



APPROVED: October 17, 2011

DANGEROUS DOG WORK GROUP
City Hall, Municipal Court Room
Tuesday, October 11, 2011

MINUTES

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

Members absent: Max Frederick (excused)

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

Others present: None

Mayor Sharon Konopa called the meeting to order at 5:30 p.m.

APPROVAL OF MINUTES

September 13, 2011

Collins moved approval of the minutes as written; Holverson seconded. Motion approved 5-0.

REVIEW OF PUBLIC COMMENT ON DRAFT REVISIONS TO AMC 6.18, DANGEROUS DOGS

Konopa, Delapoer, and Smith explained the handouts in the agenda packet. The document labeled "Group Revisions" was submitted by Blue supporters. The document was not formatted with standard bold and strikethrough; Smith had compared the document side-by-side with the work group's draft ordinance and highlighted proposed changes. In the document labeled "Public Comment on Draft Ordinance Revisions," comments from other individuals were shown with bold and strikethrough or through comments, each labeled with the initials of the person who submitted the comment. A key listing names is included at the end of that document. The packet also included an October 5, 2011, editorial from the *Albany Democrat-Herald* and a copy of ORS 609 to which the editorial referred.

Delapoer said that he, Dorland, and Smith had met earlier today to divide the work of going through each document. Delapoer would deal with the Group Revisions and state law; Dorland would talk about Linn County dog control law; Smith, the other public comments; and Smith and Dorland would supplement Delapoer's remarks as needed.

Group Revisions: Delapoer said he believes this document was prepared mostly by Mr. Raymond's attorney, Mr. Meadowbrook. In his opinion, he said, it was written to result in Blue not being classified as a dangerous dog.

Definition of "Director": Under current City ordinance, Council has authority to appoint anyone they choose as a director. By resolution, Council has designated the Chief of Police; he supervises animal control officers and he's a City employee; so the City doesn't have to pay extra. The Group Revision proposes to hire people who are not City employees and that will limit options quite a bit. Konopa said she can't imagine any local veterinarians wanting to be involved in anything like this because it could put them in a predicament as a business person. Collins said that Dorland might qualify with his experience. Dorland agreed. Delapoer said the Council now has the authority to appoint all those people if they choose. Why specify that in the ordinance? Holverson said where the group is coming from, this isn't going to be something that comes up every week or every month. They did some checking around and found there are some people with this kind of experience who would volunteer to be on this kind of group. They would be truly qualified to deal with animal behavior issues. The Police Chief is trained in human behavior issues; he may be the least qualified person in the community to be in this position.

Azevedo asked, "What would the liability be for those individuals if the dog reoffended?" Delapoer said the City would be liable because the appointed Director would be acting in a City role. Holverson said there isn't a single person involved in his group who's said a truly dangerous or aggressive dog should not be euthanized. As an example, he cited a story about a young relative told by Bill Root at the last Council meeting. Holverson said he'd read in the paper the other day that APD picked up a dog that would meet the designation; the owner offered to have it put down, but police told him to wait until the investigation was completed. Dorland said that is standard procedure. Azevedo said City code is written to give a City official authority to make decisions. With a subset of specialists reviewing each of those things, does that make government more cumbersome? Delapoer said individuals with areas of expertise cannot judge the facts and the law on those areas; you want them to be able to judge fairly. If you want them to be quasi-judicial, you don't want an expert. A judge is supposed to just listen to the evidence that's presented. It's the job of the City Attorney and the dog's owner to present evidence. A judge can't base a decision on their own knowledge but on the facts in evidence.

The group continued to discuss the definition of "Director." Delapoer reiterated that Council already has the authority to appoint anyone they choose. He asked the group, "If a dog bit your child, would you want it reviewed by a veterinarian or a police officer?" Konopa asked if the veterinarian would need to indemnify the City. Delapoer said he didn't know why they would. As a City agent, there wouldn't be any additional liability to them. He doesn't think liability is the issue.

Collins said he opposes the Group Revisions to the Director definition. Konopa repeated that Council has the authority already to appoint anyone. Holverson said he would like to see some kind of language in there that opens the door a little bit more so it doesn't have to be someone from the Police Department.

Collins said he thinks that when the Blue case came before the judge, the defense probably did a horrible job. They didn't give Judge Scott the information he needed to make another decision. Holverson said that's where he's having the biggest problem. The Police Chief isn't the best person to have in that role. It's the Blue Code; they're going to protect each other.

Dorland said animal control officers routinely work with animals, read them, and understand what they do. When an animal control officer receives a complaint about a potentially dangerous dog, the officer takes the report to Dorland, their supervisor, and he has a professional background as a trainer. From him, it goes to the Director, and he has a check valve also. He said it sounds like the way Holverson wants this to read is to get a different outcome.

Holverson said, obviously, he's looking at this from the total opposite position. The Blue group just doesn't want to see this kind of situation happen again. When you look at the whole situation with Blue, he said, if he was a policeman in Albany, Oregon, and had been involved in 10-15 trips to the residence where Blue lived, he would be totally frustrated and would be grasping at any straw to put an end to it. He said, what finally happened with Blue, he may be wrong, was police said here's an opportunity to put an end to it, let's do it.

Dorland said he appreciates Holverson's perspective, but it's not correct. There's a difference in perception in how this case was evaluated, and it's not getting us any closer to getting it resolved.

Azevedo said if the Blue supporters really want the Blue thing to be resolved, it has to be a negotiation that's not a contentious negotiation. The toxic comments are not doing any good. There are circumstances where aggressive people and aggressive dogs mix in a bad way, and police have to resolve it in a reasonable way. There needs to be a little bit of give and take here. He would like to see a less ambiguous code with more options.

Holverson said he agrees 100 percent. A few people on the Blue committee feel that if they don't get everything they want, they don't want anything. He feels virtually everything here has been written by Delapoer and Dorland. Delapoer said he was told by Paul Meadowbrook some time ago that he would not settle for anything that doesn't result in Blue being set free. Delapoer went to Olsen in the beginning, suggesting the code should be changed to give the judge some alternatives to euthanasia. Olsen said he believes the police got so fed up with the Blue situation that they decided they had to kill the dog.

Collins said what we're arguing over is the definition. He read from 6.18.030 regarding removing language about "other probative evidence." Azevedo reminded the group that the appeal process is available for those who disagree with a decision.

Holverson asked, in a year, how often would a Director situation come into play? Dorland said APD has investigated around 70 reports of dog bites or menacing in 2011; only the worst of the worst go to the Director to be evaluated. Since

the first of the year, there have been two that are potentially dangerous, and none designated dangerous. Holverson suggested the wording: "when necessary, a Director will be appointed on a case by case basis," and should have these kinds of qualifications. Olsen said, "if we've got a Director that's constantly inflaming the public by making mistakes, the Council will get rid of him." The Council needs the authority to appoint someone who's appropriate.

Holverson said he knows Councilors are frustrated with the Blue group. It has a few people who are outspoken and say things that shouldn't be said, but a couple of things are high on their list of what's important; and this is one of them. Konopa said to put the definition of "Director" on hold.

Discussion moved to the definition of "quarantine." The Group Revisions adds "a humane animal control facility." Delapoer asked, "Will that be a slap in the face to Linn County?" The county pound is designated as place for quarantine or impoundment in state law. The next proposed addition calls for "conditions reasonably necessary to protect the physical or mental health of the impounded dog..." Delapoer asked how to determine a dog's mental health? That's voodoo science, he said. If not the county facility, where else would the dog be kept and who pays the bill? Konopa said citizens can lobby the county to make it more humane. Olsen said he thinks the complaint was the facility and no human contact. Delapoer said the dogs have human contact every day; they are fed every day. Olsen agreed that it shouldn't be part of the ordinance. Delapoer said these changes are making the ordinance more ambiguous.

6.18.020 (3) Group Revisions proposed to add a definition of "provocation," to be determined by an experienced veterinarian. Delapoer said there is no single universal experienced veterinarian. You can find a veterinarian for every issue. Holverson said you can find a judge for every issue. Konopa said she supports the ordinance without the addition. Delapoer said the effect of this will be to plant within the ordinance get-out-of-jail-free cards. As long as you can get a vet to say that whatever happens was result of "provocation," you get the dog out of trouble. Changes that are suggested here will make it very difficult if not impossible to get a dog declared dangerous if the owner wants to fight it. It's not what provokes a dog but how it responds to the provocation. Collins said it's incumbent on the defense to convince the judge that the action was the result of those circumstances. Holverson said if we leave this language, he has no problem with not adding the rest.

Group consensus was to not include the provocation definition.

6.18.030 adds sworn statements, photographs, and certified copies of medical records. Delapoer said those would be difficult to get in many cases and would not be consistent with the way police officers do an investigation. In most cases, they would not have photos, and it is time consuming and expensive to get certified copies of medical records. It adds to the expense and delay and a police officer's work. Holverson said, when you're gathering evidence, I'd think you would want to have them write things down. Delapoer said no case ever goes to court without documentation. Any police officer takes notes. Holverson said, when this came up before, you said this isn't modern police procedure. Dorland said that pertained to affidavits and sworn notarized signatures – police don't do that anymore. Discussion about documentation continued.

Group consensus was to make no changes to (1).

(Audio recording interrupted here)

The Group Revisions recommends replacing the Hearings Officer with the City Council as the body to hear appeals of the Director's classification. Olsen said he thinks the people who are aggrieved feel they didn't get their day in court, that the current ordinance doesn't allow the judge options. (Recording began again.)

Holverson said when you first made the recommendation to change language to give the judge other options, if the Council would have jumped on that, this whole thing would have been settled long ago. Delapoer said he offered that to Mr. Meadowbrook, but he wouldn't agree to anything that didn't have a guaranteed outcome. Discussion followed about mediation, negotiations, and settlements.

Holverson said that the City Council now has that authority but they choose to delegate that. The Council can appoint itself as the Hearings Officer. Delapoer said if the Council did not appoint a Hearings Officer, the Council would be it. The Municipal Judge is not a judge when he's a Hearings Officer and does not have authority to issue a subpoena. Olsen asked why a dog case is any different from a robbery. Delapoer explained that "adjudicating" whether a dog is dangerous or not is different from "prosecuting." Collins asked if the Blue people are requesting something that's a higher burden of proof than what we require for people. He is not willing to go there. Delapoer said a civil process has a different set of

rules from a criminal prosecution. Hearings Officers don't have subpoena power. No other ordinance in the City Code calls for a Hearings Officer; the City Council has said they're here for the tough decisions, but they have drawn the line at dog cases.

Collins said the purpose of the Hearings Officer is to review the decision of the Director. Delapoer said there is no trial in a writ of review; the judge reviews whether the law followed, was due process followed, and was the decision one that a reasonable person could have made based on the evidence presented. The existing ordinance has a provision that calls for sworn statements, but no allegation of error in the Blue case was raised at the local level. The second issue in Blue is that local proceeding was not taped, so does not comply with due process. Anyone can make an audiotape of the proceedings. If the Court's tape failed, a citizen can offer a tape to supplement the record. Discussion of trial procedures followed. Delapoer noted that a defendant is allowed one factual trial for the most serious crimes in the United States.

6.18.040 (1) Group Revisions adds "if the Director finds warranted" wearing a muzzle. Delapoer said he would give on this one though it complicates the ordinance and makes it ambiguous. Dorland sees it as an exercise in futility. Azevedo said the language as proposed should be left in; it doesn't affect anything, gives something to the Blue folks. Delapoer said it's a future liability loophole for the City. Olsen is in favor of leaving it in.

Holverson said one of the things the Blue group feels is really important is that there needs to be some language that deals with the owner. The owner should face some substantial penalties. Delapoer said we should have prosecuted Raymond at the same time as we classified the dog. The City also dropped the ball; we should have ticketed him when he said he'd remove the dog and he lied to us. Dorland said Raymond was prosecuted with the potentially dangerous classification but not with the dangerous classification case.

Group consensus is to keep the proposed language.

6.18.040 (9) Delapoer said he doesn't know what a "police dog handler trainer" is. "Oregon Police Canine Association certified trainer" may be what the Blue group means. Delapoer said this is being set up to an impossible standard.

Group consensus was to add language proposed by Osalyn Houser: "a dog trainer certified by the Association of Pet Dog Trainers." Smith will research what goes into such certification.

6.18.040 (9) (d) Group Revisions recommends removal of the phrase "clear and convincing" from the evidence to be evaluated. Delapoer said that phrase means it has to be more than a coin toss. "Clear and convincing" is a higher standard of proof. Collins said the underlying tenet for him is protection of the public.

Group consensus is to keep it in.

6.18.040 (9) (f) Group Revisions removes: "Any party to the hearing may also audio record the hearing, but the audio recording prepared by the Hearings Officer shall be the official recording which shall be part of the record of the proceeding. The hearing procedure shall not be deemed flawed nor the outcome invalidated due to technical failures or other good faith errors which impair the audibility or completeness of the recording."

Group consensus is to leave it in.

6.18.060: Group Revisions removes authority to euthanize. Azevedo asked Holverson if he is okay leaving that language in. Delapoer noted that euthanasia language remains in the group's version of the ordinance in 6.18.070. He thinks removal from this section was done by mistake. Delapoer also believes that it is a mistake to say "shall" go to be adopted because that gives judge no other option. There could be something in the record that the judge would say the alternative being proposed is not reasonable. Alternative has to be proposed by dog's owner. Only one who has standing to appeal is owner. If owner doesn't appeal, it's done. Collins likes the work group draft language better.

Group consensus is to leave original revised language.

6.18.070 (2) Group Revisions' draft shows this as (8). The Group Revisions' draft proposes that City pay costs of quarantine or impoundment if dog is not found potentially dangerous or dangerous. Current code implies that the City pays. Konopa asked what about fees in Blue's case? Delapoer said in the work group's draft, if person is convicted or dog is classified, the owner has to pay.

Discussion returned to the definition of "Director." Holverson said that was his biggest concern, and he wants to come to some agreeable different language. Azevedo asked, will there always be someone on staff at APD with some expertise like Dorland? Dorland said yes, as long as APD has a canine program, at least a certified handler if not a trainer. Delapoer asked if Holverson would tell the Blue committee that if the draft ordinance should be approved. Holverson said that's where the committee wants to be.

Azevedo asked if it would be useful for him and someone else to sit with the Blue folks and explain things, as long as they don't throw stones. Holverson said the committee wants to get this resolved; they have done everything they thought at the time was the right thing to do to keep the issue in front of the public. Collins said that he thinks that letters that were written were overly aggressive, assertive, and derogatory toward individuals; that behavior has cast an irreversible shadow on the City Council. It has done irreparable harm to the governing process in this community. People have said of the City Council we're all bad people, we have no heart. It undermines our ability to govern this community into the future. Only way Collins said he can see that even potentially getting changed is, at the completion of the process, there is somebody who stands up and makes a statement that we had a disagreement, we worked through a process, things were said that shouldn't have been said. That won't change everything but might go some way to repairing it.

Holverson said there were a lot of things said at the time of the tearing down of the house, too. He agreed to meet with Azevedo at a time to be determined.

Konopa said her plan is bring the draft ordinance to the City Council at the November 7 work session, then to the City Council for a vote on November 9. It won't be a public hearing; if it was, she thinks it won't produce comments on ordinance language but more of the same thing – getting Blue released. She thinks Azevedo's meeting is not necessary; the Blue supporters need to trust the process. This would have been resolved months ago if they hadn't filed a lawsuit. Holverson said the Blue group isn't involved in any lawsuit. Much of what's happening here was long before they got involved. Konopa said she thinks Blue's supporters main goal is to get Blue a new trial, but they have to trust the process and have to trust that we're all discussing the language that will give an alternative for a dog to go into rehab.

This ordinance won't resolve the Blue situation. Holverson said he had a chance to talk to Mr. Raymond for the first time; he's willing to give up all responsibility for the dog if it can be placed some place where it can have a normal life. To Holverson, that's the most important thing – he's willing to give up the dog. Entire group supporting Blue has never supported Mr. Raymond. They think the very worst thing that could happen is to have Blue go back to Raymond or to Texas to another family member.

Holverson asked if there is any way legally, if Mr. Raymond would sign over all responsibility, that this thing could be resolved. Delapoer said not with a guarantee that Blue escapes euthanasia. We can agree on process but can't agree in advance on the outcome. Holverson said cases that are more difficult than this one, in his mind, are worked out among the lawyers in the middle of a trial. Discussion followed regarding the differences between trials and hearings and other legal proceedings.

Review of Oregon state law: Delapoer summarized Oregon law regarding dogs. It does not classify dogs as dangerous or potentially dangerous; it only reacts to the actions of the dog. ORS 609.097(7) says if a dog has menaced or chased a person or has bitten a person, the county governing board may order that the dog be killed in a humane manner. The decision is subject to writ of review. Linn County has its own law. The *Democrat-Herald* has suggested Albany just apply state law. It's reactive rather than proactive, Delapoer said. Dorland said, under state law, any one of the actions Blue's accounted for would have put him down. State law doesn't provide more protection. The definition of serious physical injury is much more strict and severe, but you don't need to have physical injury under state law to euthanize a dog. Under state law, if you keep a dog that has inflicted a serious physical injury, you're guilty of a crime. The bottom line is, it's not a good alternative here. Delapoer said he would love to see the City get out of animal regulations altogether, but that would not provide protection to citizens for their animals. Linn and Benton Counties may have different rules.

Group consensus was not to adopt state law.

The group agreed to conclude this meeting and schedule another one to review the remaining public comments. That meeting will be at 5:30 p.m. Monday, October 17, 2011, in the Municipal Court Room. Minutes for that meeting will reflect the source of each public comment as it is discussed. The work group's draft will be updated with changes that were agreed upon at today's meeting.

Group consensus was not to hold a public hearing.

Holverson asked if Councilors feel there will be members of the Council that will vote against this? Konopa, Collins, and Azevedo said yes, in part because of personal behavior by the Blue group against the Council. Konopa has been a member of the Council for 15 years and said she has never seen this behavior before. It's sad for me to see this in the community, she said. To say we're not caring people is not fair. Azevedo said he received a phone call last week, and the caller was very negative toward him because he's a member of this work group and assumed he had taken a certain position to protect the City Council. Delapoer said he has not had anyone attack him personally. Collins noted Councilor Jeff Christman's remarks at the last City Council meeting, that threats of recall don't bother him; they make him stiffen further. Collins said he thinks we'll be extremely fortunate to pull a three-three vote with the mayor breaking the tie, even after all this effort.

Konopa said the November 9 City Council agenda will put the dog ordinance before Business from the Public.

Holverson said we're involved because we truly care about animals. They feel this dog got a bad rap because of circumstances, not because he was a vicious dog. He talked about career politicians at the federal level ignoring input from citizens. Konopa said it's unfortunate to be compared in that way because local government officials are all here because they care about the community. She added that she hears from a lot of people who say put that dog down and don't change the ordinance; the Council has to look at both sides. Azevedo said twice we've taken the City to task on land-use issues but we didn't do it by attacking individuals; we attacked the issues. We now are very involved with the community at city government level. There are lots of opportunities to be involved and to influence how things happen in a positive way. If Blue people wanted to help the City, he thinks the City would embrace them. How you choose to use your energy and channel it will determine what the outcome is and whether you feel satisfied at the end of it. This should be a community win. Don't attack the person; attack the idea.

Holverson said his closing comments at the Blue group meeting today were, if we can get a couple of these changes that are important to us, we'd drop all letters to the editor, demonstrations, sit back and be quiet, and support the final document in public and in private. Collins said, if we have a summary of what this ordinance does that the other doesn't, six or seven key bullets, it's critical. Olsen said this has been a really thoughtful review of the ordinance. He added that Councilors had been talking about a possible change to the ordinance since spring; they did not have to include a Blue supporter in considering such a change. Delapoer said he thinks the most important thing the committee wanted to achieve was an alternative so the dog doesn't have to be killed if it's classified as dangerous. That was proposed by Olsen and Delapoer before the committee ever formed. You won without even asking because we recognized that we needed to give the judge more flexibility, he said.

Collins said the fundamental tenet is that the ordinance is designed for protection of the public from the animals that misbehave; but for the animals that misbehave, the ordinance calls for a fair due process to reach a conclusion.

Delapoer noted that many of the things that are important to the Blue group have been incorporated into the proposed changes because staff agrees with them.

Next meeting date: 5:30 p.m., Monday, October 17, 2011, Municipal Court Room.

Meeting adjourned at 7:55 p.m.

Respectfully submitted,



Marilyn Smith
Management Assistant /Public Information Officer