



Environmental Quality & Public Works Committee

June 22, 2021

Summary and Motions

Chair F. Brown called the meeting to order at 1:01 p.m. Committee Members Kay, Ellinger, Moloney, McCurn, LeGris, Sheehan, Kloiber, Worley, and Bledsoe were present. Council Members Plomin, Reynolds, and Lamb were also present as non-voting members.

I. Approval of May 18, 2021 Committee Summary

Motion by McCurn to approve the May 18, 2021 Environmental Quality & Public Works Committee Summary. Seconded by Ellinger. The motion passed without dissent.

II. FY22 Pavement Management Plan

Nancy Albright, Commissioner of Environmental Quality and Public Works, began the presentation with a review of Resolutions 470-2016 and 471-2016 which establish the Pavement Management Plan. She displayed a chart to illustrate the budget (as adopted) compared to expenditures since 2016. She explained that the FY2022 budget for paving totals \$13.8M with an additional \$271,178 for road care data collection. For the proposed allocation, Albright said, the starting balance for FY2022 paving is \$12.3M with funding deducted to address specific issues such as base failures and high friction pavement leaving a balance of \$11.2M which is broken down by functional class (i.e. arterials, collectors, and local roads). She pointed out that 25 percent is reserved for preventative maintenance such as crack seal and rejuvenation and 75 percent is reserved for resurfacing and repairs. She explained that Council District funding is allocated based on the percentage of local lane miles with an OCI (Overall Condition Index) less than 60. Albright reviewed next steps which will be sharing with Council the selection of arterials and collectors as well as the local roads with an OCI less than 60 and she also mentioned the data collection included in the budget is scheduled for later this summer. She concluded the presentation by letting the committee know the existing Pavement Management Plan is through 2021 and she anticipates her department will be working on updating the plan over the next year.

According to the resolution, Ellinger pointed out that we have a target of \$15M, but we have not hit that in prior years and Albright confirmed this to be correct. Ellinger asked about high friction pavement and Albright explained that the rock typically used in Kentucky is Limestone which tends to polish over time and the rock used in high friction pavement is Bauxite which grabs tires better, lasts longer, and is typically used in curves and in locations where vehicles have a tendency to slide. They discussed the airport runway project which will take place the weekend of August 21 and will require the entire ATS workforce for a duration of three days. Albright added that most of the ATS crew will be working on taxiways and other preparations for the two weeks leading up to the 3-day project. She also said the city is focused on getting as much work done between now and the end of July which will include main roads and school-based roads.

Bledsoe spoke about the challenge that comes with having so many small courts and small streets in her district which means they do not receive very many lane miles in the allocation and this makes it difficult to find ways to pave in those areas.

Kay asked how the allocation is determined for preventative maintenance such as crack seal and Albright explained that the 25 percent allocation is directed from the Pavement Management Plan. Kay asked if spending more on crack and seal would save on future costs and Albright clarified that 25 percent is the minimum, but more can be used if necessary. F. Brown and Albright discussed that there will be another opportunity to evaluate this percentage during the next assessment, adding that there is a lot more national research on this than there was several years ago.

Moloney spoke about funding for bike trails and asked if this was coming out of the pavement fund and how much is allocated. Rob Allen, Director of Street and Roads, said there was a minimum of \$150,000 set aside for this, but it is separate from pavement. He said this is funded through mineral severance and coal severance and he confirmed it is fully funded.

Lamb spoke about base failures on Lansdowne Drive and asked if the \$150,000 allocated for base failures was designated for specific projects and Albright confirmed it is not. Lamb also suggested using high friction pavement at the intersection of Lansdowne Drive and Wilson Downing.

F. Brown spoke about the council district allocations by local lane miles and said the breakdown does not seem fair or representative for all council districts. He suggested that we take into account the unspent money that some council districts carry over from previous years because if each council district is using all of their allocation, the allocations would be more representative. Bledsoe agreed and said this makes the allocations “weighted” and it shows that roads in that district are not being repaired. While she does not believe this was the intent of the current council member, she said, this was an inherited issue and something that needs to change for the future because it disproportionately impacts how many lane miles do not have a high score.

Moloney suggested that if a council district does not spend the funds allocated to the district, the department should move forward with spending that money on issues they see in those particular districts. Sally Hamilton, Chief Administrative Officer, said they do not have the liberty to spend money that has been allocated to a council district and reapportion it without Council’s authorization. F. Brown advised that we could do this by amending the Pavement Management Plan or we could leave this particular issue in committee for further discussion.

McCurn expressed concern that this may not always be an issue of “not spending”, but rather an issue of saving to have an entire neighborhood completed in a cost-effective way rather than doing one section at a time.

Bledsoe said she respects that concern because she also tries to maximize the amount of money she has in a certain area, but there is a point of frustration when it is time for funding to be reallocated and those unspent funds negatively impact the funding allocations. She asked if it could be a requirement that council districts have no more than 10% left in their (paving) budget at the end of the fiscal year and Albright recommended accounting as if the roads in those council districts had been paved so their percentage of roads below 60 did not keep growing. F. Brown asked if this could be done administratively or through the Pavement Management Plan and Albright said it would be better to address this in the plan.

Motion by Bledsoe to make as part of the Pavement Management Plan that when the administration comes forward with paving recommendations it accounts for roads that would be paved should weather

and resources accommodate [which will go into effect with the FY23 Pavement Management Plan].
Seconded by McCurn. Motion passed without dissent.

Worley asked if this will be a change in the current plan and Bledsoe said the intent is for this to be a change moving forward beginning with next year's plan.

McCurn asked if this would be a recommendation that would come back to this committee for approval and Bledsoe clarified that this would impact the ordinance and would come back in the plan every year.

Ellinger clarified that if you don't spend the allocation then it looks like you have more roads under the 60 percent than you would and this change will look at the money a council district would have spent and remove that amount so there would be fewer roads under the 60 percent to which Albright confirmed. Ellinger asked what would be used as the number to determine this and Albright said there is no exact number, but they will research the best way to do this.

Albright confirmed Worley's thought that the OCI is not something that is measured every year. Worley asked if there is a depreciation mechanism built into the plan for the funding allocation. Allen said it does have a degradation component and that is where the variance is because it cannot account for weather, utility cuts, or construction. He added that the degradation is built in so roads that have been repaved are reset in the system. Worley emphasized the importance of submitting work requests to the contractor in a timely fashion so the work can be done more efficiently.

F. Brown asked what happens to the funding from allocations that go unspent and Albright explained that unspent funds tend to roll into the pot used for local roads in general. F. Brown mentioned the percentage breakdown for the functional road category and expressed concern that collectors are being short-changed.

III. Abandoned Shopping Carts

Nancy Albright, Commissioner of Environmental Quality & Public Works explained that abandoned shopping carts is a growing concern. They are found sometimes in clusters and they are reported to several different LFUCG offices. She said we need to address data collection so we can see exactly how many of these are found to determine the magnitude of the problem. She highlighted some of the research that was found in other cities and said some retailers place identifying information on their carts while others have a cart containment plan. She explained that there are some challenges with our current ordinance such as the unknown number of businesses that would need a plan and the burden this could be for these businesses. She reviewed recommendations which include establishing a LexCall code for reporting the carts, further discussion on any proposed regulatory action, better data tracking, and ensuring that Code Enforcement has a process in place. She concluded by saying that there is an appeals process, but it has not yet been outlined.

Reynolds expressed sympathy for individuals who need the cart so they can get home with their purchases. She asked what the cost and labor would be to enforce this and Albright said these challenges have not yet been discussed. Reynolds asked about violations and Albright explained that for 1-3 violations there would be a penalty of \$100 and the fines increase from there. Reynolds asked what to do about an abandoned cart that contains a homeless person's belongings. Polly Ruddick, Director of Homeless Prevention and Intervention, explained the process for placing a notice on the cart, similar to a notice that would be placed on a camp, providing a 72-hour window for the cart to be addressed by the owner and after which it is considered abandoned.

Sheehan suggested bringing businesses into the conversation who own these abandoned carts, especially when setting a timeframe for the carts to be picked up, expressing concern that 24 hours might not be adequate time. She spoke about the plans in the proposed ordinance which are due in January; the undertaking of determining which establishments would need a plan; and receiving and managing the plans. She said this will require a lot of work and suggested that we take into consideration the burden this will be on the Division of Code Enforcement.

LeGris asked if businesses had been brought into the conversation since they would be expected to comply and Albright said there have been no discussion with them. LeGris expressed concern for businesses facing fines versus property owners being penalized and asked what the process is for making this determination. Kloiber explained that the property owner is the owner of the cart and the intention is to incentivize business owners to take responsibility for their property. He said he would like to bring them into the conversation and a good place for that is with regard to the plan that needs to be submitted because this is an opportunity to make changes and assist these businesses. He added that he does not see this as a requirement for every single retailer to track down the carts, but it is more like a tool that will allow us to return the carts to the appropriate place and make any exceptions to help the business owners out. LeGris said her concern is with the burden this will be on businesses, specifically small businesses with a limited amount of carts versus a large store that might have mechanisms in place to prevent the carts from leaving their property. She suggested another reason to bring property owners into the conversation would be to gather correct contact information to be placed on their carts.

Moloney spoke about issues in the past when the shopping carts were found in creeks which caused flooding. He mentioned having met with business owners in the past who explained they are losing money because of abandoned shopping carts. He said this approach worked well and the businesses realized how importance this effort is. He asked where the carts are stored when they are picked up and if there is a cost associated with the storage because he does not want to see this cost the city more than what the problem costs.

Bledsoe spoke about Beaumont Kroger which is experiencing shopping carts taken from the store to the bus stop which is on Kroger property. Kroger is self-regulating the issue by removing the carts from the right-of-way on a daily basis. Given that we are down to 4 or so calls a week, she asked if this is something Code Enforcement can handle or if we need another tool to resolve this issue. Albright said this is being balanced between Code Enforcement and Environmental Services because of the private property versus public property delineation. She said typically when an abandoned shopping cart complaint comes in, it is part of a bigger cleanup so the records are not very clear in saying a complaint was specifically for an abandoned shopping cart and she emphasized that better data tracking could help decipher this better. Bledsoe said she would like to see better data tracking through the summer to help us determine if this tool is necessary.

Worley asked if there are legal mechanisms to be utilized when we know the business in question is a repeat offender. Cash Olszowy, Director of Division of Code Enforcement, explained that there is not a mechanism that would handle a case in a different way for a repeat offender. He said rather than continue on a path of a citation cycle, Code Enforcement would do an abatement and bill the owner. He said we only have the two means from citation to lien in our current regulations and when someone is penalized, they have a right to appeal for relief through the Appeals Board and, he said, that is where we are hamstrung in the process. He also explained that decisions are sometimes made taking into consideration an assessment of the cost/benefit analysis for issuing an abatement versus a citation. Worley asked if we

can sue these businesses if we know they are the ones who repeatedly have carts leaving their property and they are not taking care of it. Mike Sanner, Attorney with the Law Department, explained that the shopping carts can be on private property or on public right-of-way and Code Enforcement places a lien on the property where the violation occurs. In this case, the only way to place a lien would be if the shopping cart is a nuisance on private property which would be treated as a general nuisance. If the shopping cart is on public property, the violation is on public property and we have nowhere to place a lien. He explained that this is why we have the graduated fine system and for the repeat offenders, the fines continue to increase.

Kloiber said the carts are there and they have be dealt with in some manner and the burden of this has been placed on the city, emphasizing that the city does not have a direct mechanism to recoup expenses. When reviewing other city ordinances, he said, the decision was to not place all of the burden on the business. He added that we are not envisioning holding onto the carts, but if they are not picked within a set timeframe, they would be disposed of.

Lamb mentioned establishing the LexCall code as this is something that may help with data collection and Albright confirmed that the administration will move forward with this.

No further comment or action was taken on this item.

IV. KU Vegetation Management Agreement

David Kloiber, 6th District Council Member, provided an overview of the Kentucky Utilities (KU) Vegetation Management Plan and he explained the KU transmission line clearing plan which cuts down all trees that could grow taller than 10 feet. He displayed a map to illustrate KU's line clearing plans for the future which will result in critical tree canopy loss. He explained that there are two possible solutions moving forward: a mutual agreement or an ordinance. By ordinance, we do not have the ability to deal with tree trimming, but we can require underground lines. He said the preferable option is a mutual agreement and the Mayor's office is working on language for this. He explained that an agreement would apply to limited locations in Fayette County including street medians, parks, and any right-of-ways that KU has existing above the transmission lines. He outlined a Vegetation Management Plan Agreement Proposal and he requested that today the committee approve a resolution asking the Mayor to negotiate this agreement with KU.

Moloney asked what the cost would be to replace a 40 year-old tree and Kloiber explained that it would depend on the type of tree and he referenced a national online calculator which demonstrates how to calculate the net benefit in order to get to net-zero. The dimensions and the type of tree would be entered into the calculator and you would indicate which type of tree you would like to replace the existing tree with. The calculator would determine how many trees of a particular species would be suitable for replacing the tree once it is removed. For clarification, Moloney asked if our goal is to find a tree close to the size of the existing tree when looking to replace it and Kloiber said it could be replaced with one or more trees. Moloney expressed concern with the responsibility for the cost of replacing the trees and Kloiber explained that the calculator is designed to take various things into consideration and it is not positioned in a way to create large economic disparities. Moloney said he is not comfortable moving forward until he can see actual numbers to illustrate the cost.

Bledsoe spoke about trees around railroad crossings which create a noise barrier and she expressed concern with the impact from cutting down those trees. She spoke about the language in the agreement

that references “legitimate” safety concerns which is open to interpretation. David Barberie, Attorney with the Law Department, said the Public Service Commission is typically going to defer to the utility on safety concerns and Bledsoe added that KU would likely consider all of their safety concerns to be “legitimate”. She spoke about the language in the ordinance that requires the undergrounding of existing above ground facilities at the expense of the utility company and asked if this is something we have the authority to require. Barberie explained that we could legally require the undergrounding of existing facilities, but that is contrary to long-standing practice and there is a concern about the cost of doing this which would likely get passed down to the customer. He pointed out that previous analyses have shown it will cost billions of dollars to underground existing above ground facilities.

Sheehan expressed concern regarding her district where KU is about to come through Lansdowne-Merrick Park. She mentioned that she did a walkthrough with them as well as the city Arborist and the plan is to clear-cut hundreds of trees which will have a huge impact on the tree canopy. She expressed interest in finding ways to strengthen the conversations between the Mayor’s office and KU. In speaking about zero-net canopy loss, she recommended that we not only think about public spaces, but also trees that will be cut from residential areas. She highlighted that the Lansdowne-Merrick Park area includes residences and a lot of those backyards will lose trees. She mentioned the effects that having a tree canopy loss can bring and suggested having an agreement with KU to trim rather than clear-cutting the trees.

Kloiber responded by saying there can be an agreement with KU to include a lot of things and hopefully that will shape policy going forward. He added that even though we do not have direct control in the residential areas, the hope is that we would be able to get them to employ the agreement across the board for the sake of efficiency. Addressing CM Bledsoe, Kloiber said there are always concerns about the ordinance when there is something in the background and there are ways that costs will not be shifted back onto us which might make it more viable for us to move forward.

Motion by Kloiber to move forward to the full Council, a resolution requesting that the Mayor negotiate an agreement with Kentucky Utilities Company related to clear-cutting or removing trees in certain areas of Lexington-Fayette County. Seconded by Kay. Motion passed without dissent.

Ellinger asked what the plan is for replacing the trees that have been removed. Kloiber said the language in the agreement keeps it in the same council district, but that is something that can be discussed further. He said those who are feeling the effects from trees being cut down will benefit from the net-zero loss calculation. Kloiber expressed to Ellinger that it is the hope for trees to be replaced in the same district, but not necessarily in the same spot.

Lamb asked if this would be strictly for removal of the vegetation management plan since that is with public property and not private property. Kloiber said the resolution is asking the Mayor to negotiate on our behalf for the properties we have the ability to bind on. We do not have the ability to bind for private residences and the hope is that we can lay the ground work for this to be spread throughout the entire city. Lamb added that KU is working with the city's Arborist and she would like to continue to build on this.

Moloney spoke about Versailles Road where several trees were cut down which is not appealing. He said he supports the motion, but asked if this is enforceable or if KU could refuse to comply. Kloiber said the resolution today is to offer the Mayor our support and put our voice with hers and to provide structure for the things we will be requesting. Kloiber emphasized that if KU enters into an agreement with us, it would be a binding contract and they would be agreeing to our requests.

Kay said this has been a frustrating issue to many inside and outside city government. It is not just clear-cutting, but often times when cutting down to clear power lines, too much is cut and we are left with half a tree which is not appealing. Kloiber confirmed to Kay that the resolution is authorizing the Mayor to negotiate the agreement on our behalf.

Motion by Kloiber to suspend the rules and have the resolution reported-out at Work Session today, June 22, 2021. Seconded by Ellinger. Motion passed without dissent.

V. Items Referred to Committee

No further comment or action was taken on this item.

Motion by Ellinger to adjourn, seconded by LeGris. The motion passed without dissent.

Meeting adjourned at 2:41 p.m.