



APPROVED: September 14, 2011

**DANGEROUS DOG WORK GROUP**  
City Hall, Santiam Room  
Tuesday, August 16, 2011

**MINUTES**

Members present: Mayor Sharon Konopa, Councilor Floyd Collins, Councilor Dick Olsen, Mark Azevedo, Max Frederick, Larry Holverson

Staff present: Casey Dorland, Police Lieutenant; Jim Delapoer, City Attorney; Marilyn Smith, Management Assistant/Public Information Officer

Others present: None.

Mayor Konopa called the meeting to order at 5:00 p.m. Members introduced themselves.

Konopa explained how the group came together. Collins and Olsen had worked with Delapoer earlier on possible revisions to the dangerous-dog ordinance and suggested involving some citizens to review and possibly revise the ordinance. Only the dangerous-dog portion (AMC 6.18) is up for review. The review will not deal with Blue. Committee members are asked to keep in mind there are still dangerous dogs out there and to consider the safety of the citizen.

Holverson said that people who have been supporting Blue feel that, for a true dangerous dog, the only option is euthanizing. It's just this particular situation. We have an ordinance that has worked pretty well for 20 years, but things change over time. The basic ordinance is sound; but a little tweaking, and we'll be fine with it.

Konopa said no public input will be taken until the group has recommendations for the Council. If individuals contact members of the committee before they are finished, it's fine to bring that input to the group. She said she had contacted the School of Veterinary Medicine at Oregon State University asking if any vets are willing to work with the group on a definition of "dangerous dog." Her request has been forwarded to a dean. Mike Huber said a veterinarian behavioral specialist would be the one to contact. She proposed OSU because a local vet might be in an uncomfortable position on the committee; their involvement could affect their business.

Konopa said she has also considered inviting a doctor to be a part of the group to get the definition of serious physical injury. Smith contacted Dr. David Haffner, emergency room physician at Albany General Hospital for 40 years and former head of emergency medicine there. Haffner said he would define a serious physical injury as one that requires calling in a surgeon or one that leaves a scar or deformity. As an example, he said a "young girl with a bite on the face that leaves a scar." Haffner is unavailable to meet with the group; he recommended surgeon Bob Gaekwad or ER Dr. Tom Vanasche as alternates.

Konopa asked if individual members had specific concerns to address.

Azevedo said he doesn't see anything that addresses how the dog is housed during the process of appeal. The Linn County facility lacks an outside exercise area and limits human contact. He believes the ordinance should show that the intent is to house the animal humanely pending appeal.

Frederick said he had concerns about definitions of section 11. He doesn't know how to assess emotional or psychological injury (akin to PTSD). Holverson asked if that would be better addressed in a suit than in the ordinance.

Holverson said his main concern is that the process that is developed is completely documented and a process of appeals works in a timely manner.

Olsen said he has some reservations about psychological injury. For example, neighbors who are chronic complainers could easily walk by a house with a dog behind a fence and claim they had psychological injuries from that dog. His concern from the outset has been that the judge has two decisions. When there is a potentially dangerous determination, the owner should probably go to the judge see if they can get it reversed. The two decisions are send the dog back home or put it down. There should be some middle ground where the dog can go for training or to a different environment, other than kill the dog.

Collins said he and Olsen talked earlier about psychological and emotional injury. He thinks it can be clarified and maybe expand it so that it has to be something related to an attack. He said he was traumatized by the dogs he met while campaigning. His intent is to protect the victim.

Holverson said he would guess the little yapper dogs do more biting than big dogs do.

Konopa asked if Delapoer and Dorland see any issues. Delapoer asked how much money will be spent on this process. If there are extensive hearings on subjective issues, it will cost the City tens of thousands of dollars. He encourages the committee to create an objective system that is not overly burdensome and gives the judge an alternative to one remedy.

Blue, in the Raymond household at least, was dangerous, Delapoer said. He sees a dog that bites the face of a three-year-old child as dangerous. The code should allow the judge to temper justice with a thoughtful analysis in an individual case and should be efficiently and evenly administered.

Delapoer said he would be more comfortable without some of the changes at the beginning of the ordinance as currently proposed. He doesn't think there's anything wrong with the process of determining a dog is dangerous, but he doesn't like any ordinance that doesn't grant the judge discretion. With a wise judge or wise hearings officer, it offers flexibility.

Azevedo said what's missing is medical expertise. You have the enforcement side and the political side, but you don't have the medical expertise regarding provocation. Delapoer said he believes that expertise doesn't exist. Dog owners now can present any testimony they wish; they are free to do that.

Collins said the place to make the determination is at the hearing before the hearings officer. You get your day in court. If you have a bad attorney, that's not the community's fault.

Delapoer said the proposed changes go a little further than he would like.

Olsen said he would like to comment about Blue and the wound that was inflicted on the baby. His dog inflicted the same injury on his baby over a food dish. It's typical dog-dish behavior, not an attack on the kid. There needs to be a middle ground, not you've got a stitch in your face, we kill the dog.

Dorland said the Police Community Resource Unit staffed some of these changes with Chief Boyd and Captain Hinrichs and CRU is willing to live with them, overall. Public safety is ultimately the role of the police. He said it's important for him that this is not about Blue. Between January and July 2011, his staff addressed 56 animal complaints that were bite-related. He said he appreciates that Blue is the hot topic; but for him, the topic is public safety. We're not the only ones looking at this. Communities all over are looking at this: In Pierce County, Washington, a jury required a city to pay half of a \$2.2 million award for law enforcement not taking action for a mauling. Community members like us are being held accountable for taking action. He emphasized that these decisions at the Police Department are not made in a vacuum; they are staffed before they even get presented to the Chief. He related his experience and training with dogs. He said it is important that public safety be the focus.

Azevedo asked how many dogs of the 56 were deemed dangerous. Dorland said Police considered one; but based on actions of family members, they chose not to. In a lot of cases, the owner of the animal agrees with Police findings and they do something with the dog. He said he expects less than half were put down. Police evaluate each case based on provocation and totality of the circumstances, and there are times that they have no alternative but to declare a dog dangerous.

Konopa asked if Police had any major concerns or if the proposed code would be cumbersome to enforce. Dorland said it needs to be simple to enforce. The built-in 10-day time limits normally keep it timely. Since Albany doesn't have its own dog pound, the facility we use is at the discretion of Linn County Dog Control. We are guests there. We don't have a facility for other housing.

Azevedo said housing at the county pound was something that concerned him. If he was in prison, he said, he would hope there would be some accommodation for some kind of an upgrade over time. A dog needs some humane treatment over a long time, and the financial burden should lay with the owner. What happened with Blue was appropriate and was forced by the community. It allows better opportunity for evaluation of the animal and for socialization.

Delapoer said a dog is only incarcerated on appeal and the only decision on appeal is whether the judge made a correct decision. Post-decision behavior of the dog is not considered.

Possible problems are created by putting the dog in a facility outside the City's control, Delapoer said. With the current situation at the Pet Hotel, he said, we're hanging out a mile. Indemnity agreements that were supposed to be signed were never signed. We have no control over who sees the dog.

Azevedo said he was concerned about the well-being of the animal long-term. Delapoer said the pound was never intended for long-term animal housing.

Holverson said he has a copy of the four pages of the Blue situation, and it looks like the police did everything they could to work with the owner. It's too bad we can't write something into the agreement that we can euthanize the owner if they don't follow through with the requirements. This really documents the need to come out with a policy that's fair to the dog, the owner, and the citizens of the community and that happens in a reasonable period of time. It has to include real clear documentation of every step.

Delapoer said all of the delay we're seeing in Blue's case is post-hearing; there's nothing we can do to shorten the judicial review. We can't hasten the court proceeding. Even if the Council heard it, we could have an appeal on a writ of review.

Collins asked who chooses where the dog goes. Delapoer said under the ordinance, the dog goes to Linn County Dog Control; but you could give the Court authority to designate another site. That sets up a situation for a wealthy dog owner to get one facility while another person might not have that option. It will be hard to come up with criteria to make the dog secure and protect the public. What happened in Blue's case is not a perfect solution.

Delapoer asked the group to work on a definition of "serious physical injury" and to come up with an objective standard, not something squishy. The group moved on reviewing the draft ordinance.

6.18.010(4) was suggested by Collins; Delapoer thinks it's surplus and unnecessary. Collins said sometimes the art of communication is stating the obvious. He wants to make sure it's clear that whoever the Council ultimately appoints as Director has some experience. Konopa asked if the Council should make that appointment. Delapoer said they already do that. He said his job is to maximize the discretion of the City Council.

Frederick asked if there is the potential for the Council to appoint someone else Director. If so, a job description is needed. Delapoer said a good Council would make sure they engage an appropriate person to do that. Dorland said he didn't know if the additional language would solve anything. Holverson said if it satisfies a group that would otherwise oppose it, then it serves the purpose. Delapoer agreed.

(6) Collins said this is an ownership opportunity; leave it in.

(11) Serious injury – The group reviewed language presented by the Blue supporters. Konopa said it would be nice to show it to the emergency room doctors. Delapoer said the language doesn't define serious injury. The state of Oregon's definition is a much higher bar (get language from Jim) and comes out of the criminal code. For our purposes, Delapoer said it is a community standard: What level of injury is sufficient to justify euthanizing an animal? Dorland said the state standard is what is applied to human-to-human encounter; it would have to be an incredibly violent encounter with an animal of considerable size and weight. If that's the one adopted, we would not have very many dangerous dogs.

Delapoer said the language shouldn't distinguish between genders. Currently it says "stitches" but could say suturing a certain area. The provocation defense was mentioned. Delapoer said the judge already has the discretion to consider food as a provocation. He believes the code does not need to enumerate that. He said you evaluate a dog's future behavior based on past behavior. He is not comfortable trying to psychoanalyze a dog. The code needs to keep "serious injury" objective. The group could create a list of things to make explicit.

Holverson asked who's better to determine serious injury than a doctor or a vet. Delapoer said any such determination would be subjective, depending upon the doctor's experience, interest, or expertise.

Konopa suggested tabling the serious-injury discussion to talk about emotional or psychological injury. Delapoer could write it to be considered in conjunction with serious injury or attack. Collins mentioned his granddaughter who had been bit on the ear and three years later will not approach a dog.

Azevedo asked "What is a serious injury to an animal?" Olsen said that's the judge's discretion again. Dorland said in the past, we've looked at five stitches as the standard of serious injury. Holverson said one stitch or two is cosmetic. Delapoer recommended dispensing with discussion of stitches and going to the length of the wound. It might be more objective to state "injury of more than x length requiring stitches or staples." Holverson asked the difference between a puncture wound and a tear.

Delapoer suggested that talk about injury should focus on whether the aggression was of a type, if it reoccurred, that could cause debilitating injury. With Blue, it was the doctor who called the police. By calling us, he determined it was a serious injury. Frederick said OSHA and OR-OSHA have definitions of serious injury. Staff will come back with proposals.

(12) New language is there to prevent third-party interference in the process, Collins said. It limits standing. Leave it in.

6.18.020(3) Definition of provocation. General discussion followed. Holverson said food aggression is one of the three main provocations for a bite. Delapoer asked if we need to expand that list to include it. Dorland said it's not the food aggression that worries him; it's the behavior that goes along with the food aggression. It's the violence imposed on the person that's the concern. It means one thing to one person, but something totally different to another. Frederick said you can say the same thing about torment or abuse.

Delapoer suggested adding "or other condition unlikely to reoccur." That would give the Director the authority to not declare the dog dangerous because of the circumstances. If it was truly aberrant behavior, the Director is not going to order it euthanized.

6.18.030(1) Police no longer require witnesses to sign affidavits. Relevant and probative evidence is the way all police decisions are made. This language is intended to reflect current practice.

Holverson asked if it could say "the investigating officer's notes." Dorland said those notes are often cryptic; some officers don't retain notes in a way that you can review them. A lot record their notes but don't keep a notebook. It creates an evidentiary situation. Holverson said it seems that it's pretty important to have a track there to follow for those that do end up in court. The investigation is a public record and can be requested as such to evaluate the findings.

(2) Request for a hearing "**within 10 days...**" Dorland said police don't always hear about a dog bite within 10 days. Holverson said our concern was it was 63 days in Blue's situation from occurrence of the bite. Delapoer said the whole reason for this is to protect the public from a dog. Do you want to not go ahead and investigate? Workload and other priority calls can take time away from that. Azevedo brought up the issue of housing in the interim. Public can be reassured that the animal is being cared for in the meantime.

Delapoer asked, what if we said we would get determination by Director in x amount of days from the time the dog is seized. What if we get the wrong dog? We don't want that one seized if it's not the right one. He said he doesn't know of any circumstances where we couldn't get that determination within 30 days. Dorland said police don't always seize the dog if it bites a human. Delapoer said when we seize a dog, we ought to get the determination of the Director. Dorland said police don't just seize an animal unless there's a real reason to. The money clock starts ticking when they do. Staff will come back with timeline language.

Delapoer said even the Hearings Officer's decision should be made in a timely manner – if the dog remains housed, 60-90 days. He proposes 30 days for Director's determination and 90 days for Hearings Officer from when you seize the dog. If it says 30 and 90 days, the City would want to do it faster than that. Time is money. Delapoer said he hasn't come up with a solution for alternative housing for dogs. We don't have that many community alternatives.

(3) There is no reason not to have an audio recording; and if the recording fails, it shouldn't invalidate the hearing. Holverson asked if that's the testimony the decision was based on, how do you come back and prove that was the right decision. Delapoer said the appeal is not whether the decision was improper but if the procedure was followed. The dog owner always has the right to bring his own tape recorder.

Next meeting date: 5:30 p.m., Monday, August 22, 2011, after the City Council work session in the Municipal Court Room. The group will discuss the next two pages, the new language, and outstanding citizen concerns.

Collins wants to get it back to Council as close to or before the Labor Day weekend as possible. Holverson said we need to do it right rather than meet a deadline.

Discussing language related to the role of the Hearings Officer, Azevedo said the language needs to reassure the public that it's a fair process. Delapoer said the rest gives the judge (Hearings Officer) discretion to come up with an alternate disposition. Discussion followed about prosecutions on television programs, circumstantial evidence, and Cesar Milan's success with aggressive dogs.

Meeting adjourned at 7:00 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Marilyn Smith".

Marilyn Smith  
Management Assistant/Public Information Officer