

In the Council Chambers of the Showers City Hall on Wednesday, November 1, 2006 at 7:30 pm with Council President Chris Sturbaum presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
NOVEMBER 1, 2006

Roll Call: Wisler, Diekhoff, Ruff, Gaal, Rollo, Sturbaum, Volan, Sabbagh, Mayer

ROLL CALL

Council President Sturbaum gave the Agenda Summation

AGENDA SUMMATION

There were no minutes to be approved.

APPROVAL OF MINUTES

Micheal Diekhoff-Reminded folks of the election on Tuesday and encouraged people to get out and vote.

REPORTS:

COUNCILMEMBERS

David Sabbagh- Stated he was surprised at the lack of elected officials who did not attend the I-69 meeting at Bloomington North high school. He said the meeting had a lot of healthy debate both for and against and applauded all elected officials who participated in this process.

Andy Ruff- Stated elected officials have had discussion on I-69 for 15 years so he does not think anyone who did not participate in the meeting at Bloomington North High School should feel bad for not continuing to go along with INDOT's charade of public input. Ruff stated for years, people have tried to communicate to INDOT about the negative impact I-69 would have on the environment. INDOT publicly told people there would be enough money to build I-69 which has turned out to be a lie. Ruff said we now have found out that the current administration is going to build a toll road in order to pay for expenses.

Tim Mayer- Encourage folks to vote early at the Curry building because it is a very important election.

Chris Sturbaum- Stated some people say their vote does not count but he has seen races decided by as little as four votes. Sturbaum stated that we have seen legislative decisions at the state and national level swing by one vote. These votes do matter or people running for office would not be spending huge amounts of money on campaigns.

There were No Reports from the Mayor and City Offices

MAYOR and CITY OFFICES

Marc Haggerty said he came to the meeting to talk about the current election process. He asked the Council for three things to improve our democracy: one is a verified paper trail, the second is preferential voting, and the last is to make it easier for third parties to run for office. He believes these things need to be changed in order for our democracy to work effectively.

COUNCIL COMMITTEES
PUBLIC INPUT

No Appointments were made to Boards and Commissions

BOARD AND COMMISSION
APPOINTMENTS
LEGISLATION FOR SECOND
READING

It was moved and seconded that the Resolution 06-12 be introduced and read by title and synopsis. Deputy Clerk Huddleston read the legislation and synopsis, stating that there was no committee recommendation. It was moved and seconded that Resolution 06-12 be adopted.

Resolution 06-12
Waiving Current Payments In Lieu
Of Taxes By The Bloomington
Housing Authority To The City

Jennifer Osterholt, Director of the Housing Authority, explained this resolution. She said taxes this year were astronomical due to the high cost of utilities. HUD funds utility expenses for the housing authority on a three year rolling basis. This year, HUD is using a lot of money from the reserve funds to cover the cost of utilities. She is asking the Council to kindly forgive \$2788 dollars that HUD would pay to the city for

services provided by the city. HUD is normally more generous with them in regards to utilities but they are not being funded at 100%.

Resolution 06-12 (cont'd)

Mayer- Stated what we are really dealing with is the federal government reducing the money we have paid in taxes to the federal government that would traditionally come back to our community under HUD or the Community Development Block Grant programs. Mayer stated these are the dollars you and I earn that go to pay taxes and the money is not coming back to us like it has in the past.

Sturbaum- Said it cost four billion dollars every four days to fund the War in Iraq so this is where the money is going and the effects trickle down to local governments.

Resolution 06-12 received a roll call vote of **Ayes: 9, Nays: 0.**

It was moved and seconded that the Ordinance 06-21 be introduced and read by title and synopsis. Deputy Clerk Huddleston read the legislation and synopsis, stating the do pass recommendation was 5-1-3. It was moved and seconded that Ordinance 06-21 be adopted.

Ordinance 06-21
TO AMEND TITLE 7 OF THE
BLOOMINGTON MUNICIPAL
CODE ENTITLED "ANIMALS"
Re: To Permit Small Flocks of
Chickens by Waiver

Sturbaum- Stated this ordinance came about because the Board of Zoning Appeals was enforcing the chicken situation and wanted the Council to take charge of the situation. Sturbaum stated Ordinance 06-21 balanced the chicken owner's rights with neighbor and community rights. Ordinance 06-21 has regulations such as a \$25 annual fee for chicken owners, a regulation that states you must keep the chicken coup a certain size, and regulations on where the chickens come out and run. Sturbaum stated he did not feel it was in the interest of the City of Bloomington to tell people what they could and could not do in their own back yards.

Mayer- Stated Ordinance 06-21 has two amendments attached to it which the Council must vote on. One of the amendments deals with when the ordinance would take effect, and the other is a good neighbor amendment. He asked Councilmember Sturbaum to introduce amendment number one.

Sturbaum- He stated that amendment one pertains to a zoning ordinance so the Council will delay the implementation of Ordinance 06-21 until January, when the zoning ordinance goes into effect.

Sabbaugh- He stated that if Ordinance 06-21 passed it would be in conflict with the current zoning. The current zoning ordinance says you can't have chickens unless you have two acres. Sabbaugh said he gets concerned when the Council passes ordinances in violation of current ordinances.

Volan stated that the new ordinance would be replaced by the old ordinance so it would not be in violation.

Dan Sherman, Council Attorney/Administrator, said there was a long history with this UDO, and what the Council was doing tonight was using this forum to work out the details on regulating small flocks of chickens in RE and RS districts. If the Council decided the ordinance was a good idea then the Plan Commission and the Council would change the UDO to reflect Council action.

Sturbaum- Asked if this created an exemption to the law that bans chickens because the Council is not going into the zoning ordinance and changing it significantly, the work is in title 7.

Ordinance 06-21, Amendment #1

1. Section 9 of this ordinance regarding the effective date shall be deleted and replaced with the following:

Section 9. Once passed by the Common Council, signed by the Mayor, and published in accordance with the law, this ordinance shall go into effect at the same time as Ordinance 06-24 which would, among other actions, repeal and reenact Title 20 (Zoning) of the Bloomington Municipal Code.

Sherman- Stated "yes because in title 7, it is made clear chickens are not allowed in small lots in RE and RS districts unless they follow the provisions set by the ordinance you are considering tonight."

Ordinance 06-21, Amendment #1
(cont'd)

Wisler- Asked if this ordinance did not pass tonight, would this mean the chickens would be allowed in RE and RS zones with no restrictions.

Sherman- Stated yes.

Sabbaugh- Said that this is an illegal action.

Sherman- Stated that throughout this whole process, they expected to change both the UDO and title 7, and both need to be done.

Volan- Asked if there was ever an ordinance by the Council that was passed in anticipation of another ordinance being passed?

Sherman- Stated that often packages of legislation require many steps so this is not unusual.

Sturbaum- Stated that this is not taking effect until the zoning ordinance passes in January and so it would sit in a holding pattern until then so it can't be illegal.

Public Comment:

Jeanette Richart- Stated she is a member of the Bryant Park area and approves of her neighbors having chickens.

Volan- Stated his esteemed colleague from District 5 (Sabbagh) declared last week that wearing a chicken suit on the week of Halloween was inappropriate. His colleague from District 5 is now trying to say that this issue is a zoning issue. He rejects this notion.

Sabbagh- Stated that this is a zoning issue and wants to make sure the zoning is in place before this ordinance is enacted.

Ruff- Stated we pass utilities rate changes and then have to wait to see what the state will do until the commission approves it. There are a lot of examples when we do something that is dependent on something that happens later. He does not see problems with this ordinance but is glad we hashed it out.

Gaal- Stated that this amendment is a housekeeping matter. The amendment should go into effect the same time as the UDO is updated. If you disagree with the chicken ordinance then state that instead of using the zoning issue as a distraction.

Amendment #1 to Ordinance 06-21 received a roll call vote of Ayes: 9, Nays: 0.

Proposed Amendment: Ordinance 06-21, Amendment 2

Mayer- He would like to introduce Amendment #2 which is part of the good neighbor policy. Amendment 2 deals with corner lots and the neighbors across the street whom may not want to see chickens.

Rollo- Asked if the neighbors that are adjacent to the chicken owners were in agreement about the chickens, would they have to be obscured from everyone's view?

Sherman- Stated the coop and run must be screened by both the adjacent neighbors and those neighbors across the street.

Ruff- Asked Councilmember Mayer if he felt that the house across the street should be considered as a neighbor?

Mayer- Stated Yes.

Ordinance 06-21, Amendment 2

Section 5 of this ordinance entitled "Standards for maintaining chicken flocks" shall be amended by adding the phrase "from a public street or" after the phrase "if visible" in 7.21.057 (b) (1) so that part (b)(1) reads as follows:

(b)(1)

Provide a sight fence or shrub screening of at least four (4) feet in height around both the coop and run if visible from a public street or to occupants of neighboring lots; and

Public Comment:

Jeanette Richart- Stated that most chicken's owners would be willing to put these barriers up out of consideration for other neighbors.

Judith Sylvester- Stated she would be very sorry if this amendment effects the overriding amendment because she loves people stopping to learn about her chickens. She walks to work regularly and see lots of things in people yards that she does not like but she learns to live with it.

Lucille Bertuccio- Stated she likes to see chickens in people's yard.

Marc Haggerty- Stated that when he moved into his neighborhood a lady three doors down had hens, geese, ducks, and chickens. He said it was wonderful to wake up to in the morning and look at these animals.

Bill Hayden- Stated that he sees Judy's chickens as a neighborhood asset that all neighbors can enjoy. He would hate to see a big fence that would prohibit him from seeing the chickens.

Carrol Krause- Stated that we don't impose the same rule on dog kennels and they look a lot worse then a well kept chicken run.

Jim Opiat- We do not require that dog kennels are screened. Why are we treating chickens different then dogs?

John Bavender- He keeps a flock of chickens and the majority people that come down the alley bring their kids to look at his chickens. It is very educational for families that come to look at his chickens. He will put up a screen but the chickens are beautiful and does not feel he should have to hide them.

Liz Brown- She is a neighbor of Judy's and did not even know that she had chickens for a long time because her landscape hides them. She attended the Council meeting to show her support for Judy.

Mayer- Stated he wanted to point out that this amendment only requires screening on corner lots and the number of people who live on corner lots that would want to have chickens is minimal.

Wisler- Stated that his concern with this ordinance is how it will be enforced. He said he was just as concerned with the enforcement of screening requirement as the ordinance itself.

Rollo- He sympathized with the intent of the good neighbor policy but is going to oppose the amendment because the ordinance is already stringent enough.

Volan- He is conflicted because he has not heard a compelling point either way in regards to Amendment #2. He said hw was troubled by the idea that people are treating chickens much more stringently than dogs. He said he was also concerned about the nature of the screening material.

Diekhoff- Stated the Council has heard from exceptional neighbors that all get along. However, this is not the case with the rest of the city because he sees neighbor feuds everyday. He agrees with councilmember Mayer because a lot a neighbors do not get along.

Gaal- Stated this ordinance does have a lot of regulations but if it is successful the Council can go back later and loosen up some of the regulations. Gaal stated he is going to support this amendment.

Sabbaugh-He thinks this amendment is good and will support it.

Ordinance 06-21, Amendment 2
(cont'd)

Ruff- Stated we close up in our house enough as it is and this goes against my concept of community and sustainability.

Gaal- Said the screening is what would allow the experiment to succeed.

Volan- Said he does not see the difference between four dogs and four chickens. He will be voting against the amendment.

Amendment #2 to Ordinance 06-21 received a roll call vote of Ayes: 4, Nays: 5 (Rollo, Sturbaum, Ruff, Volan, and Wisler) and failed.

VOTE:

Amendment #2 to Ordinance 06-21

Sturbaum- Stated that the discussion would now focus on the ordinance as amended.

Rollo- Asked if the attorneys could state the stringency of these ordinances compared to other cities?

Stacey Jane Rhodes, Assistant Council Administrator, stated that Indianapolis allows chickens passively, and does not have permit, inspection, or number requirements. She noted that she had looked at a score of other ordinances and Bloomington's was among the most stringent.

Rollo- Said the Council had a debate on the \$25 fee last week and asked what the fee was for?

Sturbaum- Said the fee goes to a good place because there is a cost to the City with Animal Care and Control inspections.

Ruff- Asked to what extent the city deals with dogs & cats such as spay and neutering, licensing fees. In general what extent do tax payers pay for dog and cat concerns.

Mayer- Stated there is no licensing fee for dogs and cats.

Volan- Asked if Councilmember Mayer knew why fees for dogs and cats were stricken? Why do we charge a fee from adopting from the shelter?

Mayer- Stated the expenses are for the animal being spayed, neutered, microchipped, health exams, and vaccinations.

Volan- Stated he would like to introduce another amendment.

Sherman explained that the Bloomington Municipal Code required amendments be submitted in writing before the meeting.

Public Input

Kevin Keyo said that this would all be part of the open record law.

Susan Brackney- Said she is in support of this ordinance and appreciates the way the Council has thought it through. Bloomington wants a progressive community and we want a more sustainable way of life and this is a simpler way of life and it's good to talk to neighborhoods.

Jim Opiat- Stated he was the secretary of the Bryan Park Neighborhood Association. He said that at their last meeting they unanimously passed a resolution in support of this ordinance. They are very supportive and hope the Council will be.

Mike Andrews-Said Volan asked to make an amendment and was disturbed the Council had passed a restriction not to allow amendments during the Council meeting. Stated the \$25 chicken fee is not a good idea because it does not promote sustainability.

Carrol Krouse-Said he has not seen any evidence of predators getting chickens. She also brought some information on the avian flue that states this is not a chicken disease but a human one.

Bill Hayden-wanted support for the ordinance because it would make it legal for us to have chickens again. He stated chickens are something we should be encouraging for sustainability reasons. He also stated that dogs are much more of a problem than chickens and he does not feel that we should discriminate against chickens.

Charles Sprag-He lives on the same block as Judy Sylvester and he thinks the Council has put a lot of thought into this ordinance. He hopes that the Council will vote for allowing Bloomington to have chickens again.

Rusty Peterson-He is in favor of chicken ownership and almost feels it would be better if this ordinance did not pass so a more lenient ordinance would come through in the future.

Volan-The amendment that he would have introduced would be to strike the \$25.00 fee. He meant no harm by wearing the chicken suite last meeting. He believes this ordinance is too strict and does not know how the Council got to be so chicken about chickens. It is better to introduce this ordinance now and revise it later than to do nothing.

Ruff-Stated that Council member Volan could have written something down and submitted it and they could have voted on it today. At the last meeting they discussed eliminating the \$25 fee but he did not think it would pass so he opted not to bring forth this amendment.

Mayer-Stated that the majority of people in this community are not for this ordinance. Mayer feels this is going to be a nightmare for Animal Control and they already have high stress jobs. He will not support this ordinance.

Rollo-He commended Council member Sturbaum for all the work he put into this ordinance. Rollo was initially concerned with Animal Control but he contacted them and they are fine with the ordinance. He understands that chickens might not be popular but he is very impressed with how the chicken owners care for the animals.

Gaal-Stated that this is a very strict ordinance and the reason for that is because the Board of Zoning appeals have dealt with conflict in the past. Gaal stated that this ordinance is not going to solve every problem but it has been carefully crafted and tries to anticipate most conflicts that could occur. He is going to support the ordinance.

Diekhoff- He appreciates all the people that have been involved in this whole process, but he has to go with what his constituents want and most are not in support of this ordinance.

Wisler-He believes enforcement of this ordinance will cause more problems than occurred in the past so he is not going to support it.

Sturbaum-He stated that the reason we don't have a group of people upset about this ordinance is because if you don't want chickens then you don't have to have them next door. He stated that he looked to

create an environment that considered everyone and he believes this ordinance has accomplished that.

Ordinance 06-21 (cont'd)

Ordinance 06-21 as amended received a roll call vote of Ayes: 5 (Gaal, Rollo, Sturbaum, Ruff, Volan), Nays: 4 (Wisler, Diekhoff, Mayer, Sabbagh).

Dan Sherman- Recommends Council meets next week for a special session which would mean cancelling the committee of the whole. This would require a 2/3 majority by the Council to pass.

Motion to Suspend the Rules

Motion to Suspend the Rules: received a roll call vote of Ayes: 8, Nays: 1, (Volan)

Motion to Cancel Committee of the whole and hold a special session on November 8th received a roll call vote of Ayes: 8, Nays: 1, (Volan)

Motion to Cancel Committee of the Whole

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

LEGISLATION FOR FIRST READING

Appropriation Ordinance 06-07

TO SPECIALLY APPROPRIATE FROM THE GENERAL FUND, FLEET MAINTENANCE FUND, RISK MANAGEMENT FUND, PARKS & RECREATION FUND, AND SANITATION FUND EXPENDITURES NOT OTHERWISE APPROPRIATED (Appropriating Various Transfers of Funds within the General Fund for Animal Care & Control, Clerk's Office, Fire, Planning, and Police; Appropriating Transfers of Funds within the Parks & Recreation General Fund, within the Sanitation Fund, and within the Risk Management Fund; Appropriating Funds from the General Fund for Animal Care & Control, Police and Housing & Neighborhood Development; Appropriating Funds from the Risk Management Fund and from the Fleet Maintenance Fund)

Appropriation Ordinance 06-07

Ordinance 06-23

TO DESIGNATE AN ECONOMIC DEVELOPMENT TARGET AREA (EDTA) - Re: 2300 Rockport Road and 2101, 2105, 2109, 2112, 2113, 2116, 2117, 2120, 2121, 2124, and 2125 Susie Street (City of Bloomington Housing and Neighborhood Development Department, Petitioner)

Ordinance 06-23

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

PUBLIC INPUT

The meeting was adjourned at 10:45 p.m.

ADJOURNMENT

APPROVE:

ATTEST:



DAVE ROLLO
Chris Sturbaum, PRESIDENT
Bloomington Common Council

Regina Moore, CLERK
City of Bloomington