



## Environmental Quality & Public Works Committee

December 7, 2021

### Summary and Motions

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Chair F. Brown called the meeting to order at 1:02 p.m. Committee Members Kay, Ellinger, Moloney, McCurn, Sheehan, Kloiber, Worley, and Bledsoe were present. Council Member Reynolds was also present as a non-voting member.

#### I. Approval of October 19, 2021 Committee Summary

Motion by Kay to approve the October 19, 2021 Environmental Quality & Public Works Committee Summary. Seconded by LeGris. Motion passed without dissent.

#### II. Annual MS4 Program Update

Charlie Martin, Director of Water Quality, began the presentation by explaining the permit process for the program. He said compliance revolves around meeting the objectives of 10 program elements which are further defined in the Stormwater Quality Management Program documents. He reviewed the evolution of the MS4 Program and said Lexington's regulations were not fully embraced in the 1990s and in 2006, the EPA and Kentucky sued Lexington for alleged violations of the Clean Water Act which led to the Consent Decree. He mentioned that in January this year, Lexington was released from the MS4 provisions of the Consent Decree and the MS4 Program no longer operates under court ordered sanctions. He reviewed next steps moving forward which include continued compliance in the program element categories, continued promotion and administration of the Division of Water Quality Management Fee Program and continued evaluation of a Stormwater Payment-In-Lieu-Of (SPILO) program as a potential alternative to post-construction stormwater controls for redevelopment sites.

Bledsoe expressed appreciation for the proactive approach in finding issues behind our stormwater problem. She asked about the increase in staffing over the years and Martin said it is a function of the regulatory community which could sometimes call for additional staff, but currently he is more concerned about filling existing positions than creating new ones.

Kay and Martin discussed how this affects the remediation plan and Martin clarified that the sanitary sewer portion of the Consent Decree is still in effect. He explained that in May 2020 he wrote to the EPA and asked for *force majeure* at a time when 90% of active construction sites were to be inspected. The response he received was that this part of the program could be terminated since all of the obligations had been met. Martin said every part of the Consent Decree is complete except for remedial measures on the Sanitary Sewer Program which he will report to committee early next year. Martin clarified that we are not under the Consent Decree but we are still under the permit obligations for the MS4 program.

No further comment or action was taken on this item.

#### III. LFUCG Greenway Encroachment Agreement

Jennifer Carey, Director of Division of Environmental Services (DES), provided a history of encroachment agreements and explained that greenway encroachments include gardens, tree plantings, stream buffers, and play structures. She mentioned that DES manages approximately 500 acres of greenway space, 165

acres of medians, and 388 acres of right-of-way. She explained that having these agreements in place allows for tracking how LFUCG properties are being used; reduces the city's liability; and improves communication with other parties with the hope of providing clear expectations to the applicant. She displayed a map to illustrate the areas of coverage and she explained that the purpose for updating the encroachment agreement is to address communication, coordination, and notification issues. She mentioned that when updating the encroachment agreement, a revised application was drafted and reviewed by the Law Department in an effort to achieve consistency with other departments. She closed by reviewing the process for obtaining an encroachment permit which can be found online and added that applicants should contact DES for a plat, map, district contact info, etc. Applicants should submit those documents to DES for review and approval prior to receiving the permit.

At this time, Chair Brown opened the floor and 2 people provided public comment.

Sheehan requested clarification on the liability piece and asked if there is assistance available for helping with the utility easement approval process. With regard to utility notification, Carey said, there is a one-page sheet on the *Greenways* web page that provides contact information for all of the utilities that could potentially have an easement on a parcel. She said DES has been in contact with the utilities and will help these groups make the connection. Cravens clarified that the intent behind the liability language is to manage the city's risk. We are giving a group or person permission to enter and place something on our property so the concern is making sure that those individuals are primarily responsible for answering to any claim that may be brought forward as a result of them working on our property. Sheehan asked if this means that when a person enters and works on city-owned property, the city is not liable for the work being done or for what might happen as a result of that work. Cravens said the gist is that the city is allowing groups on their property to work on a project, but it needs to be at minimal risk to the city. Sheehan asked if this puts the liability on the groups working in the space and Cravens explained that this makes the groups answerable in the same way they would be answerable for anything they do on our property. He added that this is consistent with language used for volunteers who work at community parks. Those volunteers would sign a release that says they understand they are being given permission to work on city property and will be primarily answerable for any damage that may occur as a result of what they are doing on city property.

Kay asked about the process for moving this agreement forward and Carey said it is not very different from other types of encroachment agreements in place through other divisions and she hopes to have Council's support. Kay and Carey discussed the permit requirement for planting flowers in a median and Carey confirmed that this does require a permit which would need to be renewed every 2 years as long as the space is being maintained. When it is no longer being maintained, the permit can terminate. Kay asked about turning over maintenance to someone else and Carey said the permit holder would contact DES to transfer the name on the permit. Kay asked about planting without a permit and Carey said that when DES learns about these instances, they determine who is responsible for managing the area and then they try to get a permit in place on the backend.

LeGris referenced a community organization working on city property and asked if it would be the community organization's responsibility to maintain the space they planted on and, if anything happens, the burden falls on the organization and not the city. Cravens said, based on this example, it would be up to the community organization to decide what insurance coverage they have for any risks involved in work they do on city property. He added that indemnification clauses are in place to manage the risk between the city and the community organization if a claim were to come forward. This is to ensure the city is not primarily answerable for damage claims that may be more appropriately imposed upon the person or

organization that put the object on city property. LeGris spoke about a community organization that does planting every two years and asked what happens if they can no longer maintain those plantings, but the plantings are in alignment with some of the city's ideas. Carey said they would have to evaluate on a case-by-case basis and determine how maintenance-intensive the plantings are. The city will likely take care of it if it is something that can be added to the maintenance budget. If it is more specialized, we may have to reach out to volunteer groups for assistance. LeGris asked if they are revisiting prior agreements in relation to the indemnity clause and Carey confirmed they are and it is more of a combined language than it was for the 2016 permit.

Reynolds questioned whether the city sees maintaining the stream buffer as an essential component to their green infrastructure policy. Carey explained that she does not see stream buffers as a clearly defined green infrastructure component, but there are benefits for having robust areas along streams. Reynolds asked about outside organizations and neighborhoods who put time and money into improving city property regardless of where it is located. She said funding might come from a grant or neighborhood funds and her concern is that we are placing regulations on people who are doing work on our properties that we don't have the manpower or money to do.

Bledsoe and Carey discussed green infrastructure and why stream buffers do not fall under this policy. Carey explained that green infrastructure is more about various practices that can be implemented to meet the Stormwater Manual requirements. Riparian areas are included in the Stormwater Manual, but mainly for the purpose of allowing calculations around them and the benefits they provide. She said no one in the private development community has used this as a tool for meeting requirements in the Stormwater Manual for developing their parcel or property. Bledsoe asked for an explanation on why stream buffers are encroachments and why it is defined that way. Carey explained that if someone comes into an area and plants a lot of new vegetation along a stream, it is an encroachment because it is something new that is being put or placed on city property. This is a way for us to know who placed it, what they placed, and where they placed it. For this reason, we feel that plantings on a stream buffer are similar to a gazebo or a trampoline because it is something that is being added to the city's property. Carey said, ultimately, we need to know about it so we can do maintenance or find the entity responsible for the maintenance. Bledsoe and Carey discussed having this reviewed by the Greenspace Commission and getting their feedback before this moves forward.

No further comment or action was taken on this item.

#### **IV. Wrong-Way Driving**

Bledsoe introduced the item which was referred to committee after several wrong-way collisions in Lexington. Jeff Neal, Director of Traffic Engineering, said wrong-way driving is likely something that occurs frequently, but it is difficult to detect and often you don't know until it is too late. In KY there are 40 deaths per year due to wrong-way driving and nationally, it is about 500 per year. He spoke about the contributing factors to wrong-way driving and he reviewed the typical exit ramp and markings that indicate "do not enter", "wrong way", or "one way". He suggested possible improvements could be enhanced signs and markings to supplement existing ones. He provided illustrations of potential technology enhancements such as wrong-way vehicle detection integration to warn other motorists and communicate with dispatch for a faster response.

LeGris spoke about wrong-way driving in the downtown area and said more accurate signage is helpful. She appreciates the innovative solutions being brought forward and ideas to make it safer for residents

and drivers who drive regularly in these areas, but also for drivers who are visiting Lexington because our roads can be confusing.

Bledsoe asked if there was a 10-year look back on the worst intersections or access points where the driver enters. Neal said it is difficult to determine the entry point because it is difficult to determine what interchange they entered on a controlled-access highway. He added that technology is not in place to record this information so many times we don't know where the vehicle entered the roadway until the collision occurs. Bledsoe spoke about the vehicle detection warning system and asked if the vehicle would have to be going at a certain speed or if you could use it on New Circle Road as opposed to Maxwell Street. Neal stated that he is not sure how well these would work in a downtown setting with pedestrians and bicyclists, but feels it is more appropriate for an Interstate (controlled-access highway). Bledsoe expressed interest in piloting a few of these to see if it would make a difference. Neal said he is waiting to see what the state is going to with their federal grant.

Ellinger asked how many warning signals would be included in the pilot program and Neal said there would be 19 total for New Circle Road and the Interstate. Ellinger asked if we are waiting to hear about the grant from the state. Neal said all of the interchanges are state-controlled roadways and it is their responsibility to put these devices on and for us to do this, we would need the state's permission.

F. Brown suggested keeping this in committee and having the Division of Traffic Engineering come back to present a pilot program. Bledsoe added that the pilot should cost around \$75,000 for the 11 interchanges on New Circle Road.

No action was taken on this item.

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

No action was taken on this item.

Motion by Bledsoe to adjourn at 2:27 p.m. Seconded by Ellinger. Motion passed without dissent.