

**COUNCIL PROCEEDINGS
PUBLISHED BY THE AUTHORITY OF THE CITY COUNCIL
OF BLOOMINGTON, ILLINOIS**

The Council convened in regular Session in the Council Chambers, City Hall Building, at 7:00 p.m., Monday, June 24, 2013.

The Meeting was opened by Pledging Allegiance to the Flag followed by moment of silent prayer.

The Meeting was called to order by the Mayor who directed the City Clerk to call the roll and the following members answered present:

Aldermen: Judy Stearns, Kevin Lower, David Sage, Robert Fazzini, Jennifer McDade, Scott Black, Karen Schmidt, Jim Fruin and Mayor Tari Renner.

Alderman absent: Mboka Mwilambwe.

City Manager David Hales, City Clerk Tracey Covert, and Corporate Counsel Todd Greenburg were also present.

The following was presented:

SUBJECT: Council Proceedings of June 10, 2013

RECOMMENDATION/MOTION: That the reading of the minutes of the previous Council Proceedings of June 10, 2013 be dispensed with and the minutes approved as printed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The Council Proceedings of June 10, 2013 have been reviewed and certified as correct and complete by the City Clerk.

In compliance with the Open Meetings Act, Council Proceedings must be approved within thirty (30) days after the meeting or at the Council's second subsequent regular meeting whichever is later.

In accordance with the Open Meetings Act, Council Proceedings are made available for public inspection and posted to the City's web site within ten (10) days after Council approval, 5 ILCS 120/2.06(b).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the reading of the minutes of the previous Council Proceedings of June 10, 2013 be dispensed with and the minutes approved as printed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Bills and Payroll

RECOMMENDATION/MOTION: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The list of bills and payrolls will be posted on the City's website on Thursday, June 20, 2013 by posting via the City's web site.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Total disbursements information will be provided via addendum.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Financial & budgetary review by: Patti-Lynn Silva, Director of Finance

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Bills and Payroll be allowed and the orders drawn on the Treasurer for the various amounts as funds are available.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Purchase of Floor Coating and Wall Coverings for the US Cellular Coliseum

RECOMMENDATION/MOTION: That the purchase of floor coating and wall coverings for the US Cellular Coliseum from Garage Flooring Coating of Central Illinois, Leroy, IL be approved, in the amount of \$110,778, and the Purchasing Agent be authorized to issue a Purchase Order for same.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.d. Customer friendly, easily accessible city facilities and buildings.

BACKGROUND: Two (2) years ago the City coated the public bathrooms and ramps with a garage floor cover to assist with the maintenance and appearance of the US Cellular Coliseum, (USCC). Central Illinois Arena Management (CIAM) staff noticed a reduction in man hours in maintaining these areas of fifteen percent (15%). CIAM staff anticipates the same percentage decrease on the concourse maintenance. The concourse concrete over the past several years, CIAM staff has noticed stress cracks. The process will grind out, cover and remove these stress cracks, which will create a safer environment for patrons.

CIAM staff has noticed over the past several years that in the main dressing room hallway there are a number of marks of spray paint from hockey teams on the wall. Garage Floor and Coating has a product which removes and prevents graffiti, called Hydro Poly, this product will be applied to the walls to prevent spray paint marks. This area is where all of the performers are and the appearance in this area should be kept as high quality as possible.

The following areas will be completed with this purchase:

- CONCOURSE
- VIP HALL FLOOR and WALLS
- APA HALL FLOOR and WALLS
- VIST HALL WALLS
- BLAZE HALL WALLS
- REFEREE HALL WALLS, SHOWER FLOOR, CEILING and WALLS
- STAGE HAND SHOWER FLOOR, CEILING and WALLS
- SHOWER #6 FLOOR, CEILING and WALLS
- SHOWER #7 FLOOR, CEILING and WALLS
- SHOWER #8 FLOOR, CEILING and WALLS

The City's Purchasing Agent did not release bids for this project. This is sole source purchase. CIAM requested and received a quotation from Garage Floor Coating. Quotation was received on March 11, 2013. Per their letter, the use of ECO CorFlex products are exclusively designed for and formulated for Garage Floor Coating. The entire line of ECO CorFlex products are all proprietary to our dealer and franchise network and aren't available to the general public, contractors or retail locations

If the purchase is approved, CIAM anticipates the components and parts should be completed by August 2013.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$85,000 for the purchase of floor and wall coverings in line item 57107110-79990. The total cost to cover the recommended areas is \$110,778, which exceeds the total appropriation by \$25,778. The City will delay two (2) other capital projects, (installation of additional storage room and the installation of additional security cameras), within the USCC to offset the \$25,778 purchase of the floor and wall coverings. The two (2) delayed capital projects will be added to the capital projects for the USCC in FY 2015. Stakeholders may locate this purchase in the FY 2014 Other Funds & Capital Improvement Program Budget document on page #219.

Respectfully submitted for Council consideration.

Prepared by: John Butler, President CIAM

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the purchase of floor coating and wall coverings for the US Cellular Coliseum from Garage Flooring Coating of Central Illinois, Leroy, IL, be approved, in the amount of \$110,778, and the Purchasing Agent be authorized to issue a Purchase Order.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Proposal and Approval of Contract for 2013 Pavement Preservation

RECOMMENDATION/MOTION: That the proposal for 2013 Pavement Preservation be awarded to Corrective Asphalt Materials, LLC, in the amount of \$200,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Goal 2. Upgrade City infrastructure and facilities; Goal 3. Strong neighborhoods; and Goal 5. Great place – livable and sustainable City by maintaining the street infrastructure within the City.

BACKGROUND: At the January 28, 2013 meeting, Council directed the Public Works Department to negotiate the 2013 Pavement Preservation Program. In 2011, Corrective Asphalt Materials, LLC, South Roxana, IL was the sole bidder for this work. The Pavement Preservation has been negotiated each year since 2011. The Reclamite Rejuvenator material used is proprietary and they are the sole source distributor/applicator for our region.

Included in this year's contract is increased use of CRF Restorative Seal for streets that have aged beyond the time frame to apply Reclamite alone. Several CRF trials have been done on

City streets since 2007 with positive results. Kenyon Court had a CRF test application applied in 2007 that still looks good. If the whole street had been treated, it would not be included in resurfacing contract for this year. The price totals listed below are based on unit prices of \$0.83 per square yard for Reclamite, (last year was \$0.82), and \$2.46 per square yard for CRF.

Rejuvenator – Reclamite	\$154,052.15
CRF Restorative Seal	\$ 45,756.00
Street Sweeping and Cleaning – Before Treatment	\$ 4,000.00
Base Price	\$203,808.15
 Alt 1 (Credit for providing Material Stockpile Site)	 (\$ 3,825.00)
 Base + Alt 1	 \$199,983.15
 Engineer’s Estimate	 \$194,256.10
 Budget	 \$200,000.00

Reclamite is an emulsion made up of specific petroleum oils and resins. It penetrates into the top layer of asphalt pavement and brings the Maltene and Asphaltene ratio back to a proper balance. The rejuvenating process keeps the pavement flexible, so both cracking and road fatigue are reduced. It also seals the pavement from air and water, slowing the oxidation process and reducing the loss of small aggregate.

CRF is an emulsion containing Reclamite and eleven percent (11%) asphalt. It provides more of a seal coat and is covered with a thick layer of lime screenings which blend into the surface and help to fill voids and cracks.

These types of treatments are designed to keep the good streets good condition. Streets are treated with Reclamite the same year when they are resurfaced to get the maximum benefit from the Reclamite. A map of the streets scheduled to be treated under this contract was provided to the Council.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$4,000,000 for the overall City Pavement Program of which \$200,000 is allocated for pavement preservation in line item 40100100-72530. Funds within the City’s Pavement Program are allocated as follows: General Resurfacing \$2,500,000, Street & Alley Repair \$1,000,000, Pavement Preservation \$200,000, Street and Alley Maintenance \$200,000 and Street micro-resurface \$100,000. This memo addresses the Pavement Preservation which compiles five percent (5%) of the City’s Pavement Program. Staff recommends the entire \$200,000 be expended on the pavement preservation program, which will exactly match the budget appropriation. Stakeholders may locate this line item in the FY 2014 Other Funds and Capital Improvement Program Budget document on page #106.

Prepared by: Jim Karch, P.E., Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Manager

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the proposal for 2013 Pavement Preservation be awarded to Corrective Asphalt Materials, LLC, South Roxanna, IL, in the amount of \$200,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Amendment to the Professional Services Agreement with A & R Mechanical, Inc.

RECOMMENDATION/MOTION: That the Amendment to the agreement with A & R Mechanical, Inc. be approved, in the amount of \$13,414, for additional work related to the installation of the lime dust collection system.

STRATEGIC PLAN LINK: Goal 2: Reliable utility services necessary for daily life.

STRATEGIC PLAN SIGNIFICANCE: Objective 4: Well designed, well maintained City facilities emphasizing productivity and customer service.

BACKGROUND: The Water Treatment Plant utilizes lime, (a water treatment chemical made from limestone), to reduce the hardness of the water which is delivered to the customers of the City's Water Department. In terms of water quality, hardness is generally viewed as the amount of dissolved calcium and magnesium that occurs naturally in water supplies. Water in the Midwest may be particularly hard due to the amount of limestone found in the natural geological

structure of the Midwest. Over time, water dissolves limestone as it comes into contact with the limestone which in turn intensifies the hardness found in the water supply.

The addition of lime in the water treatment process will reduce the hardness of the treated water. The lime dust collector system is an integral portion of the treatment facility which is used when lime is unloaded at the Water Treatment Facility. Lime is unloaded multiple times per week. The prior system used by the City has incurred operational problems which include but are not limited to difficulty in the exchange of the filter bags, obsolescence of the filter bags and an overall decline in the general capability of the system to remove dust.

The lime dust collection project was competitively bid and awarded to A & R Mechanical, Inc. on April 11, 2011 for \$107,000. This amendment would completely close out this project.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: There were no community groups contacted for this item as it is a routine matter.

FINANCIAL IMPACT: The FY 2014 Water Fund Purification Budget appropriated \$25,000 for water plant construction and improvement in the Water Purification Fund in line item 50100130-72590. This amendment will require the payment of an additional \$13,414. The projected fund balance for the Water Fund as of April 30, 2013 is \$17,406,227. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on page #145.

Respectfully submitted for Council consideration.

Prepared by: Craig M. Cummings, Director of Water
Reviewed by: Barbara J. Adkins, Deputy City Manager
Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer
Legal review by: J. Todd Greenburg, Corporation Counsel
Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Amendment to the agreement with A & R Mechanical, Inc. be approved, in the amount of \$13,414, for additional work related to the installation of the lime dust collection system.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Amendment to the Professional Services Agreement with Johnston Contractors, Inc.

RECOMMENDATION/MOTION: That the Amendment to the agreement with Johnston Contractors, Inc. be approved, in the amount of \$7,376.22, for additional work related to the installation of the direct injection carbon dioxide project.

STRATEGIC PLAN LINK: Goal 2: Reliable utility services necessary for daily life.

STRATEGIC PLAN SIGNIFICANCE: Objective 4: Well designed, well maintained City facilities emphasizing productivity and customer service.

BACKGROUND: The Water Treatment Plant uses lime, (a water treatment chemical made from limestone), to reduce the hardness of the water it delivers to the customers of the City's Water Department. Hardness is generally viewed as the amount of dissolved calcium and magnesium that occurs naturally in water supplies. Water in the Midwest can be particularly hard because of the amount of limestone that is found throughout the Midwest. Over time, water will dissolve limestone that it comes in contact with which in turn increases the hardness of the water.

The addition of lime increases the pH of the water to levels where the water is very alkaline and is not acceptable to regulators and customers. The pH of water refers to the acidity or alkaline nature of the water. Once the pH of the water is increased to that alkaline level, it must be lowered. This is accomplished through the use of carbon dioxide, (the same gas that gives pop its fizz), which forms a weak acid when injected into the water and thus lowers the pH to acceptable levels. The proposed system takes carbon dioxide and directly injects it into the water in a very efficient manner. This direct injection system, due to its efficiency, will reduce the amount of carbon dioxide that is used each year and as an added benefit, the use of this system is expected to reduce the incrustation of calcium compounds on the interior of some of the pipes in the Water Treatment Facility. This will, in turn, increase the hydraulic capacity of the Water Treatment Facility.

During construction, various changes were directed by staff to be made to the installation of the pH control system that resulted in this amendment.

The direct injection carbon dioxide project was competitively bid and awarded to Johnston Contractors, Inc. on January 10, 2011 for \$525,600. This amendment will completely close out this project.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: There were no community groups contacted for this item as it is a routine matter.

FINANCIAL IMPACT: The FY 2014 Water Fund Purification Budget appropriated \$25,000 for water plant construction and improvement in the Water Purification Fund in line item 50100130-72590. This amendment will require the payment of an additional \$7,376.22. The projected fund balance for the Water Fund as of April 30, 2013 is \$17,406,227. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on page #145.

Respectfully submitted for Council consideration.

Prepared by: Craig M. Cummings, Director of Water

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Amendment to the agreement with Johnston Contractors, Inc. be approved, in the amount of \$7,376.22, for additional work related to the installation of the direct injection carbon dioxide project.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Frontier Maintenance Renewal

RECOMMENDATION/MOTION: That the Maintenance Agreement with Frontier be approved, in the amount of \$39,756.49, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: This agreement allows with City to support and maintain defined services and levels of service in the 911 Communications Center.

BACKGROUND: This maintenance renewal covers 911 phone equipment located in the Communications Center. The term of the agreement is one (1) year and the level of service is twenty-four (24) hours a day, seven (7) days a week with a four (4) hour response time for major failures.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$42,000 for the maintenance agreement with Frontier Communications in line item 10015118-70530. The total cost for this maintenance agreement is \$39,756.49, which is \$2,243 or 5.3% below the budget appropriation. Stakeholders may locate this purchase in the FY 2013 General Fund Budget document on page #266

Respectfully submitted for Council consideration.

Prepared by: Darren R. Wolf, Communications Center Manager

Reviewed by: R.T. Finney, Interim Chief of Police

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Maintenance Agreement with Frontier be approved, in the amount of \$39,756.49, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Ratification of Contract with Local 49 Firefighters

RECOMMENDATION/MOTION: That the Contract be ratified.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivery in the most cost effective, efficient manner and Objective 1.e. Partnering with others for the most cost effective service delivery.

BACKGROUND: On June 22, 2012, Local 49 and the City staff began negotiating the terms for a collective bargaining agreement to replace the agreement which expired on April 30, 2012. The expired agreement has been placed on the City's web site. The parties were able to reach Tentative Agreements on the following issues:

Article 1 Recognition

- Update contract language to include Paramedics.

Section 2.1 Check off of Union Dues

- Union dues deducted on the first two (2) pay periods of the month.

Section 2.2 Fair Share of Collective Bargaining Administration

- Fair Share deducted on the first two (2) pay periods of the month.

Section 2.3 Fair Share of Living Expenses

- Fair Share of Living Expenses deducted on first two (2) pay periods of the month.

Article 4 Equipment and Allowance

- Increase the shoe allowance from \$100 to \$150 annually.
- Two (2) belts per uniform allotment.

Section 5.1 Sick Leave

- Run FMLA time concurrent with Sick Leave.

Section 5.2 Administrative Duty

- Employees on paid injury or sick leave may be required to participate in training activities within the employee's restrictions.

Section 12.2 Workday

- Eliminate outside employment work, except miscellaneous calls, during periods of down time.

Article 18 Union Business

- Increase Union Business Leave to 120 hours per fiscal year.

Article 24.1 Position Bidding

- Assign position for any employee with less than two (2) years of service.

Section 24.2 Firefighters

- Change the bid from May 1 to November 1 of each calendar year.

Section 25.2 Captain Promotional Process Eligibility

- Change eligibility requirement to a Fire Officer I.

Section 25.3. Asst. Chief Promotional Process Monitoring

- Change eligibility requirement to a Fire Officer II

Section 28.1 Salaries

May 1, 2012	1.5%
November 1, 2012	1.5%
May 1, 2013	1.5%
November 1, 2013	1.5%
May 1, 2014	1.5%
November 1, 2014	1.5%

- Delete the Firefighter pay scale

Section 28.2 Holiday Pay

- Update holiday pay language to remove restrictions on when holiday time is paid.

New Section – Agree to meet and negotiate changes to the recall, call in procedure, leave scheduling and shift bid, if needed, to accommodate the new Time and Attendance System.

New Section – Checks will be mailed for employees who do not have direct deposit.

New Section – Addition of an EMS Supervisor per shift. This position will be compensated at the Firefighter Paramedic Rank at the appropriate rate of service, plus 7% for all hours worked.

The parties agreed on all issues with exception of the reduction of Sick Leave Buy Back for employees hired after the ratification of the agreement. Council directed staff to arbitrate this issue. The parties agreed to execute the contract on all issues except the Sick Leave Buy back. The Arbitration date on the Sick Leave Buy Back was June 17, 2013.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Council and Local 49.

FINANCIAL IMPACT: The financial impact of the tentative agreements includes:

- Additional twenty-four (24) hours of Union Leave.
- Increase of seven percent (7%) for one (1) existing staff person per shift.

- Based on the percentage increases list above, the base wages with longevity are estimated to increase by \$603,222 over the three (3) year period of the contract.
 - FY 2013 - \$188,355.95
 - FY 2014 - \$208,921.72
 - FY 2015 - \$205,944.63

Respectfully submitted for Council consideration.

Prepared by: Angie Brown, Human Resources Specialist

Reviewed by: Emily Bell, Director of Human Resources
Mike Kimmerling Fire Chief
James Baird, Clark Baird Smith, LLP

Financial & budgetary review by: Timothy Ervin, Budget Manager

Legal review by: James Baird, Clark Baird Smith, LLP
J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Contract be ratified.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Application of Smashburger Acquisition Peoria, LLC d/b/a Smashburger, located at 1401 N. Veterans Pkwy., requesting an RBS liquor license which would allow the sale of beer and wine only by the glass for consumption on the premises seven (7) days a week

RECOMMENDATION/MOTION: That an RBS liquor license for Smashburger Acquisition Peoria, LLC, d/b/a Smashburger, located at 1401 N. Veterans Pwky., be created, contingent upon compliance with all applicable health and safety codes.

STRATEGIC PLAN LINK: Goal 4. Grow the local economy.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.a. Retention and growth of current local business.

BACKGROUND: The Bloomington Liquor Commissioner Tari Renner called the Liquor Hearing to order to hear the application of Smashburger Acquisition Peoria, LLC d/b/a Smashburger, located at 1401 N. Veterans Pkwy., requesting an RBS liquor license which would allow the sale of beer and wine only by the glass for consumption on the premises seven (7) days a week. Present at the hearing were Liquor Commissioners Tari Renner and Jim Jordan; George Boyle, Asst. Corporation Counsel, Bob Wall, Asst. Police Chief, and Tracey Covert, City Clerk, and Joseph Zappala, District Manager and Applicant representative.

Commissioner Renner opened the liquor hearing and requested that the Applicant representative address this request. Joseph Zappala, District Manager and Applicant representative, addressed the Commission. He was present to represent the corporate office. The corporate office was purchasing the restaurant from the franchisee. The application was for the same liquor license classification as the existing one.

Commissioner Renner questioned the responsible party. Mr. Zappala noted that the corporate office was located in Denver, CO. As District Manager, Mr. Zappala would be here in the City at least one (1) time every one to two (1 – 2) weeks. He currently oversaw eleven (11) stores. He added that beer sales were limited to two to three percent (2 – 3%) of total sales.

Commissioner Jordan questioned the onsite manager. Mr. Zappala noted that the existing staff would be retained. Smashburger offered five to six (5 – 6) varieties of bottled beer. The management staff, (General Manager, Asst. Manager, or Shift Manager), handled all beer sales and service.

George Boyle, Asst. Corporation Counsel, addressed the applicant. He questioned the current operations. Mr. Zappala informed the Commission that the current franchisee held three (3) stores. The corporate office was purchasing all three (3) stores. Mr. Boyle described this application as a change of ownership.

Mr. Boyle questioned when the business sale would be completed. Mr. Zappala believed that the sale of the business was scheduled for June 17, 2013. Mr. Zappala was directed to provide proof of sale to the City Clerk's Office.

Motion by Commissioner Jordan, seconded by Commissioner Renner that application of Smashburger Acquisition Peoria, LLC, d/b/a Smashburger, located at 1401 N. Veterans Pkwy., for an RBS liquor license which would allow the sale of beer and wine only by the glass for consumption on the premises be approved.

Motion carried, (unanimously).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph on June 3, 2013 in accordance with City Code. In accordance with City Code, approximately seventeen (17) courtesy copies of the Public Notice were mailed on June 3, 2013. In addition, the Agenda for the June 11, 2013 Meeting of the Liquor Commission was placed on the City's web site. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT: This is an existing RBS liquor license. Annual fee for a RBS liquor license is \$1,110.

Recommended by:

Tari Renner
Mayor

Motion by Alderman Fazzini, seconded by Alderman Fruin that an RBS liquor license for Smashburger Acquisition Peoria, LLC, d/b/a Smashburger, located at 1401 N. Veterans Pwky., be created, contingent upon compliance with all applicable health and safety codes.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Transfer of a Pump Station, Force Main, and Force Main Easement to the Bloomington Normal Water Reclamation District, (BNWRD)

RECOMMENDATION/MOTION: That the Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and force main, along with the force main easement, to BNWRD.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Goal 1.e. Partnering with others for the most cost effective service delivery. The City and BNWRD previously agreed that the force main and the easement containing the force main would be transferred by the City to BNWRD, thus using economies of scale to permit basic services to be supplied at reasonable cost to taxpayers.

BACKGROUND: On April 27, 2009, the City and BNWRD entered into an intergovernmental agreement in which various parcels owned would be transferred to the other. One of those properties was the Kickapoo Creek pump station and force main, which was constructed by the City for use with the Ireland Grove Sewer before BNWRD's Randolph Township facility came on line. The City had intended to decommission the pump station and convert the force main to a gravity sewer. BNWRD requested that the pump station and force main be retained for backup in case of disruption in service at the Randolph Township facility. Pursuant to Article III, Paragraph 2 of the April 27, 2009 Intergovernmental Agreement, staff is requesting the Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and force main, along with the force main easement, to BNWRD. The Council was provided with a copy of the Easement.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: City staff will remove the force main, easements and pump station as an asset within the financial statements of the City. This impact is not available at this time. As part of the Intergovernmental Agreement, BNWRD was required to compensate the City \$30,000 for the generator at the pump station.

Respectfully submitted for Council consideration.

Prepared by: J. Todd Greenburg, Corporation Counsel

Reviewed by: Jim Karch, Director of Public Works

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

EASEMENT

This Indenture Witnesseth that City of Bloomington, a municipal corporation, hereinafter referred to as "Grantor", for and in consideration of ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged grants, conveys, quit claims and dedicates to the Bloomington Normal Water Reclamation District, hereinafter referred to as "Grantee", a permanent utility easement across the following described property for the purpose of clearing, trenching for, laying, constructing, operating, altering, maintaining and removing a force main and all necessary appurtenances thereto, which easement is depicted on the plat attached hereto and is described as follows:

Description of Property:

Tract 1: The Northwest Quarter of the Northwest Quarter of Section 23, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois.

Tract 2: A part of the Northeast Quarter of the Northeast Quarter of Section 22, Township 23 North, Range 2 East of the Third Principal Meridian, described as follows: Commencing at a point 264 feet south of the Northeast Corner of said Section 22; thence west parallel to the North line of said Section 916 feet to the right-of-way of the Ohio, Indiana and Western Railway; thence southeasterly along said right-of-way to the South Line of the Northeast Quarter of the Northeast Quarter of said Section 22; thence east to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of said Section 22; thence north to the Place of Beginning, in McLean County, Illinois.

Description of Centerline of Force Main Easement:

Commencing at the Southwest Corner of said Tract 1; thence east 551.93 feet along the South Line of said Tract 1; thence north 68 feet along a line which forms an angle to the right of 90°-00'-00" with the last described course to the Point of Beginning. From said Point of Beginning, thence west 243.09 feet along a line which is parallel with the South line of said Tract 1 and which forms an angle to the left of 270°-00'-00" with the last described course; thence northwest 668.90 feet along a line which forms an angle to the left of 135°-00'-00" with the last described course; thence west 186.62 feet along a line which forms an angle to the left of 270°-00'-00" with the last described course; thence northwest 504.69 feet along a line which forms an angle to the left of 163°-36'-53" with the last described course; thence northwest 159.05 feet along a line which forms an angle to the left of 133°-55'-43" with the last described course to a point on the North Line of said Tract 2 lying 23.25 feet east of the Northwest Corner thereof.

Permanent Force Main Easement: A strip of land 20 feet in width lying 10 feet on east side of said Centerline.

PIN # 21 – 14 – 300 - 013 and 21 – 22 – 200 - 012

The grant of this Easement is subject to the following terms and conditions:

1. Grantee shall have through its employees, agents and/or contractors the free right of ingress and egress over and across the easement property insofar as such right of ingress and egress is necessary for the proper use of any right granted herein.
2. Grantee agrees to repair or pay Grantor for any damage to Grantor's property resulting from Grantee's exercise of the rights granted hereunder, including without limitation any damage to landscape materials, drainage lines, water mains, sewers or fences. Grantee further agrees that anytime it digs into, excavates or otherwise disturbs the surface area of the easement, it will restore any such surface area so disturbed to its pre-existing condition.
3. Grantee agrees to indemnify and hold Grantor harmless from any and all liability, damage, expense, cause of action, suits or claims of judgment arising from injury to persons and/or property on the above-described premises which arise out of the act, or failure to act, or

negligence of Grantee, its agents, employees or assigns in the exercise of the rights under this Grant of Easement.

4. Grantor may not place, build, construct or erect any permanent structure on the permanent or temporary easement area without the express, written consent of the City.

5. The terms, conditions and provisions of this Grant of Easement as herein set forth shall be binding upon and inur to the benefit of the heirs, successors and assigns of the respective parties hereto and shall run with title to the land.

DATED this 25th day of June, 2013.

CITY OF BLOOMINGTON

By: Tari Renner
Mayor

Attest:

Tracey Covert
City Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF McLEAN)

I, the undersigned, a notary public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that Tari Renner, personally known to me to be the Mayor of the City of Bloomington, and Tracey Covert, personally known to me to be the City Clerk of said Municipal Corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk they signed and delivered the said instrument of writing as Mayor and City Clerk of said Municipal Corporation, and caused the seal of said Municipal Corporation to be affixed thereto, pursuant to authority given by the City Council of said Municipal Corporation as their free and voluntary act, and as the free and voluntary act and deed of said Municipal Corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of June, A.D. 2013.

Jan Scherff
Notary Public

Motion by Alderman Fazzini, seconded by Alderman Fruin that Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and force main, the Easement be approved, the Mayor and City Clerk be authorized to execute the necessary documents and the deed recorded.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Petition from FOB Development, Inc., Requesting Approval of a Final Plat for the Empire Business Park Subdivision, Fourth (4th) Addition, commonly located on Cornelius Dr., and east of Airport Rd.

RECOMMENDATION/MOTION: That the Final Plat be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 4. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.a. Retention and growth of local businesses.

BACKGROUND: This subdivision is located south of Golden Eagle South Subdivision, west of Airport Park Subdivision, north of Empire St., (IL Route 9), and east of Airport Rd. The Final Plat is in conformance with the Second Revised Preliminary Plan approved on December 14, 2009. The parcel is west of the corner of Cornelius Dr. and Trinity Ln. and north of the new Advocate BroMenn Medical Office Building. A professional office building is planned for the new lot.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: FOB Development.

FINANCIAL IMPACT: The cost of all public improvements, platting and recording is borne by the petitioner. The future commercial property may generate revenues in terms of property and potential sales taxes.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, PE, CFM, Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Manager

Recommended by:

David A. Hales
City Manager

PETITION FOR APPROVAL OF FINAL PLAT

State of Illinois)
) ss.
County of McLean)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF
BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

Now comes FOB Development, Inc. hereinafter referred to as your petitioner, respectfully representing and requesting as follows:

1. That your petitioner is the owner of the freehold or lesser estate therein of the premises hereinafter legally described in Exhibit "A" which is attached hereto and made a part hereof by this reference, is are a mortgagee or vendee in possession, assignee of rents, receiver, executor (executrix), trustee, lessee or other person, firm or corporation or the duly authorized agents of any of the above persons having proprietary interest in said premises;
2. That your petitioner seeks approval of the Final Plat for the subdivision of said premises to be known and described as: Empire Business Park Fourth Addition;
3. That your petitioner also seeks approval of the following exemptions or variations from the provisions of Chapter 24 of the Bloomington City Code, 1960: None

WHEREFORE, your petitioner respectfully prays that said Final Plat for the Empire Business Park Fourth Addition Subdivision submitted herewith be approved with the exemptions or variations as requested herein.

Respectfully submitted,

By: William C. Wetzel

ORDINANCE NO. 2013 - 37**AN ORDINANCE APPROVING THE FINAL PLAT OF THE
EMPIRE BUSINESS PARK FOURTH ADDITION SUBDIVISION**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a Petition for approval of the Final Plat of the Empire Business Park Fourth Addition Subdivision, legally described in Exhibit "A" attached hereto and made a part hereof by this reference; and

WHEREAS, said Petition requests the following exemptions or variations from the provisions of the Bloomington City Code-1960, as amended: None; and

WHEREAS, said Petition is valid and sufficient and conforms to the requirements of the statutes in such cases made and provided and the Final Plat attached to said Petition was prepared in compliance with requirements of the Bloomington City Code except for said requested exemptions and/or variations; and

WHEREFORE, said exemptions and/or variations are reasonable and in keeping with the intent of the Land Subdivision Code, Chapter 24 of the Bloomington City Code-1960, as amended.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS:

1. That the Final Plat of the Empire Business Park Fourth Addition Subdivision and any and all requested exemptions and/or variations be, and the same is hereby approved.
2. That this Ordinance shall be in full force and effective as of the time of its passage this 24th day of June, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

EXHIBIT “A”

A Part of the Southwest Quarter of Section 31, Township 24 North, Range 3 East of the Third Principal Meridian, in the City of Bloomington, McLean County, Illinois, more particularly described as follows: Beginning at the Northwest Corner of Empire Business Park Subdivision Third Addition in the City of Bloomington, Illinois, per plat recorded June 26, 2012 as Document No. 2012-15866 in the McLean County Recorder’s Office, said Northwest Corner also being a point on the South Right-of-Way Line of Cornelius Road per the final plat of Central Catholic/McGraw Park Subdivision in the City of Bloomington, Illinois, per Ordinance No. 2002-90 approved by the Bloomington City Council. From said Point of Beginning, thence West 510.00 feet along said South Right-of-Way Line; thence South 281.86 feet along a line which forms an angle to the right of 90°-00’-00” with said South Right-of-Way Line; thence East 510.00 feet along a line which forms an angle to the right of 90°-00’-00” with the last described course; thence North 281.86 feet along the Southerly extension of the West Line of said Empire Business Park Subdivision, Third Addition and said West Line which forms an angle to the right of 90°-00’-00” with the last described course to the Point of Beginning.

Said property contains 3.300 acres, more or less.

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Final Plat be approved and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

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

RECOMMENDATION/MOTION: That the Text Amendment be approved and the Ordinance be passed.

STRATEGIC PLAN LINK: Goal 3: Strong neighborhoods; Objective a: Residents feeling safe in their homes and neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Proposed ordinance amendments encourage responsible pet ownership and enhance staff’s ability to properly identify potentially problem animals, provide safe and equitable restrictions on declared animals, and hold liable irresponsible pet owners.

UPDATES TO THIS MEMO SINCE THE MAY 28, 2013 CITY COUNCIL MEETING:

Updates have been added to pages 2 and 3 of this staff memo and to the Ordinance Amending Bloomington City Code Chapter 8.

TIMELINE OF EVENTS: In November 2012, Council directed staff to review current ordinances as they pertain to animal control due to an extremely unfortunate incident on October 25, 2012 which resulted in two (2) citizens being hospitalized after a severe dog attack. Since this time, staff members have invested a significant amount of time reviewing current ordinances, researching alternative policies, and reviewing Police and Animal Control Warden's workload statistics and activity reports.

The last time the City amended the Animal Control Ordinance was in April 2006. At that time, Council adopted a text amendment adding Section 85 to Chapter 8 of the City Code, "Establishing Penalties for Failure to Register a Dog and Authorizing the Seizure of Unregistered Dogs". The language was not aimed at owners of specific breeds of animals, but at irresponsible pet owners. The general idea was that dogs who attack other animals or humans are owned by irresponsible people; if the City and County had the authority to seize dogs which did not display dog tags, the hope was that this would take more potentially dangerous animals off the streets, out of the hands of irresponsible owners, and reduce the amount of attacks.

On Thursday, April 11, 2013, City staff issued a detailed report of their findings to the Public Safety Committee on the City's activity pertaining to animal control issues from 2006 to present, along with proposed ordinance amendments to address the issues of concern. (City staff had prepared Dangerous Vicious Dog Report, which was provided to the Council.). The Public Safety Committee unanimously voted to present the issue to the Council at a future meeting. The report and proposed ordinance amendments were the result of a number of meetings held between George Boyle, Asst. Corporate Counsel, Robert Wall, Asst. Police Chief, James Hall, Police Officer, Marshall Thomson, McLean County Animal Control Center Director, and Alex McElroy, Asst. to the City Manager.

On Monday, May 13, 2013, City staff presented the proposed ordinance amendment to the full Council for consideration. At that time, certain concerns were expressed by the Wish Bone Canine Animal Rescue, (WBCAR), group regarding the proposed ordinance. The Council voted to lay over the issue to the next Council meeting to allow City staff time to speak with WBCAR, the McLean County Humane Society, and any other interested party to discuss any concerns related to the proposal.

On Tuesday, May 21, 2013, City staff members George Boyle, Asst. Corporate Counsel, and Alex McElroy, Asst. to the City Manager joined Mayor Tari Renner, Alderman Kevin Lower, and Alderwoman Judy Stearns in a meeting with WBCAR members and Dr. Tim Anderson, Interim Humane Society Director and veterinarian at the Hawthorne Park Animal Care Center. Based on staff's discussion with the WBCAR group and the concerns presented, staff incorporated three (3) additional measures into the proposed policy:

- 1.) Language was added to Section 50(c)(3) and 50(k)(4). Those sections had previously provided that any dog that has been found to be a dangerous or vicious dog in any other

jurisdiction shall be considered as a dangerous or vicious dog in the City. The added language exempts dogs that are found dangerous or vicious in other jurisdictions solely because of their breed.

- 2.) Section 83(e) was changed to provide that in the event the appeal of a declaration that a dog is subject to euthanasia is denied, the dog shall be euthanized no sooner than 5 days after denial of the appeal. This clarifies and expands the time within which a dog owner who loses such an appeal may seek redress in the courts. Staff had previously proposed a timeline of no sooner than two (2) days. It is important to note that the current City ordinance does not require any minimum time lapse before an acting agent may euthanize an animal after denial of an appeal.
- 3.) Section 83(d)(9) was changed so the amount of liability insurance required to be purchased by the owner of a vicious dog is \$250,000 instead of \$200,000. Concern was expressed by the WBCAR group that owners of vicious dogs would not be able to obtain liability insurance for the animals, staff's research indicates otherwise. However, staff did find after speaking with a State Farm agent that the amount of \$200,000 in coverage did not exist and that the coverage came in the form of \$100,000 or \$250,000 or \$500,000. \$250,000 was the chosen coverage recommended by staff and is estimated to cost between \$100 - \$150 per month.

At the Tuesday, May 28, 2013, Council Meeting, staff brought the proposed ordinance amendment back to Council for consideration as directed. WBCAR organization attended the meeting with members interested in the ordinance being laid again over for further discussion. WBCAR group provided Council with a seven (7) item list of concerns regarding the proposed ordinance and recommendations for further amendments. Council voted to remand the issue back to the Public Safety Committee for further discussion and analysis.

On Thursday, May 30, 2013, City staff placed a spotlight article on the home page City's web site advertising the proposed ordinance amendment and the June 13, 2013 Public Safety Committee meeting regarding the topic. The spotlight article allowed visitors to leave comments regarding the proposed ordinance amendments which have been collected for Council review. (The Council was provided with a copy of the web site comments regarding the proposed Ordinance).

On Friday, June 7, 2013, the Police Department issued a letter of support for staff's proposed ordinance amendment. (The Council was provided with a copy of said letter).

On Tuesday, June 11, 2013, the Humane Society of Central Illinois issued correspondence to staff stating in their opinion the changes to the language was good and they supported passage of the ordinance. (The Council was provided with a copy of said email.)

On Thursday June 13, 2013, the Public Safety Committee met again on the issue and voted to suspend the rules to allow members of the public to voice their concerns. Only one (1) organization was present at the meeting and had a representative speak on their behalf. No other members of the public present at the meeting addressed the Committee. While addressing the Committee, the WBCAR representative presented the following concerns:

1. The length of time in which an owner may seek redress in court in the case where an appeal of a dog subject to euthanasia is denied.
2. Addition of a rehabilitation clause to provide a mechanism in which a dog declared dangerous or vicious may earn a repeal of the declaration.
3. Clear definition of ownership to include and provide for foster situations to allow an animal deemed vicious to be taken back by the foster organization.
4. Concern over individual's ability to obtain insurance for animals declared vicious.
5. Concern that in the definition of the proposed language: "*Vicious Dog*" definition: *2. Any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals... the intention was to be breed specific.*

The Public Safety Committee then brought the meeting back to order. The concerns expressed by WBCAR were addressed by Committee members and City staff as follows:

1. City staff reiterated that after speaking with the WBCAR group on May 21st, staff amended the proposed language to allow for five (5) *days after the denial of an appeal* from the previous *two (2) days from the date of the hearing*. Currently, City ordinance does not require any minimum time lapse before an acting agent may euthanize an animal after denial of an appeal. This amendment more than doubled staff's original recommendation and allows individuals potentially more than five (5) days to seek redress in court.
2. City staff stated that a rehabilitation clause has not been considered at this time because such a process has not yielded quantifiable evidence of success in staff's research. Staff did state that such a process could be considered in the future after proper research and analysis has been conducted on rehabilitation processes.
3. After some discussion, the Committee directed staff to discuss the issue of clear ownership with WBCAR before the Council June 24, 2013 meeting.
4. Staff stated that such insurance does exist based on their research and was quoted \$167 per month for \$250,000 liability coverage.
5. Staff stated that none of the proposed language is intended to be breed specific.

The Public Safety Committee then voted unanimously to have the proposed policy brought back to the full Council for consideration with the direction to staff to discuss with WBCAR the issue of a clear definition of ownership as cited above, (bullet 3). In correspondences with WBCAR following the Public Safety Committee meeting, staff amended Section 83 (d) 2. with the following language to address this concern: "*It shall be illegal for an owner or keeper of a vicious dog to sell, foster or give away the dog. In the event the dog declared vicious is being kept at a foster home operating pursuant to a permit provided by an animal shelter or foster agency licensed by the Department of Agriculture of the State of Illinois, the dog may be returned to the animal shelter or foster agency issuing the permit. The animal shelter or foster agency receiving the dog back from the foster home shall be bound by and comply with the provisions of this sub-section, (d), pertaining to the requirements for keeping dogs declared vicious, and shall not sell, foster or give away the dog.*" This language parallels the language within the Illinois Animal Control Act (510 ILCS 5/2.16).

ADDITIONAL RESEARCH: The issue and challenge of establishing fair, equitable, and responsible animal control policies is not unique to the City. Communities nationwide are experimenting with new legislative measures to address the public safety aspect of pet ownership. Some communities have decided to focus policy toward specific breeds of animals. Denver, CO enacted a citywide ban on pit bulls requiring all pit bulls in the community be removed and/or euthanized. The state of Ohio passed legislation that labeled all pit bulls as “vicious dogs” and subject to vicious dog requirements and restrictions regardless of the absence of any behavioral concerns. (See: http://www.cbalaw.org/_files/publications/lawyers-quarterly/Vicious%20Dogs%20in%20Ohio.pdf) On May 22, 2012, the Ohio legislation was amended to no longer target a specific breed, but to require any dog owner having an animal identified by a jurisdiction as being vicious carry a minimum liability insurance of \$100,000. According to staff’s research, this approach has been the more popular emerging trend in public policy.

Fourteen (13) states have passed legislation requiring liability insurance be obtained for animals declared vicious, (or in some cases dangerous), these include: Delaware, Georgia, Michigan, Minnesota, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Washington. (See: <http://www.insurancequotes.com/home-insurance-blacklisted-breeds/>) According to a study performed by the Insurance Information Institute (III) and State Farm, dog bites accounted for more than one-third of all homeowners’ insurance liability claims paid out in 2012, costing \$489 million. (See: http://www.iii.org/issues_updates/dog-bite-liability.html) State Farm reported that it paid out more than \$108 million as a result of its 3,760 dog bite claims in 2012. An analysis of homeowners insurance data by the III found that the average cost paid out for dog bite claims was \$29,752 in 2012. (Source: Insurance Information Institute, State Farm)

Year	Value of Claims (\$ millions)	Number of Claims	Average Cost Per Claim
2003	\$324.20	16,919	\$19,162
2004	\$319.00	15,630	\$20,406
2005	\$321.10	14,295	\$22,464
2006	\$322.30	14,661	\$21,987
2007	\$356.20	14,531	\$24,511
2008	\$387.20	15,823	\$24,461
2009	\$412.00	16,586	\$24,840
2010	\$412.60	15,770	\$26,166
2011	\$490.80	16,695	\$29,396
2012	\$489.70	16,459	\$29,752
Percent of Change 2003 – 2012	51.4%	-1.6%	55.3%

Dog bite incidents can unfortunately be very severe and result in major medical expenses. Due to inflated costs of medical care, many experts recommend \$300,000 in dog bite coverage in case of a severe injury. (See: <http://www.insureme.com/general-insurance/dangerous-dogs-pose-insurance-debate>) Homeowners and renters insurance policies typically cover dog bite liability. Most policies provide \$100,000 to \$300,000 in liability coverage. (See:

http://www.iii.org/issues_updates/dog-bite-liability.html) If the claim exceeds the limit, the dog owner is responsible for all damages above that amount, including legal expenses. Most insurance companies insure homeowners with dogs.

A December 2010 report from the Agency for Healthcare Research and Quality indicates that the number of Americans hospitalized because of dog bites increased by nearly 100% over a fifteen (15) year period. In 2008, approximately 9,500 Americans received serious dog bites, compared with approximately 5,100 in 1993. The increase was far greater than population growth, and pet ownership increased only slightly during the period. Experts were not able to explain the increase. Children under five (5) and adults sixty-five (65) and older were more likely to be hospitalized after a bite. Nearly fifty percent (50%) of those hospitalized required treatment for skin and tissue infections and more than half received procedures such as skin grafts or wound debridement, with treatment costing an average of \$18,200 per patient.

A requirement for animal owners to carry liability insurance for animals declared vicious is a growing trend noted in staff's research. Des Moines, IA recently amended their City ordinance to require \$100,000 in liability insurance be carried for animals declared vicious. The neighboring community of Ankeny, IA followed suit shortly after requiring \$150,000 in liability insurance for vicious animals. Royal Oak, MI, (Detroit, MI suburb), requires \$1,000,000 in liability insurance for vicious and/or dangerous dogs. (See: <http://detroit.cbslocal.com/2013/05/15/royal-oak-ordinance-requires-dangerous-dog-insurance/>)

A requirement to carry insurance is not unique to current Illinois state law. There are currently minimum car insurance requirements in Illinois and anyone caught operating a motor vehicle without proper insurance is subject to fines and penalties. State law does not require insurance companies to provide minimum insurance coverage to potential clients, as private companies they have the discretion to provide insurance on a case-by-case basis. Rather, state law places the responsibility on the individuals and requires them to obtain a certain level of insurance if they wish to drive. It is staff's recommendation that owners of animals that have been identified as vicious, (meaning it has proven to City officials that it has a propensity to attack and act violently), be required to carry minimum liability insurance in the event the animal should attack and inflict harm on a human or other animal a second time.

The proposed ordinance amendments reflect staff's research into current animal control public policy trends. There are many provisions within the amendments that would give animal owners more rights than under current policy. Some brief highlights of the proposed ordinance amendments include:

- Expansion of the definition of "dangerous dog" to include any dog that has been declared dangerous by any other jurisdiction with the exception of any dog declared dangerous that are found dangerous in other jurisdictions solely because of their breed.
- Expansion of the definition of "vicious dog" to include any dog that has been declared vicious by any other jurisdiction with the exception of any dog declared vicious that are found vicious in other jurisdictions solely because of their breed.
- Redefined definition of "enclosure" for a vicious dog, eliminating height requirements for enclosure and focusing on the ability of the enclosure to prevent the animal from escaping.

- Adding a requirement for owners of a dog declared vicious by the City to retain liability insurance with a single limit of \$250,000 to \$500,000 per occurrence and show proof of obtaining insurance to the Police Department.
- Requirement for any dog declared vicious to be micro-chipped and registered with the micro-chip company in the owner's name and listing address where the dog is currently located.
- Requirement for any vicious dog owner to notify the United States Post Office and utility providers in writing of the vicious dog declaration or the disposition of any appeal of the declaration. The owner will be required to provide proof of the notification to the Police Department.
- Redefined the definition of "injury" to state any wound that is serious enough to require medical or veterinary treatment regardless of whether medical or veterinary treatment is sought.
- Redefined owner to include any firm, limited liability company or corporation, keeping, possessing or harboring a dog or cat. Staff has experienced issues with enforcement efforts in situations where dogs were being fostered. Ownership of the fostered dogs was not clear as the animal was currently being temporarily held for the care of a potential new owner. *These concerns have not risen from the operations of the WBCAR group.* But staff has found that not all foster groups or temporary situations operate as responsibly as has been the experience with WBCAR. This amendment will place clear ownership on any dogs currently being fostered.
- Addition of Section 83 (a) which clearly defines procedures for declaring a dog dangerous, vicious or subject to euthanasia. This section provides more rights to animal owners and allows hearing officers to consider more evidence and circumstances when deciding on a declaration, (i.e. the size of the animal, the history of the animal, the circumstances leading up to the bite incident, etc.).
- Addition of Section 83(e) to provide that in the event the appeal of a declaration that a dog is subject to euthanasia is denied, the dog shall be euthanized no sooner than five (5) days after denial of the appeal.

Staff's research into animal control policies also included a review of the Town of Normal's Animal Control Ordinance, the Illinois Animal Control Act, the American Bar Association's policy recommendations, and the Illinois Administrative Procedures Act. The proposed ordinance amendments reflect certain aspects of all of these policies and represent staff's recommendation to best enhance the City's ability to properly identify potentially problem animals, provide safe and equitable restrictions on declared animals, and penalize irresponsible pet owners.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: McLean County Animal Control Center, Humane Society of Central Illinois, and WBCAR.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by:

Alex McElroy, Asst. to the City Manager

Legal review by: George D. Boyle, Asst. Corporation Counsel

Recommended by:

David A. Hales
City Manager

ORDINANCE NO. 2013 - 38**AN ORDINANCE AMENDING BLOOMINGTON
CITY CODE CHAPTER 8**

BE IT ORDAINED by the City Council of the City of Bloomington, Illinois:

SECTION 1. That Bloomington City Code Chapter 8, Sections 50, 53, 54 and 83 shall be and the same are hereby amended to read as follows: (additions are indicated by underlining; deletions are indicated by strikeouts):

SEC. 50 DEFINITIONS.

(a) “Animal shelter” means a facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other non-profit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. “Animal shelter” also means any veterinary hospital or clinic operated by the veterinarian or veterinarians licensed under the Veterinary Medicine and Surgery Practice Act of 2004 which operates for the above mentioned purpose in addition to its customary purposes.

~~(a)~~ (b) ~~Bitten~~. “Bitten” means seized with the teeth or jaws so that the person or thing seized has been nipped or gripped or has been wounded or pierced, and includes contact of saliva with any break or abrasion of skin.

~~(b)~~ (c) ~~Cat~~. “Cat” includes all animals, male and female, of the feline species.

(d) “Dangerous Dog” means:

1. Any dog that behaves in a manner that a reasonable person would believe poses a serious and unjustified threat of physical injury or harm to a person or a companion animal; or
2. Any dog that without justification bites a person or other animal, whether on public or private property, that does not cause injury; or
3. Any dog that has been declared a dangerous dog by any other jurisdiction, provided that such finding was not based solely upon the breed of the dog.
4. No dog shall be deemed a dangerous dog if it bites, attacks or menaces a trespasser on the property of its owner, or harms or menaces anyone who has tormented or abused it, or is performing in the line of duty as a professionally trained dog for law enforcement.

~~(e)~~ (e) ~~Dog~~. “Dog” includes all animals, male and female, of the canine species.

(f) “Dog subject to euthanasia” means:

1. Any dog which has killed or severely injured any person or dog; or
2. Any dog which has rabies; or
3. Any dog previously declared a vicious dog which subsequently bites a person or animal causing injury to that person or animal; or
4. Any dog previously declared a vicious dog, which, when unmuzzled, in an aggressive or terrorizing manner approaches any person in an apparent attitude of attack on any street, sidewalk, public or private property other than the property of the owner of the dog; or
5. Any dog previously declared a vicious dog which subsequently is found running at large; or
6. Any dog previously declared a vicious dog which is not kept in the manner required for keepers of vicious dogs.
7. Any dog previously declared a vicious dog which is found without current registration or vaccinations.

(g) “Enclosure” means a fence or structure capable of preventing the animal from escaping at any time. It shall be securely locked at all times. If the enclosure is a room within a residence, it shall not have direct access to common areas of the building or to outdoors, unless it leads directly to an outdoor enclosure, capable of preventing the animal from escaping that is securely locked. An owner or keeper of a vicious dog must have a secure fenced enclosure in which to exercise the dog.

(h) “Impounded” means taken into the custody of the Animal Control Center where City of Bloomington personnel have authority to take animals.

(i) “Injury” means any wound serious enough to require medical or veterinary treatment, regardless of whether medical or veterinary treatment is actually sought, obtained or provided.

~~(d)~~ (j) Owner. “Owner” means any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her. or persons keeping or harboring a dog or cat or having it in their care or acting as its custodian or permitting a dog or cat to remain on or about any premises occupied by such person(s). In the event that the owner, harborer, or keeper of any dog or cat is a minor, the parent or guardian of such minor shall be responsible ~~to ensure~~ for ensuring that all provisions of this Ordinance are complied with and it shall be illegal for such parent or guardian to fail to prohibit any violation of this Code by a minor.

(k) “Person” means any individual, firm, corporation, limited liability company, partnership, society, association or other legal entity.

~~(e) (l) Running at Large.~~ “Running at Large” means being off the premises of the owner and not under restraint or not under physical control of the owner or an authorized person either by leash, cord or chain. Control referred to as voice control is not physical control when off the premises of the owner.

(m) “Vicious Dog” means:

1. Any dog that when unprovoked bites or attacks a human being or other animal on either public or private property; or
2. Any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
3. Any dog which has been found to be a dangerous dog on three separate occasions in this or any other jurisdiction provided that such finding was not based solely upon the breed of the dog; or
4. Any dog that has been found to be a vicious dog in any other jurisdiction, provided said declaration is not based solely upon the breed of the dog.
5. No dog shall be deemed a vicious dog if it bites, attacks or menaces a trespasser on the property of its owner, or harms or menaces anyone who has tormented or abused it, or is performing in the line of duty as a professionally trained dog for law enforcement.

SEC. 53 RECLAMATION OF IMPOUNDED ANIMAL.

(a) Any impounded dog or cat may be reclaimed by:

- (1) payment of a City of Bloomington release fee of \$50.00 ~~30.00~~; and
- (2) signing an acknowledgment of ownership of the animal; and
- (3) complying with all applicable rules and regulations and by paying all charges and fees pertaining to the impoundment and care of the animal imposed by McLean County Animal Control. ~~complying with all applicable rules, regulations and fees of any involved animal shelter.~~

~~(b) If any dog or cat is impounded a second or subsequent time, the owner shall be charged with the offense which caused the impounding in addition to paying any fees referred to herein.~~

(b) (e) Any impounded dog or cat which has been placed in the McLean County Animal Control Shelter by a representative of the City of Bloomington shall be subject to all of the rules, regulations and fees that apply to other similar types of animals that are in or may be placed in the Shelter.

SEC. 54 ANIMALS NOT RECLAIMED.

(a) With the exception of animals impounded for a 10-day quarantine period as provided in sub-section (b) of this Section, any animal not reclaimed within 7 business days of impoundment shall become the property of McLean County Animal Control;

(b) For animals subject to a 10-day quarantine period, any animal not reclaimed within 5 business days from the date the quarantine ends shall become the property of McLean County Animal Control.

SEC. 83 DANGEROUS AND VICIOUS DOGS; DOGS SUBJECT TO EUTHANASIA.

(a) Procedures for Declaring a dog dangerous, vicious or subject to euthanasia:

1. Any person may file a complaint with the Police Department seeking to have a dog declared dangerous, vicious or subject to euthanasia. The Police Chief or his or her designee shall review and investigate the complaint and, if the criteria for declaring a dog dangerous, vicious or subject to euthanasia have been met, shall make the appropriate declaration and provide written notification of the declaration to the owner of the dog. Said notification shall include the basis for the declaration, the declaration, any restrictions placed on keeping the animal, and notice of the right to appeal the declaration.
2. An owner of a dog declared dangerous, vicious or subject to euthanasia shall have the right to appeal the declaration, provided that the owner files a written request to appeal said declaration with the Bloomington Police Department no later than seven days after receiving notification. If no written request for appeal is made in the time provided, the owner of the dog subject to the declaration shall have 14 days from the date of notification within which to comply with all requirements pertaining to the declaration. If a written request for an appeal is timely made, a hearing shall be held on the appeal in an expeditious manner, no later than 30 days from the date the owner requests an appeal.
3. The hearing shall be informal and strict rules of evidence shall not apply. The owner may be represented by counsel, present oral and written evidence, and may cross-examine witnesses. The hearing shall be held before an Assistant Police Chief or other hearing officer duly authorized by the Chief of Police. In making a determination on any appeal of a declaration, the hearing officer shall consider the criteria and definitions

set forth in Section 50 of this Chapter. The hearing officer may also consider the following:

- (i) the circumstances of the incident or incidents giving rise to the declaration;
- (ii) the nature and extent of any injury caused to humans or animals as the result of the incident or incidents giving rise to the declaration;
- (iii) the size of the dog subject to the declaration;
- (iv) whether the dog subject to declaration was current on its registration and vaccinations at the time of the most recent incident forming the basis for the declaration;
- (v) any previous history of the dog subject to the declaration involving incidents of threat, attack or injury to human beings or other animals;
- (vi) the history of the owner of the dog subject to the declaration, including prior incidents involving animals owned or kept by the owner, whether said animals have been current on their registrations and vaccines, and the conditions under which they have been kept.

~~(a) — Definitions.~~

~~(1) — Vicious dog means:~~

- ~~(a) — Any individual dog that when unprovoked, inflicts, bites or attacks a human being or other animal either on public or private property.~~
- ~~(b) — Any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.~~
- ~~(c) — Any dog which has been found to be a “dangerous dog” upon three (3) separate occasions.~~
- ~~(d) — No dog shall be deemed “vicious” if it bites, attacks, or menaces a trespasser on the property of its owner or harms or menaces anyone who has tormented or abused it or is performing in the line of duty as a professionally trained dog for law enforcement or professional guard duties.~~

~~(2) — Dangerous dog means any dog which when either unmuzzled, unleashed, unattended or otherwise unrestrained or leashed but uncontrolled by its owner or a member of the owner's family, in an aggressive or terrorizing manner approaches any person in a menacing fashion or in an apparent attitude of attack upon streets, sidewalks, or any public property or places.~~

~~(3) — Enclosure means a fence or structure of at least six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering of a vicious dog. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall prevent the animal from escaping from the enclosure in any manner.~~

~~(4) — Impounded means taken into the custody of the public pound where the City of Bloomington personnel has authority to take animals.~~

(b) Disposition of Appeals.

1. The hearing officer shall inform the owner in writing of the disposition of any appeal within 5 days of the date of the hearing. If the appeal is denied and the declaration upheld, the owner shall have 14 days from receipt of the written notification of the disposition of appeal within which to comply with all requirements pertaining to the declaration.
2. Appeal of the determination of the hearing officer shall be as provided by the Illinois Administrative Procedures Act.

(c) Requirements for Keeping Dogs Declared Dangerous.

1. Any person owning or keeping a dog declared dangerous must be in compliance with the requirements of this Section within 14 days of the receipt of notification of the declaration or within 14 days of the receipt of a decision of an appeal upholding the dangerous dog declaration. Failure to comply with this Section may also result in fines, fees and court costs being assessed against the owner. Each failure to comply with a provision of this Section shall constitute a separate offense. Each day an owner fails to comply with a provision of this Section shall constitute a separate offense.
2. It is illegal for any person to create a public nuisance by permitting any dangerous dog to be kept on the owner's property in violation of Section 81(a) of this Chapter. Guide dogs for blind or hearing impaired persons, support dogs for the physically handicapped and professional guard or police owned dogs are exempt from the provisions of this Section, provided an attack or injury to a person occurs while the dog is performing duties as expected.

3. Any dog declared dangerous shall be spayed or neutered.
4. Any dog declared dangerous shall be micro-chipped and registered with the micro-chip company in the owner's name with a current address where the dog is located.
5. The owner of a dog declared dangerous shall purchase a "Dangerous Dog Tag" from McLean County Animal Control. The tag must be affixed to the dog's collar in a manner so that it can be seen. Said tag shall be worn by the dog at all times. Registration for the dangerous dog tag must be renewed annually at McLean County Animal Control.
6. The owner of a dangerous dog shall be required to immediately report any biting incidents involving the dog and a person or animal to the Bloomington Police Department or to McLean County Animal Control.
7. The owner of a dog declared dangerous shall notify the United States Postal Service local office and all utility providers in writing of the dangerous dog declaration within 14 days of receiving the declaration. The dog owner shall provide proof of said notification to the Bloomington Police Department.
8. If the owner of a dog declared dangerous resides at rental property, said owner shall notify the landlord or property management of the dangerous dog declaration within 14 days of receiving said declaration. The dog owner shall provide proof of said notification to the Bloomington Police Department.
9. The owner of any dog declared dangerous shall immediately notify the Bloomington Police Department of any change of address or location of the dangerous dog. If the dog is removed from the City of Bloomington, said notification shall also be provided in writing to authorities of the jurisdiction where the dog is located.

(d) Requirements for Keeping Dogs Declared Vicious.

1. Any person owning or keeping a dog declared vicious must be in compliance with the requirements of this Section within 14 days of receipt of notification of the declaration or within 14 days of the receipt of a decision of an appeal upholding the vicious dog declaration. Any failure to comply with the requirements of this Section pertaining to the keeping of a dog declared vicious shall result in the impoundment of the dog and the dog being subject to euthanasia. Failure to comply with this Section may also result in fines, fees and court costs being assessed against the owner. Each failure to comply with a provision of this Section shall

constitute a separate offense. Each day an owner fails to comply with a provision of this Section shall constitute a separate offense.

2. It shall be illegal for an owner or keeper of a vicious dog to sell, foster or give away the dog. In the event the dog declared vicious is being kept at a foster home operating pursuant to a permit provided by an animal shelter or foster agency licensed by the Department of Agriculture of the State of Illinois, the dog may be returned to the animal shelter or foster agency issuing the permit. The animal shelter or foster agency receiving the dog back from the foster home shall be bound by and comply with the provisions of this sub-section, (d), pertaining to the requirements for keeping dogs declared vicious, and shall not sell, foster or give away the dog.

3. The owner of a dog declared vicious shall contact the Bloomington Police Department within 14 days of receipt of the declaration, or within 14 days of the receipt of a decision of an appeal upholding the vicious dog declaration, and arrange for an inspection of the premises where the dog subject to said declaration is kept. It shall be illegal for any person to keep or maintain any dog which has been found to be a vicious dog unless such dog is at all times kept in an enclosure, as defined in Section 50 of this Chapter approved by the Bloomington Police Department. The only times that a vicious dog may be allowed out of the enclosure are:

(i) if it is necessary for the owner or keeper to obtain veterinary care for the vicious dog; or

(ii) to comply with the order of a court of competent jurisdiction.

When taken out of the enclosure, said vicious dog must be securely muzzled and restrained with a chain having a tensile strength of at least 300 pounds and not exceeding three (3) feet in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog.

Any dog which has been found to be a vicious dog and which is not confined in an enclosure shall be impounded and shall be subject to euthanasia.

4. The owner of a vicious dog shall notify the United States Post Office and utility providers in writing of the vicious dog declaration or the disposition of any appeal of said declaration. The owner shall provide proof of the notification to the Bloomington Police Department.

5. If the owner of a dog declared vicious resides at rental property, said owner shall notify the landlord or property management of the vicious dog

declaration within 14 days of receiving said declaration. The dog owner shall provide proof of said notification to the Bloomington Police Department.

6. The owner of a vicious dog shall have said dog spayed or neutered.
7. The owner of any dog declared vicious shall have said dog micro-chipped and registered with the micro-chip company in the owner's name and listing an address where the dog is currently located.
8. The owner of a dog declared vicious shall purchase a "Vicious Dog Tag" from McLean County Animal Control. Said tag shall be affixed to the dog's collar and visible at all times. Registration for the vicious dog tag must be renewed annually at McLean County Animal Control.
9. The owner of a dog that has been declared vicious shall be required to purchase general liability insurance covering property and bodily injury with a combined single limit of at least \$250,000 per occurrence and shall show proof of obtaining said insurance to the Bloomington Police Department. The owner shall notify the Bloomington Police Department not more than 14 days after the cancellation of said insurance policy.
10. The owner of any dog declared vicious shall immediately report to the Bloomington Police Department any incident involving the vicious dog and any bite, attack or threat to a person or animal.
11. The owner of any dog declared vicious shall immediately notify the Bloomington Police Department of any change of address or location of the vicious dog. If the dog is removed from the City of Bloomington, said notification shall also be provided in writing to authorities of the jurisdiction where the dog is located.

(e) Dogs Subject to Euthanasia. It shall be the duty of the owner of any dog declared Subject to Euthanasia by the Police Chief or his designee to immediately take the dog to an impound facility or veterinarian who shall euthanize said dog or, in the event of an appeal, shall hold such animal pending a hearing of an appeal before the Police Chief or his designee. If the appeal is denied and the declaration upheld, the animal shall be euthanized in a humane manner no sooner than 5 days after the decision denying the appeal, unless the owner consents to an earlier time. It shall be unlawful for the owner of a dog declared subject to euthanasia to sell, foster, give away or remove said dog from the jurisdiction. In the event that an owner does not deliver a dog subject to euthanasia to an impound facility or veterinarian, the City may seek a warrant from the Circuit Court of McLean County for the immediate seizure and euthanasia of the dog. The owner or keeper of a dog subject to euthanasia must provide to the Bloomington Police Department a letter or other proof signed by a licensed veterinarian that the dog has been euthanized within seven days of the declaration that the dog is subject to euthanasia. Each day

upon which the owner or keeper of a dog subject to euthanasia fails to provide the notice of euthanasia shall be considered a separate violation of this Ordinance.

(f) Duty to Report Dangerous or Vicious Dogs Brought into the City. Any person keeping a dog which has been declared dangerous or vicious in another jurisdiction shall report that fact to the Bloomington Police Department within 3 days of bringing the dog into the City of Bloomington. All dogs declared dangerous or vicious in another jurisdiction shall be kept in a manner as if declared dangerous or vicious in the City of Bloomington. The Bloomington Police Department shall keep records of all such dogs. The status of a dog declared dangerous or vicious in another jurisdiction shall not be subject to appeal. It shall be unlawful to fail to report a dangerous or vicious dog within three days of bringing the dog into the City of Bloomington.

~~(b) It shall be illegal for any person to keep or maintain any dog which has been found to be a vicious dog unless such dog is at all times kept in an enclosure. The only times that a vicious dog may be allowed out of the enclosure are:~~

~~(1) — if it is necessary for the owner or keeper to obtain veterinary care for the vicious dog; or~~

~~(2) — to comply with the order of a court of competent jurisdiction.~~

~~When taken out of the enclosure, said vicious dog must be securely muzzled and restrained with a chain having a tensile strength of at least 300 pounds and not exceeding three (3) feet in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog.~~

~~Any dog which has been found to be a vicious dog and which is not confined in an enclosure shall be impounded by the law enforcement authority having jurisdiction in such area and shall be turned over to a licensed veterinarian for destruction by lethal injection.~~

~~It shall be illegal for any owner or keeper of a vicious dog to sell or give away any vicious dog.~~

~~(c) — It is illegal for any person to create a public nuisance by permitting any dangerous dog to be kept on the owner's property in violation of Section 81(a). Guide dogs for the blind or hearing impaired, support dogs for the physically handicapped, and professional guard or police-owned dogs are exempt from this Section, provided an attack or injury to a person occurs while the dog is performing duties as expected.~~

~~(g) (d) The owner of all professional guard dogs shall register their animals with the Chief of Police. It shall be the duty of the owner of each such dog to notify the Chief of Police of changes of address and the owner shall keep the Chief of Police advised of the location where such dog will be stationed. The Chief of Police shall provide the Police and Fire Departments with a list of such exempted dogs and shall promptly notify such departments of any changes reported to him.~~

~~(h) (e) The State's Attorney, Police or any citizen may file a complaint to enjoin any person from maintaining, permitting or having a dangerous or vicious dog or nuisance dog or~~

animal and/or to abate the same, and/or to enjoin the owner of such dog or other animal from permitting the same to leave his premises when not under control by leash or other legal control method. Upon the filing of a complaint in the Circuit Court, the Court, if satisfied that evidence for an injunction may exist, shall grant a preliminary injunction with bond in such amount as the Court may determine to be appropriate, enjoining the defendant from maintaining, permitting or having such nuisance. If the existence of evidence in support of an injunction is established, the Court shall enter an appropriate order and may assess a fine and/or may order that such dog or other animal be humanely destroyed by lethal injection.

~~(f) — When a dog has been declared to be dangerous or vicious dog by the Police Department, the owner has the right to an appeal process. These appeals shall first be heard by the Chief of Police or his authorized representative and then by the Courts pursuant to the Administrative Review Act of the State of Illinois.~~

(i) ~~(g)~~ Any person who violates this Ordinance shall be fined not less than \$100.00 nor more than \$1,000.00 for each offense. Each day that an offense continues shall be considered a separate violation.

(j) Owners of dogs declared dangerous or vicious prior to the enactment of this Ordinance shall have 90 days from its enactment to comply with its provisions.

SECTION 2. Except as provided herein, the Bloomington City Code, as amended, shall remain in full force and effect.

SECTION 3. The City Clerk shall be, and she is hereby directed and authorized to publish this Ordinance in pamphlet form as provided by law.

SECTION 4. This Ordinance is enacted pursuant to the authority granted to the City as a home rule unit by Article VII, Section 6 of the 1970 Illinois Constitution.

SECTION 5. This Ordinance shall take effect 10 days from the date of passage.

PASSED this 24th day of June, 2013.

APPROVED this 25th day of June, 2013.

APPROVED:

Tari Renner, Mayor

ATTEST:

Tracey Covert, City Clerk

Mayor Renner introduced this item. The proposed ordinance went beyond one (1) incident. There were ninety-six (96) incidents last year.

David Hales, City Manager, addressed the Council. Questions had been raised if the proposed ordinance was breed specific. A breed specific ordinance would not be a reasonable policy. The goal was to amend the City Code to be of assistance to the Police Department. He hoped that the number of incidents would be mitigated by this proposed text amendment.

Alex McElroy, Asst. to the City Manager, addressed the Council. He noted City staff's attention/due diligence which had been given to this issue by the Council. He noted Wish Bone Canine Animal Rescue's, (WBCAR), concerns. Their efforts were commendable. He reviewed the statistics for dog bites. In 2012, there had been eight (8) dog bites per month. This year, there had been fourteen (14) dog bites. City staff had reviewed current ordinance and focused on public safety. The proposed ordinance represented seven (7) months of work. Research on this issue would continue into the future. He noted the collaboration with animal rights advocates. He restated staff's focus was on public safety.

Mr. Hales cited staff's recommendation that this ordinance be passed.

Mayor Renner added that this item had appeared before the Council on three (3) occasions. It had also appeared before the Public Safety Committee twice. There had also been meetings with WBCAR.

Alderman Sage acknowledged City staff's efforts. He reviewed the time line. He echoed Mr. McElroy's comments. He noted that there would be ongoing conversations going forward. He recommended that City staff report back to Council at their September 23, 2013 meeting. The City would see the experience with the new ordinance. He also recognized Barb Adkins', Deputy City Manager, efforts. He cited the Public Safety Committee's October 10, 2013 meeting. WBCAR attended same. The Council had been provided with information regarding input, updates and concerns regarding this ordinance. The Council had also requested feedback.

Mr. Hales cited the Public Safety Committee's September 12, 2013 meeting. The Council had received information. WBCAR was invited to provide feedback for the Public Safety Committee's October 10, 2013 meeting.

Alderman Stearns believed that the conversation should be continued. The proposed ordinance would result in change and the development of another process. She noted Alderman Schmidt's comments on this issue. The City's home rule authority would result in an ordinance being adopted which would be in conflict with state law. The City could adopt the proposed ordinance. She questioned if the City should adopt same.

She noted that WBCAR and the Humane Society of Central Illinois (HSCI) did not support this ordinance. She questioned the appeal process for dogs labeled as dangerous

and/or vicious. The City needed to look to state law and adopt a minimum standard. The proposed ordinance could result in arbitrary decisions by the City's Police Chief. The state law was correct. This law established a board which would make the decision.

Alderman Schmidt thanked George Boyle, Asst. Corporation Counsel and Mr. McElroy for their efforts. She was not concerned about the regular process. She cited WBCAR's continued involvement to enhance this ordinance. She believed that WBCAR should be invited to the Council's September 23, 2013 meeting to provide input regarding any amendments to same. She added her interest in developing the best possible ordinance. WBCAR had raised serious concerns.

Mr. Hales recommended that the City be open to suggestions for any improvements to the proposed ordinance from any interested party.

Mayor Renner addressed the appeal process.

Todd Greenburg, Corporation Counsel, addressed the Council. He cited the state's administrative review law. An individual would file with the Circuit Court for an administrative appeal. He noted the course of events. He added that dangerous dogs were not subject to euthanasia.

Mr. Hales restated the goal of the proposed ordinance was improved/enhanced public safety. Justice could not be served if the City was unable to prosecute. The insurance requirements addressed medical costs. Insurance addressed the gaps faced by the victims. Currently, the City had limited tools available to address this issue.

Alderman Black had enjoyed the process. He noted constituent comments regarding this issue. The City's current ordinance was lacking. He added his support for Alderman Sage's comments. The Council had heard a number of what if scenarios. City ordinances were amendable. He noted an email from Tim Anderson, DVM, HSCI, which expressed support for the proposed ordinance.

Alderman Stearns acknowledged that the City Code was amendable. She added that Dr. Anderson had rescinded his previous email.

Alderman Schmidt added that the language needed to be changed. She specifically cited definitions.

Motion by Alderman Sage, seconded by Alderman Fazzini that the Text Amendment be approved and the Ordinance be passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: Alderman Stearns.

Motion carried.**The following was presented:**

SUBJECT: Analysis of Bids and Approval of Contract for 2013 General Resurfacing

RECOMMENDATION/MOTION: That the bid for the 2013 General Resurfacing be awarded to Rowe Construction Company, in the amount of \$2.5 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Goal 2. Upgrade City infrastructure and facilities; Goal 3. Strong neighborhoods; and Goal 5. Great place – livable and sustainable City by maintaining the street infrastructure within the City.

BACKGROUND: At the January 28, 2013 meeting, Council directed the Public Works Department to seek competitive bids for the 2013 General Resurfacing. One (1) bid was received and opened at 10:00 a.m. on June 12, 2013 at City Hall. Since the low bid is under budget and the project bid documents allow the addition of resurfacing locations, a contract for the entire budget amount should be awarded.

Rowe Construction Company	\$2,383,883.12
Engineer's Estimate	\$2,791,263.90
Budget	\$2,500,000.00

The contract documents require all work to be completed by October 30, 2013 unless a time extension is granted. Time extensions may be granted for a number of reasons, but the most common are because of additional work the City would like to have done or sustained bad weather conditions.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$4,000,000 for the overall City Pavement Program of which \$2,500,000 is allocated for General Resurfacing in line item 40100100-72530. Funds within the City's Pavement Program are allocated as follows: General Resurfacing \$2,500,000, Street & Alley Repair \$1,000,000, Pavement Preservation \$200,000, Street and Alley Maintenance \$200,000 and Street micro-resurface \$100,000. This memo addresses the General Resurface portion which compiles 62.5% of the City's Pavement Program. Staff recommends the entire \$2,500,000 be expended on General Resurfacing, which will correspond with the appropriation within the City Budget. Stakeholders may locate this line item in the FY 2014 Other Funds and Capital Improvement Program Budget document on page #106.

Prepared by: Jim Karch, P.E., Director of Public Works

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item.

David Hales, City Manager, addressed the Council. The FY 2014 budget included \$4 million for street resurfacing and street & alley repair. This budget documented the Council's support for pavement projects. He noted the increase to the dollars directed toward same. He stated that citizens would be impacted by this project.

Jim Karch, Public Works Director, addressed the Council. He cited the City's Pavement Management Program. This program would address the problem. Objective criteria had been used. He cited street ratings and the repair costs. This criteria would be used to justify the expenditure. A variety of approaches would be used. He specifically cited street ratings and GIS (Geographical Information System). City staff was interested in proactive preventative maintenance. He noted permanent pothole repair. In house staff and crews had been diligent and hard working. He also addressed street treatments such as Reclamite and CRF treatment. He recommended expanded use of these products which extended pavement life. There was a return on investment. CRF use could be expanded and used at full strength. This would extend pavement life. He recapped the potential savings and provided statistics, (costs: resurfacing at \$30 per sq. yd.; Reclamite at .83 per sq. yd.; and CFR at \$2.46 per sq. yd.) He believed that preventive maintenance measures should be emphasized as these practices would extend pavement life.

There were two (2) major street programs: General Resurfacing and Street & Alley Repair. This first program addressed the larger street projects. In addition, the Council had already approved the pavement preservation contract. He respectfully requested Council approval of the General Resurfacing and Street & Alley Repair contracts.

Alderman Black recommended that the before and after photographs be posted on the City's web site. He also questioned the environmental impact of Reclamite.

Mr. Karch noted that whenever possible photographs were used. He cited the use of water bill inserts, the City's web site, the City Manager's Monthly Report, etc. He noted that the proper application of Reclamite was critical. Education regarding this product was key. City staff had not seen and/or heard of any environmental issues.

Motion by Alderman Black, seconded by Alderman Schmidt that the bid for the 2013 General Resurfacing be awarded to Rowe Construction Company, in the amount of

\$2.5 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids and Approval of Contract for 2013 Street and Alley Repair

RECOMMENDATION/MOTION: That the bid for the 2013 Street and Alley Repair be awarded to Rowe Construction Company, in the amount of \$1.3 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Goal 2. Upgrade City infrastructure and facilities; Goal 3. Strong neighborhoods; and Goal 5. Great place – livable and sustainable City by maintaining the street infrastructure within the City.

BACKGROUND: At the January 28, 2013 meeting, Council directed the Public Works Department to seek competitive bids for the 2013 Street and Alley Repair. Two (2) bids were received and opened at 10:00 a.m. on June 12, 2013 at City Hall. Since the low bid is under budget and the project bid documents allow the addition of repair locations, a contract for the entire budget amount should be awarded.

Rowe Construction Company	\$1,264,006.53 (<i>Low Bid</i>)
H.J. Eppel & Company, Inc.	\$1,421,735.95
Engineer's Estimate	\$1,518,132.50
Pavement Program Budget	\$1,000,000.00
Water Budget for Lake Bloomington Streets	\$ 150,000.00
Fire Budget for Repairs at Fire Station Lots	<u>\$ 150,000.00</u>
Total Budget	\$1,300,000.00

The contract documents require all work to be completed by October 30, 2013 unless a time extension is granted. Time extensions may be granted for a number of reasons, but the most common are because of additional work the City would like to have done or sustained bad weather conditions.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$4,000,000 for the overall City Pavement Program of which \$1,000,000 is allocated for Street and Alley Repair in line item 40100100-72530. Funds within the City's Pavement Program are allocated as follows: General Resurfacing \$2,500,000, Street & Alley Repair \$1,000,000, Pavement Preservation \$200,000, Street and Alley Maintenance \$200,000 and Street micro-resurface \$100,000. This memo addresses the Street and Alley Repair which compiles twenty percent (25%) of the City's Pavement Program. Additionally, to benefit from an '*economies of scale*' approach, staff incorporated a street and parking lot repair for the Water and Fire Departments into the street and alley repair bid. The Water Department included a bid to resurface roads at Lake Bloomington. The funds for this project are appropriated within the Water Fund line item 50100140-72530. The Fire Department's Budget included \$150,000 in line item 10015210-79990 to resurface the parking lots at three (3) Fire Stations. Staff recommends the entire \$1,300,000 be expended on Street and Alley Repair, which will match the budget appropriations within the Capital, Water and General Fund. Stakeholders may locate this line item in the FY 2014 Other Funds and Capital Improvement Program Budget document on page #106 and for the Water Fund on page #150.

Prepared by: Jim Karch, P.E., Director of Public Works

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item.

David Hales, City Manager, recommended Council approval of this item.

Motion by Alderman Fazzini, seconded by Alderman Fruin that the bid for the 2013 Street and Alley Repair be awarded to Rowe Construction Company, in the amount of \$1.3 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Amendment to the Bloomington City Code, Chapter 28, Relating to the Regulation of Noise in the City of Bloomington

RECOMMENDATION/MOTION: That the Text Amendment be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 3. – Strong neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Goal 3.a. Residents feeling safe in their homes and neighborhoods. The goal of the Ordinance is to protect, preserve, and promote the health, safety, welfare, peace and quiet of the residents of the City through the reduction, control and prevention of loud and raucous sounds.

BACKGROUND: Barking dogs, construction equipment, amplified musical instruments, garbage trucks, and loud parties are all examples of noise that can be heard within the City. Understandably, certain noise levels must be tolerated by all citizens in order for normal functions of urban life to continue. However, excessive, unnecessary, and/or annoying noise should be subject to regulation. The proposed Text Amendment establishes limits on noise pollution and provides penalties for violations.

Existing Regulations in the City Code

There is no comprehensive section in the City Code regarding offensive noises. *However, it is important to note that there are several sections in the Code dealing with specific noises that are currently being enforced:*

- **Chapter 8, Section 8: Noisy Animals** – No person shall keep harbor any animal which howls, barks, or emits audible sounds that are unreasonably loud or disturbing and which are of such character, intensity and duration as to disturb the peace and quiet of the neighborhood or such resident or business neighbors as may be in close proximity to such dog. A violation of this Section may result in a fine in the amount of \$100.00.
- **Chapter 29, Section 83: Loud and Unnecessary Vehicle Noise/Loud Amplification System** – (a) It shall be unlawful to operate a vehicle which makes unusually loud or unnecessary noise. No motor vehicle shall be operated on any street unless such vehicle is provided with a muffler in efficient actual working condition, and the use of a cutout is prohibited. (b) No driver of any motor vehicle within this State shall operate or permit operation of any sound amplification system which can be heard outside the vehicle from 75 or more feet when the vehicle is being operated upon a highway, unless such system is being operated to request assistance or warn of a hazardous situation.
- **Chapter 28, Section 65: Disorderly (Boisterous) House** – No person owning or in possession, charge or control of any building or premises shall use the same or permit the use of the same or rent the same to be used for any business or employment or for any purpose of pleasure or recreation if such use shall, from its boisterous nature, disturb or

destroy the peace of the neighborhood in which such building or premises are situated, or be dangerous or detrimental to health.

Since these provisions are already addressed in the City Code, they are not included in the proposed Text Amendment.

Proposed Regulations

Noise ordinances are divided into two (2) types – those which are based on disturbing the listener (qualitative) and those based on exceeding decibel levels (quantitative). The proposed Text Amendment addresses both. The purpose is to protect, preserve and promote the health, safety, welfare, peace, and quiet of the residents of the City through the reduction, control, and prevention of unreasonably loud and raucous sounds, or any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity.

Although not an exclusive list, specific prohibited noises are provided in subsection (d) of the Ordinance. However, all noises are to be judged by the above-referenced standard.

Constitutionality

This Ordinance should not be construed as preventing the lawful exercise of the right to free speech protected by the Constitutions of the United States and the State of Illinois. Noise ordinances may be challenged for running afoul of the Constitution in three (3) areas – First Amendment free speech (prior restraint); Due Process (both vagueness and overbreadth); and due process (unfettered discretion in an administrative officer). Generally, a content-neutral time, place and manner regulation of noise that is narrowly tailored to serve a significant government interest will be valid. The government may regulate expressive conduct through time, place and manner restrictions so long as the restrictions are: 1.) reasonable; 2.) content-neutral; 3.) narrowly tailored to serve a significant government interest; and 4.) leave open alternate channels of communication. This Ordinance is a reasonable content-neutral regulation serving a purpose unrelated to the content of the message being conveyed. That purpose is to reduce noise and protect the public from unwanted noise. Moreover, it leaves open alternative channels of communication.

Finally, with regard to any potential vagueness and overbreadth challenges with the phrase “loud and raucous”, there is already established caselaw supporting qualitative, subjective (“loud and raucous”) ordinances. In *Kovacs v. Cooper*, 336 U.S. 77 (1949), a noise ordinance prohibiting “loud and raucous noises” was challenged as being violative of due process on the grounds that it was so obscure, vague, and indefinite as to be impossible of reasonably accurate interpretation. The United States Supreme Court rejected this challenge, stating that while the words “loud and raucous” were abstract, they had, through daily use, acquired a content that conveyed to any interested person a sufficiently accurate concept of what was forbidden. In *Normal v. Stelzel*, 109 Ill.App.3d 836 (4th Dist. 1982), the Illinois Appellate Court for the Fourth District, also found that the “loud and raucous” standard for noise violations withstands constitutional due process.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The public was allowed to submit comments on the City's web site to the first draft of the Ordinance in August/September 2012 immediately prior to and following an August 13, 2012 Council Work Session. Staff reviewed a total of 118 comments – ninety-four (94) in favor of and twenty-four (24) opposed to.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by & legal review by: Rosalee Dodson, Asst. Corporation Counsel

Reviewed by: R.T. Finney, Interim Chief of Police

Recommended by:

David A. Hales
City Manager

ORDINANCE 2013 - _____

AN ORDINANCE AMENDING CHAPTER 28 OF THE BLOOMINGTON CITY CODE
ADDING SECTION 107 RELATING TO THE REGULATION OF NOISE

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BLOOMINGTON, ILLINOIS:

SECTION 1. That the Bloomington City Code, 1960, as amended, be further amended by adding the following Section 107 to Chapter 28:

Chapter 28: Section 107: Noise.

(a) **Purpose.** This Section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents of the City through the reduction, control, and prevention of loud and raucous sounds, or any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity. Nothing in this Section shall be construed as preventing the lawful exercise of the right to free speech protected by the Constitutions of the United States and the State of Illinois.

(b) **Definitions.**

“Loud and Raucous Noise” shall mean any sound which because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City. The term includes,

but is not limited to, the kinds of loud and raucous noise generated by the activities enumerated in subsection (d), but not including activities enumerated in subsection (f) of this Section.

(c) **General Prohibition.** It shall be unlawful for any person to make, continue, or cause to be made or continued or to allow to be made on premises under the person's ownership or control any loud and raucous noise. Prohibited acts may be established both or either by the testimony of persons who have heard the noises and by recorded decibel levels.

(d) **Specific Acts Prohibited.** The following acts, as illustrations, among others, are declared to be loud and raucous in violation of this Section. This enumeration shall not be deemed to be exclusive. Specific acts include:

- (1) **Sound Reproducing Devices, Loudspeakers, Amplifiers.** The using, operating or permitting to be played, used or operated any musical instrument, machine or electronic device, radio receiving set, phonograph, loudspeaker, sound amplifier or other objects for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any time with louder volume than is necessary for the convenient hearing of the person or persons who are in the room, chamber, vehicle or outdoor area in which such machine or device is operated and who are voluntary listeners thereto.
- (2) **Loading, Unloading, Opening Boxes.** The creation of loud and raucous noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (3) **Construction or Repairing of Buildings and Public Improvement.** The creation (including excavation), demolition, alteration or repair of any structure or public improvement other than between the hours of 6:00 a.m. and 10:00 p.m., Monday through Saturday, except in cases of necessity in the interest of public health and/or safety, and then only with a permit from the Public Works Director or his or her designee, which permit shall be granted for a period not to exceed three (3) days or less while the necessity continues and which permit may be renewed for periods of three (3) days or less while the necessity continues.
- (4) **Schools, Courts, Churches and Hospitals.** The creation of any loud and raucous noise on any street adjacent to or across a real property boundary of any school, institution of learning, church, court or hospital while the same is in use, which unreasonably interferes with the workings of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital, court or church.
- (5) **Blowers.** The operation of any noise-creating blower, power fan, or any internal combustion engine, between the hours of 7:00 p.m. and 9:00 a.m., the operation of which causes noise due to the explosion of operating gases, fuels, or fluids, provided that the noise is loud and raucous and can be heard across the property line of the property from which it emanates. This subparagraph shall not apply to snow blowers

and other snow removal machinery nor to landscaping operations conducted on golf courses.

- (6) **Yelling, Shouting.** Yelling, shouting, hooting, whistling, or singing, so as to create loud and raucous noise, which as a result annoys or disturbs the peace, quiet, comfort or repose of persons in the surrounding area.

(e) **Decibel Levels.** No person shall make, continue, or cause to be made or continued or to allow to be made on premises under the person's ownership or control any continuous, predictable or recurring source of sound in such a manner as to create a sound pressure level, measured on a sound level meter using the A-weighting network, at or within the property limits of the receiving property which exceeds seventy (70) dB(A). Any person providing testimony on electronic measurements shall use procedures for the measurement of sound that conform to the standards and recommended practices established by the American National Standards Institute.

- (f) **Exemptions.** Sounds caused by the following are exempt from the prohibitions set forth in this Section:

- (1) Repairs of utility structures, which are damaged, in disrepair, or out of service and such condition pose a clear and immediate danger to life, health, or significant loss of property.
- (2) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, and all sounds associated with City responses to emergency events.
- (3) Reasonable activities conducted on public playgrounds and public or private school/university grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school/university athletic and school/university entertainment events.
- (4) Outdoor gatherings, public dances, shows, parades, festivals, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.
- (5) Any event that is sponsored by and directly controlled by the City or its designee.
- (6) Chiming of bells or other similar sounds produced by a religious institution, school, or clock or bell tower.
- (7) Sounds measured within any manufacturing district; excluding sounds generated within any manufacturing district that are measured outside the boundary of the manufacturing district.

(g) **Penalty.** Any person found guilty of violating any of the provisions of this Section shall be fined not less than One Hundred Dollars (\$100.00) for the first offense and not less than Two Hundred Fifty Dollars (\$250.00) for any subsequent offense. A separate and distinct offense is deemed committed each day such violation continues.

SECTION 2. Except as provided herein, the Bloomington City Code, 1960, as amended shall remain in full force and effect.

SECTION 3. The City Clerk is hereby authorized to publish this ordinance in pamphlet form as provided by law.

SECTION 4. This ordinance shall be effective ten (10) days after the date of its publication.

SECTION 5. This ordinance is passed and approved pursuant to the home rule authority granted Article VII, Section 6 of the 1970 Illinois Constitution.

PASSED this _____ day of June, 2013.

APPROVED this _____ day of June, 2013.

APPROVED:

Tari Renner, Mayor

ATTEST:

Tracey Covert, City Clerk

ORDINANCE 2013 - 39**AN ORDINANCE AMENDING CHAPTER 28 OF THE BLOOMINGTON CITY CODE
ADDING SECTION 107 RELATING TO THE REGULATION OF NOISE**

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BLOOMINGTON, ILLINOIS:

SECTION 1. That the Bloomington City Code, 1960, as amended, be further amended by adding the following Section 107 to Chapter 28:

Chapter 28: Section 107: Noise.

(a) **Purpose.** This Section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents of the City through the reduction, control, and prevention of loud and raucous sounds, or any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity. Nothing in this Section shall be construed as preventing the lawful exercise of the right to free speech protected by the Constitutions of the United States and the State of Illinois.

(b) **Definitions.**

“Loud and Raucous Noise” shall mean any sound which because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City. The term includes, but is not limited to, the kinds of loud and raucous noise generated by the activities enumerated in subsection (d), but not including activities enumerated in subsection (f) of this Section.

(c) **General Prohibition.** It shall be unlawful for any person to make, continue, or cause to be made or continued or to allow to be made on premises under the person’s ownership or control any loud and raucous noise. Prohibited acts may be established both or either by the testimony of persons who have heard the noises and by recorded decibel levels.

(d) **Specific Acts Prohibited.** The following acts, as illustrations, among others, are declared to be loud and raucous in violation of this Section. This enumeration shall not be deemed to be exclusive. Specific acts include:

- (7) **Sound Reproducing Devices, Loudspeakers, Amplifiers.** The using, operating or permitting to be played, used or operated any musical instrument, machine or electronic device, radio receiving set, phonograph, loudspeaker, sound amplifier or other objects for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any time with louder volume than is necessary for the convenient hearing of the person or persons who are in the room, chamber, vehicle or outdoor area in which such machine or device is operated and who are voluntary listeners thereto.

- (8) **Loading, Unloading, Opening Boxes.** The creation of loud and raucous noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (9) **Construction or Repairing of Buildings and Public Improvement.** The creation (including excavation), demolition, alteration or repair of any structure or public improvement other than between the hours of 7:00 a.m. until dark, Monday through Sunday, except in cases of necessity in the interest of public health and/or safety, and then only with a permit from the Public Works Director or his or her designee, which permit shall be granted for a period not to exceed three (3) days or less while the necessity continues and which permit may be renewed for periods of three (3) days or less while the necessity continues.
- (10) **Schools, Courts, Churches and Hospitals.** The creation of any loud and raucous noise on any street adjacent to or across a real property boundary of any school, institution of learning, church, court or hospital while the same is in use, which unreasonably interferes with the workings of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital, court or church.
- (11) **Blowers.** The operation of any noise-creating blower, power fan, or any internal combustion engine, other than between the hours of 7:00 a.m. until dark, the operation of which causes noise due to the explosion of operating gases, fuels, or fluids, provided that the noise is loud and raucous and can be heard across the property line of the property from which it emanates. This subparagraph shall not apply to snow blowers and other snow removal machinery nor to landscaping operations conducted on golf courses.
- (12) **Yelling, Shouting.** Yelling, shouting, hooting, whistling, or singing, so as to create loud and raucous noise, which as a result annoys or disturbs the peace, quiet, comfort or repose of persons in the surrounding area.
 - (e) **Decibel Levels.** No person shall make, continue, or cause to be made or continued or to allow to be made on premises under the person's ownership or control any continuous, predictable or recurring source of sound in such a manner as to create a sound pressure level, measured on a sound level meter using the A-weighting network, at or within the property limits of the receiving property which exceeds seventy (70) dB(A). Any person providing testimony on electronic measurements shall use procedures for the measurement of sound that conform to the standards and recommended practices established by the American National Standards Institute.
 - (f) **Exemptions.** Sounds caused by the following are exempt from the prohibitions set forth in this Section:

- (8) Repairs of utility structures, which are damaged, in disrepair, or out of service and such condition pose a clear and immediate danger to life, health, or significant loss of property.
- (9) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, and all sounds associated with City responses to emergency events.
- (10) Reasonable activities conducted on public playgrounds and public or private school/university grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school/university athletic and school/university entertainment events.
- (11) Outdoor gatherings, public dances, shows, parades, festivals, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.
- (12) Any event that is sponsored by and directly controlled by the City or its designee.
- (13) Chiming of bells or other similar sounds produced by a religious institution, school, or clock or bell tower.
- (14) Sounds measured within any manufacturing district; excluding sounds generated within any manufacturing district that are measured outside the boundary of the manufacturing district.

(g) **Penalty.** Any person found guilty of violating any of the provisions of this Section shall be fined not less than One Hundred Dollars (\$100.00) for the first offense and not less than Two Hundred Fifty Dollars (\$250.00) for any subsequent offense. A separate and distinct offense is deemed committed each day such violation continues.

SECTION 2. Except as provided herein, the Bloomington City Code, 1960, as amended shall remain in full force and effect.

SECTION 3. The City Clerk is hereby authorized to publish this ordinance in pamphlet form as provided by law.

SECTION 4. This ordinance shall be effective ten (10) days after the date of its publication.

SECTION 5. This ordinance is passed and approved pursuant to the home rule authority granted Article VII, Section 6 of the 1970 Illinois Constitution.

PASSED this 24th day of June, 2013.

APPROVED this 25th day of June, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

Mayor Renner introduced this item.

Alderman Fazzini cited three (3) areas of improvement. He addressed Section 107 (d) Specific Act Prohibited, (3) Construction or Repairing of Buildings and Public Improvement and (5) Blowers. He saw these two (2) items as similar. The hours for both should be 7:00 a.m. until dusk. He also cited snow removal which he believed should be an exemption. Snow removal would fall under public safety.

Alderman McDade echoed Alderman Fazzini's comments. He noted the lengthy discussions held by the Council regarding this issue. She supported a 7:00 a.m. start time. She had received complaints from citizens. Setting the same time for items (3) and (5) would result in consistent City policy.

Alderman Stearns restated the proposed 7:00 a.m. start time and finish time of dusk. She cited concerns raised regarding the heat of the day. Concerns had been raised by landscaping businesses regarding mowing services.

Alderman Lower expressed his opinion that there were holes in the proposed ordinance. He cited the economic impact that it would have on a variety of businesses. He specifically cited construction and landscaping/mowing as examples. He also noted the impact upon weekend work projects. He also noted that Section 107 (d) (3) would exempt Sundays. He questioned other limitations. He cited aviation. This ordinance would impact its sustainability. The airport needed to operate and by its nature was noisy. Small aircraft was used for flight instruction.

Alderman Fruin believed that the proposed ordinance could be edited by the Council. He would support a dawn to dusk time frame. He recommended that the Council revisit this ordinance in a few months. The City would be able to gauge the economic impact by obtaining feedback from contractors and other local businesses.

Rosalee Dodson, Asst. Corporation Counsel, addressed the Council. The 6:00 a.m. start time for construction addressed the City's union contracts, (summer start time is 6:00 a.m.) City staff had attempted to be fair to all. Airports and airplanes were not included in the proposed ordinance. Federal law pre-empted this industry.

Alderman McDade noted that the 6:00 a.m. start time had been clarified by City staff. She restated that the work hours for construction and landscaping/mowing should be the same.

Alderman Fazzini expressed his concern regarding citizens. He acknowledged that the City's union contracts listed 6:00 a.m. He encouraged the Council to listen to the citizens and adopt a start time of 7:00 a.m. In his opinion, 6:00 a.m. was too early. The start time for Section 107 (b) (3) and (5) should be 7:00 a.m.

Alderman Schmidt appreciated Alderman Lower comments regarding Sundays. Ms. Dodson noted that Sundays were excluded. Alderman Schmidt expressed her opinion that Sundays should not be excluded.

Alderman Black stated that his residence was on Main St. He cited car engines and motorcycles.

R.T. Finney, Interim Police Chief, addressed the Council. The proposed ordinance would have no impact upon motor vehicles. There was a separate state statute for same. This was a difficult issue to address. If the majority of the Council wanted more active enforcement of noisy vehicles, then the Police Department would accommodate same. He added that calls for service would be prioritized. Call regarding noisy lawn mowers would not be a top priority.

Alderman Black questioned enforcement and the use of decibel enforcement.

Interim Police Chief Finney restated that the proposed ordinance would not address motor vehicles traveling on City streets. Decibel meters were meant to address long term continuous noise. There were a number of factors which impacted noise. Vehicle noise can be heard at a distance. Decibel meters were used by OSHA, (Occupational Safety & Health Administration), to address industrial noise.

Alderman Fazzini recommended that Section 107 Noise (d) Specific Acts, (3) Construction and (5) Blowers be amended to 7:00 a.m. until dark, seven (7) days a week. He also requested that snow removal be added under (f) Exemptions.

Todd Greenburg, Corporation Counsel, addressed the Council. He informed them that snow removal was listed as exempt under Section 107. (d) (5).

Motion by Alderman Fruin, seconded by Alderman Fazzini that the amended Text Amendment be approved and the Ordinance be passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Fazzini, Sage, Fruin and Black.

Nays: Alderman Lower.

Motion carried.**The following was presented:**

SUBJECT: Approval of Hockey License between City of Bloomington, Central Illinois Arena Management, Inc. and Illinois Pro Sports, LLC

RECOMMENDATION/MOTION: That the Hockey License Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 5. Great place- livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents. The proposed hockey license will provide opportunities for persons who enjoy hockey and will create a sports rivalry between Peoria and Bloomington. The new team will be a member of the Southern Professional Hockey League.

BACKGROUND: On May 23, 2011, the City approved a hockey license with Hockey Sensation, LLC. That license was not renewed. The managers of Central Illinois Arena Management, Inc., (CIAM), who manage the US Cellular Coliseum, (USCC), for the City, have found a new tenant for hockey games, Illinois Pro Sports, LLC. John Butler and Bart Rogers, who are associated with CIAM, have disclosed that they have an ownership interest in Illinois Pro Sports, LLC.

In the opinion of the City staff, there is not an irreconcilable conflict of interest in the joint involvement of Mr. Butler and Mr. Rogers in both business enterprises. There also are sufficient safeguards in the manner in which ticket sales are conducted that revenue from ticket sales will be deposited into the Coliseum Fund as required by the Management Agreement between the City and CIAM.

The terms of the agreement are virtually identical to the previous Hockey License with Hockey Sensations. LLC. The term is for the 2013/14 and 2014/15 hockey seasons with option for one (1) additional season.

The lease requires Illinois Pro Sports to inform the City and CIAM of the identity of every owner of the LLC with an ownership or voting interest of five percent (5%) or more.

All payments from Illinois Pro Sports go into the Coliseum Fund, from which all payments to CIAM and the City are made. The rental fee to be paid to the Fund is \$6,000 per home game. However, the amount paid per game may be reduced pursuant to an "attendance incentive credit" which is set forth in Section 9 of the lease. The attendance credit is based on actual turnstile numbers rather than tickets sold. The premise of the incentive is that by using proprietary information of CIAM to calculate the parking fee, facility fee and the average for food and beverage spent by each fan per game, a reduction in the \$6,000 per game amount to be paid by the hockey team for each additional 500 fans will actually generate more revenue for the USCC,

to the benefit of the City and CIAM. For each additional 500 fans, the rental fee will be reduced by \$500, but the City and CIAM will net approximately \$900 more in revenue.

The team will pay a parking fee of fifty cents (.50) per ticket sold to each home game, excepting the first 500 tickets.

The team will pay a facility fee of fifty cents (.50) per ticket sold to each home game, excepting the first 500 tickets.

All suite revenue shall go to the City and CIAM, except that the City and CIAM will pay to the team \$1,662 for each full suite season ticket (total fourteen/14 full season tickets per suite) and \$831 for each half suite season ticket (total seven/7 half season tickets per suite).

The City and CIAM shall retain all Coliseum Club seat membership annual dues and a commission of ten percent (10%) for each Coliseum Club season ticket sold by the licensor, (ninety percent/90% to the team).

In the event of a cancellation of all or part of a season by the licensee, there is a liquidated damages section specifying the amount of damages to be paid to the City and CIAM, (\$100,000 if the licensee cancels prior to January 1st for the season to be held in that calendar year; \$150,000 if the cancellation is after January 1st but prior to March 31st; and \$228,000 for any cancellation after March 31st).

The licensee's commitments under the lease are secured by a \$100,000 irrevocable letter of credit with the City and CIAM as beneficiaries.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: City staff and CIAM.

FINANCIAL IMPACT: Revenue neutral, although increased revenues to the City and CIAM are possible by reason of the attendance incentive credit as well as an inter-city rivalry between Bloomington and Peoria.

Respectfully submitted for Council consideration.

Prepared by and legal review by: J. Todd Greenburg, Corporation Counsel

Reviewed by: John Butler, President of CIAM

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item.

David Hales, City Manager, addressed the Council. He understood the challenges regarding minor league hockey team ownership. The owners needed to grow spectatorship. He believed with proper effort, the hockey team could be successful and profitable. The hockey league would be joining a new league. The US Cellular Coliseum (USCC) offered minor league hockey, basketball and indoor football.

John Butler, Central Illinois Arena Management's (CIAM) President, addressed the Council. The hockey team would be joining the Southern Professional Hockey League. This league had been in existence for nine (9) years. There were ten (10) member teams. He described the minor league as high class A. It was a player development league. The economic profile was small/mid size markets. This was a unique opportunity. He was excited about same. Illinois Pro Sports LLC would be the new owner. There were five (5) members with fifty (50) years of hockey experience. All of the members were from Central Illinois. He cited Bruce Saur as an example. Mr. Saur owned the Velde Auto Group. He also was the former owner of the Peoria Rivermen. Mr. Saur wanted to save hockey in Central Illinois. Both the City and Peoria were looking for hockey teams. David Holt would be Director – Hockey Operations. Bart Rogers, CIAM'S General Manager, had twenty (20) years of front office hockey experience with the Peoria Rivermen.

Alderman Fazzini noted that there would be five (5) owners. Two (2) of these individuals also served as lead personnel for CIAM. This could be used as a plus or a minus.

Mr. Butler reminded the Council of this past hockey team ownership in 2006/2007. Mr. Holt would focus his time on the hockey team. Mr. Rogers and himself would serve in an advisory role. He noted each person's hockey team/league experience.

Alderman Stearns stated that hockey was important to the USCC. She cited the attendance incentive credit. Mr. Butler would act as landlord and tenant.

Mr. Butler stated that minor league hockey had changed. The goal was to place more fans in seats which would have a positive impact upon concession sales, parking and advertising dollars. Increased attendance at the hockey games would increase the USCC's revenue opportunities. The USCC utilized Ticket Master's system. The attendance incentive credit would be based upon actual attendance.

Motion by Alderman Schmidt, seconded by Alderman McDade that the Hockey License Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

CITY MANAGER'S DISCUSSION: David Hales, City Manager, addressed the Council. The City would participate in the ICMA's, (International City/County Management Association), Center for Performance Management (CPM). This program was ten (10) years old. The purpose of the program was to 1.) develop commons measures; 2.) encourage comparisons; 3.) identify effective management practices; and 4.) learn from high performers. As a participant the City would submit performance data. CPM would clean the data and provide a full dataset to the program's participants. The City would use the data to identify successes and areas of improvement. In addition, the City would learn from other municipalities. The CPM would assist to the City to determine its performance, examine service costs, assist resource targeting, address customer wants, and assist with data management. Evidence based management led to ethical management. Performance Management was 1.) outcome oriented; 2.) provided a method to highlight successes; and 3.) provided a method to identify areas for improvement/learning. Through program participation the City would 1.) recognize varying information needs; 2.) focus on citizens' perspectives; 3.) align program mission; 4.) aim for continuous improvement; and 5.) assist decision making. Reports would be received in late 2013/early 2014. The City had participated in the ICMA's pilot program. He described this effort as a milestone.

MAYOR'S DISCUSSION: Mayor Renner expressed his appreciation to Aldermen Black and Schmidt for facilitating the Mayoral Open House on Friday, June 21, 2013.

He and Alderman Sage attended a Town Hall Meeting at Luther Oaks located at 601 Lutz Rd. There would be a follow up meeting in the fall 2013.

He had attended the US Conference of Mayors 81st Annual Meeting in Las Vegas, NV, (June 21 – 24, 2013). He found the Conference interesting and enjoyed networking with other mayors.

ALDERMEN'S DISCUSSION: Alderman Fruin cited the 4th of July. He expressed his appreciation to the Park, Recreation & Cultural Arts Department's employees. He encouraged those present to participate in the day's activities. This was an opportunity to enjoy the City's quality of life.

He also noted that the two (2) text amendments, (Dangerous/Vicious Dogs and Noise), which had been passed this evening had been discussed by the Council for a long time. He questioned how to let citizens know in advance regarding text amendments.

He also cited the meetings regarding the eastside corridor study as another example. There was a value to citizens to participate in the early stages.

Alderman Fazzini informed the Council that the state of McLean County meeting would be held at the Illinois Wesleyan University Hanson Center on Tuesday, June 25, 2013 at 7:00 a.m.

Alderman Stearns also addressed the 4th of July and the City's tradition of hosting activities at Miller Park.

She requested an update regarding the Korean/Vietnam memorial. The flame and the names listed needed to be restored. The City planned a restoration project. She believed that private dollars could be leverage. There was support in the community.

Motion by Alderman McDade, seconded by Alderman Stearns, that the meeting be adjourned. Time: 8:15 p.m.

Motion carried.

**Tracey Covert
City Clerk**

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