

City of Hudson Common Council Legal Committee
Minutes of Regular Meeting
September 25, 2019

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CITY CLERK'S OFFICE
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In attendance:

Alderman John Rosenthal, Chairman

Alderwoman Tiffany Garriga

Alderman Rich Volo

Andrew Howard, Counsel

Absent: Alderman Shersshah Mizan

Mr. Rosenthal called the meeting to order at 6:15 p.m. He announced that for the first time, a non-member, Linda L. Fenoff, would be taking minutes. This would allow members to be more attentive and allow committee business to be more transparent.

He then announced the agenda items for the evening: an Americans with Disabilities Act (ADA) settlement, a city sidewalk ordinance, self-storage units and a proposed moratorium on short-term rentals.

ADA Settlement

Mr. Howard reported that the U.S. Department of Justice came to the city to investigate after a complaint was filed by three people who alleged that the city's sidewalks, and entrances to City Hall, Promenade Hill and other locations were inaccessible. He said that because the city was taking steps to address the issues and identify deficiencies—via a feasibility study to make City Hall ADA accessible, using the former John L. Edwards Elementary School for city offices and drafting a sidewalk improvement district, for example—the government was willing to settle.

The city, however, had to agree to appoint an ADA coordinator within 30 days, establish a grievance procedure to resolve complaints of violations and hire an architect within 90 days to look at city-owned buildings, curb ramps, street-level sidewalks and how the city planned to deal with existing curb ramps and sidewalks, Mr. Howard said. The government, he said, understood that it was a process and the city was moving in that direction.

Mr. Volo asked what the requirements were for a person to serve as the ADA coordinator. Mr. Howard said the individual would be trained and Mr. Rosenthal added that the coordinator could be full- or part-time. Fifth Ward Alderman Dominic Merante clarified from the audience that the coordinator does not have to be hired, that any city employee could be called on to do the job. The code enforcement officer or city clerk serve as such in many cities, he said, and city attorneys in other places.

Mr. Merante also said that the coordinator position was an executive appointment and if moved on quickly, the process could get under way, starting with an assessment of properties and such to share with the architect.

Mr. Howard agreed that there was no reason the city had to wait, but said it was better in a city the size of Hudson to appoint a person rather than a department.

Ms. Garriga asked if anyone with ADA issues regarding properties that were not city-owned could get help from the ADA coordinator. Mr. Howard said the coordinator's responsibilities would apply to city-owned properties, but that they could offer advice.

As for the grievance procedure, Mr. Howard said written notice would have to be given and a meeting with the ADA coordinator conducted to determine if there was any need to remediate.

He said a Common Council resolution was required to allow the mayor to enter into a settlement agreement. It would have to acknowledge that deficiencies were being addressed, that a licensed architect would be hired and an ADA coordinator would be appointed. Ms. Garriga said the people of the city had been waiting too long and recommended that the Common Council approve the mayor entering a compliance agreement that included hiring an architect and ADA coordinator. Mr. Rosenthal seconded the motion, which was approved unanimously.

Sidewalk Improvement District

Mr. Howard reported that he had spoken with city Department of Public Works Superintendent Rob Perry, who estimated that it would cost \$7 million to \$8 million to replace and repair city sidewalks so bonding would be required. Mr. Howard said input would be required from city Treasurer Heather Campbell on whether it would be more appropriate to bond or proceed on a pay as you go process.

Mr. Howard noted that the Downtown Revitalization Initiative (DRI) had discussed complete street improvements and suggested that the same route be applied throughout the city. The firms interviewed by the DRI committee wanted to work with curbs, ramps, etc. Mr. Rosenthal asked about the timeline of choosing a firm and Mr. Howard said it should be within the next few weeks. A deliverable set of protocols should come out of the DRI that could be used for a grant and the work on such be transferred from the DPW to a private firm.

Self-Storage Units

Mr. Rosenthal said a special use permit application to place portable temporary storage units at 121 Fairview Avenue, at the corner of Oakwood Boulevard, had come before the Planning Board. That board questioned whether that use was allowed under city code and asked the Zoning Board of Appeals (ZBA) for an interpretation. Mr. Rosenthal asked if the specific use was not listed in the code meant that it was not allowed under City Code. He said it might not be the best use for the parcel, given its proximity to residential properties.

Mr. Howard outlined what the ZBA had to consider. The property is in the General Commercial zoning district. City Code §325-15 B (1) listed "wholesale storage and warehousing" as a conditional use and §325-15 B (2) included "manufacturing, assembling, converting, altering, processing or storing of products and materials regardless of where offered for sale, provided that such use shall be limited to not more than 10,000 square feet of floor area." Also, §325-14 A (7) listed "service establishments furnishing services other than a personal nature" as a permitted use.

Self-storage or mini-storage are not specifically defined in the code, nor was there any evidence that the City Code banned storage. When contacted by Code Enforcement Officer Craig Haigh, Mr. Howard said they reviewed those sections of the code, as well as the section that includes "any plan needing site plan approval" and decided to forward the application to the Planning Board. He said the ZBA had to interpret the code as a whole and whether the

intent at the time the code was written was that no storage units would be permitted in the city. The ZBA's determination could be instructive, from a legislative standpoint, into whether the city wants to make it clear where, and if, self-storage units are allowed.

Fifth Ward Alderwoman Eileen Halloran said from the audience that she hoped Article 8 of the City Code would seem strong enough for neighborhood protection in her ward, where the parcel is located.

Asked whether the Planning Board could still reject the application based on neighbors' concerns even without applying Article 8, Mr. Howard said site plan review and the State Environmental Quality Review (SEQR) process would have to be conducted. Asked what threshold would have to be reached for Article 8 protections to be invoked, Mr. Howard said neighbors would have to raise issues of traffic, lighting, etc., which they have already begun doing with the Planning Board. Mr. Rosenthal suggested the matter be tabled until next month, after the ZBA considers the request for an interpretation. Ms. Garriga and Mr. Volo agreed.

Short-Term Rentals Moratorium

Mr. Rosenthal said the Common Council was trying to balance reasonable economic activity for residents versus the interests of non-residents operating multiple short-term rentals (STRs). It was his opinion that if one lived here they had to follow the rules, but those who conducted business over the internet got a pass. He said the city should be encouraging people with STRs to be residents of Hudson.

The issue has been a can of worms, with questions of affordability and culture arising, Mr. Rosenthal said. That's how the idea of a local law imposing a nine-month moratorium on registration or permits for new STRs came up, he said. The freeze would allow lawmakers to analyze the potential economic issues presented by regulation of STRs and get a better law enacted.

Mr. Volo asked when the local law on the moratorium was drafted because no one had seen it before the last Common Council meeting. Mr. Rosenthal said the possibility of a moratorium had been discussed multiple times and was actually suggested by Common Council President Tom DePietro.

Residents questioned whether some STR operators would even bother to register and how it would be enforced. Krystal Heinz, a local attorney, said she was not sure how the city could get around state code and questioned the need for regulation of STRs. She said there was no correlation between weekenders and use of STRs, nor was there any information on their impact contained in the affordable housing report. She suggested waiting on a law until comprehensive plan revisions helped guide where the public wanted to go as a city.

As presented, the proposed moratorium establishes penalties for those who establish a short-term lodging facility during that time. It also has a hardship provision in which the property owner may apply to the Common Council for a waiver application. The council will then conduct a public hearing before deciding whether to grant or deny the waiver.

Mr. Rosenthal said there were 130 or so registered properties in the lodging tax and many were running AirBnBs as limited liability companies and not living here. He said he did not want to live in a community centered around one type of economic activity, such as tourism. A moratorium, he said, doesn't mean that the Common Council had to enact a law at

the end, especially as work proceeded on a comprehensive plan. Doing such would give lawmakers time to figure out how the STR fits into the regulatory framework and the potential economic consequences of regulating them.

A resident asked if the moratorium would affect owner-occupied STRs and was told it would not. The idea is to speak to those who don't live here, Mr. Rosenthal said. Mr. Howard noted that the city was talking about a short-term lodging law and a moratorium simultaneously. When Mr. Volo said he wanted a second draft of the lodging law, Mr. Howard responded that he needed officials to tell him what they wanted in it.

Ms. Garriga said there are concerns about housing throughout the city so steps must be taken to address them. She said allowing no AirBnBs was not being considered, but the moratorium allowed leaders to find a way to benefit everyone.

Mr. Howard said during the moratorium, officials could analyze data and come up with a short-term rental plan. Those who registered under the lodging tax could continue to operate and renew if needed, and those who wanted to start one could apply for a hardship review, he said.

Mr. Howard also said that the proposed moratorium would be an incentive for those currently operating off the grid to register rather than risk losing any availability to be grandfathered after the freeze was lifted.

Mr. Volo was concerned about the legislative process. He said the proposed law to enact a moratorium now sat on aldermen's desks, yet he never heard of it through committee. The measure was not vetted in the usual manner because Mr. Howard had been away. Mr. DePietro added that passage of any law was a lengthy process that involved public hearings.

Mr. Rosenthal said it was "madness" not to regulate STRs in a small city, he said.

Ms. Halloran said she was not clear if the purpose of the law was to allow the city to take a more disciplined approach to regulating AirBnBs. She said the law probably would not suddenly flood the market with lower rate rentals. Ms. Garriga reminded her that she had previously said that she did not recognize a housing problem in Hudson.

Carolyn Morrison, a real estate broker and B&B owner urged aldermen to take time and research numbers and the law's effect on tourism. She asked them to consider the purpose of the law and what they expected the city to gain from it. The market is moving in a way where many people won't be able to live in Hudson, she said.

Mr. Howard agreed to circulate the original short-term lodging law and wait for suggestions.

Mr. Volo made a motion to adjourn the meeting at 7:44 p.m., which was seconded by Ms. Garriga and approved unanimously.