

City Council of the City of Carbondale, Illinois
Regular Meeting
November 21, 2006

The City Council of the City of Carbondale, Illinois, held a regular meeting on Tuesday, November 21, 2006, in City Council Chambers of the Carbondale Civic Center, 200 S. Illinois Avenue. Mayor Brad Cole called the meeting to order at 7:00 p.m. with the following-named members of the City Council present/absent:

1. Roll Call

Present: Councilman Chris Wissmann, Councilman Steven Haynes, Councilwoman Sheila Simon, Councilwoman Corene McDaniel, Councilman Joel Fritzler and Mayor Brad Cole

Absent: Councilman Lance Jack (entered at 7:16 p.m.)

Also present were City Clerk Janet M. Vaught, City Manager Jeffrey W. Doherty and various members of the City's administrative staff.

2. General Announcements and Proclamations

Mayor Cole announced that the Council had a very full agenda and in accordance with the Carbondale Revised Code discussion can be limited at the discretion of the Mayor, adding that without objection it is so ordered by the Council.

Mayor Cole announced that City Hall office would be closed on Thursday and Friday, November 23 and 24, for the Thanksgiving holiday.

Mayor Cole announced that the Southern Illinois University Saluki Football team would be hosting University of Tennessee-Martin in a NCAA Football playoff game on Saturday afternoon.

Mayor Cole announced that the annual Lights Fantastic Parade would be held on Saturday, December 2, beginning on Grand Avenue and ending at the Town Square Pavilion. The parade will begin at 6:30 p.m..

Presentation of 2006 Studs Terkel Humanities Service Award:

Mayor Brad Cole presented the 2006 Studs Terkel Humanities Service Award to Dr. Blanche Carlton Sloan of Carbondale.

3. Citizen Comments and Questions

There was no one present who wished to address the City Council during this portion of the meeting.

4. Public Hearings

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5. Consent Agenda

Presented for Council approval on the Consent Agenda were the following items and corresponding recommendations:

1. Approval of Minutes. Recommendation: Approve minutes of the Regular City Council meeting held on October 31, 2006.
2. Warrant. Recommendation: Approve Warrant #994 for the period ended October 23, 2006, in the amount of \$989,618.93. (Exhibit A-11-21-06)
3. Ordinance increasing the Overall FY 2007 Budget to Purchase an Alarm System for Oakland Cemetery. Recommendation: Approve Ordinance increasing the FY 2007 budget and approve the Budget Adjustment transferring \$1,000 from Cemetery Perpetual Care to the Cemeteries Division. (Ord. 2006-58; Exhibit B-11-21-06)
4. Resolution urging the State of Illinois to Take Action to Resolve the Medicaid Crisis. Recommendation: Approve. (Res. 2006-R-53; Exhibit C-11-21-06)
5. Resolution approving extension of a deadline to submit the final Planned Unit Development Plan for property located at Villa Court and Chautauqua Road. Recommendation: Approve. (Res. 2006-R-54; Exhibit D-11-21-06)
6. Illinois Municipal League Legislative Bulletin 2006-21. Recommendation: Accept and place on file.

Mayor Cole asked if any Council members would like any item removed from the Consent Agenda. There were no items removed.

S. Simon moved, J. Fritzler seconded, that Consent Agenda Items 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 be approved. VOTE: Ayes: C. Wissmann, S. Haynes, S. Simon, C. McDaniel, J. Fritzler and B. Cole. Nays: None. Motion declared carried.

6. General Business

1. Review of 2006 Proposed Tax Levy, Truth in Taxation Act Determination and Public Library Board's Tax Levy Requirements

Councilman Jack entered the meeting during discussion on this item.

S. Haynes moved, S. Simon seconded, that the Council direct Staff to submit a Tax Levy Ordinance for the December 19, 2006 City Council meeting containing the recommended Tax Levy and Tax Levy Abatements that will result in a net 2006 Tax Levy in the amount of \$702,260. VOTE: Ayes: C. Wissmann, S. Haynes, L. Jack, S. Simon, C. McDaniel, J. Fritzler and B. Cole. Nays: None. Motion declared carried.

2. Consideration of Funding Pre-applications from Community Organizations

Applicants speaking on behalf of their requests for funding were Cavanaugh Gray of the Young Entrepreneurs Program, Carol Jones Nesbitt of Concerned African Women, Tom Redmond of the RBF Dome NFP and Chastity Mays of A Gift of Love Charity.

L. Jack moved, S. Simon seconded, that the Council invite the Carbondale Lions Club to submit a full application for additional funding as part of the FY 2008 budget preparation procedure and not approve the funding requests from A Gift of Love

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Charity, Inc., Concerned African Women, Inc., Young Entrepreneurs Program, Archway, Inc., Church Women United Thrift Shop, RBF Dome NFP, and Southern Illinois Center for a Sustainable Future, Inc. except with the understanding that the City Manager should look into possible in-kind services to be included in the forestry maintenance budget to assist the RBF Dome with removal of trees. VOTE: Ayes: L. Jack, S. Simon, C. McDaniel and B. Cole. Nays: C. Wissmann, S. Haynes and J. Fritzler. Motion declared carried.

3. Ordinance amending Title 14 of the City Code as it relates to Truancy

C. Wissmann moved, C. McDaniel seconded, that the Council adopt the Ordinance regulating truancy within the City of Carbondale. VOTE: Ayes: C. Wissmann, S. Haynes, L. Jack, S. Simon, C. McDaniel, J. Fritzler and B. Cole. Nays: None. Motion declared carried. (Ord. 2006-59; Exhibit E-11-21-06)

4. Ordinances annexing properties into the Jackson County-Carbondale-Murphysboro Enterprise Zone

S. Haynes moved, L. Jack seconded, that the Council approve the Ordinance to add territory to the Jackson County-Carbondale-Murphysboro Enterprise Zone (First Southern Bank) and an Ordinance to add territory to the Jackson County-Carbondale-Murphysboro Enterprise Zone (Franks', LLC - Ambulatory Surgery Center). VOTE: Ayes: C. Wissmann, S. Haynes, L. Jack, S. Simon, C. McDaniel and B. Cole. Nays: J. Fritzler. Motion declared carried. (Ord. Nos. 2006-60 and 2006-61 respectively; Exhibits F-11-21-06 and G-11-21-06 respectively)

5. Ordinance approving the City of Carbondale City Council's proposed Zoning Ordinance Text Change relative to Land Use Intensity Regulations and Parking Requirements

S. Simon moved, C. Wissmann seconded, that the Council adopt an Ordinance approving the text amendments to Title 15 of the Revised Code of the City of Carbondale relative to Land Use Intensity Regulations and Parking Requirements as revised and recommended by staff. DISCUSSION: Speaking in support of the ordinance were Sandy Litecky, President of the Arbor District, and Mary O'Hara who served on the Study Circles Group which dealt with Neighborhood and Housing issues. Speaking in opposition to the ordinance was Ed Van Awken. Development Services Director Beth Ponce confirmed that the new regulations would apply only to new developments. VOTE: Ayes: C. Wissmann, S. Haynes, L. Jack, S. Simon, C. McDaniel, J. Fritzler and B. Cole. Nays: None. Motion declared carried. (Ord. 2006-62; Exhibit H-11-21-06)

6. Ordinance adopting the Carbondale Clean Indoor Air Act of 2006

After the introduction of this item by City Manager Doherty, S. Simon moved, C. McDaniel seconded, that the Council approve the Ordinance which enacts the Carbondale Clean Indoor Air Act.

DISCUSSION: Mayor Cole noted that as he said at the beginning of the meeting, he plans to limit discussion. He asked members of the audience to indicate if they would like speak in favor of or in opposition to the ordinance. After the show of hands, the Mayor said he was going to limit discussion to about six persons.

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Speaking in favor of adoption of the Ordinance were Dr. Mary Pohlmann, Chair of the Smoke Free Carbondale Coalition; George Maroney of Memorial Hospital of Carbondale and Emmanuel C. Nsofor, Associate Professor of Mechanical Engineering at Southern Illinois University and a member of the American Society of Heating, Refrigerating and Air Conditioning Engineers. Speaking in opposition to the Ordinance were Sally Carter, owner of Hangar 9; Robert Baumann, 2621 S. Illinois Avenue, who advocated a referendum on the issue and Dan Terry, 22 Pinewood, owner of two licensed liquor establishments, one a bar and the other a restaurant.

Mayor Cole invited Council comments. Councilwoman Simon said in her time on the Council she doesn't recall such a drastic limitation on public comments. She said she would like to have additional public discussion. Mayor Cole noted that it was announced at the beginning of the meeting that in accordance with the City Council public discussion could be limited by the Chair and there was no Council objection. Councilwoman Simon said Council members were not given an opportunity to object and expressed the hope that other Council members would share their opinions on shutting down public debate on this topic.

Mayor Cole again invited Council comments.

Councilwoman Simon noted that as smoke free becomes more prevalent throughout many communities in the State of Illinois and as Chicago is already smoke free, it will become the expectation of persons coming to Carbondale that restaurants and bars are smoke free. She said she agreed with Sally Carter that the smoke free requirement should include not only Carbondale but all of Jackson County and Murphysboro and she has talked to members of the County Board and aldermen in Murphysboro about the possibility of considering it. She does not believe enforcement of the smoke free ordinance will be an issue, adding that she believes enforcement will take care of itself and that no one at any establishment should have to hire someone to enforce the smoking ban. She also said that it is her understanding that a survey of Chamber of Commerce members indicated that the membership supported a smoking ordinance. She noted that there has been some discussion about an effective date, adding that she would not oppose a later effective date in order to give the businesses more time to adjust and accommodate. She also noted that she understands and appreciates the opinions expressed which have said that people should have personal freedoms of choice; however, when one person's actions puts others at risk, she supports regulating those activities. Councilwoman Simon said she supported the ordinance.

Councilman Jack agreed that there are strong feelings both for and against this issue, adding that he would agree with Mr. Baumann that perhaps it should be left to the public to decide through a referendum. He said he is a nonsmoker and played a part in opening a nonsmoking restaurant in Carbondale. He said a lot of the discussion has been framed around government protecting its citizens versus the loss of revenue, but he does not believe the government should be making personal choices for citizens. He agrees with the incentives already offered for liquor establishments who go smoke free. Councilman Jack read a Letter to the Editor from Alfred Sanders which opposed the smoke free ordinance. Councilman Jack said he would not support the ordinance.

Councilman Haynes said he concurred with Councilwoman Simon's question about allowing additional public discussion. He said he appreciated the time and effort put

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into this issue by the Smoke Free Carbondale group, adding that it seems that he has been perceived as the swing vote because he has not publicly expressed an opinion on this issue. Following advice given to him by his father many years ago, he has tried to keep his emotions out of this issue. However, he did not appreciate the material he received the prior weekend that was sent to him solely because he is an African American. He said he does not serve the public only as a representative of the African American community, adding that he serves the entire City of Carbondale. He said he has to do what he believes is in the best interests of the City of Carbondale, including both the business owners and residents. He said he believes this is a no-win situation because whatever side you are on, someone is going to be unhappy with the decision. He said he is very uncomfortable with his feelings on this issue, adding that he agrees with Councilman Jack and citizen Baumann that this is an issue of concern that should be discussed publicly and potentially voted on in a referendum. He said that his emotions tell him he should vote yes, but he does not believe this ordinance is a sensible solution. He said at the current time he does not have an answer, adding that he was hoping to hear more discussion and different ideas.

Councilwoman McDaniel noted that often Council members have to make tough decisions and this is one of them. She said she understands the feelings of business owners who allow smoking in their bars and restaurants, but she has to consider what is best for the majority of the people. She added that one of the roles of elected officials is to look after the health and welfare of the community and this ordinance does that. She said she believes the ordinance will be beneficial to the community, adding that she would even support a stronger ordinance than what is currently being proposed. She noted that she has received telephone calls both from persons opposed and in favor of the ordinance, adding that she had to determine what is best for the people she represents. Councilwoman McDaniel said was going to vote in a way that she thought was best for the community she represents.

Councilman Fritzler said he agreed with Councilman Haynes that there should be more public discussion on this issue and was disappointed at how discussion was limited, adding that allowing only three people from each side of the issue did not seem fair. He said that he believes more people should be given a voice on this issue, especially if there are students present at the meeting. With respect to the ordinance, he has mixed feelings. He said although he thinks that government should not be getting into peoples' businesses, when it comes to public health and safety that is a different issue. He said that he has traveled around the world and has observed many smoke free areas where the businesses seem always full, adding that Mary Lou's Restaurant recently went smoke free and their business has increased. He said he might also agree with the idea of putting this issue to a public referendum, adding that although there are seven council members sometimes not every part of the community is represented. He added that he thought a referendum would pass because it seems there are more nonsmokers than smokers. Councilman Fritzler said he would support the ordinance.

Councilman Wissmann noted that the Springfield City Council is scheduled to discuss at its meeting tonight a revocation of the smoking ban that went into effect last December, adding that business owners have told the Springfield City Council that business in places that previously allowed smoking has declined between 40% and 60%. He agreed that smoking causes cancer and is unhealthy. He said, however, that although the smoking ban might save some hospitality workers from cancer thirty years from now, the smoking ban might also cause these workers to lose their current jobs. As a

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result, one may question what good has been done for them. He said businesses in Springfield were promised that smokers wouldn't leave their businesses and that a flood of nonsmokers would start going to the businesses which turned out to be a lie because nonsmokers simply don't patronize the bars and small locally-owned restaurants. Councilman Wissmann said that there are already too few jobs for people in Carbondale and taking this action would further reduce the number of jobs. Councilman Wissmann said he would not support the ordinance.

Councilwoman Simon noted that she had learned from a gentleman in the audience that at its meeting tonight the Springfield City Council turned down any change in their smoke free ordinance.

S. Simon moved, J. Fritzler seconded, that as a point of order she would like to reopen this topic for public discussion from the audience and that the decision of the Chair be appealed. DISCUSSION: Mayor Cole noted again that in accordance with Carbondale Revised Code it is the prerogative of the Mayor to identify anyone who wishes to speak before the Council, adding that without the consent of the Mayor individuals are not allowed to speak. In response to the inquiry, Councilwoman Simon said she would be comfortable limiting comments to one minute with no overlapping comments and let everyone speak. Councilwoman McDaniel noted that both sides of the issue had been allowed to speak and she didn't know if there would be additional information brought forward. VOTE: Ayes: C. Wissmann, S. Haynes, L. Jack, S. Simon and J. Fritzler. Nays: C. McDaniel and B. Cole. Motion declared carried. Mayor Cole reopened public discussion with a restriction of 60 seconds per speaker.

Speaking in support of the Ordinance were: Martha Cropper, 437 Murphy Street, Murphysboro; Eric Lambert, 606 Neely Hall, SIUC; April Bailey of the American Lung Association of Illinois; Mark Peysakhovich of the American Heart Association of Illinois; Joe Moore, a member of SIU Undergraduate Student Government; Mary Beth Ahne, 491 Crowell Road, Carbondale; Tara Ford, a volunteer for the American Cancer Society and resident of Carbondale; Emily Whitney, 1948 Hortense, Murphysboro and doctoral student at SIUC; Peggy Stockdale, 31 Pinewood and Professor of Psychology at SIUC; Don Ford, 2105 Hortense, Murphysboro; Dawn Bloomingberg, SIU Student and employee at the Student Health Center; Clifton Pleasure, 1007 W. Cherry, Carbondale; Miriam Link-Mullison, Administrator of the Jackson County Health Department and Paulette Sherwood, 2003 W. Meadow Lane, Carbondale.

Speaking in opposition to the Ordinance were: James Karayiannis, 1200 W. Schwartz, representing Pinch Penny Pub, Inc. and Mary DeBock-Hicks, 1710 W. Sunset, Carbondale.

Recommending that smoking be banned in restaurants but not in bars were: Anthony Hamlin, 402 E. Schneider and SIU Student; Karen Milan, 2511 S. Illinois Avenue and Genevieve Houghton, 710 N. Oakland, Carbondale.

Michael Heck, 704 W. Elm, questioned whether Council members Wissmann and Haynes had a conflict of interest. Councilman Wissmann responded that based on an Attorney General's opinion, he did not have a conflict. In response to Councilman Haynes' inquiry, City Attorney Jeff Berkbigler said he could not render an opinion on whether Councilman Haynes had a statutory or Code-based conflict of interest without

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having additional facts and information. Attorney Berkbigler said there are also common-law conflicts of interest that could come into play, adding if Councilman Haynes feels this is a personal, subjective matter on which the Councilman feels he cannot render a fair and, unbiased decision then his advice would be for the Councilman to recuse himself.

Mayor Cole noted he doesn't smoke, drink or use drugs but does enjoy going out to eat, going to establishments to listen to live music and socialize. He noted that as Mayor some time ago he recognized there might be some benefit to the community to offer an incentive to businesses regulated by the City, primarily liquor establishments, who voluntarily choose to go smoke free. As such, he proposed the incentive to offer a full rebate of the liquor license fee for those liquor establishments who go smoke free, which incentive was approved by the Council. Fourteen liquor licensees have taken this incentive, so he would disagree that there are no options to this smoke free ordinance. Mayor Cole said he does not believe there should be a restriction on the legal use of a legal substance by citizens of legal age on private property, adding that this is a primary issue for him. He said he accepts the variety of opinions on this issue and that he would encourage persons who do not want to accept a smoking environment to not go to those places. He said as individual rights are chipped away, it becomes a deeper issue that should not be decided at the level of the Carbondale City Council. He said this particular issue should be decided by the United States Congress and encouraged people to contact Congressman Jerry Costello and Senators Dick Durbin and Barack Obama about this issue and about other issues of public health, adding that because public health issues are not limited to the city limits of Carbondale. Mayor Cole again said people do have individual rights and should have the right to do what they want on private property. Mayor Cole said that he does not believe this issue should be before the Carbondale City Council, adding that it should be sent to the State Legislature to enact statewide or sent to the U.S. Congress to enact nationwide. To the people that support this ordinance, he said he respects their opinion and admires their courage to come forward on an issue that is divisive, adding that he hopes those people respect the opinions of people who are opposed to the ordinance. Mayor Cole said he would again prefer to not act on the ordinance and defer to those with more jurisdiction, however, a vote is required.

VOTE ON MOTION that the Council approve the Ordinance which enacts the Carbondale Clean Indoor Air Act. VOTE: Ayes: S. Simon, C. McDaniel and J. Fritzler. Nays: C. Wissmann, L. Jack and B. Cole. Abstentions: S. Haynes. Motion declared defeated for lack of four affirmative votes.

7. Report and Recommendations on Halloween

Discussion on this item was postponed to the City Council meeting of December 5, 2006.

7. Council Comments

Councilwoman Simon asked if there was going to be a meeting on November 28th. Mayor Cole said the next City Council meeting was December 5th but that there would be a meeting of the Local Liquor Control Commission on November 28th.

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8. Adjournment

There being no further business to come before the City Council, the meeting was declared adjourned at 10:21 p.m..

Janet M. Vaught, City Clerk

Approved by the City Council on:
