

In the Council Chambers of the Showers City Hall on Wednesday, April 20, 2016 at 7:34 pm with Council President Andy Ruff presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
April 20, 2016

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

ROLL CALL
[7:34PM]

Council President Ruff gave the Agenda Summation and explained that there was going to be a procedural change in the meeting to allow for a third reading of legislation, Ordinance 16-04.

AGENDA SUMMATION
[7:35PM]

Councilmember Volan moved to amend the normal order of business of the regular session to consider legislation in the following order of readings: third readings, first readings, and second readings and resolutions.

The motion received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that the minutes for the Regular Session of March 23, 2016 be approved. The motion was approved by voice vote.

APPROVAL OF MINUTES
[7:39PM]

Councilmember Rollo mentioned that the Environmental Commission would be presenting awards for the Eco-Heroes Contest. One of the projects focused on biodiversity and he wanted to remind the public and administration about the impact on local wildlife and that it was the responsibility of the city to preserve biodiversity, especially concerning the deer population in the area of Griffy Woods.

REPORTS

- COUNCIL MEMBERS
[7:39PM]

Councilmember Piedmont-Smith continued with what Rollo said and reminded the public that although Earth Day was Friday, Earth Day should be every day due to our rapidly changing climate. She said there were several things we could all do to reduce our impact on the planet such as using reusable bags at the grocery store and requesting to be taken off of junk mail lists. Many other conservation ideas could be found at EarthDay.org.

Volan stated that the current code didn't allow for third readings and the council should revisit that procedure as it allowed for more flexibility and discussion. He called attention to the reduction in arrests over the Little 500 weekend and acknowledged the good work of the Bloomington Police Department. Additionally, he called attention to the VITAL (Volunteers In Teaching Adult Literacy) Quiz Bowl and how it raised money and awareness for the Monroe County Public Library's adult literacy program, which offered literacy training for those who never learned to read or for those who spoke English as a second language.

Christy Langley, the new Director of Planning and Transportation, introduced herself to the Council and stated how happy she was to be working for the City of Bloomington.

- The MAYOR AND CITY
OFFICES [7:47PM]

No reports from Council Committees.

- COUNCIL COMMITTEES

Lindsey Badger, a think tank facilitator with the Monroe County jail which discusses those affected by criminalization, addressed the council on three major topics: housing, policing, and transportation. She said that speech and advocacy students would also be talking on these issues.

- PUBLIC [7:49pm]

Whitney Snyder discussed addiction resources and how Bloomington only had a few sober living houses and they didn't meet the complete need of the area. She also cited several statistics concerning addiction care and effectiveness; those statistics showed that the numbers have remained stagnant and our system is flawed for dealing with this issue.

Zander Daily, spoke on how sober living models don't work for everyone and advocated for a peer to peer model for addiction recovery.

Chris Abram, a member of Indiana Recovery Alliance, read a letter from an incarcerated person advocating for peer to peer counselling for addiction treatment.

Cynthia Bretheim spoke about a proposed Duke Energy substation on 11th and Rogers. She was concerned about having a substation so close to a residential area. She reminded the public about a meeting on the issue on Tuesday April 26, 2016 at 6:00 at the Banneker Center.

Korinne Dunn spoke about accessible transportation for persons recently released from prison. She stated that access to transportation was essential for persons who needed to get to their jobs and/or court-ordered reporting. She referred to previous conversations with Councilmember Volan about the potential for free bus passes.

Marc Haggerty talked about why he was suspicious about the interest of IU and the Democratic Women's Caucus influencing Bloomington local politics. He also stated his support of presidential candidate Bernie Sanders.

Lily Feldman said incarceration was being used to deal with drug treatment. She said drug addiction should be considered a public health issue not a criminal issue.

Brandon Drake, a recovery coach, read a letter from an incarcerated person talking about drug addiction and policing.

Elliot Cramin had questions about the white shirt police and felt city residents should have more information on the program.

It was moved and seconded to appoint Jacqueline Fernetto to the Commission on the Status of Women.
The motion was approved by a voice vote.

APPOINTMENTS TO BOARDS AND COMMISSIONS
[8:14PM]

LEGISLATION FOR THIRD READING

It was moved and seconded that Ordinance 16-04 be introduced and read by title and synopsis. Deputy Clerk Hilderbrand read the legislation and synopsis, giving the committee Do Pass recommendation of 1-0-5.

Ordinance 16-04 - To Amend title 20 (unified Development Ordinance) of the Bloomington Municipal Code- Re: Amending 20.09.230 ("Demolition and Demolition Delay") and 20.11.020

It was moved and seconded that Ordinance 16-04 be postponed.

("Defined Words") to Expedite the Review of Partial Demolition Requests for "Contributing Structures in Residential Zoning

Volan said it allowed for more discussion.

Councilmember Chopra said she supported the ordinance and hoped that the delay wouldn't be permanent.

The motion received a roll call vote of Ayes: 7, Nays: 1.

It was moved and seconded that Ordinance 16-06 be introduced and read by title and synopsis. Deputy Clerk Hilderbrand read the legislation and synopsis.

It was moved and seconded that Appropriation Ordinance 16-03 be introduced and read by title and synopsis. The motion was approved by a voice vote.

Deputy Clerk Hilderbrand read the legislation and synopsis, giving the committee Do Pass recommendation of 8-0-0.

It was moved and seconded that Appropriation Ordinance 16-03 be adopted.

The motion to adopt Appropriation Ordinance 16-03 received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that Ordinance 16-05 be introduced and read by title and synopsis. The motion was approved by a voice vote.

Deputy Clerk Hilderbrand read the legislation and synopsis, giving the committee do pass recommendation of 8-0-0.

Jeff Underwood and Caroline Shaw explained that there was a need for these positions and that there were some staffing shortages. There was a need for a full time position at the front desk.

Councilmember Granger said there was already someone filling the position of the front desk and asked if that person be able to keep their job.

Shaw responded that the person had the opportunity to apply for the job, and that the City gave preference to internal candidates.

Volan said that he had noticed the need for a person at the front desk for a long while and he hoped that in the future there could be a team at the front desk that could handle digital communication also.

It was moved and seconded that Amendment 01 be adopted. This amendment was written to change the title of a staff member in the IT department.

Amendment 01 received a roll call vote of Ayes: 8, Nays: 0

The motion to adopt Ordinance 16-05 as amended received a roll call vote of Ayes: 8, Nays: 0

Districts
[8:15PM]

LEGISLATION FOR FIRST READING

Ordinance 16-06-To Amend Title 12 of the Bloomington Municipal Code Entitled "Streets, Sidewalks, and Storm Sewers" (Amending Chapter 12.04 "General Regulations," Chapter 12.08 "Excavations," and Adding a New Chapter 12.12 "Utilities in the Right-of-Way")
[8:09PM]

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Appropriation Ordinance 16-03- To Specially Appropriate From Alternative Transportation Fund Expenditures
[8:17PM]

Ordinance 16-05-An Ordinance to Amend Ordinance 15-19 which fixed Salaries for Certain City of Bloomington Employees for the year 2016- Re: To Add Staff to the Department of Economic and Sustainable Development, the Office of the Mayor, and the Public Works Department to Meet Increased Need and to Revise Job Titles Within the Parks Department to Better Reflect the Nature of Those Positions
[8:17PM]

A procedural motion was made by Volan to consider Ordinance 16-06 on the same night it received a First Reading.

The motion received a roll call vote of Ayes: 8, Nays: 0.

It was moved and seconded that Ordinance 16-06 be introduced and read by title and synopsis. Deputy Clerk Hilderbrand read the legislation and synopsis.

City Attorney Patty Mulvihill gave a presentation and explained that the state had passed legislation that considered wireless providers as a utility. She said that legislation had clear language that stated that wireless providers and municipalities could not discriminate between which utilities had access to right-of-ways.

Ruff thanked Mulvihill for the presentation.

Volan asked who decided what was considered "necessary devices"

Mulvihill answered, saying that state and federal regulations were very lenient and allowed the provider to make those determinations.

Rollo asked about Title 12.08.150 and what constituted an emergency.

Mulvihill said that it was currently the city's policy to allow utilities to act in the event of an emergency after they notified the city and to retroactively apply for permits after the event passed. She said this change just codified the procedure.

Rollo asked about maximum height of the structures.

Mulvihill said that city zoning restrictions applied unless there was a state or federal rule that overruled local zoning rules. The company would have to notify the engineering department which would notify the legal department.

Granger asked how many excavation permits had been submitted.

Mulvihill said nine cellular permits.

Granger asked about the impact on the street scape.

Mulvihill said there would be some negative impacts, but state regulations didn't give local municipalities the authority to reject them. The locations that had been selected were 2nd Street and Walnut Street at the northwest corner, College Mall Road and 2nd Street at the northeast corner, Dodds and College Ave on the south side, Clarrizz and Buick Cadillac at the northwest corner, Davis and Woodlawn on the west side, 1st Street and Walnut, Hillside and Walnut on the west side, Brownridge and Fieldcrest at the south east corner, Allen and Henderson on the northwest corner.

Rollo asked about the height of those towers

Mulvihill said that they were currently at 40-45 feet.

Piedmont-Smith asked if the current cellular towers would have a height limit.

Mulvihill said no and that the current towers were grandfathered. She added that future towers under the ordinance would be subject to the city's zoning ordinances. She said without local regulations the cellular towers could be constructed at any height or at any location because the City could not treat that utility differently from other utilities.

Ordinance 16-06-To Amend Title 12 of the Bloomington Municipal Code Entitled "Streets, Sidewalks, and Storm Sewers" (Amending Chapter 12.04 "General Regulations," Chapter 12.08 "Excavations," and Adding a New Chapter 12.12 "Utilities in the Right-of-Way")
[8:37PM]

Ordinance 16-06 (cont'd)

Piedmont-Smith asked about how the locations near intersection would affect line of sight for vehicles.

Mulvihill said that the city currently had line of sight rules for other utilities. She said the city could enforce line of sight restrictions which were 2 feet back from road way, out of the clear zone, and be in intersecting property lines.

Piedmont-Smith asked if this would add extra work for staff. Andrew Cibor said that this created more work for his staff but they received these kinds of permits all the time and were prepared.

Councilmember Chopra asked about 12.12 and what the definition of "near" meant in reference to cellular towers being near the intersection of property lines.

Mulvihill said that she was looking to engineering staff to make that determination.

Chopra asked what the minimum lot size was.

Mulvihill said that was a zoning question. Lot sizes change depending on when lots were subdivided. The intention was to make sure that the utility didn't interfere with the front entryway of the property. She admitted that it was a still in process, but the city should act sooner rather than later.

Granger asked about height variances.

Mulvihill said that height variances were not applicable and the tower must adhere to the height restrictions in the zoning ordinance.

Volan asked how many of the nine locations would have been prohibited with the new ordinance.

Mulvihill said it would have affected the height in some residential areas, but some were in the clear zone. She said it prevented some from being over buried utilities and would like to place them in more desirable locations.

Rollo asked if there were any other sites in mind.

Cibor said that the city had expressed concern about some of the locations and was attempting to set a meeting to discuss better locations.

Councilmember Sandberg asked if cellular companies could share the same towers.

Mulvihill said that this was still a startup industry and they could currently collocate

Piedmont-Smith asked what the requirements for public notice were.

Mulvihill said there were none. She said that the city had to treat all utilities the same and that currently other utilities do not need to provide public notice.

Piedmont-Smith asked if there was anything preventing the city from requiring public notice.

Mulvihill said that it could be possible to pass the burden of notification on to the utility provider, but that would require further research.

Rollo asked if the regulations could be modified

Mulvihill said that currently they could be modified because there were no local restrictions on these specific towers; they were only under the state's regulations.

Volan asked about penalties and if it would affect local small businesses working in the right-of-way.

Mulvihill said that the only penalties would be for utility companies.

Ruff asked about time frame to make legislative changes to ensure municipal control on street scape and aesthetics.

Mulvihill said many communities were taking upwards of 16-18 months. She said that courts were more favorable to municipalities when it's a zoning violation.

Piedmont-Smith asked about utilities being on private property.

Mulvihill said that fell under the zoning classifications, and they were not permitted in residentially zoned areas.

Jon Lawrence, chair of the Council on Neighborhood Associations (CONA), said that CONA had a meeting earlier that evening, and they were shocked by the proposed cell tower locations. There were 12 neighborhood representatives present at the meeting, and the members voted to communicate support for Ordinance 16-06 and the council's efforts to regulate utilities in the public right-of-way. CONA viewed it to be a necessary protection for all of Bloomington. Lawrence stated that he had hoped the council would be able to stop the cell towers, but if not, he was glad that the council could at least regulate them.

PUBLIC COMMENT
[9:42PM]

Sandberg said that she saw this as a necessary step and looked forward to future discussion to ensure the street scape, and thought this was a good stop gap measure.

COUNCIL COMMENT
[9:44PM]

Granger said she was frustrated that it seemed that big business was barreling into our neighborhoods. She was supporting the ordinance because this was coming to the neighborhoods and something needed to be done. She said that it was unfortunate that we were late to address this, but it was better late than never.

Piedmont-Smith said that she appreciated the ordinance, but believed that nine location applications were not appropriate and she felt outraged. She also said she was interested in pursuing public notification and publicizing the locations. She said she did enjoy using her cell phone, but felt there were more appropriate locations for wireless towers.

Chopra said she was able to have her questions answered during the work session and would also be interested in public notification.

Rollo also said he appreciated learning about this at the work session. He said that these towers were visual pollution and there could be better locations for the towers.

Mayer thanked staff for writing the ordinance and said he had all of his questions answered at the work session.

Volan said that from his experience living downtown, he doubted that people would notice. He said several utility poles already were at the 40 foot height and most of the locations proposed were in the downtown area. However, he understood that in residential areas

where there were more two story buildings rather than four story buildings, the height regulations should be observed. He said that he supported the ordinance.

COUNCIL COMMENT (Cont'd)

Ruff thanked the staff and said it was in the cellular companies' interest to be sensitive to the will of the people. He noted that CBU was not like public works, and there wasn't a mix of funds.

Volan asked Cibor if the towers were actually contracted from outside third parties that the major cellular companies were using. Cibor affirmed that was the case.

The motion received a roll call vote of Ayes: 8, Nays: 0.

The Internal work session was scheduled for Friday, April 22nd at noon.

COUNCIL SCHEDULE
[9:59PM]

Volan moved to cancel the Committee of the Whole scheduled for April 27, 2016.

The motion was approved by a voice vote.

The meeting was adjourned at 10:02pm.

ADJOURNMENT

APPROVE:

ATTEST:



Andy Ruff, PRESIDENT
Bloomington Common Council

Nicole Bolden, CLERK
City of Bloomington