

LEGISLATIVE COMMITTEE MINUTES

May 10, 2021 @ 6:00 p.m.

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

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

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: **Draft Legislation – Prohibiting Storage Unit Facilities (Vermilion Call to Action)**

M. Stark said a group of citizens are working on getting an ordinance on the ballot this November to prohibit storage units.

B. Brady was interested to see if somebody could compare the two ordinances and see how it is different than the one that is presently in front of Council.

Bill McCourt of 4135 Menlo Park Lane said he represents the Vermilion Call to Action group, and he is substituting for Homer Taft who could not attend the meeting. Essentially, what differentiates their proposed ordinance and Ordinance 2021-4 is that their ordinance seems to prohibit storage units in residential and business districts. The clear definition of storage units which eliminates confusion clarifying permitted use or conditional use and eliminating zoning by variance on this topic. This started in October when many citizens were particularly concerned about a proposed storage unit facility and council addressed that issue twice and determined it was not acceptable, which they appreciate. However, it still left the door open for additional attempts to take advantage of clarity in the existing codified ordinances, and the different definition of permitted use. This ordinance seems to clarify that. One of the major concerns is that since they are boating community, this ordinance does not seem to ban boat storage or areas that are currently designed for boat and RV storage. As far as how it contrasts with Ordinance 2021-4, temporary storage units are really the focal point, and they really are not doing anything with respect to 2021-4. It is their opinion that 2021-4 is

unnecessary as the whole topic is already covered under existing ordinances. They just need to be enforced.

B. Holmes said regarding his statement on boat storage, how would the ordinance differentiate between regular storage and boat storage. Is it the size of the building or is it the variance to ask for a building for boats only? He asked if the Vermilion Call to Action group would be okay with this because he gets a lot of questions about this. B. McCourt said this is one area that council in their wisdom can adjust their current proposal. However, they are saying that essentially, they want to ban individual units that are not temporary. For example, if you were to build a large building and house 100 boats for six months or less – this type of business would not be addressed by their proposal. On the other hand, if they were to build a big building and subdivide that building into smaller units that you put out for rent on a monthly annual basis those would be banned. Under that same definition, it would ban condominium type arrangements for boat storage. General storage in a large building for boats or RVs would not be banned.

E. Skahen asked what he would consider Parson's storage on Douglas. B. McCourt said this does not fit into the B-3 zoning. It is already properly zoned. Anything that is properly zoned is not affected by this. They are trying to eliminate zoning by variance, and they want to make clear what the definition of permitted use is.

S. Herron said one of the problems he has is they have in place a zoning board and laws, and ways for people to come in – they have seen this twice over the last six or seven months with respect to hearings, and they have handled this on a case-by-case basis. They have people that are appointed by the administration to let people have their say for a legitimate business. To ask council to say no for the time being and to put a big stamp on it by saying no way, this is a little bit not their job in a sense. He is trying to balance out land use in America. B. McCourt said this was a fair point and in a previous meeting he said he was pro-business. He wants to see the east corridor developed as much as the mayor does and anyone else does in the city – conforming businesses. The original situation that brought a lot of people together who said they did not want it was back in October with Mr. Sommer and his project proposal. This was thankfully addressed in Council. He said it should never have gotten to Council in his opinion. Additionally, they had a Board of Zoning Appeals meeting a week ago where Mr. Douzos wanted to take a piece of B-3 zoned property and put storage facilities on that property. Again, he does not have a problem with storage facilities, but he has a problem that it is not conforming; it is not a permitted use, and it is not a conditional use by any stretch of the imagination. It was not passed in BZA because the final vote was 2-2, with an abstention. It was close. There were residents that were responding and who were unhappy with this proposal and he thinks they need to be heard, which is one of

the reasons they have a petition drive going to put this on the ballot to let everyone vote on it, or if would council take it up and do it, then that would be okay too.

B. Brady feels they go to BZA due to hardship. Their decisions are based on hardship and sometimes that is tough. Just because you have a piece of land it is not a hardship that you cannot build what you want to do. Our code decides what you are allowed to put on there. So, maybe if these ordinances are uncomfortable with people, then maybe they should look at what the definition is of what they put in a B-3 district and have a little more firmness. They can control it in different ways, or they can redefine what is presented in each zoning, which may be another option. She said the BZA's job is hardship, and she does not think anything put before them or Planning is really a hardship. It is just a piece of property that someone could not sell for what they wanted to sell it for or wanted to build something that was not permitted on it. She said this is a balancing act and maybe this is part of the zoning the mayor is talking about that will help solve this.

B. McCourt said he understands the mayor has proposed the project to do rezoning and he would support that issue.

Mayor Forthofer agreed with Councilwoman Brady about the definitions, which plays into a later discussion, but he clarified that Council rejected the rezoning of a parcel of land and not the business.

S. Herron said while they are looking at ordinances, he wanted to address concerns about making an ordinance that says you just cannot do this with your property. Their job is to make ordinances, but to just have an ordinance to say no and control land use to an extent he has problems with it. He doesn't disagree with where they are coming from but telling someone what to do with their property in this manner worries him.

B. McCourt suggested to council to consider some projects that have been studied and modified – gaming shops, strip clubs – these are all legitimate businesses in some cities, and this city has chosen to restrict those. They are not saying they want to restrict storage – they just do not want them in the business districts or residential districts by variance.

Ellen Roztas of 4160 Menlo Park said she is representing MSR Capital Management, which is the office building to the left of Sommer's property. She wanted Council to think of another consideration of not dictating what a person can do to their property in B-3. This is what the city wanted when it happened, and therefore all those people bought their homes because of that location. She said the City of Parma – largest suburb in the State of Ohio, just passed an ordinance prohibiting storage facilities. They had a moratorium for a year and went over it to make sure

they were doing the right thing. They also came up with some wonderful thoughts about storage facilities as they utilize several acres of prime property, but it creates few employment opportunities. The economic health of the city depends on the creation and expansion of companies that provide jobs and tax revenues. These storage facilities do not come up to that. They were upset because several storage facilities were coming into town. She said they have 27 storage facilities within 15 minutes of Vermilion. She said there is valuable land out there and once it is used for something like storage, then it is not available for a good business that wants to come into Vermilion.

B. Holmes asked the clerk to get a copy of the Parma legislation for them to review.

Drew Werley of Timberview Drive said he agrees with Council President Steve Herron that he does not like telling anybody what they can or cannot do with their property. He thinks all zoning laws should not even exist. Even if they do pass this, it might get thrown out when they do this rezoning. He said they are okay with building a big building full of boats for six months out of the year, but they are not okay with storing small stuff. It just seems silly.

M. Stark said she agrees that she does not want to over legislate people's property in what they can do with their property. She said a family member recently moved in the last two months and needed a storage unit but had to go out of Vermilion to get one because there were none available in Vermilion. She is moving from a home in Vermilion to another home in Vermilion and had to take all her belongings out of the community to store them until she could get into her new place. It is not an ideal situation, and it was a hardship for the family to get everything out. They want to do business in the community. This does raise property values – a vacant lot compared to a business sitting there. It is a higher property value than a vacant lot. A little higher taxes on those buildings. To allow storage of boats – are you going to allow boats for a time, but you are not going to allow small condominiums. She thinks it was a shame that they were not able to bring another business to Vermilion when they want to be welcoming to businesses and letting people develop their property as they wish.

This matter was tabled to next month's committee meeting, so Council could review the Parma ordinance.

TOPIC TWO: Proposed Moratorium on Zoning Variances/New Permits (Vermilion Call to Action)

M. Stark explained the Vermilion Call to Action group has asked Council to consider putting a moratorium on all new zoning variance requests and all new permits relating to the proposed ordinance prohibiting storage unit facilities in

residential and business districts. The moratorium shall remain in effect until either council approves the proposed ordinance or a vote of the people of the City of Vermilion on November 2, 2021.

B. Brady said this is only a moratorium for residential and business districts and not industrial or areas where they are allowed.

S. Herron said they have laws in place about zoning variances and how to go about it. He does not think they should put a moratorium on it. He knows the term moratorium was compared to the marijuana issue, but marijuana is a violation of federal law, so he does not think they are the same. Philosophically, he did not think Council should be in the business of stopping just to stop it. If there is an ordinance that outlawed certain uses and they discussed it and passed it through three readings, then that is fine, but he does not believe in this at this time, and this is what the people elected them to do – knowing what their ordinances and what their Charter says.

Robert Green of 4097 Ford Lane said he is favor of the moratorium and he urged Council to consider and adopt it for voting. The reason for it is simple – it is a contentious issue. Although he respects Mr. Herron’s opinion, he also is a businessman, and he also agrees that if you have an idea to put a business on a property that you have invested in and own – you should be able to do it if it is within the confines of the ordinance. They are arguing the issues that have come before the Zoning Board and Council as they were non-conforming businesses according to the ordinance. Because of that, people who adjoin those properties were not very pleased with it and they voiced their opinion, and Council is the ones who must listen to this to decide. The moratorium to him makes the most sense on a lot of levels until they can sort this thing out – one way or the other. Yes, they have rules, and they have ordinances, but for some reason they always do not seem to fit with the businesses that people wanted to put on them, so therefore, you must ask for variances. They can at least put the moratorium in place – it does not stop business – it just stops the non-conforming businesses requesting a variance. This is the position of the Vermilion Call to Action of which he is a part of. S. Herron asked if he was talking about a temporary moratorium. R. Green said yes, simply temporary.

B. Brady said this would be a simple as a resolution, which tells BZA to take an extra look at the fact that some of these things are non-conforming. She thought through a moratorium it would encourage BZA and Planning to take a serious look before they give approval on property until they get this worked out. B. Holmes thought both BZA and Planning should look, redefine, and think about where they want to go on these issues. He thought a recommendation like this would be great.

B. Brady MOVED, B. Holmes seconded to have a Resolution prepared placing a temporary moratorium on all new zoning variances requests and all new permits relating to the proposed ordinance prohibiting storage unit facilities in residential and business districts. Roll Call Vote 5 NAYS (Skahen, Loucka, Holovacs, Stark, Herron), 2 YEAS (Holmes, Brady). **MOTION FAILED**.

TOPIC THREE: Review of Ordinance 2021-4 (Modular Storage Units)

M. Stark said council has been reviewing this ordinance for months and this ordinance prohibits modular storage units in all zoning districts. She said she does not agree with this legislation and does agree there are some districts she would consider prohibiting storage units, but not everywhere in the city. She said there are some businesses that depend on using these for their storage of equipment, etc. She would not want to put a hardship on businesses in the City of Vermilion that need these to keep their items safe from weather, etc. If they are in the correct zoning district, then she would think they should allow them in certain districts.

B. Brady said they should allow them in the industrial zoning district. B. Holmes said his concern is with residential. He is in the township daily and there are areas where some of these are popping up and it does not look good. He agrees with industrial because it fits the definition and it fits out in areas where Coley's might use these units, or even around the corner. He wants to continue to restrict them being in residential areas. M. Stark said she would like to look at a map of all the districts a little closer to see where they are in the community. She questioned where the utility district is. She said she agrees they should not be allowed in residential districts. B. Holmes said there is concerns with B-3 zoning that is near residential zoning. He said maybe when they review the zoning this will help alleviate some of these issues.

M. Stark said they can leave this ordinance tabled until they figure out what they are doing with their zoning.

TOPIC FOUR: Review of Ordinance 2021-35 (Charter Amendments)

M. Stark stated that after reading all the Charter Review Minutes and Law Director Opinions, she would like to address the Charter Review amendment to create the position of Administrative Clerk of Boards and Commissions. This is a position that Council repealed in 2018 from Part Two of the Administration Code. Furthermore, Council amended Section 210.04 Clerk of Council; Assistant to the Clerk of the Administration Code by which the Clerk of Council was 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. Mayor Forthofer vetoed this ordinance and Council unanimously

overrode his veto. Therefore, Gwen Fisher has been serving quite well in this capacity. Both positions work hand in hand. Many recommendations and legislative issues are made by Council to the Boards and vice versa from the Boards to Council. Gwen Fisher has 27 years of experience, history, and knowledge in her role. Mayor Forthofer brought this issue to light to the Vermilion Charter Review Commission as the minutes reflect that his specific opinion was with regards to the blending of the function of the Clerk of Council and Clerk for the Boards and Commission. He felt it should be a separate function. He had also stated the Clerk of Council works for Council, but the Boards and Commissions secretary is appointed by the mayor and they were working that out right now. However, this statement was untrue because this had already been worked out when Council adopted an ordinance in 2018 to repeal the Administrative Clerk of Boards and Commission and furthermore adopted an amendment to the Clerk of Council's ordinance to assign her with the duties of Boards and Commissions.

She said to provide history, in September of 2016, the former Administrative Clerk retired, and former Mayor Eileen Bulan asked the Clerk of Council to serve as the Boards and Commissions Clerk for \$8,000. She brought this forth to City Council who approved her serving in this capacity. Additionally, Mayor Forthofer sat as the Ward Three Councilman at that time, and she did not recall any objection from him on the former mayor's proposal. Council was advised the former Boards and Commissions clerk was making \$62,000 which was a combination of salary and benefits. Therefore, the current Clerk, Gwen Fisher has been saving the city around \$54,000 per year for the last five years by serving in this capacity. This is approximately \$270,000 she has saved the taxpayers by serving in this role.

When Council repealed this position and assigned the Clerk of Council with these duties, Council was given several opinions in 2018 from the law director who opined that Council only has the authority per Charter to combine departments or divisions, but not positions. Again, she added this was an opinion only.

She referred to the fact that Mayor Forthofer per the Charter Review minutes felt these two positions should be a separate function, but the ballot language as proposed to the electorate reads:

SECTION IV-6 Administrative Clerk of Boards and Commissions.

The Administrative Clerk of Boards and Commissions shall keep an accurate and complete journal of the proceedings of the various Boards and Commissions established by this Charter and the City's Codified Ordinances and shall perform such other duties as those Boards or Commissions may require. The Administrative Clerk of Boards and Commissions shall be appointed and may be removed by the Mayor. This administrative position shall exist independent of, and without supervision or oversight from the

Clerk of Council; provided, however, that if the Mayor and Council agree, the Administrative Clerk of Boards and Commissions may also separately serve the City as the Clerk of Council.

The last section contradicts the Mayor's statement as he feels these positions should be separate, but the Administrative Clerk of Boards and Commissions may also separately serve the City as the Clerk of Council. Is this not what is happening currently? The Clerk of Council is assigned with the duties of Boards and Commissions. If the Clerk of Council cannot serve in this capacity, then another clerk will need to be hired and the city will incur more expenses with additional salary and benefits. I feel this is disrespectful and a slap in the face to Gwen Fisher who graciously and willingly accepted the assignment of these duties by former Mayor Eileen Bulan,

Another fact to point out, Eileen Bulan formally served as Clerk of Council prior to Gwen Fisher being hired in 1994, and she too was served with the duties of Boards and Commissions. I find it interesting that she proposed Gwen Fisher to serve in this capacity, but she sat on this Charter Review Commission and voted to put this on the ballot.

I would urge the residents to vote "NO" on this ballot issue in November.

B. Brady thought what M. Stark said was great! She said even in the Charter it states the Clerk of Council is appointed by Council and she can perform other duties as Council may require. She does not see where that is being removed from the Charter.

S. Herron thanked the Charter Review Commission and the mayor and noted he read all the minutes a couple of times and it is clear there is a lot of questions and answers. It is a good faith operation of people who took a lot of time. However, he did not agree with everything. He said regarding the combination of these duties – in 2018, he submitted a written response with regards to a legal opinion that was imposed at that time of which he reviewed again along with the law director's positions. He feels his argument is clear in that Council can do this. When the Charter came through the people wanted this body to do these things as a check on power to the executive branch government. It is not a personnel attack – it is a balance, and this is why it is there. When they have an administration and a council that get along – they may not agree with everything but if they get along and communicate it does not seem to be a problem, but they are talking about a Charter and this is the core of their law, so they need to be careful to make sure they are doing the right thing. He thought Council's ability and authority under the Charter to combine divisions does relate to what Council did in 2018. He thinks it was valid and was the right thing to do, so he disagreed with this charter proposal.

He said another aspect brought up is the concept of the mayor being entitled to participate in all closed executive sessions. His position to a statement made by one of the law directors in one of the meetings is not clear. If it were clear, it would be in the part where it says, "Mayor's Powers" but it is not there. Again, it obviously is the intent of the people to say you can have executive session without the mayor. This goes to the Ohio Revised Code and this means they said the same thing in Columbus. They want the State of Ohio to have its municipalities be governed in a manner that is balanced, so yes, they can go into an executive session without the mayor. Does this mean it is a good idea – 99.9% of the time it most certainly is not. He wrote this three years ago today that Council should have the authority to exclude this and they have not had issues since then, and he does not anticipate having any issues with this administration, but the executive branch of government – if you look at Andrew Johnson, Richard Nixon, Bill Clinton, Donald Trump – other than Nixon, all three of them had trials in their impeachment and they never got to sit in a meeting with the legislative branch of government. The Governor of Ohio does not have this right. The executive branch does not have that right because Council can sit and discuss things in private under the legal protection of executive session, and the law itself under executive session talks about Council's limit. They cannot make decisions there and just walk home. They must come back and announce what those decisions are. So, the people have a right to know to the extent that when they make decisions, and it is clear under Ohio Revised Code that they have this right and power. He said he wants to let the people know that he simply disagrees with this. It is a huge problem, and he does not think the mayor would think that he is meaning this personal to him because he does not in any way, shape, or form as he would not have had with the former Mayor Eileen Bulan who he served with in this capacity. He said it is a philosophical but very important check on power that Council has, and he will do everything he can do with respect to everybody in this community who agrees or disagrees to try to protect this.

S. Holovacs thanked Monica and Steve for their comments and agreed with them both with with no disrespect to the administration or Charter Review Board. He noted he served on two Charter Review Boards and watched two other ones as a Council member. He said they do not get paid to review this and they ask for the opinion of the law department when they need it, but on these two charter amendments he would agree with Monica and Steve. In his years, he can probably count on his hand maybe one or two times when they did not have the mayor in an executive session, which was probably over 18 years, so he does not see this to be a problem as nothing was a problem then. He thinks this council gets along well and they have had quite a few terms that get along. They all agree to disagree, but it is nothing personal.

Emily Skahen said she agrees with both Monica and Steve, and her position is that if it is not broken do not fix it. Both issues have been fine, so she sees no need to change it.

B. Brady asked if Council would be comfortable with taking a vote and putting on a unified suggestion to the public that they feel there are questions about both issues. S. Herron thought personally this would not be appropriate. He said on topic one they should follow procedures and it goes to the people. It is up to the people. At the end of the day, they are their bosses, and this is what they need to do. He said now is the time for Council to state whether they are in favor of this. However, if somebody catches him at Giant Eagle and asks him about these issues, then he will tell them what he thinks.

F. Loucka said with all due respect to all the participants he thinks it is attempting to solve a problem that really does not exist in the City of Vermilion. B. Brady and M. Stark agreed.

Mayor Forthofer said he agrees with Council on the subject that this is not personal. This is not about any individual they have serving currently. This is about future generations of council members and future mayors, not about who they have here today. There are no problems necessarily right here today, but the people who served on the Charter Commission, which included an attorney, a UN Ambassador, a college professor, a highly-educated veteran and 24-year member of the Vermilion Local School board, and a former mayor with decades of service – including the one who Council referred to earlier, and a retired Clerk of Courts – all of them passed these recommendations onto Council. There were five things considered by the Charter Review Board, including staggered terms, the idea of a city manager, the council and mayor compensation, which he was sorry to say they chose not to consider, and then these two issues. One of the reasons they decided to consider it was at his suggestion, well represented in the minutes. His reason for representing it was again not because of the current situation they have here today, but because he feels it is necessary to at least in the situation with the clerks – to maintain the differences between their two bodies – that they do not start blending where Council takes over this or the administration slips into here. That they reinforce this service, which was once performed by two people, but with the safety valve that if Council and the Mayor agree, he would think the voters would want an amendment where the Council and the Mayor agree on something – then they agree to go down the road of trying to save money by having one person. But the position is to have two separate bodies of government – they can change this if they must.

He said regarding the situation where the mayor is present in all executive sessions, it says clearly in the Charter that the mayor shall be part of all discussions – it does

not say all discussions except...the mayor is elected by the people – elected to be doing what the Charter says – it does not say unless a future council says they do not want you in executive session – it is all discussions. This was not clear in the Charter as it stands, and these commission members are trying to clarify this. The purpose of this is not about individuals. There is no dispute by the service of the current council clerk and boards and commissions clerk. There is no question of money – it is not a cost saving issue – this goes back to what Charters are made for in the first place, which is to define the difference between the two bodies and to keep it that way, and this is why this proposal is before them.

B. Holmes asked what the Charter Review Commission sees that is going to happen in the future that already is taken care of now. He gets what they did and respects it, but he does not understand what in the future is going to change that may affect what is already continuing here. Mayor Forthofer said there would be no need to write laws or a constitution if they based it on the future, it is a form of government going forward.

M. Stark said to go back to a statement the Mayor said with regards to the position of Clerk of Council or the Clerk of Boards and Commissions – this was already set in place by a previous mayor, so why change it to flip flop it? Mayor said the previous mayor was part of the voting members of this charter amendment. M. Stark said she understands this, but why are they flip flopping it. Mayor Forthofer said he did not think there should have ever been a flip flop. He thinks it should have remained two separate positions. He thinks an accommodation was made, which became memorialized through an ordinance, and this is what the problem was, and this is what he vetoed. He did not veto the idea of working together and sharing someone, he objected to the memorialization of a permanent restructuring of the Charter sort of speak. M. Stark said he did agree to do it when he sat on Council. Mayor Forthofer said yes, he agreed to the temporary blending of the two positions – he even asked if this would be too much for one person. He did not vote for the ordinance. M. Stark said no, but he did approve for Gwen to do both positions. Mayor Forthofer said he voted for it to be temporary as a cost-savings measure because no one else could do it.

S. Holovacs said he hears about a comment about if Council does not get along – 18 years ago Council did not get along. He said there were days when council members would look at the mayor and say, “It is time for you to resign”. They have been lucky over the last 10 – 12 years that Council as whole has gotten along and they agree to disagree, and they walk out as friends. They do not call everybody up every day and try to round robin everything. They do not do this! They do the best for the city they can and by doing that, this Charter has been in effect for 60 years – 1961 and this is the most major changes he has seen in his 20 years of being involved. There have been councils you would not have wanted to be around, and

he did not want to even come to council meetings back then. Yes, they can change, but they have been very fortunate, and they are on good run right now because they have good people and good people do good things for the city. Mayor Forthofer said he agrees and if they can assure that all council's and the administrations work as well as they have together, then he does not think there would be a problem, but what worries him is that if they make a turn to that someday – this Charter did serve during those dark days, but a portion was memorialized through an ordinance that changed the affect, so it is not the same affect anymore. This is what he wants to correct it back to – back to that Charter that served through those dark days. B. Brady said she sees what he is saying, but what if it was reverse – what if it is the mayor that is the bad guy instead of Council. He is saying, what if council is bad, but what if it is the mayor that is bad! They may need an executive session to discuss a horrible thing the mayor has done, and to have the mayor sitting there when they are doing this is not feasible. She said in everything she saw it says that Council has the right to invite in who they want. She could not find one place in one city that says the Mayor or anybody outside of Council was forced to come in. S. Holovacs said it is a council meeting. Mayor Forthofer said to answer her question about what happens if there is a bad mayor – there is constantly debate across the world where people do not agree with each other. B. Brady said they need to leave these two forms of government separate and give them each the powers the Charter gives them. Mayor Forthofer said regarding the Clerk's position this is what he is recommending – that they leave these separate. With executive sessions it could always be a mutual discussion.

M. Stark said according to the State of Ohio Sunshine laws it says the definition of a “Public Body” is any legislative authority, or board, commission, committee, council, agency, etc. of the municipal corporation. The Public Body may invite anyone into executive session as it chooses. Our Council meetings are just that – Council. She felt that if Council does not warrant inviting the mayor into executive session for a specific reason, then that should be Council's choice. If Council should ever choose to remove the Mayor for gross misconduct, malfeasance, misfeasance, or nonfeasance, they should be able to go into Executive Session without the mayor there. She said this is not personal against the current mayor. She said they need to urge the residents to allow council some authority.

S. Herron said to some extent this is interpretation and this argument could last all night. It is an unpleasant topic of the incapacitation of a mayor or a mayor that is committing crimes or something like that, but they are going to have to agree to disagree at this point and go from here. He asked Attorney Chojnacki that if Council were to vote down the ordinance, does it still go to the people? Attorney Chojnacki said there would have to be a procedural mechanism to get it in front of the people. He said an initiative petition could be one avenue and the Charter Review Commission could pursue other avenues as well. There are several

procedural mechanisms under state law that operate to insure – depending on the language of the Charter, that the recommendations of a properly paneled Charter Review Commission fulfills its purposes. S. Herron said his opinion is they need to think that this is up to the people and they need to consider letting the people decide.

Drew Werley said that he agrees with Steve Herron and those who have read the minutes of the Charter Review meetings know he has said the same thing that they should have faith in the Council that they elected to invite whomever they want in there as it comes right from the Sunshine law, which he is very familiar with. Council has full reign to invite whoever they want in executive session. If Council does not think somebody should be in the executive session, then do not invite them in.

TOPIC FIVE: Review of Ordinances 2021-28, 2021-29, and 2021-39 (Rental Registration)

M. Stark said they are reviewing the penalty clause that was amended by the law department. She said they are removing the civil section. S. Herron asked Attorney Chojnacki if it was his position that this is a double jeopardy issue or just a real pain to enforce. Attorney Chojnacki said double jeopardy is probably the wrong term. You can have a civil and a criminal penalty in an ordinance. The concern is what happens if the civil penalty is enforced. What result, if any, is on the ability to further enforce the criminal penalty.

B. Brady said another issue she wanted him to address is they are not allowing transient rentals where they do not allow residency. Attorney Chojnacki said her analysis during a council meeting was accurate. The use of the term dwelling is defined in the zoning code and it specifically speaks to residential property, so the city is safe in their version.

F. Loucka addressed Section 1484.01 (d) (2) (G) where it says, any other information requested by the Building Department necessary to protect the health, safety, and welfare of the City of Vermilion. This is wide open as far as to what information.

B. Holmes said Council has been working on this legislation for a long time and they are not setting this up to punish people that want to perform this type of business in Vermilion. They are not the only city doing this, so he wants the residents to understand that the people running these businesses – this is nothing new. They are not doing this to make money. They are doing it to protect their citizens and their city. They are just trying to make it fit for the community and for the people who want to do this type of business. Vermilion is about this, and they want people

to come to Vermilion and stay for extended weekends. They want to make sure it is done right and correctly.

Drew Werley of Timberview said he would like to see Council remove some things – like the administrative provisions. To demand records, they should have provisions for ‘inaudible’ because businesses have fourth amendment rights just like anybody else does. He would like for Council not to do this at all and to say that other municipalities are doing it means nothing to him. His mom always told him growing up that is everyone jumps off a bridge, would you. His main thing is putting in an administrative warrant for records demand. He also thought the building inspector has far too much power with this ordinance.

E. Skahen asked if the fees in the ordinance were going to be changed. It was noted the initial fee is \$200 and the renewal fee is \$100. B. Holmes said this is what council had settled on. E. Skahen thought this amount should come down. B. Brady told her to keep in mind that these businesses are renting these places for over \$100 per night, and they are only asking for one night’s rental for a whole year. This is a business, so she does not think these amounts are unreasonable. It will cost the building department money to check on these rentals. S. Herron thought the administration’s proposed fee was higher. A. Hendricks said these fees will not cover their costs and she understands there have been statements made about tax collection but is the reason for collecting the tax to cover increased costs or is this tax something that even should be considered as something that should be dedicated to a specific type of expense in the community that supports tourism. The software they are purchasing to do this and the cost of the additional support staff in the building department exceeds the \$200.00. Mayor Forthofer said the original meeting talked about establishing the \$300 to \$400, but this cost will still be there, and some other taxpayer will have to pay it.

M. Stark MOVED, S. Holovacs seconded to untable the third reading of Ordinances 2021-28, 2021-29, and 2021-30 from the agenda and to amend Ordinance 2021-28 to remove 1484.01 (d) (2) (G) as recommended by Frank Loucka. Roll Call Vote 7 YEAS. **MOTION CARRIED**. M. Stark and S. Holovacs revised their motion to put these Ordinances on the agenda for a third reading as they were not tabled at the last meeting, but instead had second readings. (Clerk’s Note: These ordinances will need to be tabled on the third reading as they are required to be sent to the Planning Commission for review and recommendation, and then a public hearing will need to be scheduled.)

TOPIC SIX: Review of Ordinance 2021-33 (1060.01 – Prices for Cemetery Lots and Services)

Amy Hendricks provided council with a recommended list of prices to become effective July 1, 2021 for the cemetery lots and services that are managed by the City of Vermilion and contracted with the management firm. These firms were last increased in 2018 and these costs are more representative of what the current rates are in the industry for these services. The cemetery lots are reaching the point of capacity, so once this is full, there will not be additional revenue for selling lots. There may be some services that may have been purchased for future use, but there will be ongoing maintenance involved in these properties for perpetuity. The increases in the prices on the cemetery lots reflect a designated amount that is to go into the perpetual maintenance fund for the cemeteries going forward to provide for the cost of mowing, equipment to maintain those parcels, as well as mowers. These prices were worked on with Mark Riddle and the administration to cover increased costs going forward. She said \$65.00 on the sale of a lot goes into a totally separate fund that is used after all the lots are sold and there is no more additional services and revenue there to help maintain it because that property will always need to be maintained.

B. Brady had further questions, which were inaudible. A. Hendricks said under the present agreement the city maintains 60% of any of the proceeds for the over and above of the actual cost each year. The manager is paid an incentive that is 40%. There were many years that there was no additional revenue over and above what the costs were. They had a year where they had significant repair costs on equipment, and tree trimming is ongoing maintenance. B. Brady asked if the employees are city employees. A. Hendricks said they are contracted and are on the Riddle Funeral Home payroll. She said they proposed a new amendment in the agreement to take the average of the last five years incentive that was paid out and to add it to the monthly fee, so this comes out to an additional \$615 a month. This is just a steady revenue flow for them. She said the contract has been in place for 30 years and there has only been one increase in the monthly amount over this time.

M. Stark asked if there was any discussion on obtaining new lands for the cemetery. A. Hendricks said not that she has been involved in. Mayor Forthofer said there was some discussion, and this was one of the options. He believed the current manager had requested a one-year contract extension.

This legislation is up for a second reading on the next council agenda.

TOPIC SEVEN: Zoning

Mayor Forthofer said the current zoning codes have been in place for 50 years and at that time Vermilion was in a much different place and they are expecting more industry on the east end of town anytime now. They are facing sweepstake cafes and storage units, and they have a Route 6 corridor they want to redefine, and they

are bumping their heads up against old zoning codes, so he proposed a city-wide zoning review to determine the general scope of the work for an engineering or city planning firm to help the administration with a city-wide review, and to issue a request for qualifications from engineering or city planning firms in an example of a potential RFQ that was circulated earlier to Council today and for council to approve funding as determined by the winning bid of the RFQs, and to form a Zoning Review Committee to include representatives of the Board of Zoning Appeals, representatives of the Planning Commission, representative from Council, the Building Inspector, the Service Director, the Mayor, and at least one resident from the City. These representatives will be responsible for providing input to the chosen plan. A completed zoning review should be done by his estimation of October of this year. He said this will all come back to Council for approval.

S. Holovacs MOVED, S. Herron seconded to authorize the administration to go out to bid for an engineering firm to review the City of Vermilion's rules. Discussion: F. Loucka asked if they had any clue how much this would cost. Mayor Forthofer said they spoke with two engineering firms who have done this work and the ballpark costs are \$35,000 - \$50,000; it depends on how they write the scope of work. S. Herron said this is a good idea and property law is the slowest moving form of law there is, and they need to change with the times. B. Brady asked if the city had the money to do this. A. Hendricks said this is one of those things she thinks they cannot afford not to do. S. Holovacs said they will not know the costs until they receive the qualifications and at that point Council can make the decision. Roll Call Vote 7 YEAS. **MOTION CARRIED.**

S. Holovacs adjourned the meeting upon no further discussion.

Next meeting: June 14, 2021 – 7pm @ Vermilion Municipal Complex, 687 Decatur Street

Transcribed by Gwen Fisher, Certified Municipal Clerk (CMC)