



Planning and Public Safety Committee
Virtual Meeting
August 18, 2020
Summary and Motions

Chair Mossotti called the meeting to order at 1:03 p.m. Committee Members Ellinger, Brown, McCurn, Swanson, Lamb, Worley, Bledsoe, Reynolds, and Plomin were in attendance. Council Members Kay, Moloney, Farmer, Higgins-Hord, and F. Brown were in attendance as non-voting members.

Mossotti 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.

Mossotti addressed public comment with the following statement: Currently, public comment has been suspended. While we have always supported and encouraged public comment, it has never been intended to be an outlet for hate speech. We are working with our technology department to find a way to provide public comment in a safe way, but in the meantime we encourage the public to contact us via email which can be found on our web site.

I. Approval of June 16, 2020 Committee Summary

A motion was made by Plomin to approve the June 16, 2020 Planning and Public Safety Committee Summary, seconded by Ellinger, the motion passed without dissent.

II. Electronic Billboards Special Committee Update

Eve Wallingford, Legislative Aide to Council Member Kathy Plomin, summarized the background and history of this item since it was first brought to Council in 2017. She reviewed the state and local billboard regulations and highlighted key issues surrounding the implementation of electronic billboards in Lexington. She displayed maps to illustrate the placement of billboards in Lexington and the number of billboards by district. She concluded the presentation by discussing next steps which include either proposing a zoning text amendment or asking the Planning Commission to review and respond with recommendations.

Bledsoe asked if this could be sent for review to the Division of Planning with the inclusion of a time limit. Jim Duncan, Director of Division of Planning, explained that if the zoning ordinance were to be amended (ZOTA), Council would provide the text which is sent to the Planning Commission who has 60 days to bring that back to Council.

Reynolds asked if any business in Lexington who wanted a digital advertising could have one once these are allowed. Duncan explained that when digital signage is allowed, it cannot be contained to one specific type of sign as that would be favoring one content over another. He said if we allow off-premise digital signage for advertising, we would also need to allow the same for on premise advertising.

J. Brown asked if the city could be responsible for payments to the property owners when billboards would be taken down. Wallingford said if we require billboards to come down, we would have to pay part of the cost to remove them because it is required by state and local law. Tracy Jones, Attorney with the Law Department, explained that if we make this a requirement in our ordinance, we would need to get involved in the lease terms that are associated with boards that would come down. She said there may be some rights that need to be worked out with regard to those signs.

McCurn asked for clarification on the removal of six billboards when one digital billboard is installed and he asked if this is based on radius and Jones explained that this is in the State Billboard Act which has recently been declared unconstitutional because there was too much regulation on free speech. She said there is concern with the regulations being advised on today regarding the act if the act is now unconstitutional. McCurn said his concern is having overcrowding of electronic billboards in one corridor while another area is flooded with regular billboards. He asked if there are environmental concerns with these and Wallingford said the light pollution and distraction to drivers are the main two concerns. Kurt Recker, a representative with Lamar Advertising, said the lighting has been pretty standardized across the country and the billboards always get adjusted down to the ambient light. He added that there is technology to angle the billboard display toward the roadway so it would not be visible to the residential area.

CM Worley said he is supportive of making a move toward having these in the community and he provided clarification to CM Reynolds' concern by saying that authorizing digital billboards, does not necessarily mean we are giving businesses across the county full authority to have digital advertising. He spoke about digital billboards that are already present in Lexington and asked how it is fair for University of Kentucky and the Lexington Center to have digital signage, but other businesses are subject to our regulations. Jones explained that for the Lexington Center, there is a provision in the zone that provides for their message board. She said the University of Kentucky is not subject to our zoning laws so that is how they are able to have digital signage.

Kay spoke about vegetation at the base of existing signs and asked how vegetation would be managed if we move to digital signage. Recker said vegetation at the base of the signs is regularly maintained and digital billboards would be maintained the same way. Kay asked for clarification that there have not been chemicals at the base of these signs to keep down vegetation and Recker said there has not.

Lamb asked if the way our sign ordinance is written could impact other signs in addition to the billboards. Duncan said, according to advice from outside council, if you have to look at a sign and ask whether it is a billboard or an off-site advertising device, then you are already starting to define what the content is as opposed to on premise signage which generally advertises something on the same site. He said the Supreme Court decision takes this option away and says billboards cannot be treated as a different type of sign with different regulations than an on premise sign. Jones agreed with Duncan's remarks and said the decision in the *Thomas v. Bright* case said a sign on the premises could be put up without a permit if it was advertising activity on the premises, but to have a sign off-premises that advertises something somewhere else or a sign on your premises advertising something somewhere else, would have to go through the permitting process. The court said this is inherently unconstitutional because it is content-based. She said in order to determine what you are advertising, you have to look at the content of the sign and where it is placed in order to determine the permitting which is something you can't do. She said this gives more latitude and keeps us from being more regulatory because we don't want to get crossways with that decision. She said because this case is in our circuit, this is what governs us along with the *Reed v. Gilbert* case regarding no content based restrictions. Lamb expressed concern that once this moves forward and these are allowed, there may be unintentional consequences and then it is too late to reel it back in.

Moloney asked how Lexington Center and Opera House can allow these, but others are not allowed. Jones explained that those signs are currently operated in the zone where they are located and that particular zone allows for messages to provide notification of events that are coming. She said, as far as she knows, this is the only zone in the city where these are allowed. She said the signs at University of Kentucky are not subject to our zoning laws. Duncan added that the ordinance further states that it must be for the Lexington Center and not just the zone and the Opera House is part of that entity which is why it is allowed.

Swanson spoke about the Kentucky Highway Beautification Act being unconstitutional and he asked how this impacts digital billboards and the prospect of the state legislature dealing with this in the next session. Jones said this decision was just rendered in April of this year and she does not know what the outcome will be. She spoke about the *Thomas v. Bright* case in the 6th Circuit and said this is the law in our circuit. She said the decision went more toward when a permit was required versus when it was not and requiring different things for different

entities that would require looking at the content of the sign which is not permissible under this case. She said she is unsure what the state legislature will do in terms of regulations or new acts. Swanson asked if the state act included the ratio rule and Jones said that ratio comes from the regulations which will need to be included in new legislation. Swanson said it does not make sense to move forward with an ordinance when the state and federal courts are unsettled.

Plomin asked Recker to speak about what is happening in other cities with the state decision. Recker explained that there are a number of counties and municipalities that do not have local sign regulations in place, but most of the surrounding communities directly adjacent to Fayette County have local sign regulations in place. He spoke about the case in the 6th Circuit which includes Tennessee, Kentucky, Ohio and Michigan and he said this is very recent and the industry is trying to find a way to work around this as well. Plomin asked Recker to comment on potential revenue for the city and Recker said they are looking at various opportunities to partner with the city. He said property owners have expressed interest in this for a while and the advertisers are continuously inquiring about potential opportunities. He said we have been part of this community for about 40 years and we want to maintain a good relationship with Lexington so we are trying to determine the best way to move forward with this.

Farmer said he agrees with other committee members that there is no rush to move forward. He said sometimes the more you get into, the more problems surface and the more involved the conversations become.

Bledsoe spoke about the benefit of these signs for public safety issues when there is a need to provide an alert in emergency situations. She said clutter is not ideal and too much of one thing distracts from the one thing that is helpful. She agreed that this does not need to be rushed and she asked if this can be referred to Planning Commission to work on this while we are also working on it. Duncan said this can be turned over to the Planning Commission for recommendations and staff could assist. He asked committee to keep in mind that the staff is in the process of reviewing the entire sign law and we can fold the electronic billboards portion into the current review of the overall sign ordinance.

Plomin said she agrees and there is a lot that has changed that can be worked on concurrently.

Worley said we are best suited to have Planning Commission work on this to address some questions, particularly when it comes to legalities. He said staff can work with the Planning Commission to draft an Ordinance crafted around constitutional concerns.

A motion was made by Worley to refer the *Electronic Billboards* to the Planning Commission, seconded by Bledsoe, the motion passed with a 9-1 vote (Yes - Ellinger, J. Brown, McCurn, Lamb, Worley, Mossotti, Bledsoe, Reynolds, Plomin. No – Swanson).

Lamb asked if the Planning Commission will only be able to review this on the state level since it is unknown how the Highway Beautification Act is moving forward. Jones said the Planning Commission is authorized under state statute to create ordinances within the local area and we shouldn't not them review just because it is unclear what the state will do. She said we can keep track of what they are doing and also come up with an ordinance that is constitutional and also fits in our community.

III. Lexington Police Department Policies and Procedures – Body Worn Cameras

Dwayne Holman, Assistant Chief of Lexington Police Department, provided an update on the Body Worn Camera policy since the implementation in 2016. He reviewed the statistics and the quantity of videos that have been uploaded and are currently being stored and he highlighted the "failed to activate" data which illustrates the times when an officer failed to activate the camera and he explained the discipline associated with this. He emphasized that sometimes there is a dynamic situation and something happens in a matter of seconds which results in a failure to activate. Lawrence Weathers, Chief of Lexington Police Department, made additional comments

regarding the changes coming with adding additional cameras. He said we have looked for ways to add more cameras and we found an opportunity so we have moved forward on that.

J. Brown spoke about the policies that govern body worn camera usage and he asked which policy outlines body cameras worn in an off-duty capacity. Weathers said this is specifically stated in the Body Worn Camera policy. J. Brown clarified that he asking about an officer working off-duty in their uniform and Holman said the policy does require them to wear a camera while working in uniform. J. Brown asked how the buffering mode is used and Holman explained that buffering means the body camera is always recording video so when it is activated, it will go back and memorialize 30 seconds prior to activation. J. Brown asked if the reason for buffering is because the camera doesn't have the capacity to record all of the time and if the buffering mode allows the camera to be ready to go when the need arises. Holman emphasized it is not that the camera does not have the capability to record all of the time, but there are battery life and storage space limitations. J. Brown referenced the language in the policy that requires the officer is to announce when they make a decision to start or stop recording and he suggested that the policy include a list of those situations to make it more defined. Holman said there is general language for these situations and we can consider adding examples.

Kay asked if there are some of "failure to activate" situations that fail to arise to the level of discipline. Holman said there are situations where that happens and he emphasized that out of 150,000 videos uploaded, there are 145 that failed to activate and not all of those were "people" failures. Kay asked what would happen to an officer who failed to activate in a situation where there are significant questions. He asked if the first occurrence would be a reprimand and Holman said that is a recommendation for the Chief to consider, but that can be veered from if the situation is egregious enough. Kay expressed concern that there could be an opportunity for an officer use "failure to record" to prevent information from coming forward. If this happens 3 times, it becomes a pattern which raises the question of whether that officer is failing to do what needs to be done. Kay added that there may need to be a stiffer penalty or a different way of looking at this altogether. Holman said there has been a decline in officers who failed to activate and said it has been critical to evaluate everyone's responses while wearing a body worn camera and how often they failed to activate since the program was implemented in 2016. Weathers spoke about the disciplinary policy and said the penalties are not set in stone and if the situation was egregious enough or the failure to activate occurred multiple times or in a critical situation, there are other recommendations for discipline that can be made – not just for failure to activate. Kay asked what the policy is for releasing footage to the public. Weathers said if it involves a criminal investigation, it is not released. He said he does have the authority to take other things into consideration especially if it means someone could get hurt by not releasing it or if there is a serious concern by the community. He said footage is typically not released if it involves a court case because it could be detrimental. He said if it is perceived to be more advantageous for the public to see the footage and prevent potential unrest, we will consider releasing it.

Lamb asked how long non-evidentiary video is retained and Weathers said it is retained for 30 days. Lamb asked if this would be 30 days from the time it was uploaded and Holman explained that it would be 30 days from the time of the recording. Lamb asked if all officers dispatched to a scene would activate or just one and Holman confirmed that all officers on scene are required to activate their camera. Lamb asked if there has been discussion of using these for training or performance and Holman said our policy states that if something is captured on video that could be useful, there is a process for it to put in the training program depending on the topic. Lamb asked if there have been opportunities, similar to the citizens' academy, for public education and outreach to educate the community on what is involved with body worn cameras. Holman explained the campaign in 2016 when these were first implemented and there is information on the web site. Lamb asked about the process for impact evaluations based on the body worn camera and if we have something like this. Holman explained that they have an independent evaluation of the body worn camera program and the policy. Lamb spoke about the newer model of body worn cameras with additional capabilities and asked if these are beneficial for the police officers. Holman explained the differences in capabilities of the various body cameras and differences in how they are worn.

Reynolds asked why there are two cameras issued and Holman explained that there are officers who do some work off-duty. When these were issued in 2016, the bandwidth would take 2-4 hours to upload and we wanted the officers to be able to have a second camera ready if the first camera needed to be uploaded or charged.

Reynolds asked what would be considered an evidentiary video. Holman explained non-evidentiary would be a video that contained no evidence and there is no crime associated with it and an evidentiary video would contain evidence. Reynolds asked how the department determines if a video is retained 30 days or not and Holman explained that there are defined categories with predetermined deletion periods. Reynolds asked about the policy on releasing body camera footage and said it is her understanding that this is at the discretion of the Chief to determine if and when a video is released. Holman said when a case is still open, it is at the Chief's discretion; but in a closed case, or case that is not criminal, we follow the Open Records Act. Reynolds expressed concern that there is no policy in place that dictates how the body worn camera footage is to be released.

F. Brown asked if the reasons not to release video footage is documented. Holman said if it is an Open Records Request, the exemption is documented in that request. Weathers added that if he gets a request like this and it is not in writing, he will verbally respond. F. Brown asked if this is documented and Weathers said not unless they request a response in writing. F. Brown asked how many officers we are providing new cameras for and if this is in the budget. Weathers explained that there are about 178 and there is a grant that will help with the cost. F. Brown asked if we made any adjustment for these in the FY21 budget and Weathers explained the cameras and maintenance would be in next year's budget.

Moloney asked if the grant will help provide cameras to those officers who do not have one or if we will still have officers without a camera. Weathers explained that the goal is to provide cameras to all sworn officers and some civilian officers. Moloney asked what percentage of officers that would be and Weathers said 100%. Moloney asked about releasing video, specifically referring to the incident on Richmond Road a month prior and he asked how that video was released so quickly. Weathers said it is because there were no criminal charges associated.

Swanson asked who is involved in developing a policy like this. Weathers said police, civic groups, and attorneys are included in the process and we look at what other cities are doing for best practices. Swanson asked what structure LPD uses to gain citizen input regarding policies. Weathers explained that LPD utilizes various partnerships with a lot of citizens and citizen groups such as NAACP. Swanson asked if it is at the Chief's discretion how to engage citizens in the standard process and Weathers said it is not a standard process and many policies would not require public input.

Ellinger asked if we have resolved the issue of body worn cameras so that all officers will have a camera and will be required to wear one off-duty. Weathers confirmed that officers will have to wear a camera when they are doing police work off-duty.

Mossotti asked when the policy will go into effect requiring all officers to wear a camera. Weathers said once the grant is approved, they will hopefully be purchased in November at the latest and begin training at the first of the year as they are distributed. Mossotti asked if there will be a void from now until the first of the year where there will be officers working off-duty who will not have a camera and Weathers said that is correct. Mossotti asked if there is a way to avoid this with officers who receive more than one camera since a lot can happen between now and January. Weathers explained that when these were implemented, it was decided that officers in operations would have a camera, but those in administration would not. He said there are not many officers assigned to administration who are doing off-duty jobs so that might be a problem, but cameras are assigned to a particular officer so we can't take that one and reassign it to another because it will be registered to that officer. He said it is something we will have to work through it. He said he understands that the confidence in police is not what it used to be, but we are just going to have to be better with our reporting and documentation.

J. Brown asked at what point a recurrence of failure to activate becomes a disciplinary issue. Weathers said he is not supportive of a graduated scale for discipline when failing to activate the camera. He said it should be at the discretion of management to look at the incident and address critical failures. J. Brown asked if this discretion exists the way the current policy is written and Weathers said currently, if it is something minor, it would be a written reprimand, but the Public Integrity Unit could review the incident and recommend something more than that. J. Brown expressed concern that there should be another component to weigh in on whether the discipline was appropriate. Weathers emphasized that you have to look at each incident and the circumstances because

there are different situations that may require a different level of discipline. He said when you set a discipline policy in stone, it does not allow for the flexibility to deal with all of the potential variables. J. Brown spoke about the release of video footage and said he understands that there needs to be a level of discretion, but there needs to be criteria or guiding principles so we cannot be accused of selectively releasing video when it is convenient for us. He said if we release one body camera video, we need to release them all. Weathers explained that the concern with prosecutors is that the release of certain video footage could taint a criminal case.

Higgins-Hord asked if we are guaranteed to get this grant or if we will need to add this to our budget discussions. Weathers said nothing is guaranteed but if we do not get it, we will try to find a way to get these with our existing budget. Higgins-Hord asked if there is an opportunity to do this with the current budget and Weather said we will make an opportunity.

Bledsoe spoke about the goal of this being transparency and accountability and said it is important that we understand how the Chief and command staff have handled challenging and difficult situations. She expressed appreciation for the mindfulness and integrity that goes into making these decisions.

Plomin asked for clarification that when an officer fails to activate their camera repeatedly this leads to "coaching/counseling" which goes off the record in one year and Weathers confirmed. Plomin asked if only the officer's video can be submitted as evidence and Weathers said if we can get access to other (outside) video, we will use that.

Kay spoke about the importance of these for transparency and accountability. He said we would like to know in every case, exactly what happened, how it happened, and what the appropriate response should be. He said given this presentation, there needs to be flexibility and our job is to recognize this and look at decisions that are being made to see if they are made as transparent and accountable as possible. He said there is a concern that while the current Chief is doing a good job, the next Chief may not be as committed to being as responsive to community needs. Weathers said his command staff knows his philosophy and supervisors are encouraged to instill in all officers the importance of being aware of the community we serve.

Worley spoke about his conversations with patrol officers and how they have expressed the importance of cameras to show the use of authority, but the cameras also show the level of professionalism and training we have in Lexington. Weathers said that during every roll call, officers are reminded to use body camera. He said in looking at the statistics from last year, there were 300,000 activations and 335 failures. He said officers are getting better at this and they want the cameras. He closed by saying while we are not perfect, the officers strive for perfection.

No further comment or action was taken on this item.

IV. Items Referred to Committee

No further comment or action was taken on this item.

A motion by Plomin to adjourn, seconded by Lamb, the motion passed without dissent.

The meeting was adjourned at 3:15 p.m.

KT 09.14.2020