



APPROVED: September 13, 2011

**DANGEROUS DOG WORK GROUP**  
City Hall, Municipal Court Room  
Monday, August 22, 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 5:31 p.m.

Delapoer announced that staff is guilty of making some changes that the group didn't ask them to make:

- Impoundment, quarantine – Staff added the term “quarantine” to create flexibility and reflect actual practice. Not all dogs are impounded. Group accepted with the change.
- Definition of “serious injury”: Delapoer noted several problems with using stitches to determine the seriousness of an injury. Stitches are not the only method of closing a wound; doctors also use staples and glue. Doctors also may use more or fewer stitches, depending on the circumstances – a combat surgeon in a MASH unit with a war wound v. a plastic surgeon suturing a facial injury on a young lady. Delapoer is trying language to make it more objective, such as days of impairment. Staff recommends 10 days. A person could have a puncture wound that cut a tendon or a wound of more than \_\_ inches. Staff disagrees with language recommended in the draft ordinance regarding “other medical condition” determined by a doctor. Delapoer said this is too subjective. The question of whether a wound is serious or not should be an objective standard. Police want the discretion for a doctor to justify the classification or choose not to.
- Psychological injury: Measures what you do with the dog based on injury to the victim. The reason we are doing the classification is to prevent injury to someone else. You would euthanize a dangerous dog because you are concerned it would hurt someone else. Particularities of the victim have nothing to do with that.

What is “impairment”? Delapoer said the bite has to cause actual damage; language proposes that damage be to an organ, limb, or digit so that the use of the damaged body part is inhibited for a specified period of time. Collins asked about a bite on the butt, head, or face. Delapoer said the current code is more than two stitches. Konopa said she feels if a dog bites and breaks the skin and causes the person to seek medical help, that's a serious injury. Delapoer said seeking medical help could be affected by a number of factors, such as religious beliefs, large co-pay, lack of insurance, or when the bite happened. A doctor won't suture a wound that's infected. Olsen said the issue is the malicious intent of the dog.

Delapoer said the question is: Was the dog's action of such a serious nature that, if it is not impounded or put down, it presents a serious risk to the community of doing so again. Collins related a story from his brother, a police chief, and his experience in dealing with a Bouvier des Flandres. Delapoer said he is not prepared to base our ordinance on the intent of the dog. Dorland pointed to the language in bold face in this section of the code. He said most dog bites occur on the face, neck, genitalia, or extremities that are typically exposed (hands and arms). A serious injury needs to be something a civil investigator can identify without six years of medical school and apply to the rest of the circumstances. Dorland said that medical consultations can be valuable when evaluating a wound to determine if the bite was an offensive attack versus a defensive or warning bite. Community Service Officers, who investigate dog bites, are not criminal investigators; a doctor's opinion can be of value in evaluating a child's wound when the child is not able to communicate well. If medical consultation is allowed, definitions need to be carefully worded to avoid conflicting medical opinion.

Azevedo said this has both, what some people like and what some people don't like. He likes the ability to give the Director discretion so that he or she is not backed into a corner to make one decision. He likes having a fairly clear definition of what is a serious injury, like listing organ, limb, or digit or broken bone. That says that is a serious physical injury regardless of how old you are or how aggressive the dog may have been. Delapoer said this is a move to loosen the current code. He said he doesn't know how long the Blue bite was; current code is based on number of stitches.

Frederick asked if the designation is based on one serious injury. No, you go through the series of actions. You have to have the other factors in there -- does this dog do this kind of thing all the time? Delapoer asked if the group would prefer to have the bold language that the police prefer? Frederick said he wants both; they give an objective look at wound but allow input from medical field. Holverson said he thinks we all agree that a dog that's a dangerous dog needs to be euthanized. For that one in a thousand cases, the Director should have some options to euthanizing the dog. Collins said the Blue supporters wanted to have the medical community involved; this does that. Police win.

Duration of impairment: Konopa asked if it could say "physical impairment" instead of "organ, limb, or digit." Citing Councilor Collins' example of being bit on the backside, she said, you would be impaired if you have a job where you're sitting down for long periods. Delapoer said anyone who gets bit by a dog can say they're impaired. He recommends relying only on the wound. That's what we have now. Azevedo wants the impairment section to stay. Dorland said he had researched ordinance language in surrounding cities and counties and the changes being proposed here are substantially more specific than anyone around us. He said there's probably a reason they didn't get too specific; you have to consider the totality of the circumstances. This is here to placate those who want more. Our existing ordinance is as good as any of them. Delapoer said the City of Albany is giving this more serious consideration than any of the jurisdictions just mentioned.

Size of wound: Staff recommends half an inch plus medical procedure being warranted. It has to be more than something you would treat with a Band-Aid or a butterfly. Olsen said he thinks half an inch is kind of short, but OK if it takes stitches to close it. Konopa said any kind of wound on the face should qualify or a wound that might require more surgery. Delapoer said the Director has discretion to go either way. Consensus: half inch, 10 days, leave in impairment.

6.18.020(5) time limit if animal is quarantined or impounded. OK.

(6) City officer or employee has the authority to impound or quarantine. OK.

6.18.030(3) Audio recording added. The dog owner is welcome to tape it as well. Such recordings could be used as evidence. Holverson wants to make sure that we have some language that says the recording could be used in the event that the original record isn't available. Delapoer said that pertains to the appeal to the state; our ordinance doesn't have anything to do with the state appeals process. The Circuit judge makes a decision whether proper procedures were followed. Holverson asked what if this was a case involving people instead of a dog? Azevedo outlined the procedure for an appeal of a land use decision. Holverson said it seems like if you go through the process and the evidence goes away, should have to do it over. Delapoer said this rule says there shall be a recording. The courts will not throw out a decision if parts of a recording are not audible. Delapoer said this is a substantial advance for more due process. He said he is trying to make City decisions stick so we don't have to keep litigating them again and again. He recommends audio recording only; video interjects a whole bunch of variables. Holverson asked is it really important to have the last sentence in there about failure to produce an audible recording. Delapoer said he could predict that it would happen in every hearing. Collins is comfortable with all the language up to the red line.

Azevedo said he knows Holverson is concerned because the Blue case isn't settled, but this gives a chance to challenge at the next level. A record produced at this level is reviewed at the next level.

Delapoer said it would help to make the language more clear regarding failure to produce an audio recording. He will work on new language.

(6) 90-day requirement to get the hearing done. This is a requirement on the Municipal Court. Delapoer said he thinks it will be shorter than that. This addition is responsive to the Blue supporters.

6.18.040 Potentially-dangerous dog section:

- Added language requiring a microchip section, recognizing new technology from the time of original ordinance. Holverson asked who has to pay for this. Delapoer said the owner of the potentially dangerous dog pays.
- Requires that dog be licensed, which in itself requires current rabies vaccination.

6.18.050(1) Alternative disposition: This is all pretty much new, Delapoer said. It is intended to provide flexibility to the Hearings Officer to come up with an alternative to euthanasia. A relocation plan, for example, must be proposed by the dog owner, put in writing, and notice sent to the victim and the receiving jurisdiction. A requirement for new owners to tell subsequent owners that the dog has been classified dangerous is unenforceable. Simply moving it to another county can't be the sole solution. Delapoer said the owner has burden to come up with an alternative to euthanasia, one that provides that the dog is not likely to repeat the behavior that got it here.

Holverson asked how many similar cases have occurred in the last 10 years in Albany. Delapoer said until now, we have never had the owner of a dog seek a writ of review. This is also the first case involving an attorney. Dorland said challenges to dangerous-dog classifications are very infrequent, which is actually a testament to the decisions the City staff has made; the proposed ordinance is very new to law enforcement in this area.

Discussion followed, dealing with the ethics of allowing a dangerous dog to be given to somebody else. Dorland said he has fought for the receiving jurisdiction or people who receive the dog to be notified. Without that requirement, if the City of Albany allows a dangerous dog to move in next door to you, you won't have any say in it. He said he is a dog lover but, personally, he doesn't want a dangerous dog living next door. Konopa said that's been her one concern, taking a dangerous dog from our community because she wouldn't want another community doing that to us. Azevedo said this lets the Hearings Officer make that decision, and the victim has input. Dorland is trying to ensure we don't victimize somebody else in another community. Holverson used the analogy of a sex offender who has to be listed on a state registry. Delapoer said in the Blue situation, we don't know where the dog goes, and we have no control over that.

Frederick said you've given people an out if they want to be responsible. You've shown you're willing to work with people, and it's not always black and white. You've exhibited a whole lot of liberalism in this ordinance. Dorland said there was an attempt to get Blue out of the community, and the dog reoffended on two occasions after that. Responsibility comes with the decision to let the dog out of our jurisdiction.

Holverson asked for the latest ordinance revisions to be sent out before the next meeting. Konopa asked for all the changes in the ordinance to be printed in red. (Note: Staff chose royal blue to accommodate Councilor Olsen.) Brief discussion followed about next steps, such as a committee report, recommendation for changes, and public comment.

Next meeting                    5:30 p.m., Monday, August 29, in the Municipal Court Room.

Meeting adjourned at 7:10 p.m.

Respectfully submitted,



Marilyn Smith  
Management Assistant/Public Information Officer