

REGULAR MEETING.

COUNCIL CHAMBER, CITY OF INDIANAPOLIS, IND.

MONDAY, October 3, 1904.

The Common Council of the City of Indianapolis, met in the Council Chamber, Monday evening, October 3, 1904, at 7:45 o'clock, in regular session, President James H. Billingsley in the chair.

The roll was called.

Present: The Hon. James H. Billingsley, President of the Common Council, and 14 members, viz: Messrs. Cottey, Crall, Davis, Eppert, Fishback, Gasper, Hofmann, Linus, Moriarity, Rhodes, Storm, Sullivan, Wolsiffer, Wright.

Absent, 6, viz.: Messrs. Cooper, Krause, Murray, Shea, Uhl, Wahl.

On motion of Mr. Moriarity the reading of the Journal was dispensed with.

COMMUNICATIONS FROM THE MAYOR.

INDIANAPOLIS, IND., September 29, 1904.

To the Honorable, the President and Members of the Common Council:

I herewith return with my signature and approval General Ordinance No. 57, 1904; General Ordinance No. 66, 1904.

Respectfully,

JOHN W. HOLTZMAN,

Mayor.

Which was read.

INDIANAPOLIS, IND., September 20, 1904.

To the Honorable, the President and Members of the Common Council:

Gentlemen: I hereby return with my signature and approval General Ordinances Nos. 59, 60 and 48, 1904; Appropriation Ordinances Nos. 15, 16, 17 and 20, 1904.

Respectfully,

JOHN W. HOLTZMAN,

Mayor.

Which was read.

INDIANAPOLIS, IND., September 27, 1904.

To the Honorable, the President and Members of the Common Council:

Gentlemen: I herewith return with my signature and approval General Ordinance No. 69, 1904; General Ordinance No. 71, 1904, and Appropriation Ordinance No. 25, 1904.

Respectfully,

JOHN W. HOLTZMAN,
Mayor.

Which was read.

INDIANAPOLIS, IND., September 28, 1904.

To the President and Members of the Common Council:

Gentlemen: I herewith return General Ordinance No. 25, 1904, regulating the location of warehouses and other structures for the storage of fuel and other illuminating oils without my approval. My reasons for withholding my approval to this ordinance, are as follows:

First, the ordinance is invalid, at least in so far as it does not provide a uniform rule of action and it does not operate generally and impartially and in so far as its enforcement to a certain degree is left in the unregulated discretion of the municipal authorities. These matters are well settled in the rule governing ordinances of a similar nature. McQuillin in his work on Municipal Ordinances, Section No. 184, says:

"Notwithstanding express power may exist to enact, the ordinance must provide a uniform rule of action; it must contain permanent legal provisions, operating generally and impartially, for its enforcement cannot be left to the will or unregulated discretion of the municipal authorities or any officer of the corporation."

This text is supported by abundant authorities. The case of the City of Richmond vs. Dudley, 129 Indiana, page 112, is in point. I quote the following passage from the decision:

"It seems from the foregoing authorities to be well established that municipal ordinances placing restrictions upon lawful conduct, or a lawful use of property, must, in order to be valid, specify the rules and conditions to be observed in such conduct or business, and must admit of the exercise of the privilege by all citizens alike, who will comply with such rules and conditions; and must not admit of the exercise, or of an opportunity for the exercise, of any arbitrary discrimination by the municipal authorities between citizens who will so comply."

Second, while it is generally understood, that the ordinance is aimed at a certain industry in the City of Indianapolis engaged exclusively in the handling and storing of fuel and illuminating oils, it does as a matter of fact effect very materially a number of business interests long established where every possible precaution has been taken to properly safeguard not only their own buildings and property, but that of their neighbors. I feel impelled, however, to say on behalf of your honorable body that I do not believe that you had before you the evidence relating to these matters, which has been furnished to me since the passage of the ordinance.

The effect of your ordinance would be to drive out of business a large number of industries located within the city limits where there is very little or no danger whatever by reason of these volatile and explosive oils. And further, it strikes me that this would prevent the use of oil in our large factories for fuel purposes and I am informed that a large number of our manufacturing plants are now arranging to use oil for fuel purposes. This should be encouraged rather than discouraged as it will help to a certain degree in solving the smoke problem.

I believe, however, that there should be an ordinance regulating the handling and storage of such oils within the city limits. I believe that such an ordinance would be valid and the business could be so regulated as to make it not only absolutely safe, but also to prevent any pollution of the water supply in the vicinity where the oils are stored.

Respectfully,

JOHN W. HOLTZMAN,
Mayor.

Which was read.

Mr. Moriarity moved that this communication from the Mayor be stricken from the files.

There was no second and the Chair declared the motion lost.

From the City Comptroller:

INDIANAPOLIS, IND., October 4, 1904.

To the Honorable, the President and Members of the Common Council:

Gentlemen: I submit herewith letter of the Board of Public Safety requesting transfer from the Fire Force Pay-Roll appropriation of \$75.00 to Current Fund, East Market, and \$(b.l.) to Buildings, East Market. I recommend that these transfers be made, and inclose ordinance for that purpose.

Respectfully submitted,

J. P. DUNN,
City Comptroller.

INDIANAPOLIS, IND., October 1, 1904.

J. P. Dunn, City Comptroller:

The Board of Public Safety, at their meeting, held Wednesday, September 28, 1904, directed me to request you to recommend to the Common Council the transfer to Current fund, East Market, \$75.00 and to Repairs to Building Fund, East Market, \$75.00 from Fire Force Pay-Roll Fund.

The balance in East Market Current Fund at present is only \$10.91 and East Market Repairs to Buildings Fund \$2.45, and as these amounts are inadequate for the balance of the year it is imperative that these transfers be made.

Respectfully,

E. C. McLAUGHLIN,
Secretary.

Which was read.

REPORTS FROM OFFICIAL BOARDS.

From the Board of Public Works:

INDIANAPOLIS, IND., October 3, 1904.

To the President and Members of the Common Council:

Gentlemen: The Board having entered into and approved the attached contract granting the McCrea Grover Coal Company the right to

lay and maintain a side-track or switch from the L. E. & W. Ry. across Fifteenth street and a part of Lewis street, according to blue print attached, in the City of Indianapolis, Indiana, we herewith submit the same to you for consideration and action.

Respectfully,

M. A. DOWNING,
JACOB WOESSNER,
DAVID WALLACE,
Board of Public Works.

Which was read.

REPORTS FROM STANDING COMMITTEES.

From the Committee on Fees and Salaries:

INDIANAPOLIS, IND., October 3, 1904.

To the President and Members of the Common Council:

Gentlemen: Your Committee, to whom was referred General Ordinance No. 74, 1904, have had same under consideration and would recommend that same do pass.

ALBERT E. COTTEY,
JOHN W. STORM.

Which was read.

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

From the Finance Committee:

INDIANAPOLIS, IND., October 3, 1904.

To the President and Members of the Common Council:

Gentlemen: Your Finance Committee, to whom was referred Appropriation Ordinance No. 22, 1904, have had same under consideration and would respectfully recommend that the same do pass.

Respectfully submitted,

J. L. GASPER,
J. H. CRALL,
W. A. RHODES,
FRANK S. FISHBACK,

Which was read.

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

From the Finance Committee:

INDIANAPOLIS, IND., October 3, 1904.

To the President and Members of the Common Council:

Gentlemen: Your Finance Committee, to whom was referred Ap-

propriation Ordinance No. 23, 1904, have had same under consideration and would recommend that the same do pass.

Respectfully submitted,

J. L. GASPER,
J. H. CRALL,
W. A. RHODES,
FRANK S. FISHBACK,

Which was read.

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

From the Finance Committee:

INDIANAPOLIS, IND., October 3, 1904.

To the President and Members of the Common Council:

Gentlemen: Your Finance Committee, to whom was referred Appropriation Ordinance No. 24, 1904, have had same under consideration and would respectfully recommend that the same do pass.

Respectfully submitted,

J. L. GASPER,
J. H. CRALL,
W. A. RHODES,
FRANK S. FISHBACK,

Which was read.

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

From the Finance Committee:

INDIANAPOLIS, IND., October 3, 1904.

To the President and Members of the Common Council:

Gentlemen: Your Finance Committee, to whom was referred General Ordinance No. 70, 1904, have had same under consideration and would respectfully recommend that the same do pass.

Respectfully submitted,

J. L. GASPER,
J. H. CRALL,
W. A. RHODES,
FRANK S. FISHBACK,

Which was read.

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

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

By the Board of Public Works:

General Ordinance No. 76, 1904: An ordinance approving a certain

contract granting McCrea Grover Coal Company the right to lay and maintain a side-track or switch from the L. E. & W. Ry. across Fifteenth street and a part of Lewis street, according to blue print attached, in the City of Indianapolis, Indiana.

Whereas, heretofore, to-wit: On the 28th day of September, 1904, the McCrea Grover Coal Company filed their petition before the Board of Public Works of the City of Indianapolis, as follows:

PETITION.

To the Board of Public Works, City of Indianapolis:

Gentlemen: We, the undersigned, respectfully petition for permission to maintain a switch across Fifteenth street and a part of Lewis street to serve Lot E. and the north side of Lot G. in E. T. Fletcher's sub. of E. T. & S. K. Fletcher's Addition to the City of Indianapolis in accordance with the lines as shown in the accompanying blue print.

The undersigned will engage in the coal and wood business on said lots. Should the Board grant this petition the necessary blue prints and descriptions will be filed for contract.

MC CREA GROVER COAL COMPANY,

By F. F. McCrea, President.

Now, therefore, This agreement, made and entered into this 30th day of September, 1904, by and between McCrea Grover Coal Company of the City of Indianapolis, County of Marion, State of Indiana, party of the first part, and the City of Indianapolis, by and through its Board of Public Works, party of the second part.

Witnesseth: That the party of the first part, being desirous of securing a right-of-way for a side-track or switch from the L. E. & W. Ry. Co. tracks across Fifteenth street and a part of Lewis street, in the City of Indianapolis, which is more specifically described as follows:

Beginning at a point in the north line of Fifteenth street, the said point being 35 feet west of the east line of Lewis street, thence with a curve line in a southeasterly direction to a point in the east line of Lewis street the said point being 28 feet south of the south line of Fifteenth street, hereby covenants and fully binds himself, his successors, legal representatives and assigns, that, in consideration of the grant of the privileges and authority herein given, he will lay, construct and maintain said track upon the terms and conditions hereinafter set forth, to-wit:

(1) They shall be so laid, improved and kept in repair as to be safe for persons on foot, in vehicles or otherwise, and shall, at all times, be subject to the orders of the Board of Public Works of the City of Indianapolis.

(2) Said track and switch shall be laid upon such grade as shall be established by said Board, and shall be put down under its supervision and to its satisfaction and approval. Said track shall be raised or lowered to conform to any grade which may, from time to time, be hereafter established, whenever so ordered, in writing, by said Board and shall be made to conform in all respects with any ordinance passed by the Common Council or with any resolution or resolutions made by said Board, for the elevation or depression of said tracks.

(3) The crossing where said track intersects Fifteenth street and a part of Lewis street shall, at all times, be kept improved and in repair and free from obstructions or defects of any kind. No car or cars shall be permitted to obstruct such crossing or to be thereon except for such time as may be absolutely necessary in moving them back and forth, and they shall be at no time stopped or detained thereon in such manner as to obstruct public travel.

(4) Said party of the first part agrees, at the pleasure and written order of said Board, to take up and remove said track, and upon said party's failure so to do, upon such notification in writing, of ten (10) days, to promptly pay the cost of having the same done, and the party of the first part hereby releases all claims for damages whatsoever that may arise by reason of such removal; and in removing said track or causing the same to be done, said Board shall in no wise become a trespasser.

(5) The party of the first part agrees to pave between said track to the entire satisfaction of the second party, and in case said tracks shall be or become out of repair or in need of being reconstructed, or become in any way defective (of which fact the said Board shall be the exclusive judge), it shall be the duty of the said party of the first part to promptly repair or remove same, failing in which, after notification in writing of ten (10) days, said Board shall do or cause the same to be done at the expense of the said party of the first part, and for which expense and cost the said party of the first part shall be liable.

(6) The said party of the first part herein binds himself to hold said party of the second part and said city harmless from any and all claims for damages growing out of the existence, maintenance or use of said track, and to pay any judgment, with costs, that may on that account be rendered against the said party or said city.

(7) Any violations of any of the provisions of this instrument by said party of the first part, or by any one for it or at its instance or with its permission, shall operate as an immediate and absolute forfeiture of the privileges and authority given or granted by this contract: *Provided, however,* That the same may be terminated without cause at the pleasure of said Board, as hereinbefore set forth in Clause 4.

Said party of the second part by virtue of the provisions of an act of the General Assembly of the State of Indiana, entitled, "An act concerning the incorporation and government of cities having more than one hundred thousand population, according to the United States census last preceding, and matters therewith connected, and declaring an emergency," approved March 6, 1891, and in consideration of the things hereinbefore set forth and upon the terms and provisions stipulated, hereby gives, grants and duly vests said party of the first part the right, privilege and authority to lay and maintain an additional side-track or switch across Fifteenth street and a part of Lewis street, in the City of Indianapolis, all as shown by the drawing attached hereto, filed herewith and for greater certainty marked "Exhibit A."

In Witness Whereof, We have hereunto set our hands this day of, 1904.

McCREA GROVER COAL COMPANY,
By F. F. McCrea, President.
Party of the first part.

Witness:

CITY OF INDIANAPOLIS,
By M. A. DOWNING,
JACOB WOESSNER,
DAVID WALLACE,
Board of Public Works,
Party of the second part.

And, Whereas, Said contract has been submitted by the Board of Public Works to the Common Council of the City of Indianapolis, for its consideration and action; now, therefore,

Section 1. Be it ordained by the Common Council of the City of In-

dianapolis, Indiana, That such contract above set forth be, and the same is hereby in all things confirmed and approved.

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 Railroads.

By the City Comptroller :

General Ordinance No. 77—1904: An ordinance for the transfer of certain funds heretofore appropriated to the Board of Public Safety 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 from the appropriation heretofore made to and for the use of the Board of Public Safety, known and designated as "Fire Force Pay-Roll," the sum of \$75.00 to "Current Fund, East Market," and the sum of \$75.00 to "Buildings, East Market."

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

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

ORDINANCES ON SECOND READING.

Mr. Gasper called for Appropriation Ordinance No. 22, 1904. It was read a second time.

Mr. Gasper moved that Appropriation Ordinance No. 22, 1904, be ordered engrossed, read a third time and placed upon its passage. Carried.

Appropriation Ordinance No. 22, 1904, was read a third time and passed by the following vote:

Ayes, 15, viz.: Messrs. Cottey, Crall, Davis, Eppert, Fishback, Gasper, Hofmann, Linus, Moriarity, Rhodes, Storm, Sullivan, Wolsiffer, Wright and President James H. Billingsley.

Noes, none.

Mr. Gasper called for Appropriation Ordinance No. 23, 1904, for second reading. It was read a second time.

Mr. Gasper moved that Appropriation Ordinance No. 23, 1904, be ordered engrossed, read a third time and placed upon its passage. Carried.

Appropriation Ordinance No. 23, 1904, was read a third time and passed by the following vote:

Ayes, 14, viz.: Messrs. Cottey, Crall, Davis, Eppert, Fishback, Gasper, Hofmann, Linus, Rhodes, Storm, Sullivan, Wolsiffer, Wright and President James H. Billingsley.

Noes, one: Moriarity.

Mr. Gasper called for Appropriation Ordinance No. 24, 1904, for second reading. It was read a second time.

Mr. Gasper moved that Appropriation Ordinance No. 24, 1904, be read a third time and placed upon its passage. Carried.

Appropriation Ordinance No. 24, 1904, was read the third time and passed by the following vote:

Ayes, 15, viz.: Messrs. Cottey, Crall, Davis, Eppert, Fishback, Gasper, Hofmann, Linus, Moriarity, Rhoues, Storm, Sullivan, Wolsiffer, Wright and President James H. Billingsley.

Noes, none.

Mr. Gasper called for General Ordinance No. 70, 1904, for second reading. It was read a second time.

Mr. Gasper moved that General Ordinance No. 70, 1904, be ordered engrossed, read a third time and placed upon its passage. Carried.

General Ordinance No. 70, 1904, was read a third time and passed by the following vote:

Ayes, 14, viz.: Messrs. Cottey, Crall, Davis, Eppert, Fishback, Gasper, Hofmann, Linus, Rhodes, Storm, Sullivan, Wolsiffer, Wright and President James H. Billingsley.

Noes, one: Moriarity.

Mr. Cottey called for General Ordinance No. 74, 1904, for second reading. It was read a second time.

Mr. Cottey moved that General Ordinance No. 74, 1904, be ordered engrossed, read a third time and placed upon its passage. Carried.

General Ordinance No. 74, 1904, was read a third time and passed by the following vote:

Ayes, 14, viz.: Messrs. Cottey, Crall, Davis, Eppert, Fishback, Gasper, Hofmann, Linus, Rhodes, Storm, Sullivan, Wolsiffer, Wright and President James H. Billingsley.

Noes, one: Moriarity.

On motion of Mr. Moriarity the Common Council, at 8:10 o'clock, P. M., adjourned.

J. H. Billingsley

.....
President.

ATTEST:

W. M. Fogarty

.....
City Clerk.

