

Minutes of Legislation Codes & Regulations Meeting

October 1, 2018

Members present: Mr. Huddle, Mr. Landon, Mrs. Blevins.

With a quorum present, Mr. Landon called the meeting to order at 6:41PM.

Mrs. Blevins made a motion to approve the minutes for September 4, 2018 and September 18, 2018, Mr. Huddle 2nd. Roll Call – Ayes – Mr. Landon, Mr. Huddle, Mrs. Blevins. Nays – none.

Minutes of 09/04/2018 and 09/18/2018 approved (3-0)

Old Business:

Item 1. JUNK CARS AS ADDRESSED IN: ORDINANCE AMENDING EXISTING MARION CITY CODE SECTIONS 1153.034 AND 660.07(F) FINDING A REAL AND PRESENT NEED TO CONTROL NUISANCES WITHIN THE CITY OF MARION, OHIO (CITY ADMINISTRATION)

Mayor Schertzer explained that Item 1 and 2 came about from discussions within the LoDo (Lower Downtown) committee and with zoning inspector. They looked at what other communities have done in their codified ordinances. Since the zoning code was put into effect around 1968, some updates and revisions might be needed, particularly in penalties. He requested more discussion and input from council and public.

Mayor Schertzer stated that they would like to add prohibiting junk cars in side yards and back yards and they want more teeth in the ordinance. They are already prohibited in front yard. The city tries to work with offenders and not be too heavy handed, however they need to have enforcement options for noncompliance. He recommended that committee go slow with this. Once committee and council agree, he encouraged three readings since they would be amending the zoning code. Regarding enforcement personnel, the preference would be the zoning inspector or a community service technician, rather than traditional law enforcement officer. The details regarding who and how would need to be worked out through discussion of the issues.

Mr. Huddle (6th Ward) talked about how situations can be complicated and mentioned some scenarios like cars held in trust, junk cars with current tags, and owners using junk cars for parts because they are operating businesses on property. Mayor Schertzer stated that this ordinance may not resolve those issues and they could look at other legislation.

Law Director Russell discussed qualifications of a junk motor vehicle – unlicensed, age, missing parts, and under a particular value (must meet 3 out of the 4, and that could be changed). In the past, licensing prevented them from being considered junk motor vehicles. The proposed legislation is asking for an enhancement to what qualifies as a junk car or other vehicle/trailer. Vehicles can be parked on a permitted driveway; however, driveways can only cover so much of a parcel.

Sulu Kelley (365 E. Farming) asked a question about parking lots that are not on their lot or their place of business, such as non-contiguous designated in parking lots nearby. As a landlord, he requested that the violation goes on the owner of vehicle not on owner of property. Law Director Russell stated that the city would want as many responsible parties as they can find, because many times other parties can assist with compliance. He does not recommend identifying and eliminating a responsible party.

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Jason Schaber (3rd Ward) stated that he has received a large number of phone calls on this issue. He agrees that council needs to remedy junk cars, without being overbearing. He has been asked what determines a permittable driveway. For instance, a resident (who is a truck driver) put down gravel in his side yard to park his truck there. He was getting ticketed when he was on street because it was a semi. Mr. Schaber stated that he could not support ordinance the way that it is written but is open to further dialogue and revisions.

Robert Landon (1st Ward) requested some clarification for a scenario where a driveway goes from the front (street), through the side yard, and then on through the back yard to alley. Law Director Russel explained that as long it was a permitted driveway (approved through zoning with consideration of the maximum percentage of a parcel that can be driveway), residents are allowed to park on a permitted driveway. The prohibition is for parking off a permitted driveway. There are some specifications on permitted driveways that can raise issues, particularly that the surface and material must be similar in additions to driveways.

Law Director Russell explained that certain code sections have a minimum number of days of advanced notice. Administration was recently asked compliance officer to refine and standardize his practices.

Mr. Huddle (6th Ward) asked about how to proceed with proposed legislation, considering that there needs to be additional discussion and revisions. Mayor Schertzer suggested that this stay in committee to further refine because suggestions have not even been submitted in writing. This is an important piece of legislation that needs to be fully discussed at the committee level.

Safety Director Robbins encouraged every council person to take a drive in their ward, particularly down the alleys. Last week, he found a deep lot in a residential neighborhood that had 11 cars. In the 6th Ward, he could see the nose of a motor home (all he could see) and the rest of it engulfed in vegetation. It has been there long before he retired 11 years ago. The enforcement process does require due process. The codes are old. Junk motor vehicle regulations from the Ohio Revised Code (ORC) is cumbersome to establish what is a junk car and it can take a lot of time. Formerly, they did use a community service technician and that person was well versed in what he could do and what he could not do. People do not like you telling them what they can and cannot do on their property.

In response to Sulu Kelley (365 E. Farming). Law Director Russell explained that an expansion on a driveway without authorization is not considered a permitted driveway. They have had issues and successful enforcement on an issue like that.

In response to Todd Schneider (Council President), Mayor Schertzer explained that these are preliminary discussions on the code, they are not creating a new department, title, or position. They have some ideas for utilizing existing employees, but they do not want to take officer off the street to deal with these types of issues. Malcom is Zoning and Code enforcement

Dan Neidig (334 Forest Lawn Blvd) stated that he has previously served on boards of appeals in two different states and that he has been working with Mayor Schertzer on codes. City government is a taxing agent and has a responsibility to assure property values in the community. He would like to take another look at laws and codes to see if there are additional things that the city could do to help the property owner.

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No formal action taken on legislation, continue as old business in committee.

Item 2. PODS AS ADDRESSED IN: ORDINANCE AMENDING EXISTING MARION CITY CODE SECTIONS 1159.01, 1123.01 AND 1127.99 FINDING A REAL AND PRESENT NEED TO CONTROL NUISANCES WITHIN THE CITY OF MARION, OHIO (CITY ADMINISTRATION)

Mayor Schertzer explained that pods have not necessarily been a huge issue, but they could be problematic if council does not get in front of it now with legislation and penalties. They have identified many of the same issues as the junk car ordinance.

Jason Schaber (3rd Ward) clarified that this legislation was directed at residential districts only and asked questions about restrictions on temporary storage for construction sites like Habitat for Humanity. Law Director Russell stated that resident can have a primary structure (house) as well as an accessory structure. During the construction of a building, a temporary trailer is captured in the definition in section 2. It is not the intent of the temporary pod/tool trailer to remain on the lot. A zoning permit has 6 months life and then it lapses and a new one can be considered. That is the way to control a temporary tool pod.

No formal action taken on legislation, continue as old business in committee.

Item 3. DISCUSSION ONLY: BUILDING CODES AND REGULATIONS (NO PROPOSED LEGISLATION)

Mike Neff (851 E. Center Street), who identified himself as a licensed electrician, said that his specific issue is property values in neighborhood. There is a house at 285 Merchant Avenue that he is trying to understand who is building house what guidance they are getting from city, and what approvals they are getting from city. They tore down the previous house and did not move the debris off site, which he states is required by state. A contractor built a new house and set it at the back of the property. There are basic safety concerns. There are supposed to be 5'-square (minimum) windows in each bedroom. This house has 3.5' windows. You cannot get out of windows if the house catches on fire. This is a basic safety issue. It is being built right now. He has concerns and thinks something needs to be done. He would like to see a committee formed to get some answers. The Ohio Administrative Code (OAC) states that builders are required to follow the residential building code of Ohio. He feels that this home is not even close to following any codes. How is the city allowing someone to build a new home that is not in compliance with code? People are doing whatever they want. Many codes are performance codes, but many are safety codes. This is what he can see from the street, but no one has looked in the house.

Bart Wolfe (238 Merchant Avenue) had additional complaints about the house on 285 Merchant Avenue and referenced a recent article in the Marion Star. It will be hard to sell houses because people will not want to purchase. This committee needs to go forward. This is taking home values down. The state expects everyone to go by that code. They just need a way to enforce it.

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Josh Daniels (At Large) stated that he is not a proponent of anything that resembles the 1999 codes and building department. He lived through it and built houses under it. The drive-by inspections were a disaster, compounded by delays to get the work completed while waiting on inspection. He shared his experience working in other counties and the inflexible, bureaucratic wait times. He does not believe that legislation can be implemented in a town that has the amount of building that this town has without including home owners. He believes that they will be inspecting roofs, sidings, and inspectors will be in people's homes. He does not believe that the solution being offered is a solution to the problem that people are focused on.

Mr. Daniels continued. Complaints are focusing on a merchant avenue property (42x20). This same model house has been built in other neighborhoods by the same contractor. Some were even built during the time that the building code was in effect and met those standards. If it was more aesthetically appealing, people would not be complaining. Aesthetics is not addressed in a building department or by a building code. It will address minimum standard for building, electrifying, plumbing, etc.

Mr. Daniels stated that most counties do not have a building code, so Marion is not behind for a city our size. They tried it implementing a code and it was a bad deal. Contractors are not building homes inside the city of Marion. They have torn down 200 houses, but new houses haven't replaced them. Contractors have been building about 4-5 home a year. The city cannot justify the costs of a building code system in the height of the economy, let alone during a recession. They cannot dismantle the system, so the city will end up funding the department out of the general fund. This is not what the city can afford.

Mr. Daniels proposes a system that mandates licensing and insurance. If they license contractors in this town, the legislation will shake out some of the problem contractors because they will have to have workers comp and insurance. Contractors who do not comply will be held criminally liable. Licensing is sufficient in other occupations. There are Ohio licensing requirements in the areas of plumbing, electric, mechanical, heating and air, boiler, and fire sprinkler system. There are no licensing requirements for general structural contractor. Trade workers assist contractors in building and they are all required to have licenses. Licensing and insurance will benefit the consumer right away and will not create a bureaucracy. It gives the community a stepping stone to build on. If there is a worker's comp policy, it indemnifies contractor and home owner for claim. Insurance gives the consumer some coverage. Neither of these are required by building codes. Legislation could have contractors building to a minimum requirement of code, but it could still create a lot of liability for the person owning home. Additionally, some loans and some banks require inspections, loan vehicles that rely on government for subsistence require fha certified inspector. He believes that most contractors would comply. For those who couldn't, they would probably go to work for those who would.

Mr. Huddle (6th Ward) asked about having codes and needing to look at areas of city where there are certain codes for certain area.

Josh Daniels (At Large) stated that system already exists in the residential single-family zoning codes. There are different specifications: R1A (set back and front yard width distinctions), R1B, R1C, R2 (low density) and R3 (high density) are multifamily. Current code already limits what can go in each one of these zones.

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Bart Wolfe (238 Merchant Avenue) asked specific questions to contractors about standards for roofing, house wrap, and the state minimum building code. The city can license anybody, but that will not make them do the right thing. His problem is with how this house is being built. He stated that people cannot sue after 10 years for the house being built improperly.

Sulu Kelley (365 E. Farming) stated that the property management company that he works for requires certain insurance. He cautions committee from going beyond state requirements. Because he is a sole proprietor, he is not required to have workers compensation. There were problems with previous inspectors, including giving out bad information and overlooking problem items. Licensure might be a way to deal with this issue, but not resolve the whole thing. He is against building codes. There is not enough new work done in the community to justify a building department. If they have to include everyone who is doing work for themselves, they will be mad. He urged caution.

Todd Schneider – (Council President) acknowledged that citizens voted the previous code down. However, he believes something needs done. He does not know the answer. Our duty as elected officials to look after and protect citizens of Marion. We have to do something.

Mike Neff (851 E. Center Street) stated that he is inspector that Mr. Daniels referred to as commenting on the Marion Star story. He works for the city of Westerville. He has worked here for 30 years as a licensed electrical contractor and certified electrical inspector. He does not know about residential building codes from 2000. He does not do residential work. He has heard that it was a disaster, but it was brought in wrong with no direction. There has got to be somewhere in between, not just pass it and enforce the laws. They are building a house that does not even remotely come close to minimum standards in building a home. While this house may fit in on Bartram, but not on Merchant. There is a whole row of them and they all look the same and they are lined up and none are set back. He stated as far as roofing inspections, roofs have to be built to code and they are never inspected. No building department in the state of Ohio inspects a residential roof. He was unaware that this was part of code in 1999. He stated that the city needs to spend more time and energy to find a solution. The way it is now is not working. There is probably nothing that can be done about the home on Merchant. Certified FHA inspectors are not looking at house and do not know how the house is built. When someone remodels, it must be looked at. The majority are probably ok, but not all. We need to build an open dialogue.

Robert Landon (1st Ward) asked for some specific suggestions as to what people would like to see happen, including providing some written documents. Mike Neff asked for a committee of people who understand issues to look at the possibility. He stated that the city is legally required to enforce residential building codes by the OAC. Robert Landon (1st Ward) stated that he believes that enforcement is not required and that option is left to the municipality.

Law Director Russell suggested that the county has a planning director with 30+ years of experience who might be important to invite to the next meeting.

Josh Daniels (At Large) reiterated there is validity to licensing contractors. Council has no influence over a contractor without licensing. They tried building codes and 61% said they did not want it. Council chambers were packed, with over 300 people against code at the meetings. The building market is improving. Some inspections are being done through FHA lending. He believes that the city should take things in small steps and let people become acclimated.

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Mayor Schertzer expressed appreciation that a dialogue has been opened on this important topic and summarized some points:

- History -- In 1998 when the previous code was passed, none of these council members were present. It is important to understand what worked and what did not work and what thought process council went through at the time. Take it slow, if you rush, you will repeat history.
- Other experts – He encouraged the committee to involve city planning. They have expertise, as well as historical perspective. He suggested reaching out to regional planning.
- Understand Ballot initiatives – The public can bring forward a building code by a ballot initiative. That does not have to be done by council. He urged caution, because the language of the law is based on the initiative if it passes. He encouraged council to be involved in process regardless of which way it goes. Copies of the original referendum are available in the Mayor's office.
- Weekend warrior – Weekend warriors want to be able do things to their own home without an inspection requirement. In 1999, a person could not put in a ceiling fan, a garbage disposal, or a dimmer switch. He encouraged legislation that allows home owners to do home improvements.
- Contractor registration or licensing – This approach is mentioned as an option to enforcement of the building code.
- Residential building code – Passing enforcement of the state residential building code is the most challenging. The code is over 1000 pages front and back. If council passes before they understand what they are passing, they will repeat the events of 1999 and 2000. Go slow and make sure that the impact is understood. Copies are available through the Mayor's office.
- ORC/OAC and staffing -- The law does not say that they have to enforce it. It is left to individual cities. But it is not as simple as just passing an ordinance adopting the residential business code of state of Ohio. The city would have to have someone inspect and that would entail the creation of a new department with either full time city employees or outside contractors and most likely an administrative assistant. It is not as simple as passing the residential code. The city would have to create a department and that entails financial resources. There is not enough residential building going on to support the employees, so the general fund will have to subsidize the building department.

Mayor Schertzer asked the clerk to do some legislative research on the building code issues. He asked Mr. Daniels, Neff, Wolfe to bring something substantial the next time so that people could have information in front of them to look at.

No formal action taken on legislation, continue as old business in committee.

New Business: None

Items not on the agenda: None

With no further business to be discussed, Mr. Landon adjourned the meeting at 8:25PM.

Chairman Landon

Clerk of Council