

RULES AND PUBLIC POLICY COMMITTEE

DATE: January 20, 2009

CALLED TO ORDER: 5:30 p.m.

ADJOURNED: 6:21 p.m.

ATTENDANCE

ATTENDING MEMBERS

Robert Lutz, Chairman
Bob Cockrum
Ed Coleman
Monroe Gray
Angela Mansfield
Marilyn Pfisterer
Lincoln Plowman

ABSENT MEMBERS

Joanne Sanders

AGENDA

PROPOSAL NO. 21, 2009 - appoints Robert Dapper to the Telecom and Video Services Board
"Do Pass" Vote: 7-0

APPOINTMENT OF SENIOR STAFF – Assistant Clerk NaTrina Moffett
"Recommend Appointment" Vote: 7-0

PROPOSAL NO. 605, 2008 - amends the Code regarding possession and discharge of weapons on property of the department of waterworks
"Do Pass" Vote: 5-2

PROPOSAL NO. 36, 2009 - amends the Code to provide for delegation of authority to consent to extensions of local disaster emergency declarations
"Postpone" until February 3, 2009 Vote: 7-0

PROPOSAL NO. 462, 2008 - amends the Code to provide for the effective conservation of water furnished by the department of waterworks
"Tabled" Vote: 7-0

RULES AND PUBLIC POLICY COMMITTEE

The Rules and Public Policy Committee of the City-County Council met on Tuesday, January 20, 2009. Chairman Robert Lutz called the meeting to order at 5:30 p.m. with the following members present: Bob Cockrum, Angela Mansfield, Marilyn Pfisterer, and Lincoln Plowman. Ed Coleman and Monroe Gray arrived shortly thereafter. Joanne Sanders was absent. Councillor Mike Speedy was also in attendance. General Counsel Robert Elrod represented Council staff.

Chairman Lutz welcomed Councillor Pfisterer as a new member of the Committee and asked each member to introduce themselves and let the public know which part of the County they represent.

[Clerk's Note: Councillors Coleman and Gray arrived at 5:32 p.m.]

PROPOSAL NO. 21, 2009 - appoints Robert Dapper to the Telecom and Video Services Board

Mr. Dapper stated that he grew up on the northeast side of Indianapolis and started a business here in Marion County. He said that he was approached about serving on the board by Jerry Cosby, editor of the Spotlight, a southside publication. He added that because he wants his business to thrive and grow and appreciates the quality of life in Indianapolis, he is pleased to give back to the community in any way he can.

Chairman Lutz asked if Mr. Dapper lives in Marion County. Mr. Dapper replied in the affirmative.

Councillor Cockrum said that under the new ethics ordinance, a 66% attendance record is required for board appointees, and he asked if Mr. Dapper feels he will have any problem attending meetings. Mr. Dapper said that he also serves on the Lawrence Township Fire Board and has not had any problem attending meetings, and does not believe he will in this instance, either. Councillor Cockrum asked if Mr. Dapper lives near his business, which is located in his district in Decatur Township. Mr. Dapper said that he lives on the northeast side near Fall Creek Parkway, but has a warehouse in Decatur and a couple of other office locations in other areas of the city.

Councillor Cockrum moved, seconded by Councillor Plowman, to send Proposal No. 21, 2009 to the full Council with a "Do Pass" recommendation. The motion carried by a vote of 7-0.

APPOINTMENT OF SENIOR STAFF – Assistant Clerk NaTrina Moffett

Chairman Lutz asked Ms. Moffett how long she has been serving in the position of Assistant Clerk. Ms. Moffett indicated that she has been serving as Assistant Clerk since April, 2008. Chairman Lutz asked if the appointment simply needs to be formalized. Councillor Cockrum stated that this is correct. He said that, normally, this appointment would have been handled under organization of the Council along with the other Senior Staff appointments at the first Council meeting of the year, but because Ms. Moffett had never formally appeared before the Rules and Public Policy Committee, as required by the Rules of the Council, he felt she should first appear before the committee before confirming her appointment at the full Council.

Councillor Pfisterer stated that she has had the opportunity to work with Ms. Moffett on several occasions over the last few months and she has proven to be very responsible, timely, helpful and supportive. Councillor Cockrum indicated that she also handles payroll and does a good job answering any questions regarding checks.

Councillor Cockrum moved, seconded by Councillor Pfisterer, to recommend the appointment of NaTrina Moffett as Assistant Clerk to the full Council. The motion carried by a vote of 7-0.

PROPOSAL NO. 605, 2008 - amends the Code regarding possession and discharge of weapons on property of the department of waterworks

Councillor Speedy stated that the genesis of this ordinance goes back a few years when some residents around Geist Reservoir were complaining about duck hunting taking place on the reservoir. As a result, some decks, boats and other personal property received damage from wayward gunfire. He said that it was considered inappropriate for hunting to take place that close to a residential area. Since it seemed to be a very localized problem, the most creative solution seemed to be to prohibit the discharge of weapons on property owned by the Department of Waterworks (DOW). This would cover Geist Reservoir, as well as some other areas in the city, such as the Canal and Eagle Creek Reservoir. Councillor Speedy said that there arose some concern, however, regarding an individual's right to the legal possession of firearms and the fundamental freedom and right of self-defense. Residents should not be required to defend that freedom in a court of law, and this amendment helps align the local ordinance with State law without watering down the prohibition of hunting around Geist Reservoir.

Councillor Pfisterer asked since Councillor Speedy referenced the State law, can she correctly assume there is no conflict with any State statute in this ordinance. Councillor Speedy said that he worked closely with Robert Elrod, General Counsel, and he believes there is no conflict. He said that the State statute is directly specified in the ordinance and was incorporated to make the local ordinance equal to the State law.

The State law has been interpreted by courts, so that there is not much likelihood of a different interpretation between the laws.

Councillor Mansfield stated that she remembers when this ordinance was first proposed at the request of Councillor Cain, and she recalls that it was specifically drafted to prevent the use of firearms on property belonging to DOW. She said that she does not believe the further language about possession is needed. She added that she remembers Councillor Speedy making the comment that because the DOW owned the property, they had the right to do what they wanted on their property. She said that she believes DOW is not in support of this proposal, and she cannot support it either. A rumor seems to be going around that if an individual owns a home on Geist, they cannot have a firearm in their own home because of this restriction. She said, however, that self-protection is a right and does not need to be stated in a separate local ordinance when it is already covered in State law.

Councillor Speedy said that Councillor Cain, who offered the initial ordinance, supports this proposal. He said that although prohibition of the use of firearms was intended, possession was also affected by the way the original ordinance was written. However, citizens still have the legal right to possess firearms, and this freedom needs to be restored. Self-defense is a right, and incorporating State law into local ordinances is entirely appropriate when the use of firearms is restricted or prohibited. He said that this is the governing legislative body over the DOW, and it is good policy to better define use and possession.

Councillor Mansfield stated that a lot of public properties prohibit carrying firearms, such as the City-County building and other government buildings or schools and universities. Councillor Speedy said that DOW property is like any other right-of-way and is more like using a sidewalk, such as with the reservoirs and the Canal. Their property is not a building set apart or a field full of water pumps, and therefore, it is certainly appropriate to protect that right and clarify that protection.

Councillor Plowman said that this proposal simply cleans up an ordinance that was passed earlier to eliminate any unintended consequences. He said that the main goal of the ordinance was to prevent hunting in this residential area, and individuals still cannot hunt on Geist with these changes.

Councillor Coleman stated that although weapons are not allowed on certain public property, such as in government buildings, there are no privately-owned homes included in such property. With Geist Reservoir, personal homes are directly on the property. Councillor Coleman stated that he would be against any legislation that limits the possession of firearms as a right, but he feels this language makes the ordinance more acceptable and reconfirms that right.

Chairman Lutz read directly from Sec. 451-6 of the proposal, and asked if the language "along or upon any reservoir or property owned" would include these homes. Mr. Elrod

said that he believes the property line of the reservoir owned by the DOW is probably at the flood level and would probably not include these actual homes, but he does not know the property lines in detail. He said that he would imagine, however, if the homes are owned by individuals, they would not be on property of the DOW and would instead be lots owned by the homeowners. Chairman Lutz said that it was never the intention of the original ordinance to prevent homeowners from having a weapon in their home, and this might be the right time to clarify that intention. Councillor Speedy agreed, and said that he believes this proposal cleans up that interpretation. Chairman Lutz said that subsection (b) only indicates the possession of a handgun. Mr. Elrod said that there is difficulty with definitions, and the intent was to prevent hunters from walking along the bank of Geist in residents' yards discharging weapons that could potentially harm residents or their property.

Councillor Gray asked if there have been any arrests or instances of personal harm in the area to warrant this language change. Councillor Speedy said that he has received complaints from residents who feel the prior ordinance prohibits them from carrying a handgun, which they are licensed to carry in public, when walking to or from the restaurant or running around the reservoir and back to their own home. He said that this is a freedom that is fundamental to this country, and they are attempting to clarify it with this language. Others have stated that they want to carry a firearm in their boat for personal protection, and are not using it for hunting, but under this ordinance cannot do so. Councillor Gray said that if the residents know it is unlawful, they need to find another place to run.

Councillor Cockrum stated that this proposal addresses possession of handguns, but maybe a shotgun locked in someone's home might be construed as a violation. Mr. Elrod said that if the gun is in the house, he does not think it would be the same as being discharged on reservoir property, as they would have to be walking on the shore line. He said that to further define the types of weapons could take a good amount of discussion, and would probably not change the intended outcome of this legislation.

Councillor Gray said that he does not think it is against the law to have a shotgun in a home, but asked if it is against the law to have one in a privately owned boat. Chairman Lutz said that if that boat is on Waterworks property, it would be against the law.

Councillor Pfisterer said that she is not an attorney, but does not believe there is any prohibition against having a firearm in the house, but only regulations possession of such on property owned, controlled or leased by DOW. A home would be private property and is not owned by DOW.

Jo Lynn Garing, Department of Waterworks, said that they do have concerns about this proposal, as the current ordinance states that no one can carry a firearm on a Waterworks property without written permission. This would allow firearms on Waterworks property, and as some of those properties also co-exist with Parks property, it would be a conflict to their regulations, as well. This could also be a security

risk to Waterworks and its employees, as employees are not allowed to carry firearms, either, but might construe that they are allowed by this ordinance.

Councillor Mansfield said that this could indeed conflict with the Waterworks employee regulations if their employees cannot bring handguns onto the property. Councillor Speedy said that the employees' arrangement with their employer would take precedent, and this proposal does not keep Waterworks from limiting who comes onto their property. They can choose to keep non-employees off their property and deal with them as trespassers. He said that there are some Waterworks properties that are used as by-ways, such as the Canal or along Geist Reservoir, and this is an appropriate clean-up measure to deal with those areas. Councillor Mansfield said that if an employee came to her with a lawsuit because they got reprimanded for carrying a handgun to work, they could point out this ordinance and would win that case. She said that this proposal specifically says they can carry a handgun, and she believes they are reading language into the statute that is not there.

Councillor Coleman said that there is no law that says he cannot carry a gun into WalMart if he is licensed to carry one, but he is pretty sure that WalMart employees have regulations against carrying handguns to work. He said employees are covered by employee regulations while on the property of their employers.

Councillor Plowman moved, seconded by Councillor Coleman, to send Proposal No. 605, 2008 to the full Council with a "Do Pass" recommendation. The motion carried by a vote of 5-2, with Councillors Mansfield and Gray casting the negative votes.

PROPOSAL NO. 36, 2009 - amends the Code to provide for delegation of authority to consent to extensions of local disaster emergency declarations

Councillor Cockrum stated that the State statute governing the declaration of a local disaster emergency indicates that the Mayor can declare a disaster emergency for a seven-day period. Any extension of that declaration has to be approved by the Council. Councillor Cockrum stated that his concern in having this proposal drafted was that, as a part-time body with multiple members, seven days may not be enough time to get the entire body together for a vote or decision, meaning that the emergency declaration would lapse. He added that the declaration can only be extended for seven more days without again re-voting, so the emergency declaration cannot be extended indefinitely.

Councillor Mansfield said that she appreciates Councillor Cockrum's concerns, but she believes it is still important to have a meeting of the body to assess issues and receive input on different avenues to approach the situation. She said that she is concerned that in by-passing the meeting process, the leadership would also be by-passing additional considerations for solution. Councillor Cockrum said that the language included in the proposal intends that communication will still happen via phone or e-mail with members, and those considerations could be discussed in that way.

Chairman Lutz said that Sec. 175-202 of the ordinance specifically says that the President would consult with the majority and minority leaders and that he would obtain the consent of a majority of the Councillors for the extension. He asked if this language addresses Councillor Mansfield's concerns. Councillor Mansfield said that it does to some extent, but the language seems a little loose. She asked who would determine that it was not possible to meet. Councillor Plowman said that the ordinance specifically states that the President would determine such after consultation with the majority and minority leader, so it seems those three individuals would make the determination.

Councillor Cockrum said that a possible scenario for such an emergency would be if in 2012, during the SuperBowl weekend, the city receives an 18-inch snowfall during that SuperBowl game. Due to the storm, the roof of the stadium caves in and hundreds of thousands are trapped in the debris. That kind of an emergency could not be dealt with in seven days, and in order to get assistance from State and Federal entities, they would need an emergency declaration for a longer period of time than the Mayor's authorization of seven days.

Councillor Pfisterer agreed and said that even though the Urban Search and Rescue (USAR) team is housed in Indianapolis, they still need an official emergency disaster declaration to be activated and authorized for duty. She said that it seems this is intended to cover the eventuality that phones are down, roads are out, and there is no way to physically meet to address the disaster. This proposal is creating a structure within which the city can work.

Mr. Elrod added that State statute also requires that this Council can only meet with 72-hour notice, and therefore, this further complicates the timeline of getting everyone together for a meeting before that seven-day initial declaration is finished. There is no alternate authority for this Council to meet by phone or any other way other than in person, and they would have to provide that 72-hour notice or waivers from every member.

Councillor Gray said that he worked in public safety for over 40 years, and there was never a time in his whole career when a special meeting of the Council had to be called before public safety personnel got to work doing what needed to be done. He said that it is hard to believe they would wait seven days. Councillor Cockrum said that he is not saying the city would wait seven days before action was taken, as the first responders would always respond immediately and directors would put all their resources into action. He said that the Mayor also has authority to declare an emergency immediately, but to extend that declaration and continue to receive additional Federal or State aid, it would require action by the Council body.

Councillor Mansfield asked if there is no emergency exception to the 72-hour notice. Mr. Elrod said that there is an exception in the open door law that says they might not have to post notices according to the open door requirements, but there are no exceptions provided in calling a meeting. Councillor Mansfield said that perhaps

something should be amended in that regard. Mr. Elrod said that this would require a change in State law. He said that State law would probably be a better place for an amendment to deal with this authority, but most towns have between three and seven members on their governing bodies, and it is much easier to get a smaller number to meet than the 29 Councillors in Marion County. He said that it might be possible that the State could delegate authority to a smaller group. Councillor Mansfield said that maybe they should be looking at changing the State law instead.

Councillor Cockrum stated that he attended a meeting at Indiana University-Purdue University of Indianapolis (IUPUI), where they received a briefing from those in charge at the Columbus hospital during the recent flooding. Another city had a mobile hospital they were willing to loan, but in order to put it into action during this disaster situation, it required the governor's approval to allow those doctors and nurses associated with this mobile unit to practice without state licenses. Those kinds of things would need an extended emergency declaration; and while they have not happened often in the past, they are certainly possible.

Councillor Pfisterer said that she does not disagree that they should approach the State legislature for some changes, but in the meantime, she would feel more comfortable with something like this in place, as the State does not always work as quickly as local government would like.

Councillor Mansfield asked how the attempt to contact all Councillors would be documented. Councillor Cockrum said that it would depend on the situation, especially if all phones and computers were down. He said that this proposal is not time-sensitive if Councillor Mansfield has some amendments she would like to suggest, but he feels something needs to be on the books. Councillor Mansfield asked if Councillor Cockrum would be comfortable with postponing the proposal to give her more time to think it through. Councillor Cockrum said that he would be fine with that, and wanted to get the Council thinking about these types of possibilities.

Councillor Plowman asked if Councillor Mansfield has changes in mind she would like to make. Councillor Mansfield said that she is concerned that only a certain group makes the decision, and she would like to make sure as much input is sought from all Councillors in dealing with such a situation. She added that she understands the need for it, but thinks it should be strongly spelled out how communication happens and would appreciate more time to think it through.

Councillor Pfisterer said that spelling things out too strictly would make the process more cumbersome, and it seems at some point, they would just have to say that the best effort was made. She added that she is sure that there would be sufficient effort, but when it is physically impossible to meet, a decision like this could hold up the entire city.

Councillor Plowman said that he would suggest the Committee go ahead and pass this proposal today and then offer amendments before the full Council, or even after it has passed, as he sees no disadvantage in passing it today.

Councillor Coleman said that he is not sure they would ever have to implement the process, but he sees no reason not to have it in place.

Chairman Lutz asked Councillor Cockrum how he would feel about a postponement. Councillor Cockrum said that he has no strong feelings about passing the measure tonight, but does not think it should sit around for a long time. He added that to allay fears, he did check with the Capital Improvements Board after the meeting where the scenario was offered, and was assured that 18 inches of snow would not cause the stadium's roof to cave in.

Councillor Gray said that the city has gone this long without such a disaster happening, and he does not understand the rush. He said more time should be allowed for Councillor Mansfield to think the proposal through and gather additional input.

Councillor Gray moved, seconded by Councillor Mansfield, to "Postpone" Proposal No. 36, 2009 until February 3, 2009. The motion carried by a vote of 7-0.

PROPOSAL NO. 462, 2008 - amends the Code to provide for the effective conservation of water furnished by the department of waterworks

Councillor Plowman moved, seconded by Councillor Coleman, to "Table" Proposal No. 462, 2008. The motion carried by a vote of 7-0.

There being no further business, and upon motion duly made, the meeting was adjourned at 6:21 p.m.

Respectfully Submitted,

Robert Lutz, Chairman

RL/ag