

In the Council Chambers of the Municipal Building held on Wednesday, July 28, 1993 at 7:30 P.M. with Council President Hopkins presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
JULY 28, 1993

Roll Call: Swain, Pizzo, Service, Hopkins, Miller, Cole, White, Kiesling. Absent: Sherman.

ROLL CALL

Council President Hopkins gave the agenda summation.

AGENDA SUMMATION

The minutes of July 7, 1993 were approved by a voice vote.

APPROVAL OF MINUTES

Mayor Allison read H.R 1 from the State of Indiana General Assembly. The resolution was offered to that august body by Rep. Mark R. Kruzan of District 61. This resolution commemorates the 175th Anniversary of the City of Bloomington and Monroe County. The resolution discusses the formation in 1818 of Bloomington and Monroe County and recognizes those organizations which are participating in the celebrations. The resolution was adopted by the 108th General Assembly. Evelyn Powers updated the Council on the events relating to the 175th Anniversary.

MESSAGE FROM THE
MAYOR

It was moved and seconded that Ordinance 93-28 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title. It was moved and seconded that Ordinance 93-28 be adopted. The synopsis was given.

LEGISLATION FOR
SECOND READING/
VOTE

ORDINANCE 93-28

Chuck Ruckman, City Controller, discussed the history of the ordinance and the state and federal Law changes that made it possible, discussed the various uses for the Cumulative Capital Fund and recommended reauthorization of the fund.

The ordinance received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Ordinance 93-40 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title. It was moved and seconded that Ordinance 93-40 be adopted. The synopsis was given.

ORDINANCE 93-40

Jeff Underwood, Utilities Finance Director, discussed the new State legislation that allowed the transfer of hydrant fees to city rate payers to occur. The hydrant fees would be .85/month/residential property and the water rate increase would be about .95/month/residential user. The last increase was in 1989 and the monies were used to improve the Monroe Water Plant facility. He informed the Council that the rate increase would go before the IURC in August, would have a consumer advocate review, have the actual hearing in late October and would then come back to the council, probably in January, 1994 with the final rate increase numbers.

Kiesling asked if the increase included the hydrant fee. Underwood said they were separate. White inquired if all the rate changes were included in the ordinance and asked if a general overview of future changes and increases could be given. Underwood gave that overview.

White then asked if Underwood had the capability, legislatively, to put capital monies aside. Underwood said that in Indiana the type of reserve White spoke of is strictly regulated. White said it was odd that the city was forced into borrowing money when we know some expense is approaching.

page 2

He then recognized the City Utilities for their award winning efforts.

Pizzo expressed concern over the size of the fee increase and felt the charge was some sort of subterfuge as it amounts to about a 17% increase for users. Underwood explained that despite the percentage increase, the cost is in line with all the other water customers that Utilities serves.

Kiesling also expressed concern over the increase and asked if the hydrant portion of the fee could be listed separately on the utility bill so the public would understand the increase better. Kiesling wanted to know why the October 1 timing was important. Underwood said they were looking into it.

It was moved and seconded that the ordinance be amended to 1) change "non-city tax paying customers" to "non-city rate paying customers" in the entirety of Section I. 2) substitute the same phrasing in Section III.

Hopkins felt these changes would help clarify of the ordinance.

The amendment received a roll call vote of Ayes:8, Nays:0.

White inquired about the separate listing of the hydrant fees, and if it was technically possible.

Underwood said that Utilities was currently working on their software to make this possible. Underwood said the hydrant rental fee would be listed as a "fire protection charge".

White said he thought that the separate listing was a good idea.

Hopkins said that he disagreed with Pizzo on the issue of the charge being subterfuge in the face that the charge was discussed on several occasions at several meetings. Pizzo said that if it hadn't been it would be subterfuge as far as he was concerned.

White said he would be surprised if the fire protection charge would affect the University.

Underwood said that the University is currently being charged.

White said, for the record, that this charge was not suggested by the Utilities Department but was suggested by the City administration as a way of covering financial shortfalls in other parts of the city.

Kiesling wanted it noted that this type of fee increase is not unusual.

The ordinance, as amended, received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Ordinance 93-41 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title.

ORDINANCE 93-41

It was moved and seconded that Ordinance 93-41 be adopted. The synopsis was given.

Ted Rhinehart, Director of Public Works, explained the purpose of the ordinance and noted that some of the current fees were not in line with the processing effort required. The new housing inspection fees were discussed. Rhinehart went through the other aspects of the ordinance including parking fees, other fee updates and discussed the process of determining if the fees were of a reasonable amount and how the increase was determined.

Sections 1 - 8 He said that Red Permits have been deleted from the lot at Kirkwood and Dunn (Lot 1). It has become something of a storage parking lot rather than serving the businesses along Kirkwood as was intended. Sections 9 - 12 deal with a new housing inspection fee and a new 5th year rental occupancy permit cycle. Regarding the housing inspection fee: a committee met with the apartment owners association some time ago and discussed this particular fee. Most cities have some type of fee rental registration/inspection fees. He presented an overhead of the various units that would be inspected and how many minutes it took to accomplish each task. The rest of the ordinance deals with building fees and is modeled after the Monroe County fee schedule and the fees are based on the square footage of a project rather than a dollar value of the intended project. Square footage assessment is certainly easier to process.

Service asked about change of ownership and how the five year cycle for rental inspection would work.

Rhinehart said that currently the rentals were under a four year inspection cycle and that some rentals, ones that were in compliance on their last inspection, could apply to move to the five year cycle.

Service said that she was uncomfortable with the five year span because if there is a problem it takes longer to discover it.

Rhinehart said that there is a built-in protection with a complaint based inspection request which can occur off cycle.

Service continued to express the concern that the inspection department is terribly underfunded.

Kiesling asked why there was the exclusion for exterior painting. Rhinehart said that was in the current code and remains unchanged.

Hopkins asked for justification for the exclusion for exterior painting, adding that a major portion of the blight on the city is due to poor exterior appearances. Rhinehart said he was not privy to the original logic, but that traditionally housing codes center on life and safety issues and making a structure fit for occupancy; exterior aesthetics are not considered a requirement for occupancy. Aesthetics are normally under another portion of the code.

The Mayor said that we do require exterior painting, but weather and the time of year is often the reason why it cannot be done immediately following an inspection. It is put in the report and does not go unchecked.

Kiesling asked about the "no show fee" and Rhinehart said that was new. We are requiring that our inspectors be there for 15 minutes and if someone does not show up they would be subject to the no show.

Cole had questions about the time scale/charges and about the differences between single family and say 26 units. Rhinehart said the time scale/charge is related to it being a structure and not how many units are in that structure. Cole thought that for the customer it appears unfair to be jumping from one unit at \$35 and multi units, say 12, for \$46. Rhinehart said we are trying to recover our costs based on what the service costs and the time it takes to do the work, rather than the value of the building or unit being inspected. He said that the W. Lafayette procedure, which he reviewed before creating this schedule called for \$80 for 12 units and \$98/26 units. As you get higher on the scale, it is almost

double what ours is.

Miller asked how many complaint based inspections are done. Rhinehart said that it is a very small percentage.

Service also had problems with the scale range and the unfairness of the small unit charge. What about a complex with a larger number of units with several buildings in it. Rhinehart said the charge is per building. If you had 3 building with 3 units it would be three times the \$40 fee and if there were 4 buildings with 5 units each it would be four times the \$40 fee. Service went on to address the letter from Eric Koch, representing the Apartment Owners Association, noting that they had a fair amount of time to address this concern, expressed concern about being in the position of legal challenges, and if we were, than we would be smarter to base it securely on the cost of services rather than on seeming justice.

Swain pointed out a subsection clarification and it was duly noted and agreed upon. He asked about the exterior painting and what is the process for getting a property into compliance. Rhinehart said if they fail to come into compliance, they get into fines or legal action. Kiesling expressed the desire to have a more comprehensive fee schedule especially for parking fees and she registered a complaint that we do not go out of sight on some of the charges. They will affect the very people least able to pay the increases. She asked about handicapped spaces. Rhinehart said the handicapped spaces on the street are 2 hour, we would make a leased space available if requested. The Mayor said we let that one county employee park on the street.

Eric Koch, representing the Monroe County Apartment Association, said that the association was particularly concerned with subsections 12g and 12h. Koch said that some of the concerns Service had were the same as the association had. He felt the ordinance was more than bad public policy and that the ordinance violated the rights of both tenants and landlords with regards to the proposed inspection fee. The main concept behind this being that it is a selective tax that is unequally posed in the guise of a fee. Koch thinks the fee amounts are proposed in an arbitrary way in subsection g. Koch believes the fees are discriminatory in nature and do not reflect the real cost involved in the process of inspection. Koch then gave several examples of what he felt are unfair fees for inspection in the proposed ordinance. Koch then discussed the three concerns he had with subsection h. His first concern was that all landlords must give the city a list of tenants. The second concern would effectively give city inspectors the right to enter a rental without permission from the tenant because permission is assumed. The third concern is that a landlord is required to allow entry to a rental without notification of a tenant. Koch felt that the ordinance violates equal protection, due process, privacy rights, and freedom of contract. Koch quoted the paper. Koch said that he felt more substantive discussion with Rhinehart was necessary. Koch requested that the aforementioned subsections be tabled for further review. He also encouraged some meaningful discussion between the city, landlords, and tenants.

Kiesling noted that these provisions are in the current code and noted that some phrasing needed to be discussed.

Hopkins questioned Koch about his opposition to the fee table and asked if Koch felt that the amount for apartment buildings should be increased. Koch replied no. Koch said he would like to review the basis for the charges with Rhinehart.

Service stated that after further consideration, she felt the fees were on target. In regard to tenant lists, the reason for those is so the tenants may be informed of future entry by inspectors. The ordinance states that if there is no response to the notification by code enforcement then consent is assumed. This does not mean consent is assumed at all times. The ordinance then goes on to state that if a tenant refuses entry, a search warrant must be procured for inspection to occur.

Koch cited examples where this type of system may have shortfalls.

Kiesling noted that under current legislation the notification must be certified. Kiesling felt that the system of notification needs to be modified. She felt that the charges should be based on unit, not building.*
A A B A S e

Pizzo asked Koch if it was the amount of fees he disagreed with.

Koch said it was the matter of any fees at all. He also requested the opportunity to speak to members of the Council and those involved in writing the ordinance.

Pizzo asked if Koch felt the fees were onerous because some of the rents in town certainly are and if Koch felt inspections were onerous.

Koch said he was not against inspections but simply felt the fees were out of line. Koch said he felt fees were not constitutional, that he felt the fees were being selectively and unequally applied due to how the fees were computed.

Swain felt that notification was fine and that certified mail was not required and a hassle. Swain then inquired about the specific manner in which entry to apartments is obtained and what the precise inspection procedure is. Rhinehart described the procedures for inspection. Swain asked about the frequency of complaints regarding unlawful entry.

Rhinehart said that the inspectors have only had to obtain warrants on three occasions. He said that rescheduling and working with landlords and tenants was preferable to obtrusively acquiring a warrant. Attempts at compliance are always preferable.

Rhinehart said that if the Council wished to omit section g to give more interaction time between himself and the apartment owners he would be willing to do so. He said due to the size of the ordinance it would be preferable to omit section g rather than put the whole ordinance on hold.

Swain moved to amend Section 12g of the proposed ordinance; to remove the fee schedule for inspection from this ordinance and move it to another ordinance for consideration at a later date. The amendment was seconded.

Hopkins clarified what the proposed amendment would accomplish.

White voiced his support for the amendment because even though the ordinance had been a matter of public

discussion for some time, it was clear that there had not been enough discussion.

Swain noted that there was no particular hurry on passing the fee schedule.

Service said that she could understand how some people could feel how some items on the fee schedule could be under or over priced, but was concerned, that with this amendment, there would be no fee schedule at all, contained in this ordinance when passed.

The Mayor noted that when the original inspection ordinance was passed it had provisions for the schedule, but the Council at that time never got to doing them.

Kiesling stated that she supported the amendment, but she also supported the fees. She thought it was fair that those using the services of an inspection should pay a fee.

Service asked if a deadline could be set to pass the schedule.

Hopkins said that it would come up at the first meeting in September.

Hopkins voiced his opposition to the amendment and felt that it was simply a way of delaying the implementation of the new fees. He said that Rhinehart had explained the process of arriving at the schedule and clearly demonstrated the time involved in the process and he saw no reason to pass the amendment.

The amendment received a roll call vote of Ayes:4, Nays:4 (Pizzo, Hopkins, Miller, Cole).

The motion to amend failed for lack of a majority.

The ordinance received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Ordinance 93-33 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 93-33

It was moved and seconded that Ordinance 93-33 be adopted. The synopsis was given.

Doris Sims, Personnel Director, stated that the ordinance covered all elected officials of the city, including the Mayor, Common Council, and the Clerk. The 1% increase is in keeping with the pay increases for all city employees.

Kiesling asked if the changes to the Clerk's salary discussed last year had been made.

Sims said that was part of a two year phase in and had been completed last year.

The ordinance received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Ordinance 93-34 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 93-34

It was moved and seconded that Ordinance 93-34 be adopted. The synopsis was given.

Sims stated that the ordinance sets the salaries for all appointed officials for the City of Bloomington. All officials received a 1% pay increase plus any longevity increases (Step Pay Plan) that applied to a particular employee.

The ordinance received a roll call vote of Ayes:8,

page 7

Nays:0.

It was moved and seconded that Ordinance 93-35 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 93-35

It was moved and seconded that Ordinance 93-35 be adopted. The synopsis was given.

Sims stated that the ordinance is for police officers. Police officers are receiving a 4% pay increase. The increase was set in an earlier contract agreement with the police.

The ordinance received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Ordinance 93-36 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 93-36

It was moved and seconded that Ordinance 93-36 be adopted. The synopsis was given.

Sims stated that the ordinance was for Utilities employees.

The ordinance received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Appropriation Ordinance 93-5 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title only.

APP. ORD. 93-5

It was moved and seconded that Appropriation Ordinance 93-5 be adopted.

Chuck Ruckman, City Controller, addressed the question of health benefits, information requested at an earlier meeting.

Sims described the city's health care costs and covered how they are determined. Health care is self-funded by employees and the city. Only certain dollar amounts will be covered. The city employs a TPA to help with incoming claims. There is also a review process to analyze pre-authorized hospital stays. A majority of claim costs are real medical costs. The city also maintains life insurance policies as part of a total benefit package. The cost of insurance to employees must increase by ten percent this year.

Hopkins asked who the TPA was.

Sims is Warren-Steinborn and Associates.

Hopkins asked if there had been any major claims of \$75,000 or more.

Sims said there had been one two years previous and Personnel was anticipating one this year. Sims said that the aggregate cost of the city health care had been \$950,000.

White inquired about the amount of civil city, police and fire life insurance policies.

Sims said civil city was \$10,000, police was \$35,000, and fire was \$20,000.

Hopkins asked about the large variance between departments in regard to health care costs.

Sims said that some larger departments did not fund what the actual cost of providing care for all of the eligible workers in those departments.

Service commented on her disappointment with the Telecommunications budget and discussed the compromise that had been arrived at. She expressed her hope that some franchise arrangements would be worked out in advance of the regular budget process.

Mike Davis gave the specific dispersal of monies for the TCC.

Hopkins said he hoped an amicable decision could be made in that regard in the future.

Kiesling expressed concerns regarding planning and if that department was funded sufficiently to allow proper completion of the Master Plan. Another item that should be considered next year was payment for Plan Commission members. She inquired to Chuck Ruckman if he was anticipating an increase in alcohol gallonage tax revenues.

Ruckman said those numbers would not be finalized for three months.

The details of those revenues was discussed. Ruckman said that an increase was expected but the exact amount was uncertain. Ruckman estimated that property tax rates would increase by 3% to 4%, but said the final tax rates would not be determined until early next year and would be affected by additional property assessments and annexations.

Income tax collections was going to be off by more than anticipated because of property tax relief for homestead claims. It is unknown how those units will be allocated due to departments budgeting for more than a 5% increase.

White noted a 8.6% increase in property taxes and asked where that was coming from.

Ruckman said the money was from annexations and increased assessments.

White stated that he felt that the budget reflected the difficult times the city was having. He inquired about why revenues had fallen short.

Ruckman said that one reason was a reduction in state revenues to the city. The main reason however was in the area of the income tax - the amounts projected to be received by the county were not met. Another factor was a larger amount of property tax relief. The homestead tax relief for the county was around 1.5 million dollars. Yet another factor was that income tax money was distributed based on property taxes and the city is behind other tax districts. An unanticipated expense was the cost of health care insurance.

White stated that in the Street budget there was a capital decrease in line 4 and Rhinehart noted this was because of the large initial cost of the Thomson truck route.

White asked about a 5% increase in materials costs for the Street department.

Rodney Douglas, Street Superintendent, noted a decrease in the amount of asphalt to be purchased but also noted an increase in the amount of crack sealant purchased.

White asked about the elimination of a clerical position in the Police Budget and Sharp confirmed that and said that worker hours could be rearranged to compensate.

White noted that overtime pay would be decreased by 22.5% and that worried him. He inquired about the 1992 overtime pay. Sharp noted that one thing that had been done was to keep a close rein on overtime for staff. Overtime for staff is now Compensation time and therefore not paid

for. Sharp said that the Police Dept. was working with the Prosecutors office to reduce the time officers spend in the Courts.

White asked about increased patrolling during Indiana University Football games.

Sharp said that after he and the Mayor discussed it with IU it was decided that additional patrolling would not occur as the cost is around \$8,500 a year and IU would not pay but was willing to pick up the slack.

White asked various questions about the increase in rotation time on Police vehicles, the safety of the vehicles and the implementation of a rescue squad. He noted his comfort in the past with regard to proper funding for Public Works, Fire Dept., and the Police Dept., however this year he was not comfortable with the budget in those concerns. He expressed hope that 1995 would be better.

Kiesling regretted that Council could not give the city employees more pay.

Hopkins shared that concern. He noted revenue shortfalls as the main problem.

The ordinance received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Appropriation Ordinance 93-6 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title only. It was moved and seconded that Appropriation Ordinance 93-6 be adopted. The synopsis was given. APP. ORD. 93-6

Jeff Underwood gave a brief overview of the alterations in the budget as compared to last year.

Service said she would stand by her promise to her constituents to not vote for the Utilities budget as long as there was a rebate policy. She felt that giving money away in hard financial times was not appropriate. She expressed hope that next year there would be more discussion on the rebate policy.

Hopkins said that on the following day he would be sending a memo concerning updating the rebate policy to the Utility Service Board. The memo would address the issue with similar views to those of Councilmember Service.

Underwood said that the USB was currently reviewing all policies.

The ordinance received a roll call vote of Ayes:7, Nays:1

It was moved and seconded that Ordinance 93-37 be introduced and read by the Clerk by title only. Clerk Williams read the ordinance by title only. It was moved and seconded that Ordinance 93-37 be adopted. The synopsis was given. ORDINANCE 93-37

Dave Gionet said he would let last weeks presentation stand and would answer questions.

White asked about federal funding for combine bus service for IU and for the city.

Gionet said that the grant had come but it was not enough and the city would not receive further federal funding but that the FTA could come up with more money.

White noted the amount of the grant was 60% of that required, where would the other money come from.

Gionet said the money would come from the Bloomington

Public Transit Corporation and the University.
White asked about the total cost and Gionet said the cost was 6 million dollars. White asked about the location of the new bus site. Gionet said it would be on the current site of the campus bus service.
White asked if the services would be changed and about Route 5 revisions.
Gionet said only a few, minor changes would be made and that those targeted were becoming aware of the new options/revisions.

The ordinance received a roll call vote of Ayes:7, Nays:0

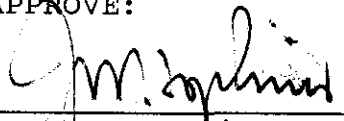
There were no comments from the public.

PUBLIC COMMENT

The meeting adjourned at 10:20 P.M.

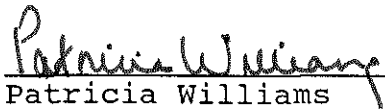
ADJOURNMENT

APPROVE:



Jack W. Hopkins, President
Bloomington Common Council

ATTEST:



Patricia Williams
CLERK City of
Bloomington

* Kiesling asked that a base charge would be reflected on a single unit and there is an additional cost incurred when there are multiple units. The additional charge is being put there, reflecting the fact that it takes a little bit longer because you have to do more steps than in a single house.

MCDONALD & KOCH

ATTORNEYS AT LAW

GROVES SQUARE

1000 NORTH WALNUT STREET

BLOOMINGTON, INDIANA

TELEPHONE: (812) 339-4433

TELECOPIER: (812) 331-853

MAILING ADDRESS:

P. O. BOX 2115

BLOOMINGTON, INDIANA 47402-2115

THOMAS M. McDONALD

ERIC ALLAN KOCH

DUNCAN KINKEAD

July 28, 1993

Bloomington City Council
Municipal Building
220 E. 3rd
Bloomington, IN 47401

RE: Proposed Inspection Fees and Procedures

Dear Council Members:

We have been retained by the Monroe County Apartment Association to represent its interests in relation to the proposed inspection fees and procedures for inspection of rental properties. For the record, we object to the proposed ordinance and will be prepared to bring a legal challenge to provisions which we believe may be unconstitutional.

Specifically, we are concerned that the fee structure proposed in subsection (g) is of the nature of a direct tax, rather than a fee which is rationally related to the actual cost of performing the inspection. For example, the fee for inspecting one small rental house would be \$35, while a large apartment building of, say, 100 units would pay \$55. We can only conclude that the revenue which the city seeks to generate would not be used to cover the costs of the inspections but, rather, would be of the nature of a general tax on selected persons.

With regard to subsection (h), we believe that the procedures set forth therein constitute an unconstitutional invasion of the privacy rights of both landlords and tenants. These procedures require an owner to furnish to city government a current list of tenants in each rental unit. Will churches be the next group that this council will require to surrender its membership list? Will businesses be required to provide City Hall with their customer lists? Will community organizations be required to surrender their membership lists to this administration?

Bloomington City Council
July 28, 1993
Page -2-

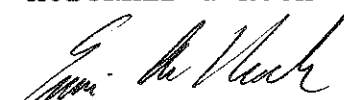
Another odious element of this subsection is that at the appointed time of the proposed inspection, consent to enter will be presumed if no response is received from the tenant. Further, the landlord will be required to grant access to the inspector without the tenant's knowledge or assent, again in violation of the privacy rights of the tenant.

We request that this proposal be tabled pending further review of the constitutionality of its provisions and meaningful discussions between the city administration and those whom this proposal will directly affect, including both landlords and tenants.

We request that this letter be made a part of the permanent record of these proceedings and that it be noted for the record that the aforementioned objections were made in opposition to the proposed ordinance. The proposed ordinance is not merely bad public policy; it violates some of the most basic constitutional protections afforded to citizens of our country. It is with this in mind that we voice our opposition and request that this proposal be tabled.

Very truly yours,

MCDONALD & KOCH



Eric Allan Koch

EAK/jh