

## REGULAR MEETING.

COUNCIL CHAMBER, CITY OF INDIANAPOLIS, IND.,  
MONDAY, July 1, 1907.

The Common Council of the City of Indianapolis met in the Council Chamber, Monday evening, July 1, 1907, at 7:30 o'clock, in regular session, President Frederick W. Eppert in the chair.

Present: The Hon. Frederick W. Eppert, President of the Common Council, and 19 members, viz.: Messrs. Cottey, Hamlet, Wood, Davis, Neukom, Smither, Rhodes, Bangs, Uhl, Stickelman, Hartmann, Portteus, Royse, Donavon, Sullivan, Hofmann, Hilkene, Henry and Wright.

Absent, 1, viz.: Mr. Brown.

Mr. Uhl moved that the reading of the Journal be dispensed with. Carried.

## COMMUNICATIONS FROM THE MAYOR.

EXECUTIVE DEPARTMENT,  
CITY OF INDIANAPOLIS,  
INDIANAPOLIS, INDIANA, June 19, 1907.

*To the President and Members of the Common Council:*

GENTLEMEN—I return herewith with my approval the following ordinances:

General Ordinance No. 52—1907, being "An ordinance to amend section 5 of General Ordinance No. 32—1907, entitled, 'An ordinance concerning the compensation of all officers, heads of departments, clerks, assistants and employes of the city of Indianapolis, Indiana, and repealing all ordinances in conflict therewith,' approved May 16, 1907."

General Ordinance No. 53—1907, being "An ordinance providing for the transfer of the sum of \$600 from certain fund to a certain fund

in and for the use of the Department of Public Safety, and fixing a time when the same shall take effect."

General ordinance No. 55—1907, being "An ordinance providing for the transfer of certain funds to certain funds in and for the use of the Department of Public Safety, and fixing a time when the same shall take effect."

General Ordinance No. 57—1907, being "An ordinance authorizing and empowering the Board of Public Works of the city of Indianapolis, Indiana, to improve Audubon Road, from south side of P. C. C. & St. L. Ry. tracks to north side of C. H. & D. Ry. tracks, with brick roadway and curbing."

I have the honor to remain,

Very truly yours,

C. A. BOOKWALTER,

*Mayor.*

EXECUTIVE DEPARTMENT,

CITY OF INDIANAPOLIS,

INDIANAPOLIS, INDIANA, June 18, 1907.

*To the President and Members of the Common Council:*

GENTLEMEN—I return herewith with my approval General Ordinance No. 49—1907, being "An ordinance approving a certain contract granting Gill & Greenen the right to lay and maintain a side track or switch from the west property line of Arsenal Avenue to and across the first alley east of Summit street, all in the city of Indianapolis, Indiana."

I have the honor to remain,

Very truly yours,

C. A. BOOKWALTER,

*Mayor.*

EXECUTIVE DEPARTMENT,

CITY OF INDIANAPOLIS,

INDIANAPOLIS, INDIANA, June 27, 1907.

*To the President and Members of the Common Council:*

GENTLEMEN—I return herewith with my approval Special Ordinance No. 5—1907, being "An ordinance annexing certain territory to the city of Indianapolis, defining a part of the boundary line of said city, and fixing a time when the same shall take effect."

I have the honor to remain,

Very truly yours,

C. A. BOOKWALTER,

*Mayor.*

EXECUTIVE DEPARTMENT,

CITY OF INDIANAPOLIS,

INDIANAPOLIS, INDIANA, June 27, 1907.

*To the President and Members of the Common Council:*

GENTLEMEN—I return herewith without my approval General Ordinance No. 39—1907, the same being "An ordinance relating to the licensing, taking and regulating all shops, inns, taverns, hotels or

other places where intoxicating liquors are kept for sale to be used in, or drank upon the premises; and regulating, restraining such shops, inns, hotels, or other places aforesaid, defining and designating the places, locality, room, building or other place where such liquors may be kept or sold and declaring an emergency."

Upon receipt of this ordinance from your Honorable body, I submitted the same to Frederick E. Matson, Corporation Counsel, with a request that he furnish me with an opinion as to the validity of such ordinance, and for the reasons embodied in the reply of such ordinance, and for the reasons embodied in the reply of such officer to such request, whereof follows herein, I am constrained to take the action outlined above. I give herewith the opinion of the Corporation Counsel:

*First.* The ordinance purports to be passed under clause fortieth, Section 53, Municipal Corporations Act of 1905, which authorized the Common Council "to license, tax, regulate and restrain all shops, inns, taverns, or other places where intoxicating liquors are kept for sale, to be used in and upon the premises etc." Neither section of the ordinance is limited to places where intoxicating liquors are kept for sale to be used in and upon the premises, but the ordinance in all sections applies broadly to all places within the corporate limits of the city of Indianapolis where intoxicating liquors are to be sold, bartered, or given away, without regard to whether they are to be used upon the premises or elsewhere. It seems certain therefore, that for this reason the ordinance is beyond the scope of municipal legislation authorized by the charter provision above quoted.

*Second.* It is provided in Section 2 that the applicant for a license shall in his application to the City Controller, state his name, age and residence, and describe the premises wherein he desires to carry on such business. It is provided that his application shall then be certified by the Controller to the Common Council, and "upon said Common Council being satisfied with the fitness of the applicant and with the place where such intoxicating liquors are proposed to be sold, the Common Council aforesaid, shall, by resolution, approve such application."

It will be observed that the ordinance does not attempt to regulate the sale of intoxicating liquors by fixing definite conditions under which such business may be carried on, and which would apply alike to all persons and to all places. It does not state or fix any qualifications as to the character or fitness of persons desiring to conduct such business, nor does it state or describe any requirements as to the location or kind of building, or the arrangement of the room, in which such business may be conducted. There are no standards provided by which the Council can determine its satisfaction with the fitness of applicants and places in a uniform manner in all cases.

The effect of the ordinance is that each separate application for the privilege of selling intoxicating liquors must be submitted to, and passed upon by, the Common Council. This would render it possible for the Council to approve the application of one person, and reject the application of another person having exactly the same qualifications as to character, personal fitness, etc. It would also render it possible for the Council to grant a license for one location and refuse a license for another location similarly situated. It thus appears that under the ordinance the Council would have power to discriminate as between persons equally fit to conduct such business, and discriminate between locations and buildings, which, as to all conditions affecting the public safety or morals, are in all respects similar and equal.

It has been settled in many cases that such is not the kind of "regulation" which either the Legislature or the Common Council can

exercise. In *Steffy vs. Town of Monroe City*, 135 Ind. 466, 469, our Supreme Court, in holding an ordinance void because it was not a proper exercise of the power to "regulate," said:

"It (the ordinance) does not attempt to prescribe conditions under which sales that are authorized by the state and by the town may be made, either as to time, place or persons."

In *Bills vs. City of Goshen*, 117 Ind. 221, 226, the court said:

"It is, further, a well settled principle that cities cannot discriminate between the citizens engaged in the same business; that if they license they must license alike."

The Supreme Court of the United States has many times laid down the same rule. A fair example of the view of this court is found in *Barbier vs. Connelly*, 113 U. S. 27, where the court says:

"That no impediment should be interposed to the pursuits of any one except as apply to the same pursuits of others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition."

It seems clear therefore, that this ordinance is not such an exercise of the power "to regulate" as is contemplated by our charter.

There is another point which may be considered: The form of government provided for cities in this state contemplates three separate and distinct departments, viz: the executive, legislative, and judicial departments. The functions of each are clearly defined and do not overlap each other. The choice and adoption of definite, fixed and certain regulations, in the interest of public safety and morals, under which the sale of intoxicating liquors to be consumed on the premises may be permitted or conducted; would seem to be a legislative function, to be exercised only by the Common Council. But the inquiry and decision whether any particular applicant, by his showing of personal character and of place or building in which the business is to be conducted, has brought himself within the requirements of such regulations, would seem to be an administrative or quasijudicial function, to be exercised only by the Board of Safety, the Controller or other suitable executive department.

For the reasons above stated I am convinced that the ordinance in question would not be held valid by the courts.

I have the honor to remain,

Very truly yours,

C. A. BOOKWALTER,

*Mayor.*

Mr. Royse moved that General Ordinance No. 39, 1907, be passed over the Mayor's veto, which prevailed by the following vote:

Ayes, 14, viz.: Messrs. Cottey, Davis, Neukom, Smither, Rhodes, Bangs, Stickelman, Portteus, Royse, Donavon, Hofmann, Hilken, Wright, and President Frederick W. Eppert.

Noes, 6, viz.: Messrs. Hamlet, Wood, Uhl, Hartmann, Sullivan and Henry.

EXECUTIVE DEPARTMENT,  
CITY OF INDIANAPOLIS,  
INDIANAPOLIS, INDIANA, June 27, 1907.

*To the President and Members of the Common Council:*

GENTLEMEN—I return herewith without my approval Special Ordinance No. 6—1907, the same being “An ordinance defining a part of the boundary line of the city of Indianapolis,” etc.

The purpose of this ordinance as I understand it, was to annex certain territory lying adjacent to the east and south boundary lines of the city, and while I am satisfied that certain changes could with justice to the people of Indianapolis be made in such boundary line, I cannot approve the same because the lines described in such ordinance No. 6, provide, among other things, for the annexation of territory which I consider not to be advisable at this time to incorporate within the limits of the city. Should such territory be annexed to the city, the residents therein have the right to expect and to demand police and fire protection, together with water and electric lighting service. The demands made upon the city in furnishing such service would be wholly out of proportion with the amount of taxes derived from such property, and I do not therefore believe it to be advisable to incorporate within the limits of the city such territory especially as such territory has not and is not developing in such manner as to give reasonable assurance that the revenues arising therefrom would meet the amount of increased expenditure caused by such annexation.

I have the honor to remain,

Very truly yours,

C. A. BOOKWALTER,  
*Mayor.*

REPORTS FROM CITY OFFICERS.

From City Controller:

DEPARTMENT OF FINANCE,  
OFFICE OF CITY CONTROLLER,  
INDIANAPOLIS, IND., July 1, 1907.

*To the President and Members of the Common Council:*

GENTLEMEN—By request of his Honor, the Mayor, I herewith submit an ordinance providing for the appropriation of sum of Eight Hundred Dollars to the Department of Public Works, as an addition to the appropriation heretofore made for “The Maintenance of Bath-houses,” and recommend its passage.

Respectfully,

GEO. T. BREUNIG,  
City Controller.

From City Controller:

DEPARTMENT OF FINANCE,  
OFFICE OF CITY CONTROLLER,  
INDIANAPOLIS, IND., July 1, 1907.

*To the President and Members of the Common Council:*

GENTLEMEN—I present herewith communication from the Board of Public Works requesting the appropriation of an additional \$1500.00 for the City Civil Engineer's Accounts Fund.

I have prepared and herewith present an ordinance providing for the transfer of \$1500.00 from the "Sprinkling Unimproved Streets" fund to said "City Civil Engineer's Accounts" fund, and recommend its passage.

Respectfully,  
GEO. T. BREUNIG,  
City Controller.

DEPARTMENT OF PUBLIC WORKS,  
OFFICE OF THE BOARD,  
INDIANAPOLIS, IND., June 19, 1907.

*Geo. T. Breunig, Esq., City Controller, City:*

DEAR SIR—In accordance with the attached communication from the City Civil Engineer, we respectfully request that you recommend to the Common Council the passage of an ordinance appropriating the sum of \$1500.00 to the City Civil Engineer Fund.

Yours respectfully,  
JOSEPH T. ELLIOTT,  
P. C. TRUSLER,  
F. J. MACK.  
Board of Public Works.

OFFICE OF THE CITY CIVIL ENGINEER.  
INDIANAPOLIS, IND., June 17, 1907.

*Board of Public Works, Indianapolis:*

GENTLEMEN—I beg to inform you that the C. C. E. Account for this office has a balance of only \$346.34, and would therefore request that you ask for a transfer of about twelve or fifteen hundred dollars to this fund. We have drawn rather heavily from the fund this year on account of the purchase of an automobile, one new wagon, two new horses, harness and repairs to wagons already in use, the total of these expenditures being about \$1400.00, on which we did not count in asking for the appropriation at the first of the year. Our regular expenses out of this fund run from about \$175.00 to \$200.00 a month.

Yours very truly,  
BLAINE H. MILLER,  
City Civil Engineer.

## REPORTS FROM STANDING COMMITTEES.

From the Committee on Public Morals:

INDIANAPOLIS, IND., July 1, 1907.

*To the President and Members of the Common Council of the City of Indianapolis:*

GENTLEMEN—We your committee on Public Morals to which was referred General Ordinance No. 58, entitled, "An ordinance amending Section 1 of General Ordinance No. 159—1906, entitled, 'An ordinance prohibiting disorderly conduct in the City of Indianapolis, and providing a penalty for the violation thereof, and fixing a time when the same shall take effect' approved January 18th, 1907, and fixing a time when the same shall take effect" begs leave to report that we have had the same under consideration and recommend that said ordinance do pass.

Respectfully submitted,

E. J. STICKELMAN.  
W. A. RHODES.  
THEO. PORTEUS.

Mr. Stickelman moved that the Report of the Committee be concurred in. Carried.

From the Committee on Sewers, Streets and Alleys:

INDIANAPOLIS, IND., July 1, 1907

*To the President and Members of the Common Council:*

GENTLEMEN—We, your Committee on Sewers, Streets and Alleys, to which was referred General Ordinance No. 51—1907, entitled "An ordinance authorizing and empowering the Board of Public Works of the City of Indianapolis, Indiana, to improve Meridian street from north property line of Vermont street to north property line of St. Clair street, with asphalt surface," beg leave to report that we have had same under consideration and recommend that said ordinance do pass.

Respectfully submitted,

CHAS. G. DAVIS.  
ALBERT E. UHL.  
H. C. SMITHER.  
CHAS. L. HARTMANN,  
LOUIS F. HENRY.

Mr. Davis moved that the report of the committee be concurred in. Carried.

From the Committee on Railroads:

Mr. Cottey moved that General Ordinance No. 21, 1907, be taken from Railroad Committee and referred to some other Committee. Carried.

President Eppert ordered it sent to Committee on Fees and Salaries.

#### INTRODUCTION OF APPROPRIATION ORDINANCE.

By City Controller:

Appropriation Ordinance No. 10—1907: An ordinance appropriating the sum of Eight Hundred Dollars to and for the use of the Department of Public Works, and fixing a time when the same shall take effect.

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That the sum of Eight Hundred (\$800.00) Dollars be, and the same is hereby appropriated, to and for the use of the Department of Public Works, as an addition to and to be a part of the appropriation heretofore made to said Department for "The Maintenance of Bath-houses."

SEC. 2. This ordinance shall take effect and be in full force from and after its passage.

Which was read a first time and referred to the Committee on Contracts and Franchises.

#### INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

By City Controller:

General Ordinance No. 60—1907: An ordinance providing for the transfer of the sum of \$1500.00 from a certain fund to a certain fund in and for the use of the Department of Public Works, and fixing a time when the same shall take effect.

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That there be and is hereby transferred the sum of Fifteen Hundred (\$1500.00) Dollars from the appropriation



heretofore made for the "Sprinkling Unimproved Streets" fund to the "City Civil Engineer's Accounts" fund in and for the use of the Department of Public Works.

SEC. 2. This ordinance shall take effect and be in full force and effect from and after its passage.

Which was read a first time and referred to the Committee on Finance.

By Mr. Wood:

General Ordinance No. 61—1907. An ordinance amending clause "b" of Section 5 of an ordinance entitled, "An ordinance concerning the compensation of all officers, heads of departments, clerks, assistants and employes of the City of Indianapolis, Indiana, and repealing all ordinances in conflict therewith," being General Ordinance No. 32—1907, approved May 16th, 1907.

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, that Clause "b" of Section 5 of an ordinance entitled, "An ordinance concerning the compensation of all officers, heads of departments, clerks, assistants, and employes of the City of Indianapolis, Indiana, and repealing all ordinances in conflict herewith," being General Ordinance No. 32—1907, approved May 16th, 1907, is hereby amended to read as follows:

Section 5. Clause "b." For the City Engineer's force.

The City Civil Engineer shall receive a salary at the rate of twenty-five hundred (\$2500.00) dollars per annum.

The assistant city civil engineers, two in number, shall each receive a salary at the rate of fifteen hundred (\$1500.00) dollars per annum.

The deputies or transitmen, in charge of the engineering corps, shall each receive a salary at the rate of twelve hundred (\$1200.00) dollars per annum.

The chief clerk to the city civil engineer shall receive a salary at the rate of thirteen hundred and twenty (\$1320.00) dollars per annum.

The assistant clerks and the stenographer shall each receive a salary at the rate of eight hundred and forty (\$840.00) dollars per annum.

The draftsmen shall each receive a salary at the rate of ten hundred and eighty (\$1080.00) dollars per annum.

The chemist in charge of the laboratory shall receive a salary at the rate of nine hundred and sixty (\$960.00) dollars per annum.

The rodmen shall each receive a salary at the rate of seven hundred and twenty (\$720.00) dollars per annum.

The chainmen shall each receive a salary at the rate of seven hundred and twenty (\$720.00) dollars per annum.

The chief inspector shall receive a salary at the rate of eleven hundred (\$1100.00) dollars per annum.

The assistant chief inspector shall receive a salary at the rate of nine hundred (\$900.00) dollars per annum.

The inspectors shall each receive a salary at the rate of eight hundred and forty (\$840.00) dollars per annum.

The city civil engineer, in addition to his regular salary, shall receive for his services in work of track elevation, a salary at the rate of twelve hundred (\$1200.00) dollars per annum.

The clerk to the city civil engineer engaged on work of track elevation shall receive a salary at the rate of nine hundred (\$900.00) dollars per annum.

Which was read a first time and referred to the Committee on Fees and Salaries.

By Mr. Davis:

Special Ordinance No. 7—1907: An ordinance changing the name of Ismond street and Parkway from 18th to 30th streets to Parkway Boulevard.

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, That the name of the Streets known as Ismond street and Parkway extending from 18th to 30th street be, and is hereby changed to Parkway boulevard.

SEC. 2. This ordinance shall be in full force and effect from and after its passage.

Which was read a first time and referred to the Committee on Sewers, Streets and Alleys.

By Mr. Davis:

Special Ordinance No. 8—1907: An ordinance changing name of Harding street from Crawfordsville Pike north to city limits to Schurmann avenue.

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, That the name of the Street known as Harding street, extending from the Crawfordsville Pike, north to the City limits, be, and is hereby changed to Schurmann avenue.

SEC. 2. This ordinance shall be in full force and effect from and after its passage.

Which was read a first time and referred to the Committee on Ordinances.

## ORDINANCES ON SECOND READING.

Mr. Royse moved to reconsider the vote of General Ordinance No. 54, 1907, of the previous meeting.

Mr. Hamlet raised the point and declared according to the rules Mr. Royse's motion out of order.

President Eppert ruled against Mr. Hamlet who appealed from the decision of the chair.

The Council sustained President Eppert by the following vote.

Ayes, 17, viz.: Messrs. Cottey, Davis, Neukom, Smither, Rhodes, Bangs, Uhl, Stickelman, Hartmann, Portteus, Royse, Donavon, Sullivan, Hofmann, Hilkene, Wright and Henry.

Noes, 2, viz.: Messrs. Hamlet and Wood.

Mr. Royse's motion was then put and carried.

Mr. Royse moved that General Ordinance No. 54, 1907, be ordered engrossed as amended by the Committee read a third time and placed upon its passage. Carried.

General Ordinance No. 54, 1907, was read a third time and passed by the following vote:

Ayes, 12, viz.: Messrs. Wood, Davis, Bangs, Stickelman, Portteus, Royse, Donavon, Sullivan, Hofmann, Wright, Henry and President Frederick W. Eppert.

Noes, 8, viz.: Messrs. Cottey, Hamlet, Neukom, Smither, Rhodes, Uhl, Hartmann and Hilkene.

Mr. Stickelman called for General Ordinance No. 58, 1907, for second reading. It was read a second time.

Mr. Stickelman moved that General Ordinance No. 58, 1907, be ordered engrossed, read a third time and placed upon its passage. Carried.

General Ordinance No. 58, 1907, was read a third time and passed by the following vote:

Ayes, 20, viz.: Messrs. Cottey, Hamlet, Wood, Davis, Neukom, Smither, Rhodes, Bangs, Uhl, Stickelman, Hartmann, Portteus, Royse, Donavon, Sullivan, Hofmann, Hilkenne, Henry, Wright and President Frederick W. Eppert.

Noes, none.

Mr. Davis called for General Ordinance No. 51, 1907, for second reading. It was read a second time.

Mr. Davis moved that General Ordinance No. 51, 1907, be ordered engrossed, read a third time and placed upon its passage. Carried.

General Ordinance No. 51, 1907, was read a third time and failed to receive a two-thirds vote as required by law.

The vote was as follows:

Ayes, 12, viz.: Messrs. Cottey, Davis, Smither, Rhodes, Uhl, Stickelman, Hartmann, Portteus, Royse, Hofmann, Henry and President Frederick W. Eppert.

Noes, 8, viz.: Messrs. Hamlet, Wood, Neukom, Bangs, Donavon, Sullivan, Hilkenne and Wright.

On the motion of Mr. Uhl the Common Council at 9 o'clock p. m. adjourned.

*Frederick W. Eppert*  
 .....  
 President.

ATTEST:

*Jane M. Kelly*  
 .....

City Clerk.