



ADDENDUM II

BLOOMINGTON CITY COUNCIL AGENDA

MAY 13, 2013

ADDITION TO REGULAR AGENDA

- Item 8B. Text Amendment to Chapter 8. Animals and Fowls, Identification and Regulation of Vicious and Dangerous Dog. (Recommend that the Ordinance be passed.) *Attachment 2. Policy Research: Dangerous Dogs which was accidentally omitted from the hard copy packet and Attachment 3. Public Safety Committee Minutes from April 11, 2013.*

POLICY RESEARCH: DANGEROUS DOGS

To: Mayor & City Council
cc: David A. Hales, City Manager
Barbara J. Adkins, Deputy City Manager
From: Alex McElroy, Assistant to the City Manager
Subject: Dangerous and Vicious Dog Ordinance
Date: May 8, 2013

The recent (October 25, 2012) and extremely unfortunate incident resulting in 2 citizens being hospitalized due to a pit bull attack has rekindled some questions pertaining to the City's current policies regarding animal control and their effectiveness to date. More specifically, certain individuals are calling for the adoption of Breed Specific Language (BSL) to hinder the occurrences of harmful and potentially fatal dog attacks.

The general procedure in Bloomington, Normal, and McLean County is to declare individual dogs either "dangerous" or "vicious", depending on the nature of their behavior. The definitions, procedures, and consequences of those designations are found in Chapter 8, Section 83 of the City Code.

Under current City Ordinances, a "dangerous" dog is:

"any dog which, when either unmuzzled, unleashed, unattended or otherwise unrestrained or leashed but uncontrolled by its owner or a member of the owner's family, in an aggressive or terrorizing manner, approaches any person in a menacing fashion or in an apparent attitude of attack upon streets, sidewalks, or any public property or places." Bloomington City Code, Chapter 8, Section 83(a)(3).

Dangerous dogs must be securely enclosed inside a house or under physical control of a leash, chain, etc. which prevents it from being closer than 10 feet to the property line of the owner or to a public sidewalk or right of way.

Under current City Ordinances, a "vicious" dog is:

- a. Any individual dog that when unprovoked, inflicts, bites or attacks a human being or other animal either on public or private property.
- b. Any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.
- c. Any dog which has been found to be a "dangerous dog" upon three (3) separate occasions.

If any vicious dog is found outside the enclosure for any reason other than veterinary care or to comply with a court order, it is impounded and destroyed by lethal injection. If it must be taken out of the enclosure, it must be kept muzzled and restrained by a chain not more than 3 feet long with a tensile strength of at least 300 pounds.

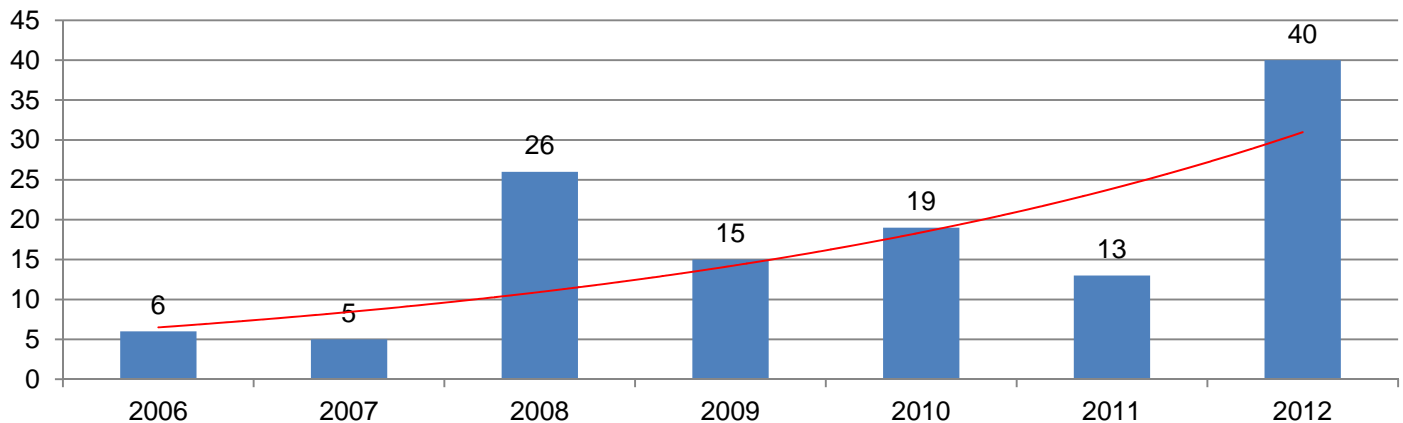
The call for Breed Specific Language is not a new issue for the City of Bloomington. In 2006, the staff was requested to research the issue of breed-specific dog ordinances. In Illinois, only home-rule units may enact breed-specific dog laws. Non-home rule units are prohibited from doing so (510 ILCS 5/15, 510 ILCS 5/24). The City of Denver, Colorado enacted a pit bull ban ordinance which was upheld in court. During staff's research, former Alderman Mike Matejka held several meetings with interested parties. Owners of pit bulls objected that the problem was not with the breed, but with irresponsible owners of pit bulls. Staff learned from Peggy Gibson, Former Director of McLean County Animal Control, that out of 18,242 dogs registered in McLean County in 2004, only 360 were listed as being pit bulls. The inference was that most pit bull owners were either not vaccinating their animals, or were vaccinated but the paperwork was not completed and sent in by the owner after vaccination to complete the proper registration.

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To address this concern, in April 2006, Council adopted a text amendment adding Section 85 to Chapter 8 of the Bloomington City Code, "Establishing Penalties for Failure to Register a Dog and Authorizing the Seizure of Unregistered Dogs". The language was not aimed at owners of pit bulls, but at irresponsible dog owners. The general idea was that dogs who attack other animals or humans are owned by irresponsible people; if the City and County had the authority to seize dogs which did not display dog tags, the hope was that this would take more dogs off the streets, out of the hands of irresponsible owners, and cut down on the amount of attacks.

Since 2006, 124 tickets have been issued to dog owners for failure to register their animals. Between 2007 and 2012 there have been 76 dogs identified as "dangerous" and 38 dogs identified as "vicious" by the City.

Total Tickets Issued for Failure to Register Dog



For calendar year 2012, the Bloomington Police Department provided the following statistics and activity for dog declarations:

12 Dangerous Dog Declarations	15 Vicious Dog Declarations
-2 Appealed and were rescinded	-4 Appealed and were rescinded
-1 Voluntary Euthanized	-8 Voluntary Euthanized
9 Remained Declared Dangerous	2 Remained Declared Vicious

Of the 12 Dogs Declared Dangerous	Of the 15 Dogs Declared Vicious
3 were Pit Bull Mix Type Dogs*	10 were Pit Bull Mix Type Dogs*

96 Dog Bite Reports Made in 2012
31 of the Reports involved Pit Bull Type Dogs

40 Ordinance Violations Issued for Failure to Vaccinate/Register Dog
57 Ordinance Violations Issued for Dogs Running At Large
97 Total Ordinance Violations Issued in 2012

**The Police Department went through 96 Dog Bite Reports by hand to obtain pit bull information. This type of specific information cannot currently be digitally generated.*

The City of Bloomington shares an intergovernmental agreement with McLean County Animal Control Center for animal control services. In 2011, 677 dogs and cats were accepted at the Animal Control Center originating from within the City of Bloomington; 76% of all the dogs from McLean County entering the Animal Control Center were not vaccinated for rabies or registered. In 2012, 673 dogs and cats were accepted at the Animal Control Center originating from Bloomington with 75% of the dogs from McLean County entering the Animal Control Center not vaccinated for rabies or registered. The following information represents the Animal Control Center activity for the City of Bloomington for 2011 and 2012.

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Bloomington Activity Measures by Month for 2011

Code Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2011 Totals
General On Call Activity	38	33	36	32	37	20	36	35	36	50	43	36	432
General Dog/Cat Complaint	29	40	83	48	93	67	115	148	116	86	87	45	957
Dead Animal Removal	5	11	26	22	24	14	35	28	29	26	11	6	237
Bite/Rabies Investigations Activity	34	40	53	69	70	41	207	61	48	26	27	43	719
Confirmed Bite/Rabies Investigations	16	16	12	24	21	26	22	38	20	14	17	14	240
General Phone Calls/Questions	293	341	540	689	443	437	446	559	483	359	370	378	5,338
Shelter Inquiries City Specific	43	47	170	65	81	96	75	85	108	81	93	78	1,022
Reclaim Activity Investigations	11	10	20	19	18	21	11	16	19	16	15	15	191
Bloomington Reclaims at the Center	9	11	18	12	14	14	12	14	19	17	18	4	162
Complaint Letters mailed	8	3	23	9	19	14	6	8	0	0	1	1	92
Animal Accepted from Bloomington at the Center	39	37	64	55	71	68	44	72	70	44	63	50	677
Total Activity Measures per Month	525	589	1,045	1,044	891	818	1,009	1,064	948	719	745	670	10,067

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Bloomington Activity Measures by Month for 2012

Code Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2012 Totals
General On Call Activity	41	41	34	32	31	31	32	29	45	38	39	29	414
General Dog/Cat Complaint	70	70	155	96	140	99	123	183	102	110	80	79	1,286
Dead Animal Removal	10	10	23	23	26	7	13	24	34	21	11	20	221
Bite/Rabies Investigations Activity	49	49	66	106	64	53	54	92	35	132	82	54	810
Confirmed Bite/Rabies Investigations	14	14	35	14	30	31	35	43	19	22	17	14	281
General Phone Calls/Questions	289	289	316	422	362	302	362	387	296	332	249	179	3,771
Shelter Inquiries City Specific	77	77	65	62	75	58	58	79	51	75	55	43	791
Reclaim Activity Investigations	6	6	15	17	20	16	12	21	15	29	9	16	186
Bloomington Reclaims at the Center	10	10	14	24	16	11	13	13	7	20	5	12	158
Complaint Letters mailed	6	6	10	13	21	0	2	6	3	4	10	4	82
Animal Accepted from Bloomington at the Center	56	56	65	50	62	48	42	66	61	82	55	47	673
Total Activity Measures per Month	628	628	798	859	847	656	746	943	668	855	612	497	8,673

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Proponents of Breed Specific Language (BSL) portray it as a proactive legislative approach to public safety as opposed to a reactionary policy of designating a dog dangerous or vicious after observing a certain behavior. BSL however, has received a healthy amount of criticism from opponents and does not come without some challenges in enforcement. The American Bar Association (ABA) warns municipalities about the weaknesses of BSL and the constitutional challenges that have resulted.

Specifically, the ABA cites two basic characteristics of breed discriminatory laws relevant to constitutional challenge and the subject to successful challenges to BSL: (1) definition of the breed; (2) procedures for identifying and challenging the designation¹.

The "*definition of the breed*" brings challenges to the vagueness of the law, as the nomenclature "pit bull" is not the identification of a breed but rather a generic term used to describe the American Pit Bull Terrier, American Staffordshire Terrier, and Staffordshire Bull Terrier and/or dogs displaying various genetic mixes and traits. It can become very difficult for the average person to correctly identify a breed of pit bull or distinguish non pit bull dogs having similar traits to that of a breed of pit bull.



American Pit Bull Terrier



American Staffordshire Terrier



Staffordshire Bull Terrier

Below is a list of 25 unique breeds recognized by the American Kennel Club (AKC). Only one of these dogs is an American Pit Bull Terrier. All dogs pictured below hold the specific physical traits to their respective breeds, only one of which qualifies as a "pit bull". With a large number of dog breeds having similar characteristic to that of the pit bull breeds, it makes the importance of a clear definition of pit bull critical when adopting breed specific language.

¹ "A Lawyers guide to Dangerous Dog Issues", American Bar Association Publishing, Joan Schaffner, p. 26

POLICY RESEARCH: DANGEROUS DOGS



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Answer: 16

² <http://www.pitbullsontheweb.com/petbull/findpit.html>

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BSL defines the targeted breed in various ways from fairly specific to very general with many laws utilizing a combination of both. Many municipalities adopting BSL name the specific breed in their language, such as American Pit Bull Terrier, American Staffordshire Terrier, and Staffordshire Bull Terrier. Beyond this, many include one or more of the following categories: "any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the AKC or UKC for any of the stated breeds", "any dog displaying a majority of the physical traits of any one or more of the stated breeds", and/or "any dog which has the appearance and characteristics of any breed commonly known as pit bull". The more vague the definition, the higher the potential for successful legal challenges³.

"Procedures for identifying and challenging the designation". Clear procedures for identifying a specific breed must be put into place at the time of, or before the adoption of any breed specific language. The major issue of concern is affording owners the right to due process. Detailed and systematic language as to how a dog will be identified and responsibly categorized as a specific breed must be established as well as a means for a dog owner to challenge the classification. Using the example from Denver, Colorado, when the City of Denver finds a dog to be of a pit bull breed, identification either arising from animal control employees or the Denver Police Department, the dog owner may challenge this designation via written petition no later than 7 days of impoundment. A hearing will next be held which requires a 3 member evaluation team (employed by the City) to review the animal and agree upon its breed classification.

Targeting a specific breed of dog has not been the City's approach to animal control measures. City ordinances and policy focus on pet owners, specifically; irresponsible pet owners. The latest revision to the City's code pertaining to animal control policy came in 2006 where the City established penalties for failure to register dogs and authorized seizure of unregistered dogs. City staff has most recently begun to review current policies as they pertain to animal control ordinances and are making recommendations to update and further tighten the language to empower City police officers and animal control in their enforcement efforts. Some brief highlights of the proposed amendments include: (included please find staff's full ordinance amendment proposal)

- Expansion of the definition of "dangerous dog" to include any dog that has been declared dangerous by any other jurisdiction.
- Expansion of the definition of "vicious dog" to include any dog that has been declared vicious by any other jurisdiction.
- Redefined definition of "enclosure" for a vicious dog, eliminating height requirements for enclosure and focusing on the ability of the enclosure to prevent the animal from escaping.
- Adding a requirement for owners of a dog declared vicious by the City to retain liability insurance with a single limit of \$200,000 to \$500,000 per occurrence and show proof of obtaining insurance to the Police Department.
- Requirement for any dog declared vicious to be micro-chipped and registered with the micro-chip company in the owner's name and listing address where the dog is currently located.
- Requirement for any vicious dog owner to notify the United States Post Office and utility providers in writing of the vicious dog declaration or the disposition of any appeal of the declaration. The owner will be required to provide proof of the notification to the Police Department.
- Redefined the definition of "injury" to state any wound that is serious enough to require medical or veterinary treatment regardless of whether medical or veterinary treatment is sought.
- Redefined owner to include any firm, limited liability company or corporation, keeping, possessing or harboring a dog or cat. Staff would run into an issue with enforcement efforts when dogs were being fostered. Ownership of the fostered dogs was not clear as the animal was currently being held for the care of a potential new owner. This amendment will place clear ownership on any dogs currently being fostered.

³ "A Lawyers guide to Dangerous Dog Issues", American Bar Association Publishing, Joan Schaffner

PUBLIC SAFETY COMMITTEE
City Hall Council Chambers
April 11, 2013

Council present: Aldermen David Sage, Karen Schmidt and Judy Stearns.

Staff present: Barbara Adkins, Deputy City Manager, RT Finney, Interim Police Chief, Mike Kimmerling, Fire Chief, George Boyle, Asst. Corporation Counsel, Rosalee Dodson, Asst. Corporation Counsel, Alex McElroy, Asst. to the City Manager, Jim Hall Police Patrol Officer, and Tracey Covert, City Clerk.

Alderman Sage called the Public Safety Committee to order at 5:00 p.m.

Motion by Alderman Sage, seconded by Alderman Schmidt that Alderman Stearns be allowed to participate remotely via telephone.

Motion carried, (viva voce).

Alderman Stearns joined the meeting via remote participation, (telephone).

MINUTES

Motion to Alderman Schmidt, seconded by Alderman Stearns to approved the Minutes of the January 15 and February 14, 2013 meeting.

Motion carried, (viva voce).

VICIOUS & DANGEROUS DOGS

Barbara Adkins, Deputy City Manager, addressed the Committee. The report regarding Vicious & Dangerous Dogs would be presented by Alex McElroy, Asst. to the City Manager. She noted others who were in attendance and assisted with this item: Jim Hall, Police Patrol Officer/Animal Control Liaison, Marcelle Thompson, McLean County Health Department (MCHD) Animal Control, and George Boyle, Asst. Corporation Counsel.

Alex McElroy, Asst. to the City Manager, addressed the Committee. He noted the work involved. He addressed the last time this City ordinance had been updated. At that time, the emphasis was on the pet owner. He noted the number of tickets issued between 2006 – 2012. This ordinance amendment had been the subject of long staff discussions. The following items were reviewed: state law, Town of Normal policy and the IL Administrative Procedures Act. The goal of this text amendment was to provide a safe environment and penalize the pet owner.

Alderman Stearns addressed clarity. She questioned what most fines were for and the largest complaint.

George Boyle, Asst. Corporation Counsel, addressed the Committee. There were two (2) major categories of Ordinance Violations (OV): 1.) animals running at large and 2.) failure to register with the MCHD. The second item was tied to a failure to vaccinate.

Alderman Schmidt thanked City staff for an ordinance that was written beyond bred specific. She noted the liability insurance requirement. The City had not been able to stay ahead of the pet owners.

Mr. McElroy restated that the current policy focused on the pet owners. Animals would be tag if identified as vicious (red) and/or dangerous (yellow).

Marcelle Thompson, MCHD Animal Control, addressed the Committee. Animal Control was a telephone call away. Citizens should call MetCom when animals are out and running at large. Through a declaration process, the dog may be determined to be vicious and/or dangerous. The pet owner would be required to purchase a tag and display same.

Jim Hall, Police Patrol Officer, addressed the Committee. When the Police Department received a dog bite call an incident report is filed. The incident report is reviewed. The neighborhood is canvassed and a determination is made. A dangerous dog would involve a dog running at large, exhibiting aggressive behavior but no actual bite.

Mr. Boyle referred the Committee to the draft ordinance, Section 50. Definitions, (c) "Dangerous Dog". He added that four (4) criteria were listed.

Officer Hall noted that if a dog was protecting property the situation would be different. A recommendation is made to an Asst. Police Chief for final determination/decision. He added that each case was unique and a separate review is conducted.

Mr. Boyle directed the Committee to the draft ordinance, Section 50. Definitions, (c) 4. He read same. This criterion addressed private and public property. He added that there were nuances.

Alderman Schmidt questioned dogs that had been labeled dangerous and/or vicious by another community. Officer Hall stated that City staff would work with the MCHD Animal Control staff to verify veterinary records, if they existed.

Mr. Boyle cited the draft ordinance, Section 50. Definitions (c) 3 and (k) 4. The pet owner was required to notify the City if their animal has been declared dangerous and/or vicious by another community. The Town of Normal had similar language in its ordinance.

Alderman Sage questioned fines. Mr. Boyle stated the following: 1.) failure to register/vaccinate - \$250, subsequent offenses - \$500, \$1,000 and 2.) animals labeled

dangerous and/or vicious face a daily fine for noncompliance of \$100 - \$1,000. He added that the City and the courts would start at the low end. The goal was compliance and safety.

Alderman Sage stated his goal – an appropriate fine which would encourage the pet owner to do the right thing. The fine structure needed to provide a line of sight.

Alderman Stearns expressed her opinion that the liability insurance was a good provision. Mr. Boyle affirmed that this requirement was contained in the draft ordinance.

Alderman Schmidt questioned the process going forward. She cited citizen feedback and placement on a Council meeting agenda.

Ms. Adkins believed that this item would be the subject of a future Council Work Session. The next step would be a Council meeting. She estimated the time line at one to two (1 – 2) months.

Alderman Schmidt believed that the draft ordinance contained good information. She questioned if concerns could derail this draft ordinance.

Ms. Adkins complimented the team. City staff and the MCHD Animal Control staff had formed a good partnership.

Alderman Sage addressed best practices and questioned if anything was missing.

Mr. McElroy noted Mr. Boyle's efforts regarding policy research. He noted the state's regulatory role. The City's draft ordinance was written slightly tighter than the Town of Normal's ordinance.

Mr. Boyle noted that under state law an animal cannot be labeled dangerous until severe injury, (hospitalization and/or death). The City's approach was preventative. He added that there was a notification requirement, (see draft ordinance, Section 83. Dangerous and Vicious Dogs; Dogs Subject to Euthanasia, (c) Requirements for Keeping Dogs Declared Dangerous, 8 and (d) Requirements for Keeping Dogs Declared Vicious, 5).

Mr. McElroy addressed policing issues. He noted that the term "Enclosure" had been defined, (see draft ordinance, Section 50. Definitions, (f)). Staff had considered an animal's ability to escape.

Alderman Sage welcomed any thoughts going forward.

Motion by Alderman Stearns, seconded by Alderman Schmidt to place the draft ordinance on a future Council meeting agenda.

Motion carried, (viva voce).

Alderman Sage expressed his appreciation for the team effort.

NOISE ORDINANCE

Ms. Adkins introduced the draft Noise Ordinance. This was an important issue. Rosalee Dodson, Asst. Corporation Counsel, served as lead staff person. This draft ordinance was being presented to the Committee for direction.

Rosalee Dodson, Asst. Corporation Counsel, addressed the Committee. This draft ordinance had been discussed at the Council's August 13, 2012 Work Session. City staff has research and reviewed noise ordinances and enforcement of same in sixteen (16) municipalities within the state. The public's response to the first draft of this ordinance has been positive. She noted that there were new definitions. The decibel level had been increased.

She noted that there were a number of questions regarding noise. Some issues were addressed elsewhere in the City Code. She cited Chapter 8. Animals and Fowl, Chapter 29. Motor Vehicles, and Chapter 28. Misdemeanors, (Disorderly House). The Police Department needed ways to detect noise. This draft ordinance would introduce another category.

Alderman Schmidt believed that this draft ordinance addressed issues raised by the Downtown Entertainment Task Force. She cited the decibel level and the 6:00 a.m. start time. Ms. Dodson noted that City's collective bargaining agreements listed 6:00 a.m. as a start time for City crews.

Alderman Schmidt addressed vehicular noise. The most common complaint was motorcycles with straight pipes. RT Finney, Interim Police Chief, addressed the issue of motorcycles. Motorcycles are made louder by removing the baffles. He noted that there were state statutes and City ordinance to address same. City police officers would be encouraged to enforce when seen/heard. The Police Department would not wait for complaints. He would emphasize that this was a community concern.

Alderman Schmidt requested that the City's various ordinances addressing noise be cross referenced. Ms. Adkins offered to look into the possibility of linking the various ordinances. Alderman Schmidt also recommended that the various ordinances be listed under commonly asked questions.

Scott Sprouls, IT Director, addressed the Committee. He cited the "I want to . ." section of the City's web site. Noise issues could be added. At this time, searching the City Code on line was not an easy task.

Alderman Schmidt recommended that common code topics include noise and that the various ordinances be pulled together. Mr. Sprouls believed that it would be easy to modify same.

Alderman Sage welcomed City staff's thoughts going forward. Ms. Adkins noted City staff's due diligence. A Work Session had been held. She believed that this draft ordinance was ready to move forward to a Council meeting agenda.

Ms. Dodson noted that small changes were needed to address concerns raised by the Fire Department.

Mike Kimmerling, Fire Chief, addressed the Committee. He cited sirens, bells and whistles. In general, fires and emergency services were noisy. Ms. Adkins suggested that there might be an exemption for public safety.

Alderman Sage addressed the Committee regarding any concerns and/or questions.

Alderman Stearns questioned if vehicular noise would be brought into the draft ordinance or left as currently written. She added that this was the most common complaint, (i.e. motorcycles, car stereos, etc.). Her concern addressed enforcement. Ms. Dodson stated that it would be left as is. The current ordinance was being enforced and currently referenced on line.

Alderman Schmidt questioned sound reproducing devices, (i.e. radios, stereos, etc. from a residence). Interim Chief Finney restated that there currently was an ordinance to address same. Enforcement needed to be encouraged.

Alderman Sage questioned if the Police Department had what was needed to address noisy vehicles. Interim Chief Finney stated that the draft ordinance addressed other areas. He cited bar noise as an example. Alderman Sage questioned vehicular noise and moving enforcement forward. Interim Chief Finney noted that this was a quality of life issue for the Council. He would take the Council's concern forward. Alderman Sage anticipated questions from the Council. Interim Chief Finney stated that the Police Department's role was to facilitate the Council's direction.

Motion by Alderman Schmidt, seconded by Alderman Stearns to place the draft ordinance on a future Council meeting agenda.

Motion carried, (viva voce).

Alderman Stearns thanked Interim Chief Finney for additional police enforcement. It was spring. She encouraged the Police Department to focus on City parks. She specifically cited Miller Park. She requested a report in the next six to eight (6 – 8) weeks regarding the number of tickets issued.

Alderman Sage recommended that this information be included in the Council memorandum. He suggested that it be labeled enforcement metrics.

Ms. Adkins addressed potential future topics: Police Department Firing Range. Interim Chief Finney stated that the Police Department had an intern. He had not seen a report as of this date.

Motion by Alderman Stearns, seconded by Alderman Schmidt to adjourn. Time 5:47 p.m.

Motion carried, (viva voce).

Respectfully submitted,

Tracey Covert
City Clerk