

In the Council Chambers of the Showers City Hall on Wednesday, April 15, 2009, at 7:30 pm with Council President Andy Ruff presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
April 15, 2009

Roll Call: Piedmont-Smith, Rollo (9:08), Ruff, Sandberg, Satterfield, Sturbaum, Volan, Wisler (7:47)
Absent: Mayer

ROLL CALL

Council President Ruff gave the Agenda Summation

AGENDA SUMMATION

There were no minutes for approval at this meeting.

APPROVAL OF MINUTES

Susan Sandberg mentioned the Homeward Bound Walk to be held on Sunday, April 19th at 3rd Street Park in support of agencies that provided assistance to the homeless population.

REPORTS:
COUNCILMEMBERS

Andy Ruff noted a recent report by Forbes Magazine that ranked Bloomington in the top 5 of Best Small Places for businesses and careers. He said he remembered an orchestrated campaign of rumors in the late 1990s to portray Bloomington as anti-business or hostile to business. He said the campaign ended because of the absurdity of the claim. He said that Bloomington currently ranked close to the top of most lists that rank business friendliness, business success, good climate for start up businesses and job creation. He said since that campaign was "dropped," the city was doing better, which indicated that the misguided campaign had been detrimental to the economy of the community in the 90s.

There were no reports from the Mayor's Office.

MAYOR and CITY OFFICES

There were no council committee reports at this meeting.

COUNCIL COMMITTEES

Citizen Jim Hart asked the council to consider the establishment of a "Dignity Village" to help with the needs of the homeless in a manner that would acknowledge a right to dignity, safety, public health and sanitation. He noted other communities had established such places.

PUBLIC INPUT

Robert Rogers, city resident, said he was starting a non-profit group named Fathers Against Non Support (FANS). He said that economic development should be defined and addressed in broader terms so that someone like himself, who had been incarcerated for non-payment of child support, would not have to face the issues of trying to find a job as a felon.

Larsen Clark, from an IU legislative research and advocacy group, said they had written a proposal regarding air pollution. Boris LaSebikinov said that the SPEA group studied the complexity of air pollution and proposed credits that could be traded between businesses.

Citizen Hal Taylor said he had about 250 names on a petition signed by homeless and low income citizens as well as more affluent citizens. He asked that serious consideration be given to some kind of housing for the homeless in the difficult months ahead.

Marc Haggerty, west side resident, said that providing child care during public meetings would allow parents to participate in democracy, sit on boards and commissions and attend public meetings. He said this would also close the gap between economic classes in the community.

There were no appointments to boards or commissions at this meeting.

BOARD AND COMMISSION APPOINTMENTS

It was moved and seconded that Resolution 09-04 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, stating that there was no committee recommendation.

LEGISLATION FOR SECOND READING

It was moved and seconded that Resolution 09-04 be adopted.

Resolution 09-04 To Reapprove Recommendations of the Mayor for Distribution of Community Development Block Grant Funds for 2009

Lisa Abbott, Director of Housing and Neighborhood Development, noted that \$744,000 was allocated for Community Development Block Grant (CDBG) funding in this resolution.

Volan asked why this was being reapproved and Clerk Moore noted that Resolution 09-03 was inadvertently filed in the wrong folder after the meeting at which it was approved, and instead of going into the folder for the mayor's signature, ended up filed with the completed legislation to be distributed. She said that this wasn't discovered until she was ready to copy, distribute and permanently file the completed legislation as usual. Moore apologized for the inconvenience and delay of passage to all who were associated with the funding.

Abbott noted that she had built plenty of time into the entire review process, and that there was no actual inconvenience.

Wisler asked if there was any change in the amount of funding in this resolution compared to the previous approved resolution. Abbott said that the numbers were exactly the same.

Referring to the Stimulus Package, Piedmont-Smith asked if there was any word of additional funding for the CDBG process. Abbot said there had been an additional \$224,000 coming to the city, but she did not have with her a copy of the rules governing the allocation of those funds. She said the process for that allocation had not been started but she was hopeful that the regular CDBG funding formulas would apply. This would allow allocations for both physical improvements and social services.

Resolution 09-04 received a roll call vote of Ayes: 7, Nays: 0. (Rollo had not yet arrived)

It was moved and seconded that Appropriation Ordinance 09-02 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 8-0-1. It was moved and seconded that Appropriation Ordinance 09-02 be adopted.

Appropriation Ordinance 09-02 To Specially Appropriate from the General Fund Expenditures Not Otherwise Appropriated (Appropriating Funds from the General Fund for Additional Design Services for Improvements at the Atwater and Henderson Intersection)

Mike Trexler, City Controller, said that a portion of the road near the 1901 Legg House was in need of improvement. He said that INDOT was funding about 75% of the work and that one of their process stipulations was that there would be no adverse effect on the historic property. He said that Indiana University was donating property to the city for the project, but asked that the wall to guide pedestrian traffic to the intersection be designed to match some of the other stone walls in the area. He said upon reviewing the plan, the State Historical Officer found that the wall, as designed, looked as if it could be misconstrued as part of the original structure, and that would have an adverse effect on the property.

Trexler said there would be a lengthy INDOT process to mitigate that adverse effect and the appropriation was to fund a consultant to guide the city through that process.

Appropriation Ordinance 09-02

Volan asked when the changes to the intersection would begin and also asked about the approval process for the intersection changes.

(cont'd)

Susie Johnson, Director of Public Works, said that the finding of adverse effect slowed this project. She said that the appropriation ordinance would allow the design process to continue. Volan clarified that the design of the whole intersection was yet to be vetted with the public, to which Johnson agreed. Volan asked when the public meetings would be held on this intersection design, to which Johnson said probably in the coming summer.

Sandberg asked if an adverse effect would still have been found if the retaining wall was more modern looking in design. Johnson said it probably would have, and that there was a fine line in making a determination.

Wisler asked if there were other similar cases, precedents or ways to argue the adverse effect finding. Johnson said Nancy Hiestand, Preservation Officer for the City, could not persuade them otherwise. Wisler asked what would happen if the city just upgraded the intersection with the wall as designed, to which Johnson said INDOT would pull funding from the project. Johnson said this was akin to an environmental problem being found, in that the problems needed to be mitigated before funding was released. Johnson said that this was a 90/10 reimbursement of funds, so it was worthwhile to not just use general funds to complete the project. Wisler and Johnson clarified that the funding did not include the design costs.

Sturbaum asked if this was a red tape issue. Johnson said it was.

Ruff asked if Johnson had gotten any messages from the public that indicated a belief that the city was trying to drag the project on. Johnson said that one citizen thought that a design was going to be approved at this meeting, but she told them that was not the case.

In final councilmember comments, Wisler said he was originally inclined to vote against this appropriation to make the point that it was absurd that a completely subjective matter of opinion could tie up important project like this. He said the city wanted to move forward with the project, but their hands were tied. He said he wanted this project to move forward and therefore he would support the appropriation. He thanked Johnson for making the case that the City did know how to build its own roads and ought to be allowed to do so.

Volan said that the council had been concerned with the intersection of Dunn, Atwater, Third and Indiana for quite a while. He said the debate centered on pedestrian traffic, and that delineators had been installed to prevent traffic from entering neighborhoods. He said that it was unfortunate that this could have been derailed by the state, although he was appreciative of the state's sense of history. He said it was a shame that this held up the whole intersection, which was supposed to be finished in 2009.

Appropriation Ordinance 09-02 received a roll call vote of Ayes: 7, Nays: 0. (Rollo had not yet arrived)

It was moved and seconded that Ordinance 09-06 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 4-2-3. It was moved and seconded that Ordinance 09-06 be adopted.

Ordinance 09-06 To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic" (Changes in Provisions Regarding One-Way Alleys, Various Parking Regulations, Crosswalks, and Penalties)

Volan said that the amendment would not decrease the number of parking spaces on the block in question, nor would it increase the perceived width of Walnut Street in that block. He said from his experience this was one of the heaviest pedestrian-used blocks in the city after 10:00 pm and added that people continually jay-walk across the road to the parking garage. He noted the argument for the original ordinance plan to remove parking from the west side of the street included concern for the safety of these jay-walking pedestrians, that it would make it easier for them to see cars coming north on Walnut, and that east bound travelers on 8th Street stopped at Walnut could not see traffic coming north on Walnut with cars parked on the west side of the street.

In addressing these concerns, Volan said that parked cars on the west side of the street actually gave a bit of a buffer for pedestrians walking across the street mid block. He said that he did agree that oncoming traffic was hard to see for a car or pedestrian stopped at 8th Street and Walnut.

He said his study of the area led him to believe some changes could be made, none of which would require changing the Bloomington Municipal Code. He suggested a zebra striped cross walk at the south side of the intersection with 8th Street, a bump out on the east side of Walnut at 8th Street, and parking on the east side of the street.

Volan said that the city needed to reconsider the timing of the lights on Walnut, as they are timed to expedite a fast trip through town. He said that drivers on Walnut sped up to make the light at 7th Street, and were traveling the fastest at the very place where pedestrians were jay-walking across Walnut. He acknowledged that this was an engineering problem and couldn't be decided with any discussion at the meeting. He said more study was needed to make changes with the timing of the lights. He then said that all these measures needed to be considered for the evenings between 10:00 pm and 4:00 am.

He said that Amendment #1 under consideration only established parking on the east side of Walnut in the block from 7th to 8th Streets, while the ordinance removed it from the west side.

Piedmont-Smith noted that she was a co-sponsor of this amendment.

Susie Johnson said she supported Volan's amendment.

Sandberg asked Johnson about any reservations with the timing of the stoplights. Johnson said that there were several engineering studies that indicated that changing sequenced stoplights to flashing lights actually increased crashes. She said a City study and analysis should be conducted before anything was done with the traffic lights. She said the discussion and preliminary data collection had begun, but she was not prepared to make a modification based on the amendment at this time.

Sturbaum asked if Johnson was committed to researching this and examining the possibility of changing the traffic lights.

Satterfield noted that the aerial photos were a little misleading and asked if there was a more graphic representation of the bumpouts. Johnson said the idea had just come up the day before, and that nothing had been prepared.

Volan interjected that his philosophy was that wherever parking could be added to both sides of a street, it should be done. He added that he

Amendment #1 to Ordinance 09-06
This amendment is co-sponsored by Councilmembers Volan and Piedmont-Smith and adds parking on the east side of Walnut between 7th and 8th Street at the same time the ordinance removes parking on the west side of the street. The additional spaces will be enforced as 2-hour parking from 5:00 a.m. 5:00 p.m. on Monday through Saturday. Please note that support for this amendment rests, in part, on improvements that do not involve a change in the code. These include: striping the perimeter of the new parking spaces, installing "bump-outs" and a marked "sharrows" lane along the east side of the street to help narrow the roadway, marking the crosswalk at 8th Street with zebra stripes and "yield to pedestrian" signs and exploring changes to the signalization at 7th Street.

would rather have that happen in this instance, even though he was sponsoring this amendment. He said that Walnut Street south of 7th Street was wider than north of 7th Street and wouldn't accommodate three traffic lanes plus two lanes of parking. He added that he was personally ambivalent about the solution, and believed the real problem was with the timing of the traffic light on 7th and Walnut.

Piedmont-Smith asked if traffic would have to jog a little to one side if there was parking allowed on the east side of Walnut in the block in question and also allowed in the west side of Walnut on the next block. Johnson said it wouldn't have to do that.

Johnson said this ordinance portion was brought forward by the request of the property owner of Kilroy's Sports Bar and the Bloomington Police Department. She said a discussion with Volan had occurred at the last minute, and that there had been no real survey or scope of the project that would entail changing the traffic lights. She said that they would support what the council decided but also expressed ambivalence.

Piedmont-Smith said that a 90 Day Order had been in place to ban parking in front of Kilroy's and asked Johnson if traffic in the western most lane jogged to the right after crossing 8th Street. Johnson said it did not. Piedmont-Smith asked if all lanes would be located slightly to the west if parking was added to the east side of Walnut between 7th and 8th Streets. Johnson said the issue would need study to determine that fact.

Wisler asked about the width of Walnut Street south of 7th Street. Johnson said that it was about 2 feet wider, resulting from the garage being built closer to the street. She said that in front of the garage there were three 11-foot lanes and an 8-foot parking lane. Volan asked about the width of a bike lane there, which Johnson said was 4 feet wide.

Wisler asked the minimum width needed for three traffic lanes and 2 parking lanes. Johnson said that the minimum on an arterial street was 11 feet per lane. Wisler said there was not a current width for parking on each side, while there was south of 7th Street.

Satterfield asked about a more comprehensive plan to upgrade Walnut Street, and said that he was concerned about any modification that might be made that would have to be changed later. He asked if there was a chance of an investment that might have to be changed with in a couple of years. Johnson said if there was a change in this main arterial street, it would need to be done through the Metropolitan Planning Organization, and would not want the funding of a plan to be done with General Fund dollars. She said that project would take more than one to two years and said she was not sure that North Walnut Street was a priority for that kind of a major overhaul. She said that slowing traffic between 7th and 10th Streets and making it safer for pedestrians could probably be done without a major overhaul and the administration would entertain those thoughts and ideas coming from the council, her staff and the community. Satterfield asked if the proposed modifications in the amendment would fit into any future plan, to which Johnson said there was no way of telling that.

Sandberg said her concern was with the loss of parking. She asked if there had been conversations with other businesses in the area. Piedmont-Smith said that she had a call and email with a business owner who opposed the removal of parking. Volan said that the amendment basically moved parking from the west side of the street to the east side and would not result in the loss of parking spaces. He said

the bigger question was if this solution was needed at this time. Volan said that if the amendment didn't pass, he would introduce a second amendment to restore parking to the west side of Walnut.

Ruff asked if there was reason to believe that more accidents could result from a change of the traffic light. Johnson said the information came from engineering studies. Ruff said he would assume that increasing speeds in the area would increase accidents where past street widening had increased speeds. He asked Johnson if any studies had been done on that section of Walnut Street. Johnson said there had not been. She said that one of the main reasons for eliminating parking on the west side of the street was the sight line problems for cars traveling east on 8th Street approaching Walnut. Ruff asked how many spaces would need to be removed to improve the sight line. Justin Wykoff, Director of Engineering Services, said that four spaces would need to be removed based on the speeds on Walnut.

Volan said that 8th Street was the road that law enforcement used to go to points north and east. He said a car waiting to cross Walnut Street could not see oncoming cars. He said it was a unique situation.

Ruff asked if the parking issue had been reviewed by the Traffic Commission and the Bicycle and Pedestrian Safety Commission. There was an answer that it had been discussed at the former but not the latter.

Ruff asked what non-ordinance changes the sponsors wished to see as a result of passing the amendment. Piedmont-Smith said that they anticipated zebra striping on the south side of the intersection of 8th and Walnut, along with signage that clearly states that drivers must yield to pedestrians who are crossing there. She said that they expected parking spaces on the east side of Walnut to be clearly marked so that even when there were not cars parked there, the spaces would visually narrow Walnut Street. She said that they expected to have a traffic study done at the light at 7th and Walnut to see what improvements might be made to slow traffic. She said that bumpouts would be installed at 8th and Walnut.

Volan added that the eastern lane on Walnut would also become a sharrow lane. He agreed that signs should point to the crosswalk, but didn't expect a 'yield to pedestrian' sign. After asked to address the question of signage, Johnson said appropriate signs would be installed. She said these would be triangular signs to indicate a crosswalk, but would not include a 'yield to pedestrian' sign.

Volan asked if a 'crosswalk ahead' sign could be added before the actual crosswalk signs.

Ruff asked what level of agreement had been reached with staff on these items. Volan said that he trusted Johnson and Wykoff and their ability and willingness to do these things. He said his own ambivalence came from the fact that studies may show there was no change warranted in the signals. He said that there needed to be some change to stop the traffic going 30 mph through synchronized lights and understood their reluctance to commit to change before studies had been done. He said he was eager to hear from persons using these intersections.

Wisler asked Volan if he was going to introduce a second amendment if Amendment #1 was adopted. Volan said he would not.
Public comment on the ordinance:

Buff Brown said that the group Bloomington Transportation for People (BTOP) had brought a number of experts on transportation to speak in the city in recent years. He said that others had spoken on pedestrian safety, walk ability and pedestrian environments and that all of them had said that parked cars created a parking buffer that was an imperative part of traffic calming, pedestrian safety and driver safety. He showed a slide from Dan Burden's talk that showed how parking, trees, traffic lanes and sidewalks had been altered for safety sake in the last fifty years. But he said that trend would reverse itself in the next fifty years. He said that if sight lines were really a problem, many parking places would be removed. He gave the example of angled parking on the square where a driver would have to back completely into a lane of traffic to see oncoming traffic. He also said that the amendment had not been well thought out and urged the council to table it.

Maggie Prall of Kilroy's Sports Bar said the request to remove parking in front of her business was purely a matter of public safety. She said that she, Johnson, Wykoff and the mayor had been working on this issue for two years, with the suggestions for the amendment and non-code issues coming from them as a business on that block. She said that there had been many accidents in this area in the last two years, and that they didn't include Kilroy's customers exclusively. She said that the Smallwood bus stopping at 7th and general use of the parking garage increased traffic in this area. She said she would actually like a street light at 8th Street, but knowing that this was an expensive and long proposition, offered the suggestions previously mentioned for the problem.

Prall also said that there was a similar visibility problem at 8th and College Streets with cars parked in front of Smallwood. She said she would not like parking on the west side of Walnut, so therefore would support the amendment. She added that a bumpout would cause a similar visibility issue for motorists coming out of the garage. She said that not having parking in front of her business would allow persons to drop off or pick up patrons, and leave the area free for police cars, and she didn't think it was good to have cars there. Prall said that her business staffed the street area with up to four or five persons to help pedestrians get across the street.

Wisler thanked Prall for her input. He asked if her concern was that the cars impaired the line of sight of pedestrians crossing to the parking garage. Prall said that the traffic was the problem.

Sandberg asked Prall for her objections to parking being established on the right side of Walnut. Prall said she had no objections, but that she thought the bumpout would create the same problem with the traffic exiting the garage.

Sturbaum asked Prall if she thought a stoplight would be a good solution. Prall said that it would be good, but synchronization would be an issue. Sturbaum asked the Public Works staff if pedestrians or cars were counted in figuring warrants and asked if Johnson thought a stoplight would be warranted at the corner of 8th and Walnut. She said both were counted, and that the volume of traffic might not warrant a light at this intersection.

Satterfield said that there were a lot of inconsistencies in the way facets of the problem were being approached. He said he was interested in tabling the amendment, and in effect table the ordinance until a later time. Council Attorney Dan Sherman explained the options of this action.

Volan asked for a clarification of Satterfield's intent to table or postpone the ordinance. Satterfield said his motion was not to postpone, but to table the amendment.

It was moved and seconded to table Amendment #1 to Ordinance 09-06 with the effect of actually tabling the Ordinance. The motion was not debatable and needed a majority to pass.

The motion received a roll call vote of Ayes: 5 (Rollo, Wisler, Piedmont-Smith, Ruff and Satterfield), Nays: 3 (Sandberg, Volan, Sturbaum) and therefore passed. Ordinance 09-06 was tabled and would need to be brought back before the end of the year.

It was moved and seconded that Ordinance 09-05 be introduced and read by title and synopsis. Clerk Moore read the legislation and synopsis, giving the Committee Do-Pass Recommendation of 3-1-5. It was moved and seconded that Ordinance 09-05 be adopted.

Miah Michaelsen, Assistant Director of the Department of Economic and Sustainable Development, said that this ordinance was a collaboration between the Controller, Public Works, Legal and Parks and Recreation Departments along with her office. She said that the current section of the code had been reviewed and the proposed ordinance was proposed to more effectively streamline the coordinating and permitting of vending and soliciting activity in the city. She summarized the major changes with definitions, types of licenses and fee structures, requirements in public display of the license, adherence to the noise ordinance, adherence to fire and health precautions, insurance requirements and specific areas on the B-line and areas near other establishments where the vending and soliciting would or would not be permitted. She said there was an appeal procedure attached to the ordinance also.

It was moved and seconded that Amendment #1 to Ordinance 09-05 be adopted.

Piedmont-Smith outlined the provisions of the amendment as stated in the amendment summary. Michaelsen said she appreciated the opportunity to discuss the issue after these items were brought forth after the committee meeting on the ordinance.

During the public comment section the following persons spoke:

David White said it wasn't clear to him whether an appeal would be possible if a permit was revoked. He was directed to speak to a member of the staff with that particular information.

Marc Haggerty was concerned about insurance requirements, and what criteria would be considered in granting the licenses. He wondered which actual persons would be granting the licenses.

Robert Rogers, resident, said his conversation with Councilmember Sandberg had enlightened him on some aspects of the ordinance because the newspaper article had not been clear about some of the provisions. He thanked the council for taking out the sections on denying a license because of criminal history.

Erin Marshall said she appreciated taking out the sections regarding criminal history and added that it was a step towards preventing classism in the community. She said she was concerned about the provision regarding insurance, and was interested in assistance for

Amendment #1 to Ordinance 09-06
(cont'd)

MOTION TO TABLE

Ordinance 09-06 tabled.

Ordinance 09-05 To Amend Title 4 of the Bloomington Municipal Code Entitled "Business Licenses and Regulations" Re: Replacing Section 4.04.110 (Lunch Wagon) and Chapter 4.16 (Itinerant Merchants) with Chapter 4.16 (Itinerant Merchants, Solicitors, and Peddlers)

Amendment #1 to Ordinance 09-05 This amendment is sponsored by Councilmembers Piedmont-Smith, Satterfield and Sturbaum and comes forward with the support of the Office of the Mayor. The changes affect the application and revocation provisions and also make a few other minor corrections to other provisions as well. In particular, the changes to the application procedures remove the requirement that the applicant:

- File a social security number (See Section 2);
- File statement of criminal convictions or a copy of a criminal history check (See Section 3) and no longer make convictions of crimes a basis for denial of an application (but still make violations of the Chapter a discretionary basis for denial) (See Section 4); or
- Provide a photograph that would be attached to the license (See Section 5).

those who could not afford insurance.

Jennifer Mickel wondered if it was more beneficial for the vendor or the city for the vendors to have insurance.

Wisler said this was a step in the right direction, although he still had concerns about the ordinance as a whole. He said he supported the amendment.

Piedmont-Smith thanked all those who worked on the amendment and added that it made the ordinance better and more solid.

The Amendment #1 to Ordinance 09-05 received a roll call vote of Ayes: 7, Nays: 0, Abstain: 1 (Volan).

It was moved and seconded that Amendment #2 to Ordinance 09-05 be adopted.

Piedmont-Smith said that the amendment clarified the extent of the prohibition of itinerant merchants with regards to special events making clear that such sales were allowed on private property under certain conditions.

Michaelsen said the administration was supportive and appreciated dialogue in the creation of the amendment.

Satterfield asked if the one block radius in the amendment was any different from the "100 block delineation" that was previously discussed. She said it was the same.

Volan asked if the amendment corrected something that was not in the city's jurisdiction, i.e., what occurred on private property. Sherman noted that Volan's question was larger than the setting up shop in a yard and getting a special use permit. Sherman said three council members and three staff members met with him and indicated that they did not intend for the ordinance to cover private property within the buffer of special events. He said he would not foresee a litigation if it was not included, as the city would not enforce it. Volan asked Piedmont-Smith if the amendment just corrected unenforceable language. She said she had read the ordinance to mean that there could be no vending on private property within the one block radius of a special event, but either way she believed the amendment to be a good one.

Michaelsen said the administration never wanted the ordinance to be applicable to private property and appreciated the amendment for clarifying the issue.

There was no public comment on this amendment.

The Amendment #2 to Ordinance 09-05 received a roll call vote of Ayes: 8, Nays: 0.

Rollo asked what personal injury or property damage insurance as outlined in the ordinance would cost. Michaelsen said quotes ranged from \$180 to \$300 for an annual policy, with professional arts organizations that offer policies to their members. Rollo asked about the 'hold harmless' clauses in regards to the insurance requirements. Patty Mulvihill, Assistant City Attorney, said that it was to protect the public. Rollo asked about any exclusionary aspect of the ordinance, and wondered if the city could assist those of limited means in purchasing insurance. Michaelsen said it was discussed and

The changes to the revocation procedure:

- Require city staff to contact licensees whose license has been revoked either by phone or in person at the same time as the letter of revocation is mailed (See Section 6)

Lastly, the changes make some corrections and changes in numbering elsewhere in the ordinance (See Sections 1, 7 and 8).

Amendment #2 to Ordinance 09-05

This amendment is sponsored by Councilmember Piedmont-Smith and clarifies that vendors who conduct business on private property are not prohibited by this ordinance from doing so within a block radius of special events. Please note that those vendors would still need to have written permission from the owner of the property who, in turn, would need to obtain a temporary use permit through the Planning Department.

Final Vote on Ordinance 09-05 as amended by two amendments.

Final Vote on Ordinance 09-05 as amended (cont'd)

considering that each application would be handled on an individual basis, the process would allow for looking for assistance if needed.

Sturbaum asked what the city was worried about with a vendor selling cards as opposed to hot dogs. Michaelsen said that in windy conditions patrons could get knocked over with a display, and that there could be hazards to tripping people. Sturbaum asked about fee waivers or scholarships for people who may be completely stopped by the requirements of insurance and license. He said it might be a big hurdle for people who are just starting out. He said one size fee doesn't fit all, and that this doesn't fit entry level artists. He mused about a no cost registry, and asked Michaelsen for her response. She said that she anticipated working one on one with each applicant, and thus could help people in start up capacities with some other resources, coop, and collaborative arrangements. She said that her department often connected potential business owners with grants and other resources to help them get started. She said she considered herself and Adam Wason to be advocates for these folks.

Sandberg asked Michaelsen to address the issues of regulations and problems that she might have encountered regarding other festivals that had not been regulated. Michaelsen said that she had spoken to the director of the Ann Arbor Street Fair regarding the jury process, and their thoughts on artists or food vendors who were not juried or vetted and the effect on the event. She said that integrity of a high quality event could be hampered by activities on the public streets and sidewalks adjacent to the event. Sandberg added that the intent of the BEAD was to encourage artists. Michaelsen agreed.

Piedmont-Smith asked if there was a dollar figure for insurance costs. Michaelsen said that she had talked to two local insurance agencies and gave the cost of \$150 to \$300 for an arts vendor, with food vendors' insurance being higher. She said there were many factors that could vary the cost, and reiterated that there were insurance options available through arts and craft organizations. Piedmont-Smith asked if this insurance could be purchased for time periods shorter than one year. Michaelsen said she didn't know.

Rollo said that the insurance requirements set a bar that some people would not be able to meet. He asked Michaelsen what she had uncovered about insurance cooperatives for this type of business. Michaelsen said she had heard anecdotal information but had no first hand knowledge of a cooperative arrangement for itinerant merchants or street vendors. Rollo asked for a counsel opinion, to which Patty Mulvihill, Assistant City Attorney, said it could be a simple cooperative of people banding together for this purpose and there would be nothing to prohibit this.

Piedmont-Smith asked for clarification about vending on private property. Michaelsen said that the vendor would need the required licensing, and the owner of the property would need to get a 'temporary use permit' from the planning department which was not a change from current code. Piedmont-Smith asked about enforcement, and Michaelsen said that it would be a regular enforcement issue. She also said that the need for a license was not a new issue. Piedmont-Smith said that this was good to keep in mind.

Sandberg asked if the current vendors surrounding the 4th Street Arts Fair were currently in compliance with the code for vending. Michaelsen said that there were some vendors in surrounding areas of the Fair that were not in compliance.

Final Vote on Ordinance 09-05 as amended (*cont'd*)

Rollo asked if there were some organizations that were exempt from the fees. Michaelsen said that there were opportunities for dialogue between the event director and vendors. Rollo asked about benevolent organizations. Michaelsen read from the ordinance definition that it would be free from the possibility of profits accruing to the founders, officers, directors or members, and that a 501(c)3 or schools would be an example of this. Rollo asked about certification of this.

Final Vote on Ordinance 09-05 as amended (*cont'd*)

Danise Alano, Director of Economic Development and Sustainability, said that examples of this type of activity in the past included a school having a car wash at a corner for a softball team, or a rotary club doing something to raise money for a scholarship. Rollo asked if a church or Shalom Center could set up a cooperative under which people could participate. Alano said yes.

Ruff asked if there was something beyond public safety for the requirement of insurance. Michaelsen said it had to do with the city's issuance of a license. Attorney Mulvihill said it was to supervise a public protection. She said that the current ordinance in Title 4 of the code was somewhat out of date. She added that the Risk Management Department required anything that happened on public property or any agreement that the City entered into to have and provide a proof of insurance. She said that this was an amendment to that area and that the City had been working on this for several years. She said that the waiver would protect the City, and the insurance would protect the public the same as in a bar, restaurant, store or theater.

Ruff asked about a board or committee that would approve applications and asked what fees they would have the authority to waive or if they would create a sliding scale. He asked if there would be a temporary use permit, licensing fees and insurance fees. Michaelsen said that it was not stated in the ordinance and that the intent was to take any potential arbitrariness out of the process. Adam Wason, Assistant Director of Economic Development for Small Business and Sustainability, said there was no ability to waive fees if they were stated in the ordinance.

Rollo asked for clarification that the City had immunity and that clauses one and two were to protect the citizen. Mulvihill said that immunity did not mean that the City wouldn't be sued, but should be immune from being found negligent in these cases.

Public comment on the ordinance:

Hal Taylor, of New Leaf, New Life, asked if it was the business of the council to limit this type of action, and wondered about the morality of a small group of people making the decisions about the actions of a larger group of people who live at the bottom of the social ladder and couldn't live well with these kinds of restrictions.

Marc Haggerty thanked Taylor for his remarks. He said he was dissatisfied with his interactions with BEAD and said he agreed with Taylor that this was just a reaction to a need to regulate. He added that this was a boon for the insurance industry and called it a red tape nightmare. He said there would be arrests and law suits and added that he would break the law.

Jennifer Mickel said that "buy at your own risk" stickers would solve the problem. She said that small, old fashioned things for sale would make a charming scene but that the regulations would not help those lower economic segments that might need this type of work. She expressed concerns about the policing of the regulations, wondered

what kind of insurance would be obtained for the prices mentioned earlier, and finally mused if the next things to be regulated would be lemonade stands and garage sales.

Final Vote on Ordinance 09-05 as amended (*cont'd*)

Martina Celerin, artist and vice president of the 4th Street Arts Festival, and said that the festival was now in the top 100 art fairs in the US. She said data was collected to analyze the crowd, and that in 2008 there were more than 40,000 people who attended the fair. She said the high caliber fair was maintained through a focus on the arts, not periphery items. She asked the council to support the focus on the arts and protect the arts fair intent especially in the buffer zone.

Erin Marshall said that the insurance requirement was one more barrier for vendors who wanted to be close to events. She said that using the word 'integrity' regarding the event spoke to the classism of the event.

Laura Plummer, volunteer with the Lotus Festival, said she was pleased to support the ordinance. She said Lotus was interested in protecting the street scene around the festival and appreciated knowing who the vendors would be, and thought it would help in bringing in vendors and coordinating the production of the Festival.

Bonnie Gordon-Lucas, artist and illustrator of children's books and magazines, said she has watched the 4th Street Arts Festival grow in the past 30 years. She said that she realized the marketing opportunity in the crowd drawn by the festival and noted that many non-profits had taken advantage of this.

Steve Anderson said he had recently sent the council an email. He said he priced insurance at \$180 which was expensive for a small business person and asked the council to not include that portion of the ordinance or to substitute a \$20 fee for the insurance segment. He said the brick and mortar businesses downtown should be able to take advantage of the Lotus crowd. He said he appreciated both amendments but did not think the ordinance was needed. He said the provision of selling on sidewalks needed to be clarified.

Becky Barrick, Community Events Manager for the Parks and Recreation Department, said that the City offered the Affairs of the Arts in the Showers Common six times a year and that the entry fee was lower in cost at \$50.

Cappy Phillips, artist and 4th Street Festival committee member, said she exhibited and sold at art festivals all over the country. She said that the growing number of patrons don't come to see a flea market, but to sell their work to an educated and enthusiastic audience and enjoy a high quality event. She said this was evident by the number of patrons and number of artists applying for spaces. She said that without the ordinance, and the buffer that would result, the event could lose its focus. She urged council support for the ordinance.

Jennifer Mickel, artist, said 40,000 attendees meant that there was plenty of space for bric-a-brac sales on the outskirts of the festival. She said this actually added to the festival.

Marc Haggerty said that gentrification was actually segregation and that the community was rapidly becoming segregated. He questioned the requirements for insurance for vendors and said it was a bar that was capable of being used arbitrarily, especially by insurance agents. He said the public areas should remain public for use by the public. He urged council to take up more important matters.

Ruff asked if the council members wanted any clarification on items brought forth during the public comment section.

Final Vote on Ordinance 09-05 as amended (*cont'd*)

Piedmont-Smith asked what insurance requirements were for other businesses in the city. Michaelsen said that the discussion was on actions in the public right-of-way and they were required to have insurance. Attorney Mulvihill said that private stand alone businesses were not required by the city to have insurance. She said the city's insurance carrier had advised higher requirements for this type of insurance. Piedmont-Smith asked about licenses required by businesses. Mulvihill responded that it depended on the businesses, and insurance requirements would vary also.

Volan said that sometimes insurance was tied to a permit, but that there was no mandate for insurance otherwise.

Satterfield asked about garage sales. Michaelsen said that they were not covered under this ordinance but were covered under the UDO. Piedmont-Smith asked about lemonade stands, to which Michaelsen said children were not required to have permits.

Ruff said that a person could be injured at or near garage sales and asked what the difference would be. Danny Lopez, City Communications Director said it was that the city does not license garage sales. Ruff countered that the license then required a permit, to which Lopez agreed. Ruff said the UDO addressed the existence of garage sales, and didn't that indicate some degree of knowledge. Mulvihill said that it was different than the city taking an additional step and actually issuing a permit. She said there was a difference between an affirmative act and just not prohibiting something.

Wisler asked if he lived on 4th Street could he set up a lemonade stand. Michaelsen said that he would need a vendor's permit for food in that area.

Volan asked about the condition of the person vending. He said that the condition of the person doing the sale didn't allow the city to ignore the public aspect of the sale. He said it was reasonable to ask for insurance, and perhaps the city could benevolently put together an insurance fund to offset the cost of that product. He said it was also reasonable to hear from merchants who were operating on public land. He said there was still work to be done to help people for whom insurance would be a hardship, but he supported the ordinance and said it was an interesting debate.

Sturbaum said he was concerned about the \$500 fine, and wished there was a little more flexibility and waivers, but would be willing to try it out for now and make adjustments later.

Sandberg said she was in support of the amendment. She said events planning was part of her day job, and said that people who were attracted to the arts were not in it for lots of money. She said the BEAD was intended to expand the arts for all strata, and this was an attempt to regulate for the good and that it was fair and balanced. She said she took exception to the statement that the ordinance was classist.

Wisler thanked the staff for their work on the ordinance and the amendments. He said that the arts and entrepreneurship were his passions and were combined in this ordinance. He liked the longer

term permits. He noted that the staff said they'd be available to hold hands of applicants through the process, but it bothered him that there would need to be hand holding at all. He said it implied that the process would be lengthy and that some folks might skip the help area and that they wouldn't benefit from it. He said he was concerned about the effect the insurance requirements would have on visiting merchants. He said that processes that inhibit entrepreneurial actions were not conducive to growing businesses. He added that the ordinance was well intentioned, but was not comfortable supporting something that was 49% good.

Final Vote on Ordinance 09-05 as amended (*cont'd*)

Satterfield talked about lack of zoning and its relevance to incentives for investment and classism. He said he was irritated at the insinuation that this ordinance was classist. He said that insurance was part of maintenance of an investment, and that the festivals and events were trying to protect their investments, too. He said that an itinerant could do the same thing. He noted that many obstacles were removed from the ordinance, and the discussion of a collective was begun.

Piedmont-Smith thanked those who were still in the council chambers at 11:30 pm. She said that the ordinance was good regulation in protecting the customer. She added that the ordinance also regulated door-to-door sales. She said that the penalty of \$500 was steep, but was assured that there would be education for compliance before a penalty was levied. She added that festivals benefitted everyone, and said that regulations were a good thing.

Rollo said structure and regulations protected everyone, however the requirement of insurance was a sticking point. He asked that staff work on a cooperative for artists, and wanted to revisit the issue as regulating the commons served everyone. He called his vote a "qualified yes."

Ruff said he didn't anticipate how difficult this decision would be for him until he put together all the messages and emails he had received. He said that the community benefited from good management of the festivals and events. He said his concern was that at the time of the economy getting tougher, and people were looking for small creative ways for making a living; we are expanding our requirements to do something like that. He added that a balance of providing opportunities for as many people as possible without affecting the character of the community was a balance. He said the addition of insurance requirements didn't balance this for him. He said he could not support this.

Volan encouraged the council to have final debate as discussed in the Rules Committee last year. He said that even with listening to all the comments, he was having trouble making a decision on this ordinance.

Sandberg noted that booth fees covered the expense of the festivals and said that arts were not always free, especially quality events. She said unauthorized vendors had taken advantage of this, and that she wanted to make sure this was mentioned again. She said this was not and could not be the only thing the city could do to encourage and help low income people.

Wisler said that a legitimate reason for considering this ordinance was the people who had taken advantage of these opportunities which he called the 'black market.' He said that increasing regulations would not decrease that black market but rather increase it.

Satterfield requested that festival organizers and economic

development staff develop a buffer zone for non merchant items to give continuity to the folks who were out on the edges taking advantage of the crowds. He said non-profit groups could give separation from juried artists and those not affiliated with the event.

Ordinance 09-05 as amended by the above two amendments received a roll call vote of Ayes: 6 Nays: 2 (Wisler, Ruff).

It was moved and seconded that the following legislation be introduced and read by title and synopsis only. Clerk Moore read the legislation by title and synopsis.

LEGISLATION FOR FIRST READING

Appropriation Ordinance 09-03 To Effect Refunding of the City of Bloomington 1998 General Obligation Bonds

Appropriation Ordinance 09-03

Ordinance 09-07 An Ordinance Concerning the Current Refunding by the City of Bloomington, Indiana, of its General Obligation Bonds of 1998; Authorizing the Issuance of General Obligation Refunding Bonds for Such Purpose; Providing for the Safeguarding of the Interests of the Owners of Said Refunding Bonds; Other Matters Connected Therewith; and Repealing Ordinances Inconsistent Herewith

Ordinance 09-07

Ordinance 09-08 An Ordinance of the Common Council of the City of Bloomington, Indiana, Approving the Issuance and Sale of Refunding Revenue Bonds by the City for and on Behalf of the Bloomington Parks and Recreation District to Provide a Savings to the Park District

Ordinance 09-08

Steve Anderson thanked the staff, council and everyone who worked on the legislation.



PUBLIC INPUT

The meeting was adjourned at 11:50 pm.

ADJOURNMENT

APPROVE:

ATTEST:

Isabel Piedmont-Smith, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington