

CITY OF BLOOMINGTON

EXECUTIVE SESSION

109 E. OLIVE ST.

MONDAY, MAY 9, 2011, 5:00 P.M.

AGENDA

Collective Bargaining, Section 2 (c) (2)

Pending Litigation, Section 2 (c) (11)

A light dinner will be provided commencing at 4:30 p.m.

CITY OF BLOOMINGTON
SPECIAL CITY COUNCIL MEETING AGENDA
109 E. OLIVE
MONDAY, MAY 9, 2011, 6:45 P.M.

1. **Call to order.**
2. **Pledge of Allegiance to the Flag.**
3. **Remain Standing for a Moment of Silent Prayer**
4. **Roll Call**
5. **Discussion on Eligibility of Aldermen and Possible Motion on Hearing**
6. **Adjournment**
7. **Notes**

Memo to: Mayor and City Council
From: Todd Greenburg, Corporation Counsel
Re: Statutes on Eligibility of Aldermen and Procedures to Determine Eligibility
Date: May 5, 2011

Illinois law Specifies the Qualifications for the Office of Alderman

The statutes of Illinois set forth certain requirements for a person to serve in the office of alderman:

Sec. 3.1-10-5. Qualifications; elective office.

(a) A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election or appointment, except as provided in subsection (c) of Section 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2, or Section 5-2-11.

(b) A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.

(c) A person is not eligible for the office of alderman of a ward unless that person has resided in the ward that the person seeks to represent, and a person is not eligible for the office of trustee of a district unless that person has resided in the municipality, at least one year next preceding the election or appointment, except as provided in subsection (c) of Section 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2, or Section 5-2-11. [These provisions refer to exceptions involving aldermen and village trustees in redistricted wards and are not applicable here.]

(d) If a person (i) is a resident of a municipality immediately prior to the active duty military service of that person or that person's spouse, (ii) resides anywhere outside of the municipality during that active duty military service, and (iii) immediately upon completion of that active duty military service is again a resident of the municipality, then the time during which the person resides outside the municipality during the active duty military service is deemed to be time during which the person is a resident of the municipality for

purposes of determining the residency requirement under subsection (a).

Illinois Law Permits City Councils to Judge Statutory Qualifications for Alderman

Another statute gives the City Council the authority to determine whether one of their proposed members is eligible to serve:

Sec. 3.1-40-10. Judge of elections. The city council shall be the sole judge of the election to office of the aldermen. It shall also be the sole judge whether under Section 3.1-10-5 aldermen are eligible to hold their offices. A court, however, shall not be prohibited from hearing and determining a proceeding in quo warranto. [*Quo warranto* is a type of legal proceeding in which the State's Attorney or a taxpayer asks a court to determine the authority of a person to hold office.]

Homestead Exemptions and Tax Arrears

As a result of an article published in the Pantagraph prior to the April election, the electorate and the City Council became aware of the fact that two properties in Bloomington owned by Judy Stearns had homestead exemptions. An additional property in Normal and a property in Oak Park also had homestead exemptions.

On February 18, 2011, the Illinois Appellate Court (1st District) issued an opinion in a case (*Jackson v. Board of Election Commissioners of the City of Chicago*, 944 N.E.2d 439) in which an objection was filed to the candidacy of a person running for an alderman position in Chicago. The appellate court ruled that because, on the date the candidate filed her nomination papers, she had multiple homestead exemptions on properties in Chicago, her properties had been under-assessed for tax purposes. Therefore, on the date her nomination papers were filed she was in arrears for the portion of the real estate taxes which would have been paid to the City of Chicago had her properties been properly assessed. Since the nomination papers, by law, include a certification by the candidate that he or she *is* eligible (present tense) to serve in the office of alderman, her nomination papers were not accurate and her name was ordered to be stricken from the ballot.

Grounds for Striking a Candidate's Name or Contesting an Election

If a timely challenge to Judy Stearns' candidacy been filed, and *if* the Bloomington Board of Election Commissioners and/or the courts had ruled in the same manner as the 1st District of the Appellate Court did in the *Jackson* case, Ms. Stearns' name would have been stricken from the ballot. (Please remember, however, that the *Jackson* case was not decided until February 18, 2011, and that it reversed decisions by a hearing officer and the Chicago Board of Elections which had ruled that the Chicago candidate was eligible to be on the ballot). However, no timely challenge to the nominating papers was filed (state law requires an objection to candidacy be made within 5 business days from the last date of filing for office (10 ILCS 5/10-8; November 22, 2010 was the last day for filing nomination papers for alderman).

A majority of the persons voting in the election voted for Judy Stearns; no petition challenging those results was filed (petitions challenging the results of an election must be filed within 30 days from the date of the election and must allege that "the petitioner voted at the election, and

that he believes that a mistake or fraud has been committed in specified precincts in the counting or return of the votes for the office or proposition involved or that there was some other specified irregularity in the conduct of the election in such precincts, and the prayer of the petition shall specify the precincts in which the recount is desired” 10 ILCS 5/23-20).

On the afternoon of Monday, April 25, 2011, I became aware of the *Jackson* case. I contacted Mayor Stockton, who informed Judy Stearns of the case that evening. I contacted Hannah Eisner, the civil attorney for the McLean County State’s Attorney’s office, who informed me that McLean County had a policy, in cases where exemptions had been inaccurately placed on real estate, to correct the error but to not attempt to collect back taxes. Since the issue of whether Ms. Stearns was currently in arrears needed to be addressed by the City Council prior to its regular meeting of May 9, 2011, I contacted Mike Ireland, Assessor for the Bloomington City Township, for his assistance in calculating any arrearages which may be owing to the City pursuant to the *Jackson* case. Ms. Stearns also contacted me, and indicated she was willing to pay arrears, but that the County had told her it would not accept payment.

In calculating the arrears, Mr. Ireland and I acted on the presumption that a homestead exemption was filed on the property owned by Ms. Stearns and her husband in Oak Park since it was acquired by them in 1987, and that therefore any homestead exemptions for properties in Bloomington were inaccurate. Since the statute of limitations for non-payment of real estate taxes is 20 years, Mr. Ireland and I checked the public records back to that date. The final calculation for back taxes in Bloomington based on inaccurate homestead exemptions was \$1,456.60. That amount was paid by Ms. Stearns by certified check made to the order of the City of Bloomington on April 28, 2011, at Bloomington City Hall. On May 5, 2011, Ms. Stearns paid an additional \$22.52 based on additional calculations by Mr. Ireland, and \$392.77 for back taxes to the City Library. She also paid \$304.97 for back taxes to the City of Bloomington Township.

The Role of the City Council

The City Council has been informed of both the *Jackson* case and the payment by Ms. Stearns. It is now up to the Council to decide whether it desires to conduct a hearing on the issues of Ms. Stearns’ election and whether there is any statutory disqualification which prevents Ms. Stearns from taking office. The Council should decide the issue of whether to conduct a hearing on these issues prior to the administration of *any* oaths of office. *In my opinion, only the City Council has the authority to authorize the delaying of oaths of office by reason of a controversy over qualifications.* I have informally polled other municipal attorneys and they concur in this opinion.

Under Illinois law, aldermen continue in office until their successors have qualified. Therefore, the City Council may debate whether a hearing is necessary under the authority of the oaths of office administered to aldermen in 2007 and 2009.

The Issues to be addressed by the Council

In the event of a debate on whether to conduct a hearing on Ms. Stearns’ qualifications for office, the City Council will need to decide two issues: (1) whether there is any reason to believe that necessary calculations of tax arrearages (or other indebtedness) to the City of Bloomington are incomplete or in error, and (2) whether there are any irregularities in the election process which

gives the City Council a reasonable belief that Ms. Stearns' election was too irregular to permit her to take office as an alderman.

Whether a Tax Arrearage or Other Indebtedness Currently Exists

As mentioned earlier in this memo, City Assessor Mike Ireland and I used the public records of the Assessors' office and the County Clerk to calculate the tax arrears of Ms. Stearns; those calculations were given to her, and she has paid that amount to the City of Bloomington. I have found no cases in which a past indebtedness which had been paid off has been used by a City Council to refuse to permit an alderman from taking office. It is my opinion that if the City Council seeks to bar Ms. Stearns from assuming office, it must find evidence of additional indebtedness which has thus far not been found, or it must find that the calculations of Mr. Ireland and myself are somehow in error and that Ms. Stearns has not fully paid an indebtedness owed to the City.

Whether an Election in Violation of Illinois Law Exists

Finally, the Council must decide whether there is evidence of irregularity in Ms. Stearns' election which justifies the City Council in refusing to seat Ms. Stearns. The issue for the City Council is whether a "mistake or fraud" involving the counting of votes or an irregularity in the conduct of an election in a precinct existed. I have found no cases in Illinois in which a court or City Council refused to seat a person who received the majority of votes cast in an election on the grounds that the person should not have been on the ballot.

The Necessity for Procedural Due Process

If the Council decides that a hearing is necessary, the Council then needs to set a date for the hearing. There are no procedures set forth in either state statutes or City ordinances for this type of hearing. However, principles of due process of law would dictate that a person whose eligibility for office is the subject of the hearing should have notice of the issues, an opportunity to challenge the evidence presented, an opportunity to cross-examine witnesses, the opportunity to present evidence and testify in his or her own defense and the assistance of legal counsel if he or she so desires.

The newly elected aldermen whose qualifications are *not* in question may be administered the oath after the City Council decides whether to conduct a hearing on any alderman whose qualifications are in question. In this particular case, if the City Council decides to conduct a hearing on Ms. Stearns' qualifications for a new term of office, she continues to hold office under the oath administered in 2007. A vacancy in the office of alderman for the 4th Ward would not occur unless or until a majority vote by the City Council would decide that Ms. Stearns was legally disqualified from taking office for a new term.

**CITY OF BLOOMINGTON
COUNCIL MEETING AGENDA
109 E. OLIVE
MONDAY, MAY 9, 2011, 7:30 P.M.**

- 1. Call to order.**
- 2. Pledge of Allegiance to the Flag.**
- 3. Remain Standing for a Moment of Silent Prayer**
- 4. Roll Call**
- 5. Public Comment**
- 6. Appointments**
- 7. “Consent Agenda”**

(All items under the Consent Agenda are considered to be routine in nature and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which event, the item will be removed from the Consent Agenda and considered in the Regular Agenda, which is Item #8.)

The City’s Boards and Commissions hold Public Hearings prior to some Council items appearing on the Council’s Meeting Agenda. Persons who wish to address the Council should provide new information which is pertinent to the issue before them.

The Council may vote to suspend the rules to allow citizen input on Regular Agenda items. If this occurs, public input will be limited to three (3) persons in support of and three (3) persons in opposition to said item. Input will be limited to five (5) minutes per person. Said person must provide their name and address for the record.)

- A. Council Proceedings of April 25, 2011 and Work Session Minutes of March 19, 2011. (Recommended that the reading of the minutes of the previous Council Meeting of April 25, 2011 and Work Session Minutes of March 19, 2011 be dispensed with and the minutes approved as printed.)**

- B. Bills and Payroll. (Recommend that the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.)**
- C. A Resolution Approving an Appointment of William Strother Wilson to the Bloomington/Normal Public Transit Board. (Recommend that the Appointment be approved and the Resolution adopted.)**
- D. Analysis of Bids for New Golf Carts at Prairie Vista Golf Course. (Recommend that the bid for the new golf carts at Prairie Vista be awarded to EZ-GO in the amount of \$221,060, and the Purchasing Agent be authorized to issue a Purchase Order for same.)**
- E. Analysis of Bids for New Golf Maintenance Equipment for the Golf Division of the Parks, Recreation, and Cultural Arts Department. (Recommend that the bid be awarded to ERB Turf Equipment for golf course maintenance equipment for the golf division in the amount of \$294,237.25, and the Purchasing Agent be authorized to issue a Purchase Order for same.)**
- F. Analysis of Bids and Approval of Contract for Sidewalk Reconstruction. (Recommend that the bid be awarded to WAS CON CO., for the 2011 Sidewalk Replacement and Handicap Ramp Program in the amount of \$200,000, and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- G. Intergovernmental Agreement with McLean County Board of Health for Animal Control Warden Services. (Recommend that the Intergovernmental Agreement with McLean County Board of Health for Animal Warden Services in the amount of \$95,568 be approved and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- H. Intergovernmental Agreement with McLean County Board of Health for Use of Animal Shelter. (Recommend that the Intergovernmental Agreement with McLean County Board of Health for use of the Animal Shelter in the amount of \$33,492 be approved and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- I. Annual Agreement Renewal and Payment to Midco for the Maintenance of the Police Department and Underground Parking Deck Security System. (Recommend that the agreement with Midco for maintenance of the security system of the Police Department Building and Underground Parking Decks in the amount of \$11,271 be renewed, and the Payment be approved.)**

- J. Agreement with Nugent Consulting Group (NCG) for Insurance and Consulting Services from May 1, 2011 through April 30, 2013. (Recommend that the two (2) year Agreement with Nugent Consulting Group (NCG) for Insurance and Consulting Services be approved at an hourly rate of \$135 with a not to exceed annual cap of \$20,000, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.)**
- K. Professional Services Contracts for the Bloomington Center for the Performing Arts. (Recommend that that the performance contracts for the Bloomington Center for Performing Arts with Baylin Artists Management Inc., Brad Simon Organization, Entourage Talent Associates Ltd., International Music Network, Paradigm, and Opus 3 Artists be approved in the total amount of \$112,500, and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- L. Agreement with Tech Solve in conjunction with the Government Finance Officers Association for Integration of the “CONROE LEAN” Process into the City’s Cash Handling Process. (Recommend that the agreement with Tech Solve in conjunction with the Government Finance Officers Association (GFOA) to advise the City how to integrate elements of the “CONROE LEAN” into the City’s cash handling process in the amount of \$23,760 be approved, and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- M. Application of R & J Enterprises, LLC, d/b/a Caboose, located at 608 W. Seminary, for an RAS liquor license, which will allow the sale of all types of alcohol by the glass for consumption on the premises seven (7) days a week. (Recommend that an RAS liquor license for R & J Enterprises, LLC, d/b/a Caboose, be created contingent upon compliance with all applicable health and safety codes with the following conditions: 1.) tavern rules would apply at midnight or one (1) hour after the kitchen closes; 2.) prior to license issuance proof of LLC must be filed with the City Clerk’s Office; and 3.) all tax payments be current.)**
- N. Suspension of Ordinances to Allow Consumption of Alcohol at Lake Bloomington’s Davis Lodge on June 10, 2011. (Recommend that the Ordinance suspending Section 26(d) of Chapter 6 and Section 701 of Chapter 31 to allow the suspension and consumption of alcohol at the Lake Bloomington Davis Lodge on June 10, 2011 be passed.)**
- O. Petition requesting approval of a Special Use Permit for a Two Family dwelling for property located at 1220 E. Washington St. (Recommend that the Special Use Permit be approved and the Ordinance passed.)**

8. “Public Hearings”

9. “Regular Agenda”

- A. Payment for Property, Liability, Excess Liability, and Excess Worker's Compensation Insurance Coverage. (Recommend that the Payment for Insurance Coverage and Insurance Broker Service from May 1, 2011 through April 30, 2012 in the amount of \$686,133 be approved.)**
- B. Analysis of Bids and Approval of Contract for Tanner Street Reconstruction. (Recommend that the bid be awarded to Stark Excavating, Inc. for the construction of the Tanner Street Improvements in the amount of \$1,067,710.85, and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- C. East Side Corridor Presentation.**

- 10. Mayor's Discussion**
- 11. City Manager's Discussion**
- 12. City Aldermen's Discussion**
- 13. Executive Session - cite section**
- 14. Adjournment**
- 15. Notes**