

Vetoed

ORDINANCE No. 74-51

AN ORDINANCE AMENDING BLOOMINGTON MUNICIPAL CODE CHAPTER 2.78, ENTITLED, "UTILITIES SERVICE BOARD."

BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

SECTION 1. Bloomington Municipal Code Section 2.78 is hereby amended by adding:

"Section 2.78.010 Creation, Title, Objectives. There is hereby created and established the Bloomington Utilities Service Board. This Board shall be a policymaking Board as prescribed under Indiana Acts 8-1-2. It is the object of this legislation to provide for the efficient operation of the City owned utilities and also for the coordination of city owned utilities operations with all governmental activities of the City of Bloomington. Though empowered to set policy for the Utilities Department, the Board is to do so in a manner consistent with general city policies as established through ordinances and resolutions."

SECTION 2. Bloomington Municipal Code Section 2.78.020 (b) is hereby amended to read as follows:

"(b) Budget. Each year by the first Council meeting in October, the Board shall submit a budget detailing the projected incomes and expenditures of the Utilities Department for the ensuing year. The budget submitted at this time should be in compliance with any funding procedures agreed to during the summer budget period as submitted by the Mayor and approved by the Council. The budget shall be presented for first reading by the first Council meeting in November. The budget shall be enacted in ordinance form by regular procedure as set out in Indiana Code 18-1-3-6, with the provision that the Council may lower, but not raise any item in the proposed budget. In no case shall Utilities funds be expended except in compliance with the budget ordinance."

SECTION 3. Bloomington Municipal Code Section 2.78.020 (e) is hereby amended by adding thereto the following language:

"Employees so discharged, after exhausting the appeal process, may petition the Board for a ruling on the manager's decision to terminate the employment. Upon petition in writing the Board shall hear statements from both the petitioner and the manager with sixty (60) days. The Board's function shall be to review the stated cause of dismissal and, if the Board so desires, to recommend reinstatement of the dismissed employee; however, the Board's ruling is not binding upon the manager, whose final decision is conclusive. The Board shall provide both the petitioner and the manager with a full written description of the Board's ruling and the basis for that ruling."

Bloomington Municipal Code Section 2.78.020 (a) is hereby amended to read as follows:

"(a) In General. The Board shall have general supervision over the Utilities owned by the City of Bloomington, but said supervision shall not interfere with the detailed supervision of the Utility Manager, who is to be held

responsible to such Board for the business and technical operation of the Utilities. The Utility Manager shall keep the Board, Mayor, and Common Council informed of Utilities activities, and shall provide whatever information is requested and make reports as required. The Common Council shall have review power over all Board decisions for 15 days including land acquisition, contracts entered into with outside agencies, grant applications and major capital improvements. Decisions of the Board shall become effective upon Council approval or upon the lapse of fifteen (15) days after the Board has informed the Council office of such decision. Council disapproval within fifteen (15) days shall negate Board decisions.

SECTION 4. Bloomington Municipal Code Section 2.78.030 is amended to read as follows:

"Membership-Appointments. The Board shall be composed of seven (7) members, of whom no fewer than five (5) shall be residents of the City of Bloomington, and of whom no more than a simple majority shall be of the same political party. All members of the Board, whether or not city residents, shall be users of one or more services provided by the municipal utilities under the control of the Utilities Service Board. The Mayor shall appoint four (4) members of the Board and the Common Council shall appoint three (3) members. The Mayor shall initially appoint members as follows: One (1) for a term of one (1) year; one (1) for a term of two (2) years; and, one (1) for a term of three (3) years. The Council shall initially appoint members as follows: One (1) for a term of two (2) years; one for a term of three (3) years; and one for a term of four (4) years. Thereafter, all appointments shall be for a term of four (4) years. If a vacancy or vacancies should occur due to resignation or otherwise the Mayor or Council, as appropriate, shall appoint a substitute member of complete the term of the vacant appointment. The initial terms shall expire on the first day of January of the first, second, third, or fourth year, respectively, following their appointment. In addition, the Mayor may serve as an ex-officio member without a vote or may appoint one member from his/her staff to serve as an ex-officio member without a vote. The Common Council may also appoint one member from the membership of the Council or its staff to serve as an ex-officio member without a vote. One member of the Board may serve as ex-officio member to the Regional Waste District Board. Ex-officio members without a vote may be appointed to the Board by the Regional Waste District Board or other relevant boards and commissions as may be decided by the Board."

SECTION 5. Bloomington Municipal Code Section 2.78.040 is amended by adding thereto the following language:

"No member of the Board who is an elected or salaried official of the City otherwise, shall receive the above mentioned salary."

SECTION 6. Bloomington Municipal Code Section 2.78.060 is amended to read as follows:

"Chairperson-Rules-Meetings-Official Action--the members of said Board are authorized to select a chairperson and any other officers deemed necessary to properly carry out the functions of said Board. The Board shall adopt and prescribe rules for the purpose of conducting their meetings. All official business shall be conducted only at official meetings of the Board. Published notice of all meetings shall be given at least forty-eight (48) hours prior to the meeting; provided however, that in the case of an emergency situation requiring immediate consideration and action, meetings may be held without published notice upon the unanimous vote of all members available for such a vote. In such an emergency situation a public explanation of any action taken by the Board as well as the factors creating the emergency shall be provided as soon as it is reasonably feasible to do so. A majority of the members shall constitute a quorum. No action of the Board is official, however, unless authorized by a majority of the entire membership."

SECTION 7. Bloomington Municipal Code Chapter 2.78 is amended by adding thereto Section 2.78.080 which shall read as follows:

"Every member of the Board shall be under the affirmative duty to publicly disclose any personal interest they may have in a matter prior to participation in the hearing or decision of such Board on the matter in question. Provided, however, that the existence of a personal interest, other than a direct or indirect financial interest, shall not prevent a member from participating in the hearing or decision of a matter unless a majority of the voting members of the Board feels the member should not participate, and further provided that the failure to disclose personal interests as provided above shall not invalidate the vote of the member failing to disclose any personal interest, other than direct or indirect financial interest, nor shall such failure invalidate any decision of the Board as a whole. The willful failure to disclose personal interest shall, however, be cause for removal from the Board. It is the expressed intent of the City that this section be supplementary and complimentary to the provisions set out in Indiana Code 18-1-2-4 (Burns Ind. Stat. Ann. 48-1247)."

SECTION 8. Bloomington Municipal Code Chapter 2.78.050 is amended to read as follows:

"2.78.050 Removal. Members of the Board shall be subject to dismissal for cause after notice and right of public hearing before the Mayor and the Common Council, the right to public hearing to be exercised within thirty (30) days after notice. Such dismissal for cause shall be jointly made by the Mayor and the Common Council upon the casting of six (6) votes in favor of dismissal. Members shall also be subject to dismissal for excessive absenteeism. Absenteeism shall be deemed excessive when a Board member, without reasonable cause, is absent from three consecutive regularly scheduled Board meetings.

SECTION 9. Bloomington Municipal Code Chapter 2.78 by adding the following additional section.

"Reasons Underlying Board Members' Decisions--Disclosure--Publication. Upon any vote of the Board, each Board member shall on demand briefly delineate the reasoning underlying that member's vote. All such disclosures of reasons shall be incorporated in the minutes of the Board."

SECTION 10. That this ordinance shall be in full force and effect from and after its passage, promulgation and publication in accordance with the law.

Passed and adopted by the Common Council of the City of Bloomington, Indiana, on the 15th day of August, 1974.

James S. Ackerman
James S. Ackerman, Council president

ATTEST:

Grace E. Johnson, City Clerk

Presented by me to the Mayor of the City of Bloomington Indiana, upon the 23 day of August, 1974 at the hour of 11:00 o'clock p. m.

Grace E. Johnson, City Clerk

This ordinance approved and signed by me upon the _____ day of _____, 1974 at the hour of _____ o'clock ____m.

Francis X. McCloskey, Mayor

ATTEST:

Grace E. Johnson, City Clerk

INTRODUCED BY:

Richard S. Behen



CITY OF BLOOMINGTON

P O BOX 100, MUNICIPAL BLDG., BLOOMINGTON, INDIANA 47401

Office of the
Mayor
812/339-2261

VETO MESSAGE

ORDINANCE NO. 74-51

AN ORDINANCE AMENDING BLOOMINGTON MUNICIPAL
CODE CHAPTER 2.78, ENTITLED, "UTILITIES SERVICE BOARD."

This message shall constitute a veto of Ordinance 74-51 passed by the Common Council on August 15, 1974, notice of which I received on August 23, 1974. In accordance with IC 18-1-6-2, my reasons for this veto are expressed below in writing.

This ordinance amends the previous ordinance establishing a utilities service board and raises several significant legal and policy questions.

Council Review and Approval

My principal reason for vetoing this ordinance is that it violates the 1972 referendum in which Bloomington voters chose to have a utilities board. State law requires that once a board has been established the board, not the Mayor or the Common Council, shall operate the City's utilities.

This ordinance would directly involve the Council in management decisions of the Board and would, in effect, deprive the Board of its lawful authority by requiring Council approval for all "land acquisitions, contracts entered into with outside agencies, grant applications, and major capital improvements."

Indiana's Cultural, Educational and Recreational Center

State law provides that municipally owned utilities may be operated by a committee of the Council, but that alternative was entirely precluded when the Utilities Board was established pursuant to referendum. This section of the ordinance is unacceptable because it is contrary both to the spirit and the letter of state enabling legislation and the referendum which provided for creation of the Board.

Other amendments while not necessarily sufficient in themselves to justify a veto should be re-considered. These include:

Review of Dismissals-Personnel Policy

The ordinance also provides for Board review of a decision by the manager to discharge an employee. Since the Board is specifically charged by state law not to interfere "with the detailed supervision of the Utility Manager," this section appears contrary to that specific prohibition, even though the ordinance stipulates that a personnel recommendation by the Board shall not be binding on the manager.

Any provision for review of personnel decisions should be fully consistent with union agreements. Furthermore, in the interests of a uniform city-wide personnel policy, the same personnel policy should prevail in all departments. Review of personnel decisions should be provided for in the context of an overall policy. The Utilities Department should not be singled out.

Board Membership

The present Board consisting of five members has proved to be a good working number. Additional membership is simply unnecessary.

The larger the group, the more time required for decisions to be made. A five member board is sufficiently large to balance the need for diverse representation with that for reasonably efficient decisionmaking.

Disclosure Requirements

State law provides for the protection of the public through a conflict of interest statute which applies to all city employees. There is no reason why the Utilities Board should be singled out for an additional standard beyond that required, for example, for members of the Plan Commission, Board of Zoning Appeals, and the Council itself. Existing state criminal law implies an affirmative duty to disclose conflicts of interest in that a fine and imprisonment are provided for should a city employee participate in a conflict of interest decision. In short, this section is unnecessary.

Removal of Board Members

The removal provisions of this ordinance require removal for cause to be jointly determined by the Mayor and Council. This joint Mayor-Council determination of "for cause" would permit the Council to remove a Mayoral appointee by a two-thirds vote of its membership.

State law gives the Mayor three (3) appointees and the Council two (2) appointees to a five (5) member Board. There is no justification for permitting a Common Council to, in effect, censure and remove a Mayoral appointee by making its own determination of "for cause."

Mayoral appointees are not subject to the approval of the

Council at the time of their appointment. Neither should the removal of mayoral appointees be at the will of the Council. Such an arrangement would defeat the independent authority given to the Mayor (and to the Council) to make appointments to the Board.

I respectfully suggest that many of these concerns could be better resolved through a more active role on the part of the Council's utilities committee.

Improved planning procedures could result from a meeting of the Council committee, the Board and the Mayor.


FRANCIS X. McCLOSKEY
Mayor, City of Bloomington

September 3, 1974

VETO

OLD