

Honorable Council  
City of Newark, Ohio  
August 1, 2012

The Safety Committee met Monday September 24, 2012 in council chambers following the Finance Committee. These members were in attendance:

Marc Guthrie  
Rhonda Loomis  
Jeff Rath

Carol Floyd  
Bill Cost Jr.

We wish to report:

**Mr. Guthrie**-called the meeting to order informed the audience that there isn't legislation in form however Mr. Jeff Rath has proposed changes to discuss with the Committee and the audience. Mr. Guthrie stated that the reason that this issue is being discussed is due to the new law that the State passed regarding vicious dogs. There have been individuals who have stated to Council that they would like to see the City of Newark vicious dog ordinance changes as well.

**Mr. Rath**- stated his intentions were for those who own Pit Bulls to eliminate the vicious or dangerous dog label that has been placed on Pit Bulls. In the proposed changes it defines a dangerous or vicious dog and the Pit Bulls would have to follow that role in order to be labeled as such. Mr. Rath recognized that there were people for the change and those against, what he feels as though he came up with is a compromise.

**Mr. Rath**- discussed number 2 on his list of proposed changes. He felt it was necessary to define serious injury. Number 3 a fence to contain a dangerous or vicious dog; he added a requirement for a 6 foot high fence.

**Mr. Marmie**- stated that there are conveniences that don't allow 6 foot high fences.

**Mr. Rath**- stated that he understood that however there are a few choices for those individuals a) appeal to the governing body b) move out of that neighborhood c) get rid of the vicious or dangerous dog.

**Mr. Guthrie**- inquired to the Law Director, Doug Sassen as to how an appeal such as what Mr. Rath is suggesting would work. If you would have a deed restriction stating that type of

fence is not permitted but you have a local ordinance that states it is required. Which has authority?

**Law Director-** stated that both can and do apply. He stated that there is no appeal process for deed restrictions unless your neighborhood has one in the bylaws. The City of Newark has already a section in ordinance 618.15 B-1 that requires a top. If the law requires you to have a 6 foot high fence but your deed restriction won't allow it then you can't build the fence and are therefore in violation of the City Ordinance.

**Mr. Rath-** stated that he believes he may have misinterpreted the section of code Director Sassen referenced. He inquired as to whether the current ordinance states that the approved locked fence has to have a top on it.

**Director Sassen-** responded no a top is not required on the fence but that the fence has to be approved by the Dog Warden.

**Mr. Rath-** number 4, he added a section that states if you own a dangerous or vicious dog there has to be a sign posted. However it was brought to his attention that Section 618.22 C4e exotic and restricted animal does require a sign be posted. Therefore Mr. Rath stated he felt that his proposal number 4 can be eliminated unless the Law Director advises otherwise.

Number 5- he is proposing removing the definition of a vicious dog as a Pit Bull and is instead defining a Pit Bull under definitions.

**Law Director-** clarified that if Mr. Rath leaves the language "keeping or harboring of a vicious dog" in his proposal then it puts back the breed specific language. He also stated that no matter where that language would show up in his proposal it would put Pit Bulls back in the vicious dog category.

**Mr. Rath-** number 6 was directed to the Law Director. Mr. Rath wanted to add certain restrictions to his proposal for Pit Bulls only. Amendment a was read.

**Law Director-** clarified whether Mr. Rath wants the same restrictions for Pit Bulls as that of vicious dogs previously mentioned.

**Mr. Rath-** stated that he wants the language regarding 6 foot high fences to be consistent throughout the legislation.

**Mr. Sassen-** clarified whether Mr. Rath wants the language for confining a Pit Bull to be that of the same as confining a vicious dog.

**Mr. Rath-** confirmed then read amendment b and request that the amendment include the barking of Pit Bulls somewhere. He stated that it was also brought to his attention that the State law contains a section that requires all Pitt Bulls to

be spade or neutered. If that is the case Mr. Rath wants the City's ordinance to also to be consistent with the State law.

**Director Sassen-** inquired whether Mr. Rath wants the off premises language regarding Pitt Bulls to be the same restrictions as the off premises with a vicious dog.

**Mr. Rath-** stated that he doesn't want the proposed ordinance to state that Pit Bulls have to be muzzled like the vicious dog language requires. The leash requirements should be the same.

**Mr. Cost-** proposed a question to the Law Director regarding his statement earlier about the language referencing keeping or harboring being in the proposal putting the label back on Pit bulls because number 6 singles out Pit Bulls again.

**Law Director-** clarified that his interpretation of the proposal is to create another classification of dog. We currently have vicious dogs and dangerous dog but he believes Mr. Rath wants to create a Pit Bull category in addition to vicious and dangerous dogs. Pit bulls would not be considered per say vicious dogs and have all the additional requirements like micro chipping and insurance. Instead, a Pit Bull category would be created which would include some of the same requirements as a vicious dog but not all of them.

**Mr. Cost-** inquired as to whether we were still being breed specific.

**Mr. Rath-** confirmed that yes his proposal remains breed specific but removes Pit Bulls from the vicious or dangerous dog label.

Regarding Section 618.15 under (i) 1 and 2. Mr. Rath asked the Law Director for a clarification as to whether it was true that if someone was charged with a misdemeanor on the first offense they could not be tried for a felony on the second offense. If that is true can we eliminate otherwise in number 2 because if someone has a vicious dog and it attacks someone causing serious injury or death he wants them prosecuted to the extent of the law?

**Law Director-**clarified that if someone is prosecuted for a misdemeanor the first time and did not have attorney representation and was not asked if they wanted an attorney then they have to be tried with a misdemeanor on the second offense. This is because proper procedures would have not taken place with regards to an attorney. That is what he feels is being implied.

**Mrs. Loomis-** inquired as to whether it wouldn't be more efficient if we removed Pit Bulls from the breed specific legislation and then if the Pit Bull does something that would make it considered a vicious dog then it would be treated as such.

**Mr. Rath-** stated that his proposal if a Pit Bull seriously injures someone than the Pit Bull is treated like any other dog and is therefore labeled as vicious dog based upon its' actions not for being a Pit Bull.

**Law Director-** clarified that this proposal does initially include additional confinements before any misconduct of the dog.

**Mr. Rath-** stated the reason he did that is because of a discussion with Mr. Frost regarding the DNA make up of specific breeds of dogs. Because there isn't an AKA control on the breeding of the Pit Bulls there is no way of knowing which dog has been breed with vicious tendencies.

**Mr. Marmie-** stated his opinion on the definition of serious injury in the proposed changes. He did not feel as though it was specific enough regarding immediate medical treatment.

**Mr. Guthrie-** asked the Law Director as to his opinion on that as well.

**Law Director-** stated that he agreed with Mr. Marmie. He further stated that the definition of serious injury that Mr. Rath has proposed won't be sufficient. The State Ordinance contains a definition of serious physical harm which is consistent with the State's definition of serious physical harm in all other criminal sections in the Ohio Revised Code and he strongly suggests that we adopt that as well. The State Ordinance definition of serious physical harm was provided by Mr. Sassen.

**Mr. Marmie-** stated he disagrees with the 6 foot high fence requirement. He stated that he would not want a vicious dog beside him but he would not want a 6 foot high chain link fence next door in his neighborhood either. Suggested that there be a specific sign made up the every individual has to post if they have a vicious dog for consistency. He also stated that he felt there were other breeds of dogs larger than Pit Bulls that could do serious harm as well but don't have the same requirements as proposed for Pit Bulls. He stated he would like to see the other breeds included. He stated that he thought the premises for the proposed changes was to remove the breed specific aspect of the legislation, if that is the case he suggested we remove it all together.

**Mr. Guthrie-** asked Mr. Marmie for his opinion on eliminating the insurance requirement.

**Mr. Marmie-** stated that it is very difficult to get and very difficult to enforce. Stated also that he felt it wasn't necessary for the insurance requirement when it is so hard to enforce but he understands why it is there.

**Mr. Guthrie-** asked Mr. Marmie if there were any insurance companies that will write a policy for a vicious dog.

**Mr. Marmie-** stated there weren't any to his knowledge.

**Mr. Rath-** stated that he is willing to support removing the breed specific legislation all together and treating a Pit Bull just like any other dog however what he felt he came up with was a compromise, one in which he thought had a possibility of getting passed. He stated that he agreed with Mr. Marmie except regarding the fence. He stated that if we eliminate the 6 foot high requirement then we should eliminate the fence requirement entirely because he doesn't believe that a dangerous or vicious dog can be contained by a 3 or 4 foot high fence.

**Law Director-** stated that the State Ordinance requiring Pit Bulls to be spade or neutered is only the ones owned by a person convicted of felonies including violence and other specific types of felonies listed. The new State law prohibits anyone convicted of a felony from owning, possessing or being in the household of any dog under 12 weeks old that isn't spade or neutered or any dog that has been determined to be dangerous for the first three years of the date of their release. Referred to Toby Wills regarding the City's animal ordinance. He asked Toby to clarify whether there is a restriction regarding the number of vicious dogs or Pit Bulls someone can have within the city. He also stated he did not believe that it was included in 618.15, and asked where such restriction is stated.

**Toby Wills-** advised Mr. Sassen that he was correct there is a restriction on the number of vicious dogs or Pit Bulls someone may have and the Section is 618.22.

**Law Director-** asked Mr. Rath what his proposal regarding that requirement would be.

**Mr. Rath-** stated he would eliminate it.

**Law Director-** provided information regarding how the new State ordinance has been applied elsewhere per Mr. Guthrie's request. He stated that the Law Directors and Assistant Law Directors he spoke to mainly in southern Ohio have had little to no experience with the new State law. He stated that he feels that the statue is going to take prosecutors, animal control officers, and courts an abundant amount of time.

**Mr. Cost-** asked Toby Wills for an explanation why someone would want to de-bark a Pit Bull specifically.

**Toby Wills-** stated that requirement originated 13-14 years ago. The State required \$50,000 insurance policy when the vocal cords of Pit Bulls were cut then drug enforcement task forces were going into houses where there were Pit Bulls that had been debarked. The officers were under attack from the dogs without warning. The State then revoked that requirement and raised the insurance requirement to \$100,000.

**Mr. Guthrie-** asked Toby if in the last 90 days whether he had had many Pit Bull related calls.

**Toby Wills-** stated he didn't know specific statistics tonight but stated they were about a 1/3 of his calls. He also stated that the owners have to provide proof of insurance to receive a permit.

**Mr. Guthrie-** inquired as to how many Pit Bulls he thought in the City were permitted.

**Toby Wills-** He stated that he believes he has 110 legally registered but doesn't feel as though that is half of them.

**Mrs. Floyd-** asked Mr. Rath for clarification as to her understanding of his proposal. She asked if removing Pit Bulls from being labeled vicious and dangerous would eliminate the micro chipping and insurance.

**Mr. Rath-** confirmed she was correct and his intention is to eliminate the restriction of number of Pit Bulls.

**Mr. Marmie-** Stated he was against limiting vicious or dangerous dogs. He doesn't believe that we would want someone having more than one vicious or dangerous dog.

**Mr. Sassen-** stated that he believed Mr. Rath's intent is to not limit the number of Pit Bulls someone can have but limit the number of vicious and or dangerous dogs one can own.

**Mr. Rath-** confirmed that was his intent.

**Mr. Frost-** thanked Mr. Rath for the compromise. He doesn't want to change the City's ordinance but he appreciates Mr. Rath taking the time and effort to put together this compromise. He believes Mr. Rath wanted to remove the stigma related to Pit Bulls. Mr. Frost also stated that the State law had changed but Newark can do whatever we want. He just doesn't want to rush into anything. He stated he has friends who are police officers and whenever he brings this issue up the officers tell Mr. Frost that he doesn't want to change this law. The officers state such because they are the individuals dealing with these dogs. He asked Toby if he wanted the law to change. Toby responded no. He stated that people are going to tell him it is the owners and that they miss treat the dogs, however if we can't determine the difference between the good owners and the bad owners then the law enforcement officials are the ones dealing with these dogs. He stated that the compromise is making it a little easier to know a Pit Bull but eliminating some of the restriction but not all. He is encouraging everyone to move slowly.

**Mr. Marmie-** he stated that he felt the ones we are probably having issues with are 90% of the individuals which make up that 50% that are not abiding by the and their permits. He stated that he didn't feel that it was fair to punish those

that are being responsible owners. He stated that there was no way for us to enforce 100% compliance.

**Law Director-** also thanked Mr. Rath for taking the time to put together this proposal; he stated that he felt it was indeed a compromise. He stated once we have worked through the questions he had the comments then we now have a proposal and he himself feels from a legal stand point it is enforceable.

**Lesa Best-** asked if it is a requirement for an owner to have control over their dogs at all times.

**Law Director-** confirmed

**Lesa Best-** inquired as to whether the definition of vicious or dangerous dog would include attacks on other dogs and cats.

**Law Director-** stated that it does include attacks on dogs but not cats, and then later clarified it does include cats.

**Lesa Best-** inquired as to whether we could limit the number of dogs people have.

**Law Director-** stated that there would be constitutional issues if we tried to impose that.

**Lesa Best-** inquired if there were previous convictions of violating the animal ordinance if we could then limit the number of pets an individual could have.

**Law Director-** stated possibly but it would take more research.

**Earl Harris-** asked why a dog would still be around after attacking someone and being labeled vicious or dangerous.

**Law Director-** stated that the law is evolving and now there is a new legal process for a City or County to deem a dog vicious or dangerous. There are constitutional rights of owners of those dogs that prohibit disposal of that dog which is that person's personal property.

**Mr. Rath-** stated that he would like to see it imposed that when a dog attacks and causes serious physical injury it is destroyed.

**Mr. Cost-** stated that he believes the owners need to be responsible for the dog's actions no matter the breed.

**Maggie -** asked how we are going to define a Pit Bull.

**Law Director-** stated that there is a wealth of information that states how a dog is to be determined as a Pit Bull. Animal Control Officers are trained on this and this process has been employed for the last 20-25 years.

**Mr. Guthrie-** stated that he thinks a compromise is best

**Theresa Kelly-** she doesn't think doing away with the muzzle and the insurance was a good idea. She also doesn't feel that the 6 foot high fence is necessary because she is not going to let her dog run loose in her fenced in yard.

**Mr. Rath-** stated that you don't have to have a 6 foot high fence if you are not going to let the vicious, dangerous dog or Pit Bull out in the back yard.

**Mr. Guthrie-** asked Toby how many of the Pit Bulls that are licensed in the City are behind a 6 foot high fence.

**Toby Wills-** stated not many

**Mr. Guthrie-** stated that he is concerned about all the people who would be coming into Council complaining about all the 6 foot high fences going up in their neighborhoods.

**Mr. Rath-** clarified that it is not a requirement. It is only a requirement if owners choose not to use a leash or kennel.

**Mr. Frost-** believed that Mr. Rath was just trying to make the fence requirement to be 6 foot high fence since it didn't specify that in the current ordinance.

**Marty Allen-**inquired about an invisible fence

**Mr. Guthrie-** stated that he believes that the 6 foot high fence will keep a child out of the yard where a dog is not an invisible fence.

**Mr. Guthrie-** asked Mr. Rath and Director Sassen to put together an actual piece of legislation for the Committee to consider.

Marc Guthrie, Chair



