

Council Questions/Comments and Staff Responses Report for June 24, 2013

as of June 24, 2013 at 8:05am

GENERAL COMMENTS:

Alderman: Scott Black

Comment: On page 194, the Mayor's name is spelled incorrectly

Staff Response: Clerical error has been corrected regarding Ordinance amending Chapter 28 of the Bloomington City Code adding section 107 relating to the regulation of noise.

EXECUTIVE SESSION:

Alderman: Jim Fruin

Item: Pending or Anticipated Litigation – Section 2 (c) (11) of 5 ILCAS 120

Question/Comment: 6:15 meeting. While only 15 minutes earlier than the planned/expected 6:30 start, I have previously made a work commitment up to 6:00. May Barb or a Staff member can call me Monday to offer more information on the meeting purpose, and the importance of my attendance.

Staff Response: Corporation Counsel Greenburg will contact Councilman Fruin.

CONSENT AGENDA:

Alderman: Rob Fazzini

Item 6C: Purchase of Floor Coating and Wall Coverings for the US Cellular Coliseum

Question/Comment: How was the determination made and who made the determination that competitive bids were not required because the supplier was a "sole source"?

Staff Response: As indicated in the background section, the US Cellular Coliseum has been very successful with the use of this product within limited areas of the US Cellular Coliseum on a test basis. Since the product is only available through a single source provider (as indicated within the letter in the council meeting packet), the decision was made by the staff at the Coliseum and within the City not to place the item for bid, but follow the single source protocol.

Alderman: Rob Fazzini

Item 6E: Change Order to the Professional Services Agreement with A & R Mechanical, Inc.

Question/Comment: Change Orders are generally unacceptable. In this case the amount is not large, the change closes the project which makes future change orders not possible on this project and the change was competitively bid. With these three reasons, I will accept the Change Order. The question still remains as to why the project bid did not contain enough leeway to avoid a Change Order?

Staff Response: The most straight forward answer is the way in which the City bids its projects; that being least cost, responsive and responsible bids without any contingency funding, there is no leeway in the project. With least cost, responsive and responsible bids without any contingency funding being the standard City protocol, the bidders on City projects, assuming the bid will be entertained by other contractor's, will make a very strong effort to put together an acceptable, profitable bid that is the least cost amongst the other bidders. Therefore, from the contractor's point of view, there is no leeway. If the contractor builds the project exactly as it was designed or at least exactly the way they had bid the project, then there will be no change to the project cost. On the City's side of the process, since the project is bid as the least cost, responsive and responsible bid without any contingency funding, the amount approved by the City Council is the absolute budget for the project unless further approval for either increases or decreases in the project amount are granted by the City Council. In either case, since there is no capability of paying for changes in the project if unforeseen issues should arise. Change Orders are the only instrument to obtain City Council approval to pay for the changes.

Alderman: Rob Fazzini

Item 6F: Change Order to the Professional Services Agreement with Johnston Contractors, Inc.

Question/Comment: Why didn't the project bid contain enough leeway to avoid a Change Order?

Staff Response: Same response as 6E above.

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Alderwoman: Karen Schmidt

Item 6G: Frontier Maintenance Renewal

Question/Comment: This question is outside the scope of this agreement, but are there any emerging opportunities for handling mobile/cell phone calls to 911? I continue to hear this is a challenge for handling and forwarding calls to the appropriate place.

Staff Response: The McLean County Emergency Telephone System Board is beginning discussions with Frontier Communications to transition the entire 9aa phone system in McLean County to Frontier's Next Generation 911 solution (NG-911). This solution would replace the existing phone system at each 911 center in the County: Metcom, Bloomington, and ISU. As we transition over the next several years to that solution, the possibility of routing wireless 911 calls to our answering center may become a possibility. However, with current technology; one center in the County must be designated as the wireless answering point. At this time, that designated point is Metcom.

The working relationship between Metcom and Bloomington is very good. We experience very few problems or delays with the transfer process. Since we utilize the same phone system, it is a one-button transfer between both centers.

Alderman: Rob Fazzini

Item 6G: Frontier Maintenance Renewal

Question/Comment: Frontier Communications is the same company that promised to give the City of Bloomington first opportunity to purchase multiple parking lots in downtown Bloomington, then it did not keep its word and sold them to another buyer. Am I remembering this correctly? If so, was this lack of trust taken into consideration when accepting a bid from this company?

Staff Response: The City Manager prefers to discuss the answer to this question in a future Executive Session under the topic Land Acquisition.

Alderman: Jim Fruin

Item 6H: Ratification of Contract with Local 49 Firefighters

Questions/Comments:

1. Article 18. Please advise as to the interest to increase this Leave policy to 120 hours (the equivalent of 3 work weeks)? And, what this Leave policy is used for?
 - a. **Staff Response:** Article 18 UNION BUSINESS (current language). Union Officers and stewards may conduct Union business involving the processing of grievances, contract administration and related activities on duty without loss of pay in accordance with current practice, provided such activities are carried out in a manner that does not interfere with the performance of assigned duties. Meetings of the general membership of the Union shall not be scheduled before 6:00 p.m. or without prior notice to the Chief or their designee. Meetings of officers, stewards and committees may be scheduled at any time provided that such activities are carried out in a manner that does not interfere with the performance of assigned duties. The Union shall be provided with ninety six (96) hours of paid Union leave per fiscal year. Such time shall be used for the attendance of labor related training, training, seminars and conventions selected by the Union. The Union shall give as much advance notice as is practicable that such employees will be utilizing such paid leave. The current contract allowed 96 hours of paid Union leave and this was increased by 24 hours to 120 hours. Per the contract this 120 hours is to be utilized by the entire bargaining unit for them to conduct union business. "Such time shall be used for the attendance of labor related training, seminars and conventions selected by the Union". The time has been used to attend union conferences and training provided by the International Association of Firefighters related to collective bargaining. Firefighters work a 24 on 48 off cycle.

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2. Section 28.2. Please explain how Holiday Pay will now be administered and compensated?
 - a. **Staff Response:** Section 28.2 Holiday Pay. (current language). Employees who are scheduled to, and do work, on any of the following holidays shall be paid premium pay in the amount of two (2) times their regular straight time hourly rate for all hours worked on such holidays. Pay periods that include a designated holiday will have premium pay earned in the first week paid in that pay period. Premium Pay earned in the second week will be paid on the following paycheck. Effective May 1, 2005: Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, Christmas Day, New Year's Eve (1/2 day), New Year's Day, Martin Luther King Day, and Good Friday. The premium pay shall be applicable to the hours worked during the twenty-four (24) hour shift beginning at 7:00 a.m. on the designated holiday. The holiday recognized shall be the day of the actual holiday and not any day celebrated in lieu of the holiday. Employees (including 40 hour employees) who work overtime on a designated holiday shall be paid at the rate of two and one-half (2 ½) times their regular straight time hourly rate for all hours worked on such holiday. This section was modified to allow the payment for holidays to be "on the current or following pay check". Resolving an issue of holiday pay not being paid in a timely manner. Firefighters are paid biweekly.
3. New Section. Administrative exception to snail mail payroll checks. Why is this necessary when we have made a major investment in Technology capabilities? How many employees are receiving their Paychecks by snail mail that requires special administrative handling?
 - a. **Staff Response:** New Section. City sought mandatory direct deposit for all Local 49 employees. Union opposed mandatory direct deposit. City's position to address the administrative handling of checks was to mail checks for those without direct deposit. Currently there are 92 firefighters utilizing the direct deposit option and 9 paper checks that will be mailed. Firefighters are paid biweekly.

From the public comments I receive, there is a growing concern with the richness of Public Employee benefits compared to what is more common in the Private sector. Continuing this richness of non-compensation benefits is an increasing concern to our residents/taxpayers, that is not sustainable going forward.

Staff: Todd Greenburg

Item 6J: Transfer of a Pump Station, Force Main, and Force Main Easement and to the Bloomington Normal Water Reclamation District

Staff Comment: The staff report statement that BNWRD must pay \$30,000.00 for the Force Main Easement is inaccurate. I am attaching a breakdown of the July 28, 2009 Intergovernmental Agreement. The City has already received a credit for the \$30,000. (see attachment)

REGULAR AGENDA:

Alderwoman: Judy Stearns

Item 7A: Text Amendment to Chapter 8. Animals and Fowls, Identification and Regulation of Vicious and Dangerous Dogs

Question/Comment: Does the new ordinance conflicts with state law?

Staff Response: As a home-rule municipality, the City is permitted to pass legislation which is different from state regulations. The proposed ordinance is clearly within the legal authority of the City under the Illinois Constitution.

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Alderwoman: Karen Schmidt

Item 7A: Text Amendment to Chapter 8. Animals and Fowls, Identification and Regulation of Vicious and Dangerous Dogs

Questions/Comments: I have received additional questions about how our “policy research” section seems to be breed-specific, although the language of the ordinance does not address specific breeds. Does the ordinance invite judicial interpretation that ends up being breed specific? Are police dogs exempt from being labeled “vicious”? The recommended amendments to the Ordinance does not specify breed specific. As a member of the Council Public Safety Committee, I committed in our last committee meeting to supporting the new dog ordinance as written, and continuing to work with Wish Bone and others to refine and improve the ordinance. Following a discussion this evening with Larry Apfelbaum, I think there are some basic additions that we need to consider now before we pass this ordinance. I would like us to lay this over again and see if we can incorporate these ideas into our ordinance. As I understand it, Larry has not been able to meet with George Boyle to explore and discuss these ideas. I think we need to make time for this. There are some basic concepts that should be considered as enhancements to the new ordinance, putting more clear responsibility on the owners of dangerous dogs and laying out procedural issues that should help bother owners and those who might find themselves interacting with a dangerous/vicious dog. I appreciate that this is an 11th hour request, following another Committee meeting and additional work from our city attorney. My interest is in trying to get this right the first time. We are well on our way to a great ordinance that meets our community needs.

Following is a summary of issues that Wish Bone hopes to see our new ordinance address. In addition, Larry notes that details of the State Animal Control Act is not in concert with our ordinance, and he has other municipal ordinance language that we can consider adopting.

The new Animal Ordinance will not significantly affect Wish Bone Canine Rescue due to our screening and selection process but it will potentially affect many animals in town. Imagine a female protecting her puppies being declared dangerous if she bites or acts in a threatening way. Or an animal in pain trying to protect itself. State law says those are complete defenses to any punishment but in Bloomington, it's a potential death sentence. Same for protecting its owner while taking a walk away from their property. I guess the message is that its Ok to use a gun to protect oneself but leave Fido at home. The Bloomington ordinance, however well intended, is an ill-conceived over-reaction to a tragic dog attack last year. It misses the mark in so many other ways. Consider that state law (510 ILCS 5/Animal Control Act):

1. Identifies veterinary records or behavioral evidence as important in deciding is dog's behavior was 'justified.' Not in Bloomington!
2. Requires proof by clear and convincing evidence to declare a dog vicious. Bloomington does not have a standard. Its all up to the Police Chief
3. Provides 35 days to appeal a euthanasia order. Originally Bloomington was 2 days but they graciously moved that way back to 5! Imagine raising the money and finding/hiring an attorney in order to file a lawsuit to save your dog in the next 120 hours!
4. Allows an orderly transfer of a vicious dog to subsequent owner that agrees to abide by stringent rules...but not in Bloomington!
5. Gives the owner the chance to petition to remove the dangerous label but Bloomington's declaration is permanent. Like a scarlet letter.

Read the proposed Ordinance yourself. It labels a dog as permanently dangerous if it behaves in manner that a reasonable person believes poses a serious and unjustified threat of physical injury or harm (Section 50 (c) (1)). In other words, it does not even have to actually bite someone. And if it does bite, (Section (c) (2) says it does not have to cause an actual injury to be punishable! A dog that growls or nips at someone could be deemed dangerous imposing significant financial penalties and restrictions on the owner and the animal. We would like to make the Bloomington law better, not weaker. We totally agree

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that public safety and responsible pet ownership is of the utmost important and rightfully should be the primary focus of the Ordinance. However, the current approach gives too much power to the Chief of Police and puts too great a burden on law-abiding animal lovers. We also submit the process to create the ordinance was equally flawed in that city staff knowingly failed to contact interested groups until after the proposed ordinance was in its final stages.

Staff Response: Whether to decide to permit more public input or suggested amendments prior to the adoption of the amendments to the City's dog regulations is, of course, ultimately up to the City Council. However, the City staff has met with, or attempted to meet with, representatives of Wish Bone Canine rescue over the past six weeks or so. The City staff believed it had addressed the concerns of Wish Bone Canine Rescue as expressed at the meetings of the Public Safety Committee. The staff was surprised when the letter was sent by a representative of Wish Bone late last week, raising new concerns about the proposed ordinance.

The examples given in the letter of "a female protecting her puppies" or "an animal in pain trying to protect itself" are not the types of behavior which would result in a dog being declared dangerous in Bloomington. A "dangerous" dog must, without justification, bite a person or other animal. A dog is not a "dangerous" dog for biting, attacking, or menacing a trespasser, or for harming or menacing anyone who has tormented or abused it. In cases where a bite is not involved, it must behave in a manner that is reasonable person would believe poses a serious and unjustified threat of personal injury to a person or companion animal.

The ordinance makes a distinction between "dangerous" dogs, and "vicious" dogs. The letter received last week implies that a "dangerous" dog is subject to euthanasia. The proposed ordinance does not classify a dangerous dog as subject to euthanasia.

The penalties applicable to "dangerous" dogs are that they cannot run at large, must be micro-chipped, spayed or neutered, identified with a special dog tag, reported to the postal service, reported to the owner's landlord, and any subsequent bites by that dog must be reported. These requirements simply do not put such a dog in danger of euthanasia.

A "vicious" dog is not subject to euthanasia unless it kills or severely injures any person or dog, if it has rabies, if it bites a person or animal causing injury after it has been declared a vicious dog, if it is found running at large after being declared a vicious dog, if it is not kept in a secure enclosure in violation of the City's ordinance, and if it is not currently registered and vaccinated. These are common-sense protections of the safety of the public.

A police dog will not to be considered dangerous or vicious, see Section 50(d)(4) and Section 50(m)(5) of the proposed Ordinance.

Alderman: Rob Fazzini

Item 7B: Analysis of Bids and Approval of Contract for 2013 General Resurfacing

Question/Comment: If the City of Bloomington decides to issue a \$10 million bond for road and alley work, would that change the amount of this award of \$2.5 Million?

Staff Response: A larger pavement bond would not change the need for the current streets to be completed as recommended for City Council approval. Staff recommends approval of the pavement management program.

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Alderman: Rob Fazzini

Item 7C: Analysis of Bids and Approval of Contract for 2013 Street and Alley Repair

Question/Comment: If the City of Bloomington decides to issue a \$10 million bond for road and alley work, would that change amount of this award of \$1.3 million?

Staff Response: Same response as above for 7B.

Alderman: Rob Fazzini

Item 7D: Amendment to the Bloomington City Code. Chapter 28, Relating to the Regulation of Noise in the City of Bloomington

Question/Comment: Were the national standards that Harley motor cycles adhere to researched to insure that our ordinance does not violate the national standards? Should we consider changing the 6:00 a.m. start time on Monday through Saturday to 7:00 a.m. because this has been requested in the past by citizens in Ward 8 according to my Citizen's Concerns Log Book on 7-22-11 by Todd Griffin, 8-9-12 Steve Malliet and 11-3-12 by Rome Yount?

Staff Response: The federal sound limit for motorcycles going less than 35 mph when measured at a distance of 50 feet is 80 dB(A). This is the same limit for the state. When going more than 35 mph at a distance of 50 feet, the federal limit is still 80 dB(A) and the state limit is 86 dB(A). The intent of the ordinance is not to be more restrictive than federal or state regulations. Subsection does not address motorcycles. It addressed sound exceeding the dB(A) level made on "premises" under a person's ownership or control. In the first draft of the ordinance, the start time for construction activities was 7 am. As explained in an email from Jim Karch on 6/24/12 "it is important to note that while the ordinance as currently proposed would allow for our (City) operations to continue, it would be giving City crews "special treatment" beyond what would be provided for local contractors like Stark and Rowe." The current 699 union contract provides a start time of 6:00a.m. This is a bargained issue that would have to be negotiated. For this reason, the 6:00a.m start time for construction activities was determined to be fair and reasonable.

Alderman: Scott Black

Item 7D: Amendment to the Bloomington City Code. Chapter 28, Relating to the Regulation of Noise in the City of Bloomington

Question/Comment: How was 6AM determined as a reasonable start time for construction?

Staff Response: Same response as above for 7D.

Alderwoman: Karen Schmidt

Item 7D: Amendment to the Bloomington City Code. Chapter 28, Relating to the Regulation of Noise in the City of Bloomington

Question/Comment: Section f6 related to the chiming of church bells as an exempt category: I have received recent complaints from neighbors regarding a church that rings its bells every 15 minutes on Sunday – below are details from one-email I received. I realize that this change comes late to the crafting of this ordinance, but would like to remove this exemption, so we can continue to work on a resolution. Chapter 29 references sounds related to vehicles. At this time of year, vehicles sounds – loud mufflers, esp. – are the most frequent complaints I receive. I know I am not alone with this complaint. Can we have some comment on enforcement of Chapter 29 and how our citizens can help the police address this? Email: "On Sundays the chiming starts at 7:30 am and stops at 6 pm. This continues all day and happens every 15 minutes. Mondays through Saturdays the chiming goes from 9 am to 6 pm again every 15 minutes. At the top of the hour everyday their recordings play a song for 12 minutes. At the top of the hour when a song is played, conversations have to be stopped or the television/radio has to be turned up as the sound is so loud.

Staff Response: The details of the situation addressed does seem a little excessive. Perhaps a letter to the church requesting some type of compromise may be an initial option. Perhaps removing this exemption

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may be another option, it's important to point out that the enforcement of noise ordinances against any sound generated in the course of religious express has been held to violate the 1st and 14th Amendments to the U.S. Constitution. An important case on this issue from several years ago in Phoenix had a similar fact pattern. Church bells rang every hour from 8 am to 8 pm every day and registered 67 dB(A) at the nearest property line. It was considered a disturbance of the peace and the church leader was prosecuted and the bells were ordered to 60 dB(A) and on for only 2 minutes on Sunday. The U.S. District Court stated that although the neighbor's arguments about the disturbance was valid, the interests of free speech and religious expression were more important. The lower's court's decision was reversed. Generally noise enforcement related to motor vehicles is done by observations of our Officers during the normal course of their work day. When free from calls for service, they should be cognizant of traffic violations in general, some of those being noise violations. Historically we believe our Officers have relied on the state statue for loud mufflers. Regarding loud stereos, they have generally used the City ordinance. From time to time, we have complaints in certain parts of town or a rash of complaints. After hearing from the public that more enforcement is desired, we will then make a push for Officers to pay special attention to noise issues. The Neighborhood Focus Team and/or the Street Crimes Unit in the past actually do details in which their focus is Traffic Enforcement related to noise issues. This is also something that the Officers can be directed to use as part of our Selective Traffic Enforcement Program. As far as the public's help with loud vehicles, if they live in an area where they are repeatedly hearing noise they feel is excessive let us know. We can assign a detail or call Officers attention to it through Supervisor Directive or the S.T.E.P program. If they are simply behind a loud vehicle and want to call it in, by all means, they can, but with other calls for service it might not be possible to locate the car in traffic before it reaches its destination. This would not be something the Officers would enforce, unless they witnessed it so we could attest to the violation in court if need be.

Alderwoman: Judy Stearns

Item 7E: Approval of Hockey License between City of Bloomington, Central Illinois Arena Management, Inc. and Illinois Pro Sports, L.L.C.

Question/Comment: I see the potential for a conflict of interest between CIAM and ownership of the hockey team. What safeguards will be put in place to assure that there is oversight of this relationship between the two entities? Please explain how this will be viewed by our auditor when they audit the coliseum funds?

Staff Response: Ticket sales are the only issue in which there is a possibility of a conflict of interest. However, there is a record of all ticket sales generated at the Coliseum box office and sales by Ticketmaster. In addition, the City has the authority to use an independent auditing firm to audit CIAM's records. The possibility of CIAM successfully diverting ticket sales into another account seems very low to the City staff, but if this is a concern it would apply to all ticket sales, not just those of the hockey team. In addition, when the original management agreement and hockey lease was approved by the City Council, the owners of CIAM were also the owners of the hockey team.

Prepared by: Barbara J. Adkins, Deputy City Manager

WITH WATER BILLING	COB	BNWRD
LKPS & BUNN ST FORCE MAIN	\$112,589.12	
IRELAND GROVE SEWER		\$1,259,927.30
LESS TAP ON FEES		\$ 342,083.12
		\$ 917,844.18
LESS PREVIOUS PAYMENT		\$ 629,963.65
		\$ 287,880.53
PLUS LKPS GENERATOR		\$ 30,000.00
		\$ 317,880.53
PLUS EASEMENT FEES		\$ 6,090.00
		\$ 323,970.53
LESS PROPERTY TRANSFER		\$ 353,657.64
		\$ (29,687.11)
LESS BILLING OVERCHARGE		\$ 190,628.70
LESS PENALTY FEES DUE		\$ 256,000.69
DUE BNWRD		\$ 476,316.50

\$ 1,266,017.30
629963.65
\$ 636,053.65
310583.28
\$ 325,470.37
\$ 31,500.00
\$ 293,970.37
353657.64
\$ (59,687.27)
190628.78
\$ (250,316.05)
256000.69
\$ (506,316.74)
30000
\$ (476,316.74)

*BNWRD \$68,000 DESIGN EXPENDITURE NOT INCLUDED AS IT WAS REQUIRED BY 1992 INTERGOVERNMENTAL AGREEMENT

EXCLUDING WATER BILLING

	COB	BNWRD
LKPS & BUNN ST FORCE MAIN	\$112,589.12	
IRELAND GROVE SEWER		\$1,259,927.30
LESS TAP ON FEES		\$ 342,083.12
		\$ 917,844.18
LESS PREVIOUS PAYMENT		\$ 629,963.65
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		\$ 323,970.53
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