

Safety Committee Minutes

Honorable Council
City of Newark, Ohio
May 13, 2014

The Safety Committee met in Council Chambers on Monday, May 12, 2014 following the Service Committee with these members present:

Alex Rolletta, Chair
Marc Guthrie
Jeff Rath

Curtis Johnson
Carol Floyd

We wish to report:

1. **Ordinance No. 14-09** amending chapter 618 of the codified ordinances of the City of Newark, Ohio regarding sanctions for violations resulting in serious injury to persons was considered.

Mr. Rath- I would, this is something that I am bringing forward. Let me start off by saying regardless of my history with breed specific legislation. This has absolutely nothing to do with breed specific legislation but that is what brought this to my attention. When we were talking breed specific legislation I heard Mr. Sassen mention several times about a first bite that is free. I will be honest with you, when we talked about this a year ago I didn't really know what he meant by a free first bite. During the leash legislation and discussions with him it finally clicked. I guess let me explain to you what that means. If a dog attacks somebody then they can be declared vicious. Once the dog has been declared vicious and it attacks somebody and causes serious harm then the court system can order that dog be euthanized. If a dog has not been declared vicious and it attacks somebody in our community and rips his face off then the judge does not have the ability to order that dog euthanized. This legislation reverses that. It gives the judicial system the discretion to order a dog be destroyed humanely by a licensed veterinarian, the County Dog Warden or the County Humane Society. My intent here is not to say that if I grab for a dog's bone and it snap at my hand that dog needs to go down. My intent is that if a dog attacks somebody and seriously injures them, causes serious bodily injury, I don't want that dog to be able to do that again. I want them to be euthanized and this gives the courts the right to have that ordered.

Mr. Guthrie- I wanted to ask the Law Director how does this jive, what we are doing here, with existing State law?

Director Sassen- our vicious dog ordinances beyond the breed specific legislation because as you know was revoked by the State Legislature but our provisions with regards to sanctions for the conduct of a vicious dog when it is running at large is essentially identical to the State. The way that it works is that you have to have a

violation of law underlying this whole process in order for a human being to be charged with a crime. If you come over to my house and for whatever reason my dog bites you, I am not subject to criminal sanction because I didn't really do anything; my dog took an action over which maybe I had no control so it is not criminal conduct on my part. The current ordinance talks about vicious dogs running at large and that is where I am responsible now because I allowed my dog to run at large or it got off the leash or it jumped the fence or whatever, I don't have my dog under control. In the course of that process where I am now potentially liable for not controlling the dog, if that vicious dog bites a person and causes serious physical harm or kills another dog that dog is subject to mandatory euthanization, the court must order that dog euthanized. If that vicious dog causes physical harm not serious physical harm to a human being that dog is subject to discretionary euthanization. The judge can order the dog euthanized but is not required to. That is consistent right down the line with the Ohio Revised Code. Our current ordinance with regards to non-vicious dogs is also exactly the same as State law. This would enhance that provision so as to say if a non-vicious dog while running at large bites a human being and causes serious physical injury in addition to other sanctions the court may impose on me if found guilty the court would have the discretionary authority to order that dog euthanized on the first bite. Of course we know that if my dog is running at large and it engages in that type of behavior and it causes serious physical harm and is not euthanized and I keep the dog it is now by definition a vicious dog. On the second bite it will be subject to the mandatory or discretionary euthanization. Mr. Rath's proposal is to back that up one step so when that dog is still deemed to be a non-vicious dog but it causes serious physical injury to a person the judge would have the discretionary decision to euthanize your dog. That is the part that goes one step beyond State.

Mr. Guthrie- Doug, then as far as defining serious physical injury that would be in the hands of the judge?

Law Director- no serious physical injury is also defined in the Ohio Revised Code .I sent that to Mr. Rolletta this morning but I didn't get a chance to send it to everyone else. Section 29.01 basically describes serious physical injury. In the criminal world we use that definition every day of the week. Judges know what it means, lawyers know, prosecutors know what that mean.

Mr. Guthrie- as the supervisor of the prosecutors do you see many circumstances where this language would have been beneficial?

Law Director- Mr. Rolletta asked me that this morning. We see or hear a lot of cases of dogs running at large non-vicious biting someone and causing serious physical harm but in order to fit into this realm you have to be able to put those together. You have to have a non-vicious dog that caused serious physical harm while it was running at large. To be perfectly honest with you I don't think that I spend enough time up front in our criminal section to be able to honestly answer your question.

Mr. Rath- my point is that is if a dog is going to attack someone and cause serious physical harm then it is probably going to do that again. The dog is not deemed vicious at the time of bite, the dog if you want to clarify I am paraphrasing you Mr. Sassen, the dog is deemed vicious at the time of a conviction. So even if a dog attacks somebody and

causes serious physical harm if the owner was never prosecuted in the court of law that dog is still isn't vicious. If a dog is going to attack somebody and they are going to bite somebody and cause serious physical harm my belief is that it will do it again. I don't want that to happen.

Director Sassen- slight clarification that this originally non-vicious dog that bites and now would be deemed vicious that can be done in the criminal process because the owner was charged with a crime, say the dog was running at large, if there was no criminal charge filed because the dog was in his own home and you came over to visit, there is no crime there. Our Animal Control Officer still has the authority to deem because of that bite the dog to be vicious. There is an appeal process for the owners to have a hearing in front of Captain Connell who is our appeals officer. During that process whether it is the criminal process or the hearing process before Captain Connell during that interim period was the point that Mr. Rath was talking about before you get the document of guilt or deeming the dog vicious during that interim period the dog is still non-vicious without the enhanced sanctions of a vicious dog coming into play. I think that gap there is another one of those things Mr. Rath expressed to me. We spent a lot of time trying to craft what it was he was trying to do here. But it was this period in between when a dog has demonstrated aggressive behaviors, this legal process is still running its' course so you are in limbo that the dog is now shown a propensity towards violence but it is not subject to these potentially enhanced sanctions.

Mr. Cost- this might be splitting hairs but I want to try to understand something. If the dog is on someone's private property and not running at large if the dog seriously bites someone would the judge still have that same discretion as he would if the dog had been running at large, does he get a free bite because he is on private property?

Law Director- that case would never appear before a judge so there is no euthanization that comes into play. The only time that this additional remedy comes into play is if there is a criminal case filed and the criminal case in this scenario would be the dog running at large. The criminal charge is filed against you the dog owner separate and apart from the fact that it caused physical injury. That is the only way that this enhanced sanction comes into play. There has to be a criminal charge of running at large filed first then a conviction then the judge can in his discretion order euthanization.

Mr. Cost- the injury then is not relevant?

Law Director- it is very relevant. In fact Mr. Rath and I debated this at some length. The extent of the injury is relevant. The first step has to be a criminal charge, running at large. If your dog is running at large and nips at my ankle but doesn't cause serious injury you are not talking about this enhanced sanction. It has to be 1-non-vicious, 2-running at large and 3-cause serious physical harm for this enhanced sanction to apply.

Doug Marmie- as far as because we are imposing a law for the City of Newark but yet is being enforced, the euthanization, either by the County or a licensed veterinarian are those expenses going to be incurred by us.

Law Director- initially the answer would be yes but we have two provisions that we passed here recently. One was allowing the City in non-criminal situations to recover those costs from the dog owner and also authorize the court in criminal situations to order those costs reimbursed from the defendant as part of the sentence.

Mrs. Loomis- I was wondering right now I think that they remove the dog from the City then is this where you could say under this new rule the dog would have to be euthanized but if he was out of the City of Newark he would no longer have to be?

Law Director- first euthanization is discretionary under this scenario with the courts.

Moving to another district may be considered by the judge a relevant factor but it doesn't change the district and it doesn't change the applicability of the sanction.

Regardless of where I live if this event occurs in Newark I am going to be subject to Newark ordinances and whatever sanction the municipal court judge here in Newark seeks to impose upon me wherever I live after that.

Motion by Mr. Rath to send to full Council, second by Mr. Johnson

Motion passed by a vote of 4-1(Mr. Rolletta)

Alex Rolletta, Chair