



## **Planning & Public Safety Committee**

October 11, 2016

### **Summary and Motions**

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Chair Mossotti called the meeting to order at 1:00 p.m. All committee members were present. Council Members, F. Brown, Plomin, Moloney, and Evans were in attendance as non-voting members.

#### **I. Committee Summary**

A motion was made by Stinnett to approve the August 16, 2016 Planning & Public Safety Committee Summary, seconded by Bledsoe. The motion passed without dissent.

#### **II. Distribution of Unsolicited Advertising Supplements**

Henson introduced the topic and introduced Rufus Friday, President and Publisher of the Lexington Herald Leader Media Company, who presented the item. He defended Herald Leader product distribution record. He expressed his views that Herald Leader has the right to distribute free newspapers and solicitations that go along with that.

Stinnett questioned whether the Ordinance prohibits anyone from distributing materials. Michael Cravens, with Law Department, said it does not; but it places limitation on how they are distributed. Stinnett furthered that saying it says to put the material on the porch or door hanger. He also added that this isn't about first amendment rights, but it is about litter and public safety. Stinnett asked Friday about the cost of walking the distributions to the door rather than throwing out the car window and whether advertisers would pay that extra cost of it were an issue. Friday did not want to speak on that, but rather, he directed them back to recent cases regarding distribution as a protected speech. He urged council to review the cases again before proceeding with this ordinance.

Kay asked Cravens if the cases Mr. Friday referred to had been reviewed and if they were included in the opinion. Cravens stated that the Supreme Court Case from last year had been reviewed and it did not change their opinion.

Henson commented that she has respect for those companies wanting to do business in our communities and respect for Herald Leader, but she motioned to move ordinance be moved to full council.

Evans questioned how placing the material on the porch is less of a Public Safety issue than placing it in the driveway if the issue is someone not picking it up. Commissioner Bastin commented that the materials left in the driveway could indicate that the person is not home which could make them a target for theft or burglary.

Henson commented that in addition to Public Safety, it is difficult for elderly or disabled to go into the yard and pick it up and it is also an Environmental Quality issue when it is left outside and it washes into the storm drains.

Evans questioned how it can be an Environmental Quality issue if it is on the property.

Mossotti commented that previously Richard Morgan with Herald Leader had told his distributors to be careful. She asked if there were any stats to show if this had gotten better. Morgan responded that they do take extra care in delivering the materials.

He addressed Evans question saying that they drive around looking to see if product has been left out. If it has been left out for long period, that address is removed from the distribution list. Mossotti wanted to clarify if everyone who does not subscribe to the Herald Leader received this solicitation. Morgan said yes, but only residential homes and duplexes and to opt out, they must call.

Lamb asked Cravens if Louisville passed an ordinance. He responded that they did and ours was modeled after that. Lamb also said Herald Leader has allowed people to call and have their address removed. She questioned whether any colleagues have heard concerns about this.

Akers asked Morgan why they don't deliver to certain neighborhoods. Morgan responded that it is based on the number of households in the neighborhood who receive the Herald Leader. Morgan said they do not deliver to apartment complexes but research has shown that in places, they are often not picked up.

Gibbs responded to Lamb that he has received complaints that these solicitations are still being found in the neighborhood, sometimes in the gutter.

Stinnett thanked Morgan and Friday for taking the time. He said he understand that they want to exercise their amendment rights. He told them that this ordinance was not in violation of their rights, but it was telling them they had to put it on the front porch or door step.

Farmer asked Friday if he had looked over legislation and if we were to pass this in its form, how it would affect him. Friday asked again for the Council to review Supreme Court Cases. He also pointed out that it could be problematic to model the ordinance after one that passed 7 years ago. Farmer asked Friday if litigation were inevitable should the ordinance pass. Friday responded that they do not want to proceed with litigation and they want to work with the community.

Bledsoe followed up by asking if the assertions were content neutral. He responded that as a newspaper they are protected no matter the content.

Lamb asked about section 2 stating that code enforcement will be responsible for enforcing the ordinance, she asked Henson how this would affect Code Enforcement. Code Enforcement said there would be many issues for enforcement such as complaint only, compliant by property owner, vacant property, investigative, penalties to assess, etc. He said he can't answer directly how his division will handle this; it will be on a case by case basis. Lamb responded that she understands Public Safety issue. She said we must be able to follow through so we don't have to add personnel. She suggested looking into it further to see how enforcement will handle it.

Scutchfield commented about Public Safety as neighborhoods in her district have seen an uptick in burglaries and car thefts. She is worried about the continued notice that someone might not be around

Mossotti recognized Kathy Gibson, property manager as a public speaker. Ms. Gibson spoke about the solicitations and how they are left at empty apartments; she has asked them to stop and they are still being delivered. She also asked if this was only newspapers or could they stop the phone books and cable solicitations as well. Mossotti responded that the ordinance was in regard to all unsolicited material.

Plomin asked if there was a recording of the total number of these unsolicited materials going out. Director Armstrong responded that they have never been asked to gather this data and they do not have the specific information. Mossotti asked if, while they are out on a response, if they notice the

material being left out. Armstrong responded that they do on occasion see these materials when they are at a vacant property. He said they have to come into contact with the property owner to determine if the material is unsolicited. He added that the application can be frustrating because there is a collection of evidence and calls to be made and eventual hearing. They go out and investigate these issues only if there has been a complaint; they do not go out looking for material that has not been picked up.

Lamb addressed the issue of it not being appropriate to have the public speak while there is a motion on the table. She asked if there was a sign-up sheet. Mossotti said there was no sign-up sheet.

Henson commented that this is not about the Herald Leader, but all unsolicited material. She has received a few complaints in her district. She said if a phone book were thrown into a yard, she would get the call about it and then code enforcement would investigate so this ordinance will be complaint-driven.

A motion was made by Henson to approve the proposed ordinance regarding the Distribution of Unsolicited Advertising Supplements and refer it to the full Council, seconded by Akers. The motion passed on a 8-2 vote (Mossotti, Scutchfield, Kay, Stinnett, Akers, Gibbs, Bledsoe, Henson- Yes; Farmer, Lamb -No).

### **III. Constables**

Stinnett introduced the item stating that this issue came up this summer as a result of an article in the Herald Leader and some e-mails from Akers' constituents in regards to Constables. Stinnett clarified that the purpose of this is not to ban constables. He added that there is no limit to how many deputy constables each of the three elected constables in our community can have.

Keith Horn, Managing Attorney, gave a brief overview of the draft ordinance to explain the process of approving deputy constables.

Stinnett asked who is tracking the number of deputies and Horn responded that he does not have that number. Stinnett clarified that counsel

Lamb asked about the bonding and where that money comes from. Horn responded that government is responsible and he suggested looking at an insurance policy rather than a surety bond.

Scutchfield asked what that cost was for and Horn responded that it was to cover liability.

Bledsoe asked about the worth of an insurance policy and Horn responded it was worth one million dollars.

Stinnett added that the bonding was about \$12,000 per person.

Mossotti asked about training and Horn responded that he did not think there was a training requirement.

Kathy Witt, Fayette County Sheriff gave a presentation showing her support of the proposed ordinance.

Jeff Jacob, Constable, spoke about surety bonds, what they do as constables and their authority.

Jim McKenzie, Constable, spoke on issues regarding the association between sheriff and constable and the importance of the uniform. He also expressed interest in meeting with the Council.

Ron Johnson and Kathy Gibson, property managers, spoke in favor of the constables. James Waller, property owner, spoke in favor of the constables.

Mossotti asked whether the sheriff's office could assume these duties and Witt responded that they could.

Lamb asked Patrick Johnson, Risk Management, to explain the process of surety bonds. He responded that the constable purchases their own bond and they bring it to his office for reimbursement and his office files the bond with Council who votes on it to approve the bond and then it is taken to County Clerk's office to be filed.

Stinnett asked how many deputies each of them have. Mr. Jacob responded that he has 12 deputies and Mr. McKenzie responded that he has 2. Mr. Sparks has 2 deputy constables.

Stinnett suggested meeting on this again.

Brenda Wells, Greater Lexington Apartment Association, spoke in support of and was appreciative of the constables.

Bledsoe asked about the difference in the amount of deputies each constable has and the fees for each are all consistent. They responded that they are consistent. McKenzie responded that it is based on the demand in that precinct.

No further comment or action was taken on this item.

#### **IV. HB 422 – Code Enforcement Hearing Boards**

Scutchfield introduced David Barberie, with Law Department, who presented the item. This legislation allows hearing officers to handle the cases with an additional administrative appeal to the board. Some of the immediate recommendations are to change all of the existing ordinances to follow the new state law; use hearing officers to handle administrative appeals; and create and operate the new notification system. Long-term recommendations include consolidation of the (5) existing boards into 1 board and consider utilizing paid hearing officers.

Lamb thanked Barberie for the presentation and asked about training requirements. He said there would be minimal training requirements. They would mostly use attorneys who are already familiar with how to handle the hearings.

Kay wanted to clarify that this proposal meets the minimum requirement. Barberie responded that the fine level is not required, but it is a recommendation. Kay asked if the additions were just because it is a convenient time to do so that. Barberie said that CE is going to have a lot of changes and when you look through these ordinances today you will see it consolidates the existing ordinances so it isn't spread throughout the code.

Mossotti asked if this was just compliance. Barberie said that without this, they would no longer have a priority on their liens. If they decided not to do anything at all, they would have less of a success rate on compliance as well as collections.

A motion was made by Scutchfield to approve the Code Enforcement Hearing Boards ordinance and refer it to the full Council, seconded by Kay. The motion passed without dissent.

## **V. Long Range Transportation Planning**

Mossotti introduced the item and Council agreed to postpone the discussion of this until the next meeting.

Lamb asked about the urgency of ordinance and whether this is something that should wait until the next meeting in December or if it should be discussed sooner.

A motion was made by Lamb to approve the Long Range Transportation Planning and refer it to the full Council, seconded by Kay. The motion passed without dissent.

A motion was made by Farmer to adjourn, seconded by Scutchfield. The motion passed without dissent.

The meeting was adjourned at 2:52 p.m.