

REGULAR MEETING

Monday, March 1, 1926, 7:30 p. m.

The Common Council of the City of Indianapolis met in the Council Chamber, March 1, 1926, at 7:30 p. m., in regular session, President Boynton J. Moore in the chair.

The Clerk called the roll.

Present: Hon. Boynton J. Moore, President, and eight members, viz.: Walter R. Dorsett, Claude E. Negley, Austin H. Todd, Otis E. Bartholomew, Robert E. Springsteen, O. Ray Albertson, Edward B. Raub and Millard W. Ferguson.

The reading of the journal was dispensed with on motion of Mr. Bartholomew, seconded by Dr. Todd.

COMMUNICATIONS FROM THE MAYOR

February 24, 1926.

To the Honorable President and Members of the Common Council of the City of Indianapolis, Indiana:

Gentlemen—As Mayor of the City of Indianapolis, I hereby within ten days after receiving the same, in writing, respectfully disapprove and veto General Ordinance No. 11, 1926, the same being an Ordinance authorizing and creating the position of Attorney for the Common Council of the City of Indianapolis, defining his duties and fixing the salary thereof and designating the time when the same shall take effect, passed by your body February 15, 1926, and presented to me on February 16, 1926.

I hereby transmit to you in writing my reasons for such veto.

In the first place gentlemen, this Ordinance for the creation for a new position and a new salary to be drawn from the City Treasury does not coincide with the principle of economy enunciated by this administration. There is no call nor pressing need for such an appropriation.

Such Ordinance would be invalid for the reason that under the budget appropriation for the year 1926, there has been no appropriation for such position. In such circumstances payment of the salary of such attorney, if it could be paid at all under the law, could only be paid from current unexpended funds not heretofore appropriated to any other purpose or purposes, but as you know all current funds which may come in for this year have been heretofore appropriated for specific purposes, not subject to diversion, and as a matter of fact, if the City Controller's estimates are correct, this municipality will be \$80,000.00 short even in the payment of such previous specific appropriations. Consequently there are and can be no funds for

the year 1926, for the payment of the salary expressed in the Ordinance.

This Ordinance seems upon its face to have been drawn under the theory of Section 8656, Burns 1914, which authorizes the Common Council to investigate the departments of government and to examine into any charge preferred against them or any of them.

This section gives the Council certain powers for such investigations, but in my opinion it only applies to a specific investigation wherein there is at least some ground to suspect malfeasance, misfeasance or corruption in a specific department or departments of the administration. It does not authorize in my view a blanket investigation or a fishing excursion. And of course it does not authorize under its guise the appointment of an attorney for the Council for their general purposes, contrary to the law of this state.

Even in a specific investigation based upon some grounds, it is extremely doubtful that the Common Council would have the right to appoint an attorney at law thereof. The statutes of the State by which we are all governed (Burns 1914, Sec. 8655, Cl. 53) makes its prohibition as to the Common Council:

"The Common Council of any city of the First, Second, Third or Fourth class, shall not elect or appoint any person to any office or employment whatever, except as in this Act expressly provided."

The said Section 8655 does not expressly provide, nor does it authorize by its language the appointment of an attorney at law for department investigation, nor does any other section of the statute. It would appear therefore that such departmental investigations of the section were intended by the law to be made by the City Council itself upon the theory that such evidence as could not be readily procured by the Council for impeachment purposes, should be left to the disclosure by bodies better fitted for complete and full investigation, such as the Grand Jury, Prosecuting Attorney's office, and the State Board of Accounts. Even in the most extreme cases under section 8655, in my view there could be no attorney for a specific investigation by the Council except the attorneys legally constituted by the law in the Legal Department, without winking at or overslaughing the express provision of the laws of this State.

It is very clear that under the State law your honorable body has no authority to appoint an attorney at law for itself or for any other department.

I cite you a brief digest of the State law which appears to be conclusive upon this point:

The General Assembly has created a legal department for this city, declaring the head thereof shall be appointed by the Mayor and that subordinate officers and employees thereof shall be appointed by such head, who may remove any of them. Burns 1914, Sec. 8684. The Corporation Counsel shall have the management, charge and control of the law business of the city, and for each branch of its government—shall be the legal advisor of all its departments and officers, shall draw up ordinances, leases, deeds, contracts or other legal papers for such city and its various departments when requested to do so by the proper officer—shall conduct all legal proceedings, etc.—in all cities the city attorney (corporation counsel) shall employ such other assistants as he may be authorized to do by ordinance, and not other.

BURNS, 1914, SECTION 8692.

"Whenever any executive or administrative function shall be required to be performed by an ordinance or resolution of the Common Council, the same shall be performed by the proper executive department, and not by such council—no new department shall be created. The Common Council shall not elect or appoint any person to any office or employment whatever, except in this act expressly provided."

BURNS 1914, SECTION 8655 (at conclusion)

Neither the last named act nor any other act expressly or impliedly gives the Common Council authority to employ a lawyer. The legal department is an executive department.

BURNS 1914, SECTION 8684

For the foregoing reasons, gentlemen, I am constrained through my duties to the City, as I see it, to veto this Ordinance. The Mayor is always loath to set his opinion against that of yours and will only do so in cases such as this, where the public interest absolutely demands. Unfortunately this is one of such cases and reluctantly I am compelled to veto this measure. I am

Very respectfully yours,

JOHN L. DUVALL,

Mayor.

Dr. Todd moved that General Ordinance No. 11 be passed over the Mayor's veto. Seconded by Mr. Dorsett.

At this time Mr. Raub raised a point of order, stating that it was not the proper time to vote on the passage of the ordinance over the Mayor's veto. President Moore ruled Mr. Raub out of order.

Mr. Dorsett raised a point of order that there was a motion before the house.

Mr. Raub again interrupted the President of the Council as he was attempting to put Dr. Todd's motion to a vote and moved that consideration of General Ordinance No. 11 be postponed until the next regular meeting. Mr. Raub's motion was seconded by Mr. Ferguson.

President Moore put Mr. Raub's motion to a vote and the same was carried on a roll call vote as follows:

Ayes, five, viz.: Messrs. Albertson, Bartholomew, Ferguson, Raub and Springsteen.

Noes, four, viz.: Messrs. Dorsett, Negley, Todd and President Moore.

REPORTS FROM CITY OFFICERS

February 27, 1926.

To Mr. William A. Boyce, Jr., City Clerk of Indianapolis, Indiana:

Dear Sir—I hand you herewith fourteen copies of an ordinance annexing to the City of Indianapolis the district east of Arlington Avenue and south of Tenth Street, which is practically covered by Pleasant Run Golf Course.

Will you kindly present this ordinance at the next regular meeting of the City Council. Monday, March 1, 1926.

Yours very truly,

GEORGE G. SCHMIDT,
City Civil Engineer.

REPORTS FROM COMMITTEES

Indianapolis, Ind., February 25, 1926

To the Honorable President and Members of the Common Council of the City of Indianapolis, Indiana:

Gentlemen—We, your Committee on Parks to whom was referred Special Ordinance No. 1, 1926, entitled "An Ordinance, authorizing the sale, alienation and conveyance of real estate by the Board of Park Commissioners of the Department of Public Parks of the City of Indianapolis, and fixing a time when the same shall take effect," beg leave to report that we have had said ordinance under consideration, and recommend that the same not be passed.

OTIS E. BARTHOLOMEW, Chairman

AUSTIN H. TODD

WALTER R. DORSETT

CLAUDE E. NEGLEY.

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES

By Mr. Dorsett:

GENERAL ORDINANCE NO. 14, 1926

AN ORDINANCE, regulating vehicle parking in the congested district, establishing a time limit, restricting the number of automobiles and providing certain penalties for violation thereof; repealing all ordinances and parts of ordinances in conflict herewith and declaring a time when the same shall take effect.

Be it Ordained by the Common Council of the City of Indianapolis, Indiana:

Section 1. The parking of vehicles on the streets and public places in the congested district, within the City of Indianapolis, Indiana, shall be permitted as follows, to wit.:

(a) In the Congested District and also on Washington Street, from East Street to West Street, all vehicles may park for a continuous period, not to exceed one and one-half (1½) hours, between the hours of eight o'clock A. M. and seven o'clock P. M. Between the hours of seven o'clock P. M. and eight o'clock A. M. there shall be no limitation as to the duration of time on which a vehicle shall be parked, except that at no time or in any street or alley, shall any vehicle remain parked for a period of more than ten (10) hours.

(b) No person, firm or corporation, shall be permitted to park more than two of their vehicles, at any one time, by the provisions

of this ordinance, within any one square, within the congested district of the City of Indianapolis.

(c) Every person, firm or corporation violating any of the above provisions of this ordinance, shall upon conviction be fined in any sum not exceeding Three Hundred (\$300.00) Dollars, to which may be added imprisonment not exceeding one hundred and eighty days.

Section 2. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

This ordinance shall be in full force and effect from and after its passage and publication as required by law.

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

By Dr. Todd:

GENERAL ORDINANCE NO. 15, 1926

AN ORDINANCE, relating to the establishment by white persons of a home-residence in a negro community, and the establishment by negroes of a home-residence in a white community, providing a penalty for the violation thereof, and declaring a time when the same shall take effect.

PREAMBLE

WHEREAS, in the interest of public peace, good order and the general welfare, it is advisable to foster the separation of white and negro residential communities.; therefore,

Be it Ordained by the Common Council of the City of Indianapolis, Indiana:

Section 1. That it shall be unlawful for any white person to hereafter establish a home-residence on any property located in a negro community, or portion of the municipality inhabited principally by negroes, or for any negro to establish a home-residence on any property located in a white community or portion of the municipality inhabited principally by white people, except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the city to be affected; the aforesaid written consent to be filed of record with the City Clerk.

Provided, however, that a white person owning property in a colored community, or a colored person owning property in a white community, before the passage of this ordinance may exercise his or her vested right to thereafter move into and reside there without obtaining the consent of a majority of the persons of the opposite race occupying such community. Provided, further, that a white person may exercise his vested right to sell his property in a white community to a negro, and a negro may exercise his vested right to sell his property in a negro community to a white person, but the purchaser in either case after the passage of this ordinance can not take up his residence therein without first obtaining the written consent of a majority of the citizens of the other race inhabiting such community, as hereinbefore provided.

Section 2. That it shall be unlawful to maintain any home-residence established in violation of Section 1 of this ordinance.

Section 3. That each seven (7) days maintenance of any home-residence established in violation of Section 1 of this ordinance shall

be deemed to be and shall constitute a separate and distinct offense.

Section 4. That the terms "white community" and "negro community" as used in this ordinance shall be taken and held to mean and embrace every residence fronting on either side of any street within three hundred feet of the location of the property involved, measuring along the middle of the streets in any and all directions.

Section 5. That any person violating any of the provisions of this ordinance shall on conviction be punished for each offense by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by such fine and such imprisonment in default of the payment of the fine, or by both such fine and such imprisonment, in the discretion of the court having jurisdiction.

Section 6. That should any provision or section of this ordinance be held to be invalid, its invalidity shall not affect or annul the other provisions of this ordinance, which shall nevertheless have the fullest effect possible in such case.

Section 7. This ordinance shall be in full force and effect from and after its passage and legal publication according to law.

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

By the City Engineer:

SPECIAL ORDINANCE NO. 2, 1926

AN ORDINANCE, annexing certain territory to the City of Indianapolis, Indiana, and defining a part of the boundary line of said City, and fixing a time when the same shall take effect.

Be it Ordained by the Common Council of the City of Indianapolis, Indiana:

Section 1. That the City of Indianapolis be and the same is hereby extended so as to include the following described continuous territory, all of which is hereby annexed to and made a part of the territory constituting and forming the City of Indianapolis, in Marion County, Indiana.

Section 2. Beginning at the intersection of the center line of Arlington Avenue with the north line of Section 2, Township 15 North, Range 4 East; thence east along the north line of said Section 2, commonly known as the center line of Tenth Street, a distance of 2,635.05 feet, more or less, to the east line of the west half of said Section 2; thence south along the aforescribed east line, to the north line of the southwest quarter of said Section 2; thence west along the aforescribed north line, to the center line of Arlington Avenue; thence north along the center line of Arlington Avenue, to the center line of Tenth Street, the place of beginning.

Section 3. 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 Public Works.

CALL FOR ORDINANCES ON SECOND READING

Mr. Bartholomew called for Special Ordinance No. 1 for second reading. It was read a second time by the Clerk.

On motion of Mr. Bartholomew, seconded by Mr. Dorsett, Special Ordinance No. 1 was ordered engrossed, read a third time and placed upon its passage.

Special Ordinance No. 1 was read a third time by the Clerk and failed to pass by the following vote:

Noes, nine, viz.: Messrs. Albertson, Bartholomew, Dorsett, Ferguson, Negley, Raub, Springsteen, Todd and President Boynton J. Moore.

At this time Mr. Albertson presented the following motion which was seconded by Mr. Raub:

Indianapolis, Ind., March 1, 1926.

Mr. President:

I move that George G. Schmidt be requested to appear before the next regular meeting of the City Council to explain why he has twenty Inspectors on his force when they are not warranted by the present amount of public improvements.

O. RAY ALBERTSON.

President Moore put Mr. Albertson's motion to a vote which was passed unanimously by the Council.

At 8:05 o'clock p. m. the Common Council of the City of Indianapolis ajourned.

Boynton J. Moore

President.

Attest:

William A. Boyce

City Clerk.

