

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY, INDIANA,
HELD A REGULAR COUNCIL MEETING IN THE THIRD FLOOR ASSEMBLY
ROOM OF THE CITY/COUNTY BUILDING ON MONDAY, AUGUST 5, 2019 AT
7:00 P.M.**

MEMBERS PRESENT: Council Members: Mr. Phipps, Mr. McLaughlin, Mr. Nash, Mr. Aebersold, Mr. Barksdale, Dr. Knable and President Blair. Mr. Caesar and Mr. Coffey were absent.

ALSO PRESENT: Ms. Stein, Police Chief Bailey. Major Popp, Officer Humphries, Mike Hall, Mr. Thompson, Mr. Wood, Warren Nash. Ms. Moeller, Mr. Gibson and Ms. Milburn

President Blair called the meeting to order at 7:00 p.m.

MOMENT OF REFLECTION:

Mr. McLaughlin asked that they take a moment to remember the victims of the two shootings that took place this week.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Mr. Blair stated that Mr. Caesar couldn't arrange travel plans tonight and Mr. Coffey felt ill after the budget session so he excused himself from the meeting.

APPROVAL OR CORRECTION OF THE FOLLOWING MINUTES:

Mr. Barksdale moved to approve Regular Meeting Minutes for July 18, 2019 as corrected, Mr. Phipps second, all voted in favor. Mr. McLaughlin abstained, Mr. Coffey and Mr. Caesar were absent.

COMMUNICATIONS – COUNCIL:

Mr. McLaughlin stated that they he and Mr. Barksdale were at a meeting where they were talking about issues with debris in the alleyways and hopefully things will be resolved soon. He explained that he thinks there was some breakdown in communication since the city has gone to contractual services and they want to encourage everyone not to just sit items out, but to call to have them picked up.

Mr. Barksdale stated that the drivers are going to start carrying stickers to tag non-compliant items that they see and they will document the items as well.

Mr. Nash asked if it will be the city drivers or Ecotech.

Mr. Barksdale replied Ecotech.

Mr. Blair asked if there are other ways to communicate this to the public.

Mike Hall stated that they put this information into the sewer bills that went out to everyone last year.

Mr. Barksdale asked if they could do this again this year.

Mr. Hall replied yes.

Mr. McLaughlin suggested making it a seasonal announcement.

COMMUNICATIONS – MAYOR:

Mike Hall stated that the Mayor wanted to invite them to the movie series starting in September and explained that it will run for 4 Saturdays at the amphitheater. He added that this is put on by the Horseshoe Foundation of Floyd County and wanted to thank them for their support.

COMMUNICATIONS – OTHER CITY DEPARTMENTS OR CITY OFFICIALS:

Ms. Stein stated that she was asked to look into whether the City could do anything to prohibit events such as the extreme wrestling match that took place recently. She explained that after doing some research she learned that it is either prohibited under the Indiana criminal code or it is permitted and falls under the jurisdiction of the Indiana Gaming Commission (IGC). She read the definition of combative fighting follows

Sec. 1. (a) As used in this chapter, "combative fighting" (also known as "toughman fighting", "badman fighting", and "extreme fighting") means a match, contest, or exhibition that involves at least (2) contestants, with or without gloves or protective headgear, in which the contestants:

(1) use their:

(A) hands;

(B) feet; or

(C) both hands and feet;

to strike each other; and

(2) compete for a financial prize or any item of pecuniary value.

(b) The term does not include:

(1) a boxing, sparring, or unarmed combat match regulated under IC 4-33-22;

(2) mixed martial arts (as defined by IC 4-33-22-2);

(3) martial arts, as regulated by the gaming commission in rules adopted under IC 4-33-22;

(4) professional wrestling, as regulated by the gaming commission in rules adopted under IC 4-33-22; or

(5) a match, contest, or game in which a fight breaks out among the participants as an unplanned, spontaneous event and not as an intended part of the match, contest, or game.

She stated that she doesn't think the City Council can regulate something that is already regulated by another government agency so they cannot enact a law to prohibit this type of match, because it is already prohibited by the IGC. She added that there are criminal penalties for violation of the criminal code as well as for not having a license or engaging in unlicensed fighting.

Mr. Phipps asked if there was anything prohibiting them from restricting it to certain locations.

Ms. Stein replied no and stated that she thinks they could work with the zoning code to specify this. She added that she believes it falls under indoor recreation or indoor entertainment.

Mr. Phipps asked if this could be a separate category because if they start regulating indoor entertainment that could even pertain to things like a wedding reception.

Ms. Stein explained that they could deal with that in the definition section of the zoning code or as a special use.

Dr. Knable asked if they could require them to notify the county health officer if they obtain a license.

Ms. Stein stated that the IGC already has a set of requirements and she doesn't think they can add on to them. She added that she wishes the IGC would be more responsive when inquiries are made regarding issues like this.

Dr. Knable stated that what happened clearly wasn't sanctioned and asked what they should recommend to their constituents. He asked if they should be advised to call the police department in real time.

Ms. Stein replied yes and stated that the combative fighting also falls under the criminal code so that would also be something to notify the authorities about.

Mr. Blair stated that they are marketing and advertising these events beforehand and asked what could be done at that point.

Ms. Stein stated that they could contact the police and zoning in this instance to let them know they are in violation if they don't have a license.

Dr. Knable asked if the county prosecutor should be notified instead.

Ms. Stein explained that all of the above could be notified because the police somewhat get their direction from the prosecutor regarding whether or not they will stand behind the charges that are filed, and prosecute.

Mr. Barksdale asked if anyone knows if the second match went on as scheduled.

Dr. Knable stated that he believes it is later this month.

Mr. Nash stated that the way they acted at the meeting was that it is a sanctioned event.

Mr. Phipps stated that he doesn't think the gentleman speaking was part of the event.

Mr. McLaughlin asked if there is any place that would be zoned for entertainment.

Ms. Stein asked Mr. Wood to speak to this.

Mr. Wood stated that his thought would be to include something like this in the zoning ordinance as both indoor and outdoor recreation. He added that he would be happy to work with Ms. Stein on the best way to integrate it.

Ms. Stein stated that she thinks they will be handcuffed a little bit because the statute says that these mixed martial arts events are permissible in Indiana and they can't be prohibited. She explained that they will need to find a reasonable way to regulate it through licensing.

Mr. Wood stated that it could be licensing, a permit from the Health Department and other development standards to limit the types of places that these events could be held.

Mr. Blair stated that he thought this was already a non-permitted use in the zoning code in all districts.

Mr. Wood stated that they pretty much have to permit every use. He explained that under the constitution they can't use zoning to keep out protected speech and that is what this would ultimately come down to.

Mr. Nash asked if they could do it by special exception only.

Mr. Wood replied yes. He explained that they can also restrict the zoning districts that this would be permitted in. He added that at some point they could look into having a sports authority that looks at all types of sporting activities. He stated that Indianapolis made a name for themselves on the world stage as being an amateur sporting capital and maybe they could make a regional name for themselves with a sports authority.

Ms. Stein stated that the bottom line is that the IGC requires a lot and if they aren't licensed with them it is illegal.

Mr. Phipps asked if they could add a stipulation that they post their license on the venue.

Ms. Stein stated that there might already be something in the statute that address this.

Mr. Blair asked what Ms. Stein is recommending going forward.

Ms. Stein stated that she doesn't know that there is anything to be done by the City Council.

Mr. Aebersold stated that unless they know where these things happen ahead of time it would have to be shut down on the night of the event.

Ms. Stein stated that she believes that they have to have the license 30 days in advance so if they are promoting it they should already have that available upon request.

Mr. Blair thanked Ms. Stein for her work on this issue.

REPORTS – COMMITTEES, BOARDS OR OTHER OFFICIALS AS REQUESTED BY A MAJORITY VOTE OF THE COUNCIL:

HORSESHOE BOARD – Mr. Caesar and Mr. Aebersold

Mr. Aebersold stated that they didn't meet in July.

REDEVELOPMENT COMMISSION – Mr. Barksdale

Mr. Barksdale presented the following report:

- Tabled the low bid for the green space at East 15th & Main streets because it was above the budgeted price of \$107,569 (\$43,000 over the lowest bid)
- Disposed of two NARC properties: a lot at 502 Culbertson to New Directions Housing Corp. for the Neighborhood Stabilization Program (no charge) and a house at 2402 Jollisant Avenue to be rehabbed for Aletha Goodman, the owner occupant (\$10,000)
- Released the retainage fee for the Griffin Recreational Center Project, Phase 2 (\$8,059)
- Approved issuing a RFP for commission-owned properties at 802-810 Vincennes Street (proposals due at the August 13 NARC Meeting)
- Approved issuing RFP for commission-owned properties at 702-706 West Market Street (proposals due at the August 27 NARC meeting)

- Approved the disposal of commission-owned properties at 717 and 719 Cherry Street and 624 Vincennes Street (sealed offers due at the August 13 NARC meeting)
- Approved two change orders for the Slate Run Road project due to having the road open during construction, instead of being closed to through traffic as originally bid, and also the inclusion of additional piping, etc. to address drainage concerns (change orders total \$317,470 of a \$2,000,000 project)

APPROVAL OF CF-1 FORMS:

INTRODUCTION OF ORDINANCES:

READING

INTRODUCTION OF RESOLUTIONS:

COMMUNICATIONS – PUBLIC: G-19-01 (Unreasonable Noise)

Police Chief Bailey stated that he had a couple of thoughts after reviewing the ordinance that is on the agenda for consideration tonight. He explained that the calls for service regarding fireworks appeared to be less this year than what they were last year and the impact of fireworks in general was less than previous years. He added that he can't account for why but he did want to add some clarification when looking at the statistics because they didn't find that they were inundated this year as compared to other years. He stated that with regards to the enforcement piece moving forward, he isn't sure combining the noise ordinance with the prohibition of fireworks is the best idea. He added that for him, when he looks at the officers that enforce these items it seems to be two separate things. He stated that the new ordinance lays out 7 specific days that fireworks are allowed and typically the impact of fireworks are New Years Day and the two weeks around the 4th of July.

COMMUNICATIONS – PETITIONER: G-19-01 (Unreasonable Noise)

G-19-01	Ordinance to Amend Ordinance 96.01-96.02 Regarding Unreasonable Noise	Barksdale/Knable 1&2
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Dr. Knable introduced Bill No. G-19-01 for first and second readings, Mr. Barksdale second, all voted in favor with the exception of Mr. McLaughlin who voted no. Mr. Coffey and Mr. Caesar were absent.

Mr. Barksdale moved to amend the ordinance to read 10:00 a.m. July 4th to 12:01 a.m. July 5th Dr. Knable second, all voted in favor by a show of hands. Mr. Coffey and Mr. Caesar were absent.

Mr. Barksdale stated that they had Ms. Stein work on this ordinance for them and it pretty much follows the Indiana Statute, and they aren't changing anything that the state doesn't already encompass.

Ms. Stein stated that state statute says that unless it is an outlined holiday fireworks are prohibited after 11:00 p.m. and before 9:00 a.m. but also gives a city a right to adopt an ordinance concerning the use of fireworks. She added that a city cannot adopt an ordinance that regulates fireworks between the hours of 5:00p.m. and 2 hours after sunset on June 28-30 and July 1-3, 5-9, between the hours of 10:00 a.m. and 12:00 p.m. midnight on July 4 and between the hours of 10:00 a.m. December 31-1:00 a.m. on January 1. She explained that when she drafted this ordinance, she added 11:00 p.m. because she didn't want police officers to have to argue with residents about when 2 hours after sunset was, but recommended amended it to 11:15-11:30. She stated that they also included a section that states that an individual or group may apply to the Board of

Works during a day and time not listed so that it can free up anyone that wanted to do a fireworks display, but it would prevent those that want to do them on random dates and times.

Mr. Barksdale stated that Mr. Jacobi brought that to their attention at the last meeting and it stuck in his mind that his community/neighborhood event could be affected by the weather, and that is why they have added this special exception in the ordinance.

Dr. Knable stated that he thinks this brings them a bit of clarity because fireworks were excluded from the noise ordinance previously. He thanked Chief Bailey for being here tonight and giving his input. He added that his personal number of phone calls regarding fireworks was up about threefold this year over last year. He stated that he wasn't really gung-ho about it until he set down and talked with those neighbors that were affected. He stated that he works with a lot of veterans and if by setting some sort of parameters and it helps individuals dealing with PTSD, then he wants to do it. He added that the days laid out in this ordinance pretty much coincide with what they already experience.

Mr. Phipps stated that he would concur with what is being said about the veterans because he knows of one individual who goes to bed early after taking a sleeping pill because he is so affected by the noise. He added that his calls this year had gone up and in his neighborhood this weekend they still had fireworks going on. He stated that he thinks that people don't call because they don't think it is illegal. He stated that they have found the bottle rockets on their roof which is a fire hazard and if they limit when fireworks are being used they can limit the exposure.

Mr. McLaughlin stated that he received several phone calls from residents that weren't happy about them trying to regulate their use of fireworks. He explained that part of the issue with it being in with the noise ordinance is the issues not being addressed with such things as car mufflers and loud motorcycles. He stated that attaching this with the noise ordinance because he already had issues with the noise ordinance being enforced and they can't really have issues with loud cars addressed without having proper equipment.

Mr. Aebersold stated that he thinks the enforcement is going to be close to nonexistent. He added that the noise with automobiles is such a fast moving issue that unless you get the license they would be gone before it could be reported. He stated when people call in about the fireworks where are they going to tell them to go because most of the time you can hear them from 2 blocks over.

Mr. Phipps stated that it is going to be difficult to enforce but sometimes just having a law will have an effect on some people.

Mr. Barksdale stated that he thinks the ordinance in front of them is very concise with days and times and if something is going on out of compliance they should call the police.

Mr. Phipps stated that he does see the issues brought up with combining this with the noise ordinance and maybe in hindsight it should have been a separate ordinance.

Mr. Nash stated that a lot of the complaints he heard was the hours. He asked what they decided as far as the cutoff time goes.

Ms. Stein stated that the cutoff can be no earlier than 11:10 p.m.

BOARD APPOINTMENTS:

COMMUNICATIONS – PUBLIC (NON-AGENDA ITEMS):

ADJOURN:

There being no further business before the board, the meeting adjourned at 7:45 p.m.

Scott Blair, President

Mindy Milburn, Deputy City Clerk