

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Wednesday, March 21, 2018 at 6:30pm with Council President Dorothy Granger presiding over the Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
March 21, 2018

Roll Call: Ruff, Sturbaum, Chopra, Piedmont-Smith, Granger, Volan, Sandberg, Sims, Rollo
Members Absent: None

ROLL CALL [6:31pm]

Council President Dorothy Granger gave a summary of the agenda.

AGENDA SUMMATION [6:32pm]

Councilmember Steve Volan moved and it was seconded to approve the minutes of January 10, 2018. The motion was approved by voice vote.

APPROVAL OF MINUTES [6:32pm]
January 10, 2018 (Organizational Meeting)

Volan moved and it was seconded to approve the minutes of February 15, 2018. The motion was approved by voice vote.

February 15, 2018 (Special Session)

Volan moved and it was seconded to approve the minutes of February 21, 2018. The motion was approved by voice vote.

February 21, 2018 (Regular Session)

Councilmember Isabel Piedmont-Smith spoke about the Women's History Month luncheon that was held earlier that day.

REPORTS

- COUNCIL MEMBERS [6:35pm]
- The MAYOR AND CITY OFFICES [6:39pm]

Alex Crowley, Director of the Economic and Sustainable Development Department, gave the Council an update on the Trades District project and the Dimension Mill project.

Dr. Gwendolen White, President of the Bloomington Commission on Sustainability (BCOS), presented its first-ever Sustainability Awards to Madeline Hirschland, One World Enterprises, and the Center for Sustainable Living.

There were no reports from Council Committees.

- COUNCIL COMMITTEES
- PUBLIC [7:09pm]

Cathi Crabtree spoke to the Council about the Monroe County chapter of Showing Up for Racial Justice (MC-SURJ) and its opposition to the city purchase of an armored vehicle.

Volan moved and it was seconded to reappoint Marcus Debro and appoint Dianne Shewmaker to the Dr. Martin Luther King, Jr. Birthday Commission. The motion was approved by voice vote.

APPOINTMENTS TO BOARDS AND COMMISSIONS [7:14pm]

Volan moved and it was seconded to revoke the appointment of Zaira Hernandez to the Commission on the Status of Women for cause. The motion was approved by voice vote.

Volan moved and it was seconded to reappoint Jacqueline Fernette and appoint Nana Amoah-Ramey, Landry Culp, and Lynne Shifriss to the Commission on the Status of Women. The motion was approved by voice vote.

Volan moved and it was seconded that Resolution 18-05 be introduced and read by title and synopsis only. The motion was approved by voice vote. City Clerk Nicole Bolden read the legislation by title and synopsis.

LEGISLATION FOR SECOND
READING AND RESOLUTIONS
[7:15pm]

Volan moved and it was seconded that Resolution 18-05 be adopted.

Resolution 18-05 To Approve of
Interlocal Cooperation Agreement
between the City of Bloomington
and Monroe County – Re: Building
Code Authority
Council Questions:

Anahit Behjou, Assistant City Attorney, presented the legislation.

Councilmember Chris Sturbaum asked if the agreement was a routine renewal.

Behjou said that was correct.

Piedmont-Smith asked if the city and county paid each other to perform the functions in the agreement.

Behjou said they did not.

Piedmont-Smith asked what funds could be needed for the interlocal agreement as referred to in part six.

Behjou said that she could get the information.

Councilmember Dave Rollo asked if a two-year extension was typical for the agreement.

Behjou said it varied.

Rollo asked if the city negotiated issues like building efficiency or building materials as part of the agreement.

Behjou said she was not aware of any discussions.

Councilmember Jim Sims asked about the removal of text that allowed for cancellation of the agreement with 30-days notice.

Behjou said it was not inserted because neither the city or county had tried to terminate it early.

Granger asked how much time Behjou would need to get answers for Piedmont-Smith.

Behjou said she could review the agreement and contact someone for more details.

Piedmont-Smith moved to postpone voting on the resolution until the next regular session, and said she also wanted answers to Rollo's questions.

Dan Sherman, Council Attorney, said that the agreement expired at the end of the month and there would be some time in April without an agreement in place.

Rollo asked what would happen if the agreement expired.

Behjou said the county handled the city building code and the city handled the zoning. She said there would not be an agreement for a while.

Rollo asked what the real effect would be.

Sherman said it would have to be discussed with the county and that there was no real way to answer that question.

Sturbaum asked if there had been any problem with the current agreement.

Behjou said there was not.

Sturbaum said the parties were bound by state code and it seemed like a routine matter.

Volan moved and it was seconded to postpone further consideration of Resolution 18-05 until after the third item on the agenda.

Motion to postpone Resolution 18-05

The motion to postpone Resolution 18-05 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to postpone Resolution 18-05 [7:25pm]

Volan moved and it was seconded that Ordinance 18-06 be introduced and read by title and synopsis only. The motion was approved by voice vote. Bolden read the legislation by title and synopsis, giving the committee do-pass recommendation of Ayes: 8, Nays: 0, Abstain: 0.

Ordinance 18-06 – To Amend Title 16 of the Bloomington Municipal Code Entitled “Residential Rental Unit and Lodging Establishment Inspection Program” - Re: Repeal of Chapters 16.06 (Public Health and Safety), 16.07 (Smoke Detectors), 16.08 (Carbon Monoxide Detectors) and 16.09 (Fire Extinguishers)

Volan moved and it was seconded that Ordinance 18-06 be adopted.

Chris Wheeler, Assistant City Attorney, presented the legislation.

Council Questions:

Sturbaum asked how the city inspection of fire extinguishers and smoke detectors worked.

Wheeler said Title 16 adopted by reference the building and safety codes, which still allowed for inspections. He said the city would still be able to enforce through those mechanisms.

Sturbaum asked if overlapping and unnecessary sections of the code were being removed.

Wheeler said none of them were necessary and that they overlapped with state code. He said the deviation from state code was enough that the Indiana Fire Prevention and Building Safety Commission disliked the city code.

There was no public comment.

Public Comment:

Granger said that she was frustrated that the state thwarted the city’s role in protecting its citizens.

Council Comment:

The motion to adopt Ordinance 18-06 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote on Ordinance 18-06 [7:31pm]

Volan moved and it was seconded that Ordinance 18-04 be introduced and read by title and synopsis only. The motion was approved by voice vote. Bolden read the legislation by title and synopsis, giving the committee do-pass recommendation of Ayes: 2, Nays: 0, Abstain: 6.

Ordinance 18-04 – To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code (BMC) - Re: Amending Fencing and Wall Standards and Some Related Definitions Set Forth in BMC 20.05.046(d) and BMC 20.11.020

Volan moved and it was seconded that Ordinance 18-04 be adopted.

Amelia Lewis, Zoning and Long Range Planner, presented the legislation.

Council Questions:

Councilmember Allison Chopra asked if the proposed legislation addressed enforcement.

Lewis said that the legislation attempted to address enforcement by giving property owners additional options prior to installing a fence.

Chopra asked if there would be less enforcement because people were already adhering to the behaviors in the proposed legislation.

Lewis agreed and said it would ideally result in fewer variance requests and decreased enforcement.

Chopra asked if there had been variance requests due to the deer population.

Lewis said that was not a primary concern. She said more of the requests were about a desire to use a portion of a yard for children or pets.

Chopra asked why people wanted higher fences.

Lewis said the legislation primarily dealt with the location of fences. She said most people typically put up a six-foot privacy fence.

Ordinance 18-04 (cont'd)

Rollo asked if the majority of the variance requests in the last ten years had been approved.

Lewis said yes.

Rollo asked if the complaints to U-Reports in the last year had been violations.

Lewis said those were violations as a result of complaints.

Rollo asked if those fences had to be taken down since they did not comply with code.

Lewis said they had to be taken down or had to apply for a variance.

Piedmont-Smith moved and it was seconded to adopt Amendment 01 to Ordinance 18-04.

Amendment 01 to Ordinance 18-04

Amendment 01 Synopsis: This amendment was mentioned by the Planning and Transportation staff at the Committee of the Whole and is sponsored by Cm. Piedmont-Smith. It strikes the words "along the front setback" in a sentence that continues "... of the secondary front building wall," and replaces those words with "forward." This is intended to clarify that fences installed anywhere forward of the front building wall shall not exceed four (4) feet in height.

Lewis reviewed the amendment for the Council.

The motion to adopt Amendment 01 to Ordinance 18-04 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to adopt Amendment 01 to Ordinance 18-04 [7:47pm]

Sturbaum moved and it was seconded to adopt Amendment 02 to Ordinance 18-04.

Amendment 02 to Ordinance 18-04

Amendment 02 Synopsis: This amendment is sponsored by Cm. Sturbaum and is intended to enhance the visual experience of the pedestrians and motorists passing by the secondary front of lots within the City's Planning Jurisdiction with "good neighbor" fences. The negative "blank wall experience" is much like the downtown, where large blank spaces have long been prohibited. With that in mind, it applies to tall fences (i.e. those fences more than four [4] feet in height) installed forward of the secondary front building wall. In that regard, it requires that the portion of these fences that exceed five (5) feet in height be of open construction. *(Please see the attached examples of both solid and open-topped fences.)*

Sturbaum explained the amendment to the Council. He said that some of language in the amendment was intended to clarify for the average reader and that he liked the redundancy of the language.

Lewis said staff objected to the language in the amendment because it was redundant and it only applied to a small portion of the fence rather than regulating everything that happened on the secondary frontage.

Sturbaum asked if the language was harmful.

Council Questions:

Lewis said it was not harmful, but staff preferred the language to apply to the entire length of the fence rather than just one-third of it.

Granger asked if changing that language would help staff support the amendment.

Lewis said it would.

Sturbaum said he would accept a friendly amendment.
Rollo said that he did not understand what the discussion was about and asked for a diagram to be put up on the screens.

Amendment 02 to Ordinance 18-04
(cont'd)

Volan agreed with Rollo. He asked how open-construction was defined.

Lewis said it was intended to be defined through description in the legislation.

Volan asked if staff and Sturbaum were okay with the lack of definition.

Sturbaum said he wanted to avoid over-regulating to avoid enforcement issues and unintended consequences.

Volan asked if there was a better way to be more specific in order to avoid future disputes.

Sturbaum said there was simple language in other legislation and a common understanding of what was meant by the term open-construction. He said if there was a problem the Council could come back and fix the issue.

Rollo asked for a walk-through of the amendment with a diagram.

Sturbaum explained the amendment with the drawing that Volan held up for the camera.

Granger asked why the amendment was written to only apply to one fence and not all fences.

Sturbaum said the focus was on the public realm, which meant street-facing fences. He encouraged open-construction on other fences, but said it was not the Council's primary concern.

Rollo asked if the hand-drawn diagram was consistent with what had been shown on the screen.

Lewis explained how the amendment would work with the diagram shown on the screen.

Sturbaum moved and it was seconded to make a friendly amendment to Amendment 02 to Ordinance 18-04.

Friendly amendment to
Amendment 02 to Ordinance 18-04

Sturbaum said that he would like to strike the words "facing streets or sidewalks" from Amendment 02 so that staff would support the amendment.

Sims asked if plexiglass would be an acceptable material instead of lattice work.

Lewis said she thought it would and that the legislation specified that the fence needed to be made of durable materials.

Sturbaum suggested that plexiglass would not be allowed because it would yellow and become opaque over time.

Rollo asked if durable materials were defined and if staff had a list for the purposes of enforcement.

Lewis said they did not have a list of durable materials.

Rollo said that the durable materials language needed to be defined or struck from the amendment.

Volan asked if a fence would be allowed if the first five feet were made of wood, and the next three feet were chain-link.

Sturbaum and Lewis said chain-link was a prohibited material.

Chopra suggested the wording could be changed to say that the open construction should be made out of the same material as the fence itself.

Sturbaum said he thought it was implied in the legislation.

Granger suggested removing “durable materials” and instead having “same material as the rest of the fence”.

Lewis said the reason for the “durable materials” language was to allow for a metal top and a wood bottom, which staff thought was an acceptable option for homeowners.

Amendment 02 to Ordinance 18-04
(cont'd)

The motion to adopt the friendly amendment to Amendment 02 received a voice vote of Ayes: 8, Nays: 0, Abstain: 1 (Volan).

Vote to adopt friendly amendment to Amendment 02 [8:14pm]

Rollo asked how staff felt about striking the language regarding durable materials, since there was a list of prohibited materials.

Council Questions:

Lewis gave an example of a fence made of netting and wood, which would not be prohibited but was also not desirable.

Sturbaum said the Council should want fences built out of durable materials.

Rollo said if that was the case then the Council should change the code or define durable materials.

Sturbaum said he thought people knew what durable materials were.

There was no public comment.

Public Comment:

Rollo said the Council was creating a potential problem for enforcement if it was not clear what durable materials consisted of.

Council Comment:

Sims said he preferred definitions and that part of the legislation felt restrictive.

Volan said he thought the terms needed more definition and that the legislation was not ready for a vote that evening.

Councilmember Andy Ruff agreed with the need for more clarity in the amendment. He agreed with Sims that there was a restrictiveness to the amendment that he was uncomfortable with.

Chopra said she did not like the amendment because it was confusing. She said if the legislation was not clear and readily usable then it was not good legislation. She said an amendment should not be heard on the same night as a final vote because it made the Council feel like the decision should be rushed through.

Piedmont-Smith thought it was a good amendment and appreciated the fact that it was in the packet prior to the meeting.

Councilmember Susan Sandberg agreed with Piedmont-Smith. She said she was concerned about delaying a vote because she did not want to impair citizens' abilities to design their yards the way they wanted. She said she would vote yes on the amendment.

Volan said he thought the amendment was too complicated for the time allotted, and suggested that Sturbaum bring it forward again after it was revised.

Granger said she liked the amendment but would like to see it applied to all fences.

Sturbaum said it was a simple amendment. He called public-facing fences with open-construction “good neighbor” fences. He said people could understand what a lattice-topped fence was. He said

the Council could go back and revise if needed rather than agreeing to giant barricade fences.

Amendment 02 to Ordinance 18-04 (cont'd)

The motion to adopt Amendment 02 as amended to Ordinance 18-04 received a roll call vote of Ayes: 3 (Sturbaum, Piedmont-Smith, Sandberg), Nays: 6, Abstain: 0. FAILED.

Vote to adopt Amendment 02 as amended to Ordinance 18-04 [8:36pm]

There was discussion about the best way to postpone discussion of the legislation.

Ruff asked if staff looked at other communities to compare their fencing regulations.

Council Questions:

Lewis said staff looked at other city ordinances to see how they were written.

Sturbaum asked if discussion of the regulations had occurred at the Bicycle and Pedestrian Safety Commission.

Lewis said it had.

There was no public comment.

Public Comment:

Volan said he was not opposed to postponing discussion on the legislation to give Sturbaum more time to revise his amendment. He said he saw the value of open construction but wanted better definitions.

Council Comment:

Chopra said she wanted to vote on the ordinance that evening but would be voting no.

Sturbaum asked his colleagues to vote to postpone discussion on the legislation.

Ruff said he had tremendous admiration for Sturbaum's passionate and diligent work to promote and further develop the quality and appearance of the community's built environment. He also did not believe that staff would propose bad policy. He thought the issue of the legislation fell somewhere between staff and Sturbaum's views.

Chopra believed the Council should vote on the legislation that evening.

Volan said that it was possible to amend the legislation right then or to amend the code later. He did not think staff was trying to put forth bad policy.

Sandberg moved and it was seconded to postpone of Ordinance 18-04 until the next regular session or as determined by Council leadership.

Motion to postpone Ordinance 18-04

Piedmont-Smith said the motion seemed reasonable in light of the upcoming Council schedule.

Chopra asked Sandberg why she moved to postpone.

Sandberg said she listened to all of the comments and thought the confusion could be rectified by another two weeks worth of work.

Sturbaum reminded the Council that Planning agreed that there was a good way to change the legislation.

The motion to postpone Ordinance 18-04 received a roll call vote of Ayes: 7, Nays: 2 (Ruff, Chopra), Abstain: 0.

Vote to postpone Ordinance 18-04 [8:58pm]

Volan moved and it was seconded that Resolution 18-05 be taken off the table and reopened for discussion.

Resolution 18-05 To Approve of Interlocal Cooperation Agreement between the City of Bloomington and Monroe County – Re: Building Code Authority

Behjou explained to Piedmont-Smith that building permit fees were divided between the city and county. She said the money had to go back to the budget and in order for that to happen there had to be an appropriation clause.

Piedmont-Smith clarified that it was revenue coming in that needed to be appropriated before it was spent.

Behjou said that was correct.

Behjou told Rollo that the county did not have any rules regarding building materials. She said the city had guidelines in the Unified Development Ordinance (UDO), but they could not require more than what the state allowed.

Rollo asked if it was because state law preempted local codes.

Behjou said that the city could enforce what was in the UDO to the extent that state law allowed.

Rollo asked if it could be required during the building permit process.

Behjou said building materials were not reviewed during the permitting process. She said that the city could review the materials when the project came to the city for certified zoning compliance.

Chris Reinhart spoke about UDO building standards and the state code.

Public Comment:

Rollo thanked Reinhart for his comment. He said that he hoped more time would be available for future interlocal agreements.

Council Comment:

Sandberg thanked Reinhart. She said the interlocal agreement was the best path forward and she supported it.

The motion to adopt Resolution 18-05 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to adopt Resolution 18-05 [9:05pm]

LEGISLATION FOR FIRST READING

Volan moved and it was seconded that Ordinance 18-05 be introduced and read by title and synopsis only. The motion was approved by voice vote. Bolden read the legislation by title and synopsis.

Ordinance 18-05 – To Amend Title 4 of the Bloomington Municipal Code (BMC) Entitled “Business Licenses and Regulations” (Amending Chapter 4.28, entitled “Mobile Vendors,” to Provide for Appeal of Adverse Actions to the Board of Public Works)

Granger appointed Chopra, Volan, Piedmont-Smith and Sturbaum to the Council Land Use Committee.

ADDITIONAL COMMITTEE APPOINTMENTS [9:06pm]

There was no public comment.

ADDITIONAL PUBLIC COMMENT

There were no changes to the council schedule.

COUNCIL SCHEDULE [9:06pm]

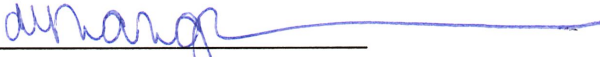
The meeting was adjourned at 9:08pm.

ADJOURNMENT

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 2nd day of May, 2018.

APPROVE:

ATTEST:



Dorothy Granger, PRESIDENT
Bloomington Common Council



Nicole Bolden, CLERK
City of Bloomington