

LEGISLATIVE COMMITTEE MINUTES
OF NOVEMBER 9, 2020

Municipal Council of the City of Vermilion
VIA ZOOM

In Attendance: **Vermilion City Council:**
Steve Herron, President of Council; Monica Stark, Council at Large; Frank Loucka, Ward Two; Steve Holoavcs, Ward Three; Barb Brady, Ward Four; Brian Holmes, Ward Five. Absent: Emily Skahen, Ward One

Administration:
Jim Forthofer, Mayor; Chris Howard, City Engineer; Amy Hendricks, Finance Director; Tony Valerius, Service 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: **Review of Ordinance 2020-30 (Chapter 618 ‘Animals’)**

M. Stark noted the law department submitted revisions to Ordinance 2020-30 and she felt it was a good ordinance. She said they added a minor misdemeanor for the first offense and for each subsequent offense, such person shall be guilty of a misdemeanor of the fourth degree.

F. Loucka said he totally agrees with the latest revision and felt Council should move forward with the third reading.

Homer Taft of 3972 Edgewater Drive assumed the ordinance was the same that he has seen, whereas, in Section 2 it prohibits the owner from allowing escape, except when the dog is lawfully engaged in hunting. G. Fisher said the latest version of the ordinance she emailed him last week is the same ordinance they are reviewing. H. Taft thought council was mistaken and didn't feel this was a good ordinance because what they're trying to do is have a dog under restraint so it can't attack other dogs and people particularly when it's in a public place. This says nothing about this. Furthermore, it says – except when they are hunting. If they are not on private property, then what are they doing hunting. You do not want them hunting on city streets, so he thinks this is misdirected in subsection 2. He thinks it would be better to say that if it's on or enters a public right of way, keep the dog from approaching other persons or animals more than six feet from the owner or more than 10 feet in any other circumstance. He said they are really dealing with three things – 1. If they are on their own property. 2. Not allowing them to trespass on other people's property. 3. Having them so they cannot in an unfriendly manner

approach others. Not that they cannot escape, but they cannot attack. He does not think subsection 2 is properly written and he did not think they should include anything about the exception for hunting. If they are downtown with the dog, then they should not be hunting.

G. Fisher pointed out with regards to the hunting issue, that per Attorney Susan Anderson she stated that since state law allows an exception for hunting, removing that exception from the ordinance sets up a home rule question of whether the city can prohibit what state law allows. H. Taft believed it does not allow it on public property and that is the point.

H. Taft asked what the emergency was. Quite frankly if something has been discussed this long, then it can wait another 30 days in case people want to raise a ruckus about it and he feels they should respect that.

B. Brady said the wording has always been uncomfortable to her, but she does not know how to word it better. M. Stark said they need to remember that ordinances can always be a work in progress. They can always revise ordinances on the books if they desire.

S. Herron said he has looked at this topic several times and it has been in discussion for quite a while. He said it involves them having to not overstep state law. Essentially, the terminology for not letting the dog escape is the obligation everybody has under the civil law which is to control your dog. A dog may escape and still cause problems, even though it is not attacking somebody. Therefore, he believes the language is worded correctly. He agreed with the law department that it goes with state law. It is their responsibility not to let ordinances encroach on state law. He said he doesn't see the need for an emergency, so if council would like to remove the emergency clause and wait an additional 30 days that's fine, but this has been in public discussion for a long time.

G. Fisher said they do include the emergency clause in most of the ordinances. However, Council can choose at any time to not declare an ordinance as an emergency, and they can simply strike the emergency clause.

F. Loucka MOVED, S. Holovacs seconded to put Ordinance 2020-30 back on the Council agenda on November 16 for a third reading. Roll Call Vote 6 YEAS. **MOTION CARRIED**.

TOPIC TWO: Transient Rentals (Review of Ordinance 2020-44)

M. Stark addressed Section 873.01 Definitions (a) Transient accommodation means every establishment kept, used, maintained, advertised or held out to the public to

be a place where sleeping accommodations are offered to guests in which four (4) or less rooms are used for the accommodation of such guests, whether such rooms are in one (1) or several structures. She said there are homes in Vermilion that have more than four (4) bedrooms and there could be homes that have five or six bedrooms, so she suggested removing the four (4) or less rooms and make it read: sleeping accommodations are offered to guests in which rooms are used for the accommodation of such guests... G. Fisher said she brought this issue up with one of the transient subcommittee members and he agreed they should leave out the number of rooms, so she would agree with Monica's suggested language. S. Herron agreed this is a wise move because they want to treat everyone equally as they do not want to narrow down to a smaller structure.

B. Brady addressed Section 873.01 (b) as it states the accommodation is rented primarily to transient guests. What do they mean by primarily? M. Stark said they could remove 'primarily'. S. Herron said the advantage of the term primarily is that it relates to the purpose of the rent. If you have a guest, the last thing you want to do is over apply. They are there to get people to pay for over a period, so he would keep the word primarily, but if others think its overkill, then it is fine too. B. Brady said primarily means you use it more for rental than anything else, so a home you rent for five months would not be a primary rental. She said if they just say rented, it is intended for somebody that is paying rent. M. Stark said it is saying rented primarily to transient guests for a period of less than 30 consecutive days. She said some people rent their homes all year long to different guests. S. Herron said it does not take away from the word rent, so he thinks removing it would be fine. M. Stark did not think it would change the paragraph whether you have the word in there or not. H. Taft said he opposes this ordinance, but if they do not define transient, you are asking for a massive lawsuit on an ordinance that is not affective. He said the City of Sandusky went through this big fight and they must define what they mean by transient. He said they do not mean 30 days; they mean a month because anybody that rents month to month will be in violation of the ordinance because February does not have 30 days. They want to define what they mean by transient and if they fail to define it, then your ordinance will fail. M. Stark suggested they leave the word 'primarily' in the ordinance for now.

M. Stark addressed Section 873.05 Conditional Use Required – subsection 4 (c) where it addresses parking. She said the parking defines one 9' x 18' all weather (asphalt, concrete, or crushed stone) parking space shall be provided for each two persons of occupancy or per bedroom, whichever is greater. She said she has six kids and if they traveled this would be a problem for her, so she suggested they change the wording to two adults of occupancy, so it does not include minors. S. Herron suggested 'licensed drivers or licensed drivers who are 18 years of age or older, or 21 years of age. He said they need some limitations. S. Holovacs said they allow off street parking, so if that residence does not have it the city does.

Secondly, the parking area needs to be hard-surfaced and crushed stone is not hard-surface. Do they allow this? T. Valerius said stone driveways are allowed in the RS zoning district, which is special residence. G. Fisher suggested looking to see if Airbnb/VRBO has age limitation rules established on renting. B. Brady asked if they could just limit the number of cars to how many parking spots are available.

Homer Taft thought M. Stark nailed it by saying ‘adults’, and they could say 16 years of age as a licensed driver, or the number of parking spots, which could also be based on the number of bedrooms. There could be places with five bedrooms that do not have enough parking, so he is not sure this would work. He said although street parking is allowed, he is not sure if 24-hour parking is allowed in front of other people. They could stipulate that parking must be in front of their premise. S. Holovacs said off street parking is allowed, and you can park in front of someone’s house. He said the other issue to think about is the winter parking ban. Captain Graham said they are not allowed to park on a curb less street. G. Fisher noted that most rentals establish their parking based on their availability, and most owners state this in their rental agreement by defining how many spaces are available, and list options for additional parking, if any.

M. Stark said somebody had commented that the reason why council is putting legislation on the books is due to one rental in Vermilion. She assured everyone that she has taken many phone calls from residents who have Airbnb’s or deal with neighbors who have Airbnb’s that deal with parking issues. She said she will work on some revised language for parking and will forward it to the clerk.

B. Holmes asked how other municipalities word this and asked how this is working for them since they cannot get it to work for Vermilion. M. Stark said they modeled their ordinance off the City of Huron, and they are tweaking it.

Bart Barna of 836 Gardiner said M. Stark had said that when she goes on vacation she goes with her kids, but when he goes on vacation he rents a lot of Airbnb’s and they rent a van with other adults, so it’s not like everyone is bringing a lot of vehicles. They must remember that Vermilion is a vacation/tourist town, so they do not want to hinder anyone from having a transient rental. He said this is the future more than hotels, so they want to make sure that they are trying to have these. He indicated that he is against this ordinance as it hinders and deters people from having this. He realizes neighbors may not be happy with it, but at the end of the day it’s their property and the city should find ways to make sure they can do what they want with their property within means. He said the party house rules and other things in the ordinance are already state laws and city laws, so they do not need to put these regulations in the ordinance. No one who is renting their house wants anyone to throw a big outrageous party. He said VRBO/Airbnb’s all have big rules in place, so it protects the property, and there are reviews on the

owner/tenants. He wants to make sure the city isn't making too many rules that will deter people from having these transient rentals that bring people in to our great community that spend their money and help the city with their tax dollars. He said just to make a couple hundred dollars in permit fees may cost the city thousands in revenue.

S. Herron said they do not have the authority to limit parking on off-street parking. However, if there is a limitation on parking it probably will be determined on what they have available as suggested by B. Brady. He said at the end of day it really comes down to the consumer. He said this is not to have too many rules and he is glad people are coming forward and picking the ordinance apart because property use is critical. He said they don't have the ability to monitor safety of this structure and who are the responsible people in the structure, and what is going on there. This does not relate to privacy issues as much as safety issues with people. He said there is an unfortunate underground of predators and they use properties in a secretive way, and it is not appropriate or legal. He said law enforcement can have that tool to obtain names and find ways to investigate and to make sure that everybody is doing the right thing. The city cannot allow the safety of the people who come into Vermilion in an Airbnb to have a less safe environment they would have at a hotel. There is a lot of state laws and if they are inconsistent then he wants to know about it. He does not think they are asking too much of these owners to comply with safety mandates and inspections, and to find out who was there that weekend. He said to him his is non-negotiable in this day and age.

G. Fisher asked if the subcommittee ever reviewed any of the Airbnb or VRBO rules. M. Stark said they did not. G. Fisher said she would pull the rules, if any, for council. M. Stark said she would rework the parking language.

M. Stark addressed Section 873.05 (f) where it states: All abutting property owners have been notified by certified mail, (proof submitted) of the proposed use as a Transient Accommodation. G. Fisher explained this section could be eliminated as the Zoning Board of Appeals does not require this type of notification. If you're applying to the BZA, a sign is put in place of that property notifying the public of the variance request, and in the application process there is a sheet where applicants are encouraged to notify all neighboring property owners within 100' and inside city limits of the intent of the variance. She explained that she notifies property owners on rezoning requests within 300' by certified mail, but not in this instance. Therefore, she suggested removing (f) from this legislation. M. Stark agreed they should eliminate (f).

M. Stark reiterated that Section 873.10 of the ordinance is non-applicable to Hotels, Motels and Bed and Breakfasts in Business Zones and the provisions of the conditional use permit and permit process for Transient Accommodation shall not

apply to legally permitted uses with certificates of occupancy issues for hotels, motels and bed and breakfast inns in business zones with onsite management. They still shall comply with the annual life and safety inspection requirement and will pay an annual fee for such inspection.

Drew Werley was surprised that one person was kicked out of the zoom meeting since this is a public body holding an open meeting. He addressed the ordinance and said he joked with Steve Herron a couple meetings ago that Council wanted government oversight with this, and they did not prove him wrong. There are a lot of things he feels about the ordinance that are over the top. He said when they went into non-negotiable and wanting to know who people are and where they are coming from, and what they are doing – he said the Fourth Amendment is non-negotiable – you have no right to that information, nor will this ordinance give you that, so he wishes they would quit bringing that up. He said they are trying to limit property rights like crazy with how many people that are allowed to be on the property – it's two people per bedroom, so if he has a two bedroom cottage that he is renting out, the maximum occupancy that can be on that property is four, so you couldn't be visiting Mom and Dad somewhere or they can't come over and visit you or come over for sit down or a cookout? He thinks this is overreaching – or maybe he should reword – maybe they are afraid that Grandma and Grandpa are going to turn into a party house. He said he spoke with several members of the law enforcement in Vermilion, including Captain Graham earlier today, and none of the people he talked to could recall an incident involving transient accommodations or a short-term rental, or an Airbnb. He said they talk about traffic congestion and he doubts this is done by Airbnb's. He thought it was bad when they upped the fee from \$100 to \$400 and now down to \$200, and now they have to go before the BZA as well, which is another \$100, unless he is mistaken on that, plus the cost of certified mail of letting your neighbors know. He thinks this is silly as well. He was surprised when he saw a copy of the proposed ordinance as it is far overreaching then he could have ever imagined. He is 100 percent against this as well as limiting this public meeting.

Homer Taft said he is largely opposed to this ordinance and if this ordinance is passed, he thinks it needs to have a great deal of thought. He asked why this is an emergency and with the greatest regard to the Clerk of Council he will say that it is generally inappropriate and improper in his view to make all ordinances emergencies. It takes two-thirds of council to make it an emergency and it goes into effect immediately, but it also by law deprives the citizens of the right of referendum that is guaranteed to them by the Ohio Constitutional, so every time you're voting for it, you're saying you have good cause to deny the citizens the right to referendum. He does not think they should be doing this very often and he surely did not think they should when there is opposition to an ordinance. Let folks have their 30 days to petition for referendum. Secondly, he thinks most of this

is motivated by Erie Shores and Islands and by some that want double taxation. You want to have the bed tax both for Erie County and the city put on these and you want that in addition to the fact that they're obligated to pay income taxes to the city on this income. Indeed if they didn't, they would not only be in violation of state law and felony, but federal law and felony, and you're going to know that because RITA gets a report of the income filed by with the IRS. He feels this is a tax ordinance hiding as a welfare and safety ordinance. Thirdly, it does not solve most of the problems complained of and there have not been one public or many complaints about Airbnb's. He agrees with B. Barna as the city is killing the Golden Goose. This is a vacation town, and you do not want to make it so difficult that people cannot have rentals here and stimulate the economy. He has experienced problems from other homeowners – not Airbnb's; people who are renters, people who are homeowners – big parties, noxious fumes, terrible noise, and in cases to his knowledge when they have illegal fires they do not enforce the laws against folks, but they say they are going to regulate the heck out of the Airbnb crowd, but not the rest of them. He pointed out that the 30-day thing should be a month and it should be fewer than eight days, but less than 28 days. He said many communities prohibit parking on any street between 2am and 5am. He thinks they need to look at the cost of compliance. He suggested charging \$100 and \$50 for reinspection, and if this is not enough then they can increase it. He suggested giving people the chance to apply to see how this works. As referenced by the finance director the city gets a fair amount of bed tax and this also helps pay for it. He said the fees with BZA could make this pricey. He said they do not define a party house; they are limiting it to persons in occupancy. He said Councilwoman Stark made reference to the fact that she has a bunch of kids, so if you limit it to two per bedroom, then there is a lot of places where they cannot come. He said they have made this non-transferrable and he does not understand why, and they require a placard, which he refers to it as a 'Red Badge of Shame'. He said if it is revoked, they cannot rent at all, which he thinks is a denial of property rights. He heard talk about the penalty and would suggest if they do not get a permit for the first year it is effective, the penalty for non-compliance should be \$500. This will help pay for enforcement.

Bart Barna thanked council for working hard on this and apologized for not coming sooner. He ran this ordinance by a lot of his friends that rent transient rentals, so this is not him speaking for himself, but for others. He said Vermilion is a vacation tourist town and he wants to make sure emergency votes should be the exception and not the rule. He hopes this common place is something they change and make it the exception. He said obviously with COVID if something needs to be addressed right now it is for the health, safety, and financial aspect of the city. He said they need to stop making laws for one instance. He addressed the 'Red Badge of Shame' that Mr. Taft spoke of and said the visual display permits are counterproductive. What good does this do besides burden the owner, and furthermore it would signal

the criminals that the property may be empty half of the time, or worse yet it would allow the criminals to target victims that are unfamiliar with the home they are in or the area. So, putting this sign up in front of somebody's home is very counterproductive. He said this appears to be more government dictating how property owners can use their property. More fees are incurred by the owner with no guarantee of approval even if all laws and guidelines are met. There are no guarantees there – it is the choice of the board that day, so he strongly is against the conditional use permit and the whole ordinance, but the conditional use permit should definitely be thrown out. He said the city should not make the people jump through so many hoops. Make it so you are getting your point across, but do not make it so hard that you are making them deter what they want to do with their property. The fees in general – why do you need these fees? Has the city incurred big expenses that are warranted? Have transient rentals made something go up as to why they need these fees, or is this just finding an opportunity to get some extra money because they have people making extra money on their property?

M. Stark asked council if they felt it would benefit them by holding a work session on this topic to review it more. She said they can table the third reading next week. She said some concerns raised were about limiting people who are sleeping there, not people who are coming to visit. They discussed the city is not going to pay for certified mail and they would put the BZA sign in front of the property. She said Erie Shores and Islands has nothing to do with this legislation whatsoever and council has not heard a thing from them, nor have they been involved in this legislation. S. Herron said he does not have a problem with a work session, but as a reality check the right of referendum has absolutely nothing to do with declaring an ordinance an emergency. He said declaring an emergency simply allows the ordinance to go into effect within 30 days. Absolutely under no circumstance does the right of person's referendum is stopped by this. It is a little bit odd when he hears that the City wants to double tax them, but then what is the cost of enforcement. This answers the question and makes the argument stronger that they should have a reasonable fee put on the homeowner. He did not think the placard is needed and felt the argument was valid, so he did not have a problem throwing this out. He explained this ordinance has nothing to do with the Fourth Amendment – the Fourth Amendment relates to unreasonable searches and seizures, so this was an inapplicable statement. He said for him it comes down to safety and law enforcement to find out who is in an area at a certain time.

F. Loucka said someone is running a business and agrees there should be a conditional use permit because it's not permitted in residential zoning, so they need to apply because they are running a business in a residential area.

G. Fisher said she will work with the President of Council to come up with a date for a work session.

S. Herron MOVED, S. Holovacs seconded to table the third reading of Ordinance 2020-44. Roll Call Vote 6 YEAS. **MOTION CARRIED**.

S. Holovacs adjourned the meeting upon no further discussion.

Next meeting: December 14, 2020 – Time and Location to be determined

Transcribed by:
Gwen Fisher, Certified Municipal Clerk (CMC)