

The regular meeting of the Hammond Common Council of the City of Hammond, Lake County, Indiana was held on May 13, 2019 in the Hammond City Council Chambers.

Council President Robert A Markovich presided.

Council Coordinator Carmen Balboa facilitated.

PLEDGE OF ALLEGIANCE was recited by all.
Invocation by Councilman Higgs

ROLL CALL

PRESENT: Spitale, Kalwinski, Torres, Higgs, Woerpel, Rakos, Markovich

ABSENT: Venecz, Emerson

TOTAL: 7

DISTRIBUTION OF COUNCIL SCHOLARSHIP AWARDS

Presentation by Theresa Mayerik, Assistant Superintendent of the School City of Hammond.

Speakers: Jodi Kateiva of the Legacy Foundation.

Clark H.S.

Eduardo Pineda 1st Winner
Amanda Reyes 2nd Winner

Bishop Noll H.S.

Javier Miranda III 1st Winner

Gavit H.S.

Jade Hart 1st Winner
Sabrina Lewis 2nd Winner
Chloe Flanagan 3rd Winner

H.A.S.T.

Mariah Barber 1st Winner

Hammond H.S.

Alex Echevarria 1st Winner
Andrea Hampton 2nd Winner
Romesha Washington 3rd Winner

Morton H.S.

Alyssa Delacruz 1st Winner
Kara Gardner 2nd Winner
Richard Eaton 3rd Winner
Miriah A. Ramos 4th Winner
Magdalene Kryszyn 5th Winner

DISTRIBUTION OF COUNCIL SCHOLARSHIP AWARDS

Councilman Higgs, supported by Councilman Torres, moved to go back to regular order of business.

AYES: ALL

READING OF THE MINUTES

Councilman Torres, supported by Councilman Higgs, moved to suspend the rules.

AYES: ALL

Councilman Torres, asked the Council Coordinator to read Resolution R11 in its entirety.

Councilman Torres- I want to thank you all again for making Hammond proud and especially the 2nd District.

Mr. Mendoza- I would like to thank the City of Hammond, this is probably the best award we won so far. I hope to see you guys out there, let's drink some beer.

Mayor McDermott- This is one of the beautiful projects that's happened. I been Mayor 15 years now. These guys came to town didn't ask for anything. Bought an old abandoned building in the 2nd district, turned it into a great brewpub, best in America, and a great restaurant, in Downtown Hammond. These guys are a dream. We've done a lot of projects since I been Mayor, this has been my favorite project, so I'm very proud. I appreciate Councilman Torres for bringing this up. You guys are wonderful, we love you and if I ever get a tattoo it's gonna be of 18th Street Brewery.

Councilman Woerpel- Just for the record, this Resolution passed the last meeting that's why we didn't vote on it.

Councilman Higgs, supported by Councilman Woerpel, moved to return to regular order of business.

AYES: ALL

Councilman Spitale, supported by Councilman Higgs, moved to accept the minutes of April 22, 2019 and place on file.

AYES: ALL

APPROVAL OF CLAIMS

Councilman Woerpel, supported by Councilman Rakos, moved to accept the claims from April 30, 2019 through May 8, 2019. Claim #2459 through claim #2774, inclusive.

ROLL CALL VOTE

AYES: Spitale, Kalwinski, Torres, Higgs, Woerpel, Rakos, Markovich

NAYS: None

ABSENT: Venecz, Emerson

Motion carried

7/0/2

CLAIMS APPROVED

*Prepared by
Robert J. Golec
Hammond City Clerk*

PUBLIC HEARINGS

None

COMMUNICATIONS

Councilman Woerpel- We all received a letter from George Stoya, dated 5-13-19, regarding due diligence and nuisance and subjection of Hammond Coup Chickens.

Councilman Woerpel, supported by Councilman Rakos, moved to add George Stoya's letter to the minutes.

AYES: ALL

Letter attached to minutes.

Councilman Higgs- I would like to thank everyone that came out and voted in the Election, may God continue to Bless you in your endeavors. Although I wasn't excited about the outcome but I know what God has for me it is for me. I'm blessed coming in and going out, he will continue to open up doors no man can shut, so thanks be unto God who gives me the strength.

Councilman Rakos- Although Councilwoman Venecz can't be here to do the Crime Watch announcements. This is the first meeting she ever missed, she is recovering from surgery this morning. She's doing very well she'll be back really soon. The only Crime Watch I'm aware of is Thur., May 16, Hessville C.W.; Jean Shepherd Center; 7 p.m.

COMMITTEE REPORTS

Council as a Whole Committee- Councilman Kalwinski - Brought out 19-10.

ORDINANCE 3RD READING- FINAL PASSAGE

19-10 An Ordinance Reclassifying Certain Lands in the City of Hammond for Zoning Purposes and Amending Ordinance No. 8514 (An Ordinance Establishing a Zoning Plan for the City of Hammond including the Regulations and Maps to Administer the Zoning Plan in Order to Provide for Orderly Growth and Development within the City, all in Accordance with the Comprehensive/Land use Plan as Amended) for Property Commonly Known as 850 Indianapolis Boulevard Hammond, Indiana

Councilman Kalwinski, supported by Councilman Higgs, moved for passage.

Councilman Kalwinski- 850 Indianapolis Blvd. is a gas station and car wash that will be coming down in a demo. New construction will occur to bring in a new gas station and car wash. Consequently the Zoning has to be updated and changed and made appropriate to move from I-2 to C-4.

Councilman Higgs, Are they re-zoning the property?

ORDINANCE 3RD READING- FINAL PASSAGE cont

Councilman Kalwinski, Yes, the property is being re-zoned from I-2 to C-4, to be in line with the new construction prior to this the property was grand fathered. Now that there is new construction we have to do the zoning and get it in compliance.

ROLL CALL VOTE (passage)

AYES: Spitale, Kalwinski, Torres, Higgs, Woerpel, Rakos, Markovich

NAYS: None

ABSENT: Venecz, Emerson

Motion carried

7/0/2

ORDINANCE NO. 9440 PASSED

INTRODUCTION OF ORDINANCES

None

RESOLUTIONS

19R-12 Authorizing the Hammond Fire Department to Apply for an Indiana Homeland Foundation Grant

Councilman Woerpel, supported by Councilman Higgs, moved for adoption.

Councilman Higgs- Please add me as a co-sponsor to 19R-12.

Councilman Woerpel- This is a State of Indiana, homeland security grant for \$4000.00 there is no city match. The grant will be used to buy batteries for the radios.

ROLL CALL VOTE (adoption)

AYES: Spitale, Kalwinski, Torres, Higgs, Woerpel, Rakos, Markovich

NAYS: None

ABSENT: Venecz, Emerson

Motion carried

7/0/2

RESOLUTION NO. R12 ADOPTED

19R-13 Authorizing the Hammond Fire Department to Apply for an Indiana State Homeland Security Program Grant.

Councilman Woerpel, supported by Councilman Higgs, moved for adoption.

Councilman Higgs- Please add me as a co-sponsor to 19R-13.

Councilman Woerpel- This Grant is from the same Indiana Homeland Security Program, it's for \$50,000 dollars. It's my understanding that 17 defibrillators will be bought with no city, match.

received
5-13-19

GEORGE STOYA
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WHITING, IN 46394-1140
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May 13, 2019

Hammond Common Council
5925 Calumet Avenue
Hammond, IN 46320

RE: Due Diligence, Nuisance & Subjection of Hammond to Chickens

Members of the Council:

Recall that during Public Expression at the close of the April 22, 2019 Common Council meeting that a proposal was suddenly advanced, complete with ostensibly supporting literature, seeking to amend our city's municipal code and permit the introduction of developing, keeping, raising and farming chickens despite the provisions of Hammond's Municipal Code section 91.035 clearly prohibiting it:

HARBORING ANIMALS

§ 91.035 DOMESTIC ANIMALS AND FOWL.

(A) No person shall own, possess, or have custody on the premises in a residential area any animal classified as a domestic bird or fowl.

(B) No person shall keep or permit to be kept in a residential area any domestic bird or fowl as a pet.

To be sure, the zoological classification of any such animal and fowl has been well-established and they remain scientifically categorized as **landfowl**, **gallinaceous birds**, or **galliforms**. I ask this council take note and formally observe that there has been no alteration or shift, in the scientific consensus, concerning the zoological status of chickens as animals classified as fowl or domestic bird (poultry), among our nation's scientific communities; or at the national Food and Safety Inspection Service (FSIS) or the Center for Disease Control and Prevention.

Supplementing the proposal for amending Section 91.035 are mere anecdotal narrative materials (magazine and newspaper articles) that taken together attempt to construct a discourse that chickens are not to be considered merely a species of domestic birds or poultry, but viewed as pets, ostensibly ideal for promoting socialization and/or that of providing an interactive framework for inculcating humanistic concern, in much the

poultry, but viewed as pets, ostensibly ideal for promoting socialization and/or that of providing an interactive framework for inculcating humanistic concern, in much the same way that such a status could be imputed to other domesticated animals such as dogs and cats, and perhaps to the horses provided as a therapeutic for inmates in maximum security prisons; except that dogs, cats and horses don't lay eggs or provide meat for human consumption.

The problem is that Section 91.035(B) categorically prohibits keeping or permitting to be kept, in any residential area, any domestic bird or fowl as a pet. Thus, absent a formal change in existential status, one rationalized by zoological science and recognized by federal and/or state legislation as justifying the alteration of their scientific classification, for this council to authorize or permit chickens to now occupy Hammond residential areas would illegally convert the entire City of Hammond into a socio-political barnyard. Such a usurpation of zoological classification adversely affects and subverts various rights in residential land usage and constitutes a public and/or private nuisance.

Consequently, it is difficult to see how the Hammond Common Council could believe it possesses the legal authority to arbitrarily alter the legally recognized status and scientific classification of chickens as something other than domestic bird or fowl and therefore capable in any way of converting the factual, scientific and legal status of chickens to pets, insofar as the zoologically recognized classification and status of domestic birds or fowl such as chickens categorically prohibits it. It is equating apples with oranges.

What's more, such a legislative conversion would be a little more than local political act and ultra vires (outside the council's scope of recognized authority), for not even Home Rule permits municipalities to exceed the State and federal authority formally adopting the scientific recognition of chickens as poultry. As observed by attorney Joshua Claybourn in a May 7, 2017 in an Indy Star opinion:

"Indiana's Home Rule Act first passed in 1980 and generally grants municipalities the power to govern themselves as they see fit. The idea, modeled off the national principle of federalism, gives more choice, options, flexibility, and freedom to local leaders. Now those ideals are under greater attack than at any time since Hoosier home rule began.

"In recent years the Indiana legislature handcuffed municipalities from setting a local minimum wage or from regulating housing, agricultural operations, worker schedules, or plastic bags." See, **Claybourn Opinion: In defense of Hoosier home rule. IndyStar May 7, 2017.**

Any prospective or actual legislative/regulatory proposal authorizing chickens to be allowed in or kept anywhere within the city's urbanized environment comprising its residential living space, that is, areas and sections of the city as constituted by the zoning of various estates in land ordered and defined by the city of Hammond's planning grid, is little more than an unlawful attempt at special legislation for the benefit of a few at the risk and behest of the entire city --- under the color of law.

For it is a well-established right that owners/occupiers of residential properties are inherently entitled to their quiet use and enjoyment. And where not express, such covenants are implied at law. And these rights are not incidental but fundamental to and at the heart of ownership and possessory rights in land.

Such covenants, it should be noted, pertain to the rights of quiet enjoyment and a protection against nuisance and other forms of interference to land use and value. A covenant represents the present and future rights of a property owner/tenant to enjoy his/her residential space in peace absent any external interference that appreciably deprives owners of its use/enjoyment and/or encroaches on the estate-in-land's use and/or market value.

Any appreciable corrosion of these property interests and value are not only constitutive of a nuisance, which operates in the mode of a persistent trespass, but more, when reversing regulation(s) that would legally permit chickens it also constitutes an invasive encroachment upon the quiet enjoyment of not just the property's residential purpose, it significantly subordinates the use and value of any ownership or leasehold estate for the benefit of either a private and/or public interest.

Such a reversal of longstanding regulation becomes tantamount to inverse condemnation. One thinks of Kelo and New London; as well as other government regulations impairing/corroding rights to private property for public good without just compensation. Since 1922 the US Supreme Court's established general principle is that "if regulation goes too far it will be recognized as a taking." A taking requiring just compensation.

"Property' in its legal sense means a valuable right or interest in something rather than the thing itself, and is the right to possess, use and dispose of that something in such a manner as is not inconsistent with law." State v. Ensley, 240 Ind. 472, 164 N.E.2d 342 (1960). Indeed, regulation may deprive an owner of most or all beneficial use of his property and may destroy the values of the property for the purposes to which it is suited.

Significantly, in determining when a taking has occurred the law considers the impact of government action and whether it "has interfered with distinct investment-backed expectations." Biddle v. BAA Indianapolis, LLC, 860 N.E.2d 570, 582 (Ind. 2007) (quoting Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978)). And as recognized in Jeff Sagarin and Shirley Jablonski v. City of Bloomington (Ind. App 2010) [citation omitted], the elements constituting an inverse condemnation are "(1) a taking or damaging; (2) of private property; (3) for public use; (or, alternately, private use for a

public purpose... See Kelo... Stoya note); (4) without just compensation being paid; and (5) by a governmental entity that has not instituted formal proceedings." 29A C.J.S. Eminent Domain § 560 (2007).

Here, despite a petition circulated and signed by residents of a particular section in the city of Hammond along 165th Street it cannot be said, absent a referendum vote, to represent the entire public of Hammond, or adequately merit any legislative/regulatory action to reverse Code section 91.035, and must be considered special interest and arbitrary, one taken under the color of law to primarily benefit the private interests of the citizen(s) seeking to authorize chickens on any and all residential premises throughout the city.

Chickens simply cannot be declared pets by local legislative fiat where there is no scientific evidence, under prevailing legal standards of admissibility and/or valid scientific methodology, meriting a zoologically reliable finding that chickens are anything but domesticated birds or fowl. What's more, residents of Hammond have reasonably and rationally relied on Code section 91.035 with respect to their investments in home purchases, improvements and other expenditures that perfect the transforming of their interests in real estate into that of a home.

— 42 USC Sec. 1983

The language of the post-civil war legislation couldn't be more clear:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

(R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

Given the inability of chickens to scientifically merit qualifying as anything but domestic birds expressly prohibited from inhabiting or occupying Hammond's residential premises, and given the highly developed scientific evidence of their zoological classification as poultry, chickens cannot be legislatively smuggled into the longstanding provisions of Hammond's municipal code as pets. For even if, hypothetically, chickens were capable of being deemed pets, how does the new ordinance provide for:

---A limit on the number/density of birds at any residence

---Protection against predators that are expected to become more prevalent with new game on which to possibly feed?

---Compliance with State or federal standards governing material construction and spatial dimensions coops or other forms of housing.

---Licensing and shots to prevent the risks of infectious disease, i.e., licensing and shots similar to that ordered for canines

---Provisions against abnormal behavior

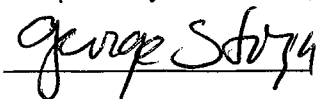
And what of **protection from a harsh environment**, defined as the one that is outside of the comfort range of the birds? In this context that of high and low temperature, high humidity in some circumstances, excessively strong wind, inadequate ventilation and/or air movement and high levels of harmful air pollutants such as ammonia, all are examples of a harsh environment. Much effort is made in designing and building poultry houses that will permit the regulation of the environment to a significant degree.

For it is the responsibility of those in charge, and responsible for, the day-to-day management of the birds that the environment control systems are operated as efficiently as possible. To this end, those responsible require a good knowledge of the different factors that constitute the environment and how they interact with each other to produce the actual conditions in the house and, more importantly, what can be done to improve the house environment.

There is no other conclusion here but that any new legislation reversing or otherwise superseding Hammond Code section 91.035 cannot be justified by any factual or legal merits. That the citizens of Hammond have detrimentally relied on section 91.035 in making their residential investments and decisions about home improvements.

That any new legislation sanctioning chickens as pets or permitted on residential premises or the appurtenances thereto is arbitrary and violative of the 5th Amendment takings clause; substantive due process; and procedural due process under the 14th Amendment under the color of law; and creative of a public or private nuisance and subject to class action, as well as individual suit.

Respectfully submitted,



George Stoya

RESOLUTIONS cont.

ROLL CALL VOTE (adoption)

AYES: Spitalo, Kalwinski, Torres, Higgs, Woerpel, Rakos, Markovich

NAYS: None

ABSENT: Venecz, Emerson

Motion carried

7/0/2

RESOLUTION NO. R13 ADOPTED

NEW AND UNFINISHED BUSINESS

Council President Markovich- The Intent to Consider 19-05, was taken care of earlier in the council meeting.

Councilman Woerpel- I want to concur with Councilman Rakos, I had a conversation with our colleague today, she's doing well after something I probably wouldn't have done to my knee, I just want to wish her well. I talked to her 10 minutes before I got here and she's in good spirits, she's not in pain. I just want to wish Janet get well soon.

Mayor McDermott- I want to thank everyone that showed up to vote on Tuesday, I want to thank Councilman Higgs and Councilman Markovich for great terms and tenure on the Hammond City Council. I appreciate your service. 16 years, Bob 32 years, I'm not a historian for Hammond , I know one person that has served longer than you and he has a park named after him. I just want to say congratulations to Councilman Markovich, and Councilman Higgs, thank you for what you've done for our City.It's not a glamorous job, you get a lot of arrows shot at you and make a lot of enemies but you did it for a long time. I just want to say congratulations to the both of you. Thank you.

PUBLIC EXPRESSION

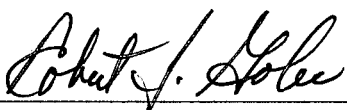
Anne Herbert- I just want to congratulate Barry Tyler Jr. and Katrina Alexander on winning the primary.

Carolyn Jackson- I wanted to come today and bring an update on the bills that were passed this year. I also have the Indiana Festival guide. Also I would like to thank those individuals whom I've only had to call one time for help I cannot do this job alone.

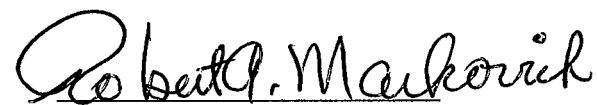
Councilman Higgs, supported by Councilman Woerpel, moved to adjourn.

AYES: ALL

ATTEST:



Robert J. Golec, City Clerk



Robert A. Markovich, President
Hammond Common Council

Time: 6:45 p.m.

dw

Minutes approved at the Common Council meeting of May 28, 2019.

*Prepared by
Robert J. Golec
Hammond City Clerk*