

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 22, 2008
Marion County Courthouse Square

9:00 a.m. Board Session
Senator Hearing Room

PRESENT: Commissioner Sam Brentano and Commissioner Patti Milne. Also present were John Lattimer as chief administrative officer, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

ABSENT: Commissioner Carlson

Commissioner Brentano called the meeting to order.

PUBLIC COMMENT

None.

PRESENTATION

On-line Marion County Code – Brooke Hanford, Jo Stonecipher

Jo Stonecipher, legal counsel, said that the board asked some time ago for legal counsel to codify and place the Marion County Code, comprehensive plan, and zoning ordinances online. They did a search and selected a vendor, Code Publishing, Inc. from Seattle, to carry out this project. The general code and the comprehensive plan are complete and available at www.codepublishing.com. The zoning ordinances will be completed when the amendments that the board is considering have been adopted.

Ms. Stonecipher introduced Brooke Hanford of Code Publishing, Inc. and thanked her for coming to the meeting to present the new code. Ms. Hanford demonstrated the features of the online code and said the printed code still exists as a physical entity. She said one of the positives of the online code is that it is updated as the ordinances are passed. When an ordinance passes, Marion County can send it to Code Publishing and they will have it online by the effective date. They will also be purchasing three copies of the print version of the code. One of these will be in the board office, with the others going to legal counsel and the law library.

Ms. Hanford demonstrated the features of the online code, which is designed to fit in with the appearance and style of the main Marion County website. The zoning code is not on the web yet because there is another ordinance to be added. Ms. Hanford demonstrated the search features for the code and showed how individual sections can be printed out. Links are provided to citations to other parts of the Marion County Code and to the Oregon Revised Statutes at the Oregon Legislature site.

Mr. Lattimer asked when the online code would be available to the public. Ms. Hanford said it is currently available, but there will be no link to the county's website until the county actually adopts the

code, which will probably be next week.

Commissioner Brentano asked if viewers could look at the codes for other counties or states that are on the codepublishing.com electronic library site. Ms. Hanford said these are available for viewing. Commissioner Brentano said this could be helpful for comparing codes across counties and states.

Mr. Lattimer asked if a subject could be searched across multiple county or state codes. Ms. Hanford said that for now, each individual county or state code would have to be subject-searched individually, but they are considering setting up a subject search that would allow users to search multiple jurisdictions. They do not have the codes for all the municipalities or counties in Oregon, so any multi-jurisdiction search could only cover the jurisdictions they actually work with currently.

Commissioner Milne said they have been waiting to bring the code online for quite some time and it is now reality. She said the online code looks easy to use and she is happy with it. She said she likes the idea that it is available to the general public.

Commissioner Brentano asked Ms. Stonecipher if she was happy with the online code. She said she is glad it is nearly done and she has enjoyed working with Ms. Hanford on the project. She said that the project provided an opportunity to clean up the code. They found many surprises and extensive work to be done along the way. She advised the board that there is an ordinance to adopt the code officially, and they are working to create the link on the county website to have it ready once the ordinance is formally approved. Ms. Stonecipher said legal counsel has been involved in discussions of the site's usefulness with many county employees and departments. This has given them a better idea of the features people would find most useful. They may consider adding other options to the online code in the future, but because these extra features come with additional costs, they decided not to start off with all the available features.

CONSENT

INFORMATION TECHNOLOGY

Approve proposed changes to policy 702 (B-21), Geographic Information System (GIS) Database Administration.

PUBLIC WORKS – PLANNING

Schedule a public hearing on November 12, 2008, to consider amendments to Chapter 181 (SGO Zone) of the Marion County Rural Zoning Ordinance.

SHERIFF

Approve amendment #1 to the lease with Salem Foundation-Pioneer Trust Bank, N.A. to extend the lease until June 30, 2013, and include payment of \$98,599 of tenant improvements.

MOTION: Commissioner Milne moved approval of the consent calendar. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

ACTION

None.

PUBLIC HEARINGS 9:30 A.M.

PUBLIC WORKS

A. Public hearing to consider amendments to the Marion County dog control ordinance. – Bruce Armstrong, Bill Worcester

Commissioner Brentano noted how the process works for a public hearing. First, county staff members describe the changes being proposed. Those in support will get an opportunity to speak, followed by those opposed, and finally a summary by the staff member. Board members may ask questions at any time during the proceedings.

Commissioner Brentano noted that he received a note that five calls were received regarding this issue and that one of the calls was from Ray Reid. Commissioner Milne said she had read Ray Reid's testimony and concerns as transmitted through an email from Nelsa Brodie, Public Information Coordinator. Mr. Reid was unable to attend the hearing and said he had concerns about how the revision to the dog ordinance would affect protection dogs. He has been training protection dogs since 1974. He said he hoped the ordinance would not affect his ability to use dogs for protection. Commissioner Milne asked if they could address this question during their presentation.

Bill Worcester, Public Works director, said the county has been operating the dog shelter for two years, and they are hoping to make some adjustments in the dog ordinance to make it work better now that they have had some experience with it. He said one goal is to be able to charge people who are known to be the owners of a dog but refuse to pick up their dog. Dog control is currently unable to charge these people for the boarding costs for the five days they keep the dogs.

Mr. Worcester said that in cases where there has been a hearing about a dog and the owner is appealing the hearing officer's decision, they currently have no ability to charge the owner for the cost of keeping the dog at the shelter during the appeal process. Another area where they would like to make changes is in cases where local police agencies ask the shelter to hold a dog for an extended period of time for evidence. They are currently unable to charge police for these boarding costs.

Bruce Armstrong, legal counsel, said they have created a document that shows copies of the proposed changes to the ordinance. He said this has already been emailed to one gentleman who requested it. He had copies available for people who wanted to view the document, and he said they could also email a PDF version to those who request it.

Mr. Armstrong said that there are some substantive changes in the ordinance along with other changes that are just language cleanups. He said he would review the substantive changes only. One significant change in Section 2 of the proposed language is the indication that the ordinance is separate from and intended to replace the provisions of ORS 609.030 to 609.095 and 609.100 to 609.110. This is the

language relating to nuisance dogs and regulation of dogs, and this means Marion County is not operating under those specific sections. These sections do not pertain to dogs and livestock, dog licensing, or rabies, which are in different chapters of the ORS. However, nuisance regulation of dogs would now be controlled under the Marion County ordinance. The current language states that the county's ordinance is in addition to the ORS provisions mentioned above. This is a significant but not drastic change as the ORS and the Marion County ordinance actually match each other very closely.

There are three changes in definitions. In regard to the definition of "dog" in Section 3(5), they have removed the language "owned or kept in Marion County" because the ordinance would apply to any dog that is in Marion County, whether it is owned and kept in the county or not. There have been cases where a dog has traveled across county lines and committed an act and there was a question of whether they could enforce the Marion County ordinance, so they saw a need to clarify this. In Section 3(9), they have expanded the definition of "dog control officer" to include the dog control director and dog control manager, who have the same authority to issue notices of civil infraction and to impound dogs. In the definition of keepers of dogs in Section 3(11), they removed the Marion County Dog Shelter, veterinary hospitals, and non-profit dog shelters from this definition, as their intention is not to cite nuisance dogs that might accidentally get loose from one of these shelters.

Mr. Armstrong mentioned Mr. Reid's question and clarified that the definitions of potentially dangerous dogs and dangerous dogs. A potentially dangerous dog is a dog that without provocation and outside the keeper's premises either menaces a person, injures a person, or injures or kills a domestic animal. Both this definition and the dangerous dog definition specify that these acts must occur without provocation. Provocation includes but is not limited to wrongfully assaulting a dog or its keeper or trespassing on premises belonging to the dog's keeper. This would mean that a protection dog being used properly to protect premises or a person would not be affected by any of the changes in the ordinance because the language regarding dangerous or potentially dangerous dogs has not changed. He said they would not pursue notices of civil infraction or enforcement against an individual who uses a protection dog properly.

Commissioner Brentano asked about the difference between potentially dangerous and dangerous dogs. He gave the example of someone who is invited to the keeper's premises but gets attacked by the dog while on the premises. Mr. Armstrong said the dog could be considered a dangerous dog if there is serious physical injury, but if there is a more minor injury, the dog would be considered potentially dangerous. Serious physical injury is described as risk of death, serious and protracted disfigurement, impairment of health, or loss or impairment of function of any bodily organ. Commissioner Brentano asked if what mattered to defining a dog as dangerous was the seriousness of the injury inflicted, even in a case where the person injured had been allowed onto the keeper's premises. Mr. Armstrong said this is correct, assuming there has been no provocation involved. Mr. Armstrong said there is really no change in the ordinance regarding protection dogs. Commissioner Milne asked if this meant that Mr. Reid could still have his protection dogs. Mr. Armstrong said the ordinance did not explicitly define protection dogs, but as long as a dog is kept properly and does not run at large, menace at large, or trespass, the keeper would not be in violation of the ordinance.

Sections 6(1) and 6(10) deal with dog licensing. Keepers are required to license dogs that are six months old or have a permanent set of canine teeth, and this requirement has always been part of the ordinance. Currently, a keeper is not in violation of licensing requirements if the keeper has not resided in the county for 30 days or has not owned the dog for 30 days. This creates problems of proof for dog

control officers. Under the new language in Section 6(10), if a keeper does not obtain a license, Marion County Dog Control can issue a notice of civil infraction and have a hearing on the failure to obtain a license. The language allows keepers who have received a notice of civil infraction for a licensing violation to rebut the allegation by showing that they have resided in Marion County for less than 30 days or acquired the dog less than 30 days earlier.

Section 7 had existing language that prohibits removing a dog from the county if the dog is subject to a notice of civil infraction for a nuisance violation such as running at large, menacing, or trespassing. The new language broadens this so it is not just a nuisance violation citation but also prohibits removal of a dog from the county if the dog is the subject of any pending ordinance violation, criminal matter, or other state law matter.

Another change involves Section 10(2). Section 10(1) requires that a keeper pay all fees, penalties and costs before a dog may be redeemed. The proposed language in Section 10(2) allows Dog Control to enter into a payment plan with keepers required to pay these amounts. This is to ensure the payment of costs where a police agency has requested that the shelter keep a dog during a pending investigation, as these cases can often drag on for a long time and create a resource drain for the county. The new language allows dog control more options.

Section 9 deals with redemption of impounded dogs. These dogs are kept for three days if they appear to be strays with no evidence of a keeper. The dog is currently kept for five days if there is evidence of a license or keeper. The proposed language states that dog control would keep the dog for five days after a notice is sent. This provides additional time to make sure the owner gets the notice and has a chance to respond and redeem the dog.

Mr. Anderson said that as Mr. Worcester had pointed out earlier, there is currently no language that clearly states that keepers are responsible for paying impound and boarding costs even if they do not redeem the dog. Under the current rules, these costs have to be paid when redeeming a dog, but there is no clear language addressing how to handle situations where a keeper owned the dog but chose not to redeem the dog while costs were accruing. This is part of Section 10. The current boarding costs are \$20 per day with a \$25 impound fee, and there can be other costs involved as well. Under the current rules, all fees must be paid in full when redeeming the dog. The new language in Section 10(2) allows dog control to enter into a payment plan with a keeper under certain circumstances.

For the sections after Section 10, the language has changed somewhat, but it is basically still the same. There are some changes in Section 16, Section 19, and Section 20(5). Bruce stated that the original dog control ordinance was Ordinance 1236, with some changes and amendments in Ordinance 1241, and the changes from Ordinance 1241 have now been incorporated into Ordinance 1236. This means that some of the proposed changes that show up in red are actually already in effect. This includes the sections dealing with adoption and enforcement.

There has been one small change in administrative process regarding hearing before the Marion County Hearings Officer. The process starts by issuing a notice of civil infraction, and they have added language in Section 16 stating that if they cannot personally serve the dog keeper, then dog control can post the notice at the keeper's dwelling and follow up with a mailed copy of the notice.

Sections 18 and 19 deal with presumptions, penalties, and restrictions as part of the administrative

process. One significant change relates to dangerous dogs. Currently, if a dog is determined to be a dangerous dog, the hearings officer has no choice but to order euthanasia of the dog. They have changed this to track more closely with recent state law and allow the hearings officer more discretion and flexibility to order other measures such as appropriate fencing, neutering, or relocation of the dog. This may be useful in the case of smaller dogs that technically have behaved as potentially dangerous dogs but do not pose as significant threat as another dog would.

Lastly, the decision and appeal section of the ordinance in Section 20(5), they have added a mechanism to allow Marion County to collect boarding fees from a keeper during the case. The keeper may appeal a hearings officer's order by writ of review and is responsible for paying the dog's fees if the appeal does not succeed. However, until this change there has been no way to collect fees until after the appeal is decided. The new rules require the owner to pay existing board expenses owed to dog control when providing the notice of intent to appeal, which must be done within 15 days of the hearings officer's decision. The costs of \$20 per day can add up quickly and the county has sometimes had difficulty collecting from the keeper. In cases where the appeal is successful, any costs paid would be returned to the appellant.

TESTIMONY:

Supporting:

Alan Scott, 1590 Norway Street NE, Salem, OR, spoke of a letter he wrote to the commissioners in August 2006 regarding the neighborhood where he lives. At that time, he and five other neighbors had an issue with a neighbor who had five dogs that barked all the time. He said this was a long process that took from February 2005 until final disposition in July 2007. He said he was concerned about the length of time it takes to bring a case to decision. There were multiple complainants in his case and he did not see any changes in the ordinance that would allow the county to consider the existence of multiple complainants. He said all six cases, his and the five other neighbors, were dealt with as separate cases although they all attended the same hearing. At the time of the case, they were required to identify which of the five dogs were doing the barking, which was difficult for them to determine from outside a fenced yard. He said this issue has not been addressed in the changes to the ordinance. They had three hearings during the two and one half years of his case. At the first hearing, their case was dismissed. At the second hearing, the keeper was fined \$75, which Mr. Scott said was not a strong enough penalty. The dogs continued to bark and the neighbors had to keep track of their barking again. Finally, in July 2007, the hearings officer imposed a larger fine and stronger penalties. Mr. Scott said he supports strong enforcement against barking dogs, particularly within the city limits.

Patty Storkel, 1415 Liberty Street SE, Salem OR 97302, said she is a local dog trainer and program director of the Paws for Love therapy dog certification program. She is also a Canine Good Citizen Evaluator certified by the American Kennel Club. She said she basically supports the changes but had several questions about the changes. The first question was in reference to the statement in Section 2 about the Marion County ordinance replacing certain sections of the Oregon Revised Statutes. She asked for clarification about this. She asked about the definition of "keeper" in the ORS as she was not familiar with the use of this term in the statute. She said she is an owner and found the term "keeper" problematic as it does not indicate control of something in a legal sense, while an owner has specific legal guarantees. She said that in some places in the ordinance, they appear to have forgotten to change the word from "owner" to "keeper."

Regarding redemption of dogs, Ms. Storkel said there is no language indicating how they will determine a dog's ownership except looking up a license. She said it apparently does not mention scanning the dogs for identifying microchips or tattoos, but she always microchips and tattoos her own dogs because license tags are very easy for dogs to lose. She said she hoped they were checking the dogs for microchips and tattoos. She said another concern was that the ordinance said nothing about notifying dog owners by telephone, although it does say they will receive written notice. She asked about Section 19(2) and the possible requirement that a dog and keeper attend a behavior training class authorized by the dog control director, as she was concerned about how they would choose the trainers. She said that if dog control did not have a list of qualified trainers, she would be happy to help them with that project. She said she would also suggest making it a requirement that the owners get their dogs certified as Canine Good Citizens. She said she would be happy to submit a written statement regarding this.

Opposition:

Michael Montgomery, 650 Justice Street SE, Salem OR 97302, said one of his first concerns is the short notice given in order to submit testimony before the changes in the ordinance take effect. He said 48 hours is not enough time for people to be able to respond. The three things mentioned by staff in regard to the changes were that owners who do not pick up their dogs cannot be charged, that they cannot charge owners for boarding a dog while waiting for an appeal, and that police agencies cannot be charged for keeping dogs for evidence. He said all three of these rationales are tied to money, and it was his understanding that the ordinance was designed to be for the purpose of public safety. He said this is the cost of doing business and the county is the one that decided to open up this dog shelter, which they should have done with their eyes open regarding any possible costs involved. He said he is not advocating allowing dog owners to escape their responsibilities, but he saw a problem involving due process because it would not be fair or perhaps even legal to charge owners for impounding a dog before the entire legal process, including appeals, had been completed. He said that if the county did not have enough money to cover the shelter's costs, this would be a budget allocation issue as opposed to a reason to change the ordinance. He asked what the emergency was in this case and why these changes needed to be implemented in December. He said he assumed the rationale was financial, as this was the only reason given for the purpose of this change.

Mr. Montgomery said there are a few things in the current ordinance that may open the county to some potential harm. He said that in Section 3(15), the definition of "physical injury" includes the word "pain," which is relatively subjective. He quoted ORS 656.005(7), the Oregon Workers Compensation Law, which defines physical injury as being established by medical evidence supported by objective findings. He said that this issue should be clarified when the ordinance is changed and that the definition of "physical injury" in ORS 656.005(7) would be more appropriate.

Mr. Montgomery said that the protection dog issue may need more consideration. The question was addressed earlier in relation to dogs that are on the owner's premises, but he said protection dog owners do not always stay at home and also take their dogs out with them. He questioned how situations are handled if a protection dog is in a car or on a leash held by the owner and is approached by an individual. He asked if a dog's lunging, growling, or injury to the complainant in these situations would be considered evidence that the dog was a dangerous dog or potentially dangerous dog. He said this is another area that needs to be addressed before the changes go into effect.

Susan Kanode, 4728 El Cedro Loop, Salem, said her concern was that an appeal through the hearings officer is outrageously expensive. She said that even though people love their pets, most do not have \$2,500 to \$5,000 to hire an attorney to go through this process, which leaves the owner at the mercy of the hearings process. She suggested making the process easier and considering the use of mediation to see if these matters can be resolved prior to going into a court situation. She said she has a problem with the definition of a potentially dangerous dog because the dog in question has not actually caused any harm. She said it is prejudiced to say small dogs would necessarily be less dangerous than a large dog. She said her son had a pit bull that she was frightened of at first but which turned out to be a very nice dog. She asked who would be in charge of deciding that a formerly “potentially dangerous dog” has become a “dangerous dog.” She said there should be a veterinarian or official person who can determine this question before it has to go a hearing situation. She said the current process appears to be unfair to some and that the enforcement process needs to be redefined in these areas.

Mr. Armstrong and Mr. Worcester came back before the board. Commissioner Brentano asked Mr. Armstrong to respond to some of the questions. Mr. Armstrong said Section 5 of the ordinance describes “disturbing dog noise.” He said it is no longer required that the individual barking dog be identified. This was the case a few years ago but was changed when the current ordinance was adopted. The focus now is on the noise violation itself as coming from a particular property and responsible party, not on finding out which dog was doing the actual barking. In regard to the length of the process, he said he had seen some cases come before a hearings officer more than once, and the penalties in these cases tend to go up accordingly.

Regarding the issue of whether state law will still apply in Section 2, Mr. Armstrong said a dog can still violate state law and a local law enforcement agency can still pursue matters in court if a dog commits a violation. Their expectation is that when possible, law enforcement will turn cases over to dog control, though they cannot deny law enforcement agencies the authority to enforce state law violations. However, Marion County would be operating under its own administrative process, which would replace the provisions in ORS 609.030 to 609.095 and ORS 609.100 to 609.110.

Regarding the definition of “keeper,” Mr. Armstrong said this definition has been commonly used for a long time and can include an owner. The idea behind this is that the owner is not always the possessor of a dog, and a keeper is defined as any person who owns, possesses, controls, or otherwise has responsibility for the care or custody of a dog. He said what Marion County is seeking to do in these cases is deal with situations where dogs represent a threat to the health and safety of the community. He said that if a keeper is allowing a dog to create problems, this needs to be addressed and the keeper needs to be held responsible whether or not that person is also the dog’s owner. In the case of the currently proposed changes to the ordinance, these are actually more concerned with establishing definitions of who is not a keeper. Commissioner Milne said the keeper definition is broader than the definition of owner so problems can be addressed whether the keeper is the owner or not.

Mr. Armstrong said that regarding Mr. Montgomery’s question about the definition of the term “physical injury,” this usage goes back a long time. He says the ordinance did not simply address cases where dogs cause injury, but also cases where a dog causes substantial pain as well. He said they do not want to ignore pain as an issue, which is why the term “substantial pain” is used in the ordinance because it indicates that a dog has done something that has had impact on a person and raises it to a level that allows the hearings officer to impose restrictions if needed.

Regarding protection dogs going off the keeper's property, Mr. Armstrong said he may have misspoken, and that this would only apply to cases where the dog is not being monitored, not on a leash, and not under control of the keeper. He said that clearly, keepers are allowed to take dogs off their own property, but there is an obligation that the dog must be on a leash or under the keeper's control. Commissioner Brentano asked if the ordinance adequately describes these situations, and Mr. Armstrong said that it does. He said that if the dog is not running at large and responds to something deemed to be a provocation by trying to protect an owner, this is permissible.

Regarding mediation, Mr. Armstrong said he believed there is a mediation process for barking dog cases. He said dog control officers also have the option of using a stipulated order form that allows the officer in the field to resolve the situation without taking it to a hearing. The dog control officer can propose that the owner put up fencing or face other civil penalties without going to the trouble and expense of a hearing. If the dog's keeper will stipulate agreement on the form in writing, the form goes to the hearings officer, who can sign off on it and resolve the case without a full hearing. He said this is easier to do in some cases than in others, but it offers an opportunity to resolve situations short of using the administrative process.

Commissioner Milne said that formerly there were efforts to get people to use the Neighbor-to-Neighbor mediation program for some of these cases. Mr. Worcester said that regarding the barking dog cases; there have been some changes within the last year or so. He said that when a bark complaint comes in, the owner/keeper is notified that there has been a complaint, and then they suggest that the keeper and the complainant both go to the Neighbor-to-Neighbor mediation program, which has volunteers trained to do this kind of work. He said this has been successful in many cases, but if one or both of the parties is not willing to go to mediation, they have the complainants fill out a barking log to record the times and amounts of barking, which allows them to issue citations based on that information.

Commissioner Milne said it sounds like dog control is recommending Neighbor-to-Neighbor to people. She said she hoped this was presented to participants as a clear and available option that they are encouraged to use. Mr. Worcester said this information goes out with their packet and is also presented by the officers when they speak to owners and complainants about this issue.

Mr. Armstrong said Marion County's language defining a "potentially dangerous dog" is exactly the same as that used in state law. He said the decision was made previously to follow that definition and there has been no change in this language. Mr. Armstrong said that under state law, if a dog acts twice as a potentially dangerous dog, it is then considered a dangerous dog. He noted that one of the proposed changes is to remove the obligation for the hearings officer to require mandatory euthanasia in all cases if a dog fits this definition of a dangerous dog. This allows the hearings officer some discretion for cases where a dog technically meets the definition of dangerous dog but could be controlled by measures short of euthanasia.

Regarding the appeals process, Mr. Armstrong said the hearings process provides sufficient due process because the individual is informed up front regarding what the violation is, gets the opportunity to have a hearing and provide evidence and witnesses to support their case, and has a full-blown hearing before the hearings officer's decision is made. He said the appeals process for dog control is similar to the appeals process in other situations involving litigation because there is an initial determination if the individual decides to pursue the matter. In civil litigation where pending or accruing costs are involved, it is common in the initial determination for the appellant to be required to provide a bond, to cover costs

in some other way, or to get a stay to hold off enforcement. Mr. Armstrong said that what Dog Control has proposed is similar but is less stringent because it simply requires that if the appellant files a notice of intent to appeal, the requirement is only to pay the dog's fees up to that point. The case then goes before the judge, who has the discretion to determine what is appropriate for the appellant to provide after that point.

Mr. Worcester spoke about barking dog complaints. He said that under the current process, they try to consolidate complaints so that if there are multiple complaints involving a single property in a relatively short time, they make them all part of one case whenever possible. Regarding redemption of dogs, he mentioned the question about whether the dogs are searched for microchips and tattoos. He said they search the dogs with two different kinds of scanners that will scan the dogs for every kind of chip they know about. They also search the dogs for tattoos, though some of these are harder to figure out. He said they look for any and all identifying marks on dogs that come in. He said they also make telephone calls and try every possible means to notify owners. They send letters because that is an official way to start the clock on the five days they keep the dogs for known owners.

Mr. Worcester said that the option to send dogs to training classes as described in Section 19 has not been used much up until now. He said it is a good option to have in the ordinance. He said there is a trainer they have worked with at the Humane Society and a few commercial operations in town that have training operations. He said they are very open to any recommendations regarding good trainers and training programs to be added to their list.

Regarding Mr. Montgomery's comments, Mr. Worcester recognized that the notice about today's hearing could have gone out sooner and they will try to learn from this in the future and provide more advance notice. He said the motivation for changes in the ordinance is partly financial, but he said every dollar they can collect in fees is a dollar they do not have to request from the General Fund. He said he felt an obligation to bring these matters to the board's attention although the final decision is up to the board. He said this is an issue of incentives. The shelter's space is very limited, with 21 kennels for stray dogs and 19 for adoptable dogs, along with their hospital. These 40 kennels fill up fast at certain times of year, so the fee discussion involves incentives for people to avoid leaving their dogs at the shelter and to come and redeem them instead. He said it is also necessary in the case of owners who want to lodge an appeal to provide them with an incentive to move the process along. This helps them with the challenges of managing their shelter space.

Commissioner Milne asked Mr. Worcester to address the issue of larger dogs versus smaller dogs and the issue of certain dog breeds that have reputations for being dangerous. Mr. Worcester said this is an important issue. Marion County has many pit bulls, which have a reputation for being violent, although this reputation is not always deserved. He said that all dogs put up for adoption go through a temperament test, and they watch carefully for certain behaviors in breeds that have a reputation. He said he does not believe they are prejudiced, but they do show extra caution with certain breeds when putting dogs up for adoption.

Regarding euthanasia of dogs, Mr. Worcester said they usually leave this question up to the hearings officer. He said they generally do not advocate euthanasia for any one dog as opposed to another unless there is a serious history of biting or injuring people. He said he felt it was important to let the hearings officer have discretion in these cases.

Commissioner Milne said she had some interest in this question because of a situation in her own family. Her son has a Rottweiler and she had been apprehensive about this, but the dog turned out to be the best-behaved and sweetest animal she ever encountered. She said training, owner behavior, and discipline can make all the difference in these types of cases, so she did not want to see dogs labeled just because of their size or breed.

Ms. Stonecipher said that when a case goes to the hearings officer, the hearings officer applies the criteria in the ordinance by looking at the dog's actions, not the dog's breed. She said the size or the nature of the specific dog may become factors regarding the measures necessary for someone to keep a dog safely. This can sometime relate to the dog's breed, but the actual determination of whether a dog is potentially dangerous would be based on the criteria in the ordinance. Ms. Stonecipher said a large dog trained to be a guard dog can cause a great deal of damage very quickly if not properly controlled, and this has to be taken into consideration although it is not part of the hearings officer's criteria.

Commissioner Milne said the owner is the major factor here. She said it was important to offer opportunities for training and that the owner should be notified on a timely basis if a problem has occurred. She said that when notices are mailed out, it may take a few days longer for them to be received in other parts of the county. Also, people go out of town and may miss the written notice. She said it is important to avoid putting owners into an unfair situation.

Mr. Armstrong said that if a dog has been impounded for committing a violation, the dog control director or manager has the authority to determine if the dog needs to be held until the hearing is completed. If the dog is to be kept, a letter would go to the owner informing him or her of the payment obligation if the hearings officer finds that the dog has been found guilty of committing a violation. A notice of civil infraction will also be served on the individual at the same time, informing them of the hearing process. After that, the hearings officer would send notice of the hearing, and the issue of costs would be addressed during the hearing. The information regarding the hearings officer's decision goes to the participants in the hearing. Dog control also follows up with a letter explaining the requirements for notice of intent to appeal and confirming the keeper's responsibility for the costs.

Commissioner Milne said it is important that the keeper receive the information up front regarding the fact that there is a problem regarding the dog, along with information about the time frame, possible consequences, and responsibilities of the keeper. Mr. Armstrong responded that the dog control director's authority to determine whether the dog should be held is in Section 8(3) and includes notifying the keeper and setting up a hearing as soon as possible. He said that in any case where a dog is being impounded, the hearings officer gives that case absolute priority in scheduling to get a determination as quickly as possible. He said dates are designated for hearings each week, and they get these worked into the calendar as quickly as possible.

Commissioner Milne said the question had been posed as to whether this was an emergency and why there was little time between the time of the announcement and the hearing. She said the board has had numerous work sessions on this ordinance going back to April 2007. She said they want to get this finalized, and if they do this by emergency procedure, it goes into effect immediately instead of having to wait until 90 days after adoption. Ms. Stonecipher explained that the regular process actually takes 105 days to adopt an ordinance by the regular process because the readings of the ordinance have to take place two weeks apart.

Commissioner Brentano pointed out that there was a language question regarding whether the language was consistent throughout the ordinance regarding the use of “keeper” instead of “owner.” Mr. Armstrong said he has made a note of this on his copy of the ordinance and will search the document to make sure this is consistent and correct throughout the document.

Commissioner Milne said she recognized the importance of people’s pets in their lives. She encouraged people to get their dogs licensed, immunized, and neutered. In case of problems, she encouraged people to use Neighbor-to-Neighbor mediation. She commended the efforts of dog control to make the hearings process quicker, fairer, and less expensive for everyone involved.

MOTION: Commissioner Milne moved to close the public hearing and direct staff to finalize the ordinance and bring it back to the board at a later date for approval.
Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Ms. Stonecipher pointed out that this is not a quasi-judicial process. Therefore, there is no closing of the record, so people who think of things they would like to say on this issue are welcome to present their comments to the board or board staff. She recognized that this hearing was held on short notice. She said the board would welcome comments from interested people and would consider these comments throughout the process until an ordinance is actually adopted.

Commissioner Brentano read the calendar.
Commissioner Brentano adjourned the meeting at 11:12 p.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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