

City of Bay Village

Council Minutes, Committee Session
Conference Room
Paul Koomar, President of Council, Presiding

September 19, 2016
7:30 p.m.

Present: Clark, Koomar, Lieske, Mace, Tadych, Vincent, Acting Mayor Ebert

Excused: Mr. Henderson, Mayor Sutherland

Also Present: Finance Director Mahoney, Recreation Director Enovitch, Community Services Director Selig, Police Chief Spaetzle, Director of Operations Landers.

AUDIENCE

The following audience members signed in this evening: Russell Thompson, Amanda Luckay, Patrick McGannon, Fred Green, Sarah Aerni, Robert A. Bonnett, Warren Remein, Nancy Brown, Clair Banasiak, Jeff Gallatin, Lydia DeGeorge, Tara Wendell, Dennis Driscoll, Susan Murnane.

ENVIRONMENT, SAFETY AND COMMUNITY SERVICES COMMITTEE-Vincent

Vicious Dog Ordinance –Update to Codified Ordinance Chapter 505

Mr. Vincent stated that the Law Director, Police Chief and he spent quite a bit of time last week revising Chapter 505.01. The first revision is a “One Strike Rule” which provides a stiff penalty if the pet is not yet designated a dangerous or vicious dog and bites another dog or person, or seriously injures another person or animal.

One of the problems with the injury on Pellett Drive was that the dog left the property and bit a person and killed the person’s dog. At that time, nothing could be done except give them a Minor Misdemeanor because it didn’t happen within twelve months of the last incident. The provision is being strengthened by escalating the offenses for when the dog leaves the property and is not yet designated a dangerous or vicious dog. The first time the dog bites a person or another dog and it is not a serious injury according to the Ohio Revised Code, it is a Third Degree Misdemeanor. If it bites a person it moves it to a Second Degree Misdemeanor. If it bites a person or a dog and it is serious injury according to ORC 9511. (a) (5), it is a First Degree Misdemeanor. It allows for the penalization of a dog owner who lets their pet out of the home and it injures someone.

The “Three Strike Rule” is for a pet running out of a home and is at large. The first offense is a Minor Misdemeanor for an event of the dog running around the neighborhood. The second time it happens it is considered a Fourth Degree Misdemeanor. The third time it happens it is considered a Second Degree Misdemeanor and also allows for the designation of a dog as a dangerous dog.

Mr. Vincent recommends adding these provisions to the ordinance to help keep owners' feet to the fire if they are not as careful as they should be with their animals.

The revisions to the Chapter 505 – Animal Control, are just addressing the penalty cause for at-large animals at this time. Section 505.99 has also been repealed. Other sections of Chapter 505 will be reviewed to make sure those sections are firm and fair. Chief Spaetzel stated that this is just the first blush at revising the ordinance and Council will eventually get the entire chapter. Revisions can also be made in the future.

Mr. Vincent noted that the Environment, Safety and Community Services Committee will meet again to continue their work on this Chapter 505, with several provisions to go over. There will be consideration for looking at a nuisance designation which is not currently in the chapter. There is also a pre-nuisance designation taken from the Avon Lake code that may be considered as well.

Mr. Mace suggested including something about tethering. Mr. Vincent stated that the Cuyahoga County Dog Warden was present at the last meeting and discussed the anti-tethering legislation which will be reviewed for possible inclusion.

The ordinance amending Chapter 505 will be placed on first reading this evening.

Medical Marijuana

Mr. Vincent stated that the first draft of the Medical Marijuana ordinance will be introduced this evening for first reading. The State of Ohio has passed a Medical Marijuana law that allows for dispensaries and other things for which they still have to promulgate rules. The ordinance for review and consideration this evening is to prohibit the cultivation, processing and distribution of Medical Marijuana within the City of Bay Village.

Mr. Koomar noted that the ordinance will be placed on first reading this evening with more discussion when Mr. Henderson is present. The ordinance is more of a cautionary stance waiting to see what the state will do. There could be the option to go back and revisit the ordinance should the state be dispensing only through qualified pharmacies such as CVS or Walgreen's. The Council is trying to be careful from a City perspective, with a wait-and-see until the state comes out with final regulations.

Mr. Vincent stated that he would like to see what can be done if it does come out to make it so that folks don't have to drive far to get their prescriptions filled. As most of us know, there are some people that would utilize and potentially be helped by the use of Medical Marijuana.

Mr. Tadych stated he wrote down some words before the meeting tonight and he will read them about Medical Marijuana. Mr. Tadych made the following statement:

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“I want to address the legislation presented to us this weekend about Marijuana that amends our Sections 1513.16, and 1513.01, part of Chapter 1513, which is being put on first reading tonight. Our conversations on Council consisted mainly of a mention that the Cleveland Clinic stands against the new Ohio legislation and my mention that, at best, a moratorium should be considered holding things in abeyance until the state and federal law makers come together on final ideas on legislation. That date is expected to be in 2018. That’s a long way off. Indeed, most other municipalities contacted in this very short window of opportunity that I have had, found a moratorium the most effective legislation of choice. These municipalities that include cities that are smaller and larger than Bay Village. I feel and believe that the control legislation is no more than a repeat of what still exists. I want to ask that tonight’s legislation be held and not presented and that a moratorium be considered in the weeks ahead. We have over the years used moratorium legislation many, many times. This seems to be a good time to do it. Thank you.”

Mrs. Lieske stated that she goes back and forth because Chapter 1158 has probably had more moratoriums than anything she is familiar with. Mrs. Lieske noted that she is considering the pros and cons of each legislation.

Mr. Vincent asked what the difference would be in the moratorium legislation and the controlling legislation.

Mr. Tadych stated that it is making more legislation on top of the legislation that is already there, whereas a moratorium says we will wait and look at this when it comes out in 2018. Mr. Tadych stated that he does not think Council should go forward with the legislation on tonight’s Council meeting agenda.

Mr. Koomar stated that when Council has done moratoriums like the ones done for Chapter 1158 that was for something that was more in the control of City Council. Council was waiting for the professional guidance of a planner and for the subcommittee to do their work. Mr. Koomar stated that from his perspective not knowing when those state regulations will come out it just becomes another item on our tickler list to make sure a moratorium doesn’t expire and we have to re-vote it up. In 2018 or 2019, some of the sitting Council members might be gone and the moratorium expires and there might be some ill done to the City based on what the state does. Mr. Koomar proposed that it be prohibited right now. It is straight forward. When the state finally gets around to wrapping up their legislation we can take a look at it and make changes to it.

Mr. Koomar continued, noting that retired Drug Enforcer Bob Stutzman addressed the City regarding non-medical use of Marijuana by youth can decrease IQ’s seven percentage points. It is good to be prudent and put something in place that doesn’t expire until the state makes a change. When the state tells us what they have done, the Council as a body can look at it.

Mr. Tadych stated that it is still illegal on a federal level.

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Mr. Koomar stated that his goal tonight is to get it out there and when Tom Henderson is back there can be additional discussion. He has some strong viewpoints and we can have a round-robin discussion and get public input. That is the idea of putting it on first reading.

Mr. Tadych stated that it is uncomfortable having to pull it once it goes on first reading. We should hold it and talk about a moratorium when the entire Council is present. Holding it for one more or two more weeks isn't going to matter.

Mr. Koomar stated that if six people around the table tonight say they would rather go the moratorium route in two weeks, we will go the moratorium route.

Mr. Ebert stated that as long as the legislation on the agenda tonight is on first reading it doesn't have any effect as far as law. Once it is passed, it becomes law. A moratorium holds the matter in abeyance. It just sits there until such time there is a motion to remove it, pass it, or defeat it.

Police Chief Spaetzle stated that he is of the position that until the state or the Department of Commerce decides what they are going to do we shouldn't be doing much of anything.

Mr. Ebert stated that the legislation on first reading is going to solicit positive and negative comments from the public. With a moratorium there is nothing to review.

Mr. Vincent noted that to Mr. Ebert's point with the legislation introduced people have something to read and review. With a moratorium, there is nothing to review. Mr. Tadych countered that in the last week and a half there were many articles about the subject. There is something out there to review.

Mr. Tadych stated that he contacted twenty cities about what they are doing in regard to the Medical Marijuana issue. He distributed a report indicating that of the twenty cities, two cities have legislation of control. The rest have passed moratoriums. Ten of the cities have passed six month moratoriums, two have passed twelve month moratoriums, two have passed moratoriums for 270 days, and two have passed moratoriums for 120 days. Eighteen have done something, and sixteen have passed moratoriums. That is 77% of the cities responding to the questionnaire that have passed moratoriums.

Mr. Tadych stated that state legislation is still being formulated and drafted. A moratorium action seems more in tune awaiting the state's decision. A six month moratorium, if selected by this Council, would end in March, which would most likely have to be removed. A nine month moratorium, if selected, would end in June, at a time when Council is on recess. A twelve month moratorium, if selected, would end in September, at a time when Council has reconvened.

Mr. Koomar stated that he thinks getting it out in the public is the most important thing. Mr. Vincent is in favor of moving it forward under his committee. Mr. Koomar stated that a head count will be taken tonight and if it is three-three he will put it on for first reading. Mr. Tadych stated he would like to wait two weeks. Mr. Koomar suggested putting it out for input.

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Mr. Vincent asked if we go the legislative route and there is a new rule promulgated by the state that allows for a pharmacy, is amending it easier than redrafting after a moratorium. Mr. Ebert stated that it is easy to amend.

Mrs. Lieske asked about having Mr. Vincent's Environment, Safety and Community Services Committee hold a meeting to review the ordinance. He did a nice job with the dog ordinance, and that is the normal way we go about things.

Mr. Koomar stated that when this issue has come up in the past, overall people were supportive of putting the brakes on. There wasn't much discussion, other than Dave, on the moratorium. Sometimes there is no need to over-engineer something. There is nothing we can do right now until the state finishes regulations. This is just making sure we are in a position of strength when those regulations are finalized. If it allows pharmacies in town to dispense we can go back and amend it and make sure those pharmacies can dispense through the state to help those that are in need medically.

Mr. Vincent asked Mr. Ebert if there were a moratorium and something passes six months from now when we have the moratorium going on, how strong is that moratorium. If someone puts in an application to dispense, how strong is the moratorium? Mr. Ebert stated that the moratorium is prohibiting and whatever that moratorium states would be legal and binding. If you prohibit the dispensary and the sale of the Medical Marijuana that would still have the same full force and effect of law.

Mr. Ebert stated that if you are looking for input, you should put the ordinance on first reading. You will get comments back. If you have a moratorium and the law passes, we will not have the input for the legislation. Mr. Tadych stated that the legislation to go on first reading tonight was completed inside of a week. Mr. Ebert stated that this legislation goes back much longer. A draft of the subcommittee of the state who is involved in drafting legislation for the prohibition sent information.

Mr. Clark stated that if we tried to rush this legislation through and approve it tonight he would have a problem with it. But, introducing it on first reading does spawn discussion. We have a number of things on second reading right now that have been sitting there for a while.

Mr. Ebert stated that the moratorium for Chapter 1158 was renewed many times. He noted that Mr. Tadych was against those moratoriums. Mr. Ebert always suggested that something should be passed because the moratorium was getting to be a joke. Mr. Tadych stated that he was against the moratorium because his committee did indeed say that they didn't think anything was necessary. There was the consensus that nothing should happen. The committee made a decision that nothing should happen and that decision was passed out to all of the Council.

Mr. Ebert stated that when a draft was sent out of the legislation, that is when more comments were received pro and con of the legislation, builders, residents, etc. That promotes more conversation and input than simply a moratorium. If the committee wants to put it on first reading, that committee has a right to put it on first reading.

Mr. Clark, Mr. Vincent, and Mr. Koomar agreed to put the legislation on first reading. Mr. Mace stated that he is for the moratorium. He would like more time to fact find. Mr. Mace noted that he signed up for a webinar session with Mr. Ebert and Mr. Tadych on Medical Marijuana to be held in the beginning of October. The session is well beyond three weeks and this could go on to passage before we have the benefit of this information. Mr. Ebert stated that the ordinance can remain on first reading.

Mrs. Lieske stated that she would prefer it either going through Mr. Vincent's committee or a moratorium, rather than first reading. Mr. Koomar noted that the vote is three-three and he will put the ordinance on first reading this evening.

FINANCE & CLAIMS COMMITTEE – Clark

Supplemental Appropriation Ordinance

Mr. Clark stated that he will introduce an amended appropriation ordinance this evening to add \$2500 for personnel to do the minutes for the Architectural Board of Review, Board of Zoning Appeals and the Planning Commission. This will cover part time employment through the end of the year. Mr. Koomar asked if the funds will be taken from the Mayor or Service Director's category. Mrs. Mahoney stated that to stay consistent from year to year she does not want to reduce the budget for a certain category.

Mr. Clark stated that he spoke with Mrs. Mahoney about starting the process of developing the operating and capital budget for 2017. Department heads will be asked for capital requests for 2017 for some time in October to have the budget by the end of December, if not earlier. Mr. Clark will work on this with Mrs. Mahoney and keep everyone advised.

Mrs. Lieske asked if there is any update on the telephone system for the municipal buildings. Mrs. Mahoney stated that they have the vendor of choice just today and they will be visiting Council on Monday, September 26, 2016. The telephone consultant, Jeff Hartman, will be present. Mr. Hartman is going out of town for a wedding this weekend and he has advised that if there is some reason he is delayed he can do a telephone conference.

Mr. Koomar asked if Mr. Hartman is available the first week in October. Mrs. Mahoney stated that they would like to keep this moving. He will probably be here Monday the 26th but with travelling delay is always possible.

Mrs. Lieske stated that it would make sense to have Mr. Hartman there because he is the consultant. Mr. Koomar agreed, noting that it is a big purchase.

Mr. Clark stated that he would be in favor of having the consultant there considering the time and effort that has been put into this. This is a ten-year decision and he would like the consultant to be present.

Mr. Tadych stated that the Finance Committee had a small conversation with the consultant and he is very good at it. He can explain it to all of Council pretty well.

Mr. Clark noted that this has been in process for three and a half years and another week won't hurt.

PLANNING, ZONING & PUBLIC GROUNDS & BUILDINGS COMMITTEE-Lieske

St. Raphael's Catholic Church – Parish Office Sign Request – Reference: Codified Ordinance 1179.10

Mrs. Lieske commented that the request for the parish office sign was approved by the Architectural Board of Review on September 14, 2016. Mr. Koomar noted that the Bay Village code requires that religious institution signs in residential districts be approved by resolution of Council.

Mr. Vincent stated that the sign matches the signs that are currently installed on the St. Raphael's grounds. It is a perpendicular sign indicating the sign of the Parish Office and will be an aid to those looking for the separate building that houses the Parish Office.

PUBLIC IMPROVEMENTS, STREETS/SEWERS/DRAINAGE COMMITTEE-Henderson

There was no report this evening.

RECREATION & PARK IMPROVEMENT COMMITTEE-Mace

Mr. Mace had no report this evening.

SERVICES, UTILITIES & EQUIPMENT COMMITTEE-Tadych

Mr. Tadych had no report this evening.

AUDIENCE

Susan Murnane stated that she has a question about Codified Ordinance Section 505.01 (d) (1). This deals with cats, dogs, and other animals running at large. It states that whoever violates this section is guilty of a Minor Misdemeanor and on the third conviction the owner shall be subject to the Dangerous Dog provision, as outlined in Section 505.19. Section 505.19 is not included in the packet, but it seems to have a very high insurance requirement and dog training. So, if somebody's kitty gets out three times, are we really going to subject them to \$100,000 in insurance and dog training? It seems this is overkill.

Mr. Vincent stated that this is a way to note to all pet owners that they must keep track of their animals and keep them out of other people's yards. The section referring to dog training for cats will have to be revised.

Ms. Murnane asked about the \$100,000 insurance requirement. Mr. Vincent noted that if a cat bit a child he would hope there is insurance. Mr. Koomar noted that the legislation is on first reading for public input.

Amanda Luckay, Bradley Road, stated that she is present to defend what she presented in a White Paper in regards to Medical Marijuana. Ms. Luckay stated that she is wondering where the opposition is coming from because you are not going to stop medical patients from having Medical Marijuana and using Medical Marijuana and traveling with Medical Marijuana in Bay Village. The black market is very alive and well and it is going to always be in regard to children getting ahold of drugs. Studies have actually shown that states that are legal have less children using it than states that are still in prohibition. Twenty-six states and the District of Columbia have legalized and she would hope that all of Council would take a look at those states and look at the crime rates that have dropped and the reduction in opiate overdose death, down 25% in all states that have legalized Marijuana. The only thing you would prevent happening is tax revenue by putting on a ban because it would be unlawful for you to try to stop a medical patient from using or possessing Marijuana. House Bill 523 does already prohibit dispensing 500 feet from schools, churches, and playgrounds. The law that was written is very restrictive already. It does give cities a lot of control, making them limiting it to one dispensary rather than a free-for-all. Based on the demographics of Bay Village there would probably be about 300 patients within the city limits. With one dispensary that would be about \$2.5 million annually in revenue plus the tax from the building and adding full time employees. You should research why cannabis is illegal and really what the benefits for medical patients are. I would love any input on any law that is written or ordinance limiting dispensaries and not an all-out ban, especially before the state rolls out their regulations. That would be an overreaction. This is something that needs more time to have a better understanding, especially the benefits for the patients. As far as federally illegal, in 2009 President Obama did pass laws prohibiting the feds from coming after states that have legalized medically and in 2013 extended that to recreational states as well.

Mr. Koomar stated that if the state had written all the regulations and we knew what the rules of the road were as we sit here today we wouldn't be putting this forward on first reading. I am sure there are lots of studies out there, but I can tell you the studies I have looked at is that Marijuana can lead into deeper drugs and opiates.

Ms. Luckay stated that alcohol is a gateway drug – not Marijuana. DARE has even said they were wrong and that alcohol is the gateway drug and not Marijuana.

Mr. Koomar thanked Ms. Luckay for her opinion.

Nancy Brown, Wolf Road, stated that she just wanted to speak for clarification on it because just to base this in the newsletters that come out from the Mayor's office or her letters or broadcasts it talks about some of the things that occur with animals a police officer has to witness something that happens before they can enforce or write a ticket. Ms. Brown asked if that is covered in the ordinance. Chief Spaetzle stated that this is covered under state law. The option for that is they can take in statements and information, present it to the prosecutor who can issue a warrant.

That is an exception. While the Police show up at the scene, they can't make an arrest unless they see it, they can also gather facts and present them to the prosecutor.

Nancy Brown asked if there will be aggressive, effective communication to residents once this is passed. Chief Spaetzel stated that there will be an education piece.

Mr. Ebert stated that he suggested that the Environment and Safety Committee put a blurb in the newsletter that is going out soon that the dog ordinance is being revamped and to become aware of the new ordinance and how it will affect residents as pet owners. Mr. Vincent stated that he would have this to the Mayor's Assistant by Thursday of this week.

Lydia DeGeorge stated that in regard to the Medical Marijuana discussion she just wants to add that we should not lose sight that this is Medical Marijuana. It seems like we are talking about recreational use and the reference to bringing dispensaries into town and it is a gateway drug. Please don't lose sight that this is Medical Marijuana.

Amanda Luckay stated that within the next two years would be a good time for the representatives in the state to work with local government as they have said they are willing to do. They would help the local government officials learn about the regulations within the next two years, especially with the doctors becoming certified. Maybe that would be a good time for everyone to increase their knowledge and become well versed on this issue.

Mr. Koomar stated that he would disagree on whether Marijuana is or is not a gateway to bigger drugs. Ms. Luckay stated that is Mr. Koomar's opinion and her statement is based on science. Mr. Koomar stated that the head of the Drug Enforcement Agency, retired, from New York City office spoke about it and from his thirty years in law enforcement he thought it was a big problem.

Frederick Green, Pellet Drive, expressed appreciation to the City for the quick action in response to the dog attack on Pellet Drive, only two houses down from where he lives. While it is unknown if the solution is there, Mr. Green appreciates the response and quick action by all concerned.

Mr. Vincent asked Chief Spaetzel if the Police heard about another dog at the residence in question on Pellet Drive. Chief Spaetzel stated that an officer was sent to the house and there was no dog. The two dogs are with the County Animal Warden and are being held awaiting a motion by the courts to have the dogs euthanized.

There being no further comments, the Committee meeting adjourned at 8:15 p.m.

Paul Koomar, President of Council

Joan Kemper, Clerk of Council