



Planning & Public Safety Committee

April 11, 2017

Summary and Motions

Chair Scutchfield called the meeting to order at 1:05 p.m. Council Members Mossotti, Kay, J. Brown, Gibbs, Lamb, Bledsoe, Henson, and Plomin were in attendance. Higgins was absent. Council Members Stinnett, Farmer, and F. Brown were also in attendance as non-voting members.

I. Approval of Committee Summary

A motion was made by Henson to approve the March 14, 2017 Planning & Public Safety Committee Summary, seconded by Kay. The motion passed without dissent.

II. Vicious Dogs

Peggy Henson introduced the item and spoke about the Vicious Dogs ordinance draft process and proposed revisions. Chad Edwards with Law Department and Chief Bowling with Animal Care and Control were present to address comments and questions. Henson said there were a couple of things that were not in the ordinance that she feels are important. She said the revised ordinance contains changes that Animal Care and Control has requested; some of their changes are in this revised ordinance but some of the changes were not necessary based on the opinion of Law Department. Henson asked for Chief Bowling's comments regarding the revised ordinance.

Chief Bowling said Animal Care and Control has reviewed this on several different levels from Law Department's perspective and from Animal Care and Control's interpretations. He said as it stands right now they are still having difficulty with "domestic animal" being placed in the ordinance under section 4-14 and this is because state law which regulates vicious dogs only speaks of a human being. He said if there is a dog-on-dog attack, then in the vicious dog ordinance as it is right now, this would not be a chargeable offense. He said they would have to charge on the state level which only speaks to attacks on humans. He said they can take temporary possession of an animal for 10 days for public safety reasons, but that only leaves a 10-day window to bring a civil or criminal charge. He said you can't bring a civil charge against someone if it is not specified in the law.

Henson asked for Edwards speak about Law Department's thoughts on this. Edwards said they are familiar with state law's definition of dog attack as being a dog attacking or attempting to attack a human. He said state law allows them to supplement the vicious dog statute with a local ordinance which is what we are doing by adding "domestic animal" attacks to that definition.

Bowling said his argument is that vicious dog is defined in state law as well. He said Animal Care and Control is defining it as well; they are just going more in depth with the local ordinance on the definition of a vicious dog. He said he understands the vicious dog law to be enforceable by uniform citation. He said section 4-14 is a law that he cannot write a uniform citation for. He said he can take possession of the animal and impound the animal, but there is no uniform citation that can be written.

Kay asked for clarification on the options we have for the ordinance. He asked if Bowling's concern was about not being able to charge an individual. Bowling said yes, if it is a dog-on-dog attack or a domestic animal attack. He said they would go through a civil court rather than a criminal process which is time consuming and costly. Edwards said Animal Care and Control's concern is which statute they should be citing to in these instances. He said they can continue to cite under the state statute even if they are

taking the dog for viciously attacking a domestic animal. Kay asked Edwards if Animal Care and Control has concerns about citing under the state statute and Edwards said yes, they have concerns with doing that.

J. Brown said if it is a dog-on-dog attack, Animal Care and Control is able to take the attack dog away for 10 days allowing for civil or criminal charges to be filed. He asked if the concern was Bowling's responsibility to write a citation for the vicious dog. Bowling said state statute says the dog has to be off the owner's property or an officer has to see it. He said if there is a dog-on-dog attack and the attack dog is on its property, they don't have a violation unless they can prove the dog was off its property or the officer saw it. J Brown asked when animal cruelty comes in to effect. He asked if another animal or its owner can be accused of animal cruelty to another person's property or animal. Bowling said no; that would be an intentional or wanton issue. He said you have to prove those 2 things in court on animal cruelty. J Brown said we have to trust that the Law Department says we can do this and that this is being done correctly. His concern is that this will not be done on the street level because Animal Care and Control does not feel comfortable taking someone else's property.

Henson said there was a discussion and she sees Bowling's views. She said she is okay with removing "domestic animal". She said in most cases she has found you will get both an animal attack and an owner who is trying to protect their animal. She asked if in that case you would be able to take possession of the animal because a human was involved. Bowling said if you use the word unprovoked attack it could become a problem. He said if the dogs are fighting and someone gets in the middle and is attacked, they were probably attacked because they were trying to separate the dogs. If a human is attacked in a dog attack they would at least want quarantine and that is where the 10 days comes into play and whether the victim's owner will press charges. Henson said she agrees with Bowling that it would be hard to prove an attack on a domestic animal if it was not seen so she is fine with removing that language from the ordinance. Henson said she spoke with Law and they decided it would be okay for Animal Care and Control to use their discretion in these cases. Bowling said the problem with discretion is that every person who has a domestic animal attacked will want the attack dog picked up and he said that results in a lot being on the officers' shoulders and there are cases where the owner doesn't pay the fees to get their dog released which is another problem.

Mossotti asked for clarification between local ordinance and state statute. Edwards said there are state statutes that define what constitutes a vicious dog and how vicious dog attacks should be handled. He said state statutes expressly allow us to supplement those laws with our own additions and that is what we have done here. Mossotti said she is under the impression that Chief Bowling wants more teeth in the ordinance. Bowling said it is not the teeth; there are ordinances out there like Louisville and they have changed vicious dog because it is a hindrance on state law. He said they proposed to have 3 levels including nuisance dog, aggressive dog and dangerous dog. He said the animals they deal with are different at the scene. Mossotti asked if he is satisfied with the ordinance as it is written. Bowling said he is not; he would like it to be tabled one more time and give them an opportunity to come back one more time with the people who are involved with this and see if we can work something out.

Kay asked if the discussion started with "domestic animal" being added to section 4-14. He asked if taking it out will satisfy his main concern. He said it would satisfy his main concern. Henson said she would be okay with taking that language out because she does think it will be hard to prove.

A motion by Peggy Henson to Amend the Vicious Dogs ordinance and remove "domestic animal" from section 4-14, seconded by Steve Kay, discussion follows.

Lamb asked for Horn to speak on the item. Horn said he wants to make sure there is no confusion about citing someone under an ordinance. He said Law Department tries to give Council what they request; adding that if Law Department thinks it is legal, they will give it to Council. He said if they think there is an issue with it, they will let Council know. He said they have no issue with removing "domestic animal" from the ordinance. He thinks any part of this that is based on probable cause will be problematic potentially, evidence-wise, but he doesn't think there is a fundamental flaw in the ordinance we have. Lamb said with respect to what Chief Bowling has said, the complaints she has received have largely been involving other animals. She said she is not sure she can support removing "domestic animal" from the ordinance.

J. Brown echoed Lamb's comments. He said he has a constituent who had a domestic animal that was attacked and she felt the needed enforcement was not there to make her or her dog feel safe. He said he hates that there is discretion in how this ordinance will be enforced, but he feels if we leave "domestic animal" in there and Chief Bowling educates his officers on how to address this and use discretion when issues come up, he thinks giving a 10-days period to file charges is something we need with this ordinance and he cannot support removing the language.

A motion was made by Henson to Amend the Vicious Dogs item and remove "domestic animal" from section 4-14, seconded by Steve Kay. The motion failed by a vote of 1-8.

A motion was made by Henson to move the Vicious Dogs item to full council, seconded by Kay. The motion passed without dissent.

III. Street Access for Fire Safety

Chair Scutchfield gave a brief explanation of the item stating that we have had several meetings with fire, planning, engineering, and traffic engineering. She said they have all agreed to a slightly wider road dimension in subdivision regulation, but they do not have to bring forward at this time; it is in the process of being put down on paper. She said the presentation was not finalized yet, but informed the committee it would be ready to present at the May 9, 2017 Planning and Public Safety Committee meeting. Scutchfield also said that Fire is now recognized as a full member of the technical committee which will lead to more consistent and safer road designs so when they are talking about subdivision plans this allows for Fire to be officially recognized.

No further action or discussion on this item.

IV. Zoning Map Amendment Process Change KRS 100.2111

Stinnett gave a brief overview of this item and how it came to committee. He said there are some ordinances that allow the planning commission to have the final say. He introduced Paul Schoninger who presented the item.

Schoninger gave the alternative method to consider zone changes; using KRS 100.2111. He explained that the process is the same except when it comes to the approval process which states that the Planning Commission has final say unless within 21 days an aggrieved party files a written request with Planning that the final decision shall be made by Council; or Council files notice with Planning Commission that Council will decide the map amendment.

Stinnett asked James Duncan, Director of Planning, if he had an opinion of this either way. Duncan said there are potential positives in this process. He said the non-contested changes would happen much faster with this new process. Duncan said if Council chose not to take action on Planning Commission's zone change, it would become effective after 90 days by process of law. He said overall he believed the change could benefit and due process would not be curtailed.

Plomin asked about the legal definition of aggrieved party; she asked if anyone can give written notice. Tracy Jones, Law Department, responded that an aggrieved party would be someone who applied for zone change, showed up in opposition to a zone change or made their objections known; she said there is a room for a broader interpretation of that. Plomin asked who determines if someone is eligible to be an aggrieved party. Jones said that the notice would be sent to the Planning Commission; she said Planning Commission has never been put in this situation before so she can't say how they would react.

Stinnett responded to Plomin that the person requesting a hearing would notify the Planning Commission and the Planning Commission would notify Council in writing. Plomin asked if this could be anyone and Stinnett said yes. Jones said the aggrieved person would be required to make written request to Planning Commission within 21 days. She said this statute requires a written request to Planning Commission and the decision go to the legislative body. She said it puts the onus on the person asking or Council; otherwise she said you wouldn't get what you normally get in this process.

Lamb asked about Council rules regarding work session that pertains to zone changes. She asked if we can put some of the processes from KRS 100.2111 into the rules and procedures. Lamb said some zoning map amendments may move forward with or without Council approval and that concerns her. She said you may only have part of the research components because of the ordinance. Lamb said she sees the benefit and understands the need for it in order to move forward. She said she wants to be sure we aren't allowing a process that prevents them from research and knowing the history. She said we need to look into this further and she would support this in doing so.

Kay asked if we would have to follow either KRS 100.211 or KRS 100.2111 and if there was no option besides taking it to the state legislature. He asked if we would have to follow one or the other and if we cannot modify them. Jones said that is probably correct; they have not fully researched this, but the way it reads, you would have to pick one or the other. Kay said other jurisdictions do not have council review the Planning Commission's results, but it looks like that is mandated in KRS 100.211; he asked how that is possible. Jones said under KRS 100.211 there is a 90-day provision and if Council does not act within 90- days then whatever the Planning Commission does is final under process of law. She said under KRS 100.2111 the same thing would occur, but after 21 days. Kay asked if in other jurisdictions where the legislative body chose not to take action or review, after 90 days, those decisions about zone changes then become law. Jones referred to Bruce Simpson, attorney who has handled these cases in other jurisdictions.

Private attorney Bruce Simpson spoke on the issue; he has experience dealing with this issue in other jurisdictions. Simpson said typically owners get a notice and if there is controversy, Council would be notified. Simpson said Council would decide whether to have a public hearing or not. He said sometimes an uncontested case may take months because of Council breaks and other things. Simpson said the clean-up provisions are good for the community; KRS 100.2111 is beneficial when the case not contested.

Bledsoe said this makes sense in balancing our planning and zone change process rather than waiting for periods of time. Bledsoe asked if there is a time limit to hear the case as a Council, for instance if they

are on break. Jones said the only timeframe is one that is given to provide notice (21 days) after the Planning Commission makes a decision. She said there is no guarantee when it would be heard. Bledsoe said it would give a person the assurance that it will be heard. She said maybe we can incorporate some language so the public is clear on the process and be clear from the beginning that if they want to have a voice they should be present at the hearings and not wait until it goes before Council. Jones said there are different options for doing this and it is something they will have to consider this going forward. Bledsoe said she is supportive of this.

Lamb referred to state statute pertaining to the 90-day timeframe and asked if the petitioner can go ahead and start when Planning Commission approves or do they wait until the 90 day period transpires. Simpson said this is often referred to as the 90-day rule; he said it goes into effect when Planning Commission makes a recommendation; he said if Council takes no action, then within 90 days the Planning Commission's decision is final by process of law. The same would be true if you amend an ordinance under KRS 100.2111. An aggrieved party has 21 days to give written notice that they are aggrieved or disagree. You have to have an ordinance consistent with the statute. Lamb asked if the petition or developer would not start a project until its development plan is approved by the Planning Commission. Sallee said this is normally the process. He said when the approval is in process this gives time for the final development

Mossotti asked about Louisville and resolving this. She said we may not have to deal with the issues on the back-end with these changes. Simpson said it is all transparent. She asked if there is a downside to this or anything in this that doesn't work. He said maybe some fine tuning like recording a Planning Commission's decision and some minor things like sharing information, education, and communication and such. He said in the majority of cases we are going to have zone changes that are uncontested so he does not see a downside to moving forward with this. Mossotti said she is in support of this and hopes we can do this in conjunction with the item she has prepared for this committee next month regarding meeting with the affected neighborhoods of these map amendments.

Stinnett said this doesn't change the zoning front-end process; it is the same. He said under this new process we would have to ask Planning Commission to give us information because we want to hear it after Planning Commission takes action. Stinnett asked if we can we get our minutes faster within two weeks of a decision being made if we don't adopt this. Sallee said the issue with minutes is unpredictable because it depends on the number of cases heard and he said there are things that add to the delays. Stinnett said if we adopt 100.2111 we would want to put a time limit for Council to hear the case because state law doesn't put a time limit. Jones said we will still have 90 days even though KRS 100.2111 does not specifically say that.

Kay said his concern is that an individual Council Member can make a request; he said the statute says it is the body that makes the approval. He said that raises a question about the 21 days if they are on break. He asked if we are on break and it requires the legislative body to make the request, would we need a vote. Jones said the appropriate body would file notice. She said it could mean one or the Council as a whole. Kay said he would like clarification on that before moving forward.

Scutchfield asked if an aggrieved party can file an appeal under KRS 100.2111 and Jones said yes. Scutchfield said if it was an aggrieved party or a member of Council she thinks that would cover the Council as a whole. Jones agreed and she said a final decision would be made by the appropriate legislative body; we would not necessarily have to have a hearing, just make a decision.

Stinnett said after 21 days it comes to Council and the body decides what happens next. He said we do not have to have a hearing. He said this way it is not automatic. Kay said if Planning approves zone change and Council goes on break, they are not going to be back from break and able to make a decision within 21 days because our break is longer than that. Stinnett said we could choose to have a hearing or not; this is just giving Council an opportunity to hear it and we can approve it the way it is. Kay said it is a question of whether it is going to be referred to this body and we would have to file written request with the Planning Commission and if we are on break, we would not be able to do that because we can't take action while on break. Stinnett said we have 90 days to take action. Simpson said the statute speaks to Kay's concern. He said Planning Commission's decision is final unless one of the 2 previously stated situations occurs within 21 days. Then it is up to Council to decide if we want a hearing or not.

Kay asked if no aggrieved party files a request, but a Council Member believes we should hear it and we are on break, how we can file a request. Simpson said that Council Member is as much an aggrieved party as anybody and can make that request within 21 days. Kay said it would helpful if that were clarified.

Amy Clark signed up to speak on this item. She asked why we would want to turn over constituents' concerns to Planning Commission rather than communicating with constituents and getting them a hearing if that is they wanted. She said if there is a zone change, there is a preliminary development plan that has to be signed off on and certified within 14 days. Her concern is that we would not have official and sound communication with this process.

V. Items Referred to Committee

No further action or discussion on this item.

A motion was made by Henson to adjourn, seconded by Plomin. The motion passed without dissent.

The meeting was adjourned at 2:32 p.m.