

Safety Committee Minutes

Honorable Council
City of Newark, Ohio
March 16, 2016

The Safety Committee met in Council Chambers on Monday, March 14, 2016 following the Street Committee with these members present:

Mark Fraizer, Chair	Curtis Johnson
Jeremy Blake	Carol Floyd
Jeff Rath	

We wish to report:

1. **Ordinance No. 16-07** amending chapter 618 of the codified ordinances of the City of Newark, Ohio regarding breed specific vicious dog designation was considered.

Director Sassen- I appreciate the opportunity to offer a summary of what this ordinance does because quite frankly it is kind of hard to read in and of itself if you don't have the various sections of Newark's code regarding dogs and dangerous and vicious dogs side by side to compare and contrast. Since this was presented to the Clerk I have made some fairly significant changes to it from a drafting stand point not from a substance standpoint so at some point tonight I am going to be asking the committee to make a motion to amend 16-07 to what I will give you to substitute as 16-07 A which really just makes me happy because again we are not changing the substance of what we are going at here but I think that it reads better from a draftsman's standpoint and quite frankly we have a lot of ordinances in Ohio and Newark including the State Code that have been poorly drafted and I would rather not be a part of that problem. Essentially the fundamental changes that this ordinance will make are based on a request to me to modify our existing ordinances with regard to dangerous and vicious dogs to essentially parallel that of the Ohio Revised Code and that is what I have tried to do to the best of my abilities even though in many ways which was what results in this draftsman's issue that we are talking about square pegs and round holes a lot of the time but long story short it essentially addresses the fundamental issue that everyone here is most concerned about and that is definitions of dogs. There are a number of things that are being removed, there are a number of things that are not going to be addressed but I think that it is easier if we focus on what does this ordinance actually say as opposed to what does it not say compared to what a previous ordinance may have said. There will essentially be four kinds of dogs in the City of Newark if this ordinance passes legally by way of definition. The first one which is not mentioned in here I will just call regular dogs. In the ordinance they are referred to as dogs who are neither nuisance dogs, dangerous dogs or vicious dogs so rather than say that I will just call them regular dogs. A nuisance

dog is defined as any dog that approaches a person in a menacing fashion and yes the word menacing fashion is also defined in the ordinance or a dog that has attempted to bite or has endangered a person. Those events would have had to occur off the premises of the owner without provocation from the victim or subject of the dog attack. All of these definitions exclude a reference to a police dog which is also defined in there what a police dog is and when that police dog is on duty and not on duty. It has to be engaged in police activity which police dogs aren't always engaged in police activity they go home with their handler and are sometimes the family pet. When they are engaged in police activities they are exempt from these definitions when they are home as the family pet they are not. A dangerous dog is defined as a dog that has caused injury to a person or that has killed another dog or has been the subject of three convictions of its' owner for running at large. Regardless of the type of dog or the circumstances for which that dog was running at large. If I am convicted three times because this particular dog has been running at large it is now by definition a dangerous dog. When we are talking about causing injury to a person or killing another dog it has to be without provocation. All facts for determination can either be made by the Animal Hearing Officer or the judge depending on the venue you find yourself in. Vicious dog is defined under the new ordinance has a dog that has killed or caused serious injury to a person, serious injury is also defined in the ordinance, without provocation. That is it. That is the sole definition of what a vicious dog is. A dog that has killed or caused serious injury to a person without provocation, does not include a police dog and there is another exclusion added as well and that is if the dog engaged in that behavior on the premises of its' owner defending against a trespasser or a person who was committing a crime on those premises. That act will not result in that dog being defined as a vicious. So if I have a dog and you come onto my property in an illegal manner and are conducting some sort of criminal offense and I either tell my dog or on his own initiative he decides that he is going to defend me, my family and my home he kills you or causes serious injury to you will not form the basis for my dog being classified as vicious. It could still lead to my dog being declared dangerous but it won't lead to the dog being declared vicious.

Mr. Fraizer- what id the difference between dangerous and vicious and is there a certain criteria that makes it a dangerous dog vicious?

Director Sassen- that is what I just told you. Without killing or causing serious injury to a person your dog won't move from a dangerous dog to a vicious dog. The only way that your dog becomes a vicious dog is if it kills or causes serious injury to a person. Your dog may be a dangerous dog and engage in certain behavior on a multitude of occasions but that doesn't mean he graduates to vicious at that point. You can move from minacious to dangerous on the three strike rule but you never move from dangerous to vicious unless the dog kills or causes serious injury to a person.

Mr. Fraizer-that is what I was verifying.

Mr. Rath- if I have a dog that is in my house and I have a dog that has attacked someone who has invaded my house to protect me, my house and my family what actions causes that to be dangerous, how does that dog become dangerous?

Director Sassen- because there's not an exception for home defense if you will. Under vicious there is this home defense exclusion so that if the dog engages in conduct that

would otherwise cause it to be deemed vicious but this home exception applies it can't be deemed vicious. It can be deemed dangerous because the definition dangerous is caused injury to a person or killed a dog. The next big change comes and I tried to structure this so that it was as easy to understand as possible. It comes with regard and this is really the only other major change to it, of course we know that the first one was the hot button one. The second one which is the other major change is with regard to penalties to be imposed upon the owner based on the conduct of the dog depending on whether the dog is a regular dog, a nuisance dog, dangerous dog or vicious dog. That is where the other difference between the classification of your dog comes into play and essentially we are talking about running at large or failure to control. We all know what running at large means, a dog jumps a fence and he is off running around the city, he is running at large. As that dogs, owner, keeper, harborer I am going to be subject to a potential sanction and that sanction is going to be different depending if my dog is a regular dog, a nuisance dog, dangerous dog or vicious dog. The other place that those penalties are going to be imposed upon me is if I fail to exercise reasonable constraint of my dog and that includes when it is on my own property. So if you are a guest in my home and for whatever reason my otherwise friendly dog decides to take a chunk out of your leg that is an act that is going to lead me to court. It is a factual question guilty or not guilty based on the history of the dog, the circumstances at the time, why did he bite you? The judge makes the decision as to whether I failed to restrain or not but that is the vehicle that would bring me into court is that I failed to exercise reasonable control while you were over watching the Browns' loose a football game. So essentially you are talking about running at large and failure to confine. One of the significant changes in this amendment is going to be that the draft that you currently have includes also this structure of penalties for dogs who are not leashed. The ordinance we passed not too long ago that said thou shall leash your dog when you are out walking. I personally feel that is separate and apart from a running at large or a failure to control and because there are other restrictions imposed by the ordinance on what I have to do with my dog when I am on and off my premises if it is dangerous or vicious. I thought that the sanctions for leash violations should remain as they are and not be subject to this change. One of the major changes in here from a drafting stand point was that leash violations sanctions are not going to change. In the current version they do, that was an oversight on my part. If I am convicted of my dog running at large or for failing to control my dog if it is a regular dog on my first offense it is not a criminal violation but it is a fine of \$25.00 minimum to \$100.00 maximum. For every subsequent offense it is a minimum fine of \$75.00 a maximum fine of \$250.00 and on those subsequent offenses the judge has the authority to sentence me to up to 30 days in jail. Then there is the option that if the judge feels it is warranted they can impose that I at all times personally supervise this dog. They can order that I personally supervise the dog which is weird because I can't personally supervise anything 24 hours a day 7 days a week. Second category is if your dog is a nuisance dog, is deemed to be a nuisance dog and your dog is deemed to be one of these three categories because you have found yourself in a situation where you have brought yourself through the actions of your dog and yourself in front of some

Magistrate, either the hearing officer or the judge. If you have a nuisance dog and you are convicted of a violation of one of these offenses on the first offense it will be a minor misdemeanor which is the first stage which is technically criminalized because you will have a conviction of a minor misdemeanor which is the same thing as a speeding ticket. The fine can be anywhere from \$0.00 up to a maximum of \$150.00. On any subsequent offense the offense is now a fourth degree misdemeanor which means you can be sentenced between \$0.00 and \$250.00. You can be incarcerated anywhere from 0 days to 30 days and the judge can order that you either personally supervise the dog and/or complete obedience training with that dog. Now when I say those are the options you have to also understand that anytime you find yourself in court subject to a potential criminal charge and that jail is an option the court can always and this is a fairly common thing to do in a standard criminal situation is order you to a certain period of time in jail and then they suspend the jail time and put you on probation with certain conditions such as don't do it again. If you do it again you not only will face potentially additional sanctions for the new offense but you could face a probation violation and an imposition of the suspended jail sentence. If you have been convicted of one of these offenses with regard to your dog that has been deemed to be a nuisance dog and you have a third offense your dog now upgrades to the classification of dangerous dog. At that time it is the three convictions that is the trigger that causes your dog now to be deemed a dangerous dog. If your dog is a dangerous dog and you find yourself convicted of one of these offenses and it is a first offense that will be a fourth degree misdemeanor with the possibility of \$0.00 and a \$250.00 fine, between 0 and 30 days in jail. Any subsequent offense is a third degree misdemeanor subject to \$0.00 to \$500.00 fine, 0 to 60 days in jail. During the pendency of your trial, this is one that is probably going to find its way through Courts of Appeals because it is fairly contentious so whether it survives or not I don't know but during the pendency of your trial the court can order you to restrain and confine that dog which you are challenging whether it is dangerous or not, challenging that designation. The court can order that you still be subject to those constraint and confinement rules or that the dog be housed at the dog pound at the judge's discretion during the pendency of that case. Then if you are convicted on these subsequent offenses you can either be ordered to maintain the \$100,000.00 liability insurance or in the alternative have your dog humanely destroyed. That's not the judge's option that is your option. Ordering the liability insurance is an option with the court too but quite frankly under our ordinance it is a distinction without a difference because if you have a dangerous dog you are subject to these enhanced requirements which we will come back to but they aren't changing in this ordinance but \$100,000.00 in insurance is one of those enhanced requirements for a dangerous or vicious dog.

Mr. Rath- you say or confined or housed at the county dog pound

Director Sassen- during the pendency of your court hearing or appeal process

Mr. Rath- during that time?

Director Sassen- yes

Mr. Rath- what is the possibility of changing that to say because I don't want my dog to go to the dog pound but I want it to be confined and restrained per the court order that I choose a licensed kennel?

Director Sassen- I think the court has the authority to do that because the court has the authority to say that you have to restrain or confine the dog in a manner consistent with the current ordinance. If you can find a private location that meets the 8 foot high fence, a top on it, and if it is off the premises it has to have a muzzle so if you can find one then that's fine.

Mr. Rath- you don't think the ordinance needs to specify that?

Director Sassen- no as long as the requirements of the statute are met it doesn't matter who meets them or where they are being met as long as they are being met. If your dog is a vicious dog and you find yourself in court for one of these offenses the offense will be a first degree misdemeanor if the dog causes serious injury to a person if while the dog is out running at large not simply because the dog is running at large but if the dog causes serious injury to a person while running at large it is a first degree misdemeanor on a first offense, \$0.00-\$1,000.00 fine, 0-180 days in jail and the court has the authority to order that dog euthanized. It's not mandatory it is discretionary on the court to order the dog euthanized. If while your dog is running at large and not being confined and controlled by you and you find yourself in court if during the event the dog kills a person that will be a fourth degree felony. I can't tell you specifically what those offenses are because felony sentencings are always complicated there are a lot of other factors that go into them and it is hard for me to summarize it but if your dog causes the death of a person that is a fourth degree felony and if convicted the euthanization of that dog is mandatory. If while your vicious dog is engaged in one of these events but there was no injury caused to a person but you find yourself in court you are subject to the same sanctions and this is weird draftsman's ship but I am just paralleling the Ohio Revised Code you would be subject to the same penalties as if your dog was a dangerous dog. Meaning your dog is vicious it is running at large, it doesn't cause any injury or harm to a person on a first offense fourth degree misdemeanor on a subsequent offense third degree misdemeanor. If it causes serious harm it is a first degree misdemeanor with optional euthanization. If it causes the death of a human being it is a fourth degree felony with mandatory euthanization. The draftsman's ship was weird in the Ohio Revised Code, it is very weird on the version that you have before you and I think that I have fixed it in what I am going to give you tonight 16-07A so it is much easier to read and understand when under the circumstances your vicious dog is running at large but causes no harm to any person. The only other change is the change in the definition of Animal Control Officer which is quite honestly a distinction without a difference. The definition is to include the County Dog Warden and authorize that that County Dog Warden have the same authority under this ordinance as our Animal Control Officer because throughout our ordinances it refers to Animal Control Officer, in the existing form the Animal Control Officer is defined as that person hired by the City of Newark to do this dog stuff. The definition has now changed to include any County Dog Warden having

that full authority. The reason I say that it is a distinction without a difference is that if we did not have an Animal Control Officer for the City of Newark we would by default we would then rely on the County Dog Warden for the policing aspect of our animal control responsibilities. There are two different aspects. The policing aspect of our animal control responsibilities would default to the County Dog Warden. The County Dog Warden won't enforce local ordinances. The County Dog Warden will only enforce the State Code. So by changing this definition and saying he has the full authority under our ordinances given that our ordinances essentially parallel the State and given that the County Dog Warden will only enforce the Ohio Revised Code even if they are on city dirt it is essentially a distinction without a difference.

Ms. Hall- Mr. Sassen so I understand our City Dog Warden will not be relieved of his duties? You're saying if we didn't have a City Dog Warden then the county would take over?

Director Sassen- I was speaking purely hypothetical. We have a City Animal Control Officer now

Ms. Hall- and he will stay there?

Director Sassen- that is not for me to decide, that is for the Chief of Police and the Safety Director to decide. I can't answer that question.

Terry Lyle, 294 Stare Rd- Betsy Metzger is very active in lost and found pets and there are a number of dogs that she knows very well because they are escape artists. As far as a dog running loose is this going to keep progressing for some of these owners?

Director Sassen- in one circumstance only. If you have an escape artist dog, regardless of that dog's disposition if you as the owner, handler, harborer, person in control of that dog are convicted three times for not any dog but that specific dog that dog will hence forth be known as a dangerous dog. Let me clarify something about this ordinance and what you have to remember about the distinction between the Newark Codified Ordinances and the Ohio Revised Code. They don't stand separate and apart from each other. In many areas of the City of Newark Criminal Code and the State of Ohio they simply lay on top of each other. So let's say that we don't want to have any animal control laws in the City of Newark at all, we could do that and then we are stuck with the language of the Ohio Revised Code which includes that three strike and you are out penalty. Then the bigger consequence is we lose our local control to tweak the ordinance here there and somewhere else. We can't make the law more liberal than the State Law because if the State Law says three strikes and you're out then three strikes and you're out.

Terry Lyle- asked a question about what kind of responsibility the person who finds a dog and keeps it until the owner or an adopted owner is found has. He stated that when he has called the on duty County Dog Warden after hours he doesn't get an answer.

Director Sassen- let me try to answer your question to the best of my ability and I will answer it two ways. The first part of it is if that person who found the dog for some period of time while trying to locate the owner or locate a new adoptive

home that person is now by definition the harbinger or keeper of that dog and will during that window of time be responsible for that dog's behavior. They take that risk upon themselves during that period of time. This is a very difficult factual question. When does a guy who has a dog on his porch because it just showed up become a harbinger and keeper? It is a very fact specific question that you can't write a rule to identify that. If you give the dog a bowl of water and a blanket to sleep on and then in the morning take the dog to the pound you haven't established yourself as the harbinger or keeper. If you keep it for an extended period of time, take to the vet and get it shampooed then in a few weeks you find a home for it then during that time you would be the harbinger or keeper of that dog. The other question of yours is really beyond the scope of this ordinance. It's not really a criminal; it's not really a statutory issue. There are two separate functions that have to be addressed when you are talking about animal control. The first is what I call policing and that is what we are talking about right now. Policing the dog's behavior through sanctions on the owner and the other is the humane responsibility. That is where Paula Evans comes in, that's where their relationship with the Humane Society comes in. We have had those discussions within the City of Newark specifically with regard to the confines of our jurisdiction; it's difficult I can't really talk about it. We don't contract with the Humane Society right now. We don't have a relationship legally with Paula Evans. We do have negotiations and discussions going on but I can't really talk about it.

Terry Lyle- asked if we could instruct NPD to make a call them to someone to get the animal.

Director Sassen- it's not that easy of an issue to resolve but there are discussions going on in an attempt to resolve that problem because we do recognize it as a short coming but I'm not really permitted to tell you the status of those discussions.

Mr. Cost- thanked the Law Director for clarifying that the leash law was being kept as it was. My wife brought a dog home about a month ago that was standing out in the middle of the street. We went through what you were discussing about trying to call the Humane Society and the pound and then what we found was that there is a site for lost and found pets on Facebook. We took a picture of the dog and had 4 or 5 of our friends put it out there. My daughter put the picture on the lost and found site and we had a call in about 10 minutes. We had the dog back to a very grateful owner in a very short time. I think that you have done a nice job on the explanation of the different categories of the animals and I think that you have done a nice job explaining the penalties. I still have a couple of questions and or concerns. The question that Dee asked, the City Dog Warden I am assuming is the first line of enforcement on this then above and beyond that will other police officers be involved in this same process beyond the Dog Warden?

Director Sassen- the answer is, right now the Animal Control Officer is the agency of the city designated for this police function and I don't want to talk about the humane function because that's not the subject of this legislation or this meeting. The Animal Control Officer is the person tasked with the police function of this and other ordinances with regard to animals in the city. He doesn't work 24 hours a day

7 days a week and he can't be on call 24 hours a day 7 days a week. What is the backup plan, I don't know what it is practically but other persons can be, resources permitting, designated as an Animal Control Officer if they are qualified. So I think the question really isn't a legal question it is probably more a practical question. I don't want to put him on the spot tonight because he probably wasn't prepared to hear the answer but if you called the Chief tomorrow he might be able to give you some guidance.

Mr. Cost- also a clarification, my understanding is that there is no limit to the number of animals that you can have in your household and let's just go with dogs for now.

Director Sassen- that is not technically correct because I think that if you have more than 5 you have to have a kennel license. I think it is up to 5 or 6. You can have up to 5 or 6 dogs and after that you can have more but you have to have adequate facilities and you have to have a kennel license and to get that license you have to show certain things.

Chief Connell- this is a legislative body, we could delve into the what if's all night long. How we handle things if the ordinance changes is all going to be subject to review and I certainly wouldn't comment now on how we intend to do that. The ordinances can be enforced by the law enforcement officers but as you know we are sometimes stretched thin as that goes. In regards to the animal issues, a kennel license changed in the last few years. They are very restrictive now and there are things that have been put into place by the State as to when you can get a kennel license. It is usually for the breeding and selling of dogs but you do have to buy a license for each individual dog.

Director Sassen- this ordinance doesn't restrict the number of dogs that you can have in your house it restricts the number of vicious dogs you can have in your house to 1. In the past with the Breed Specific it was read you could have 1 Pit Bull. Assuming this passes under this provision Pit Bulls are not per say vicious dogs, the number of Pit Bulls you can have is eliminated because they are not deemed vicious. The limit on vicious dogs is still at 1.

Mr. Cost- another clarification, you have one vicious dog, you can have to quote you as many regular dogs as you want along with that.

Director Sassen- correct

Mr. Cost- I have a hypothetical question. Is it reasonable to expect with the change in this that we have more instances of dog fights or do you feel that we'd have less instances of dog bites?

Mr. Rath- there are a couple of tweaks that I would still like to do on this but I'm not going to bring those forward today because I want to consult the Law Director first. When we discussed this a little over a year ago my intention at that point in time was just to get rid of the breed specific legislation and then more forward from that in increasing the penalties. I have said for the last 6 plus years that I have been on Council my goal has always been to make it very difficult to own a vicious dog in the City of Newark and to make it very difficult for a vicious dog in the City of Newark to live. I think this goes there. When we talked about this a little over a year

ago it was voted down and many of the people who voted it down said that it did nothing to increase the penalties. Well now if you have a vicious dog that kills somebody you committed a felony. Now if you have a vicious dog that does serious bodily injury you have a serious misdemeanor with a significant dollar fine and potential jail time. That in itself I think is going to do a good job of controlling vicious dogs within the City of Newark and that is ultimately my goal to control actual vicious dogs in the City of Newark. I like that it mirrors the State's legislation and it also mirrors what over 50% of the municipalities in Ohio have adopted and are using in the State of Ohio. I think that it is high time that we did this ourselves.

Motion by Mr. Rath to send Ordinance 16-07 on to full Council, second by Mr. Johnson

**Motion by Mr. Rath to amend Ordinance 16-07 to 16-07A, second by Mr. Johnson
Motion to amend Ordinance 16-07 passed by a 4-1 vote (Mrs. Floyd)**

Mr. Blake- I think this is towards the Chief, we are discussing the duties of the Animal Control Officer and while there is a lot of discussion about dogs, you know how I voted last year and how I am going to vote tonight but I get more questions about cats than I do about dogs. I really do. We have talked about dogs enough but we really don't talk about cats in a public forum. I am seeing this as a way to get a public discussion about cats. When it says the Animal Control Officer may have additional duties as described by this chapter, State Law or other local ordinances could you go through why at one time our Animal Control Officer did capture cats and now why that is not occurring in our city?

Chief Connell- it is a wide ranging discussion and it has become a notable issue, feral cats in the City of Newark. We are looking for solution on that and there obviously are humane concerns with that as well as neighborhood concerns. Again if this passes we will have to evaluate what we do with our staffing.

Mr. Blake- at one point there was a way that our Animal Control Officer captured the cats and took them to I don't know if it was the pound or Humane Society but they were able to get rid of them. Now that service isn't available and I am getting constituents calls about cats all of the time so if you could just give a little more background.

Chief Connell- at one point we had infrastructure in place when we were able to partner with the county and they were able to take cats, that no longer happens so we have an infrastructure problem and we have an Animal Control Officer that basically has no infrastructure to take care of these problems. Lack of kenneling, lack of places to take the cats either for placement or euthanization if that were the case of they were feral. We lack infrastructure. We have an officer in place who can handle things but we have no tools for him to use.

Mr. Blake- other communities have done the spay and neuter than release of cats, what would be your opinion of that type of program?

Chief Connell- I haven't seen all the research on it but I am told that there is research on it that shows that catching the cats, fixing them then releasing them in

the neighborhood does actually stem the problem of cats coming into the area. I haven't read it myself so I can't speak to it but it does show promise.

Mr. Rath- just to free up some time our Animal Control Officer and cut down on his administrative nightmares, I remember from our discussions previously that one of the problems that he has is chasing down our vicious dogs and making sure they are in compliance and a lot of that has to do with registration. They are required to register as a vicious dog and then do that again 12 months later. The problem with that is that you have vicious dogs that need to be re-registered all year long and I think that is ridiculous. One of the next steps that I would like to do is bring forth legislation that requires the owner of a vicious dog to be registered at that time and pays a prorated for the remainder of the year and then have a registration for vicious dogs in the same month every year as long as they all registered at one time that way when you have 18 dogs to be registered by the end of that month then you know right where to go and then you have 11 more months to take care of everything else.

Chief Connell- potentially again if this passes we are going to have to re-evaluate the work load. I know that my Animal Control Officer is very busy and has a lot on his plate. We will look at that.

Mr. Rath-in your opinion would that help alleviate some of his work load?

Chief Connell- I don't have enough information on what those stats are to say.

Motion to send Ordinance 16-07A on to full Council passed by a vote of 4-1 (Mrs. Floyd)

Mark Fraizer, Chair