

CITY OF ALBANY  
CITY COUNCIL (WORK SESSION)  
Municipal Court Room  
Monday, January 31, 2011  
4:00 p.m.

**MINUTES**

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Councilors Dick Olsen, Jeff Christman, Bill Coburn, Floyd Collins, Bessie Johnson, and Ralph Reid, Jr.

Councilors absent: None.

BUSINESS FROM THE PUBLIC

There was no business from the public.

COUNCILOR COMMENTS REVIEW OF ALBANY MUNICIPAL CODE 6.18 DANGEROUS DOGS

City Attorney Jim Delapoer said that in 2010 the Albany Police Department (APD) and the Municipal Court were involved in the classification of a dangerous dog. Staff passed out copies of the Albany Municipal Code (AMC), Section 6.18, Dangerous Dogs (see agenda file). This ordinance has been in effect many years and this is the first time the Council has been asked to review it.

Delapoer explained that according to the AMC, the Director's job is to make an initial determination of the classification of a dog based on the dog's behavior. The Director's decision can be reviewed by a Hearings Officer. The Police Chief has been designated as the "Director" and the Municipal Court Judge has been designated as the "Hearings Officer". Though it is a civil process, the determination criteria are in the ordinance to classify *potentially dangerous* dogs or *dangerous* dogs.

Delapoer said according to the ordinance's definition, a dangerous dog has caused serious injury or death of any person or has killed a domestic animal. It defines serious injury as an injury that requires stitches. In regards to Blue, the dog in question, the process went its course and Municipal Court Judge Robert Scott determined that Police Chief Ed Boyd made the correct decision in classifying the dog as dangerous. The ordinance says that if the dog is dangerous then the Hearings Officer must order that it be euthanized. The order has been stayed pending the City Council's review and will expire on February 7, 2011. Delapoer said he was contacted by Arlene Brooks, a veterinarian, to speak about Blue and the ordinance. Paul Meadowbrook, the dog owner's attorney, is also here.

Delapoer described the procedure. Under the ordinance there is no role for the Council to review a decision made by the Hearings Officer. The Council would be acting outside the scope of the ordinance if they were to change Judge Scott's decision and would be setting a precedent which could lead to being asked to review other Municipal Court decisions. This is a civil proceeding and there is an appeal right which directs the person to file a Writ of Review in Circuit Court if they feel the Municipal Court Judge was unfair. Such an appeal was not filed in Circuit Court.

Delapoer said that it is appropriate for the Council to consider changing an ordinance; and technically, it is not appropriate for the Council to hear testimony about Blue. However, Delapoer suggested the Council allow the owner and the veterinarian to speak, though they will need to be brief since there are other items on the agenda tonight. Then he will ask Boyd to speak about how the current ordinance was administered by his staff, not from the standpoint of review or appeal of the Judge's decision, but to give the Council a measure of confidence about what City staff is doing.

Councilor Bill Coburn wanted to understand the ordinance first. Delapoer and the Council reviewed *618.020, Classifications of levels of dangerousness*. Discussion followed about the difference between *potentially dangerous* and *dangerous*, and the impact of being at large.

Paul Meadowbrook, 913 1<sup>st</sup> Avenue E, wanted to address the definitions. He said there is a state law for dangerous dogs and it varies significantly from the City's ordinance. Meadowbrook read the definition in ORS 161.015 (8) which refers to serious physical injury: "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ." Meadowbrook said that Albany's ordinance says that stitches are serious. The City's is much stricter than the state law.

Meadowbrook said the other issue is provocation. The City's ordinance does not define it and it is not defined anywhere. He found a case in the Michigan Court of Appeals, where the issue was what provocation meant. It is

called Brans vs. Extrom, from 2005, and it is the only one he found. The Michigan court said provocation is not defined in the dog bite statute. They decided the definition would be what would reasonably provoke an animal to do something whether the person intended to provoke it or not. It used a "reasonable person" standard, in other words. Meadowbrook said this is a problem in the City's ordinance, because it has a different standard than state law. The City's is extremely strict. Meadowbrook said that Brooks will explain one bite versus another bite. The issues of injury and provocation are what the Council needs to address.

Arlene Brooks, DVM, 13012 Running Dog Lane SE, Turner, is from the Homestead Vet Clinic and the Last Chance Club. She had a whiteboard that contained two lists of dog bite provocations and a definition of provocation (see agenda file). She passed out a document titled "...a dog named Blue" (see agenda file). She read the statement on the first page. She said she hopes to present the information today that she had hoped to present at the hearing, to clarify provocation. If Blue was deemed dangerous, there is the option of a mitigating factor of provocation. She did not get to present that in Municipal Court and she thinks its absence would have made it difficult for the Judge to determine provocation. Today she wants to show what provokes a dog to bite.

Councilor Jeff Christman said he doesn't think it is the Council's job to rehear this case. He thinks it is the Council's job to look at the ordinance and consider changes. He wants to hear things that would potentially change the ordinance, not rehear the case. The Council is headed down a dangerous path by rehearing cases the Judge has already ruled on. The potential result is that just about anything that comes before the Judge, if someone doesn't like it, would come to the Council for the ordinance to be changed, and the Council would end up rehearing the case. Brooks said she didn't get to go over the case in Municipal Court and she also didn't get to present provocation. She said what she can do is give 15 reasons for provocation but asked the Council to bear in mind that it was not presented to the Judge as a mitigating circumstance. It will give a more defined basis for provocation. She said, we have to look at it from the dog's point of view and the human's. Brooks said that if Judge Scott understood provocation or had guidelines, he may not have made the same decision.

Brooks read the definition of provocation from the whiteboard: 1. the act that causes some action or feeling; 2. the act that angers, irritates, or annoys; 3. to call forth; evoke.

Brooks said that statistics show that there are 77 million dogs in the U.S. and there are 44 million people that have dogs. About 39% of households in the U.S. have more than two dogs. Brooks said that Blue was involved in food aggression. The toddler that was bit in this case was in a penned area while Blue was being fed and unfortunately Blue either nipped, or more likely just pushed the toddler's head out of his bowl. This is called food aggression.

Brooks said, there are 3 million dogs that get surrendered to shelters every year. In the shelters there are from 5-20% of dogs that are involved in food aggression; so 150,000 to 300,000 dogs in shelters display food aggression. That means that in the U.S., 3 to 15 million dogs will snap at your hand if you put it in their food bowl. This is what Blue did; but, it is also very trainable to change.

Brooks reviewed *Human Behavior-Based Provocations*:

1. Challenging dog for food or water
2. Attacking or perceived attacking of a dog or its companion
3. Encroaching on territory
4. Sickness/Injury
5. Failure to recognize the dog's insecurity or fear
6. Intervention in dog fights
7. Threatening human body language

Brooks said that in Blue's case if she could have explained that it was food aggression it would have made sense. A toddler putting a face in a food bowl was described in Municipal Court as not meeting the definition of provocation, but she respectfully disagrees.

She read the list of *Dog Behavior-Based Provocations*:

1. Fear and self defense
2. Food aggression
3. Territorialness
4. Possession aggression
5. Dominance aggression
6. Predatory instincts
7. Pain/sickness
8. Redirected aggression

Brooks said if this was considered in the ordinance, it could have factored into Blue's case.

Brooks directed the Council to the pictures of serious injuries in her document. It had several pictures of dog bite injuries including a picture of the injuries to the toddler that Blue bit. The City lists "stitches" in the ordinance; she said that may not be a good indication of severity. In human medicine, during the initial cleanup of facial wounds,

any time a doctor can get a stitch in they will, in order to minimize scarring. She suggested rephrasing the ordinance to “serious injury as determined by the attending physician or photographic wound evaluation by the County Health Officer.” She said she reviewed the medical files for the toddler’s injury and learned he had medical injections that gave the appearance of swelling. She asserted that the swelling was related to medical treatment, not the dog bite. Pictures of the pre-treatment swelling were among those Judge Scott reviewed. She also suggested that the wording “shall” be euthanized be changed to “could.” She said that Blue bumped the toddler, or nipped the toddler, as the toddler got into the food bowl.

Councilor Floyd Collins asked, why didn’t you present this during court? She said she doesn’t know, but she wasn’t asked to. She said Judge Scott asked her about toy aggression, but not food aggression. In her experience in other courts she was invited to at certain points to make a presentation, but that did not happen.

Councilor Dick Olsen said Meadowbrook had asked him what chance there was to talk to the Council. Olsen asked Brooks, was there a limit by an attorney to what you could talk about in Municipal Court since the ordinance said “shall?” Brooks said there were several communications about what she could talk about. She said she would have at least during the public forum tried to discuss it. Olsen said that something is wrong with our ordinance if someone can’t come and talk about a case to the Judge.

Brooks said that she is proposing, if there is any possibility, for Blue to go into rescue instead. Hopes Haven is already set up for dangerous dogs and works with Linn County for other rescues.

Konopa asked, if we did that would the agency indemnify the City? Brooks said yes.

Delapoer said that all the comments made so far by Meadowbrook and Brooks have not been directed to change the ordinance, but to object to the procedure in Municipal Court. That type of complaint is subject to Writ of Review, not subject to review by the City Council. The state law does not seek to define provocation. Determining reasonableness under certain circumstances is common, such as in the Michigan case referred to by Meadowbrook, but such determinations are unique to each case. Delapoer said if the Municipal Court Judge made a mistake because he should have allowed Brooks to expand and did not, then their remedy is to appeal to the Circuit Court with a Writ of Review. Changing the ordinance would not help. What has been presented to the Council is to consider whether or not the Judge made a mistake; it has not been an issue with the ordinance.

City Manager Wes Hare asked, is it reasonable to include a definition of provocation in the ordinance? Delapoer said it is not a reasonable course because provocation, like “recklessness,” is a concept that will be evaluated over all circumstances. It would be difficult to describe every type of provocation that could occur. This is about the procedure, not the ordinance, and the remedy is a Writ of Review.

Delapoer said it does a disservice to Boyd to not speak to the case at this juncture, because even though he asked Meadowbrook and Brooks to not speak to Blue’s case specifically, it is clear the Council did hear a lot about it anyway.

Councilor Bessie Johnson asked, does the appeal cost? Delapoer said yes, there is a filing fee. This is a property case and due process is that the owner can appeal on issues of property; but the owners did not file a Writ of Review and the time limit has passed.

Boyd said the investigation into Blue’s history discovered six incidents, two of which were bites that were deemed to be serious by a treating physician. APD also has a statement from the caretaker from animal control that Blue is unpredictable, so staff there have made special food arrangements and other care arrangements, more than for other dogs in their care, due to his aggressive behavior. Boyd said, we have shown that he is dangerous and have taken appropriate steps. The ordinance has four levels of review to determine dangerousness. All four steps of the review were accurate.

Delapoer suggested possible changes to the ordinance. The Council could consider not having a Hearings Officer; or secondly, revise the mandatory euthanasia clause, though in fairness to the Judge, the Council would have to give standards such as having the owner prove the dog is unlikely to reoffend and that would be difficult to prove. Thirdly, the Council could redefine serious injury in a way that is more in line with the state. However, the Council should consider if they really want the more serious injuries to take place *before* they determine a dog to be dangerous.

Delapoer added, please don’t agree to have a dog taken out of Albany as a resolution. There was an agreement in Municipal Court before regarding Blue that, in lieu of prosecution, the owner would take him out of town. It did not happen; the dog was just moved to a new neighborhood, where its aggressive behavior continued.

Meadowbrook said he wants a change in dangerousness and to define provocation which applies to more than just Blue. Regarding the Writ of Review, he said it is not a meaningful appeal because the other agency can’t change the City’s ordinance.

Richard Brooks, 13012 Running Dog Lane, Turner, said the words “at large” bothers him. This dog was in its back yard, not at large; and the other bite case involving Blue took place on the owner’s front porch.

Richard Raymond, Blue's owner, thanked the Council for their time. He said APD is doing the best they can with what they have been told, but unfortunately the people that were involved have not told them the facts so APD was not told the truth. They were not well informed. If they were there and knew what really happened, they would come to a different conclusion. He said he does not have hard feelings, even if his dog dies. He said, the problem is the person that lives next door to him; he got Blue in trouble. This neighbor has lied to the police and to the whole town. He said his dog was defending his son, because a grown man was attacking his son. Another neighbor stopped the fight and chased his son to the porch and got bit. Now the dog is accused of being dangerous. The dog was doing his job by protecting the owner's son. Raymond said that Judge Scott did not agree with the decision and that is why there was no appeal. Raymond said that Judge Scott said to take it up to the City Council.

**MOTION:** Olsen moved to ask staff to bring back a revised ordinance with "may" instead of "shall" (in 6.18.050.) Johnson said she would second the motion if (they) were open to other changes.

The motion died for lack of a second.

**MOTION:** Johnson moved to have staff bring back the three options which Delapoer suggested: consider not having a Hearings Officer; revise the mandatory euthanasia clause; and redefine serious injury. Olsen seconded the motion.

Councilor Ralph Reid said that when dogs bite, it is the owner's fault due to lack of training.

Collins does not support this motion. He has had experience with a dog that had nipped someone that came back and caused serious injury to a child later. If we have to wait for the dog to do major damage before we deal with it then we are putting people at risk. He just rescued a dog from a shelter and loves dogs, but not at the expense of kids. Dogs have to be trained - it is the owner's responsibility.

Coburn is not convinced that there is a problem with the ordinance. The problem seems to lie with this specific case. Also there was an opportunity to appeal and the owner did not do that.

Johnson withdrew her motion and it was acceptable to the seconder.

No changes were made to the ordinance.

Olsen said he will inform the public, that if your dog bites your child, don't take them to the hospital because it will be half a death sentence; and if happens a second time it will be a death sentence for your dog.

Raymond said as he exited the room, just like that, my dog is going to die.

Olsen asked, is the dog that was promised to be taken out of the community and was not, this same dog? Delapoer said yes, that was Blue. Delapoer said that there was a criminal enforcement against Raymond that was dismissed if he promised to take Blue out of the community. Staff explained that it occurred in September 2009 and instead of taking Blue out of the community they took him to a different address in town, where the aggressive behavior continued. Delapoer read a portion of the four-page police summary.

Delapoer asked if APD can provide the Council with the four-page summary on Blue so the Council can be aware of the steps staff has taken in this case. A staff member left to make copies.

#### INDUSTRIAL WETLANDS PREPAREDNESS – WETLAND SOLUTIONS

Hare said the City has been engaged in the Council of Government's (COG) look at wetlands and barriers. They are working to set up a regional permitting process.

Hare introduced Cynthia Solie, Executive Director of COG. They passed out the Regional Connections Newsletter (see agenda file) and the Council of Governments brochure (see agenda file). Solie explained that COG is an association of local governments. Albany has an elected official, Mayor Konopa, on the COG Board. COG works through a variety of other bodies and committees. Reid and Hare are also involved in COG. As a 190c organization, COG can provide any service their members want them to provide, such as business lending, grant writing, senior and disability services, meal delivery, etc.

Pam Silbernagel, from COG, gave a PowerPoint presentation (see agenda file).

John Pascone, from Albany Millersburg Economic Development Corporation, spoke to the difficulty in getting developers interested in land that has wetlands. There is such a long lead time that anything cities can have done beforehand, is helpful.

Pascone said it may be worthwhile to look at the PepsiCo property and do some wetlands work up front, since the project has timed out. Hare said some of the work that was done is still applicable and is an incentive for PepsiCo to sell the property. The problem is that it is specific to their site development. It can be difficult to get work done up front when we don't know what type of development will come in. Another strategy that some cities use is to build

buildings on the site. Of course that has inherent problems too, because we don't know what size building someone might want. Discussion followed.

Coburn asked if there is a way to align the state and federal regulations so that work is not being duplicated. Silbernagel said they are moving towards such an arrangement with the "regional general permit." Discussion followed.

Collins said the work COG is doing is exactly what he envisioned. They are reducing barriers so that communities come out ahead. He said, we also need to be willing to reserve lands for industrial sites.

#### ECONOMIC DEVELOPMENT UPDATE & NEXT STEPS

Due to time limits this item was postponed to a later date.

#### COUNCILOR COMMENTS

Coburn said he was frustrated when Blue's owner got up and said what he did, to make the Council sound like the bad guys. He does not understand why the owner did not appeal the decision (in Circuit Court).

Konopa said Blue was in the court system before and was supposed to move out of town, but did not. Staff passed out APD's four-page summary regarding Blue the dog (see agenda file).

Delapoer said the owner owes several hundred dollars in storage fees for the kennel holding his dog.

Olsen said he thinks if Municipal Court had heard what he heard, there would have been a different outcome. He referred to 6.18.020, paragraph 3), which gives the Director authority to refrain from classifying the dog as dangerous or potentially dangerous, if they determine there may have been abuse, torment, or other provocation. Olsen said Judge Scott must have overlooked that section. Olsen suggested they change "shall" to "may" in 6.18.050 to allow for cases when the aggressive behavior was caused by abuse or torment or other provocation.

Christman pointed out Section 6.18.030, regarding the appeal process. Christman said the ordinance directs them to appeal the case, and they did not. He said, we are not the bad guys here.

Coburn pointed out that there are several steps that happened before the decision to euthanize. The Council informally reviewed the report which showed several police encounters with this particular dog. Discussion followed about several incidents that occurred in two different neighborhoods.

#### CITY MANAGER REPORT

There was no report.

#### ADJOURNMENT

There being no further business, the Work Session adjourned at 6:22 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC  
Deputy City Clerk

Wes Hare  
City Manager