

**CITY OF ROCK ISLAND  
CITY COUNCIL STUDY SESSION  
April 8, 2019 - 5:30 p.m.**

**City Council Chambers, City Hall, 3rd Floor**  
1528 Third Avenue, Rock Island, IL

Present: Mayor Mike Thoms, Alderman Virgil J. Mayberry, Alderman Dylan Parker, Alderman Dave Geenen, and Alderman Ivory D. Clark

Alderman James Spurgetis arrived at 5:40 p.m.

Absent: Alderman Stephen L. Tollenaer and Alderman Joshua Schipp

Staff: City Manager Randy Tweet, City Attorney Dave Morrison, City Clerk Judith Gilbert, and other City staff

4/8/2019 - Minutes

**COMMUNITY AND ECONOMIC DEVELOPMENT: MANAGING DANGEROUS TREES**

Community and Economic Development Urban Planner Miles Brainard presented on government's role in managing dangerous trees. He showed a picture of a flowering Bradford Callery pear tree near power lines and asked if it was a dangerous tree. He said this particular species can explode because it has poor branch structure. They tend to fall apart even with less intense winds. Mr. Brainard said there are a lot of these trees in the city.

Mr. Brainard explained what is a dangerous tree. He said trees often become structurally unstable due to pests (such as the Emerald Ash Borer), disease, weather damage, bad trimming, lack of maintenance or poor maintenance, as well as nuisance species (wrong species for the location) and bad breeding. Mr. Brainard said most people cannot properly identify dangerous trees; only licensed arborists can be trusted to possess the skill and knowledge to correctly assess the conditions of a tree or even to identify the species.

Mr. Brainard reviewed how publicly-owned trees along the streets or in the parks are handled now. He said they are addressed on a case by case basis and he gave several examples. He said when neighbors have complaints about trees on private property, they are told the City does not get involved. When there are trees on private property leaning onto the public right-of-way or presenting a danger in some way, they are also addressed on a case by case basis, but with great restraint. Mr. Brainard said that depending on the severity of the case, the City does a minimal amount of action to relieve the situation.

Mr. Brainard reviewed what neighboring cities do with regard to trees. East Moline addresses the trimming of trees and not much else. In Moline and Bettendorf, they only address trees when they are negatively affecting the public right-of-way. Davenport's code is similar, but also addresses vegetation that is damaging buildings and the vegetation must be removed. Mr. Brainard gave an example of a tree of heaven growing against a foundation which would be required to be removed.

Mr. Brainard gave examples in more wealthier, land-locked, urban communities where they have more regulation of trees; for example, height over a sidewalk so there is sufficient clearance for walking and removal of dead and dying trees on private property. He said in these communities, they tend to have staff with a specialty in tree care or licensed arborists on staff.

City Attorney Dave Morrison discussed the legal issues of privately owned trees. He said one of the most common questions is about trees on property lines. He said it's important to find out if the tree is really on the property line. Only a licensed surveyor can determine where the property lines are. If a tree is cut and the tree turns out to be on the neighbor's property, the person can be charged with criminal trespass, theft, and there may be treble damages. Mr. Morrison stressed the importance of finding out where the property line is. If the roots and trunk are on the property line, the tree is owned jointly with equal ownership. Mr. Morrison said it's always best to try and work it out with the neighbor. Taking any action without the neighbor's permission can lead to charges of conversion. Mr. Morrison explained that for the City to get involved with trees on private property can be a slippery slope. The City would be assuming a liability that it doesn't currently have.

Mr. Morrison said with respect to trees that are dangerous and affecting the public right-of-way, the City should take action when it is causing a dangerous situation. Mr. Morrison explained even when MidAmerican Energy trims trees, they have to use "reasonable care" and not go too far with trimming trees.

Mr. Morrison reviewed what can be done when it's a situation involving a neighbor. He advised talking to the neighbor and working something out. He said it's important to confirm your lot lines. He said only a licensed surveyor can tell you where your property boundaries are. Mr. Morrison advised consulting a licensed arborist to determine if a tree is a danger to your property. If the arborist says that is the case, get it in writing and send it to your neighbor by certified mail; this will put them on notice about it. He explained your neighbor does have a duty to protect you from unsafe conditions. Mr. Morrison said as a last resort, you can file suit and litigate the matter. He said in tree cases, no one walks away happy. Mr. Morrison cautioned the City Council not to get involved in these matters.

Alderman Spurgetis asked Mr. Morrison if the City would have any liability if they created a revolving loan fund to assist property owners with the expense of taking down private dead trees which can be very costly and a financial burden. Mr. Morrison responded no; there would be no liability.

Mr. Brainard discussed next managing City-owned trees as there are a lot of trees in Rock Island, specifically City-owned trees in the right-of-way that need attention. He stated other communities have tree management guides for their street trees. A guide has pictures and provides instruction on tree care; it also has advice on choosing trees for a location or how to remove them. He said for the past two years staff have been researching these guides. Mr. Brainard recommended that it is time for the City to consider creating a tree management guide.

Mr. Brainard concluded the presentation with some guidelines. Dangerous trees that overhang or negatively affect public right-of-way should be trimmed or removed only when necessary; restraint should be employed as much as possible so as not to be accused of trespassing. Dangerous trees that do not have an impact on public right-of-way are a private matter and the City should not be involved due to issues of liability. The City should steer clear of disputes between two neighbors. The City should focus on City-owned street trees and consider creating a management guide for them.

Alderman Spurgetis asked about trees on boulevards where they are between the curbs and the public sidewalks and if those are City-owned trees. Mr. Brainard responded yes. Alderman Parker asked about branches overhanging the right-of-way and if the City trims those and when and why. Interim Public Works Director Mike Bartels replied that any type of complaint is logged into the Cityworks system. The situation is assessed and a determination is made if it can be done by Public Works staff or if a contractor needs to be hired. He said they used to have an annual bid process for a tree contractor. Mr. Bartels explained this was paid for with Gaming

Funds in the past. With less funds, they don't do it anymore.

Alderman Parker asked if the list of trees to be planted in the boulevard could be updated. Mr. Brainard replied yes; it does need to be updated. He said there are diseases affecting maples. Mr. Brainard explained a tree management guide would include species diversity. Alderman Geenen said people love tree-lined neighborhoods. He said the 7th Ward does not qualify for the 50/50 tree program because of the smaller boulevards. He asked if there is a smaller tree that can be planted on the boulevards. Mr. Brainard said yes; they can figure that out.

Alderman Parker said he would like the nuisance ordinance amended to include dangerous vegetation. He asked if the City would assume any liability for doing that. Mr. Morrison responded he didn't believe so, but the language should be tightly worded. Mr. Brainard said they can look at language from other communities and the best approach to limit liability. Mr. Morrison said the current ordinance may cover some of those circumstances and added that it might also be a training matter for staff. Alderman Parker thinks a lot of cases are from absentee landlords.

Alderman Parker brought up grant funding opportunities to pay for an arborist on staff. Mr. Brainard explained that there are a couple of people on staff in Public Works and Parks who are qualified to sit for the arborist exam to be certified. He doesn't think it would be reasonable to hire someone. He added that the Morton Arboretum also offers training for staff. He explained further that it takes years of experience and other qualifications before one can even sit for the arborist exam. Alderman Parker suggested bringing it up to Bi-State about sharing an arborist or tree-caring team with other communities. City Manager Randy Tweet said he would ask other communities about a joint arborist.

## **COMMUNITY AND ECONOMIC DEVELOPMENT: REGULATING SHORT TERM RENTALS**

Miles Brainard presented the topic of regulating short-term rentals. He began by discussing what are short-term rentals. The definition follows the Fire Code in that short-term rentals are less than 30 days. A short-term rental can be a room or a whole residence; it can even be just a couch. He stated short-term rentals are facilitated by platforms such as Airbnb, VRBO, HomeAway, etc., that make a profit by charging a service fee. They take a cut of the rental charge. Short-term rentals are similar to traditional hotel stays, but with a different appeal because you are staying with locals in a home and they are usually more affordable. Mr. Brainard said there are very few short-term rentals in Rock Island (five); when there are special events, there may be as many as ten.

Mr. Brainard reviewed regulations elsewhere; it is different everywhere you go. He stated that attempts to ban short-term rentals fail in court or in practice to get rid of them. He said the more intense the regulation, the more likely it will be challenged in court. He said cities may have regulations in theory, but ignore them in practice. Mr. Brainard said he spoke with Airbnb's community outreach representative. Airbnb does not have an ordinance template for communities and they don't look kindly on attempts to expunge them from a community and they will get their attorneys involved.

Mr. Brainard reviewed what the neighboring cities do with regards to short-term rentals. Mr. Brainard was clear in that the ordinances of neighboring cities do not define short-term rentals, but short-term rentals would be presumably defined as traditional bed and breakfasts are. He said they called staff and asked what they really do in practice. In Moline, bed and breakfasts are special uses in 1-6 family residential zones and up. Mr. Brainard said in practice, they ignore them. In East Moline, bed and breakfasts are authorized uses in 1-2 family residential zones and up. East Moline also ignores short-term rentals. In Davenport, they are permitted uses in lower residential densities and special uses in higher residential densities. He said Davenport ignores

short-term rentals. In Bettendorf, they are a special use in single family residential zones and up. He stated in Bettendorf, the city wants to know where the short-term rentals are and they are not wanted in Bettendorf.

Mr. Brainard reminded Council they are in the midst of amending the City's zoning code. He reviewed how short-term rentals are addressed in the current zoning code. He explained a short-term rental will always need an operational permit issued by the Chief Building Official. It is for a use that the structure would not normally have that use. It allows for inspections to determine if basic health and safety requirements are met. This would be handled by the Inspection Division and is similar to the regular rental inspection and registration process. Operational permits are issued on an annual basis.

Mr. Brainard stated in some cases, a special use permit would also be required. That would be in the lower density zones of R-1 and R-2. Mr. Brainard had on display a zoning map showing the different residential zones. Alderman Mayberry asked where that would be in the 2nd Ward. Mr. Brainard said there are only a couple of neighborhoods near the Milan border. He said there are many PUDs in the 2nd Ward which have their own special rules. Mr. Tweet said all of southwest Rock Island is R-1 or R-2. Mr. Brainard explained special use permits address parking, signage, and registration for the hotel/motel tax. He added special use permits come before Council for approval. Mr. Brainard reviewed the process for a short-term rental application.

Mr. Brainard said the question for Council to decide is how they want to address short-term rentals in the new zoning code. He explained the various definitions or choices. Permitted uses are allowed by right and without a hearing or vote. Special uses must be approved by City Council. Authorized uses are approved by the Board of Zoning Appeals. The difference is by intensity of use or a particularly different use. The BZA tends to approve more minor cases. Mr. Brainard said in both cases of special and authorized uses, there is a public hearing where the applicants can speak as well as those potentially affected by the use are able to speak along with members of the public.

Mr. Brainard presented the different options for Council to consider. The first option is for all short-term rentals to be a special or authorized use in all residential zones. The second option is to make them special or authorized uses in lower density residential zones and permitted uses in higher density residential zones, similar to bed and breakfasts. The third option would be to make them permitted uses in all residential zones. Mr. Brainard explained the secondary question is whether short-term rentals should be special uses or authorized uses. Council approves all special uses and the Board of Zoning Appeals approves authorized uses. With short-term rentals, typically there are no modifications to the structure and there may be one or two extra cars. Mr. Brainard said he wanted to hear feedback from Council.

Alderman Parker asked why lower density cases come to Council. He lives in a higher density neighborhood, but said there isn't much difference between his neighborhood and the 4th Ward and 7th Ward. He wanted to know why only certain cases go to Council. His preference is for permitted uses or authorized uses in all zones.

Alderman Clark said he agrees there is no difference between higher density and lower density neighborhoods. He wants a legal opinion when a neighbor comes and complains about their neighbor renting out their home. He wanted to know what the City can actually do. Mr. Morrison said it depends on what your ordinance says you can do. If they are supposed to be licensed and aren't, there can be a fine or injunction. Mr. Brainard clarified that if short-term rentals are completely banned, they almost always fail. He stated Airbnb operates in 190 countries and they feel strongly they should be allowed to do so.

Alderman Clark feels there should be some say by the City. Mayor Thoms said Alderman

Parker's recommendation would be short-term rentals would be automatically approved. Alderman Parker clarified that authorized use would go to BZA. He said there are other ordinances in place to address issues such as signage and parking. Alderman Parker asked if it's necessary to create a separate registration for short-term rentals. He said there are already regulations in place to address neighborhood concerns. He said a compromise would be to make the BZA review the cases. Alderman Clark said he is more comfortable with the BZA reviewing the cases. Mayor Thoms said he is OK with the operational permit and if there are issues or complaints, to then address them. It can be dealt with by taking the permit away or they have to go in front of the BZA and get a special use permit. He thinks it is a waste of staff time otherwise. The registration and inspection is a good idea. He said most forward-looking cities don't deal with it.

Alderman Parker asked about the hotel/motel tax. Mr. Brainard responded that the administrative costs to collect the tax exceed the amount that would be collected. He added however, that it is important to attempt to be fair and have them registered and that they pay the hotel/motel tax on an annual basis. Alderman Parker asked if there was legislation at the state level to change how that is done. Mr. Brainard replied there is a state tax and Airbnb pays a block sum to the state for the state tax; local taxes are up to the municipalities to sort out. Mayor Thoms stated you can have the property owner print out their record of Airbnb rentals and pay the taxes based on the record. He believes the permit should be on an annual basis and the taxes paid annually.

Alderman Spurgetis asked for clarification from Alderman Parker that he doesn't want any differences between the zoning areas. Alderman Parker said yes, he doesn't want that. Alderman Spurgetis would like time to process and review the options. He said there are zoning codes and uses for a reason and if businesses aren't allowed in R-1 or R-2 without a special use permit, he is hesitant to change that without examining it further. He feels the City needs to be careful and do it right.

Mr. Brainard said he only travels by staying in short-term rentals. He said the process of rewriting the zoning code is going to take some time. He added there is time for a conversation with the community about what they would like and what is the most, sensible balanced approach. Alderman Parker stated this is the opportunity to change the process with the rewriting of the zoning code. He is very excited about changing the process and staying with the times.

The study session concluded at 6:35 p.m.

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Judith H. Gilbert, City Clerk