



Planning and Public Safety Committee Meeting

January 18, 2022

Summary and Motions

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

I. Approval of November 2, 2021 Committee Summary

Motion by Ellinger to approve the November 2, 2021 Committee Summary. Seconded by Plomin. Motion passed without dissent.

II. Expanded Public Hearing Notification ZOTA

Samantha Castro, with Long Range Planning, explained the purpose for the expanded notification Zoning Ordinance Text Amendment (ZOTA) is to move from notification of property owners within a certain radius of the subject property to notification of property owners and property addresses (if the property is not the owner's primary mailing address). She explained that when a property edge touches a roadway, the buffer line needs to be expanded to the nearest road centerline which an applicant can do utilizing GIS. From there, a spreadsheet of addresses associated with each buffered property is generated using the city's open source parcel data. Those addresses are cross referenced to obtain the owner's name and address using the PVA. A final spreadsheet and set of stamped and addressed envelopes is provided to Planning staff for review. Division of Planning currently uses 4 methods to ensure notification of a zone change: mailings, signage on the property, legal ads in the newspaper, and social media. Castro stressed that Division of Planning is agreeing to take on the responsibility for expanded notification and the data being used is from reliable sources such as GIS, PVA, and E-911.

Reynolds asked about the notification process which Castro stated will include notification to the address of the property. Castro said they currently only reach owners (who may not live at the property address) so this is an effort to reach renters and occupants to get them involved.

Plomin and Castro discussed that this notification would list "occupant" as opposed to a specific person's name. Plomin appreciates the transparency in doing this and she asked if they have a projection on the number of additional notifications this would include. Based on the numbers they have run, Castro expects this to reach an additional 50-75 percent of people.

Lamb asked about the part of the ordinance that will address GIS information and Castro referenced Articles 6 and 7 in which the language will state that records kept by the Property Valuation Administrator (PVA) and the office of Geographic Information Services (GIS) may be relied upon to conclusively determine the identity and address of the owner and the property addresses (if the property is not the owner's primary mailing address). Lamb and Duncan discussed how the mailings are sent and Duncan explained that they are sent via regular first class mail because there are seldom enough pieces to qualify for the bulk rate. He clarified that the applicant provides first class stamps and envelopes. Lamb asked if this will require additional funding to be put in the budget or if it will be absorbed using funds in the current budget. Duncan believes this can be absorbed using funds from this fiscal year, but will look at the

postage budget for FY23 to determine if additional funding will be required. Lamb and J. Brown agreed that actual costs should be reviewed after a year of piloting this process before it is moved into a new responsibility area.

Worley questioned the use of E-911 information for evidence and if that information will be imbedded in the GIS system since E-911 is not publicly available. Castro said it is not openly available, but it is a tool that can be used to pull data for specific units at an address. Worley asked if the department would provide GIS tracking information to the applicant and Castro said the tool will be tested over the next year to make sure it is effectively working and they hope to have the tool available to the applicant if it is something they want to use themselves. Worley said the concern is making sure this is done correctly, but he understands that sometimes there are last minute zone changes or last minute revisions and making that information available and knowing it is correct is helpful because you can do this with the PVA. He is supportive of getting as much notice out there as possible, but this creates an opportunity for someone to say they did not receive notice. Worley feels the way to provide notice to surrounding residents and the general public is by placing a sign on the property notifying of a zone change. This is required by statute and ordinance and generally all people who pass the property and see the sign will know about the zone change. He appreciates that the department is willing to take this on for the first year, but based on his experience he feels it is too much of a burden to put on an applicant.

Bledsoe and Castro discussed that notification would also be sent to the president or owner of apartment complexes/condo associations. Castro clarified that this is something that is currently being done and will continue with the expanded notification. Speaking about the red lettering in the document that indicates it has changed, Castro said that the wording was changed slightly. Bledsoe and J. Brown discussed how this will move forward and J. Brown explained that this is being presented as a ZOTA so we could pass it and bring it back in a year to make changes. Bledsoe appreciates that this will reach more people, but she still has questions about legality. She added that this is a better ordinance than when it was last presented.

Moloney is concerned that the city will be taking on the additional work to send out the notifications. Castro explained that the developer will still notify the property owner, but Planning staff will be responsible for the expanded notification for the first year. Moloney feels better about having a sign placed on the property to provide notification and his concern is that one person might not receive the written notice which could jeopardize the zone change. He is concerned about the involvement of tenants in zone changes and having too much input on how the property should be and he said the owners of the property should have more of a say on what information is relayed to tenants regarding zone changes.

Kloiber and Castro confirmed that the legal aspect would be satisfied if a developer (or the city) had evidence that the notice was sent to an address from the database and whether the resident says they did or did not receive the notice would not be relative to this ordinance. Castro explained that the "hold harmless" piece which relies on the city's data as provided by PVA, E911 or GIS would indemnify the applicant as they would be relying on data we provide them.

Lamb asked how frequently it happens that a property owner argues in court that they did not receive proper notice and Duncan said he is not aware of this ever happening. Lamb spoke about the open meeting concept which allows anyone to come into a meeting and argue. We have seen people who have no relevance to a zone change come to a Planning Commission hearing or a Board of Adjustment hearing and argue. She hopes that more people will come to the Planning Commission where the process is supposed to take place rather than waiting to approach Council and bypassing the Planning Commission

process. She expressed appreciation for bringing this forward to be more transparent even though it creates additional work for staff.

Worley spoke about his involvement in several zoning appeals and said one of the counts in the appeal complaint is always lack of due process/lack of notice. He is supportive of experimenting with this in-house for a year, but he cannot support making this a substantive law that will be imposed on applicants and developers moving forward. He said the legal impact of this is that it will create the opportunity for more people to come forward and file an appeal saying they were not afforded due process rights. He is supportive of trying this process out internally, but does not want to change the law creating the opportunity for someone to say their due process rights were violated (by not receiving proper notice) or after the first year, having the burden of doing this passed on to developers.

Reynolds understands why more people need to be notified because things can escalate when information is not being shared. Sometimes letters are sent and people still say they didn't receive them, but the effort in doing this is important. She is okay with taking this on internally for a year, but she is not comfortable passing the burden of doing this on to the developer long-term. She said this could be helpful, but there are concerns and this really needs to be looked at closely to determine if it should be done internally long-term.

Bledsoe asked about implementing this without passing the ordinance and having it reviewed it after a year. Duncan explained that this can be done, but with formal direction from the Council saying that this will be done as a pilot and staff will report back to committee to discuss how to move forward with the ordinance. Bledsoe said that may alleviate some concerns and she requested the administration create a pilot project for one year (having Planning Staff responsible for the expanded notification) and come back in Feb 2023 for a review to see how this will work moving forward.

Kloiber and J. Brown considered a sunset provision on the ordinance and J. Brown said this is something we can do, but the thought behind this being a pilot is that it would be more exploratory than putting it in ordinance form. Those with serious concerns would be more open to seeing how the pilot goes as opposed to having a sunset ordinance.

J. Brown said this topic has come up in a variety of meeting groups to discuss neighborhood change and transparency and being a part of the process. He mentioned that the ZOTA presented is a good one, but there have been concerns raised about legal challenges adding more responsibility and cost to the developers while still trying to provide notice and transparency and having people included in the process and those concerns have been significantly addressed. He said having the GIS-generated list that we can provide developers is a big step forward and the "no harm" clause is important so we don't hold developers responsible if somebody does not receive notification based on a list we provided. It is a priority of the city to send notifications to as many people as possible and we don't know what the impact of this will be on whoever is responsible for doing this going forward. He said the one year review will provide helpful information for making a decision on how to proceed. He referenced previous conversations on mandatory development meetings for zone changes which was something we felt like we couldn't or shouldn't mandate so this might be a better option.

Motion by Ellinger to approve a one-year pilot program [for expanded notification] and have it brought back to committee in February 2023 with a review of any issues that may arise. Seconded by Reynolds. Motion passed without dissent.

J. Brown and Tracy Jones with Law Department discussed how the pilot program would be brought forward. Jones said this would likely be a resolution for a pilot program asking the Division of Planning to act on this as a pilot program for one year and report back in February 2023. We could determine at that time if we want to enact a permanent ordinance that would change the notification process or do something different.

Lamb and Ellinger agreed that monitoring any arguments that arise from people having not received proper notice and monitoring issues on both sides of this would be helpful.

III. Recommendations for Ensuring the Continuous Operations for Shared Use Paths, Sidewalks, and Bike Lanes.

Ellinger explained that the item was brought to committee when there were issues with the Legacy Trail being closed off with no detour option and to form a policy moving forward so we don't have this issue in the future. Scott Thompson with Transportation Planning began the presentation by describing the importance of transportation systems which are made up of travel lanes, bike lanes, sidewalks, and shared use paths for people of all ages in every part of our community. He said streets are meant to enable safe and convenient access for all road users and access is maintained to ensure reliability during new construction, redesigns and roadway improvements, and maintenance of operations. Moving forward, Thompson reviewed several measures that can be taken to ensure the transportation network is safe and reliable. Thompson explained that the *Complete Streets Policy* would include the safety and needs of the community and providing convenient ways of getting around. This will require transparent development of a complete streets policy with the approval and adoption of Council.

LeGris said a positive thing to come out of the Legacy Trail construction was having a Complete Streets Policy. She would like to see what parts of that policy are in place and what it would take to fill in the gaps. Rather than having a policy in pieces, she suggested making it comprehensive.

Sheehan said this is one step in our conversation as a Council about a policy we can create moving forward as we are talking about alternative transportation and meeting the needs of our residents. She said what happened on Legacy Trail is only one example of concerns that citizens have. She said we need to create policy to ensure we have this continuous service, particularly for people who use bike and pedestrian paths for commuting to work options in addition to recreational uses.

Reynolds spoke about complete curbs and complete streets and said it is vital moving forward that we have a policy that explains how we construct sidewalks or maintain bike paths and shared-use paths. She also expressed the importance of having a policy in place for closures to prevent issues like what happened last year.

Lamb asked if there is a policy in place that provides a process for a contractor who is performing work that presents a safety hazard to get a permit for closing parts of a sidewalk and if shared-use paths could be added to this policy. Doug Burton, Director of Engineering, said Traffic Engineering handles the lane closure permits which include sidewalks. Lamb said this might be an opportunity to widen the permit process to provide notification. Burton mentioned that often these paths are built on easements which restricts what we can do in terms of enforcement. If it is a path on a public right of way and we own it outright, it is easier.

Bledsoe said it is important to have utility partnerships because they do a lot of work that disrupts the issue on sidewalks. She spoke about the Clays Mill Road area which has 3 schools close together and temporary sidewalks had to be paved to provide a safe route for children walking.

J. Brown spoke about the incident behind this and the usability of trails which is for more than recreation because many people use these for transportation. We need to create a policy to ensure we have alternative routes when there are disruptions or closures and we also need to provide advanced notification so people can adjust their schedules if necessary. Ellinger would like to have the item stay in committee and form a working group to draft a policy. Plomin added that we also need to look at coordinated communication.

IV. Residential Parking Permit Program (RPPP)

LeGris introduced this item which includes Residential Parking Permit Amendments for South Hill New and Spring Street. She explained that the two resolutions in the packet are amendments to existing Residential Parking Permits and the homes being added are contiguous to the zones. There have been requests from multiple interested parties who wish to be annexed into these existing Residential Parking Permit zones. Members from Law Department and Lexington Parking Authority were present for questions.

Motion by Lamb to approve and move forward to the full Council the amendment to the Resolution for Residential Parking Permit - South Hill New. Seconded by Baxter. Motion passed without dissent.

Motion by Lamb to approve and move forward to the full Council the amendment to the Resolution for Residential Parking Permit - Spring Street. Seconded by Baxter. Motion passed without dissent.

I. Division and Program Review – 2022 Evaluation Selection

Planning and Public Safety Committee has selected Purchase of Development Rights (PDR) & Emergency Management as the two divisions up for 2022 Evaluations. This is tentative and will be contingent on whether both divisions are able to participate.

II. Items Referred to Committee

No comment or action was taken on this item.

Motion by Plomin to adjourn at 2:32 p.m. Seconded by Ellinger. Motion passed without dissent.