

In the Council Chambers of the Showers City Hall on Wednesday, November 14, 2012 at 7:30 pm with Council President Tim Mayer presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
November 14, 2012

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

ROLL CALL

Council President Mayer gave the Agenda Summation

AGENDA SUMMATION

Minutes for November 7, 2012 were approved by a voice vote

APPROVAL OF MINUTES

Chris Sturbaum noted that Mayor Kruzan returned a duck, named DJ, to a child after it had been confiscated by Animal Control, and he said that this was good government reacting to bureaucracy.

REPORTS:

- COUNCILMEMBERS

Dorothy Granger noted the City/County Residents Breakfast would be held at Rachel's Café on 3rd Street on Saturday, November 17th. She said the Local Growers Guild would be presenting a program.

Andy Ruff announced that the committee working on the vision statement for the update of the Growth Policies Plan for the City of Bloomington held a meeting to work on the statement. He said the debate at the latest meeting was about a statement regarding a goal "of reducing the overall dependence on the automobile." He said some thought it was a negative statement, and that he objected strongly to the removal of that statement. He said the current plan made references to this concept, and he wanted council members to know about this debate and 'controversy.'

Steve Volan thanked Ruff for the details of his report, and said that the GPP would set the tone for other city policies and documents. He said that the statement should not be an issue and was 'appalled' that the appropriateness of this sentence was questioned.

He said that the fall IU semester included a full week of break at Thanksgiving for the first time. He then commended the mayor for returning the DJ the Duck to a child in Bloomington.

Marty Spechler said he was not against people using their cars, but that the proper way to get a balance in transportation was to improve the convenience and safety of using bicycles and walking. He said that people should not be penalized for using their cars.

He said that he was part of a group of faith community leaders that announced that in the spring of 2013 the group would hold a charrette with an outside consultant to help design a better, more comprehensive approach to dealing with the homeless problems in Bloomington. He said he was encouraged that people wanted to help the homeless.

Tim Mayer noted that Housing and Neighborhood Development Department Program Manager, Marilyn Patterson, was awarded the Woman of the Year Award by Girls, Inc., and he congratulated her. He asked citizens to think about the folks affected by Hurricane Sandy and help them if possible, especially during the holiday season. He also commented on the DJ the Duck issue.

Adam Wason, Communications Director for the Office of the Mayor, read a proclamation by Mayor Kruzan which proclaimed Sunday, November 18, 2012 as Hoosier Hills Food Bank Day to honor the Hoosier Hills Food Bank on the celebration of its 30th anniversary. Julio Alonso, Director of HHFB, noted the support of the past councils and

- MAYOR and CITY OFFICES

administrations of the City of Bloomington of the food bank, and thanked them for their efforts.

Jan Grant, Chair of the City of Bloomington Arts Commissions, updated the council on their grant awards for this year that totaled \$12500 and were given to fourteen organizations.

Adam Wason noted that the SPEA Service Corps Fellows, graduate students in the Masters program, worked on several important projects in the city administration and highlighted their projects for the council.

There were no reports at this meeting.

Mayer asked for public comment.

Daniel McMullen spoke about economic issues and democracy.

It was moved and seconded that Ordinance 12-26 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation to accept the petitioner's request for withdrawal of this item by a vote of 7-0-0.

The petitioner was present at the meeting, but did not speak to the issue. There was a motion and second to withdraw this ordinance.

The motion to accept the request to withdraw Ordinance 12-26 received a roll call vote of Ayes: 9, Nays: 0.

It was moved and seconded that Ordinance 12-27 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the committee recommendation of Do Pass 1-0-5. It was moved and seconded that Ordinance 12-27 be adopted.

Lisa Abbott, HAND Director, reviewed amendments proposed to clarify items in the ordinance. She showed a video from Underwriters Laboratories that showed "Legacy" rooms (natural fibers) vs. "Modern" rooms (man made fibers) and their rates of combustibility and issues dealing with smoke from the fires. The video indicated the higher flammability of man made fibers used in today's furniture and stressed the importance of early notification of fire.

She noted the length and depth of the committee discussion on the item and said she would answer questions rather than repeat information.

Mayer called for the amendments to be introduced.

It was moved and seconded to adopt Amendment #1. The motion was approved by a voice vote.

Neher said the issues in Amendment #1 addressed some concerns of Attorney Mike Carmin who spoke during the committee meeting.

Patty Mulvihill, Assistant City Attorney, said that definitions and clarifications were added. She said three of his issues were actually addressed by other sections of the Code, or were not included for the sake of consistency within the Code.

Volan asked for clarification on #8 of the summary about the 60 day correction period. Mulvihill said this wasn't singling out one type of permit but served to actually make the all permits consistent.

Mayer called for public comments on this amendment, but there were none.

Reports from the MAYOR and CITY OFFICES (cont'd)

- COUNCIL COMMITTEE:
- PUBLIC INPUT

LEGISLATION FOR SECOND READING

Ordinance 12-26 To Vacate a Public Parcel -- Re: Portion of Morton Street Right-of-Way, South of Kirkwood Avenue and Directly West of the B-Line Trail (CFC, Inc., Petitioner)

Ordinance 12-27 To Amend Title 16 of the Bloomington Municipal Code Entitled "Housing Inspection" (Repealing and Reenacting Title 16 with the New Title Name of "Residential Rental Unit and Lodging Establishment Inspection Program" and a Total of Ten Chapters)

Amendment #1

This amendment makes nine changes:

- Part 1 adds a reasonable person standard to the Director's ability to call for additional documentation regarding the strength or proper operation of something inside of a residential rental unit or lodging establishment.
- Part 2 deletes a vague statement in the ordinance that did not provide specific information as to when the Director may or may not make certain changes.
- Part 3 ensures that Section 16.06.020 is consistent with Section 16.03.040(c)(1) and makes it clear that a complaint inspection will only occur if there appears to be a violation of Title 16.

Motion to adopt Amendment #1 to Ordinance 12-27 received a roll call vote of Ayes: 8, Nays: 0. (Sandberg was out of the room when this vote was taken.)

--Part 4 adds a new definition of "accessory structure" as these types of structures are regulated by Title 16.

--Part 5 defines the word "equipment." As equipment is regularly used and regulated in Title 16, a definition is appropriate.

--Part 6 makes it clear that the exterior of the property of a residential rental unit or lodging establishment is only subject to the regulations of Title 16 if property is made available to the relevant occupants.

--Part 7 deletes any reference to the residential care facility having to be owned and operated by the same person or corporation. Ownership is not necessarily germane.

--Part 8 makes 4-year and 5-year permits consistent with 3-year permit in allowing the owner to make the inspections in either the 60-day standard correction period or within the extended period of time granted by the Board of Housing Quality Appeals.

--Part 9 corrects a typographical error in one cite to the NFPA regarding carbon monoxide detectors. The cite is 72 rather than 720.

It was moved and seconded to adopt Amendment #2. The motion was approved by a voice vote.

Lisa Abbott, Director of HAND, said that the department would rather have the smoke detector requirement implemented sooner than this amendment allowed, and she greatly appreciated the spirit of cooperation over the issue.

Neher noted that he wanted to balance pressures on landlords in the issue, and that this would allow for a phase-in for the smoke detector requirements to allow for publication and extends the deadline for compliance.

Council Questions:

Volan asked Neher and Mayer, sponsors, to explain the delay in asking for compliance in residential units. Neher said the discussion with landlords regarding financial issues and logistical concerns in meeting the original proposed date indicated that the landlords needed more time, but were in agreement with the spirit of the proposed law. Mayer said that his thought was that this allowed landlords to comply with the law but not set them back financially, especially with regards to their other financial obligations to rental units.

Volan said that his concern was about the issuance of 3, 4, and 5 year permits, and what that would mean to landlords.

Mulvihill said that there were only two exceptions to completing hard wiring for smoke detectors within five years. She said brand new rental units must be in compliance by 1/1/14. She said if a building permit on a structure required a Certificate of Zoning Compliance, the upgrade would be needed at that time. She said that the length of permits was not related to these two issues.

Volan said his personal example was that he rented out rooms in his home and had a three year permit. He said he felt he should be in compliance at the end of his present permit period rather than at the end

Amendment #2 This amendment is sponsored by Councilmembers Neher and Mayer and changes the effective date for the smoke detector requirements. The amendment promotes public safety by ensuring the installation of hard-wired smoke detectors in all rental units while acknowledging the financial considerations the requirements will place on owners of residential rental property. These changes will require: (a) newly registered residential rental units to comply with these provisions for applications filed after January 1, 2014; (b) residential rental units where a Certificate of Zoning Compliance is issued in conjunction with an application for a building permit to comply with these provisions for permit applications filed after January 1, 2014; and (c) all residential rental units to comply with these provisions by December 31, 2018.

of 2018. Neher said that this was not to be associated with a permit cycle, but rather a deadline for full compliance.

Rollo asked what would happen if a landlord was not compliant by 2018 and it was not immediately discovered. Mulvihill said that if the city would find out, staff could start an enforcement action. Rollo said he was referring to an accident, and noted that that an aggrieved family member could sue the landlord. Mulvihill said she couldn't really comment on the landlords' civil liability. Rollo asked if the city was liable if a landlord didn't comply by the deadline. Mulvihill said the onus was on the landlord. Mulvihill explained the Tort Claims Act regarding the failure to enforce a local or state law.

Mayer called for public comment but there was none at this point.

Council comments:

Volan said he appreciated the effort the amendment made for the time for compliance, but he would like to have had the shortest cycle permit to comply at the earliest possible time. He said the amendment came too late for him to make this case and change it, and said the compressed legislative cycle used by this council was at fault.

Spechler said he appreciated Mayer and Neher's effort in offering this amendment. He said that he couldn't vote for the amendment because he said that four years was too much of an extension of time. He said real estate businesses realize that these costs must be borne, that the money should be recovered by rents over a period of time, and that they would have a relationship with financial institutions to help them with initial expenses. He said the ten year lifetime of a smoke detector could be recouped by a raise in rent of \$5 per month. He said he might be able to accept a compromise of one or two years, but not four.

Granger said that she supported hard wiring for smoke detectors, but understood the issues involved in the need for an extension of the deadline. She urged landlords to complete this task as early as possible.

Neher said that he was not willing to make an assumption that financial institutions would be available to make loans in the present economic climate. He said many landlords worked on narrow margins and that logistical and financial constraints were an issue. He asked the council members to accept the amendment.

Sandberg said she had carefully read the materials provided and was grateful for the proposed amendment. She said this would not be harmful for businesses that provide rental housing and that more time would allow them to incorporate this requirement into their business plan. She said that it was respectful to be aware of the landlords' issues in compliance. She urged quick compliance with the requirement to possibly save a life, but understood the additional time needed for some.

Ruff said staff, landlords, council members and community all cared about the reasons behind the measure to improve safety in rental units. He said he appreciated the amendment, adding that it genuinely addressed legitimate concerns of fairness in implementation and yet maintained the goal and spirit behind the proposal.

Volan asked if his idea of having compliance associated with the end of rental permits would create a rolling compliance date in advance of the 2018 date. He said he would have liked to have seen a compromise between Spechler's position and the amendment. He said he believed more units would come into compliance sooner rather than later. He said he shared Spechler's concern. He said the rental units, 67% of housing stock, were the de facto student housing as IU had never housed

Amendment #2 (cont'd)

all of its students. He pondered on how IU would make these changes if they were responsible for all units being changed, and said that the amendment was worthwhile, even though it did not move as quickly as he would have preferred.

Sturbaum said he had recently talked to a fire fighter who said she had recently seen a fire where a fatality was related to a smoke detector problem. He also asked a group of students if they had ever taken a battery out of a smoke detector, and was surprised that all of them had. He called this a serious issue, but unfair to do it in such a way that high costs were borne by landlords. He said this was a life and death issue, and would also call attention to landlords and tenants to the issues. He said this would strike a good balance in timeline, and hoped it was not too flexible.

Mayer said rent would need to be raised \$10-15 per month to recoup the cost of hard wired smoke detectors. He noted that the consideration of the smoking ordinance in the past had brought forth a number of the same concerns about compliance. He said the council had extended the compliance date, and many establishments were in compliance ahead of that date. He also said that at some point, the hard wired smoke detectors would be a point that renters would consider in choosing a place to live. He thanked Neher and Council Attorney/Administrator, Dan Sherman, for putting together the amendment.

Amendment #2 to Ordinance 12-27 received a roll call vote of Ayes: 8, Nays: 1 (Spechler).

Council Questions:

Mayer asked for Abbott to provide information on the ordinance as amended. Abbott said there was a prohibition of upholstered furniture on porches, that chipping and peeling paint be handled by EPA safe work practices. She said the code would hopefully be more readable in its new format.

Ordinance 12-27 as amended

Mayer called for questions from staff. He called for public comment on the ordinance as amended.

Public Comment:

Chuck Switzer, an attorney with Faegre, Baker, Daniels, said he was representing Orchard Glen Housing Cooperative. He appreciated the council and HAND for listening to the concerns of the community and thanked them for streamlining and re-organizing Title 16. He said there were not general objections to the proposed ordinance, but that the housing cooperatives were treated as rental units under the proposal. He said that the coop would like housing cooperatives to be treated in the same manner as condos and single family homes. He said this would exempt them from the hard wired smoke detectors. He said Orchard Glen was owned by 350 members, with more than 700 people living there. He said they shared in the cost of upkeep, landscaping and maintenance for the whole property. He said the pride of ownership and proprietary interest led the members to think of themselves as more of a condominium association than renters, but under the changes to Title 16, they would be treated as a rental property. He said the burden would be borne by the members, and that there was almost no margin or profit well for this cooperative as there was no landlord and no financing.

Nikki Johnson, CFC Properties, thanked the council members who met with her and Jim Murphy about their concerns. She noted that with the smoke detector ordinance being more stringent than state code and in conflict with state code, it would need state Fire Safety Commission approval. She said Maureen Ward, an attorney with Indiana Apartment

Association, had presented the council with the applicable codes. She said private citizens and corporate citizens were obliged to abide by laws and that government should do so also.

Chris Bomba, Parker Real Estate Management, said he was happy the amendments were proposed and passed. He said the properties he owned would be in compliance by the deadline.

Tommy Guthrie, Varsity Properties, said he did not agree that there was a huge difference between the wired and battery operated smoke detectors. He appreciated the extension of time as the cost to him for upgrades would be \$380,000 or about \$800 per unit. He reiterated that he did not agree with doing the upgrades and didn't want anyone to die, but he didn't think this would change student behavior and life styles. He noted that smoke detectors were checked each time a tenant moved in and out, in addition to the city inspections.

Gandalf Farnum, Vice President of the Orchard Glen Cooperative Board, said he was recently informed of the changes proposed. He said that property taxes paid could be deducted from his tax returns, and that legal ownership was similar to other home ownership.

Keith Hoover, a 3rd District resident, asked why all residents in Bloomington should not have to comply with this proposal. He said he had a small number of rental houses and could be in compliance by the middle of 2013, but understood the issues with larger landlords. He said that the 2018 date excluded the idea that newer technology might be developed that would more fully solve the problem.

Further Council Questions:

Mayer asked staff if they wanted to make further comment. Mulvihill said she had been in contact with the cooperative's attorney and had asked for a variety of documents including by-laws, rules and regulations, and articles of incorporation. She said the city had reviewed them all and found that this property was a hybrid – not traditionally a rental, and not owner occupied. She said it was much more akin to a rental unit. She said the only way a person could be removed from their condo would be if they stopped paying property taxes or mortgage. Cooperatives could evict residents for not maintaining their units, noise violations, or other reasons. The city legal department determined that that was the defining difference and so they were not excluded from the regulations.

Mayer asked if the Orchard Glen Coop was in multiple locations. Mulvihill said the property was in one location and that the city had been inspecting it since 1972. Mayer declined to discuss the nature of cooperatives with a questioning person from the public, and said the discussion could take place with staff.

Volan asked if this was the only cooperative in the city. Mulvihill said that this was the only one being inspected now, and that there were other ones that were being developed. Volan asked how the other cooperatives would be determined to be owner occupied or rental. Mulvihill said that language in the agreement indicated what kind of cooperative it was, and HUD identified the cooperative in question as a rental property.

Spechler asked if the legislation proposed was against state code, because he was concerned about going to court. Mulvihill said that municipalities could not just ask for a court decision to determine if an ordinance was valid. She added that even if a judgement was issued before the ordinance was passed, that judgement could be appealed.

Council Comments:

Ordinance 12-27 as amended
(cont'd)

Sturbaum said he was initially concerned about the cost to landlords, but he felt that the city had made a compelling interest in public safety. He said this ordinance would make everyone play by the same rules.

Spechler said that landlords would have to pay five dollars a month in order to afford this upgrade.

Neher said that he hoped to work with HAND to incentivize early adoption of smoke alarms before the 2018 deadline. He said he hoped to involve all renters in promoting fire safety.

Sandberg said she supported the administration, and she did not feel that public safety was a waste of city tax dollars. She said that the ordinance was proposed to minimize risk, set standards, and promote public safety.

Volan said that the housing market was growing because the population was growing. He said that public transportation needed to grow alongside the housing market in order to adapt to the larger population.

Mayer said that the discussion focused on fire detectors, but the property management code had been streamlined by the ordinance.

Ordinance 12-27 as amended by Amendment #1 and #2 received a roll call vote of Ayes: 9, Nays: 0.

LEGISLATION FOR FIRST
READING

Appropriation Ordinance 12-04 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, Parks General Fund, and Risk Management Fund; and, Appropriating Additional Funds from the Fire Capital Fund, Risk Management Fund and Rental Inspection Program Fund)

Appropriation Ordinance 12-04

There was no public comment at this time.

PUBLIC INPUT

It was moved and seconded to suspend the rules to allow for appointments to boards and commissions. The motion was approved by a voice vote.

APPOINTMENTS TO BOARDS
AND COMMISSIONS

It was moved and seconded to appoint Deborah Myerson and Dedamia Whitney to the Environmental Commission. The appointments were approved by a voice vote.

Dan Sherman, Council Attorney/Administrator, detailed the proposed council schedule for the year 2013. It was moved and seconded to approve the 2013 council schedule.

COUNCIL SCHEDULE

The motion to approve the council schedule received a roll call vote of Ayes: 4 (Granger, Sturbaum, Sandberg, Mayer), Nays: 3 (Ruff, Rollo, Volan), Abstain: 2 (Spechler, Neher).

The meeting was adjourned at 10:03 pm.

ADJOURNMENT

APPROVE:

ATTEST:



Timothy Mayer, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington