

LEGISLATIVE COMMITTEE MINUTES
OF MARCH 12, 2018

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

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

Administration:
Jim Forthofer, Mayor; Tony Valerius, Service Director; Chris Howard, City Engineer; Chris Hartung, Police Chief; Amy Hendricks, Finance Director.

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

TOPIC ONE: **Amend Chapter 1030.09 – Grades on Dedicated Streets**

C. Howard explained the ordinance as it exists, states the city charges \$400.00 per grade, so if somebody is building a new house they submit a plan and pay a \$400.00 fee. The builder is required to submit an 'as build' of the final grade. They require in most of the cities they work in a plot plan review and they perform a foundation check to verify they build the house in the location and at the height as proposed before they start framing. If they have a problem with a house, then it's the time to catch it. They also do a final grade check. He said they charge \$125 for the plot plan review, \$150 for the foundation check, and \$150 for the final grade, so it's \$425.00. If the final grade is rejected then the builder has to pay another \$150 fee until it's fixed, so it's putting the burden back on the builder.

S. Herron MOVED; B. Brady seconded to have legislation referred to council for a first reading to amend Chapter 1030.09 as described. Roll Call Vote 6 YEAS. **MOTION CARRIED.**

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

S. Herron explained these two ordinances deal with two sections of the Charter; first one talking about the duties and powers of the Mayor. (Article IV – Section 4) paragraph two states the Mayor exercises control over all departments and divisions of the city. However, Article V – Section V-1. General Provisions under Administrative Departments states that basically with the exception of Department of Public Safety, Service, Finance, and Law, that Council may abolish departments or divisions and may combine departments or divisions as it may deem necessary and may authorize one person to be the head of two or more of such departments or divisions. He said last year the Clerk of Council was approached and undertook the duties of the Boards and Commissions, as the former clerk retired. This saved the City around \$52,000; maybe more because the city didn't have to pay for the benefits. The Clerk of Council took over this position for \$8,000 a year or so ago. The Clerk noted she took over in 2016. This ordinance would put the job of covering Boards and Commissions under the Council Clerk which is under the auspices of City Council. He sees this as two conflicting parts of the Charter and City Council can vote on these ordinances. Should the Mayor wish to veto, then it's within the power of the Mayor and it would then go back to Council for a possible override. He asked everyone to keep

in mind that both positions are very legitimate and both sections of the Charter are pretty straight forward, so if for some reason there is a disagreement, everyone should understand they have a pretty good argument. Both sides in this situation frankly have no clear answer. He would tend to believe they need to resolve this. If Council isn't inclined to resolve this by the end of the March and wants to think about it then they should have an understanding that everything would stay the same with the administration until this is resolved. He said the ordinances seek to do what he thinks Council feels they can do, which is to blend a position. He said there is an opposing side to that because if the Mayor is under the Charter he exercises control over all departments and divisions, so can Council do that is really the issue. If the Mayor exercises control over all divisions it's just a competing thing all he is saying. He said the ordinances are being enacted, but they relate to basic fundamental powers of the Charter which gives one to Council and one to the Mayor.

J. Gabriel said in his curiosity in light of the additional information under Article V, what is the law director's opinion on both sections of the Charter. S. Herron said they need to hear from him next week at the council meeting. M. Stark asked if they could have another Legislative meeting prior to the third reading of these ordinances and G. Fisher said Council can put a special meeting on the Council meeting of February 26 if needed. J. Gabriel suggested tabling this ordinance until they can hear from the law director. G. Fisher reminded him the law director will be in attendance at the next council meeting when the ordinances are up for a second reading, so there would be no need to table at this point until they hear from the law director. S. Herron said it would be ideal to have the third reading by the time Council adopts the budget because it does impact the budget. S. Holovacs referred to the Assistant Clerk of Council in the proposed ordinance by saying they could enact this section, knowing that physically it may not happen because they don't have the money, but down the road they may have the money and at least it's on the books.

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

M. Stark acknowledged that council was in receipt of draft legislation from the law director's firm. S. Herron said it seems to be a substantial change from what council had drafted, but he knows the law, so maybe council should propose his ordinance because they are dealing with a lot of First Amendment issues and they want to be careful on whatever they enact.

B. Holmes asked Chief Hartung if he was good with the changes and Chief Hartung said he put his two cents in which he feels were addressed in the draft legislation. G. Fisher said that Frank Loucka let her know that he was good with the draft as submitted by the law department.

Mayor Forthofer asked council to possibly review the hours of which soliciting can be conducted. Currently, it is until 9:00 p.m. which seems a little late. S. Herron agreed it was late and B. Holmes said it's past bed time for some. M. Stark addressed Section 860.06 as it states that all business done under a license issued by virtue of this chapter shall be conducted between the hours of 9:00 a.m. and sunset Monday to Saturday, and in no cases later than 9:00 p.m. No business shall be conducted on Sunday and no such person shall canvass on any legal State or Federal Holiday. B. Brady suggested 8:00 p.m. and S. Herron and J. Gabriel were both good with 7:00 p.m. B. Brady asked if the rules are just for the people who have to get permits and would political be bound by the canvassing rules.

B. Holmes said if they change the time to 7:00 p.m. then they would need to take out the word sunset or just stick with sunset. S. Herron said they could say sunset or 8:00 p.m. C. Hartung said usually when the law department puts something in the ordinance there's probably a piece of litigation that goes back to restricting hours because many people don't get home until 5:00 p.m. and may not feel they have enough time, and may feel the laws are infringing on their First Amendment rights. He feels they should ask the law director first. M. Stark said they can take this section to the law director. She also addressed the fact that no business can be conducted on Sunday or a legal State or Federal Holiday. She said political is done a lot on Sundays. B. Holmes believed this goes along with what C. Hartung said pertaining to First Amendment rights.

Homer Taft of Edgewater Drive said he's an attorney and feels the city would have an extreme problem with the ordinance being thrown out if they restrict political speech or the right of petition and assembly, which would include restricting circulating petitions or religious activity. If they did it before dark and it was winter then he feels this would be too restrictive. Sunday's and Holidays would be too restrictive as well and he thinks it would be easily struck down. S. Herron asked if its content neutral would it be okay. When they put a restriction on any First Amendment activity and they're not addressing the content of it; so for example if they are pointing out a religious belief or drawing a difference between a religious person and a political person, does he think they are okay. Homer Taft said no because constitutional law requires the whole area of speech; commercial activity of speech and you can only restrict speech if you have a compelling government interest in doing so. He thinks they have to walk on egg shells the whole way. In addition, the Federal Courts have generally held that certain kinds of speech; namely religious speech which is mentioned in the Constitution and political speech in the like, are particularly suspect if they are restricted. He thinks for example, if you say that you can't do anything political on July 4 or Sunday, you're done! Mayor Forthofer thought religious and political were exempt. M. Stark said from the way the ordinance reads, they are exempt from having to get permits, but doesn't know if that exempts them from everything else. They asked for the law director to provide answers to the items in question.

TOPIC FOUR: Medical Marijuana (Draft Legislation)

M. Stark acknowledged receipt of draft legislation from the law department which would enact New Chapter 1292, entitled "Medical Marijuana". She said it talks about how Substitute House Bill No. 523 passed by the 131st Ohio General Assembly was signed by Governor John Kasich on June 9, 2016, which authorizes the use of marijuana for medical purposes and establishes the Ohio Medical Marijuana Control Program. This program will be fully operational no later than September 8, 2018, at which point facilities for cultivation, processing, testing, and dispensing medical marijuana will be operational throughout the state, and Ohio Revised Code Section 3796.29 authorizes the legislative authority of a municipal corporation to prohibit cultivators, processors, and retail dispensaries within the said municipal corporation. She said the ordinance also states that this Council has determined it to be in the best interest of the City and its residents to prohibit the cultivation, processing, or dispensing of marijuana for medical purposes in any form within the city. She asked if this ordinance has been forwarded to the Planning Commission for a report and recommendation. G. Fisher said she has not until she knows if Council is in favor of this ordinance. M. Stark said a public hearing would also need to be scheduled if this is council's desire to move forward. She also addressed Section 1292.02 Prohibited Activities as it states: All Medical Marijuana Entities, excluding Testing Laboratories, are prohibited in all zoning districts in the City of Vermilion. Testing Laboratories

are permitted only in a state university, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity in accordance with state law.” She said it seems the City cannot prohibit testing laboratories, but they have to be permitted in a certain entity.

J. Gabriel said this is a topic the state has found to be legal; cultivation and growth of medical marijuana, which in his opinion he’s not all that familiar with, other than suspecting it would be a cost alternative to pain treatment for folks who are struggling. In light of the opiate epidemic, they will feel the financial crush from the cost of policing it. He’s looking at the fact that the state has said it’s legal and as a group they have listed their third most important goal as business friendly. Therefore, he would caution council’s thoughts and open their minds to say, that if somebody was to come to Vermilion and grow medical marijuana, it would have to be prescribed by a physician. Also he pointed out that it would bring tax dollars and jobs and health care for families, which are things they seek, especially since the city is struggling for income. He wants to make sure they don’t throw the bassinet out before the baby is born. He said if other cities are allowing them and Vermilion is saying no they aren’t going to do this; then this is the part they need to be looking at. He would hate Vermilion to miss an opportunity. He knows because it has the word ‘marijuana’ in it, which he didn’t want to give people the wrong impression that he is pro-marijuana, but he is pro-business and pro-jobs. If those two things can be accomplished then he would like them to at least give it an honest thought.

S. Holovacs said there is a facility going up in Huron on Rye Beach Road right now, so if they don’t think it’s not going to be around here, it is. He agrees with Councilman Gabriel that they need to look at the jobs and tax dollars because that’s one thing Vermilion is hurting on.

S. Herron agreed with both J. Gabriel and S. Holovacs. However, the State of Ohio has failed miserably with the growing and cultivation of medical marijuana. It’s a legitimate business, but it’s extremely difficult to run and there are not a lot of regulations. He said there is a big issue coming up on the ballot in November for the State Constitution. He has always felt they should simply enact these ordinances to prohibit just for short periods of time, so the state can get its act together and they can find out what is going to happen with this amendment to the State Constitution because having talking to the gentleman in Oberlin who got that license; first of all the people that are doing this are having an extremely difficult time getting financing. If you finance it and you’re FDIC, then you’re basically financing a drug that’s illegal in other states. The business is not exactly solid right now, so he thinks Vermilion should prohibit it for another six months until they see what happens. Philosophically he is not opposed to it because they need to compete in the region and the people have spoken, and medical marijuana is legitimate and philosophically he considers medical marijuana to be a very legitimate and a good alternative to the other forms of pain management, so in the future they may not want to be afraid of the word ‘marijuana’ and they need to compete, but right now he doesn’t think it’s the right time to get into that because he feels they will see a lot of chaos until it gets straightened out.

G. Fisher reminded council the moratorium on the distribution of sale of medical marijuana expires May 6, 2018, so council could put it back on the books for another six months. J. Gabriel asked if the moratorium is the same legislation that they will be extending further or is it additional legislation. M. Stark said it’s very similar legislation and if council’s desires they can put another moratorium on the books for another six months after the present legislation expires. S. Herron said if council enacts this proposed legislation than it would be permanent.

G. Fisher said she could put another moratorium on the agenda prior to the current legislation expiring and council can decide at that point to adopt it.

S. Holovacs asked Chief Hartung if the courts and the laws have backed off on small amounts of marijuana. Chief Hartung said it used to be if you had possession of marijuana you would get a six month driver's license suspension, and they since have removed that. He said in Huron this is a very divisive issue and they have a community that is split down the middle; not so much on the issue of cultivation and the amount of revenue it will bring in, but when the dispensary came up they wanted to use the old Burger King building off Rye Beach. When they do address this depending on the constitutional issue it will be a very divisive issue, but it's the sign of the times.

J. Gabriel said to be clear they can merge these two ordinances and bring it into one, because they would have to do something about the zoning. There will be more work than welcoming it because you would have to say where it's permitted and how it's defined in the zoning code. He doesn't want to prohibit everything right now. B. Brady asked if it would fit under an agricultural zoning and J. Gabriel said they could do it as a conditional use out there.

Chief Hartung said his brother is running as a Democrat for the Erie County Commissioner race, so he is sure he would come before council to explain the dispensary and cultivation process, and what kind of revenue projections they are looking at. S. Herron said maybe they should consider this in May.

Next meeting: April 9, 2018 @ 7pm – Vermilion Municipal Complex, 687 Decatur Street, Vermilion, OH

Gwen Fisher, Certified Municipal Clerk (CMC)