COMMON COUNCIL
REGULAR SESSION
April 19, 2017

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Wednesday, April 19, 2017 at 6:32pm with Council President Susan Sandberg presiding over a Regular Session of the Common Council.

ROLL CALL
[6:32pm]

Roll Call: Sturbaum, Ruff, Chopra, Granger, Sandberg, Piedmont-Smith, Volan, Rollo
Members Absent: Mayer

AGENDA SUMMATION
[6:33pm]

Council President Susan Sandberg gave a summary of the agenda.

APPROVAL OF MINUTES
[6:35pm]

March 22, 2017 (Regular Session)
March 29, 2017 (Special Session)
April 05, 2017 (Regular Session)

It was moved and seconded to approve the minutes of March 22, 2017 with minor corrections. The motion was approved by voice vote.

It was moved and seconded to approve the minutes of March 29, 2017 with minor corrections. The motion was approved by voice vote.

It was moved and seconded to approve the minutes of April 05, 2017. The motion was approved by voice vote.

REPORTS

- COUNCIL MEMBERS
  [6:38pm]

Councilmember Allison Chopra wished everyone a happy IU Day and congratulated graduating law students.

Councilmember Dorothy Granger said that, although Monroe County had not won the Georgetown University Energy Prize, there were still actions people could take to save money and energy, which included a free attic insulation program. She detailed how to get information about the program.

- The MAYOR AND CITY OFFICES
  [6:40pm]

Terri Porter, the new Director of Planning and Transportation, introduced herself to the Council.

Councilmember Steve Volan acknowledged Porter was still getting up to speed in the position. He asked how she would approach handling upcoming issues such as the upcoming comprehensive plan, and asked when she would be able to dive into such problems.

Porter said she had been looking at the comprehensive plan for some time, and gave her thoughts on how she would approach the process moving forward.

Jacqui Bauer, Sustainability Coordinator for Economic and Sustainable Development, updated the Council on the guaranteed energy savings contracts.

Councilmember Isabel Piedmont-Smith clarified that the scope of the project would include gas and electric utilities.

Bauer said that was correct and that there would be an examination of how city facilities used gas, electricity, and water.

Bauer clarified that the Monroe County Energy Challenge had not ended and that the results were still being processed.

Council Administrator/Attorney Dan Sherman noted he had filed a Disclosure of Conflict of Interest form that related to a sidewalk project that was in his neighborhood, and included on the priority list for the Sidewalk Committee. He noted that the project was one of 50 such projects and was not seriously considered by the Committee.

It was moved and seconded to accept the Disclosure of Conflict of Interest form from Sherman. The motion was approved by voice vote.

- COUNCIL COMMITTEES [6:52pm]

Granger, Sidewalk Committee Chair, introduced the other members as Councilmembers Dave Rollo, Tim Mayer, Chris Sturbaum. She detailed the purpose of the committee and the criteria used when prioritizing sidewalk projects, which included safety considerations, roadway classifications, pedestrian usage, proximity to destinations, and cost, among others. She displayed the priority list of sidewalk projects and traffic calming projects, and went over the criteria rankings and the overall rankings. She said the committee had $306,000 to allocate and explained how the committee might have allocated the funds. She displayed slides of the projects that had been funded-which included maps of the projects. She provided details about each of the projects and said the committee was available for questions.

Piedmont-Smith asked if there was any money for the traffic calming projects.

Granger said there was a little money, around $20,000. She said traffic calming could be something as simple as a painted crosswalk.

Piedmont-Smith asked if the traffic calming projects were going to be considered separately from the other sidewalk projects.

Granger said in a way they would be, but there was no set rule that required the committee to only spend so much on traffic calming devices. It was simply a way to help the committee think about what the city's needs were.

Chopra asked for clarification about how the committee used the lists of sidewalk projects and traffic calming projects to prioritize funding.

Granger said that with the little money available after the committee had funded the sidewalk projects at East 10th Street and at Rockport Road, it made sense to look at the traffic calming projects.

Chopra asked what the total cost was for the East 10th Street project.

Sherman said the total cost was approximately $381,000.

Granger said that number could change.

Chopra asked for clarification on when the project would be completed.

Sherman explained that the city would complete its work in 2017 and INDOT would complete its work in 2018.

Councilmember Dave Rollo thanked Granger for chairing the committee and thanked Sherman for helping facilitate the committee's meetings. He noted that it was a complex topic and there were more projects than funds available.

Chopra said she was delighted that the East 10th Street project would be fully funded through city funds, state funds, and funds from MCCSC. She said it was an important project that helped link residents to their school and also helped foster a sense of community. She thanked the committee on behalf of the constituents who spoke in favor of the project.

Piedmont-Smith thanked her colleagues for doing the work of deciding where the limited resources would go. She also thanked the Planning and Transportation Department for paying cost overruns on previous projects so that those projects would be completed.

Sandberg thanked the committee for its work, noting that much of the work was about retrofitting. She thanked committee chair Granger and observed that, while the decisions were not always easy to make, the committee had been efficient in completing its work.

Granger encouraged members of the public to communicate with the Council about projects they would like to see completed.

It was moved and seconded to adopt the Council Sidewalk Committee Report. The motion was approved by voice vote.

- PUBLIC [7:13pm]

Sandberg called for public comment.

Tonia Matthews read excerpts from Through the Looking Glass to celebrate National Poetry Month.

Joel Deutsch spoke against annexation.

Diana Igo spoke about an article dealing with approaches to affordable housing.

Rita Barrow, Van Buren Township Trustee, spoke about upcoming annexation meetings.

APPOINTMENTS TO BOARDS AND COMMISSIONS [7:23pm]

It was moved and seconded to reappoint Jack Kahn and to appoint Denise Lessow to the Commission on Aging. The motion was approved by voice vote.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Ordinance 17-18 – To Amend Title 6 of the Bloomington Municipal Code Entitled "Health and Sanitation" – Re: Changes to Chapter 6.12 (Smoking in Public Places and Places of Employment) that Define an "Electronic Smoking Device" [ESD] and Add the Use of an ESD to the Definition of "Smoking"

It was moved and seconded that Ordinance 17-18 be introduced and read by title and synopsis only. The motion was approved by voice vote. Clerk Nicole Bolden read the legislation by title and synopsis, giving the committee Do Pass recommendation of 4-0-3.

It was moved and seconded that Ordinance 17-18 be adopted.

Beverly Calender-Anderson, Director of the Community and Family Resources Department, presented the legislation to the Council. She explained the reasons for the proposed ordinance, and stressed that legislation was not about the positives or negatives of vaping but was about the right of residents and of visitors to Bloomington to breathe clean air in public spaces.

It was moved and seconded that Amendment 01 to Ordinance 17-18 be introduced.

Amendment 01 to Ordinance 17-18

Piedmont-Smith explained that the amendment would clarify that the term "retail tobacco store" included retail stores that were utilized primarily for the sale of electronic smoking devices and that otherwise fit the definition set forth in the code.

Chopra asked Piedmont-Smith to repeat part of the amendment.
Piedmont-Smith clarified the purpose of the amendment.

Council Questions:

Volan explained he would like two additional weeks to consider the issue, so he would be passing on the vote that evening if the Council did not move to postpone the matter.

Council Comment:

Granger said she supported the amendment and thought it would provide clarification to some of the business owners who were concerned with the ordinance.

It was moved and seconded that Amendment 01 to Ordinance 17-18 be adopted.

The motion to adopt Amendment 01 to Ordinance 17-18 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 1 (Volan).

Vote to adopt Amendment 01 to Ordinance 17-18 [7:29pm]

It was moved and seconded that Amendment 02 to Ordinance 17-18 be introduced.

Amendment 02 to Ordinance 17-18

Piedmont-Smith explained that the amendment would require that signage include the prohibition against the use of electronic smoking devices, noting it would make clear what was covered by the ordinance.

Chopra asked what the fiscal impact of the amendment would be.
Piedmont-Smith said she had not examined the fiscal impact, but explained that business owners or managers would be responsible for the signage. She noted the city might be able to provide a downloadable sign on the website that a person could download and print to display, which would be an inexpensive option.

Council Questions:

Rollo asked what the administration thought of the amendment.
Mike Rouker, City Attorney, said the administration supported the amendment.

Councilmember Andy Ruff asked why the signage requirement was not originally included in the legislation.
Rouker said the administration had not considered signage changes, as it believed the no smoking signs were adequate. He said that after the issue had been raised at the previous Council meeting, it was discovered that signs did exist that included ESDs. He acknowledged that such a requirement would impose some cost on business owners, as it would require a change.

Evan McMahon spoke about concerns he had regarding the amendment.

Public Comment:

Nick Torres spoke about signage requirements in other communities around the state.

Amendment 02 to Ordinance 17-18 (*cont'd*)

Council Comment:

Rollo said he was in favor of the amendment. He noted that he had seen people vaping in the presence of no smoking signs, so he thought the amendment was needed to avoid any ambiguity as to what was prohibited. He thanked Piedmont-Smith for bringing the amendment forward.

Granger echoed Rollo's comments and said the amendment made enforcement easier for business owners.

Piedmont-Smith said she had done a quick internet search and had found many inexpensive signs that would be acceptable.

It was moved and seconded that Amendment 02 to Ordinance 17-18 be adopted.

Vote to adopt Amendment 02 to Ordinance 17-18 [7:40pm]

The motion to adopt Amendment 02 to Ordinance 17-18 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 1 (Volan).

Motion to postpone consideration of Ordinance 17-18

It was moved and seconded to postpone consideration of Ordinance 17-18 to a third reading.

Volan explained his reasons for making the motion. He said it had been a busy week and both sides of the issue had provided ample written material for the Council's consideration. Out of respect for both sides, he wanted additional time to consider the issue. He noted that postponing the issue to the May 3rd meeting would not cause any scheduling issues. He welcomed any questions and added that he would be open to hearing from those who had attended the meeting and who wanted to speak.

Piedmont-Smith asked, if the Council wanted to give those present a chance to speak, whether the Council needed to do so before postponing the matter.

Volan said he would be willing to withdraw the motion with the understanding that he would raise it again before the final vote, if it meant that those present could speak.

Sandberg said she personally did not need additional time to consider the issue, as she saw it more as a matter of courtesy.

Chopra said she did not need more time and postponing the issue might have been even more of an inconvenience for those present.

Volan said the good of the community was more important than the convenience of any person at the meeting. He said the Council always had the option to make such motions.

Chopra, Volan, and Sherman had additional discussion about the motion.

Councilmember Chris Sturbaum said he was convinced that the county health department and the American Lung Association representatives were speaking in the public interest and had done their research. He said he did not need additional time.

Motion to postpone consideration of Ordinance 17-18 (*cont'd*)

Granger said she had read research on the issue previously, but did not have time to read the research being put forward by the health department and the administration. Despite that, she felt comfortable addressing the issue that evening, based on what she had read previously and reading the abstracts and conclusions of the studies.

Piedmont-Smith said she had read the abstracts of some of the studies, but had not had a chance to read all of the full studies that had been presented to the Council. She said she would appreciate more time to consider the issue.

Chopra said she was ready to vote on the issue, but that if the matter was postponed, she would prefer to have the discussion on the matter on the same evening as the final vote.

Ruff said he was comfortable with the legislation after taking some time to consider the issue and doing some research. However, he also respected his colleague's request for additional time given the fact that the matter was not urgent. He said he would vote yes on Volan's request.

Sandberg said she was prepared to vote that evening. She trusted the science coming from authoritative sources. But she also said the issue involved a nuisance factor and she had received comments from citizens who were bothered by it. She said the scientific evidence about harm was not the factor determining her vote. She said her focus was the nuisance factor and respecting a person's right to go out in public and not have to breathe in someone else's smoke.

Volan said he appreciated the comments from his colleagues. He said he would not have proposed postponing the matter had it not been for the fact that there was nothing on the agenda for the next regular session. He said that although many of the council members had done the work to consider the issue, he had been unable to do so because of all of the other items on the Council's agenda. He thought the hole in the schedule would give him and others the chance to make the most conscientious decision possible, which would entail reading the presented research. He asked for a yes vote on the motion.

Sturbaum, Volan, and Sherman had discussion about possible agenda items for the May 3rd meeting.

Ruff said he was considering changing his vote on the motion given Volan's comment about the lack of scheduled business for the next meeting.

Volan said his comment should not be construed to imply he did not consider the issue to be of importance. He respected both sides of the issue and he wanted to make a fully informed decision. He said he was not the only member who had indicated a need for additional time.

Chopra said it would be inefficient to move the issue, and the reason the Council had been so busy was because of the issues coming up. She said continuing to push things forward would be inefficient for the issue at hand as well as other issues.

Motion to postpone consideration of Ordinance 17-18 (*cont'd*)

Piedmont-Smith said she did not understand the reasoning of some of her colleagues. She said it was a complex issue, there were conflicting scientific studies, and it was not a pressing matter. She requested the respect of the Council for those on the Council who thought the issue was complex enough to extend to a third reading. She did not understand Ruff's assertion about changing his vote on the motion. She said the Council had received some of the information only very recently, and given the scientific nature of the question, she requested that her colleagues consider the complexity of the issue and not just their own convenience.

Sturbaum said the issue was not nearly as complex as the annexation issues and he could not help but comment on the lack of respect shown when council members had asked for more time to consider that issue.

Volan said the annexation was on a five-month schedule, and the Council would be spending more time considering that issue than it took to consider the UDO. He questioned Chopra's prioritization of efficiency over quality of decision-making. He said he was not asking for a six month delay as Sturbaum had been during the annexation process. He was asking for two weeks during a legislative cycle that was devoid of work. He said it was not an unreasonable request, and the Council had it in its power to allow for more time. He asked those council members who had already made up their minds on the issue to defer to those who had not.

Ruff clarified his earlier comment and explained that he was convinced the issue was important to Volan and had possibly taken Volan's comment the wrong way. He mentioned he had voted with Sturbaum to delay consideration of annexations and said he would be consistent by voting for Volan's motion.

Vote on Motion to postpone consideration of Ordinance 17-18 [8:08pm]

The motion to postpone consideration of Ordinance 17-18 received a roll call vote of Ayes: 4, Nays: 4 (Sturbaum, Chopra, Granger, Sandberg), Abstain: 0. FAILED

Council Questions:

Piedmont-Smith asked for additional comment from either the board of health or the administration regarding vaping as a way to get people to stop smoking.

Penny Caudill, Monroe County Health Department, said there was a lot of information and research. She said some research found that vaping helped people quit smoking, but other research said it did not. She said the legislation was not about cessation devices. She pointed out that the aerosol contained toxins that were similar to tobacco smoke. She said the proposed legislation was not about whether vaping was a good cessation device or not, but dealt with the question of someone using an ESD near others, and those people taking in the toxins.

Piedmont-Smith said it appeared to her that the level of toxins was exponentially lower with e-cigarettes than with cigarettes. She asked if toxins at those low levels were still a risk to human health.

Caudill said the health department, Surgeon General, and National Association of City and County Health Officials, among others, believed it was.

Ordinance 17-18 (*cont'd*)

Sturbaum asked if there was any concern about what was in the e-cigarettes, as they were merely delivery devices and it was not always easy to tell what was in the devices.

Caudill said some devices might not contain nicotine, others would, and there were reports of some devices being altered to contain other chemicals or drugs.

Public Comment:

Scott Tibbs spoke against the ordinance.

Evan McMahon spoke against the ordinance.

Nick Torres spoke in favor of the ordinance.

George Hegeman spoke in favor of the ordinance.

Council Comment:

Rollo said the issue was not about cessation or whether vaping was a gateway to smoking. He said it might help some people quit smoking and it might encourage others to start. He was not evaluating that. He said the issue was the right of people to breathe clean air. He thanked Calender-Anderson, the Board of Health, and the Health Department for their work. He said he did not regard vaping as dangerous as smoking, but said there were carcinogenic particulates and aerosols present. He detailed many of the variables that might impact how much exposure a person could experience to those things. He said he would err on the side of caution and support the ordinance.

Chopra said she would be voting to support the ordinance. She said the main reason she would be voting yes was that she had not heard from anyone that was opposed to it. She reiterated the scope of the legislation and said vaping was not on trial. She said the ordinance dealt with the limited situation where people were in a public space and deserved to have the best air possible. She also said she would err on the side of caution as the data was up in the air as to whether or not it was harmful.

Sturbaum said everyone had a right to smoke cigarettes or to vape, and if he smoked he might be using e-cigarettes to try to quit. But he said that was not the issue. Rather, the issue was the public right to breathe clean air.

Granger said she would be supporting the ordinance as amended. She was concerned with young people picking up vaping, and she did not want to see that. She said it made sense to add vaping to the smoking ban. She reiterated the Council was not banning vaping or e-cigarettes, it simply meant a person could not do it in public places. She said you could find research on both sides of the issue.

Volan said the Council had heard testimony that any amount of toxins was too much. He said he had accepted the argument that any amount of second hand smoke was too much when the Council had considered the smoking ordinance. But he noted vaping was less toxic than smoking. And he said many people were sensitive to other smells. He said he had difficulty determining what subset of the population should be served when thinking what to require in the ordinance. He said he could not make a determination about an acceptable level of toxins. He said he could not vote for the ordinance or against it. He wished he could have had additional time to think about the issue.

Ordinance 17-18 (*cont'd*)

Ruff said he did not have the ability to determine what an acceptable level of toxins was. He said he could only rely on the experts and what they had written. He said even the material provided by opponents of the ordinance contained statements acknowledging some level of toxins. He said that fact, combined with what the administration had said, allowed him to move forward with promoting clean air. He said the ordinance did not make vaping harder than smoking, as a person could still go outside and vape. He reiterated the ordinance was not about eliminating vaping. He addressed a point made by a member of the public regarding private property rights versus the right of a person to breathe clean air.

Piedmont-Smith said she had been researching during the discussion and had found a report from the World Health Organization that promoted regulations on e-cigarettes. She said she listened to and trusted the WHO when they issued statements. She would have appreciated additional time, but agreed that the issue was largely about bystanders. She said the regulation was one that businesses would not likely do on their own. She said she would vote in favor of the ordinance.

Sandberg said the issue was one of common courtesy and respecting the rights on non-smokers in public spaces. She said although the evidence might not be definitive on vaping, the issue was about the right of people to be in public spaces without being bothered by smoke or vapor. She said it made sense to add it to the smoking ordinance.

Sturbaum said he would remember former council member Anthony Pizzo when he voted for the ordinance. He shared some of his thoughts about the former council member and his efforts to pass the smoking ordinance.

Vote to adopt Ordinance 17-18 [8:50pm]

The motion to adopt Ordinance 17-18 as amended received a roll call vote of Ayes: 7, Nays: 0, Abstain: 1 (Volan).

Ordinance 17-19 – To Amend Title 14 of the Bloomington Municipal Code (BMC) Entitled "Peace and Safety" (Deleting Section 14.36.130 through 150 [Stench Bombs] and Amending Section 14.36.160 [Fencing Around Swimming Pools and Other Water-Filled Excavations])

It was moved and seconded that Ordinance 17-19 be introduced and read by title and synopsis only. The motion was approved by voice vote. Clerk Bolden read Ordinance 17-19 by title and synopsis giving the committee Do Pass recommendation of 7-0-0.

It was moved and seconded that Ordinance 17-19 be adopted.

Mike Rouker, City Attorney, explained the purpose of the ordinance.

Council Questions:

Rollo asked how the ordinance would apply to large temporary pools.

Rouker said the only factor that was considered was the depth of the water in a pool.

Sturbaum asked what would happen if he set off a stink bomb after the ordinance was passed.

Rouker said it would depend on the situation.

Vote to adopt Ordinance 17-19 [8:57pm]

The motion to adopt Ordinance 17-19 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 1 (Sturbaum).

There was no legislation for first reading. LEGISLATION FOR FIRST READING

Sherman spoke about possible topics for an upcoming internal work session. COUNCIL SCHEDULE [8:58pm]

It was moved and seconded to cancel the Internal Work Session on Friday, April 21, 2017. The motion was approved by voice vote.

It was moved and seconded to cancel the Committee of the Whole on Wednesday, April 26, 2017. The motion was approved by voice vote.

The meeting was adjourned at 8:59pm. ADJOURNMENT

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 3RD day of May, 2017.

APPROVE:

Susan Sandberg, PRESIDENT
Bloomington Common Council

ATTEST:

Nicole Bolden, CLERK
City of Bloomington