

In the Council Chambers of the Municipal Building, at 5:30 p.m., E.S.T., with Council president Charlotte Zietlow presiding, on Thursday, March 15, 1973.

REGULAR SESSION
COMMON COUNCIL
CITY OF BLOOMINGTON,
INDIANA

Present: Jim Ackerman, Richard Behen, Sherwin Mizell, Alfred Towell, Charlotte Zietlow, Hubert Davis. (Councilman Davis arrived late and therefore was not present for the votes taken early in the meeting.)

ROLL CALL

Absent: Brian De St. Croix, Wayne Fix, Jack Morrison.

Mayor McCloskey, James Wray, Transportation Director; Ted Najam, Assistant to the Mayor; James Register, Corporate Counsel; Martha Sims, Controller; Grace Johnson, City Clerk; Marvard Clark, Assistant City Engineer; Richard Gose, Fire Chief; Owen Cosby, Police Department.

CITY OFFICIALS PRESENT

About 25 people, including members of the press. OTHERS PRESENT

Councilman Ackerman moved that the minutes of the Council meeting of March 1, 1973, and the minutes of the meeting of the Board of Finance of February 20, 1973, be approved as distributed. Councilman Towell seconded the motion. THE MOTION WAS CARRIED BY A UNANIMOUS VOICE VOTE.

MINUTES

Council - 3/1/73
Board of Finance
2/20/73

Mayor McCloskey addressed the Council: My office today prepared a resolution commending the IU basketball team and their coach Bob Knight for recent successes and of course we are all hoping for another success tonight so if we could alter the agenda enough to have someone on the council introduce this resolution, I would appreciate that very much.

MESSAGE FROM THE MAYOR

Briefly touching on several topics, many of them which you may very well be aware of - firstly, I would like to say that there was a neighborhood meeting last night on the Miller Drive. developmental coordinator Jim Wray, redevelopment director Danny Fulton, councilman Jim Ackerman and myself did attend. Basicly I explained our overall federal funding situation in regard to the miller drive area and also the possibility that with neighborhood support and consensus and development of a very much modified one year NDP program starting from July 1, 1973, through June 30, 1974. It would not involve any sewage or water installation and, indeed, it would involve no major relocation or anything like that but it would perhaps allow for street improvements, more junk car pick up and allow the residents of the neighborhood more time for consideration and planning as to just what they would like the future of the neighborhood to be. As far as I am concerned that was our final formal contact with the community down there; they are going to meet again I understand on Monday night - that will not be a city meeting but the city will be standing by through that meeting as to the possibility of providing any more information they may want. I think that Tuesday morning we will know whether Miller Drive NDP will be going again very soon. I do hope that the people see that this can be their program and it will be their program and we want to do all we can but it is basicly out of our hands. I think the city administration has made more than a good faith effort in this area over the last 15 or 16 months.

A scheduling note - I have asked Jim Wray not to discuss or introduce the third street, atwater revenue sharing proposal tonight. As you know, we have received additional information from Indiana University - what looks to be a very promising situation. I have talked about it privately with several members of the council and what we basicly need now is more information as to just what the amount of the appropriation would be, in the case that IU does donate a substantial amount of right of way. But that would not be, I am sure, more than another one or two weeks.

I would also like to commend Dan O'Laughlin, the CAP director and also Ernie Butler and Paul Miller for their recent suggestions that we do establish a somewhat formal apparatus very soon to discuss the future of OEO and CAP-related programs. I think Mr. Butler and Mr. Miller have both indicated that they would be willing to expend some revenue sharing money, and possibly we can. As the council knows all along we have been considering the possibility of getting into a program such as city support of a day care center.

Another item - tonight there will be first reading of an economic development ordinance which has been generated out of my office with the help of an Indiana University graduate student. Basically it amounts to the appointment of a three member commission by the mayor with the advice and consent of the council. This group will be charged with all the basic investigation and research as to the community's overall present and possibly future economic situation. In the long run, if and when the commission and the city administration as a whole so choose, it could go into such things as a formal economic development commission under the state statutes. I would hope that it would have a minor budget so that it could seek information both in the city and nationally. And I think very soon, within a matter of months, would be reporting to the mayor and to the council as to what they think our economic development policy as an administration and as a community should be. I think many of the members of the council have a copy of a magazine article from Nation's Cities about, generally speaking, the fact that city administrations have not been very involved in the economic development area. Perhaps this is unfortunate in that nearly all of our decisions - whether it be zoning or sewage rates or whatever - do have an economic impact and I think we can be looking to more progress in this area. And, again, it would report as a group to the mayor and the council and I am sure would enjoy the full cooperation of all city departments and such groups as the chamber of commerce. Ultimately I think it should have an action and a promotional component. I think there is no doubt that we could use some more industry. The type and the scope I think is subject to investigation and further consideration.

I think everyone probably knows that this week - a day or two ago - we did submit seven individual applications for the \$20 million plus waste water expansion program to the stream pollution control board and we are making contacts in Washington. I expect - next week or the following week - to be in Washington and perhaps, with luck, we will be able to meet personally with Mr. Ruckleshaus and other federal officials to hopefully generate their interest and start getting some feedback on just where Bloomington stands overall in state and federal priorities. The last thing I would note is that we do have, after much consideration by various members of the council and the mayor's office, a utilities service board ordinance. I think those of you who have read it - it is obvious the concern the administration does have that it does coordinate with all units of city government, particularly the plan commission, the planning department and the Board of Public Works and other city departments. It basically will be and must remain a very important part of the city administration in an overall coordinated development policy. I would also like to note that I believe that Mrs. Zeitlow would have an additional amendment as to personnel policies which, from what she has told me about it would be very valuable. Thank you.

Councilman Behen moved that the agenda be changed to permit consideration of Resolution No. 73-24 at this time. Councilman Towell seconded the motion. The motion was carried by a unanimous voice vote. AGENDA CHANGE

Councilman Behen moved that Resolution No. 73-24 be introduced and read by the Clerk. Councilman Towell seconded the motion. The motion was carried by a unanimous voice vote. RESOLUTION NO. 73-24

Grace E. Johnson, City Clerk, read Resolution NO. 73-24.

Councilman Mizell said he thought it would be fitting if this resolution were handled the way the one for the high school sports was and have all of the councilmen sign it.

Councilman Behen moved that Resolution NO. 73-24 be adopted. Councilman Mizell seconded the motion.

Councilman Ackerman said he thought a word is missing. Councilman Ackerman moved that Resolution No. 73-24 be amended by inserting the word "hurryin" before the word "Hoosier". Councilman Towell seconded the motion. The motion was carried by a ROLL CALL VOTE OF AYES 5, Nays 0.

The question was called. Resolution NO. 73-24 was adopted by a ROLL CALL VOTE OF AYES 5, Nays 0.

Councilman Mizell moved that Ordinance No. 73-21 be introduced and read by the Clerk by title only with posting as required by ordinance. Councilman Towell seconded the motion. The motion was carried by a unanimous voice vote.

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES

No. 73-21 - annexation
1804 N. Monroe

Grace Johnson, City Clerk, read Ordinance No. 73-24 by title only.

Mr. Register explained that this is the voluntary annexation of property on North Monroe street. (The Council secretary found out, subsequent to the meeting that this property has been given the address of 1804 N. Monroe - it did not have an address at the time the ordinance was introduced)

Councilman Mizell moved that Ordinance No. 73-22 be introduced and read by the Clerk by title only and posted around the city as required by ordinance. Councilman Ackerman seconded the motion. The motion was carried by a unanimous voice vote. Grace Johnson read Ordinance NO. 73-22 by title only.

No. 73-22 - annexation
1724 East Hillside

Mr. register explained that this is the property located at 1724 East Hillside and that this is a voluntary annexation.

Councilman Mizell moved that Ordinance No. 73-23 be introduced and read by the Clerk. Councilman Towell seconded the motion. The motion was carried by unanimous voice vote.

73-23 - Housing
Quality Appeal Board

Grace Johnson, City Clerk, read Ordinance NO. 73-23 in its entirety.

Councilman Mizell moved that Ordinance No. 73-24 be introduced and read by the Clerk. Councilman Towell seconded the motion. The motion was carried by a unanimous voice vote.

73-24 - Economic
Development
Commission

Grace Johnson, City Clerk, read Ordinance NO. 73-24 in its entirety.

Councilman Mizell moved that Ordinance No. 73-13 be advanced to second reading and read by the clerk by title only. The motion was seconded by Councilman Ackerman and carried by a unanimous voice vote.

SCHEDULED BUSINESS
No. 73-13 - Utility
Service Board

Grace Johnson, City Clerk, read Ordinance NO. 73-13 by title only.

Councilman Mizell moved that Ordinance NO. 73-13 be adopted.

Councilman Ackerman seconded the motion.

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Councilman Mizell addressed the council: At the meeting of February 15, 1973, the council chairwoman appointed a committee to consider this ordinance and to consider amendments to this ordinance. Shortly thereafter the committee met - it consisted of Councilmen Fix, Morrison, Davis, and Mizell; Mr. Owens representing the city legal department. The committee discussed various amendments to the ordinance. The committee agreed on three amendments which we wished placed in legal terms and presented to the council for its consideration. However, the amended version that I have before me now incorporates a number of other sections which were not discussed at the committee meeting. I think because of this it would be proper to consider each amendment separately. I would like to say in addition that what the council committee did consider was setting up a salary for this Board that is found in the proposed amendments, section number 4. We also considered an amendment which would encourage the cooperation of this utility board with the various departments of the city who are involved in the growth and development of the community; this is incorporated into section one of the amendments. We also considered reducing the number of appointments from 7 to 5. This is included in the first five lines of section 3 of the amendments. The committee can speak to these amendments. But as far as the rest of the amendments are concerned, we have not considered them and cannot speak to them as a committee.

Councilman Mizell moved that Ordinance NO. 73-13 be amended to read as follows:

"Section 1. Creation, Title, Objectives. There is hereby created and established the Bloomington Utilities Service Board. It is the object of this legislation to provide for the efficient operation of the City owned utilities with all governmental activities of the City of Bloomington.

"In accomplishing this objective, it is the intent of this Council that the Utilities Service Board shall serve in an advisory capacity to presently established Boards, Commissions, and City officials concerning Utilities matters, but it is likewise the intent of this Council that the Utilities Service Board shall seek the advice and counsel of all presently established Boards, Commissions, and City officials concerning their respective activities and insofar as is possible coordinate the Utilities operation with all governmental activities of the City.

"The Utilities Service Board is charged with the responsibility of maintaining communications with, but not limited to, the following specific bodies: The Bloomington City Plan Commission, the Bloomington Redevelopment Commission, and the Bloomington Board of Public Works."

Councilman Ackerman seconded the motion.

Councilman Mizell said he thought this amendment speaks to the points raised by the Committee.

Councilman Towell: I see the intent but what is the force of saying these things?

Mayor McCloskey: Councilman Towell, I would just say that it is a statement of policy, a strong recommendation at the very least, charging them to coordinate with all development aspects of the city administration. I think it is binding in that sense; it is general, not specific.

Councilman Towell: I am certainly in favor of the general direction, I would just like to make sure that it happens.

No discussion was offered from the floor.

The question was called. The motion was carried by a ROLL CALL VOTE OF AYES 5, NAYS 0.

Councilman Mizell moved that Ordinance No. 73-13 be amended by changing Section 5 to read as follows: "Section 5. Salary. The members of the Board shall be paid a salary, to be budgeted from Utilities funds, of Two Thousand (\$2,000.00) Dollars per year." Councilman Ackerman seconded the motion.

Councilman Behen: I assume, because of some of the zoning meetings that I have been at in the past that to pass any of these we need five votes. I personally feel that this is a very important piece

of legislation that we are dealing with here tonight and I cannot see one person who should cause this either not to be passed the way it should be - I feel very strongly about it. For only we few to be sitting up here and anything we do here has to be unanimous tonight is not fair to this particular ordinance in my opinion.

Councilman Towell: I have been in attendance at a number of meetings where we have had only five people present and I just think that if we see that we are not going to be able to maintain a majority then probably the reasonable thing to do would be to table it until more councilmen are here, rather than setting it back for a couple of meetings when it could be reintroduced.

Councilman Behen: I think one person's vote becomes too important, when there are so few of us in attendance,

Councilpresident Zietlow: I think I understand what you are saying but I think that the establishment of the possibility in the law that we can vote when we have a quorum here means that we have the responsibility to go through with it. I don't think we can table things on the basis of just having a mere quorum.

Councilman Ackerman: I would suggest we discuss this ordinance and propose amendments and try to get a feeling of how we stand and if it does look like there is a serious disagreement that we move to table at that time, after we have thoroughly discussed it.

Councilman Towell: However we disagree on the ordinance, I think we should be able to agree on waiting to vote.

Councilman Mizell: This is one of the reasons I suggest we separate the question so that if there is a controversial amendment we might table that without sacrificing other amendments which have been approved for the entire ordinance. It is a worthwhile ordinance and is unusual in that it originated from the electorate; this council has a mandate to present and approve an ordinance of this type. I would rather not see the entire ordinance lost for want of a cooperative feeling on a particular amendment which can be reintroduced at any time.

Councilman Towell: We are now just discussing each amendment that is proposed; we don't have to divide the question yet.

Councilman Ackerman: I would like to raise a question about the justification for the salary; is the Board of Public Works salary not set at \$1500?

Councilman Mizell: Yes; a good bit of the work currently being done by the Board of Public Works could be taken over by the utilities board; I would expect that the work load of the board of public works would be decreased. The utilities company is probably the largest-in the dollar figure- the largest operation of the city. It is a very responsible position and responsible board.

Councilman Behen: Here I was thinking that a city councilman's responsibility was important, and this is asking for more than we get.

Councilman Ackerman: Could we get some comment from a member of the Board of Public Works or the mayor concerning the cut in responsibility and duties of the Board with the creation of a utility service board?

Mayor McCloskey: I would say it would mean a major diminishment of the responsibilities of the Board of Public Works; it would no longer handle utilities. The Board of Public Works would be concerned with the other physical areas - streetplatts and that sort of thing. It just removes utilities from the Board of Public works, and the Board of Public Works has the remainder of its present jurisdiction. It would be the policy making body for the utilities department.

Councilman Towell: In what way would this board answer to the city? To the Council? or the mayor?

Mayor McCloskey: Well, I believe it would be charged with making annual budgets for one thing, which would be subject to the review of the council. Salary ordinances would have to be authorized

by the Council. I would assume there would be a council liaison to the utilities service board as much as there is now to the Board of Public Works or the Redevelopment Commission or the Board of Public Safety. I would like to also note that council would appoint a minority - in this case two - of a five-member board and surely the consensus of the council should be able to determine what type and status of person you want to represent you in that capacity. I think it is important again that the ordinance does provide a positive mandate that the Board is to be responsive to the legitimate governmental desires of the remaining city administration. I don't see any severe problem if responsible people are appointed and they follow their good common sense and the guidelines of that ordinance. I would note that, if there is anything that I have learned after 16 months in office it is that you can have the planning department and the redevelopment department and the utilities department and the engineering department and the board of public works all going off in opposite directions; it just doesn't make any common sense. One thing is obvious to me, after a conference today with the Black and Veatch financial expert, John Scott, there are going to have to be tremendously significant decisions made very soon in the area of utilities fiscal operation. It is going to take people who devote a lot of time - more than I can devote - to the utility budget. I think they are going to be very valuable in this area: fiscal and accounting and also including the other areas such as basic expansion and environmental, etc. It will be a policy making and policy developing body and I think can perform a very useful function.

Councilman Towell: In the case of the budget we will have more review than we do now, is that correct?

Council president Zietlow noted that at present there is not budget prepared for the utilities department.

Councilman Towell: the laws of the state of Indiana are very lax or perhaps nonspecific in the area of what controls there would be over utilities and in this case we are establishing some additional controls.

Councilman Mizell: The enabling legislation which allows us to pass this kind of ordinance states that each year at a time to be fixed by the municipal council the board shall submit a budget of its financial needs in the ensuing year, set out in such detail as the municipal council may direct, the council having the power to lower any item in the budget but not to raise any such item or items. So it is specifically directed by the state enabling legislation.

Mayor McCliskey: I was going to suggest that perhaps in the blank spaces of the ordinance that perhaps the first day of December would be a good deadline to put in, for the utility budget for submission to the council for the following year.

Councilman Towell asked whether, with a salary of \$2000.00 per board member, the expenses of the board members would also be paid: I know that as a member of the council I pay out more in expenses than my salary. I would hate to have people who serve on a board like this and put in lots and lots of hours come out less than nothing.

Councilman Mizell: I would consider it a favorable or friendly amendment to include that in my motion, adding the phrase: "That these members shall be entitled to reimbursement for any expenses paid out by them in performance of the duties of their office."

Councilman Towell: I think there should be more control than that; it sounds like anytime they spend some money in the performance of their duties it will come back to them. What is the wording we have in the previous ordinance about "properly expended"?

Councilman Behen read the wording from the economic development commission ordinance: "shall be reimbursed for expenses properly incurred in connection with their duties pursuant to this Ordinance."

Councilman Towell: I think that is good wording.

Councilman Mizell said he would consider it a friendly amendment to insert, at the end of the motion the wording "The members of the Board shall be reimbursed for expenses properly incurred in connection with their duties pursuant to this Ordinance."

Councilman Ackerman who seconded the motion also accepted this friendly amendment to the motion.

Mayor McCloskey noted that a utilities budget has been prepared for this year - the first time in history. In response to a question from Councilpresident Zietlow, Mayor McCloskey said he did not expect that this item would be a major expense and that the utilities budget should be able to handle it. He said he did not think there would be any question about someone being reimbursed for expenses incurred in performing the duties of his office. I will say this, there is not a lot of room for a lot of fat in utilities; we are in a position where we do have to have severe scrutiny very soon, particularly in connection with any sewage expansion program. It is no secret there would have to be rate increases.

Councilman Towell: I would just like to remark that the economic development commission came from the mayor's office and in the one case you saw fit to put in a expenses clause and in the other not, I think they are both equally justified.

The question was called. The motion was carried by a ROLL CALL VOTE OF AYES 5, Nays 0.

Councilman Mizell moved that Ordinance No. 73-13 be amended by substituting for sections 2,3, and 4, the following section: "Membership, Appointments. The Board shall be composed of five (5) members, not more than a simple majority of whom shall be of the same political party. The Mayor shall appoint three (3) members of the Board, and the Common Council shall appoint two (2) members. The Mayor shall initially appoint members as follows: one (1) for a term of one (1) year; one (1) for a term of two (2) years; and one (1) for a term of three (3) years. The Council shall initially appoint members as follows: one (1) for a term of three (3) years and one (1) for a term of four (4) years. Thereafter, all appointments shall be for a term of four (4) years. If a vacancy or vacancies should occur due to resignation or otherwise, the Mayor or Council, as appropriate, shall appoint a substitute member to complete the term of the vacant appointment. The initial terms shall expire on the first day of January of the first, second, third, or fourth year, respectively, following their appointment. Councilman Ackerman seconded the motion.

Councilman Behen again expressed concern that the council was acting on this ordinance with only 5 in attendance. Councilman Towell said that he thought that before the council voted it down, if that seemed likely, it was a matter of courtesy to let the other members of the council have a chance to participate in the discussion and voting. He noted that if all five members that are present agree on action to be taken, that would be enough to carry a vote even if the total council were present.

The question was called. The motion was carried by a ROLL CALL VOTE OF AYES 5, Nays 0.

Councilpresident Zietlow asked the Vice President, Councilman Behen, to chair the meeting so that she could introduce an amendment to the ordinance.

Councilwoman Zietlow moved that Ordinance NO. 73-13 be amended by adding Section 2 from the proposed amended version, as follows: "Powers and Duties. The Board shall have general supervision over the Utilities owned by the City of Bloomington, but said general supervision is in no way to interfere with the detailed supervision of the utility manager, who is to be held responsible to such board for the business and technical operation of the Utilities. The Utility manager shall keep the Board, Mayor, and Council informed of Utilities activities, and shall provide

whatever information is requested and make reports as required.

"Each year by the first day of December, the Board shall submit a budget detailing the project incomes and expenditures of the Utilities for the ensuing year. The budget shall be enacted in ordinance form by regular procedure as set out in Indiana Code 18-1-3-6, with the provision that the Council may lower, but not raise any item in the proposed budget.

"The Board shall select a utility manager who shall have executive charge of the City owned utilities. Such manager may be removed by such board. In the appointment of a manager the Board shall make the selection on the basis of fitness to manage, taking into account his executive ability and knowledge of the Utility industry.

"The Board shall fix the number and the compensation of all employees, including the manager, such compensation to be submitted to the Common Council each year prior to the first day of August. The Council shall enact such compensation in Salary Ordinance form by regular procedure with the provision that the Council may lower any salary, but may not raise any salary. No person shall be paid a salary from Utilities funds except as enacted in a Salary Ordinance.

"The Board shall adopt rules and regulations governing the appointment of all employees, making proper classifications, such rules to determine the eligibility of applicants. The manager shall have the right to discharge employees at will, but shall be required to state the cause."

Councilman Ackerman seconded the motion.

Councilwoman Zietlow moved to amend the motion by inserting after the word "applicants" in the next to last sentence, the following: "All rules regulating employment shall be consistent with all existing city-wide personnel policy, including equal employment and affirmative action practices and consistent with duly negotiated union agreements." Councilman Ackerman seconded the motion. The motion was carried by a unanimous voice vote.

There was discussion concerning the date for submission of the utilities budget to the council. Mayor McCloskey spoke against using the same time line - July-August submission - as is set by the state laws for other city budgets, noting that the utilities departments expenditures are not as regular and predictable as those of other departments perhaps are. Mr. Wray noted that the standard budget procedure requires budgeting for a period of 18 months which he did not see as particularly desirable and therefore did not feel it should be set up this way for the utilities budget if not required by state law.

Councilman Towell said he was concerned about the date - it seemed to me that an awful lot happened to the utilities budget the last month of the previous city administration. We're building in that same sort of thing again. After an election, if there is a change of administration the lame duck administration will determine the utilities budget for the next year. I wonder if we really want to do that.

Mayor McCloskey noted that there would be a new administration to administer the budget so that he did not think it would be a major problem. He noted that there would be continuity in the utilities service board who would develop the budget for submission to the council.

In response to a question from Councilwoman Zietlow, Mayor McCloskey said this budget would not be subject to review by the tax adjustment board.

Councilman Behen said he would object to having this budget reviewed with the other city budgets because he thought it was of such importance that it should be reviewed by itself.

Mr. Wray said he thought it would be preferable to use the January - December fiscal year for the utilities budget so it would be consistent with the budgets of other departments. He noted that no more of the board than a simple majority could be from anyone political party and they would be appointment some by the mayor and some by the council. He said he did not think the budget would be a problem.

Mr. Gray noted that the council will have the power to lower but not raise any item in the budget which ~~and~~ serve as a control. He said he thought it ~~is~~ difficult to see how that many people could get ~~to~~ner into any kind of conspiracy to create the kind ~~of~~ problems that faced this administration when ~~it~~ took office.

Councilwoman Zietlow said that she thought that the fact that there would be a budget would preclude a lot of things that had happened in the past.

Councilman Towell said he was also concerned about the \$750,000.00 that was spent in an unprecedented subsidy for a certain subdivision. While this was being done it was maintained that we were in good fiscal shape and then we discover that we are not afterwards and the treasury is bare.

Councilman Behen noted that this date could always be amended in the future if the date is found to be impractical, if the Board, once established finds a different timing is preferable.

Mrs. Sims, Controller, questioned whether the first meeting in december would give the council adequate time to consider the budget before the end of the year. Councilman Towell said he thought the utilities budget should probably have special meetings anyway.

Councilwoman Zietlow moved to amend the motion by changing the first sentence of paragraph two to read as follows: Each year by the first council meeting in November, the Board shall submit a budget detailing the project incomes and expenditures of the Utilities for the ensuing year." Councilman Mizell seconded the motion.

The motion was carried by a unanimous voice vote.

The question was called on the amended motion. The motion was carried by a ROLL CALL VOTE OF AYES 5, Nays 0.

Councilman Behen returned chairmanship of the meeting to Council president Zietlow.

(The Council took a five-minute break in business. Councilman Davis arrived during the break.)

Councilman Behen moved that Ordinance 73-13 be amended by inserting the proposed amended section 5 as follows: "Removal. Members of the Board shall be subject to dismissal for cause by the Mayor in the case of Mayoral appointments or by the Council in the case of Council appointments. "Cause" shall include, but not be limited to: gross neglect of duty, misconduct with respect to duties in connection with the Board, excessive absenteeism from Board meetings and any other action adversely affecting the rights and interests of the public." Councilman Ackerman seconded the motion.

Councilman Behen said that he thought this was a point at which if any Councilmember had serious objections to this clause, they should say so now and the ordinance could be tabled until more members could be present.

Mayor McCloskey: Might I suggest that the council delete the second sentence of the proposed amendment. The more I think about it, cause is a very definite legal concept which does involve a failure of duty. Anyone being dismissed for cause, if they disagreed with that would have legal redress to retain or reobtain such an appointment. So I have no big ax to grind about the desirability of defining cause. It is a very definite legal concept.

Councilman Ackerman moved that the motion be amended by deleting the sentence beginning "'cause shall include..." Councilman Behen seconded the motion.

Councilman Mizell: The statement that cause is a legal term implies that there will be some body which will rule on whether or not cause is adequate. My question is whether this is true and

if so, what is the body that would make this determination?

Mayor McCloskey: Obviously the mayor or the council dismissing anyone for cause would have to state the reason. Any person feeling aggrieved by a contending and unjustifiable dismissal would have a legal right to seek redress, probably through circuit court. Mr. Register, Corporate Counsel, said it would be through the superior court.

In response to a question from Councilman Ackerman, Mayor McCloskey said that cause would have to involve something other than a difference of opinion-it would have to involve some sort of dereliction or neglect or irresponsibility. I have no feeling that the phrase has to be there - cause can be adjudicated.

Marilyn Mahlberg, League of Women Voters read the following statement: "The League of Women Voters would like to give special thanks to Councilman Mizell for introducing the Utility Service Board ordinance and for shepherding it through the Common Council. Unfortunately, although this ordinance is near and dear to our hearts, we are put in the position of having to strongly oppose the ordinance in its present form. We are doing this because of Section 5 on removal. Last fall, the voters of this community passed, by a landslide vote, a referendum for the establishment of a Utility Service Board. The Common Council is now faced with the responsibility and duty of honoring the wishes of the community. Part of the Council's duty is to give the voters the change they voted for - an independent board. As we read and understand the section on removal, the Utility Service Board members, for all practical purposes, would serve at the discretion of the mayor and the common council. This means that a mayor or council could remove a board member before his term has expired. The purpose of staggered terms is to provide continuity from one administration to another. Under the removal section in the present ordinance, a complete changeover of board would be possible either at a time of change of administration or before. In our work in government over the years we have observed that the legislature is usually very much aware of the amount of power that they intend to be given to any governmental body. For instance, they have legislated that the Board of Works or Board of Safety, serve at the discretion of the mayor. On the other hand, they specifically designated that a utility service board, Plan Commission, etc., shall have board members who serve staggered terms. We feel that the intent of the law is being circumvented in this ordinance. When a provision is made for staggered terms (as required by law) and at the same time the board serves at the discretion of a mayor or council, then it appears to us that there is not only a conflict, but that there is little difference between the new Utility Service Board and the Board of Works which presently administers the utilities. We understand and sympathize with the feelings about controlling absenteeism from the board but feel that the remaining statements of "cause" for removal entail subjective judgment and endanger the independent functioning of the board. Thank you."

Councilman Towell: I would like to ask Mrs. Mahlberg a question. I know you and your organization have spent quite a bit of time on this. I would like to ask whether you can see or imagine anyway in which this board might go wrong?

Mrs. Mahlberg: I think probably absenteeism. I think everything else is subjective - whether one man is doing a good job or not. When this was explained to the public, the reason given for having a utilities service board was to have an independent board. Why not just have the board of works make a budget, and take on the other duties listed for the utilities service board.

Councilpresident Zietlow: Maybe some voters voted for an independent board but I think most of them voted for some sort of regular control over the utilities which would be more immediately answerable to the public. Maybe the League of Women Voters did not vote for it that way but I know that a lot of people I talked to did.

Mrs. Mahlberg: We did a lot of educational work in the community and explained this to literally thousands and believe me when I say that most people want an independent board.

Mayor McCloskey: I would like to say a few things: first of all, this ordinance has been thoroughly run through our legal department

and in noway does it violate any state law and particularly it does not violate any law concerning the utility service board. And I would stress once again that cause is a very definite legal and ethical and responsible term that does not allow a mayor or a council to be arbitrary or capricious. It allows a dismissal for a definite and serious reason; the concept of cause involves formal legal redress. I would note that a councilman may be removed from the city council for cause at the vote of two-thirds of the common council. Cause does not allow reckless indiscretion. I would also like to add that I think we would be being very irresponsible to stipulate a situation in which a board could have a total fiat for any of its individual members to be reckless or irresponsible. I don't think the public voted for that either.

Councilman Towell: I would like to ask if even if we don't have it in the ordinance, could a member be removed for cause? For example, for violating the provisions of the ordinance.

Mr. Register: the first point I would like to make is that this ordinance as it is now framed certainly does not say that such members shall serve at the pleasure of the mayor or the pleasure of the council. It does not say that. It does indicate continuity except for cause. I think the mayor stated it correctly when he said that cause suggests some failure of duty and does not include capriciousness at all.

Irene Devins addressed the Council: I am speaking for myself although I have spoken with several other people today who are willing to sign petitions to the intent of what I am going to say. I feel somewhat like a player who has had the rules changed halfway through the game. I am very disappointed about the inclusion of the whole section on removal because I see this as the board being responsible to the mayor and to the common council so that it then no longer becomes a citizens independent board. On this issue perhaps more than any other issue that has appeared before the common council in the last seven years I think you have a clear public mandate to what they want. They want an independent utilities board. The basic philosophy of American government is that there should be checks and balances involved and this at the local level of government is the only way we do have checks and balances. Now by all means, I don't mean to say you should rule out any provisions for removal. I think you should have provisions for removal of ineffective or incompetent board members. But make the mechanisms and the reasons for removal specific; don't leave them to the interpretation of any elected official. One can't make statements about what you think the electorate voted on. The only information meetings that I was aware of and of which there were many, all said specifically that this would make them independent - and there was no other voice given on this. My own feeling is if the common council and the mayor feel they want to retain the right then it should be by public hearing so that the citizens have an input into these matters. If removal ever becomes an issue and cause has to be proven it should be a public hearing.

Councilman Towell: It seems that this has been going on this week so that the mayor deletes a number of causes and you say that whatever cause there should be or can be in the ordinance should be spelled out.

Mrs. Devins: One of the objections I have is that the present wording says, "but not limited to", which means anything. One has got to remember that this ordinance will be in effect indefinitely and that it is all very well for the mayor who happens to be a lawyer to say that cause is a legal word but if somebody is removed from the board and is being paid less money than they are spending on expenses, are they going to be able to go through the legal battles? I am not saying that you shouldn't - there shouldn't be some control over the board but I feel that arbitrary decisions should not be made; they should be always open to the public. I also want to thank mayor McCloskey for deleting the final sentence of that section.

Councilman Towell: You referred to checks and balances, I think it should be said that there are other checks and balances.

for example the power of the legislative against the executive. And the courts beyond that.

Councilman Behen: When you speak of checks and balances, we would never be taking that away from the voters. They always have the prerogative of not voting for us again. If we don't have some jurisdiction over the board then there are no checks and balances.

Councilpresident Zietlow: Then the board becomes independent and unaccountable.

In response to a question from the audience concerning what would constitute legal cause, Mr. Register said cause would include any of the reasons which are proposed for deletion and any other words or situations.

Councilman Towell: I think something should be clarified and that is that in the beginning of Mrs. Mahlberg's remarks she talked about Councilman Mizell's introducing this ordinance. I would like to say that at our morning council meetings with the mayor. Councilman Mizell and others brought up the fact that this had not been provided as yet and the mayor made a promise to bring it up at about this time so that the introduction by Councilman Mizell in my opinion did not speed it up at all' and I think that should be said. I would like to say that it seems to me less than fair to introduce it at about the time the mayor had promised it.

Mayor McCloskey: ever since I suggested that this question be put to the electorate last fall I have been in constant contact with the city legal department. From the passage of vote, my commitment was to get it passed within a reasonable amount. I think that more than six months would have been very unreasonable. There are so many city employees and so much time, so much work to do and I appreciate Councilman Mizell's concern, I appreciate the League's concern and the ordinance is here tonight.

Councilman Mizell: I would like to say that I appreciate the publicity but I don't see that it affects the ordinance one way or the other and I think we should get on with this.

Councilman Davis: I am not sure this related directly to the amendment but to the section. I am a little uncomfortable with some dimensions of that. But to say that the inclusion of this section would make the utilities service board roughly the equivalent of the Board of Public Works seems to me to be a gross simplification.

The question was called on the amendment to delete the second sentence of the section. The motion was carried by a roll call vote of Ayes 6, Nays 0.

Councilman Mizell: I would like to say that it is my opinion that the enabling legislation specifically sets out that the terms shall be staggered to imply by the writing that it shall be free of any political influence and that it be staggered and that it be a mechanism of maintaining the continuity of the Board. I think the inclusion of the proposed amendment would in effect nullify this statement in the enabling legislation.

Councilpresident Zietlow: Because of the nature of any cause that would have to be presented to dismiss someone, I would have to disagree. I don't think this removes the idea of a staggered term. I think we have had some experience with attempted removals of people on staggered terms and it is a very difficult thing to do.

Councilman Mizell: Those people that have been - at least that the attempt has been made to remove them - are not appointed under such an ordinance as this which would include a mechanism for removal and the mechanism in the enabling legislation setting up those commissions is worded the same way to my knowledge, as this that sets up the utilities board.

Councilman Ackerman: Is your argument that the mechanisms setting up the other commissions of the city should not be the same in the

cases of removal. Because I was just checking out this ordinance for the human rights commission and there is such a mechanism for removal for cause. It seems to me it is sort of a standard way of exerting some minimal control.

Councilman Mizell: The human rights commission ordinance is a creation of this body and the utilities service board ordinance is government by state enabling legislation.

Councilman Towell: The human rights ordinance also comes from enabling legislation, which specifies in great detail the things that are in our ordinance.

Councilman Mizell: I submit that it may not be the intent of the legislation enabling the human rights commission to have that in the ordinance.

Councilman Towell: It seems to me that this is the first time I have ever heard of removal for cause being any kind of controversy.

Councilpresident Zietlow: That was my point on the human rights ordinance, there was no discussion of whether or not somebody should be removed for cause, although I think that in the practice in the city we have more reason to have had.

Councilman Towell: If the question then is about the mayor and the council removing for cause then it seems to me we ought to discuss that point. I don't think that removal for cause is controversial at all. This is a tremendous responsibility, it is the major money business of the whole city that these people will be guiding so it seems to me we need some escape valve if things go wrong and I don't believe that absenteeism is the very serious way that things would go wrong. I think it would be a matter of robbery or something like that that would occur. I hope it will never occur, I don't expect it to; I am just saying that it seems to me we need some check in the case that there is collusion and distortion and some nonsense like that.

Councilman Ackerman: I think that, as has already been pointed out by Mrs. Mahlber, the board that is being suggested is not totally independent of political control because over ~~the~~ a period of time the ~~the~~ council and the mayor do make the appointments. And over a period of time we just have to be realistic - gradually an administration coming in - the appointments made by earlier administrations will be phasing out and so an effect of control is already there that can't be gotten away with so there is no real need - it doesn't seem to me - for someone to go in with a hatchet, to remove people whose terms are going to expire anyhow within the year.

Mr. Wackowski, Human Rights Attorney for the City addressed the Council: It seems to me that there was a question on the floor that I can clear up. The ~~the~~ enabling ~~the~~ legislation for the state civil rights commission says that members of the commission may be removed by the governor for cause but for no other reason.

Mrs. Devins: I think it is quite right that you should have the ability to hire but the point that I am objecting to is not removal for cause but it is removal by YOU by cause - any common council because I feel that you already have sufficient input to the Board and this would give you added weight in the board. Obviously you are going to get changes and the idea is that ~~the~~ the changes in philosophy will not be too drastic at any given time since some of the terms will probably coincide with the changeover of the council and the mayor. But my own feeling is that I don't - it seems to me to be removing - you already have the power to appoint so once you have appointed, if this person is then fulfilling his duty, then there should be a specific independent means for removing these people.

Councilman Ackerman: I guess the difference is our interpretation of cause - it seems that the fear is that for any disagreement with the political powers they could be removed. The way I understand it is the way Mr. Register and the Mayor have stated it, it ~~the~~ sounds like a very well spelled out thing. Maybe we should build in a board or something like that that would conduct the hearing for cause. But I would certainly fight to have some sort of removal

clause in there but maybe there might be better ways of adjudicating the removal.

Councilman Mizell: I have assumed all along that the appointments that are being made to all boards and commissions by the mayor and the council are well thought out and well considered appointments so that to the best of our knowledge when the appointments are made there seemingly is no reason at all that we would wish to have them terminated early. However, it may be helpful to have some type of adjudication board set up so that should there be some need which arises after the appointments, they could be taken care of. What I object to is that, as it is written, an appointment could be terminated and then it is incumbent upon the individual who has been terminated to bring to trial - if you will - to get the job back - rather, the termination is right now and then there is a long drawn out procedure to get reinstated. I think that if there is just cause that it should be equitable on both parties - that cause should have to be demonstrated as well as reasons rebutting the cause have to be demonstrated by the individual. So that if there is a balance between the two, I would find it acceptable.

Councilman Ackerman: Could we include then some kind of clause that termination will not be carried out until cause has been established in a due judicial court of the city, for instance?

Mrs. Mahlberg: I would like to ask a question - if the legislature intended this to be a part of the enabling legislation, why did not they put it in the law?

Councilpresident Zietlow: The legislator does not think out all the details of all its legislation very carefully I would think - it may be that they did not think about this particular aspect.

Mayor McCloskey: A state authorizing statute is not an ordinance, it is that simple. The ordinance cannot legally conflict with the state statute but surely that does not go to the point of the local responsibility of an elected administration in a particular community to tailor this ordinance within the terrain of the state statute to fulfill what they see as the legitimate local needs. For me, cause does exist as a legal term; lawyers don't define fraud but when it occurs you sort of know it and there are two judges of it - one in superior court and one in circuit court. They really would know what cause is - I would see that does seem to be a basic tension here that somehow presumes that elected officials - the mayor or the common council is going to deal in bad faith and be arbitrary. I don't think that is necessarily true. And, again, this does not give an elected official the right to be arbitrary or inequitable.

Councilman Davis: I wonder if it would be more equitable or palatable if we said "dismissal for cause, and for no other reason, by the mayor and the common council." That would mean that any member of the Board that was subject to dismissal by cause, whether appointed by the mayor or the council would have to be dismissed by the mayor in conjunction with the council. The mayor and the council would have to agree on any dismissal.

Councilman Towell: That seems to me like a good suggestion. I would presume that that would mean that the council would meet in public session and vote on the matter.

Councilpresident Zietlow: It would seem to me that some kinds of cause it would be better to deal with not in a public session.

Councilman Towell: If you don't want to ruin a man's reputation.

Councilman Ackerman: It does seem to me that we have come to what Councilman Behen said an hour ago - some points of disagreement among the council and I think we should table it.

After some discussion, Councilman Towell moved that the motion and further consideration of Ordinance NO. 73-13 be tabled until a special meeting called to finish the rest of the agenda. Councilman Ackerman seconded the motion. The motion was carried by a ROLL CALL VOTE OF AYES 6, Nays 0.

Councilman Behen moved that the agenda be revised to permit consideration of Resolutions 73-22 and 73-23 at this time. Councilman Ackerman seconded the motion. The motion was carried by a unanimous voice vote.

Resolution NO. 73-22

Councilman Behen moved that Resolution 73-22 be introduced and read by the clerk. Councilman Ackerman seconded the motion. The motion was carried by a unanimous voice vote.

Temporary Loan

Grace Johnson read Resolution NO. 73-22.

Councilman Behen moved that Resolution No. 73-22 be adopted. Councilman Ackerman seconded the motion.

The motion was carried by a ROLL CALL VOTE OF AYES 6, Nays 0.

Councilman Behen moved that Resolution NO. 73-23 be introduced and read by the clerk. Councilman Ackerman seconded the motion. The motion was carried by a unanimous voice vote.

Resolution NO. 73-23

Investment of funds

Grace Johnson read Resolution NO. 73-23.

Councilman Behen moved that Resolution NO. 73-23 be adopted. Councilman Ackerman seconded the motion.

The motion was carried by a ROLL CALL VOTE of Ayes 6, Nays 0.

Councilman Towell moved that the meeting be adjourned. Councilman Mizell seconded the motion. The motion was carried by a unanimous voice vote.

ADJOURNMENT

The meeting was adjourned at 7:55 p.m., E.S.T.

Charlotte T. Zietlow
Charlotte T. Zietlow, President

ATTEST:

Amy G. Mann
Amy G. Mann, Secretary

NOTE: a special meeting was called for March 29, 7:30 p.m., E.S.T, for the council chambers to finish the agenda of the meeting of March 15, 1973.

RESOLUTION No. 73-22

TEMPORARY LOAN

BE IT HEREBY RESOLVED by the Common Council of the City of Bloomington, Indiana, that the Controller of said City is hereby empowered to make the following temporary loan for the purpose of cash operating balance, to-wit:

TO GENERAL FUND	\$300,000.00
FROM FEDERAL REVENUE SHARING TRUST FUND	\$300,000.00

such loan to be secured by a pledge of taxes to be received which are not otherwise allocated.

Charlotte T. Zietlow

Charlotte T. Zietlow, President
Common Council, City of Bloomington.

Approved:

Francis X. McCloskey
Francis X. McCloskey, Mayor
City of Bloomington, Indiana

Adopted: March 15, 1973

RESOLUTION No. 73-23

INVESTMENT OF FUNDS

BE IT HEREBY RESOLVED by the Common Council of the City of Bloomington, Indiana, that the Controller of said City is hereby empowered to make the following investment into Government Securities yielding the highest rate of interest obtainable, consistent with safety, to-wit:

DEPARTMENT OF REDEVELOPMENT N.D.P. FUNDS

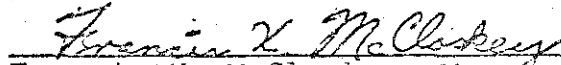
\$150,000.00

To mature in a period of 30 days



Charlotte T. Zietlow, President
Common Council, City of Bloomington

APPROVED:


Francis X. McCloskey, Mayor
City of Bloomington, Indiana

Adopted: March 15, 1973