

MINUTES OF THE REGULAR MEETING OF THE LAW AND ORDINANCES COMMITTEE OF THE VILLAGE OF WILLOWBROOK HELD ON TUESDAY, JULY 2, 2019 AT 6:00 PM AT THE WILLOWBROOK POLICE DEPARTMENT, 7760 QUINCY STREET, VILLAGE OF WILLOWBROOK, DUPAGE COUNTY, ILLINOIS.

1. CALL TO ORDER

The meeting was called to order at the hour of 6:00 p.m. by Trustee Kelly.

2. ROLL CALL

Those present at roll call were Trustee Davi, Trustee Kelly, Assistant Village Administrator Michael Mertens, Village Attorney Tom Bastion, Building Official Roy Giuntoli. Also present were Chris Drews from Tri-State Fire Protection District, Village Administrator Brian Pabst, Trustee Gayle Neal and Trustee Sue Berglund.

3. APPROVAL OF MINUTES

Minutes - June 4, 2019 meeting

Trustee Davi made a motion to approve the minutes from the June 4, 2019 Law and Ordinance Committee meeting, the motion was seconded by Trustee Kelly - motion carried (Approved).

4. UPDATE - Proposed Amendment to Clarify Water Bill Payment Responsibility Section 6-8-5 Bills and 6-8-8 Nonpayment

Village Attorney Bastion discussed the reason for the ordinance amendment. As there is often confusion in who is responsible for the payment of a water bill (e.g. tenant or owner). He discussed a Pre-Termination Hearing process, prior to water service being shut-off, requiring notices to be sent to both the property owner and tenant, advising them of the arrearage, the opportunity to have the Pre-Termination Hearing and other procedures. The Village Administrator will act as the Hearing Officer and will determine whether service will be shut off. He emphasized the importance of this type of hearing because in other villages he represents, there have been clerical errors (funds applied to wrong account, payments having been made when water service was discontinued when there may have been extenuating circumstances, for example people with disabilities or medical conditions.

Assistant Village Administrator Mertens added we will verify that fees are current and that the right lien coverage fees

are included. The remaining portion of the ordinance is ready, but some additional research is required.

Trustee Kelly asked when the ordinance would be ready and Assistant Village Administrator Mertens responded the estimated completion will be the second meeting in July or the first in August.

5. UPDATE - *July 17, 2019 Plan Commission Text Amendments*

Assistant Village Administrator Mertens stated that both items were discussed during the June 5<sup>th</sup> Plan Commission Meeting and moved forward to the Commissions July 17<sup>th</sup> meeting.

- a) Amends Section 9-3-15, 9-12-2 and 9-14-24 (c) to Remove Outdated Information and Bring the Zoning Code into Compliance with State and Federal Laws for the Recently Enacted Small Wireless Facilities Deployment Act, 50 ILCS 840/1 et seq. The Amendments also Clarify the Application of Certain Bulk Regulations to the Permitted Accessory Use of Amateur Radio Antennas in Residential Districts

Assistant Village Administrator Mertens stated that the first item (a) involves regulations for the telecommunications matters, like antennas, antenna structures, small cell site antennas, etc. and alters staff titles.

- b) Amends Section 9-9-7 (c) Regarding Performance Standards in the M-1 Light Manufacturing Zoning District

Assistant Village Administrator Mertens stated that the second item (b) was a bit more complicated in that it is an amendment to our performance standards in the M-1 Manufacturing district. He added that Building Official Giuntoli and Inspector Drews from Tri-State Fire Protection District were present. This ordinance has not been updated since 1997, and the amendment will update the ordinance to comply with the latest International Fire Code (IFC), adding many new definitions. The proposed amendment requires businesses involved in manufacturing, or storing, or utilizing hazardous materials to apply for a special use permit. The proposed ordinance incorporates the IFC for the Hazardous chemicals lists covers both underground and above ground storage, as well as indoor and outdoor storage.

6. DISCUSSION - Proposed Text Amendments to Clarify the Definition for Building Height - Section 9 - Chapter 2 (Recommend Referral to Plan Commission for its Consideration)

Assistant Village Administrator Mertens stated that after reviewing definitions in our code ambiguities in calculating a building height were found. The proposed amendment will clarify how height requirements should be calculated and when a variance will be required. Our attorneys are reviewing the proposed language to ensure it is grammatically correct. Staff is requesting the proposal be presented to the Plan Commission as a text amendment on July 17<sup>th</sup>.

Trustee Kelly: Discussion?

Trustee Davi asked what are the issues we are concerned about?

Assistant Village Administrator Mertens stated that staff researched nearby communities to compare their processes to calculate building height. Noting that some communities are silent when it comes to ancillary structures (i.e. chimney), and others use a multitude of criteria to calculate it. We are clarifying our calculation process.

Trustee Davi added if this was a fire code issue.

Assistant Village Administrator Mertens stated that it is not necessarily a Fire Code issue, however, there are building codes that do require a chimney to be a certain height over a portion of a roof.

The typical large footprint of a commercial building proved to be confusing to calculate this building height, this amendment will assist staff.

Trustee Kelly asked for a simple example of (an M-1 building) can be forty feet (40') and a max ten feet (10') more with ancillary equipment.

Assistant Village Administrator Mertens stated that if rooftop equipment would be greater than fifty feet (50') above grade they would have to obtain a variance for that installation, as HVAC equipment can get larger/taller. Staff also does not want to create too many non-conformities, nor do staff want everyone to have to obtain a variance for every piece of equipment. This applies to new developments. If existing structures were damaged by an act of God e.g.

lighting, they would be allowed to rebuild under the code that they were granted a permit under.

Trustee Davi made a motion to recommend the proposed changes to Title 9 of the Village Code: the motioned was seconded by Trustee Kelly - motion carried (Approved).

7. DISCUSSION - Code Enhancement to Require Hazardous Materials Reporting and Operational Permits

Assistant Village Administrator Mertens stated that the Village of Willowbrook (WB) uses the services of a company called TPI Building Code Consultants (TPI) for plan reviews and inspections. One of their current employees was the former Fire Marshall with the village of Lombard. Lombard has a "Operation Permit" (OP) program for the industrial areas that requires hazardous material reporting and a yearly permit. Willowbrook staff contacted current Lombard Village management and requested a copy of their Operational Permit documentation. Lombard's population ~43,000, the number of Operational Permits is ~30. Staff is requesting this modification to our Building Code to allow for an Operational Permit. Willowbrook is anticipating 10-15 Operational Permits, staff considers this not to be overly burdensome. Staff will send a letter to all businesses in the M-1 district to determine if their business will be required to obtain an Operational Permit. Tri-State Fire Protection District (Tri-State) personnel has offered assistance to Willowbrook staff in administering this program. There is some overlap in Tri-State's annual duties (annual Life Safety inspections) in the district that can assist Willowbrook with this program. The intent of this program is to obtain information from business regarding what materials (type, quantity, locations, etc.) that they have onsite. This information can assist First Responders in dealing with any potentially hazardous condition that can arise. Staff is currently tentatively scheduled to start meeting with TPI, Tri-State to start working on this program, should this committee approve it. this program should link with the prior Title 9 changes made recently.

Trustee Kelly asked will this program allow the Village to inspect Sterigenics?

Assistant Village Administrator Mertens stated if they met the criteria that they would. Other possible businesses would likely apply to this as well. He reiterated that this program

is separate from the annual life safety inspection that Tri-State currently performs.

Trustee Kelly asked if it was the Village's intentions to inspect every business with an Operational Permit?

Assistant Village Administrator Mertens stated yes, adding that staff may utilize the services of a 3<sup>rd</sup> party inspectional service for them, possibly TPI or others and fees will be assessed as a pass-through fee.

Trustee Kelly requested if Trustee Davi had any questions? He did not. Trustee Kelly stated he thought it was a good idea.

Trustee Kelly asked staff what they needed. Assistant Village Administrator Michael Mertens stated that this was slated to be in front of the Board on July 22<sup>nd</sup>.

Staff is requesting a recommendation to proceed, Trustee Kelly and Trustee Davi approved.

8. DISCUSSION - Code Enhancement to Require Third Party Alarm Notification for Hazardous Chemicals

Assistant Village Administrator Mertens stated that this was an interesting one topic. Countless meetings have been held with Tri-State and TPI since becoming Home Rule and he thanked Chris Drews and Tri-State for attending tonight. Currently two businesses in Willowbrook have a 3<sup>rd</sup> party Alarm Notification system, Highline Auto and the Willowbrook Ice Arena. These companies were required to connect the systems as part of their initial Occupancy Inspections that were prompted from the field inspectors identifying a potential risk. Staff thinks this is a good idea to codify the requirement for any applicable company. The system would detect the problem, the alarm would notify their monitoring company, the monitoring company would notify Tri-State. Sterigenics currently has detection systems in their buildings, and this ordinance would require them to notify Tri-State of any problems or incidents.

Trustee Kelly asked if the Village could be directly notified as well as Tri-State.

A male audience visitor asked if for example a business was under negative pressure, if that system failed, would it be a notifiable matter?

Assistant Village Administrator Mertens stated that this was a matter that will be researched.

Staff is requesting a recommendation to proceed, Trustee Kelly and Trustee Davi approved.

9. COMMITTEE REPORT - VISITOR'S BUSINESS

Per Trustee Kelly, the committee did not have a report. Trustee Kelly did ask Village Attorney Bastion for an update of what they were working on.

Per Village Attorney Tom Bastion:

- 1) Adoption of a recent state legislation, the Matt Haller Act includes reporting requirements to the state, we are proposing to amend Title 6 Chapter 7, "open burning" to be re-titled "air pollution", allowing the village to impose the same, reporting requirements as to the state. For example, Companies must report negative pressure failures to the state, the proposed ordinance would require companies to notify village as well.
- 2) To determine whether or not the village has the authority to regulate the transportation of hazardous chemicals, there is not an express preemption. Determine if there is a state wide concern, states such as Texas have determined non-hazardous chemical routes. If passes, non-reporting could result in citations and fines. It will remain to be determined if the village has any jurisdiction over the state routes. Research just started.

Trustee Kelly, RE topic Item 9/1 is topic broad enough to require plans or reports filed with the IEPA/USEPA to be filed with us as well? Tom added that it can be added and researched.

10. VISITOR'S BUSINESS

(Public comment is limited to three minutes per person)

Q1) A male visitor: Many ordinances have been discussed, do any of these limits the amount of hazardous storage?

A) Per Village Attorney Bastion: Yes, Building Code Title 4 amendment passed last month, limits the storage of Ethylene Oxide (E/O) to one hundred (100) pounds, also the current amount cannot increase, if quantities voluntary drop, they cannot be increased (an act of God does not constitute / initiate a voluntary drop). Assistant Village Administrator Mertens added that the topics discussed at



this meeting were not focused on reducing any one business operations or specific materials or quantities. We referred to the International Fire Code (IFC) that lists many chemicals and allowed quantities. He discussed what the Title 9 amendment was written and intended to do, narratively stated what the ordinance indicates, locations, quantities, etc.

Building Official Giuntoli stated references to the IFC in that a propane cylinder for a fork lift is regulated thought the IFC. The IFC allows for control areas and maximum quantities. Willowbrook is not further limiting these products. Assistant Village Administrator Mertens added that the IFC charts are quite comprehensive in that we will refer to them for quantities. However, feeding off the IFC, is the Operations Permit program. Whereas the annual permit is updated to current materials and quantities and if a business process is modified throughout the year, the Operational Permit is in place to record that - over the annual fire district inspection.

A male visitor continues: That the IFC boiler plate maximum quantities can be further reduced. Per Assistant Village Administrator Mertens, the ordinances brought forth in this meeting do not further limit quantities, it is possible that future ordinances can look into that.

Building Official Giuntoli added that the only chemical that was limited in the current code was E/O.

A male visitor continues: "rephrasing his question": "When will an ordinance that keeps Sterigenics shut down be coming up for a trustee vote, and when will it be effective?"

Trustee Kelly stated: That is an impossible question to answer.

A male visitor: Of any of the ordinances that we have on the table, do any of those do that?

Village Attorney Tom Bastion responded: No, they do not. They cannot because 1) it would not be enforceable and 2) it would be a taking, a condemnation - they were a permitted use 30 years ago and if we were to single them out to shut the business down, it is a taking, a condemnation.

A male visitor: You are not necessarily singling them out, they might be the only one using anything that dangerous.

Village Attorney Bastion responded: they were a permitted use that is being adversely affected. They could be amortized out over years; we do not want to do that. But to limit their storage or process would be a taking.

A female visitor asked: If drunk driver laws were to change, would drunk driving be grandfathered in?

So, I have a question for you: So, you're telling me that if we have someone driving drunk for thirty-five years, ok, and we changed the laws saying you can't drive drunk anymore they would be grandfathered in?

Both Village Attorney Bastion responded and Trustee Davi responded:

Davi: No, driving drunk is not a permitted use.

Bastion: That is a criminal offense.

A female visitor continues: Is there anything you can do to be effective?

Assistant Village Administrator Mertens stated that at this time Zoning does not affect past businesses. They would be a legal non-conforming use and they can operate until they stop operating whereas at that time they would have to come up to the current code. We are trying to make adjustments/amendments to tighten up to get a better understanding of what there is out there and get control of what we can (current materials and quantities). Everyone would like to make that happen - unfortunately we cannot. A legal non-conforming fence example was offered. Only if an existing building/business was damaged to a certain extent (a certain percentage) would said business need to conform to a current code.

A male visitor asked: So, back in the early 2000's, the State of Illinois banned smoking indoors, in restaurants. There were 10's, if not 100's of thousands of restaurants operating in the State of Illinois that allowed smoking. They were not allowed to continue that practice, that business practice, the very next day. So, there are instances in our laws, in the in the State of Illinois, and it was done by Home Rule Cities, Schaumburg, City of Chicago, before the State did it - of local municipalities passing laws in regards to emissions of substances that weren't immediately enforceable upon existing businesses. Is that correct?



Village Attorney Bastion responded: Depending on the Smoking is for example an express grant of authority to regulate smoking and so forth. However, this is a Zoning code with an ongoing business.

A male visitor continues: There was no express granting regarding smoking when those laws were passed.

Village Attorney Bastion continues: There is no preemption saying villages can't do it.

A male continues: Correct, which means that they can.

Village Attorney Bastion continues: But this is shutting down a business that is a legal conforming use.

A male visitor continues: No, it doesn't mean that, it doesn't mean that at all. You can definitely operate your business however you like, that doesn't mean that you can't set emission standards, because there is no preemption for that.

Village Attorney Bastion continues: Okay, but each village there is a matter of statewide concern. You're saying set an emission standard, are you suggesting that the village can set its own emission standard? Every village can?

A male visitor continues: Right, every village with Home Rule, yes.

Village Attorney Bastion continues: And what would that emission standard be?

A male visitor continues: Whatever the village chose to make it.

Village Attorney Bastion continues: If it was that, in my opinion, they would say it would be an unconstitutional taking.

A male visitor continues: Interesting that you would say that, because it has been challenged in the courts. It was challenged in a case against Des Plaines, IL. In regards to water pollution, not air pollution. And it was found that the village, uh. It was an interesting ruling because the village determined, or the judges determined, that that the town that was polluted was next door do that Des Plaines could not regulate what they did, but that Home Rule powers

would have given Des Plaines powers to regulate pollution within their own borders. And if you also look at the most recent case regarding the road builders, vs the state of IL, vs, or, Cook county.

Village Attorney Bastion continues: Sri, I have read that. Sri: Yeah, and what did it say? That was a circuit court decision on a motion to dismiss motion for motion summary judgment, and it was immediately appealed. It was appealed on April 4<sup>th</sup> and the circuit court; there were two issues, whether or not the builders had standing to bring the action and the court said: well that that particular constitutional amendment which reported to have monies raised to build safe roads said there was no preemption in that particular event.

A male visitor continues: Correct. Just like there is no preemption, in regards to... (unknown...)

Trustee Kelly: This has been a very informative legal discussion. Does anyone else have any questions?

A male visitor asked: I have a question in terms of penalties. In terms of, if a company does not conform to the new storage standards or any other new rule that are passed with alarm systems or whatever, what are the penalties that any such company refuses to comply with these standards?

Village Attorney Bastion responded: Absolute penalty under the state statute of \$750.00 per day. For an ordinance violation. You can declare to be a business offense that could be higher, could be up to a couple thousand.

A male visitor continues: Is it, in the State of Illinois, this is a general question, it could be for anything they do, is a company allowed to violate an ordinance daily and then pay the fine in infinity or is there a certain point?

Village Attorney Bastion responded: Depending on what the violation is. If it's an ongoing violation, the court can enter an injunction enjoining them from the business from any future violations.

A male visitor asked: But they can just continue to violate?

Village Attorney Bastion responded: If the court enters an order an injunction then those operators are subject to contempt.

A female visitor asked: Any of these ordinances that are being drafted, um, are, is the ability, is it the ability for the village to include in there that if you are a company that does pollute the air, or has a chemical that is hazardous, that you have to pay the village for testing and monitoring? Village Attorney: Retesting? Monitoring the air?"

Village Attorney Bastion responded: That is already included in the state statute.

A female visitor continues: Well the state statute requires them to do it picking their own person every quarter of a year.

Village Attorney Bastion responded: That we will look into this matter.

#### 11. ADJOURNMENT

Trustee Kelly made a motion to adjourn, the motion was seconded by Trustee Davi - motion carried (Approved). The meeting adjourned at 6:51 pm.

PRESENTED, READ and APPROVED

9/3, 2019

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CHAIRMAN

[DRAFT] Minutes transcribed by Building Official Giuntoli