In the Council Chambers of the Showers City Hall on Wednesday, December 3, 2014 at 7:30 pm with Council President Darryl Neher presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
December 3, 2014
(50 in attendance)

Roll Call: Rollo, Ruff, Sandberg, Volan, Granger, Sturbaum, Neher, Spechler, Volan, Mayer (arr. 8:47 pm)
Absent: none

ROLL CALL

Council President Neher gave the Agenda Summation.

AGENDA SUMMATION

There were no minutes for approval at this meeting.

APPROVAL OF MINUTES

REPORTS

- COUNCIL MEMBERS

Susan Sandberg welcomed the Commission on Aging and commented on the personal importance of the Commission to her because of her recent experience with her father's aging and health.

Marty Spechler spoke about holiday season consumer spending. He commented that although overall spending was strong, in-person retail sales were down because of an increase in online shopping. Online merchants were not required to charge sales tax, but legislation was before Congress that would require sales tax to be applied to the order. He encouraged the community to reach out to Representative Todd Young in support of the legislation.

Steve Volan called attention to the City Administration's choice not to enforce parking meters on Saturdays during the holiday shopping season.

Dave Rollo reported that the Earth had lost half of its wildlife over the previous four decades, according to the World Wildlife Fund, the Zoological Society of London and others. He stated that our expansion as a species and appropriation of resources and habitat were the cause. He encouraged the purchase of local, sustainable gifts to reverse the trend.

Andy Ruff noted that the Hoosier Hills Food Bank announced that they distributed more food in November than they had in the twelve months of 2013. He added that the good news was that HHFB could provide the amount of food, but the bad news was that the demand was that high. He spoke about the Right Livelihood Awards that served as a parallel to the Nobel Prize awards. The awards were given to people who achieved in making the world a better place in fields such as ecology and social justice. One of the award winners in 2014 was Edward Snowden and another was Bill McKibbin of 350.org.

- The MAYOR AND CITY OFFICES

Alice Oestreich, Chair of the Commission on Aging, presented their 2014 Annual Report. She explained that the Commission's goals were threefold: promote a positive perception of aging, increase older adult participation in creative and civic activities, and enhance the skill sets of the workforce to improve quality of life for the population. In 2015, the Commission intended to put a spotlight on aging related initiatives in Indiana.

Volan asked that the report be reissued with a correct date and a list of the Commission members included.

Molly O'Donnell of the Commission on Sustainability presented their 2014 Annual Report. She said the commission promoted economic development, environmental health, and social equity in the community. It measured and reported the community's progress towards sustainability. The commission focused on energy use and sustainable development for the year 2014 by assessing green infrastructure, water system, ambient noise and light in the community, and access to public transit. Bloomington had more solar energy installations than any other city in Indiana, and members of the

Mayor and City Offices (*cont'd*)

Commission were active in the Monroe County Energy Challenge. In 2015, the Commission intended to focus on the Energy Challenge, promote ordinances that would be friendly to environmental agriculture, and to support Bring Your Bag Bloomington.

- COUNCIL COMMITTEES

There were no reports from council committees at this meeting.

- PUBLIC

Jessica Pillar spoke about Court Appointed Special Advocates (CASA) and asked the public to consider volunteering to advocate for children who were victims of abuse and neglect in Monroe County. She urged that dialogue around child abuse and neglect continue in the community.

Claire Boardman read a statement about the rezoning of properties around Indiana University to Institutional. She spoke about the subsequent lawsuits over the zoning.

Cheryl Underwood continued the discussion of rezoning. She accused the Mayor and Council of being unaware of what was occurring within the city's Planning Department. She called on the Council to reverse the rezoned properties to their prior zoning and explained the reasoning behind the lawsuit she brought against the city.

APPOINTMENTS TO BOARDS AND COMMISSIONS

There were no appointments to Boards or Commissions at this meeting.

LEGISLATION FOR SECOND READING AND RESOLUTIONS

Appropriation Ordinance 14-06 To Specially Appropriate from the General Fund, Parks General Fund, Fire Capital Fund, Risk Management Fund, and Rental Inspection Program Fund Expenditures Not Otherwise Appropriated (Appropriating Various Transfers of Funds within the General Fund, Fire Pension Fund; and, Appropriating Additional Funds from the Arts Commission Operating Fund, Risk Management Fund, BMFC Showers Bond, 1998 Street Bond II, Golf Course Bond, BMFC 1998 Street Lease and Rental Inspection Program Fund)

It was moved and seconded that Appropriation Ordinance 14-06 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of Do Pass 7-0-0. She stated that the public comment portion of discussion for the ordinance would serve as the legally advertised public hearing that was advertised in the newspaper.

It was moved and seconded that Appropriation Ordinance 14-06 be adopted.

Controller Jeff Underwood explained that the legislation was the end-of-the-year clean-up ordinance and there would be no impact on the appropriation of tax rates. He laid out the details of the funds which were transferred.

There were no questions from the council. There was no public comment regarding the ordinance.

Appropriation Ordinance 14-06 received a roll call vote of Ayes: 8, Nays: 0 (Mayer was not yet present for this vote)

Ordinance 14-24 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*)

It was moved and seconded that Ordinance 14-24 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of Do Pass 4-1-2.
It was moved and seconded that Ordinance 14-24 be adopted.

Patty Mulvihill, City Attorney, commented that Ordinance 14-24 and Ordinance 14-25 were intertwined, and she spoke about both of them simultaneously. She compared the code as it would be with and without the ordinance. She clarified the intention behind the legislation, saying that it was meant to be less restrictive on mobile food vendors and was not intended to protect brick and mortar restaurants. She said staff wanted to protect Bloomington's community character. She said that the ordinance was a compromise among interested parties. She laid out the amendments to Ordinance 14-24 that were proposed and stated the staff supported Amendments #3, 4, 5, 6, 7, and 8.

Rollo expressed concern that the public was not given adequate notice of the amendments prior to the meeting.

Ordinance 14-24 (*cont'd)*

Volan answered by saying he was not opposed to giving more time for the public to digest the amendments, but he felt it was important to introduce the amendments immediately to begin the discussion. He stated he would not object to postponing final action on the ordinance to another meeting.

Neher asked that the ordinance be discussed to allow the public to comment before delaying.

Volan asked to introduce the amendments in reverse order with the exception of Amendment #5 which he requested be introduced after Amendment #2.

Questions from the council on the intention of the ordinance in general

Sturbaum asked staff if the ordinance was intended to be a procedural correction or a policy change. He asked who was driving the policy change.

Mulvihill answered that the ordinance served as both. She asserted that the previous policy was not working for the different stakeholders, and staff wanted to find a way to streamline the process.

Sturbaum asked for a summary of the new policy direction.

Mulvihill described the desire of mobile food truck vendors to be able to be in close proximity to one another and operate on private property. To accommodate this, policy needed to be changed.

Sturbaum asked who in the city chose the direction the city would go with the ordinance. Mulvihill said it started with the Economic and Sustainable Development Department, the Legal Department, and the Office of the Mayor. She said they wanted to encourage new business but balance it with the need for community character.

Sturbaum asked if this meant that the city wanted more mobile food truck vendors. Mulvihill said she did not think that that was necessarily the meaning behind the legislation, but the city needed to meet the demand of the public.

Sandberg asked who in the brick and mortar community stepped up to weigh in on the ordinance. She commented on several emails from brick and mortar restaurants the council had received the day of the meeting that stated concern about the ordinance. Mulvihill assured the council that they reached out to brick and mortar establishments. She indicated that the feedback received from the outreach was included in the discussion. She reiterated that the ordinance was a legitimate compromise.

Volan asked to what extent the proposed ordinance was stricter than the current code. Mulvihill stated that the fifty foot requirement could be considered stricter than regulations of a license cap, increased penalties, revocation of permits, and a decibel limit for generators.

Spechler stated his concern about market fairness. He asserted that mobile food vendors and brick and mortar restaurants should be taxed in the same way. He wanted to know if staff had reached out to other cities to find out how much food trucks paid in taxes in relation to brick and mortar restaurants. Mulvihill explained that the city could not tax mobile food vendors, but they could charge license fees. State Statute also indicated that these fees had to be related to the program and expenses associated with issuing the licenses.

Spechler asked about business taxes. Mulvihill was not certain if the city had the authority to impose that type of tax.

Amendment #8 to Ordinance 14-24

It was moved and seconded to introduce Amendment #8 to Ordinance 14-24 for consideration.

Volan noted that he was actually a co-sponsor on all amendments presented for the ordinance. He explained that the amendment corrected the ordinance to require mobile food trucks to be fifteen feet away from a fire hydrant, instead of ten feet, in order to comply with State Code.

Mulvihill stated that the law was likely based on the amount of space needed for firefighters to access the hydrant and asked that the council fix the ordinance to ensure compliance.

Sandberg asked if this would further limit the designated spots in which vendors could set up their trucks. Mulvihill stated that staff did not have time to look into the issue but was confident that the map would be updated.

Sandberg asked again whether this would further limit the spots. Mulvihill said she was not prepared to answer the question that evening.

There was no council comment on Amendment #8. There was no public comment on Amendment #8.

Amendment #8 to Ordinance 14-24

Sponsor: Neher
Fixed clerical error to state that mobile food vendors and pushcarts be parked at least fifteen feet away from a fire hydrant according to Indiana Code 9-12-16-5(e).

Amendment #8 to Ordinance 14-24 received a roll call vote of Ayes: 9, Nays: 0

Vote on Amendment #8

It was moved and seconded to introduce Amendment #7 to Ordinance 14-24 for consideration.

Volan explained that this amendment added specific examples of the kinds of sound and light that would be prohibited by the ordinance.

Sturbaum asked if the specific part of the ordinance under discussion would ban ice cream trucks from circulating in neighborhoods.
Mulvihill said that ice cream trucks were exempt from this regulation.

Public Comment:
Kay Bull commented that there were five parking meters with blinking lights outside of Max's Place that were annoying to patrons inside.

Council Comment:
Dorothy Granger said she appreciated the amendment's clarity.

Volan said he would appreciate support of the amendment.

Amendment #7 to Ordinance 14-24

Sponsor: Volan
Clarified definitions of amplified sounds and aural devices by giving examples of these attention drawing devices.

Amendment #7 to Ordinance 14-24 received a roll call vote of Ayes: 9, Nays: 0

Vote on Amendment #7

It was moved and seconded to introduce Amendment #6 to Ordinance 14-24 for consideration.

Volan explained that the amendment increased the decibel (dBA) limit on generators from 60dBA to 70dBA, established a specific distance for the measurement, and removed the requirement for the manufacturer's specifications to be submitted with the application for license.

Neher pointed out that 70dBA is actually two times the volume of 60dBA. He stated that some sources indicated that noises of at least 80dBA could cause hearing damage. He cautioned that moving the decibel level higher would make it difficult to lower in the future, and he believed starting at 70dBA would provide a starting benchmark.

Sturbaum asked why the manufacturer's specifications were being removed. Neher explained that it would allow mufflers or other modifications to be added to the generator to lower the decibel level.

Sturbaum asked if there would be testing of the decibel level instead of the submitted specifications. Neher confirmed that there would be.

Amendment #6 to Ordinance 14-24

Sponsor: Neher
1) increased the permitted decibel level for generators from 60 dBA to 70 dBA.
2) established a distance of four feet by which the decibel level of the generator is measured.
3) deleted the requirement that the manufacturer's specifications of existing generators be submitted with the application which would allow generators to be modified to meet the new levels.

Sandberg asked what fuel was used to power the generators. Mulvihill indicated that nothing in the ordinance regulated emissions.

Volan said that emissions standards are beyond the regulatory authority of the city and the authority remained with the State. Mulvihill said staff could not find any guidance on what the emissions should be for a vehicle that remained idle and not in motion. She said staff remained open to suggestions.

Sandberg asked if this was taken into consideration for the limit on how many mobile food vendors could be in one place at any given time. Mulvihill stated that the fifty foot distance regulation rather than a number cap could still work to serve this purpose. She said that if there was a vehicle that was a nuisance there were mechanisms within the ordinance to approach that problem.

Rollo asked where the fifty foot limit would be measured from. Mulvihill stated that the unamended ordinance indicated that it would be measured from the facade but cautioned that there would be an amendment that would include outdoor seating areas.

Spechler asked how Home Rule would work if the council wanted to limit vehicle emissions. Mulvihill stated that there would need to be research into the State Code to determine if there was any indication on emission levels because Home Rule only applied if there was no rule in the State Code.

Neher asked how the amendment would reconcile with the city's noise ordinance. Mulvihill said they would work in tandem. The amendment would only take effect if the noise complaint was related to a generator. Other types of noise would be under the purview of the Noise Ordinance, which uses a reasonable standard.

Neher asked why the reasonable standard would not apply to the generator. Mulvihill stated that the more specific provision applied therefore the generator standard would take precedence.

Rollo stated that 70dBA was comparable to a vacuum cleaner. He asked if the 60dBA would prohibit most generators. Mulvihill said that the vendors indicated that they could not meet the 60dBA standard. She indicated that other cities ranged from 60dBA to 100dBA. She said staff considered that businesses had already invested money into generators and allowing modification would allow vendors to continue to use those generators.

Neher said that there was also a distance standard added in the amendment.

Volan stated that his interest in the amendment was the set measurement distance. He commented that both brick and mortar establishments and mobile food vendors had invested heavily in their businesses, and he wanted to split the difference with noise. He pointed out that the issue could be brought up again to correct details that turned out not to work.

Rollo asked if there were noise complaints about vendors. Mulvihill stated that staff had received feedback that generators were too loud.

Public Comment:
Darlene Gonzalez stated that the National Institute of Health website indicated that hearing loss occurred at volumes greater than 85dBA. She also said that manufacturers measure volume at twenty-three feet instead of four feet. She said that vendors would need to purchase generators that were set at 55dBA to only produce 60dBA at four feet. These generators would not be able to operate a food truck.

Steve Swihart, Director of the Bloomington Independent Restaurant Association (BIRA) stated that the organization did not take a stand on the issue at hand. He said that decibels were not the way this should be

measured because ambient traffic noise was 85dBA. He did not have an alternative way to measure.

Chad Sutor, owner of the Big Cheeze, stated that the further away from the source of the noise the measurement was taken, the lower the decibels. He said that fifty feet away from the source, a 70dBA noise dropped down to 48 dBA.

Gregg Rago, Nick's English Hut, stated that 70dBA was a reasonable place to start. He urged the council to start somewhere and revisit the issue if it proved to be a problem.

Darlene Gonzalez spoke again to say that the Amendment was not reasonable and that the limit would damage business.

Sturbaum asked if the methodology of the measurement would work.

Volan stated that they needed to come up with a standard. He said the most important aspect to him was an established distance at which to measure the noise, but he was not set on the distance as it was laid out in the amendment. He said he had experienced both being annoyed by the noise of food trucks and enjoying the food they provided. He said he was willing to withdraw the amendment.

Spechler stated that he spoke with a noise engineer on the topic. He said that the council would have to revisit the issue when more subjective comments came in during the summer months.

Volan said that the council had the same problem with the Neighborhood Noise Ordinance. He said the previous standard was so hard to enforce that it was useless. He said the standard was changed to work in neighborhoods, but the standard could not apply to the downtown area. He said mixed use areas needed to be more specific.

Sandberg said that the issue was about context. She said that while carnivals should be loud, activities in the downtown needed to be respectful to everyone using the area. She said she would support the amendment as long as there would be a revisiting of the issue when more comments came in.

Granger said that she was not comfortable with 80dBA, and she was unhappy with 70dBA. She said she did not want to restrict mobile truck vendors out of business. She cautioned people to keep in mind that the decibel requirement was not just made for people walking in the downtown area but also for the customers of the trucks. She said she would vote for the amendment.

Mayer said the discussion about the noise was the wrong direction for the conversation to take. He said the environmental risks of food trucks were more important to discuss. He said the limits should be as low as possible. He said he would not support the amendment.

Sturbaum revisited the comment about 70dBA measured at four feet being more stringent than 60dBA without a clear distance of measurement. He said he could not support the amendment when he did not fully understand the change.

Volan recalled the issue of pornography businesses that were at risk of being restricted out of business. He said that these restrictions were unconstitutional. He said that focusing on environmental issues was outside of the purpose of the council, and the council needed to take every issue into consideration. He reiterated that he was willing to withdraw the amendment.

Amendment #6 to Ordinance 14-24 (*cont'd*)

Neher asked staff what condition the ordinance would be in without the amendment. Mulvihill said if the amendment did not pass, the limit would be set at 60dBA without a definitive distance at which to measure. She expressed concern that without a standard, staff would have difficulty with enforcement. She said that the ordinance needed to start somewhere and make modifications if necessary.

Neher said he did not want to put something into place that created a conundrum. He said he would make a motion to withdraw the amendment.

Volan asked that councilmembers be given another opportunity to comment.

Sturbaum said they needed more time on the issue.

Granger said Mayer changed her mind, and she needed more time to think about it. She intended to pass.

Sandberg supported withdrawal of the amendment. She said she was concerned about the environmental and noise effects.

Volan said his goal was to reduce ambiguity to help staff and the public to know the law clearly.

Rollo said that specificity was important. He said the council was responsible to set the standard. He supported the stringency of the amendment.

Volan said he wanted to correct the issues as soon as possible. He would be willing to wait until the first cycle of 2015 if necessary.

Mayer said that language should be added to require that the least polluting equipment be used.

Spechler stated the issue of the amendment was to make the ordinance as strong as possible and then examine if the ordinance was acceptable.

It was moved and seconded to withdraw Amendment #6.

Vote on Motion to Withdraw Amendment #6 to Ordinance 14-24

The motion to withdraw Amendment #6 to Ordinance 14-24 received a roll call vote of Ayes: 8, Nays: 1 (Spechler).

Amendment #4 to Ordinance 14-24
Sponsor: Volan

It was moved and seconded to introduce Amendment #4 to Ordinance 14-24 for consideration.

Allowed for mobile food vendors and pushcarts to operate on private property twenty four hours a day. It also changed the hours which they are prohibited from being located on any public property from 4:00 a.m. - 7:30 a.m. to 4:30 a.m. - 6:30 a.m. to allow for them to serve breakfast.

Volan explained that this amendment was to change the regulation on when mobile food vendors could operate. He said it did not make sense to limit operation when any private property owner could be operating within that window. He was concerned about the legality of this restriction. He said preventing them from opening during potential business hours would cause undue strain. He said the goal of this requirement was to prevent food trucks from being able to stay in one place for twenty-four hours. The amendment would give more time to set up for food trucks while still keeping the original intention.

Granger asked if this meant that trucks could come in at 5:30am to set up or if they had to come at 6:30am. Volan said that they were allowed to arrive at 6:30am.

Public Comment:
Andrew Weissert, Nowhere Mandrews, said he liked the amendment making it more lenient for food trucks. He said it would be hard to get off of the street by 4:30am, and the amendment was still too restrictive.

Volan said that the amendment was lenient, and he was open to revisiting the issue if it proved overly restrictive. He asked for support from the council.

Vote on Amendment #4 to Ordinance 14-24

Amendment #4 to Ordinance 14-24 received a roll call vote of Ayes: 7, Nays: 1 (Mayer), Abstain: 1 (Sturbaum)

It was moved and seconded to introduce Amendment #3 to Ordinance 14-24 for consideration.

Amendment #3 to Ordinance 14-24

Sponsor: Ruff
Codified the ability of an enforcement officer to issue a warning instead of having to immediately issue a fine for a violation of any of the three chapters described in this ordinance. The language mirrors language found in the current Noise Ordinance.

Volan explained that this amendment would codify officer discretion to issue a warning. He praised the spirit of cooperation so far in the evening. Sandberg asked if there could only be one warning.

Volan indicated that the language of the legislation would provide for only one warning.

Mulvihill said there would be communication between ticketing authorities about which mobile food vendors had received a warning. She clarified that the Economic and Sustainable Development Department, the Legal Department, and Police Departments would be the ticketing authorities. She said that a second warning could be issued a few years after the previous warning. She explained that the goal of the warnings and tickets were to gain compliance not to raise revenue.

Sandberg asked for staff to confirm that there would be communication among departments. Mulvihill assured the council that she would be the point person for communications.

Mayer asked for a 90 day grace period from adoption to be added to the language. Mulvihill said that the request would be reasonable. She said that staff generally tried to have a grace period after any ordinance was adopted.

Volan encouraged discussion on the grace period.

Ruff asked Mulvihill to comment on Volan's statement. Mulvihill suggested that language be added that allowed enforcement authorities to grant as many warnings as necessary in the grace period in order to gain compliance. She said that language could also be added that clarified the interim necessary between warnings.

Volan said he supported the language that would define a clear period between warnings. He requested that the council hear public comment before taking further action.

Sturbaum supported postponing the ordinance to another meeting to allow staff to write the language.

Spechler said that the ordinance had too many issues to be considered for a final vote. He said he believed law enforcement agencies needed to have discretion. He asked why further language was necessary.

Volan said the unamended ordinance would not allow enforcement authorities to issue a warning.

Granger asked if the Economic and Sustainable Development staff would find a grace period beneficial to communicate with all the mobile food vendors. Mulvihill said staff intended to communicate everything.

Public Comment:
Gregg Rago asked that the council consider creating an auxiliary enforcement entity that would be available to enforce the ordinance to prevent it from being a burden on the Police Department.

Amendment #3 to Ordinance 14-24 (*cont'd*)

Council Comment:
Volan said he supported creating a civil enforcement entity. He said it was necessary to create this distinction.

Spechler thanked Ruff for including the amendment. He said the language in the amendment would not prevent an enforcement officer from issuing more than one warning. He said he would support the amendment.

Ruff commented that the wording was not perfect but the intent was clear.

Vote on Amendment #3 to Ordinance 14-24

Amendment #3 to Ordinance 14-24 received a roll call votes of Ayes: 6, Nays: 1 (Mayer), Abstain: 2 (Sturbaum, Sandberg)

Amendment #2 to Ordinance 14-24

It was moved and seconded that Amendment #2 to Ordinance 14-24 be introduced for consideration.

Sponsor: Neher
Clarified the fifty feet will be measured from either the façade of a ground level establishment or from such an establishment's outdoor seating perimeter.

Volan explained that the amendment would change the fifty foot restriction measurement from the facade of a brick and mortar establishment to the outdoor seating area.

Neher said the city went to great lengths to determine the viable amount of space that a brick and mortar establishment could use for outdoor seating.

Sturbaum asked why a less stringent policy was necessary. Volan said that the fifty foot rule would cause enough limitation that maintaining a cap on how many vendors could be in one area would be unnecessary.

Neher pointed out that he was not a sponsor of Amendment #5 which created less stringent policy if Amendment #2 was accepted.

Spechler said that the language of the amendment needed to determine where the fifty foot measurement would end on a food truck. He said that no part of the food truck should be within the fifty feet. Mulvihill said the language indicated that no part of the food truck can be within fifty feet of the facade of a restaurant.

Granger asked if the area in front of Foodworks would be restricted. Jason Carnes indicated that it would be. He said the map of restricted areas was a work in progress.

Ruff asked how the ordinance would apply to convenience stores. Volan said that the intent behind the ordinance was to affect institutions that were regulated by the County Board of Health.

Ruff asked if there was a clear definition of which institutes would be regulated within the ordinance. Mulvihill said that the intent was clear even though the language was not.

Ruff asked if staff foresaw a problem with the lack of clarity. Mulvihill said that the complaint may be registered but the code would not apply because convenience stores sell food as an accessory, not a primary use.

Volan suggested that the phrase "and is licensed by the County Board of Health" be added to the amendment.

Granger asked if the Health Department needed to license mobile food vendors. Mulvihill said it would.

Volan asked if the map of restricted areas would be part of the code. Mulvihill said it would not. It would be updated with the opening and closing of businesses. Brick and mortar restaurants and mobile food vendors would be updated when the ordinance passed and with every map update.

Public Comment:
Alison Zook, owner of A.Z. Vintage, spoke about her partnership with mobile food vendors for events. She explained that the ordinance would prevent food vendors from setting up outside of her store. She asked if the restrictions would still apply after a business causing the restriction closed for the evening. She then read statements from Nicci Boroski, co-owner of the Back Door, and Bridgett Divohl, owner of Royale Hair Parlor. Boroski pointed out that having food available allowed patrons to cut their intoxication after attending events. Divohl said mobile food vendors build the business community, draw people downtown, and contribute revenue to the city.

Talia Halliday, owner of Gathering, spoke in support of mobile food vendors. The annual handmade market that she hosted relied on the presence of food trucks to draw in more patrons. She said that food trucks added to the overall atmosphere and considered them an asset to her business. She said that mobile food vendors were part of the art, music, and theatre scenes for the community. She encouraged the council to postpone a vote on the ordinance.

Amber Connor spoke in support of mobile food vendors. She drew attention to the difference between the clientele of mobile foods vendors and brick and mortar businesses. She said she would not choose to go to a food truck instead of a restaurant if she came downtown to go to a restaurant. She read statements from Amy Richardson, Ashley Rutter, Christine Davenport, and Cindy Bradburg in support of mobile food vendors.

Wendy McConnell said having mobile food vending as an option gave more opportunities to start up entrepreneurs. She read the statements of Matt Wickward, Marie Metelnick, Duane Robinson, and Jim Cosi in support of mobile food vendors.

Jackie Howard, owner of Bea's Soda Bar, spoke on her business' use of local ingredients and partnership with local, brick and mortar establishments. The fifty foot restriction would prevent her from participating in festivals that were in the downtown area. She said the ordinance would force her to change the way she did business. She asked the council to change the ordinance to allow owners to leave their vehicles unattended or to reduce the fifty foot rule to thirty foot. She also asked for the ordinance to not apply when a business was closed, for restaurants to be able to give written permission to use the space in front of their business, and for private property owners to be able to provide written permission instead of requiring the business to submit a site plan. She closed by suggesting the creation of a food truck lot.

Volan asked why restaurants should not be allowed to waive the fifty foot rule. Mulvihill said the concern surrounded abutting restaurants and keeping track of written permission. She said that the staff sought consistency.

Volan asked why permission could not be consistent. Mulvihill said that it would change on a day to day basis and per vendor.

Volan compared keeping track of these permissions to keeping track of warnings. Mulvihill said warnings could be tracked by two or three staff members while permissions would need to be tracked by hundreds of officers.

Volan asked why the fifty foot rule needed to be in effect when a restaurant was closed. Mulvihill said staff wanted officers to know, twenty four hours a day, if the location was permitted.
Rollo wanted to distinguish between a truck with a generator and a pushcart. He said he was sympathetic to brick and mortar establishments

Amendment #2 to Ordinance 14-24 (*cont'd*)

that had made a considerable investment and were not able to move to another location. He supported the amendment.

Ruff said he was sensitive to preventing too much of a burden on enforcement. He said he was not convinced there was not a way to support enforcement officers while still allowing mobile food vendors to operate in front of a restaurant after hours.

Spechler said he supported the amendment. He expressed concern that allowing permissions for some mobile food vendors would encourage people to assume that the spaces were available for everyone.

Sandberg reminded the council that at the meeting they had heard from mobile food vendors but not from the brick and mortar owners that had reached out via email. She encouraged the council to consider everyone who had reached out in order to come to a compromise between competing interests.

Sturbaum said there should be common sense when a business was closed. He asked for an attempt to add this to the ordinance.

Neher said other cities had one hundred foot and two hundred foot restrictions. He appreciated the discussion around the amendment. He emphasized that the ordinance would come down to enforcement and the balance of demands on law enforcement's time.

Volan commented that all bars were required to have food available for patrons. He said the spirit of that law was to provide a way for intoxicated patrons to cut down on drunkenness. He encouraged bar owners to take caution before exporting that duty on to food trucks. He said the amendment was meant to support the reasonable assumption that two vendors would not take over the space that a brick and mortar restaurant could expect to use. He reiterated that the rule should not apply when the nearby restaurant was closed or if the vendor was given written permission. He said that this was not a simple issue.

Ruff reiterated that he was supportive of the fifty foot rule.

Vote on Amendment #2 to Ordinance 14-24

Amendment #2 to Ordinance 14-24 received a roll call votes of Ayes: 9, Nays: 0

It was moved and seconded that Amendment #5 to Ordinance 14-24 be introduced.

Amendment #5 to Ordinance 14-24

Sponsor: Volan
Deleted the creation of the three specialized districts (Kirkwood, Courthouse Square and Restaurant Row) and limitation of the operation of food trucks and pushcarts within them. It also deleted the licensing caps.

Volan said that this amendment would remove the restriction on the number of mobile food vendors that could be in an area and remove the limit on the number of licenses issued. He said the limit on the number of available spaces would serve as a suitable restriction.

Mulvihill said this would give staff the time to see how the ordinance would work and make tweaks as necessary.

Rollo asked how many vendors could be on the Courthouse Square. Volan said that vendors may not be able to sell products if they are located in angled spaces. Mulvihill said that were five spaces available on the Square.

Rollo asked how many more food vendors could be in the Kirkwood area without the limit. Mulvihill said there would be twenty-five available spaces.

Rollo asked about Restaurant Row on 4th Street. Mulvihill said there would be more spaces on the south side of the road near Indiana Avenue, one space on the north side near the City Lot and then some spaces near the fire station.

Amendment #5 to Ordinance 14-24 *(cont'd)*

Sturbaum asked if this amendment was meant to clean up the ordinance or send a policy message to say that the city was amenable to getting more vendors on the street. Volan said that it was intended to be both. He said that all the spaces available on Restaurant Row would be a block away from brick and mortar restaurants. He said there would not be harm in having trucks parked together away from residences which would be allowed after this amendment.

Sturbaum asked why the amendment was crucial. Volan said the limits were unnecessary.

Neher asked staff what the impact on Kirkwood Avenue from Indiana Avenue to Grant Street would be. Mulvihill said the amendment would limit spaces to six spaces instead of ten prior to the fifty foot rule and Amendment #5.
Ruff asked if eliminating the limits on the number of licenses would create an expectation of a guaranteed spot to vend. Mulvihill said that it might limit the areas downtown, but it would open more spots around the city outside of the downtown area.

Spechler asked if a food truck would be allowed to operate near Ballantine Hall on campus. Mulvihill said that would be up to the University. Spechler asked staff to speculate on the University's decision.

Mulvihill said she was not comfortable speaking on the University's decision. Spechler said the University would consider the operation of a food vendor on campus a negative.

Public Comment:
Jeff Mease, owner of One World Enterprises, said he appreciated food truck culture and the entrepreneurship that it represented. He spoke about Portland's food truck culture. He also suggested that the lot on 6th Street would be a viable location for a food truck gathering or pod. He also said providing power could cut down on generator noise.

Spechler said that he supported the amendment because the limit on the number of food trucks in one area was problematic.

Sturbaum said that the amendment would send the wrong message.

Volan asked what the right message would be. He said that the amendment would open options around the city instead of creating more competition in the downtown area.

Sandberg expressed mixed feelings about the amendment. She said she liked the idea of food truck pods, but she was concerned about damage to the special nature of the downtown area's atmosphere.

Vote on Amendment #5 to Ordinance 14-24

Amendment #5 to Ordinance 14-24 received a roll call votes of Ayes: 5, Nays: 4 (Mayer, Sturbaum, Sandberg, Rollo)

Motion to Postpone Ordinance 14-24 as amended

It was moved and seconded to postpone Ordinance 14-24 as amended by Amendments 2, 3, 4, 5, 7, 8 until the next available meeting.

Spechler said that the ordinance was very complicated and would affect sensitive areas of downtown. He said that other stakeholders needed time to be able to weigh in.

Mulvihill indicated that she could not be present if this ordinance was continued to December 17, 2014.

It was moved and seconded to allow public comment before council comment.
The motion was approved by a voice vote.

Ordinance 14-24 as amended *(cont'd)*

Public Comment:
Jackie Howard spoke in support of postponing the ordinance. She said that spending more time before the passage of the ordinance would be beneficial to the effort of reaching clarity and consistency.

Andrew Weissert said that postponing the ordinance until after the first of the year would be beneficial.

Gregg Rago, from Nick's, asked if postponing would mean enforcement would also be postponed. Neher indicated that it would.

Darlene Gonzales said that the ordinance should not be taken lightly. She encouraged the council to get it right the first time and reach the best compromise.

Susan Bright, Nick's English Hut, spoke in favor of postponement.

Volan asked when the next available meeting would be. Staff indicated that the ordinance would need to be reintroduced if council waited until after the first of the year.

Sandberg asked if a meeting the next week would be possible.

Mulvihill committed to meeting with more stakeholders prior to a special session on December 10, 2014.

Sturbaum asked what was on the schedule for January. Council Attorney Dan Sherman said that there might be a tax abatement.

Volan encouraged the council to put the ordinance on the agenda for January 14th, 2015

Sandberg said she wanted to work on the ordinance before January to create a benchmark as quickly as possible.

Spechler said his memory would be better served considering the ordinance in December rather than postponing it to January.

Neher said that it was necessary to move the ordinance forward to commit to making the corrected ordinance a priority for the council.
Rollo said he was concerned about the noise element of the food trucks. He said that having more food trucks in one area could create more noise.

Volan said there needed to be more than a week to further study the effects of the ordinance.

Mayer said that a decision was needed. He said that delaying the ordinance longer than December 10, 2014 would risk the council losing focus and attention.

Sturbaum acknowledged that there was not consensus on every amendment. He asked the council to consider the message that the ordinance would send.

Granger said she wanted the ordinance moved to December 10th in order to prevent similar questions from being brought up again.

Volan said he would vote against the motion because he wanted the ordinance to be postponed until after December 10th, 2014.

Neher said that moving the ordinance to December 10th, 2014 would not mean that it could not be postponed again to allow further discussion.

Volan said that moving the ordinance to December 17th, 2014 was still an option despite Mulvihill's inability to attend.

The motion to postpone Ordinance 14-24 as amended by Amendments 2, 3, 4, 5, 7, 8 until December10, 2014 received a roll call vote of Ayes: 7, Nays: 2 (Rollo, Volan)

Vote on Postponement of Ordinance 14-24 as Amended

It was moved and seconded to postpone consideration of Ordinance 14-25 until the meeting on December 10, 2015

The motion to postpone Ordinance 14-25 received a roll call vote of Ayes: 8, Nays: 0, Abstain: 1 (Volan)

Ordinance 14-25 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)

Ordinance 14-26 To Amend Title Two of The Bloomington Municipal Code Entitled "Administration and Personnel" (Amending Section 2.08.020 which Sets Forth General Provisions for the Establishment, Membership, and Operation of Boards, Commissions, and Councils, and Amending Section 2.23.090(d) to Bring the Expiration Date of the Commission on Aging in Line with Other Such Local Entities)

LEGISLATION FOR FIRST READING

Ordinance 14-26

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

PUBLIC COMMENT

Sherman noted that there was a Work Session Friday, December 5th, 2014. Neher polled the council on their intention to attend and announced that they would keep the Work Session on the schedule.

COUNCIL SCHEDULE

The meeting was adjourned at 12:05 am.

ADJOURNMENT

APPROVE:

Darryl Neher, PRESIDENT
Bloomington Common Council

ATTEST:

Regina Moore, CLERK
City of Bloomington