

**CITY PLANNING COMMISSION
MINUTES
NOVEMBER 12, 2019**

1. **CALL TO ORDER** – Hutcheson called the meeting to order at 6:00 P.M.

2. **ROLL CALL**

Members Present: Disalvo, Halm, Haner, Holm, Rew, Stroebele, VanHouten, and Hutcheson
Late: None
Absent: DeMasi, Rater, and Scott
Staff: Gibbons, Wade, and Weber

3. **ADOPTION OF AGENDA**

Motion by Holm, second by VanHouten to adopt the agenda as presented. Motion carried by unanimous voice vote.

4. **APPROVAL – MINUTES OF OCTOBER 8, 2019 MEETING**

Motion by Rew, second by Holm to adopt the minutes as presented. Motion carried by unanimous voice vote.

5. **PROOF OF PUBLICATION** – Gibbons

6. **REVIEW OF MEETING PROCEDURES** – Hutcheson

7. **PUBLIC HEARINGS** - *(Refer to the taped recording of these proceedings for official verbatim minutes)*

A. CASE #ZT-19-004: Public hearing on the request of the Community Development Department to amend multiple sections of Title 15: Zoning of the Municipal Code by repealing Section 15.02.110(E)(6), Temporary Storage Containers and Section 15.02.110(E)(7), Temporary Storage Trailers and replacing them with Section 15.02.110(E)(6), Portable Storage Units; and enacting Section 15.03.571, Portable Storage Unit and Section 15.24.110, Portable Storage Units in Industrial Districts.

Weber provided an overview of the request.

No one spoke in favor of the request.

The following member of the public spoke in opposition of the request:

Scott Rolenc, 810 Woodbury Avenue, Council Bluffs, IA 51503, stated that he has brought his concerns regarding the City's policies on temporary storage containers to City Council earlier this year. Rolenc stated that he has received notice of violations on his property from prior staff members and to his knowledge is the only business that has received such letters. Rolenc stated that City Council had directed staff to solicit public input from local businesses that would be affected by the proposed text amendment. Rolenc was told that he should be included in the public input process by City Council, but feels that he was not appropriately included. Rolenc stated that he feels that there was not sufficient public input in the amendment process. Rolenc stated that he believes that the primary users of storage containers are located in C-2 districts where they are used by retailers as a secure way to store overstock and bulk material necessary for their operations. Rolenc spoke with a representative from Jim Hawk trailers who informed him that their trailers are rented out and used by many schools within the city. Rolenc feels that the proposed regulation of containers within the city will penalize the primary users of storage containers within the community. Rolenc feels that combining storage containers and storage trailers into a single definition creates conflict. Rolenc stated that without the proper public input that the board should table the decision. Rolenc stated that Target and Dick's Sporting Goods have containers that stay on site for greater than ninety (90) days. In residential areas, Rolenc stated that he feels that storage containers are more durable than a 'Tuff Shed.' Rolenc stated the Commission should consider how the

proposed regulation would affect local businesses. Rolenc stated that if he is not able to buy in bulk and have a place to store the materials on site his business would not be as competitive as businesses in Omaha or online. Rolenc stated that he feels Council Bluffs is being overly regulated in comparison to Omaha and surrounding counties in Iowa. Rolenc feels that the Commission should table the request to allow at least a sixty (60) day timeframe for staff to solicit input from local businesses.

Hutcheson closed the public hearing.

Van Houten asked why the issue is being brought up at this time.

Gibbons stated that the issue was initially brought up through enforcement action taken on Aqua Palace, who then brought the issue to the Mayor and City Council. Gibbons stated that City Council informed staff to conduct research on how containers were regulated in other Iowa cities. Gibbons stated that Council supported staff in pursuing an amendment and emphasized that they did not want containers to be allowed in residential areas permanently and that construction sites should not be penalized. Gibbons stated that staff reached out to businesses with high container traffic within the City to receive input on container turnover on their properties. Gibbons stated that that information was used to determine the time durations stated in the proposed amendment.

Gibbons stated the following reasons in support of the proposed amendment: containers are not aesthetically pleasing; containers do not promote the City's mission of continuously improving the quality of life and attractiveness of the City of Council Bluffs; the safety concerns associated with the potentially hazardous materials or chemicals transported in containers; and containers do not produce any tax value to the City. Gibbons stated that he feels the proposed amendment is fair and allows business owners the option to ask for an extension of time from Council if the proposed timeframes are not suitable for their needs.

Disalvo asked if the current code allows for a business to locate a container on their property permanently. Gibbons stated that there is no mechanism under the current code to allow containers on-site permanently.

Disalvo referenced the building code that states that when containers are left on site for 180 days or more that they are considered a permanent building. Disalvo stated that the City allows mobile home trailers to be located on properties and that portable storage units are not much different. Gibbons stated that, unlike portable storage units, mobile home trailers are constructed under federal guidelines and meet housing codes. Disalvo asked that if there is a way to allow the containers on site if they were to pass a safety inspection. Gibbons stated that he cannot speak to the building code, but the building code referenced in the Chief Building Official's comments would lead one to assume that these containers can be made into permanent structures, but he does not know what that would require. Disalvo stated that as a business owner he can see how utilizing portable storage containers on a permanent basis would be beneficial as it provides a secure storage option.

Disalvo stated that he believes businesses would benefit from using portable storage units for permanent storage purposes. Gibbons stated that while the storage unit could meet the definition of permanent structure from a building code standpoint, the unit would still have to meet zoning regulations.

Wade advised Disalvo to abstain from discussion and voting on the case as Disalvo will be voting on the case as a councilmember in the future.

VanHouten asked if staff has received complaints regarding portable storage units. Gibbons stated that the majority of storage unit complaints come from units located in residential areas.

VanHouten asked if there would be a fee associated with a temporary use permit. Gibbons stated that there currently is no fee charged for temporary use permits.

VanHouten asked how this would affect construction sites for residential developments. Gibbons stated that the proposed amendment would not affect those sites as they would be considered active construction sites where containers would be allowed for the duration of the project, which is already allowed under the current code. Gibbons stated that the current code allows containers to be on-site for seventy-two (72) hours, which staff felt was too restrictive, whereas the proposed amendment allows containers to be on site for up to two (2) weeks without a permit. Gibbons stated that if an applicant requires additional time, a temporary use permit can be issued administratively and shall be subject to the proposed requirements. Gibbons stated that commercial districts are subject to requirements as well and the same timeframe as residential districts. Gibbons stated that industrial zones differ in that containers are more commonplace in these settings and therefore it would be difficult to regulate containers as they are integral components of industrial operations.

Rew asked if staff knew how many businesses would be impacted by the proposed amendment. Gibbons stated that staff did not have an exact number, but that the amendment would impact every property in the City in terms of compliance. Gibbons stated that many containers today are likely illegal and nonconforming. Gibbons stated that the proposed amendment is an effort to provide a mechanism to bring the containers into compliance. Gibbons stated that the proposed amendment may cause some people to build an addition on their property to meet storage needs which would provide the property owner with a long-term storage solution and increase the City's tax base. Rew stated that he works with businesses every day and in many aspects our community is not business-friendly. Rew stated he feels the proposed amendment places another hurdle that businesses have to jump over. Rew stated that maybe the City should have aesthetics requirements for containers. Rew stated that he agreed with Disalvo's point that containers offer a secure storage option. Rew stated that the proposed regulations are too strict, especially given that the City does not know how many businesses would be affected. Rew stated that he drives past Aqua Palace every day and does not notice the illegal storage containers on the property. Rew said that if it does look bad, we should address aesthetic requirements for containers on a case-by-case basis. Rew stated that when businesses do not have enough money or space for additional permanent storage options, containers are a viable option and therefore he would have a difficult time being in favor of the proposed amendment. Rew stated that he would like some additional time to observe how many containers are in the City outside of an industrial setting that the proposed amendment would impact. Gibbons clarified that the existing code already outlaws containers as permanent storage today.

Halm asked if the containers would be subject to building code if they were to be located on-site permanently. Gibbons stated that the comment from the Chief Building Official eluded that if containers were on-site for a period exceeding 180 days, then they would be subject to building code requirements. Gibbons stated that in the case of businesses like Target and Walmart containers are turned over constantly, therefore, a single container is not on site for long.

Hutcheson stated that some businesses may use the same container and switch out only the inventory on a regular basis. Hutcheson stated that he is concerned that the City will not have proof that containers change on a daily basis unless the City plans to individually inspect every container. Hutcheson stated that he thinks containers serve an essential purpose for many businesses.

VanHouten stated that he feels the City already has a strict building code in comparison to other local municipalities. VanHouten stated that he has no problem with the proposed requirements for residential districts, but a compromise should be made in regards to commercial district requirements.

Holm stated that he feels that allowing containers in the city is hurting Council Bluffs. Holm stated that he is aware of quite a few containers within residential and commercial areas of the city. Holm stated that he hates to see businesses move out of Council Bluffs, but feels that there is no place for containers within the city. Holm stated that there is a new assisted living facility being constructed where containers are located on-site,

but he knows that once that project is complete, the containers will be gone. Holm stated that there are a few businesses that have containers on their property that have sat there for a long time, with some of the containers in poor condition. Holm stated that some of these businesses have room to expand on their site, but choose to use containers likely because it is a less expensive option. Holm stated that he does not feel that neither a storage container nor truck trailer on axels should be used as a storage option on any commercial or residential property within city limits.

Gibbons asked the Commission for guidance on regulation of containers if the Commission was not in favor of what was proposed.

Hutcheson suggested that there be an annual application for containers where applicants would be required to justify their need for the container if they would need to have it on-site year round. Hutcheson acknowledged that this would require the building code to be amended per the Chief Building Official's comment. Hutcheson stated that the City should provide an avenue for people to apply annually to allow storage containers on their property for a flat fee. Hutcheson said that as a part of this process, the City should inspect the containers annually to confirm their use.

Stroebele stated that there still needs to be some aesthetic requirements, whether that be fencing, screening, painting, or some other option. Stroebele said there are certain areas of the city where these containers do not look good and the City has no idea what they are being used for.

Halm stated that he thinks it is important that containers stay as temporary uses and are not allowed to be permanently located on-site, because then they should be treated as a building for safety and aesthetic reasons. Rew stated that this would not apply to businesses who are turning containers over every day.

Holm stated that it would be difficult to regulate aesthetics for all containers in the city. Holm stated that the potential application fees would not be sufficient enough to support the amount of time and resources required to monitor and inspect container aesthetics. Hutcheson stated that without knowing the number of containers in the city, it is difficult to determine how much time and resources would be needed. Hutcheson said that new buildings already require inspections currently, therefore, container inspections could potentially be added to the City's existing inspection system.

Rew stated that businesses should have an avenue to apply for a permit to allow containers permanently. Rew stated that this system would still allow the City to enforce aesthetics standards.

Gibbons stated that the City has one (1) zoning enforcement officer for the entire city and that he does not feel that inspecting containers is an efficient use of the zoning enforcement officer's time. Gibbons stated that the regular inspection of individual containers on a consistent basis also creates difficulties from an enforcement standpoint. Gibbons stated that the Commission should provide guidance on what standards they would like to see.

Hutcheson stated that if the containers are leased they cannot be modified to meet aesthetic requirements. Hutcheson stated that screening and placement could be used to enforce aesthetics, but nothing that would permanently alter the containers themselves.

Gibbons stated that it can be difficult to enforce aesthetics. Gibbons stated that if aesthetics are a main concern, the Commission should consider recommending appropriate screening and placement requirements.

Halm asked if anyone has ever proposed a storage container home. Gibbons stated that storage container homes exist, which is why staff has built in language in the proposed definition that does not allow containers to be used as habitable structures, unless the containers were to comply with all applicable building codes, etc. Halm

said that he would not like to see containers being used as homes unless there were architectural standards in place. Gibbons stated that there are not city-wide architectural standards.

Rew stated the lack of consensus shown by staff's research indicates that cities seem to struggle with how to regulate containers. Gibbons clarified that there is consensus on the elements regulated.

Holm stated that he doesn't think that Omaha allows them permanently in a residential setting. Hutcheson stated that the Commission does not have an issue with the proposed residential regulations. Hutcheson asked Rolenc for feedback.

Rolenc stated that the request should be tabled to receive greater input from business owners. Rolenc stated that it is not fair that industrial areas are not subject to the same regulations as commercial areas. Rolenc discussed the durability of containers. Rolenc stated that City Council directed staff to obtain business input and of those contacted by Rolenc, none had been contacted by the City, but they all have storage containers. Rolenc stated that the Council Bluffs community is fortunate to have an abundant supply of containers and that this advantage should be embraced. Rolenc stated that he likes the idea of requiring the containers to be painted similar to the surrounding buildings. Rolenc said that the majority of storage containers are within the C-2 district. Rolenc asked if the Commission had any specific questions for him.

Hutcheson asked if Rolenc would be opposed to an annual permit and fee. Rolenc stated that he would not be opposed to an annual permit or fee. Rolenc stated that taxation is the main concern he has heard from City Council and staff and suggested that businesses be brought in to discuss an appropriate tax.

Halm asked if Rolenc's containers rotated or stayed on-site. Rolenc clarified that the same containers stay on site. Halm asked if Rolenc rented or owned the containers on his property. Rolenc stated that he owned the containers.

Hutcheson stated that the City Council would make the final decision on the request. Rolenc asked that the Commission table their decision.

Halm stated that he does not think that he would notice the storage containers on the Aqua Palace site if he were to drive by. Halm stated that he would have more of an issue if the containers were in front of the building on the property. Halm stated that the location of the containers on the property should be regulated.

Rolenc stated that he understands enforcement of containers if there have been complaints, but no complaints have been made regarding the containers on his property that he is aware of. Rolenc suggested that there be a yearly application for containers and that enforcement action should take place if staff receives complaints from the public. Rolenc asked if the Commission had any input on the aesthetic regulation of containers. Halm stated that it depends on the location. Rew stated that no city has come up with a standard set of regulations in part because enforcement of aesthetics is subjective.

Rolenc stated that if the proposed amendment were to go into effect there would be significant backlash from local businesses. Rolenc suggested that the City should take smaller steps and start by enforcing container aesthetics.

Gibbons stated that if the Commission would like to allow containers permanently, then he recommends tabling the request to allow staff time to conduct additional research. Gibbons stated the Commission should consider where within the community containers should be allowed permanently. Gibbons noted that the containers that exist today without a permit are illegal. Gibbons stated that there will still be a hardship placed on businesses with containers if they were to be allowed permanently as they may need to be screened or

Painted to comply with new aesthetic standards. Gibbons stated that staff will conduct additional research on the zoning and land use regulation of containers, but cannot speak to building code's regulation of containers.

Rew stated that he would like staff to look into how many businesses would be affected by the proposed amendment. Rew stated that ideally containers should not be in the city, but in reality businesses need them to operate. Gibbons stated that it will be difficult for staff to provide a total number for containers within the city. Rew said that if the Commission tables the request, it would allow members the time to look around the city to gain a better sense of the issue.

Wade suggested to reach out to Jim Hawk trailers for information on how many clients utilize their containers within the city. Gibbons stated that staff would be willing to meet with Jim Hawk trailers and other business owners, but that it should be a diverse group.

Holm reiterated that containers should not be allowed in city limits permanently. Holm stated that if a business needs to grow inventory then they need to expand their building.

Van Houten asked Rolenc what concerns he had with the proposed amendment. Rolenc stated that combining storage container and storage trailer into one term is confusing. Rolenc stated that he is also concerned about the lack of regulating industrial districts as there still are safety concerns with containers in those districts. Rolenc stated that he understands the proposed residential regulations, but containers are similar to metal buildings that already are allowed in the city.

Halm asked if the City has ever grandfathered illegal uses. Wade stated that under the grandfather statute, the use would need to have been considered legal at the time of installation. Halm asked if the City has ever released a survey for public input. Gibbons stated that the City has not. Wade stated that the City's Facebook page could be used as an avenue for public input. Hutcheson stated that the use of social media for public input will only provide a limited sample. Halm stated that there should be a wider discussion within the community regarding containers.

Gibbons stated that it seems as though there is consensus among the Commission regarding the proposed residential regulations, but staff should focus on additional research in commercial areas. Hutcheson asked that staff also research regulations for industrial areas. Gibbons stated that industrial areas are more isolated than commercial areas but that staff will look into industrial district regulations. Hutcheson stated that there are some industrial areas that abut residential and commercial areas. Gibbons stated that this was addressed in the proposed amendment through screening requirements.

Hutcheson asked what penalty is currently associated with the illegal use of containers and if this would apply under the proposed amendment. Gibbons stated that the penalties listed under the City's current zoning ordinance's would apply. Hutcheson asked if these penalties apply to all the existing illegal containers. Gibbons confirmed that it could.

Gibbons asked that the Commission not assign a deadline to allow staff sufficient time to conduct research. Stroebele stated that the information presented by staff tonight was sufficient, but additional concerns have arisen that need require further research.

Gibbons asked that the Commission reiterate what they would like staff to research. Gibbons stated that there is interest from the Commission in making containers permanent and asked if staff should look into regulations regarding aesthetics and placement. VanHouten asked staff to consider the building code if containers are to be allowed permanently. Hutcheson asked staff to look into differentiating containers on a short-term versus long-term basis.

Gibbons stated that he feels the proposed definition is a step in the right direction as under the current code there is no clear definition of a temporary storage container or trailer. Gibbons stated that staff will research additional options for container regulation in commercial and industrial areas. Gibbons stated staff is willing to obtain input from a broad spectrum of businesses. Halm suggested that staff hold a community workshop.

Gibbons asked the Commission if the existing code needed to be changed. Halm suggested that regulation of containers be based on a hierarchy of container or trailer type. Gibbons stated that staff will conduct additional research based on the Commission's input.

Motion by Hutcheson, second by Halm to table the request to allow time for staff to conduct additional research as discussed. Motion carried by unanimous voice vote.

8. **OTHER BUSINESS** (*Refer to the taped recording of these proceedings for the official verbatim minutes*)
 - A. City Council update: Wade provided an update of City Council actions relative to recent planning cases.
 - B. Other items of interest: Gibbons and the Commission discussed replacing Disalvo's position on the Commission.
9. **ADJOURNMENT** – Hutcheson adjourned the meeting at 7:20 P.M.

The recording of this proceeding, though not transcribed, is part of the record of each respective action of the City Planning Commission. The recording of this proceeding is incorporated into these official minutes of this Commission meeting as if they were transcribed herein.