

**LEGISLATIVE COMMITTEE MINUTES**

**OF APRIL 9, 2018**

Municipal Council of the City of Vermilion  
Municipal Complex, 685 Decatur Street, Vermilion, Ohio 44089

**In Attendance:**                    **Vermilion City Council:**  
*Monica Stark, Council at Large; John Gabriel, Ward One; Frank Loucka, Ward Two; Steve Holovacs, Ward Three; Barb Brady, Ward Four; Brian Holmes, Ward Five. Excused: Steve Herron, President of Council*

**Administration:**  
*Jim Forthofer, Mayor; Chris Howard, City Engineer; Chris Hartung, Police Chief; Amy Hendricks, Finance Director, Ken Stumphauzer, Law Director*

**Call to Order:**                    Monica Stark, Chairwoman, RESOLVED THAT this Legislative Committee comprised of the committee of the whole does now come to order.

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**TOPIC ONE:                    Review of Ordinances 2018-16 & 2018-17 (Boards/Council)**

F. Loucka explained Ordinance 2018-16 repeals Section 260.02 of the Administrative Code entitled “Administrative Clerk of Boards and Commissions” of Chapter 260, with the idea of Ordinance 2018-17 combining this position with the Clerk of Council. He said they received a legal opinion from the Law Director stating Council can abolish this position. However, Council for the current Charter can’t really combine the position of Clerk of Council with the former position of Administrative Clerk. He offered a suggestion pursuant to Ordinance 2018-17, as they can’t combine the position of Clerk of Council with the former position of Administrative Clerk, so to enact Ordinance 2018-17 as currently written, it would require a Charter change he believed. K. Stumphauzer said the way he interprets the Charter is that Council has the ability to combine divisions and departments, but they don’t have the right to provide a position when the position is designated by the Mayor. F. Loucka said if they deleted the sections relating to the responsibilities of the Boards and Commissions, it would be basically swiping the third sentence in Section A and the last section of the second section under Section B. Basically it would delete anything relating to the duties of Boards and Commissions. However, he noted that Section III-8 of the Charter (Clerk of Council) states that the Clerk of Council shall be appointed and may be removed by Council. The Clerk of Council shall keep an accurate and complete journal of the proceedings of Council and perform such other duties as Council may require. Council may employ such other employees as it deems necessary for the proper discharge of its duties. He said Council can add personnel and can put a part time clerical person on the books or they can let it go at this time. Council can at any time employ other employees in the Council office whenever they want. B. Holmes said the Charter also says council can combine other departments as deemed necessary and may authorize one person to be the head of two or more positions of such departments or divisions, so he thinks they can move forward with Ordinances 2018-16 and 2018-17 pursuant to the Charter.

G. Fisher noted that the position of Administrative Clerk of Boards and Commissions is not defined within the Charter; it’s defined in the Administrative Code. She said the Law Director has said the Mayor oversees the departments, but in Article V of the Charter “Administrative Departments” it says that Council may establish additional departments or divisions and they may abolish departments or divisions, and they can combine departments or divisions. So if the

Mayor is overseeing the departments and divisions, it still addresses in the Charter that Council can establish them, abolish them, and combine them, and one person can be the head of two or more of such departments or divisions. So both sections are in the Charter and this is why she is questioning this. K. Stumphauzer said the Clerk has brought up an interesting point as she is correct in what the Council has the authority to do, but there are certain things specifically provided for in the Charter that they can't do. So by way of example, you if wanted to combine the Planning Commission and the Board of Zoning Appeals you couldn't do it because they are created by Charter, so there are examples of what you could do. You could combine the Police Department and the Fire Department. The Clerk of Council's position is to carry out the business of Council. He believes there should be a common sense solution and he hasn't talked with the Mayor about this, so if he is speaking out of turn then the Mayor can tell him later, but he wondered if there was some way of creating the recording responsibilities of the person who works for the Boards and Commissions. He asked if Council could work this out with the Mayor, but that persons responsibilities would be for the Boards and Commissions, whether it was the current clerk, she would have two hats; one working for the Mayor and one working for the Council, and reporting to the Mayor as the Clerk of the Boards and Commissions. S. Holovacs said the Clerk of Council does this currently. G. Fisher said they defined both positions within one ordinance which is before Council. They combine both positions and it states the Clerk of Council will be assigned with the duties of Boards and Commissions and shall perform such duties as may be directed by Vermilion City Council, the Mayor, or the Chairman of each Boards and Commissions. So, it's defining the position of Clerk of Council and Boards and Commissions by combining them both in one ordinance. K. Stumphauzer said he could rework the ordinance so it's consistent with the Charter as how he interprets it. He said he doesn't issue orders, but issues opinions. F. Loucka accepted the law director's suggestion in reworking the ordinance. B. Brady asked why the clerk brought this ordinance forward; do you feel you need protection? G. Fisher said she is doing the work of both positions and felt combining the positions makes it easier by creating one piece of legislation. S. Holovacs said they need to look at whether Gwen can take a vacation if she is doing both Boards and Commissions and City Council. They can push off Council meetings during her absence, but she has Boards and Commission meetings in that timeframe as well and they have the same person doing both. If anything, they need to train somebody in these positions, so they can do both because the work is important for both positions and they need coverage. He would like somebody to back up the Clerk. K. Stumphauzer said the ordinance does state they are going to create an Assistant to the Certified Municipal Clerk and this person in this role assists the Clerk of Council. But then, the Boards and Commissions would have a reporting responsibility to the Mayor. G. Fisher said in the Ordinance where it addresses the Assistant to the Certified Clerk, the Assistant shall perform such duties as may be directed by Vermilion City Council and the Chairman of any Committee, and or boards and commissions. She left the directive by the Mayor out of that section by mistake, but they could add the Mayor into this section as well. She said this was the purpose of putting the section of the Assistant in the ordinance so there is back up when she's on vacation or if she becomes ill. She was trying to simplify all of this into one ordinance so they always have coverage in the city.

F. Loucka clarified there are more responsibilities that falls on the Clerk of Council that are over and above just preparing minutes. He was inclined to having the ordinance reworded per the law director's suggestion whether the Assistant is filled now or sometime in the future. G. Fisher said it's on the books when needed. She understands with the current budget situation they can't hire an assistant at this time, but if they ever get to that point it's in the ordinance.

J. Gabriel emphasized the fact that the City doesn't have the funds to hire an additional person or will it be filled in the foreseeable future, but it's important to note that there are certifications that come with the Clerk of Council's office. He understands they can fill this position but that's not going to cut it; they need somebody certified. He asked the Clerk how long it took to become certified as a Municipal Clerk. G. Fisher said it took three years to become certified and she received it from Kent State University. J. Gabriel said there are requirements to record keeping, so he is down with creating an Assistant because down the road if they can ever get things turned the right way, this position will have qualifications versus allowing them to just hire somebody off the street. G. Fisher noted that retirement is coming sooner than later for her.

Mayor Forthofer said with the Clerk of Council covering Boards and Commissions he has no problem or question with the integrity or anything like that, but if there was a Clerk to be hired then he would have no problem with that Clerk reporting to the Mayor and training to do the complicated work that is currently being done by the Clerk of Council, so it creates back up and stays true to the Charter where the Clerk of Boards and Commissions will report to the Mayor and the Clerk of Council reports to Council.

B. Brady said they were looking at a part time person to avoid paying additional in health care. G. Fisher said the ordinance was written to authorize a part time employee as needed up to twenty (20) hours, and no more than 20 hours, and only when needed when she is absent. Mayor Forthofer said if he was to hire somebody for Boards and Commissions he would only hire somebody part time.

Council authorized the law director to rework the ordinance as he deems appropriate according to the discussion above. This will be referred to the May Legislative meeting for review.

**TOPIC TWO: Peddlers, Canvassers, & Solicitors – Draft Legislation**

M. Stark said they have discussed this issue for the last couple months relative to updating the current ordinance on the books. Council received draft legislation from Attorney Brendan Healy from Walter Haverfield. K. Stumphauzer said Attorney Healy is very much in tune with this type of legislation and the city has to be precise so they don't infringe on Constitutional rights.

B. Holmes said they had questions pertaining to the business hours restriction as to how late they could solicit. Therefore, can council establish a certain time; like 9:00 p.m. or sunset. Attorney Healy said council can establish a curfew, but the problems with curfews when looking at district court cases and appellate courts case interpreting these ordinances, there is a wide range of opinions and it changes from district to district and there's no consensus on what would be an appropriate curfew. He thought 9:00 p.m. seems to be a time that has been upheld by the courts consistently, but not 7:00 p.m.; an hour after sunset is too vague and is not enforceable and it's possible the city will get sued. He thinks 9:00 p.m. is the most defensible and he rewrote the ordinance to say between the hours of 9:00 a.m. and 8:00 p.m. based on some of council's suggestions, but personally as an attorney he would say 9:00 p.m. is the best bet, but 8:00 p.m. is defensible. He would not suggest 7:30 p.m. He said it's hard to predict how a court will interpret the ordinance. He also applied the 8:00 p.m. time to peddling, soliciting, canvassing, or requests for contributions to be consistent across the board.

J. Gabriel asked what Attorney Healy felt about the 'Do Not Knock' registry because he would like to throw this entire ordinance out and make it a one page thing that lets people put

themselves on a 'Do Not Knock' list so they will be left alone. Attorney Healy thought this would be great as one thing courts have said is that communities when they try to enact curfew ordinances or peddler ordinances, is the problem in that the community is telling the citizens what they want to hear, when they want to hear it, and how they want to hear it and courts don't like that. With a 'Do Not Knock' they do have in the ordinance where a resident can put a sign up in their house saying, 'No Solicitation' which is fine, but with this list it would be much better. The problem is that you administratively need to set this up and he reviewed the City of Lakewood because on their website they have a 'Do Not Knock' registration online which is great and it has worked for them. He will talk with their law director to see if they had any issues. He believes the City of Parma still has it on their books, but doesn't know if it's being used or not. The City of Englewood has been sued several times over their ordinances, but their 'Do Not Knock' ordinance has been upheld by the courts, and it was thrown in their face as to why they have a Peddler ordinance when they have a 'Do Not Knock' ordinance, so he likes the 'Do Not Knock' ordinance. He said administratively it needs to be set up before it's implemented. He would favor this over the peddler ordinance he recently drafted. He said they may still want a curfew ordinance because they wouldn't want people going around at 11:00 p.m. soliciting or selling goods, but if they have a 'Do Not Knock' then they should push the curfew to 9:00 p.m. because of the public safety component.

B. Brady asked if a 'Do Not Knock' would cover everybody, such as public officials or children selling. Attorney Healy said this is correct and mentioned that a lot of solicitors will tell their employees to ignore the 'Do Not Knock'. M. Stark clarified if the 'Do Not Knock' will stop children and religious organizations from knocking and Attorney Healy said it can, but the city could do a carve out for this. He will review the City of Lakewood's ordinance for canvassing. He said if he is with a religious organization and he wanted to go door to door, there is a fundamental right that's embedded in the Constitution to be able to do this. If he would happen to knock on the wrong doorbell and would get arrested, then he could see a potential challenge to that, but as far as he has seen, he hasn't found a court case where a 'Do Not Knock' ordinance has been struck down.

M. Stark asked how this would work with licensing and background checks with a 'Do Not Knock' list. Attorney Healy said the city can do a combination of what they are doing now and have a 'Do Not Knock' ordinance. They can still have a licensing requirement, but they can't require religious organizations or charitable groups to get a license. The city could require someone to register, or at the very least with a 'Do Not Knock' ordinance you could have it in the ordinance that anyone going door to door canvassing, soliciting, and peddling could go to the Police Department to get the 'Do Not Knock' list. Most communities do a combination of both. F. Loucka thought the combination would be in order so you have record of who is running around the city.

**B. Holmes MOVED**; M. Stark seconded to have the law department prepare legislation creating a 'Do Not Knock' registry in combination of licensing, background checks, and curfew. Vote 6 YEAS. **MOTION CARRIED.**

TOPIC THREE:        **Law Department Compensation – Draft Legislation**

K. Stumphauzer provided council with draft legislation reestablishing hourly rates of his law firm and establishing the salary of the City of Vermilion Prosecutor and the hourly compensation for the Administrative Assistant/Paralegal to the Prosecutor. He said he has two

Prosecutors that share the salary in that position. One works one full day and the other works a half to two-thirds of the day, but the one that works two-thirds of the day doesn't get to the threshold of the amount of money necessary to qualify for healthcare. Therefore, he proposed an increase to that position of \$25.00 a month. Additionally, the other important position addressed in the draft legislation is the Administrative Assistant who is involved in plea bargaining, pre-trials, and all the things that Prosecutors do, but the Assistant has a number of responsibilities and she is a Paralegal and handles all the discovery, drafts responses to motions, meets with the police officers, works with the Prosecutors for search warrants and recently there was Marsy's Law that was passed which is attentive to victims. Therefore, they are required to notify every victim of every crime advising them of the hearing and pre-trial dates. In addition, this Paralegal meets with the victims and explains what their rights are and what they can and can't do. Most Municipal Courts have a Victim Advocate by way of example, in Lorain there is two or three, and the Victim Advocate works full time doing this, but instead the City of Vermilion has a Paralegal that is doing this work. He noted she makes \$15.53 an hour which is very low for a qualified Paralegal. Therefore, he asked City Council to increase this salary by \$2.00 per hour. He said he's aware of the financial condition of the City and understands they can't give raises because right now the city doesn't have the money, so he suggests that his salary be reduced by the amount of money that will be given to the Prosecutor and the Paralegal (\$25,500 to \$22,755 per year). F. Loucka said essentially this is revenue neutral.

B. Brady said if you qualify for healthcare through OPERS where does that come from. A. Hendricks said it comes from the contributions that are made from people when they are actively working, as well as the share that's required by law to be paid by the municipality or the governmental entity. B. Brady asked if there is any burden on the city after retirement and A. Hendricks said no.

M. Stark noticed the law director's hourly rate is being increased in the draft legislation. K. Stumphauzer said it's being put in the position that it was at the end of last year before the new ordinance was passed in January of 2018. He indicated that the hourly rate wasn't feasible for them to continue to do the work because the work is pretty sophisticated and he had indicated that they would continue to do the labor work for \$225 an hour, but at that time they had a lot of litigation going on as well in the police department, and he indicated that litigators were going to charge more money so he had proposed \$250 an hour. He said this is not new, but something he was charging before. M. Stark said Council passed the ordinance in January of 2018 at \$175 per hour. G. Fisher noted the ordinance for the \$175 has been in place for some time.

S. Holovacs asked if they could simply amend Ordinance 2018-4 passed in January and break up the other two positions and increases and do separate ordinances. K. Stumphauzer said this draft legislation doesn't apply to just his law firm, but it applies to any law firm they hire, such as Squires, Sanders and Dempsey. He would venture to say they charge at least \$500 - \$750 an hour. He addressed Section 4 in the draft legislation as it needs to read just as in accordance with Ohio Revised Code provisions. He said his law firm is giving the city preferential rates as compared to other municipalities.

G. Fisher explained the Prosecutors' salaries are established by separate ordinance (Ordinance 2010-5), so they would have to amend that ordinance if they combine those salaries in this draft legislation. K. Stumphauzer agreed and noted that nobody in his department has had a raise in eight years. G. Fisher said if the law director retires, then the Mayor has to appoint somebody

new, so Council would have to draft new legislation to appoint a new law director. K. Stumphauzer concurred.

M. Stark asked if it was the Prosecutor's choice to work less hours. K. Stumphauzer said he wanted two Prosecutors because what happens if somebody is sick or conflicted. He said it's easier to split the time up. M. Stark referred back to the \$175 hourly rate that is currently in place per ordinance, but questioned the higher amount that has been being paid. K. Stumphauzer said there was a motion passed when S. Holovacs was on Council last to increase the rates that are reflected in the new ordinance. G. Fisher said technically they have an ordinance from the beginning of the year that authorizes the \$175 hourly rate, so Council would have to amend this. K. Stumphauzer said the \$175 that was passed at the beginning of the year was less than what he was making as of December 31, 2017. There was a motion that granted the increase. *NOTE: G. Fisher researched the motion after the meeting and found that on November 2, 2015 a motion was approved by council to increase the attorney fees for environmental matters to \$300 per hour, and \$250 per hour for litigation matters.*

M. Stark said the correspondence sent to council by the law director indicates the Paralegal works 20 hours a week, but with the pay amount that was sent to council by the finance director it looks as though she may work 21 hours per week throughout the year. Back in 2015, it had been noted by the law director that he was looking for somebody around 10 hours per week, so she wanted to know if this individual will stay at 20 hours per week. K. Stumphauzer said because of Marsy's Law it requires additional hours.

City Council asked the law director to provide the amendments as directed and to put them on for a first reading at next week's Council meeting.

**TOPIC FOUR:        Chapter 1042.04 – Stormwater Infiltration (Draft Legislation)**

K. Stumphauzer explained the service director wanted additional language incorporated into the current ordinance. He said the current ordinance is vague as it relates to the responsibility of someone that has a sanitary being infiltrated by stormwater. The proposed language is: Any private sanitary lateral that permits, allows, or causes for any reason the infiltration of stormwater, should be repaired or replaced by the owner at the owner's expense within 180 days of the date of discovery. He said Council can choose to change the time limit. S. Holovacs asked the city engineer if other cities do something different than this. C. Howard said the issue as the code is written currently, is that it's very unclear of where the city's responsibility starts and where the property owner's responsibility starts. He said the main line is the City and everything from the main line to the residential lateral is the property owner's responsibility. He was okay with a six month time limit. He said if the EPA requirement pertains to whether a sanitary sewer that is installed within 200 feet of the front of your home, then he would give 90 days to tie in.

J. Gabriel said they need to be careful about making the time limit too short because getting contractors who are seasonal could be difficult. He wouldn't hit somebody with a 60 day time limit because they may not be able to find somebody to do the work within this timeframe.

B. Brady said where the lateral comes into the main is bad, so they're saying it's the homeowners responsibility? C. Howard said there needs to be a definition of where that responsibility lies.

B. Brady said they lined those, but didn't put top hats in and didn't secure those connections, so if that's bad you're going to hold the homeowner responsible? That doesn't seem quite fair. C. Howard said this is an issue that needs direction as to where the responsibility starts for the homeowner. He said some in some cities the responsibilities are within the right of way, so the lateral to the cleanout would be the city's responsibility and the from the cleanout which is usually at the right of way will be the private homeowners responsibility. He said in new subdivisions they have to put a cleanout at the right of way. Right now the code says the main line, so they need clarification. J. Gabriel said what happens if it crosses the entire street. That's not right and now the homeowner has to dig through the city property and fix it all the way to the other side of the street? He would think right from the property line. M. Stark asked if the engineer could review some legislation from other municipalities and come back to council with some suggestions. C. Howard will let the clerk know when he has the information compiled so it can be put on a committee in the near future.

M. Stark adjourned the meeting after no further business was discussed.

Next meeting: May 14, 2018 @ 7p.m. – Vermilion Municipal Complex, 687 Decatur Street, Vermilion, OH

Gwen Fisher, Certified Municipal Clerk (CMC)