

In the Common Council Chambers of the Municipal Building held on September 21, 1978, with Councilpresident Richardson presiding over a regular session of the Common Council.

COMMON COUNCIL
REGULAR SESSION
SEPT. 21, 1978

These minutes are a summary; tapes available in Council Office.

Councilmembers present: Allison, Blume, Kinzer, Middleton (entered during discussion of Ord. 78-56), Morrison, Olcott, Richardson, Towell and Young. Absent: none.

ROLL CALL

Richardson gave the agenda summation, noting that Appointments to Boards and Commissions has been removed from the agenda. For second reading, Ordinance 78-70, Budget Transfers; Ordinance 78-69, To Authorize the City of Bloomington Athletic Club Project Economic Development Commission Bond Issuance and to Approve Other Actions in Respect Thereto; Ordinance 78-68, To Change the Name of Crestwood Lane to Wynnwood Lane; Ordinance 78-56, To Amend Chapter 17.20 of the Bloomington Municipal Code, Entitled "Housing Quality". For first reading, Ordinance 78-44, To Amend Zoning Maps re: NW corner of College Mall Road & Covenant Drive as RL/PUD; Ordinance 78-73, Budget Transfers; Ordinance 78-71, To Amend Section 1.04.070 of the Bloomington Municipal Code, Entitled "Fiscal Impact Statements"; Ordinance 78-66, To Amend Chapter 12.04 of the Bloomington Municipal Code and Prohibit Dumping in Storm Sewers; and Ordinance 78-65, To Amend Chapter 2.16 of the Bloomington Municipal Code, Entitled "Police Collective Bargaining". Also, the minutes of August 28, 1978 are to be approved.

AGENDA SUMMATION

Olcott apologized for a remark made in the paper regarding the Housing Quality Ordinance, and Towell and Richardson thanked him for the apology.

MESSAGES FROM
COUNCILMEMBERS

Allison thanked the Herald-Telephone for the large City Beautiful ad in the paper. She also commended I.U. Vice-President O'Neil for his campaign against litter.

Blume commended Olcott for his apology.

Richardson read a resolution for the I.U. Football Team, wishing them luck in their game against Washington on Saturday. Olcott moved and Young seconded a motion to approve the resolution by acclamation. Motion carried by unanimous voice vote. Richardson added that the I.U. Soccer Team is now rated number one in the country, and they should be congratulated for this achievement.

Mayor McCloskey addressed the Council. He agreed that the I.U. Soccer Team should be congratulated and he said Richardson should be commended for the work he has done for the Youth Soccer League. He thanked the Housing Code Committee for the work they have done on the Housing Quality Ordinance and asked that the Council pass the suggested amendments. He said he supports a right of entry clause, stating that without this clause there would be only voluntary compliance and the consequences are too severe in opting for this procedure. He said the program is expensive, but the program is well worth it where the health and safety of the community is concerned. He said one landlord commended the Housing Code Officers when the inspector discovered faulty wiring that may have cost someone their life if it had not been discovered.

MESSAGE FROM
THE MAYOR

There were no Petitions and Communications.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-70 by title only.

PETITIONS &
COMMUNICATIONS
ORDINANCE 78-70
Budget Transfers

Clerk Connors read Ordinance 78-70 by title only.

Olcott moved and Morrison seconded a motion to adopt Ordinance 78-70 and Richardson read the legislative synopsis.

Morrison gave the committee report, noting a Do Pass recommendation.

With no discussion, Ordinance 78-70 was adopted by a roll call vote of Ayes: 8, Nays: 0.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-69 by title only.

Clerk Connors read Ordinance 78-69 by title only.

Olcott moved and Morrison seconded a motion to adopt Ordinance 78-69. Richardson read the legislative synopsis.

ORDINANCE 78-69
To Authorize the
City to Issue
Economic Development
Bonds for
Blgtn. Athletic
Club

Morrison gave the committee report, noting a unanimous Do Pass recommendation.

Steve Richardson, Attorney for the Petitioner, addressed the Council. He introduced several housekeeping corrections, and pointed these out to the Council.

Olcott moved and Towell seconded a motion to approve the amendments as submitted by Mr. Richardson. Motion carried by a unanimous vote of Ayes: 8, Nays: 0.

Kinzer asked the difference between a lease agreement and a loan agreement, as the Bloomington Klubhaus had, and Richardson explained that they have issued a lease agreement which means that they will float the bond and then lease the facility from the City. In answer to a question from Kinzer concerning what would happen if the Council refused the bonds now that the building for the racquetball club is almost completed, Richardson said they would obtain conventional financing.

Olcott moved and Morrison seconded a motion to adopt Ordinance 78-69 as amended. Motion carried by a vote of Ayes: 8, Nays: 0.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-68, To Change the Name of Crestwood Lane to Wynnwood Lane.

ORDINANCE 78-68
To Change the Name
of Crestwood Lane
to Wynnwood Lane

Connors read Ordinance 78-68 by title only.

Olcott moved and Morrison seconded a motion to adopt Ordinance 78-68. Richardson read the legislative synopsis.

Morrison gave the committee report, with a Do Pass recommendation pending information on the residents on the Lane.

Richardson read a memo from the Council Office which stated that there are only five lots on the Lane, and not all of these are being built on. The residents are anxious to get the street name changed so that they can receive their mail.

Ordinance 78-68 was then adopted by a roll call vote of Ayes: 8, Nays: 0.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-56 by title only.

ORDINANCE 78-56
To Amend the BMC
re: Housing Q

Connors read Ordinance 78-56 by title only.

Olcott moved and Morrison seconded a motion to adopt Ordinance 78-56. Richardson read the legislative synopsis and asked that the ordinance be considered section by section, leaving right of entry questions until the end.

Young commented that the City already has a right of entry clause on the books in the BOCA Code, but they have not exercised this right with search warrants. He continued that the penalty is too high at \$1,000 maximum, and suggested that it be lowered to \$100, especially since the fine can be assessed daily.

Richardson read the present right to entry clause in the BOCA Code, and he said the new clause that the Council will be considering is actually less stringent than the present one.

Kinzer said that it would not be an effective program if it were based entirely on citizen complaints. Some renters would complain, but others may not because they are afraid of reprisals of some sort or simply because they are not aware of violations. She questioned why someone would refuse to let an inspector go over their apartment for violations since the idea is to protect the tenant and the landlord.

Middleton entered the meeting at this point.

Morrison remarked that he would like to see a representative of the Westside Neighborhood Association sitting in on all future discussions concerning revisions to the Housing Code Ordinance. He said the westside residents seem to have been able to establish a workable system where the landlords and tenants talk out their problems without calling in the City for inspections. He said cooperation is the key, and the rest of the City should look at the westside to see how this is done.

Kinzer added that there have been dramatic changes in the westside, but the westside has received a considerable amount of federal funds to aid in this transition.

Blume said, in answer to a point by Kinzer, that tenants may not want an inspector in their apartment for several reasons: they think it is an invasion of privacy and improvements may make their rents go up.

Olcott said he had previously favored a program based on a complaint system, but he now thinks that the department has served the City well in their inspection program, and the new ordinance is an improvement over what we now have. If Howard Young says the ordinance is sensible, the Council should consider this.

Middleton said philosophically, he doesn't like the City to dictate the relationships between landlords and tenants. He said this is an invasion of privacy and that registration of rental units is a burden. He said inspections should be done on a complaint basis by the tenant, landlord or neighbor. He continued that inspections are very expensive, and under this ordinance they could be still more expensive. It is not a workable program because the department spends most of their time on units that are not in violation. He said the City is going overboard by protecting everyone, since everyone loses some freedom in the process. He said often complaints are made by tenants who are merely trying to get at their landlord. He then moved and Olcott seconded a motion to table the ordinance for further revisions. He then withdrew his motion so that other Councilmembers could give opening remarks.

Towell said he has lived in many apartments in his 18 years in Bloomington, and tenants are used to having people come into their apartment: the landlord to show the apartment, repairmen and utilities people. Most of these are for the benefit of the landlord, but the landlords are opposed when there would be an inspection that could benefit the tenant. He continued that the inspection cycle has been lengthened to three years under this ordinance, and most tenants would not think that this is a serious invasion of privacy since the inspectors are there for a very limited purpose.

The tenants will at least have notice that an inspector is coming. He continued that Frank Barnhart, Attorney for the Monroe County Apartment Association, agrees that there is nothing in the ordinance that has previously been struck down by the judge. Finally, he said that mandatory inspections are needed because most tenants will not know if something is wrong with their apartment and it is these people that must be protected.

Richardson said the Council voted during budget time to increase the size of the Housing Code Office and to run a fully financed housing program. He said if the Council did not want to support the program they should have said so then instead of at this stage. He said most of the changes are entirely cosmetic, stating that fees were dropped and the inspection cycle was lengthened. He proposed that the current right of entry provision is stronger than what is proposed in the ordinance. He continued that some people claim that only 10% of all housing units are affected through the ordinance, but this is not true. If there are run-down homes in a neighborhood, it has an impact on the entire area.

Morrison agreed, but said he can not go along with search warrants, stating that he has had bad experiences with search warrants during the war. He said there must be a better way to do it.

Towell moved and Morrison seconded a motion to divide the question to consider 17.20.040, .070, 080 and .100 separately with one vote on the remainder of the ordinance. Motion carried by a vote of Ayes: 9, Nays: 0 as did the vote on the remainder of the ordinance.

Olcott asked if this ordinance would nullify the previous ordinance, and France Komoroske answered no, it supersedes it by stating the ordinance is amended to read as follows.

Richardson asked for consideration of 17.20.040(c), Inventory and Damage Lists. He said there was a 3-3 vote in committee on this.

Towell moved and Kinzer seconded a motion to amend the section as proposed by the Council Office.

Middleton moved and Blume seconded a motion to delete the section. Richardson noted that (a) and (b) are already in the current ordinance.

Towell's amendment was adopted by a vote of Ayes: 8, Nays: 1 (Middleton.)

Young moved and Morrison seconded a motion to delete (c), stating that this would be quite a bit of trouble for smaller landlords. He said that larger landlords probably already keep these lists.

Towell argued that this section would only serve to lessen the tension between landlords and tenants and help to settle problems without going to court. He noted that the landlords are interested in inspecting the apartments when a tenant is leaving, and the tenant is interested when they are moving in. With a previous list, there would be more of a balance. He also said that there is nothing to require that tenants' damage deposit be put in escrow. As it is now, the landlords earn the interest on approximately \$700,000 in damage deposits, and tenants often have a difficult time getting their deposits back.

Richardson said he would be opposed to keeping this section if it meant that City Inspectors would have to be spending time in court testifying as a third party. This would take too much of their time away from doing inspections. Komoroske agreed that the City could be placed in this position.

17.20.040(c) was then deleted by a vote of Ayes: 5, Nays: 4 (Towell, Allison, Kinzer and Richardson).

Vote of Ayes: 8, Nays: 1 (Middleton) on the remainder of 17.20.040.

On another topic, Council president Richardson read a proclamation from the Council concerning support of the Energy Fair on September 30. The proclamation was adopted by unanimous voice vote.

ENERGEY FAIR
PROCLAMATION

In discussion of 17.20.070 - Inspections - Fees, Blume presented his proposed amendment to (b) requiring certified mailings to tenants before their apartments may be inspected.

ORDINANCE 78-56
continued

Towell said the Supreme Court has said that search warrants for this purpose are legal. He said with a delivered or mailed notice the tenant would have sufficient notice. With Blume's amendment, Bloomington would have the most complicated procedure in Indiana. He said he would like to let the Housing Code staff work out the procedure, stating that he is not really opposed to any of the procedures.

Blume explained that the word "presumed" is what bothered him. By assuming that an inspection is okayed unless the City hears otherwise, it leaves out the possibility of good reasons for not answering. It would be expensive to send certified letters, but it would be well worth it when invasion of privacy is concerned. He said the City should not seek a search warrant until they are sure that a person won't let them in.

Blume moved and Young seconded a motion to adopt his proposed amendment.

Komoroske said that if the Council does not adopt this section, there would still be a search warrant provision under the current BOCA Code. This would simply set up steps that must be adhered to before a search warrant may be obtained.

Morrison asked if there has to be a reason to suspect a violation before a search warrant may be obtained and Richardson answered no, not in administrative searches. He then read from the Tyler case which sets out that there must be a need for the intrusion and there must be a reasonable program set up, which the City has done.

Olcott asked if the City has ever exercised its power to obtain a search warrant, and Towell said he didn't think so. Blume added that the City has been afraid to do so.

Morrison suggested that it be written into the lease that the City has the right of entry, but Richardson repeated that under the current BOCA Code, the tenant must let the inspector in.

Blume's amendment was then adopted by a vote of Ayes: 7, Nays: 2 (Towell and Kinzer).

Steve Smith, City Engineer, explained the current notification process. He said that there are currently two notices sent. The first one is not certified, and if the tenant does not respond to the first notice, a certified letter is mailed. The first notice is of little value since they have only a 10-16% response rate. It would be easier to send a certified letter the first time, which would cost \$6,000 annually.

Towell suggested that a card could be mailed that said if you object to having your apartment inspected, send the card back. Kinzer agreed.

Mr. Rumble spoke from the audience, stating that tenants obviously don't care if their apartments are inspected if the City has such a low return rate.

Towell said he wouldn't mind seeing the whole section deleted, stating that the best procedure is for the City to contact the landlord and then have the landlord contact the tenants.

Young said he would like to see an amendment in (a) stating that all apartments in the city are to be inspected before others are reinspected.

Kinzer moved and Morrison seconded a motion to delete 17.20.070(b) in entirety, stating that the amendment would be costly and inefficient.

Towell moved and Kinzer seconded a motion to adopt a new section modelled after the West Lafayette ordinance. He then read the W. Lafayette version. Steve Smith said he would support the amendment, adding that they tried such a procedure once, but they didn't have the teeth in the ordinance to enforce it. Also, it would minimize time and cost expenditures of the department.

Komoroske said changes would have to be made concerning certification and districts. Towell said he would be willing to wait and work out the bugs later and he then withdrew his motion to amend.

Kinzer's motion to delete (b) carried by a vote of Ayes: 9, Nays: 0.

Young moved to amend (a) by stating that all apartments must be inspected once before others are reinspected. Richardson asked that it be further amended to add "in good faith" after "inspected". Towell seconded the motion. Motion carried by a vote of Ayes: 9, Nays: 0.

Kinzer moved and Morrison seconded a motion to adopt 17.20.070 as amended. Motion carried by a vote of Ayes: 9, Nays: 0.

Young moved and Olcott seconded a motion to adopt the amendment he proposed in 17.20.080(c) concerning the length of time allowed before a landlord must comply. After a short discussion, Young withdrew his amendment, and 17.20.080 was adopted as submitted by a vote of Ayes: 9, Nays: 0.

Young addressed 17.20.100 - Penalty, stating that the penalty is too high and he then moved to lower it from \$1,000 to \$100. Olcott seconded the motion.

Bill Finch noted that almost all code violations carry a maximum fine of \$1,000 and added that he has never seen a judge award more than \$500.

Towell moved that "and other penalties provided in the BMC" be added to Young's amendment, and Young seconded the motion. Motions carried by a vote of Ayes: 9, Nays: 0.

Middleton moved and Olcott seconded a motion to amend the first sentence of the ordinance to substitute the words "repealed and re-enacted" for the words "amended to read".

Komorokse said that would be okay except provisions on search warrants and on right of entry, would still be in the BOCA Code.

Middleton moved that 17.20.040 be deleted. There was no second.

Middleton's first amendment was adopted by a vote of Ayes: 8, Nays: 0.

Kinzer moved and Morrison seconded a motion to adopt Ordinance 78-56 as amended. Motion carried by a vote of Ayes: 9, Nays: 0.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-44 by title only.

Connors read Ordinance 78-44 by title only and Richardson read the legislative synopsis.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-73 by title only.

Connors read Ordinance 78-73 by title only and Richardson read the legislative synopsis.

ORDINANCE 78-44
Amend Zoning Maps
NW corner College
Mall Rd. as P

ORDINANCE 78-73
Budget Transfers

Richardson said that the Human Rights Commission has requested that their section of the budget transfer be given second reading tonight.

Charlie Webster of the HRC explained that the HRC must file a petition for rehearing on the Hudgins case before September 25, and in all fairness to the attorney taking the case, they would like to know if the Council would grant their transfer so that they could pay him.

Kinzer moved and Morrison seconded a motion to suspend the rules to give Ordinance 78-73 second reading.

Motion failed when Young voted no (must be unanimous vote). Blume said he did not think it was important enough to suspend the rules.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-71 by title only.

ORDINANCE 78-71
Amend BMC re:
Fiscal Impact
Statements

Connors read Ordinance 78-71 by title only and Richardson read the legislative synopsis.

Olcott moved and Morrison seconded a motion to introduce and read Ordinance 78-66 by title only.

ORDINANCE 78-66
To Prohibit
Dumping in Storm
Sewers

Connors read Ordinance 78-66 by title only and Richardson read the legislative synopsis.

Olcott moved and Richardson seconded a motion to introduce and read Ordinance 78-65 by title only.

ORDINANCE 78-65
To Amend BMC re:
Police Collective
Bargaining

Connors read Ordinance 78-65 by title only and Richardson read the legislative synopsis.

Olcott moved and Morrison seconded a motion to approve the minutes of August 28, 1978 as submitted. Motion carried by unanimous voice vote.

MINUTES 8/28/78

The meeting was then adjourned at 10:30 p.m.

ADJOURNMENT

APPROVED:

ATTEST:



John F. Richardson, President
Bloomington Common Council



Nora M. Connors, Deputy City Clerk

MINUTES APPROVED this 19 day of October, 1978.