from restaurants, open or closed, as being restricted. Now it's back to 50 feet, from only open restaurants. While location restrictions will continue to be difficult, I am wondering if a 100 feet from open restaurants and 50 feet from closed restaurants could be a compromise. Now I'm working backwards.

I still take specific issue with certain food truck operators who make no effort to be mobile and who exploit loopholes in the ordinance to control the best locations.

I believe I'm quoting The Big Cheeze tonight who said, "the point is to move around." Right? Well, they are not moving around. They stated so two weeks ago that they want their location because they do 81% of their sales at that location. So here they are telling you that they want to move around, when that is just the exact opposite of what they want to do. They want that space, anytime, any day, especially the busy weekends.

There has to be a better way to insure food trucks have an equal opportunity to share public locations. Under both the current and proposed ordinance a food truck can operate for 22 hours a day in the same spot and keep that location into eternity simply by parking a car as a place holder for two hours each night. I see that as a very critical flaw that would be easy to fix, either by simply amending the ordinance to limit a food truck to 8 hours per day on any block, or more creatively, by giving food trucks a lottery or bid system to share the best locations. Wouldn't most food truck operators be on board with a system that allows more fair access to these spots? If such a system yielded a weekly schedule for food trucks operating in a designated number of spots, it would be just as easy for police to enforce as the map the current ordinance relies on. And food truck operators would avoid the inconvenience and cost of getting to their spot early to reserve it for the rest of the day or the rest of the week.

As councilman Sturbaum noted, and I also pointed out to the administration, the ordinance doesn't prevent national chains from operating food trucks in downtown Bloomington. I even encouraged the administration's staff to do a Google search for images of a McDonald's food truck or a Starbuck's food truck to see an example of where the industry is headed. And by offering one or two day permits, the ordinance invites out of town food trucks to siphon off sales from local businesses on weekends, like Homecoming or Little 500 for fees as low as $25 or $50.

How about this as an amendment: A mobile vendor is only eligible for one short term license in a calendar year. Should they apply for a second short term license in the calendar year, they would have to pay the balance of the full year permit. With this amendment, a food truck from Indianapolis that pays $50 for a license in April to operate for two days during Little 500 would be required to pay $250 to get a license if the operator decided to come back in November for Homecoming. And wouldn't such an amendment equally and fairly protect local food truck operators as well as brick and mortar from out of town offenders?

It appears Bea's Soda Bar is interested in exploring the pods idea along with several council members who've expressed exploring that idea. If done properly, a food truck would not have to rely on a space across the street from Kilroy's for 81% of their business. And the investment of the adjacent brick and mortar restaurants made in their location would be better protected. I welcome the opportunity to discuss the pod idea or other matters with you, other council members and food truck operators. Frankly, it's disappointing that we have to get this far along the process to first be exploring these ideas and finding common ground. I thank you and the other council members for saying it's better late than never to consider these other ideas. And we're concerned about the future as well as we are with the present.

The reason why I'm upset is because the entire process was hinged around "we need an ordinance that's easy to enforce." Ideas were ignored from the beginning because it would be too hard to enforce. I think it would be a great idea to say a food truck is limited to eight hours a day on this block, or cannot be parked on this block on consecutive days to ensure that food trucks are being mobile as The Big Cheeze would want you to believe they're trying to be. We can't do that because how is a police officer supposed to know that a food truck was parked here today and there tomorrow? Every idea we had was answered with "enforcement's a problem." I understood that, and said, "we needed dedicated enforcement officers and what better way to pay for enforcement officers than to charge food truck operators market rate for their locations. We go ahead and we charge market rate rent for their locations, the city now has revenue, that revenue can pay for full time enforcement officers, now we are not limited to what is enforceable and what is not enforceable.

So to have everything undone by a five to four vote on an ordinance that I guarantee you will not be enforceable, is very upsetting to me, and it is a step backwards. And I thought I was going to come up here today and say "Hey let's vote in favor of this and we can come back as soon as council member Neher

becomes Mayor Neher and revisit the food truck idea in the short term, and get all the smartest people in the same room and say what's the best place and the best way to do it, and let's do that. I felt that this would be a temporary fix but this is worse than the status quo, and I would rather have the status quo than this passed tonight. I'm sorry that I've taken up so much of your time. I appreciate the administration and particularly Jason for all the time he's put into this.

When they explain to you how hard it is for the police late at night, I work those 4 am shifts every week. I've been doing it for six years, Thursday, Friday, and Saturday. I still do it on Friday and Saturday nights to 4 am. I've tried to call police because I've had customers who've had their cell phones stolen. Police are interested during those hours with one thing and one thing only: public safety. And that is what their concern should be. They should not be concerned with me calling to rat out a food truck that is on my back door or front steps. And I don't understand how my taking a picture and getting that food truck fined puts money back in my pocket or my employees' pockets after my sales have been encroached upon for an entire weekend.

Mr. Volan, you wanted me to call food trucks what they are. The word 'leech' came about. Certain food trucks are operating morally; there are other food trucks that are leeches and it's about time somebody called them a leech. That's all I have to say.

Cory Sampson with The Big Cheeze said he was scattered with all the changes proposed during the meeting.

He noted Sandberg voted 'no' on Amendment #3 even though the amendment ultimately passed. He thought she should know that one of the positive externalities of allowing food trucks to operate outside closed businesses was keeping them in one area with a lot of activity, but little travel needed to get to the products. He said if the food trucks were located a block or two away from that area it would expand the area of enforcement. He said it was a good thing to keep the area packed.

He said, in addressing Eisenberg's comments, that The Big Cheeze paid property taxes on their assets. He said they paid a fixed fee for use of a commissary no matter the amount of time it was used. He said they were protective of 'their' spot because the spot was not guaranteed at night, and their protection was a hedge against not being able to open their business by not being in that spot. He said staying in that spot and paying the meter all day was worth the time and money because without doing so they risked going there at night and finding that spot taken. If they were assured of that spot they would travel more before they needed to set up on Kirkwood. Sampson read from his prepared statement:

The vast majority of new technology in business models hinge on opportunities that nobody else saw. Unless they were making waves and looked upon as competition for others in the industry, they were not doing their jobs.

Casualties from change are part of society today. There will be winners and losers with the ordinance. Change is how society moves forward and sometimes businesses fail. The Big Cheeze has found value in a product and method of delivery and has created an offering to the public, and it's been successful.

He said this was how big things happened, challenging the status quo, challenging what people think as normal and right and fair, and showing them that something new and different could be embraced and be a good thing.

He said the 50 foot rule created a fair barrier for incumbent firms and would protect the pedestrians. He said rules should be tied to health, safety and the wellbeing of the community, but not regulate or limit competition or remove access to markets that the administration claims can't be fixed.

He said he was in favor of the ordinance except for the 50 foot rule. He said enforcement must be by map and it was a big problem to not do that. He said his plan would allow food trucks if they didn't block the façade or the outdoor seating of any brick and mortar business. He said it was fair and community friendly, and would allow more vendors to operate. He said it was not reasonable to eliminate a space that was six inches into the 50 foot area. He said that 25 feet away from brick and mortar outdoor seating was a reasonable distance for food vendors to operate and was more reasonable.

He said the map with spaces marked out that are within 50 feet of a brick and mortar showed a lot of usable spaces, but they were out of his market. He said if the 50 foot rule were enforced, he would have to move

Ordinance 15-05 as amended (by Amendments #1 & #3) *(cont'd)*

his operation closer to Eisenberg's restaurant. He said just creating a number to push vendors to a different area was not fair, and that streets should be sustainably examined. He said that if his business was allowed to operate sustainably and profitably within the late night market, a fair conclusion for everyone could be developed.

Jackie with Bea's Soda Bar said the best possible outcome was to get to the point where no one was happy with the ordinance. She said she appreciated the time and effort the council devoted to this issue to try to come to a conclusion that was fair from the perspective of council, staff and all retailers. She said it had been an incredible, thoughtful discourse and she looked forward to continue the discussions.

Council comments:

Ruff said he hoped the measures that had been discussed and approved would allow those on both sides of the issue be able to do what they needed to do. He said he hated legislating by what scofflaws might do or by the enforcement of their violations.

Ruff said Eisenberg's final comments illustrated why Ruff favored the 75 foot restriction during hours of operation of bricks and mortars, and his support for the overall proposal was packaged with that. He said the approvals of the 50 foot restriction might actually be more of a negative for brick and mortars than he intended. He said he had been intrigued by designating spots and attaching value to them and the establishment of pods. He said it was difficult to not vote for this measure given all the work that had gone into it.

Ruff said that if the ordinance as amended passed and Eisenberg's business was affected by a scofflaw, he wanted Eisenberg to call him right away. He said he would immediately propose legislation to correct the issue.

Sturbaum asked Sherman how the council could reconsider a vote taken earlier at this meeting. Sherman said a council member on the prevailing side would need to request a reconsideration of the question, the motion to reconsider would need a second, and a vote would be taken to bring the matter back to the council. He said he would check with Robert's Rules of Order to determine the exact number of votes needed to reconsider, a simple majority or a two-thirds majority vote.
Rollo called a five minute recess for this matter to be resolved.

Rollo called the meeting back into order.

Rollo asked Sturbaum if he, as a member of the prevailing side on an amendment, wanted to move to reconsider the question of Amendment #2 to Ordinance 15-05. Sturbaum said he decided that the legislation was not perfect, and actually not even that good. He said he believed the council would have a chance to revisit this very soon. He stated his support for what he called a flawed and imperfect solution.

Rollo asked for any motions for reconsideration of the questions from earlier in the meeting. There were none.

Volan said the research into what other cities were doing on this measure was very good, and commended staff for the work. He said the ordinance did a good job at balancing competing interests. He said staff deserved praise for streamlining the process, and said the licensing process was smoother, clearer and more reasonable. Standards of conduct and restrictions on electricity, he said, were reasonable. He added that harsh punishment without enforcement that was fair to all parties could create imbalance and unfairness. He said interests of brick and mortars, food vendors, police and real estate owners investments all needed to be balanced and it was the council's job to do that. He said unfounded perceptions and inconsistent application of principles that would result in restrictions that were arbitrary should be avoided.

Ordinance 15-05 as amended (by Amendments #1 & #3) *(cont'd)*

He said food vendors paid property taxes on their equipment, could not get a permit to sell alcohol, had no seating, no heating or cooling, and no protection from the elements. He said it was fundamentally different from a restaurant. He said that The Big Cheeze's call for one particular space did not do favors for the food vendor argument in the city, and in fact, it was the greatest single irritant in the whole process, on which everyone had an opinion.

Volan said the market rate for parking spaces for cars in the downtown was too low. He said that the cost of doing business within a parking spot was a worthwhile discussion to have. He said that meters were not enforced for revenue, but to properly regulate the scarce commodity. He said the ParkMobile App and pricing of vendor permits based on their origin (in-town or not) could help achieve this balance. He said that the uReport service should be promoted, and he also advocated for the establishment of a 311 line for reporting these violations. He said the parking meter fund should be used to pay for a parking enforcement officer to function as a civil enforcement officer on the street late at night. He said he'd like to see the sales records from the businesses in Fountain Square that Walker said were losing business because of parking meters.

Ordinance 15-05 as amended by Amendments #1 and 3 received a roll call vote of Ayes: 8, Nays: 1 (Ruff).

Ordinance 15-06 - To Amend Title 20 of the Bloomington Municipal Code Entitled "Unified Development Ordinance" (Amending Sections 20.05.110 & 20.05.111 Regarding Temporary Uses and Structures)

It was moved and seconded that Ordinance 15-06 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, noting that there was no committee recommendation on this item. It was moved and seconded that Ordinance 15-06 be adopted.

***Note**: This item was introduced this evening, and therefore, under BMC 2.04.300 (Ordinances and resolutions – Reading required.) required unanimous consent to consider and a 2/3s majority to pass.*

Ordinance 15-06 received a roll call vote on consent to consider the motion of Ayes: 7, Nays: 2 (Sturbaum, Spechler).

LEGISLATION FOR FIRST READING

Ordinance 15-04

Ordinance 15-04 - To Amend Title 7 of the Bloomington Municipal Code Entitled "Animals" - Re: Making Various Housekeeping Changes, Creating Three Classifications of "Potentially Dangerous" Animals, Adding New Disclosure Requirements, Putting Additional Restrictions on the Practice of Tethering, Adding New Anti-Cruelty Provisions, Creating a New Violation of "Habitual Offender," and Other Changes

Ordinance 15-08

Ordinance 15-08 - To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic"- Re: Changes to Yield Intersections, No Parking Zones, Loading Zones, Accessible Parking Zones, and Traffic Violations

Ordinance 15-09

Ordinance 15-09 – To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic" and To Make Other Changes Related to Metered Parking - Re: Shortening the Hours of Enforcement of On-Street Metered Parking, Eliminating the Credit Card Convenience Fee for Meter Use, Authorizing the Mayor to Declare "Parking Holidays," Extending the Hours of Enforcement for Lot 9 (Fourth Street Garage)

Ordinance 15-10

Ordinance 15-10 - To Amend Title 2 (Administration and Personnel) and Title 15 (Vehicles and Traffic) of the Bloomington Municipal Code (To Improve Parking Management in the Downtown by Imposing a Maximum Charge for On-Street Metered Parking, Setting Forth Actual Times and Fees in an Amended Schedule U, Providing a Period of Free Parking in all Garages, and Establishing a Fee Discount and Waiver Program to be Guided by a New Parking Commission)

PUBLIC COMMENT

There was no public comment at this portion of the meeting.

It was moved and seconded to hold a Special Session on Wednesday, April 1, 2015 before the Committee of the Whole scheduled for that night in order to consider Ordinance 15-06 which was denied consideration at this meeting and to deliberate on one other item of legislation. COUNCIL SCHEDULE

The motion received a roll call vote of Ayes: 9, Nays: 0.

MOTION: It was moved and seconded that the council amend the schedule of meetings by shifting the Committee of the Whole meeting from April 8, 2015 to April 15, 2015, shifting the Regular Session from April 15, 2015 to April 22, 2015, and cancelling the Committee of the Whole scheduled for April 22, 2015.

ACTION: The motion was approved by a voice vote.

The meeting was adjourned at 1:10 am on March 27, 2015. ADJOURNMENT

APPROVE: ATTEST:

Dave Rollo, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington