



## Planning and Public Safety Committee

### Virtual Meeting

February 2, 2021

#### Summary and Motions

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Chair J. Brown called the meeting to order at 1:00 p.m. Committee Members Ellinger, McCurn, Lamb, Kloiber, Worley, Baxter, Bledsoe, Reynolds, and Plomin were in attendance. Council Members LeGris, Sheehan, F. Brown, and Kay were in attendance as non-voting members.

J. Brown began the meeting with the following statement: "Due to the COVID-19 pandemic and State of Emergency, this meeting is being held via live video teleconference pursuant to 2020 Senate Bill 150, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting."

#### **I. Approval of November 17, 2020 Committee Summary**

Motion by Ellinger to approve the November 17, 2020 Planning and Public Safety Committee Summary. Seconded by McCurn. The motion passed without dissent.

#### **II. Community Corrections Process for Working with (ICE) U.S. Immigration and Customs Enforcement**

Major Tina Strange, with Division of Community Corrections, provided a presentation on the intake process at the jail. She explained the place of birth inquiry, based on the Vienna Convention, which requires consular notification to be offered to all foreign-born subjects taken into custody. She added that there are 57 countries for which we are mandated to notify through the consular notification process even if the arrestee does not request it. She explained that outside agencies are notified of an arrestee when fingerprints are processed through Kentucky State Police (KSP). She spoke about a workstation that is available and may be utilized by any outside Law Enforcement Agency. She added that if the outside agency is ICE, then a Form 247 (Immigration Detainer) is completed on the foreign-born national which indicates the U.S. Department of Homeland Security (DHS) intends to assume custody of an individual.

Reynolds asked how the booking process used to take place compared to how it is now. Strange said "place of birth" is asked of everyone and that information is logged in the jail tracker system. She explained that the consulate was previously notified regardless of where they were born, but beginning in July 2019, this is only done if they ask for it. She said there is an intake list of 57 countries and if an arrestee comes in from one of those countries, we initiate the process as mandated. Reynolds asked for confirmation that previously foreign-born arrestees were reported to ICE which is something we no longer do and Strange said that is correct.

Bledsoe asked which other federal agencies we work with and Strange said those include U.S. Drug Enforcement Administration (DEA), U.S. Marshals, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and Department of Alcoholic Beverage Control (ABC).

Reynolds asked if it is a law that requires the jail to ask if an inmate is foreign-born at the time of booking and if citizens are obligated to answer the question. Lisa Farmer, Director of Community Corrections, explained that we are required to ask where they were born in the booking process, but they are not required to respond.

J. Brown clarified that Community Corrections does not make special accommodations for any agency and he emphasized that there is not a designated desk for ICE, but there is a desk area that any agency can use to access information. He also clarified that there is a federal statute that requires the "origin of birth" question to be asked and there are some countries who require that their consulate is notified of an arrestee from that country.

Lisa Farmer, Director of Community Corrections, spoke about the State Criminal Alien Assistance Program (SCAAP) grant which is administered by DHS and has been received since 2003. She explained that the grant provides federal payments to states and localities that incur correctional officer salary costs for incarcerating undocumented criminal aliens who must have at least one felony or two misdemeanor convictions for violation of state or local law. She added that, beginning in FY2007, the SCAAP funds must be used for correctional purposes only. To qualify, she explained several requirements that must be met and DHS makes the final determination on the status of the submitted inmate records. She concluded the presentation with a review of the funding that has been received in the last five years.

Reynolds spoke about the grant which was set up in 2003 and the jail is getting this grant money to operate the jail whether or not the inmates are documented or undocumented and this offsets the cost for trainings and programs. She said she would like to find funds elsewhere to cover these costs and she would also like to see the name of the grant changed because it is derogatory toward the immigrant community. She asked if the jail is legally required to allow ICE to be in the jail and Farmer said she does not believe so, but she will have to defer to the Law Department.

Lamb asked how the jail would continue with some of the programs without the grant funds. Farmer said they would have to ask for additional money in the budget to continue with the programming. As an example, she spoke about the GED instructor in 2017 which cost \$20,000 which was paid for using this grant. Lamb asked who the GED instructor was prior to 2017 and Farmer said they use an instructor from Bluegrass Community and Technical College (BCTC). Lamb asked if the grant is also used to pay for supplies and Farmer explained that anything that is used along with the program (books, materials, copier, etc.) would be paid for with this grant.

McCurn asked what procedural changes would be made at the jail without this grant and Farmer said they would have to ask for additional funding in the budget to cover expenses that would normally be paid for with the grant. McCurn asked if other protocols would need to change and Farmer said the process would stay the same.

Sarah Adkins, Immigration Attorney, provided a presentation regarding ICE detainees and the impact they have on the immigrant community. She stated that there is no federal legal obligation for local jurisdictions to use their resources to help with immigration enforcement and detainees are only requests made by ICE with compliance being voluntary. She said each jail can decide which detainees to honor and under what circumstances. She stated that ICE detainees are unconstitutional and local immigration enforcement does not make communities safer, but it destroys trust with immigrant communities.

J. Brown provided points of clarification and said it appears there is no correlation with SCAAP grant and the Division of Community Corrections' coordination with ICE. He said the Division of Community Corrections has been responsive and has made changes to their intake policy to be more reflective to people in the community. He said he understands the concern with the name of the grant and the way the immigration population in the community feels about our acceptance of the grant. He said the division is committed to working with the administration to look for other funding opportunities if they exist. He spoke about the new presidential administration, it looks like immigration policies are changing which may affect local policy. He spoke about the challenge with the detainee process and said the Division of Community Corrections is following the guidelines, but there may be an opportunity for us to continue to work toward providing resources and information to immigrant arrestees where there might be a language barrier.

Reynolds said we have a large immigrant community that contributes to the economy and moving forward, it is important that we take this into consideration and that our policies and procedures are respectful of everyone. She said she would like to commit to working with the administration to find additional funding to support these programs. She stated that the item remain in committee for future updates.

No further comment or action was taken on this item.

### III. Article 17: Sign Ordinance Amendments

Traci Wade, Planning Manager, provided an update on *Article 17: Sign Ordinance Amendments*. She explained that the Sign Ordinance permits a greater number and size as the intensity of land use increases. She reviewed the content neutrality issue which resulted from the Supreme Court Case, *Reed v. Gilbert*. She spoke about the formation of a workgroup which reviewed the existing ordinance line-by-line which compares to the International Municipal Lawyer's Association (IMLA) model code language. She spoke about the proposed amendments that came out of the workgroup discussion and there was a request for input from several organizations, testimony of which was heard during two public hearings in 2019 regarding the amendments and concerns regarding proposed changes. There were requests to increase the Economic Development (ED) Zone and the ZOTA was modified to address concerns. She explained that advertising signs are most commonly referred to as billboards. Finally, she reviewed the potential corrections/modifications as recommended by staff and the timeline which makes the next step to either leave in committee or refer back to full Council.

Lamb asked if billboards would be encompassed in the sign ordinance. Wade explained that billboards (advertising signs) are already regulated in Article 17 so this update would not change any of the specific regulations for billboards, but there is a separate issue to review the allowance of electronic billboards. Lamb spoke about the Fayette County Neighborhood Council concerns and asked if there was a cross-section of public comment at the two Planning Commission hearings. Wade reviewed a brief list of citizens and representatives who spoke at the hearings. Lamb asked if there could be an incorrect interpretation of the 2015 U.S. Supreme Court Decision, *Reed v. Gilbert*. Wade said it has been five years since that decision and there have been other court cases to come forward and reiterate the content neutrality issue for commercial and non-commercial speech which are both protected by the Constitution. Worley said he has heard the misinterpretation argument before and *Reed v. Gilbert* is the law in place, but there are times when a court is asked to evaluate the application of *Reed v. Gilbert* to a particular town's ordinance. He said his understanding is that *Reed v. Gilbert*, as established right now, is the clear interpretation of the law. But there may be other circuit cases who apply this interpretation to specific instances.

Kloiber asked for clarification regarding signs that are not intended to be restricted to within 800ft of the Economic Development (ED) Zone. Wade explained that, in the expansion area, there are about 500 acres located within the ED Zone and a good portion of that land is near the interstate. Some of that land will not have adjacency when this is complete so the owners of the ED land approached the Planning Commission during the public hearing to request larger and taller signs near the interstate. She added that the signs requested were similar in size to hotels and restaurants. The Planning Commission agreed with the request, but the motion that was made included a stipulation that the signs can only be within 800ft of the interstate which leaves any ED land beyond 800ft with no free-standing signs. She added that the ED land owners are looking for some relaxation of this restriction. Kloiber asked if there are any free-standing signs outside of 800ft in that development zone currently and Wade said there are none. Kloiber clarified that this was not intentional because they were looking at having more, but they accidentally restricted themselves and Wade agreed.

Plomin spoke about the e-billboards subcommittee which is considering restrictions for height, size, brightness, etc. for incorporation in a draft ordinance for the Planning Commission to consider.

McCurn spoke about an ED property off Newtown Pike which is across from the interstate, near a hotel, and next to a neighborhood. He said the Planning Commission was restricting this to 800ft due to future development of homes, but he feels this should be relaxed.

J. Brown spoke about property owners who might have inadvertently restricted themselves and asked if there was a way to address this issue. Wade said there is no recommendation to bring forward at this time because today the intent is for the committee to understand there are a few things that need to be tweaked before adopting the language in Article 17. J. Brown said in an effort to give people the opportunity to advertise, we need to pass something to move this along and if changes need to be made at a later date, we can do that.

Worley spoke about the Planning Commission changes that were made and said there is a summary of those changes included in the packet. He said the appropriate changes have been made with the exception of 2 or 3 mentioned today that need enhancement.

Motion by Worley to approve the Sign Ordinance as proposed by the Planning Commission and presented here today be approved for recommendation to the full Council and reported out of committee. Seconded by Bledsoe. The motion passed without dissent (as amended).

Reynolds asked for clarification that what is being done in the electronic signage subcommittee could potentially effect these recommendations. Worley said those changes would only effect billboards and not the sign ordinance as a whole.

Motion by McCurn to amend the original motion to allow free standing signs to be regulated in the B-3, B-4, I-1, and I-2 zones; except within 800 feet of an interstate right of way, the free standing signs shall be regulated as a B-5P zone and free standing signs shall be internally illuminated and not externally shined upon. Seconded by Worley. The motion passed without dissent.

Lamb requested information explaining the proposed amendment be provided to Council prior to the report-out of this item. McCurn stated that his intent for this amendment is to allow free-standing signs outside of 800ft of an interstate in an ED Zone, which are prohibited in the current language. Worley added that we need to have conversations on how to move forward with this prior to report-out. At this time, a vote was taken on the amendment and that passed without dissent. Finally, a vote was taken on the original motion (as amended) and that motion passed without dissent.

#### **IV. Sustainable Growth Study – Project Update**

Craig Bencz, Administrative Officer Senior in the Mayor's Office, provided a background and explained that the study was recommended in the 2018 Comprehensive Plan and this creates an objective measurability to help guide decisions regarding the alignment of the Urban Service Boundary (USB). He emphasized that this does not make recommendations for future alignments and does not identify specific areas appropriate for future expansion; it only creates a process by which we can evaluate. He spoke about the Sustainable Growth Task Force which was appointed by the Mayor and meets monthly with specific tasks to accomplish. By looking at updating vacant land and underutilized land, he said, a vacant land inventory can be completed. He spoke about the public and stakeholder engagement in this process and said there will be at least one large community meeting for public input. He spoke about the growth scenarios which are intended to inform the creation of objective indicators which are in line with the Comprehensive Plan. With the input from the task force, he said, a list of objective criteria will be developed that would initiate discussion regarding the USB expansion.

Plomin asked how the impacts from the pandemic have affected looking at land use. Bencz responded that, from the start, the study has been updated on a regular basis and data will continue to be updated on a regular basis to monitor a change in trends. Plomin asked if there will be a more encompassing look by the July benchmark date and Bencz confirmed this data will be updated indefinitely so we have current information on a regular basis.

Kloiber spoke about objective measures to inform development of the Comprehensive Plan in the future and said the details of how we are going about it seem to be self-referencing instead of using objective measures. He asked if others see this as getting information in a box rather than objectively and Bencz said much of the data collected will be used to inform the objective criteria with the intent to make the conversation about whether or not to expand the urban service boundary more data-driven. Kloiber expressed concern that looking only in the box we have for criteria, we are going to come up with a predetermined set of answers and his concern is more with the way we are looking for answers than the answers themselves. Bencz said we are looking within the existing USB to get projections on how long our supply of land will last, what the use of vacant land could look like, and defining what is meant by underutilized land.

Kay spoke about the slide showing goals and objectives where objective (b) which says we will designate rural land for long-term preservation and this process will determine when or if that land will be incorporated into the USB and the next slide says the study does not identify specific areas appropriate for expansion. He said he understands the consultants are doing the prep-work to identify criteria, but the remaining issue is how or when we get to what the Comprehensive Plan calls for. Bencz said the scope of work for this study is truly within the USB which is the area being emphasized and that is what the objective indicators will be based upon. He said once this is adopted by the Planning Commission, the next step would be for the Planning Commission to work with staff to identify those areas. Kay asked if it is fair to say that the study itself does not achieve objective (b) and Bencz confirmed that currently the study scope does not identify areas outside the USB that would be suitable for future development. Unless we get specific with where we might expand and having the criteria to justify an expansion, Kay said, we will not avoid the real problem which is the battle about the expansion itself.

Bledsoe spoke about the task force being committed to doing really good work on this. She highlighted the definition for vacant, under-utilized land and said this does not always mean “available” and this piece of information is critical for how this moves forward. In the past, it was discussed that the final product would come before Council for approval and she asked if this is still the intent. Bencz said having been adopted as a goal in the Comprehensive Plan, the study would be approved and accepted by the Planning Commission and would then become part of the Comprehensive Plan. He said there has been an understanding all along that a presentation would be provided to Council to gain consensus on the process.

Worley expressed concern about the timeframe and looking at this at a time when we will start looking at goals and objectives for the next Comprehensive Plan. He is concerned that the value of the work will not have efficacy because of the late stage we will receive it. Bencz expressed hope that the data will inform and hopefully expedite the next steps. He said he understands the concern with the timeframe, but there was a delay in getting this started due to contract pricing fluctuations.

J. Brown expressed concern that this study is not accomplishing what it was intended to do and he emphasized that this is the most important issue in our community because this is how we grow. He added that if we don't separate the conversation between expansion and not expansion in the totality of the Comprehensive Plan, we will continue to have the same battle this community always has and the challenge concerning equity, development, and growth. He said when looking at the land in our community, we also need to see the land in the PDR program where development is most likely not going to happen. Unless that is visible, there is a constant fear that all of that land is available for a potential expansion. He said we can be pace setters or trendsetters, but until we have the conversation equitably, we cannot get there. He stressed that the citizens will want to see what the true cost of an expansion includes.

No further comment or action was taken on this item.

#### **V. Items Referred to Committee**

No further comment or action was taken on this item.

Motion by Lamb to adjourn. Seconded by Plomin. Motion passed without dissent.

The meeting adjourned at 3:02 p.m.