

In the Council Chambers of the Municipal Building held on Wednesday, November 3, 1993, at 7:30 P.M. with Council Vice-President Miller presiding over a Regular Session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
NOVEMBER 3, 1993

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

ROLL CALL

Miller gave the agenda summation.

AGENDA SUMMATION

The minutes of October 6 and 20, 1993 were approved by a voice vote. Kiesling commented that the discussion on Tax Abatement was somewhat unclear. Clerk Williams responded that the text of the minutes is compiled from the audio tapes and that she would review the section in question.

MINUTES FOR
APPROVAL

Kiesling announced that bulky trash items can go to the Oard Rd trash collection location. Also that the Enterprise Zone has designed and distributed a newsletter that has been sent to businesses and residents of the zone.

MESSAGES FROM
COUNCILMEMBERS

Cole announced the upcoming 2nd Annual Westside Artist's Studio and Gallery tour this weekend.

Service announced the various community events at the request of the 175th Anniversary Committee for Veterans Day and Flag Pole dedication, 11/11 at 10 am; the Rededication of the Courthouse Murals, 11/21 at 12 noon; Canopy of Lights on 11/26; as well as the Monroe County Civic Theater production of "An Evening with Sullivan and Gilbert" and last but not least the Bloomington Tomorrow Forum and review of the master plan at the SPEA building on 11/6 at 8 am. She also commented on the recent criticism of the master plan review taking place at this time, rather than January. She pointed out that this is a continuation of a "visioning" of the community, a tradition that SPEA has been holding for several years and she didn't think it was appropriate to review it at this time, anyway, because we have not yet implemented it with the appropriate ordinances. Pizzo invited everyone to the ribbon cutting festivities for the first of 29 affordable homes to be constructed at the land trust on Friday and then there will be an Open House on 11/12.

Swain said there is a difference in being pro-active and activism for a cause or concern and he hoped that we would keep that in mind when, as a council, we decide to debate and subsequently pass legislation that may or may not be within our purview or of little or no force. He also did not feel that we have addressed the problems encompassing our law enforcement branch and our police department. The way that our policies as being enacted in the community must be addressed.

Sherman thanked President and Mrs. Erhlich for everything they have contributed to the university and our community. They will leave a lasting mark on our community.

Mike Davis said that as of Friday, the United Way fundraising campaign is officially over. City employees have exceeded last years donation by \$2,000. That's a 12% increase in a year when city employees received only a 1% salary raise. He also urged everyone to attend the Bloomington Tomorrow forum. This annual review is an opportunity to discuss the future of our community.

MESSAGES FROM
THE MAYOR

Mayor Allison read a statement regarding the Board of Public Safety and the results of meetings with boardmember Patrick Baude, the Prosecutor, the Police Chief, and Linda Runkle, Corporation Counsel. That statement is attached to the original minutes. The mayor also read a Proclamation for S.O.A.P. Students Organized Against Poverty and thanked them for organizing the drive to provide winter coats for children and proclaimed November 21 Free Market Day in Bloomington. Greg Raisman accepted the proclamation and thanked everyone for their superb cooperation in this

effort.

Cole read a memo from Tim Mueller that she requested regarding an update on just where we are in the master plan process and implementation. (Also attached to the minutes).

MESSAGES FROM
CITY OFFICES

Don Moore shared his concerns about Bloomington and a global economy. He expressed his opposition to NAFTA. He gave a long statement regarding economics, values, and politics.

PUBLIC COMMENT

Doug Jones, Coalition for Positive Progress, came to discuss the Master Plan Annual Review. He stated that if the November 6 meeting was the Annual Review then the board and panels should be reconstituted in such a way that better represents the community at large. Currently there are around 24 panelists and only 5 are from the private sector and he does not feel that this is representative of the community. He noted past legislation that requires an annual review of the Master Plan in January of each year.

White said that community forums on global economics should take place with our congressional representatives. It is also important that local economic issues should be discussed with the appropriate local elected officials and we do that as we consider then land use, planning, infrastructure, workforce development, etc. He felt the Council should do those things to drive our economy in a positive way.

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

LEGISLATION FOR
SECOND READING/
VOTE
RESOLUTION 93-37

Service noted that this is money from vending machines that are located in municipal buildings used primarily by city employees, not the public and is to be used as the annual fund for Christmas activities.

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

It was moved and seconded that Ordinance 93-51 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded that Ordinance 93-51 be adopted. The synopsis and committee recommendation was given. It was moved and seconded that Ordinance 93-51 be postponed until November 17, 1993.

ORDINANCE 93-51

The motion to table received a roll call vote of Ayes:8, Nays:0.

It was moved and seconded that Ordinance 93-50 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded that Ordinance 93-50 be adopted. The synopsis and committee recommendation of 7-0-1 was given.

ORDINANCE 93-50

George Heise, Environmental Commissioner, noted the four main changes to the noise ordinance. The purpose of the changes and amendments are to make more explicit what is currently implied in the Code. The first change is one regulating car stereo loudness. The second item is one which allows limited exceptions with a permit. The issuer of that permit may specify limits up to 115 decibels. The normal limits differ between night and day. He gave comparative measures of loudness. The third change is to make the fine for violation \$50.00 as opposed to the current

page 3

fine of \$10.00 so the violation will be taken more seriously. The fourth change is establishment of an averaged system of sound measurement.

Swain asked about the specifics of permitting of civic events that may exceed 115 decibels.

Heise said that there are provisions regarding those situations and that the numbers do not put unreasonable constraint on permissibility.

Swain asked if civic events that will obviously exceed that level will be compelled to apply or if they would be exempt from permits.

Heise said that the maximum of 115 decibels could be made to apply to all events.

Swain inquired about the reason for the ordinance and Heise said it was in response to citizen complaints.

Robert Steinmetz thought the ordinance was an excessive reaction to a relatively small problem and he thought the police had enough to deal with.

Heise said that they had collected comments and complaints and that the majority of complaints surrounded the speedway (south of town) and car stereos. The ordinance does not address the speedway. The current ordinance regulates cars in the same way as everything else which is at a substantially higher level than would be permitted in the proposed ordinance.

Sherman talked with Steinmetz regarding sound levels on weekends on Kirkwood Ave.

Swain said he had a problem with the phrase "convenient hearing" and discussed the possibility of over-legislation and how maybe other alternatives to legislation ought to be tried.

Sherman said that this is an issue of quality of life, people are being offended and that the Council should address it with this legislation.

He then went into the question of enforceability, on which he stated that the ordinance may not be enforceable, but the ordinance reflects community values and therefore he would vote for it.

Swain said the ordinance smacks of knee-jerk legislation and the ordinance will be a passing fad. He noted past legislation that is now obscure and he expressed his belief that this ordinance would one day be in that category.

Miller expressed her support of the ordinance. She then asked Heise some specific questions of enforceability which he answered.

It was moved and seconded that Amendment A pertaining to limiting sounds generated at civic events especially permitted by the Mayor to 115 decibels be adopted. The synopsis was given.

AMENDMENT A

The amendment received a roll call vote of Ayes:7, Nays:1(Swain)

The ordinance, as amended, received a roll call vote of Ayes:7, Nays:1(Swain)

It was moved and seconded that Ordinance 93-29 be introduced and read by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 93-29

It was moved and seconded that Ordinance 93-29 be adopted. The synopsis and committee recommendation of 6-0-2.

Tim Mueller, Planning Director, described the location and the immediate surrounding areas. He described the mixed zoning and the Master Plan

issues the zoning raises. He then explained that heavy industrial uses would not be preferable and those had been eliminated in the outline plan. The County's plan to widen Vernal Pike was considered when the plan was drawn up and the widening should not be impeded. Access to the site and to the area behind it were discussed. The development plan will provide more specific information.

This outline plan does include a list of permissible uses. Sidewalks along Vernal Pike are to be constructed, but no sidewalks would be put inside the development. Drainage problems on the site were discussed. A bond would be required to cover the private improvements in the development. All conditions of approval would be implemented in the development plan stage.

Sherman asked about bonding for sidewalks and when it is done.

Mueller said that in a subdivision developers are always bonded, but in a unitary ownership situation sidewalks are not bonded. The reason for this arrangement were given.

Sherman asked if the City held bond money for sidewalks in Devonshire. Mueller said sidewalks and all other public improvements would have been bonded at the end of the development, but at Devonshire the developer was given a determinant variance which means that they were not bonded. The sidewalks will eventually be bonded after the next phase of Devonshire is completed.

Kiesling said she would like to see what improvements would be bonded. Mueller said it would be sent up in a memo. He also said that those improvements would not be fully engineered until later.

Mike Carmin, representing the petitioner, noted there would be a sewer stub to Vernal Pike. He also recognized his commitment to put in sidewalks as well as a privacy fence at the onset of the project for the neighbors to the west and northwest.

Helen Langley asked that the council make very sure that the bonding requirement is required of this developer and Kiesling asked that the council be notified when it takes place.

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

It was moved and seconded that Ordinance 93-49 be introduced and read by title only. Clerk Williams read the ordinance by title only.

ORDINANCE 93-49

It was moved and seconded that Ordinance 93-49 be adopted. The synopsis and committee recommendation of 7-0-1.

Tim Mueller described the tract west of Winslow Park Woods. The petitioners would like to continue the theme of the Winslow Farms development with a PUD for the particular site and future additional petitions for the farm as they acquire land. This is a recommended infill type of development with up to 6 units/acre in a mixed housing type of plan. The tract is heavily wooded and certain trees have been identified and will be preserved through specific measures. There will be 61 lots with a loop figured street configuration, not opening to Graham Dr, but pretty much self contained and internalized. Conditions of approval are relatively simple with an emphasis on tree preservation. The project ranks high in master plan compliance. Graham Dr is not a public street at the current time but activities are under way to secure its dedication now that there is more activity in that area.

Dan Nubecker, Eric Stolberg and Tim Winger were available for questions.

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

It was moved and seconded that Ordinance 93-24 be introduced and read by title only. Clerk Williams read the ordinance by title only. It was moved and seconded that Ordinance 93-24 be adopted. The synopsis and committee recommendation of 4-1-1 on the amended ordinance was given.

ORDINANCE 93-24

Service attempted to provide an overview regarding the Board of Health ordinance that differed from what the city ordinance said. Initially we hoped to pass an ordinance that said that regulations any more stringent than currently in our ordinance would apply. Our legal department did not think that was the best approach and thought it was better to adopt an ordinance in our own format that went along with everything the county said. After much discussion and confusion, it might have been better to do what was considered initially because we then had a situation where people wondered if the County Health Dept. had jurisdiction, which it does. The goal is to establish, that whether one lives in the city of the county the same regulations apply and that our aim is to protect the public from the dangers of second hand smoke.

Last week Amendment C was discussed and Service was not sure if it was wise to consider it at this time. She was uncertain if we should do that now because we have a problem with enforcement and if we adopt our own version of the county ordinance and put it into our law then our enforcement mechanisms can kick into effect. Our Legal Dept. can enforce violations. If we don't adopt it then it is totally in the hands of the county to do the enforcing even in the city. Therefore we could only enforce the 25% ^{for smoking} rather than the total plan on new establishments.

Cole introduced an amendment, Amendment A, that would keep bars as an exception to the city ordinance banning smoking. Any establishment with smoking would have to post a sign at the entrance stating so. The amendment was moved and seconded.

AMENDMENT A

Cole recognized a possible conflict between the city ordinance and the county ordinance but city legal staff assured her that the city has its own jurisdiction in this area. The county thinks there should be one overriding ordinance prevailing over the whole county. She stated she felt if future bars wanted to be non-smoking that was fine, but if they wanted to allow smoking they should be able to do so.

Pizzo disagreed. He stated that he feels the Council is here to protect the people of the city and allowing people to conduct activity that is harmful to themselves and to others would be a mistake. He said he would vote against the amendment.

Cole said she supports the ordinance but does not feel the community is ready for a total ban.

Kiesling asked for clarification regarding a language change in the ordinance.

Dan Sherman, Council Administrator, clarified the language. He spoke regarding Amendment A and its restrictions.

Kiesling asked if current businesses that allow smoking would continue to allow it.

Dan Sherman said they would unless they closed business for more than six months or they changed ownership.

Service said she had two problems with the proposed amendment. One, the point of the ordinance was to make the city ordinance coincide with the county ordinance so no questions of jurisdiction existed, the proposed amendment would create that conflict. The county did at one time have an amendment that would have exempted bars but it did not pass, if it had passed, she would not have a problem with the amendment. Second, if a person wishes to abuse themselves enough to go to a bar anyway, and imbibe alcohol then it is their tough luck if they are exposed to smoke, which may be a valid argument, but the employees are unfairly exposed and they are part of the public which the Council seeks to protect.

Swain said Service's first point is well taken, but otherwise he would agree with the amendment if he agreed with the proposed ordinance. He stated that there is a point when the market forces and the people have to take responsibility for themselves. An employee that chooses to work at a bar is aware of the exposure and has a choice not to work there. He felt awareness should be raised by education and not by legislation. He also felt that the proposed ordinance is a redundancy which the Council should avoid.

White said he would support the amendment as he did at committee, and although he agreed with Pizzo, but bars are a different case, a person does not have to go to a bar and the market will control that.

Sherman said health and safety is an important issue but that the arguments presented to exempt bars should have been presented to the County Health Department. He felt a legal bind over the exemption of bars is not worth the fight.

Pizzo said that the educational value of such an ordinance is large and the message the Council sends by passing the ordinance without the amendment could do some good.

The amendment received a roll call vote of Ayes:3(White, Miller, Cole)
Nays:5.

It was moved and seconded that Amendment B be introduced.
Service read the synopsis. The amendment sets up the timetable for transfers and moves up the effective date for new businesses.

AMENDMENT B

Swain asked if transfer of ownership included inheritance.
Dan Sherman said that was undefined and Swain suggested that Dan Sherman get into contact with the county to cover the question of transfer of ownership.
Dan Sherman said he had talked to Jim Truelock and he had hoped that the county would have made it more clear but they had not.
Sherman said that the county should be asked to clarify the issue.
Swain said the lack of clarity would compel him to vote against the amendment.
Service said she felt the amendment was needed to get the date of effectiveness closer to the county's date.

The amendment received a roll call vote of Ayes:7, Nays:1(Swain)

Service noted Amendment C and said she was no longer in favor of the and no one else was interested in presenting the amendment.

Kiesling commented on her belief in the jurisdiction of the County Health Department and hoped we would try to stay in sync with the state and federal legislation concerning smoking.

Sherman said he supported the ordinance because it was better than our current one and not because it brings us in line with the county.

Swain reiterated his reasons for not supporting the ordinance, both jurisdiction and over legislation.

Pizzo stated he lobbied strongly for the ordinance on the county level and he still supported it.

The ordinance, as amended, received a roll call vote of Ayes:7, Nays:1(Swain)

It was moved and seconded that Resolution 93-32 be introduced and read by the Clerk by title only. Clerk Williams read the resolution by title only.

RESOLUTION 93-32

It was moved and seconded that Resolution 93-32 be adopted. It was moved and seconded that Resolution 93-32 be tabled.

The motion to table received a roll call vote of Ayes:6, Nays:2(Service, Miller)

It was moved and seconded that the following ordinances be introduced and read by title only by the Clerk for first reading before the Common Council. Clerk Williams read the legislation for first reading by title only.

LEGISLATION FOR FIRST READING

Ordinance 93-53 To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic" (Leased Spaces at Municipal Lot 3)

ORDINANCE 93-53

Ordinance 93-54 To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic" (Parking)

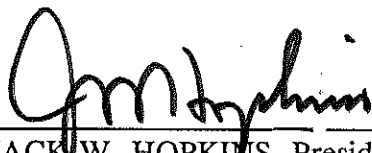
ORDINANCE 93-54


Don Moore addressed the council about global economics and NAFTA.

PUBLIC COMMENT

The meeting was adjourned at 10:15 P.M.

ADJOURNMENT


JACK W. HOPKINS, President
Bloomington Common Council


PATRICIA WILLIAMS, Clerk
City of Bloomington

Approved on ____ November, 1993.



STATEMENT OF MAYOR ALLISON

NOVEMBER 3, 1993

I recently met with Board of Safety vice president and constitutional law professor Pat Baude, Chief of Police Steve Sharp, Prosecutor Bob Miller and Corporation Counsel Linda Runkle to reaffirm our commitment to work together on a common goal of effective law enforcement. Chief of Detectives Bill Parker has met with the Prosecutor and will meet weekly with a representative of the Prosecutor's office to consult and coordinate cases. The Prosecutor's office will conduct legal updates for the Bloomington Police Department. We are confident of a good working relationship. This relationship is vital to effective law enforcement in Bloomington and to the understanding of appropriate roles in law enforcement.

The Bloomington Board of Safety is doing its job well. Its duty is to investigate and evaluate complaints against the police, and either exonerate the officer or ask for disciplinary action. It can subpoena witnesses. It has authority over the Chief of Police and all other officers. Its authority includes the power to discipline or fire officers.

The Board of Safety is a citizen board that guarantees citizen oversight of the police under state statutory process and obligations. The Board of Safety has very careful rules of procedure that it must follow. Any complaint brought to the board is investigated thoroughly,

and the board and complainant are notified of the outcome by the Chief. If an appeal is made, the case is then reviewed by one of the three board members. Thus, if the complaint must go to a formal hearing, the other two members can act as impartial judges. The investigating board member reviews evidence and interviews persons involved in the complaint. After the investigation, the board makes findings of fact.

In addition, the Board of Safety can review rules of procedure followed by the Police Department. That is what the board has done in some recent cases that it has reviewed in an effort to determine whether the Police Department followed its regular procedures. The Board can recommend changes in the **Rules & Regulations** of the department when deemed appropriate.

In addition to understanding these roles, it is important to understand what the Board of Safety does not do and what the Police Department does not do. The board does not set policy, and neither do the police. One important policy issue is the priority that drug enforcement should have among all of the enforcement activities of the police. **This is the issue which should be the primary issue of public focus.** A clear distinction should be made between criticism aimed at the police and criticism aimed at the marijuana enforcement policy. My door has been and will remain open to anyone who wishes to discuss law enforcement policy with me. I also have initiated discussions with citizens on drug enforcement policy, and Bob Miller has shown his willingness to talk to the public about his policies.

The Board of Safety is the proper agency for handling complaints against the police. Its procedures are designed to protect both the rights of citizens and the rights of city employees, namely our police, and to ensure that the police department does not become embroiled in politics.

Thus, the setting of drug enforcement policy is one for the prosecutor and the mayor in consultation with the Chief of Police and within the confines of the law. It is the job of the police to carry out that policy and the Board of Public Safety to oversee the performance of the police. The system I have just outlined affords ample opportunity for a responsible public expression of views regarding both the issues of alleged police misconduct and drug enforcement policy issues. I think the system is working well.

*** AMENDMENT FORM A ***

ORDINANCE #: Ord 93-50
SUBMITTED BY: Council Office
COMMITTEE ACTION: Pending

PROPOSED AMENDMENT:

1. Add a new SECTION III which will read as follows:

SECTION III. Section 14.09.070 Special Permits, subsection (d), shall be amended to add the following sentence at the end of that provision:

The average noise level allowed under a Civic Event Permit shall not exceed 115 dB(A) for more than three cumulative minutes in any one hour, when measured at a distance of fifty (50) feet from the sound source.

2. Renumber the subsequent sections.
3. Reflect amendment in the synopsis.

SYNOPSIS

This amendment, suggested by George Heise, puts a limit of 115 decibels for sounds generated at civic event specially permitted by the Mayor.