

RULES AND PUBLIC POLICY COMMITTEE

DATE: August 7, 2008

CALLED TO ORDER: 6:05 p.m.

ADJOURNED: 6:56 p.m.

ATTENDANCE

ATTENDING MEMBERS

Robert Lutz, Chair
Bob Cockrum
Ed Coleman
Monroe Gray, Jr.
Angela Mansfield
Lincoln Plowman
Mike Speedy

ABSENT MEMBERS

Joanne Sanders

AGENDA

PROPOSAL NO. 348, 2008 -amends the Code to restrict the use and discharge of consumer fireworks

"Do Pass as Amended"

Vote 6-1

PROPOSAL NO. 141, 2008 - adopts a new Ethics Code for City and County agencies, officials, appointees and employees

"Do Pass as Amended"

Vote 7-0

RULES AND PUBLIC POLICY COMMITTEE

The Rules and Public Policy Committee of the City-County Council met on Thursday, August 7, 2008. Chair Robert Lutz called the meeting to order at 6:05 p.m. with the following members present: Bob Cockrum, Ed Coleman, Monroe Gray, Angela Mansfield, Lincoln Plowman, and Mike Speedy. Absent was Joanne Sanders. Jon Elrod, Acting Counsel, was also present.

Chair Lutz asked each committee member to introduce themselves and indicate which district they represent.

PROPOSAL NO. 348, 2008 -amends the Code to restrict the use and discharge of consumer fireworks

Chair Lutz said that at the last meeting, the issue was raised as to whether the proposal would regulate the use of sparklers, snakes, and similar items. He said that he and Mr. Elrod have looked at the ordinance and have reached the conclusion that the State Statute exempts those types of things from the definition of consumer fireworks. Therefore, they are not included in this particular ordinance.

Councillor Speedy asked for a brief description of the proposal. Chair Lutz explained that the proposal restricts the use of consumer fireworks as defined in the Indiana Code. It puts a limit on the dates and times that consumer fireworks can be discharged within the consolidated city, excluding the excluded cities and towns of Lawrence, Speedway, Beech Grove, and Southport.

Councillor Speedy said that the General Assembly gave the City-County Council the authority to restrict the use of consumer fireworks, as they were previously allowed to be used year-round. He verified that is what the ordinance is proposing to do. Chair Lutz answered in the affirmative. Councillor Speedy asked when the restrictions will become effective. Chair Lutz answered that it would be effective upon passage and adoption by the Mayor. Councillor Speedy asked how violations would be reported after adoption of the ordinance. Chair Lutz answered that he believes that the police would be called to enforce the compliance. He said that he is unsure how the enforcement will be handled, but he imagines that the officer would issue a ticket. Chris Cotterill, Corporation Counsel, said that violations of the Code are typically enforced by the Office of City Prosecutor, Corporation Counsel. The notice is provided to the person committing the violation, and that person is usually fined. Mr. Cotterill said that he is not specifically familiar with the language of the ordinance and therefore, he is not certain of its enforcement procedures.

Councillor Speedy asked if a fireworks violation is worthy of a 911 call. Mr. Cotterill answered that he is not sure. Councillor Speedy said this should be clarified at some point before the full Council meeting, and he believes that the department should have a policy on that. Mr. Cotterill said that he understands that the city and the county have 911-related expenses, but he does not feel that he is in the position to decide whether or not a fireworks violation is an emergency. Chair Lutz said that he hopes that

someone would not call 911 for a one-time offense, but if it is continuous they should maybe contact the Mayor's Action Center or call the non-emergency police number. He asked if police have the authority to issue a ticket or notice of violation if they witness the offense. Mr. Cotterill answered in the affirmative, and stated that there may be some exceptions to that. Mr. Elrod added that the offenses are treated the same as littering, parking at a meter for too long, or being illegally parked.

Donna Adams, citizen of the near eastside, said that a number of her neighbors cannot tell the difference between fireworks and gun fire. She said that she has called 911 for years because she cannot distinguish between the two. There are some people that experience gun fire in their neighborhood all the time and are afraid to call the police, but she believes that everyone should call if they hear gun fire. Ms. Adams said that she has called the non-emergency number, but if they are told of possible gunfire, the call is switched over to the emergency number. She said that the police have enough to do and people do not want to waste their time, but someone needs to be called. She said that children in her neighborhood set a neighbor's dog house on fire with fireworks, and people sometimes shoot fireworks at her house and her roof. It is very upsetting. She is concerned about veterans that have flashbacks from hearing the fireworks, and animals are terrorized by the sound of them. Ms. Adams said that she was not aware that fireworks are required to come down on a person's personal property, but many times they come down on someone else's property. Limiting the number of days will limit the amount of child-related injuries, of which most occur in the presence of parents.

Chair Lutz encouraged people to call the police if ever they feel there are gun shots being fired, and not to hesitate.

Rosie Stockdale, citizen, said that she believes this is a great first step. She and most of her neighbors are forced to park on the street, which subjects their cars to being hit by the fireworks. She asked if an officer responded to a violation, would he be required to determine who actually violated the ordinance, as she believes that homeowners should be responsible if fireworks are illegally set off from their residence. She said that she would hate for the ordinance to be passed and be impossible to enforce. Chair Lutz said that it would be determined on a case-by-case basis. Ms. Starkdale said that the problem is that these violations typically happen at parties, and individuals may not confess to the offense. She said that she would like to see the ordinance tightened to identify who is responsible if fireworks are illegally set off from a residence.

Councillor Speedy said that the ordinance refers to a person and references the user, but it does not address the property owner.

Councillor Mansfield said she appreciates the comments of the citizens. She said that she experienced a neighbor setting off fireworks at her house in the middle of a work week last year and it was very disturbing, as well.

Councillor Mansfield moved, seconded by Councillor Speedy, to forward Proposal No. 348, 2008 to the full Council with a "Do Pass as Amended" recommendation. The motion carried by a vote of 6-1, with Councillor Gray casting the negative vote.

[Clerk's note: The ordinance was amended at the previous Rules and Public Policy Committee meeting.]

PROPOSAL NO. 141, 2008 - adopts a new Ethics Code for City and County agencies, officials, appointees and employees

Councillor Plowman moved, seconded by Councillor Mansfield, to "Amend" Proposal No. 141, 2008, as described in Exhibit A. The motion carried by a vote of 7-0.

Chair Lutz said that the date included in Section 103-52, sub-section 6 should be removed. John Cochran, Special Counsel to the Mayor, apologized and stated that the date was supposed to be removed from the amended version of the proposal. He explained that the proposal makes some changes to the current ethics laws for local government with the intent to add clarity, transparency, and whistleblower protection related to the conduct of local government officials, city and county-wide elected officials, and employees. The proposal ensures that the conduct of those who administer local government reflect the expectations of Marion County residents. Mr. Cochran said that the proposal was originated by the Mayor's Office and filed with the Clerk of the Council in March of this year, and some very lengthy discussions have taken place to develop an agreement on the terms of the proposal. The amendment most notably recognizes the fundamental differences between a part-time legislator, a full-time administrative employee and a full-time elected official. He said that the first draft basically addressed everyone in the same manner, but he did not believe that to be appropriate.

Councillor Plowman asked, with respect to taking out the date in Section 103-52, what should be put in place of that date. Chair Lutz said that he suggested that the date simply be taken out, as it is not realistic due to timing and the upcoming budget season.

Councillor Plowman moved, seconded by Councillor Mansfield, to make a technical amendment to the amended version of Proposal No. 141, 2008 by striking the words "Prior to December 31, 2008" in Section 103-52, sub-section 6.

Councillor Gray asked what this particular section of the ordinance allows. Chair Lutz answered that it gives the City-County Council Ethics Committee, established by the ordinance, the directive to put together an ethics proposal that addresses the conduct of Council members. Councillor Gray asked if that means that the Councillors on this committee will establish their own standards of ethical conduct for all Councillors. Chair Lutz answered in the affirmative. Councillor Gray asked when that will take place. Chair Lutz answered that it will take place as soon as the Council decides on it. He said that the proposal was originally introduced in March, and at that time the December 31 deadline was more realistic, but now it is unrealistic. Councillor Gray asked if it will now be enforceable in 2009. Chair Lutz answered in the affirmative.

Councillor Gray asked if it will pertain to anything prior to its establishment. Chair Lutz answered that it will not pertain to the City-County Council, but everything else will be effective upon the adoption of the ordinance by the full Council.

The motion to technically amend the amended version of Proposal No. 141, 2008 carried by a vote of 7-0.

Councillor Mansfield said that she is concerned with Section 151-31, which is not part of the proposal, but requires standing committees of the Council to meet once a month. Given the uniqueness of the ethics committee, they will not have proposals being sent to them regularly. She said that she believes that either the ethics committee should not be a standing committee or Section 151-31 should be amended to exempt the ethics committee from having to meet once a month. Councillor Mansfield said that she is also concerned with Section 151-1101, which states that the ethics committee shall review the standards. She said that she does not feel this is necessary, as she believes that it should be handled like all other ordinances. Additionally, Section 151-1102, sub-section 4, states that the ethics committee should act as an advisor to Councillors on ethics questions. She again stated that she does not feel this is appropriate, as she believes that the Council attorney should be the one to advise Councillors on ethical questions. Finally, Councillor Mansfield said with relation to Nepotism, Section 293-208 states that relatives of any employee or public official cannot work within the same agency. She said that she believes that it should be written to reflect that someone who is in charge of hiring or directly supervising someone should not be able to hire or directly supervise their relative. Mr. Cochran said that the Mayor's office would not oppose that suggested change. Chair Lutz said that he does not want to hold up the passage of the proposal. Councillor Plowman recommended that the proposal be passed as it is currently written and then changes be made on the Council floor before the full Council. Mr. Cochran said that he would draft some language changes to send to the Councillors before the Council meeting and offer those amendments on the Council floor. Councillor Mansfield agreed.

Councillor Mansfield said she also feels that something should be done about the ethics committee being a standing committee and having to meet every month. Chair Lutz said that he likes the idea of the committee acting as an advisory committee. Councillor Speedy said that it could function as that, but there would not be a duty of confidentiality in place. Chair Lutz asked if Councillor Speedy would like for the proposal to be stricken at the full Council meeting. Councillor Speedy answered in the negative, and stated that he simply does not want the ordinance to prohibit a Councillor to confide in and receive advice from an attorney. Chair Lutz said that he does not believe that it prohibits Councillors from seeking outside counsel. Mr. Cochran said that Section 151-1102 explicitly allows for a Councillor who is under investigation to seek counsel from an attorney. He said that he also feels that Councillor Mansfield's concern is reasonable, and he feels that it is more appropriate for the committee members to discuss this since it specifically relates to the Council. He said that he believes that the best way to address it is to suspend the requirement for the ethics committee to meet once a month. Chair Lutz said that the section indicates that the ethics committee *may* do any of the following, making it permissive. Councillor Speedy

said that he believes that should be pointed out. Councillor Cockrum said that typically it has been the decision of the committee chairman as to whether or not the committee will meet, and it is not uncommon for a meeting to be cancelled if there is nothing before that committee. He said that he feels that it is appropriate to amend that portion of the section, and state that the committee will meet at the call of the chairman. Mr. Cochran said that the Mayor's office will agree to allow the Council to determine that. Councillor Mansfield said that she believes that it can also be amended at the full Council meeting, as it technically addresses the current requirement for a committee to meet a minimum of once a month. Councillor Cockrum said that he proposes that it be changed relative to all standing committees that they meet at the call of the chairman.

Chair Lutz said that he believes that the city is better off with less government. He said that he is supportive of the proposal, but he wanted to move slowly on the issue, as it will have a substantial impact on how business is conducted in the city and county. He said that he has had this proposal circulating for a few months now because he wanted to receive Councillor input, public input, and media input. He said that he believes the citizens would like to see the proposal move forward. It was closely modeled after the State's rules.

Councillor Plowman moved, seconded by Councillor Speedy, to forward Proposal No. 141, 2008 to the full Council with a "Do Pass as Amended" recommendation, with the additional amendment to Section 293-208 that will be brought before the full Council.

Councillor Gray asked if the proposal that is currently being voted on will include the Council's ethical standards, or if the ethics committee will determine those standards. Chair Lutz answered that the Rules and Public Policy Committee is voting on the ethical standards of full-time employees of the city and county. Mr. Cochran said that the ethics committee will make recommendations for the ethics code that relates specifically to Councillors and the Council staff, but the full Council will still have to pass that code of conduct. Councillor Gray asked if that means that the full Council will vote on a separate code of ethics. Mr. Cochran answered in the affirmative, and stated that the ethics committee will form a code of conduct that will govern Councillors and Council staff.

Julia Vaughn, Policy Director, Common Cause in Indiana, an organization that works for open, honest and accountable government, said that the public is crying for higher standards in all levels of government. She said that she is concerned with the comment that common standards for all are not wanted. She feels that separate standards contribute to a lot of confusion and ill will toward government. It is understood that there can be certain differences that are appropriate, but she suggests that the Council try to keep things uniform, consistent, and equal whenever possible.

Councillor Mansfield said that part of the reason there was a massive change was because the previous proposal did not recognize that there were two separate branches of government. The original proposal indicated that the executive branch was to oversee the enforcement of the legislative branch. She said that she believes that a lot of consideration will go into making it as consistent as possible.

Councillor Speedy said that he believes that the standard should be the same for everyone, but enforcement is the issue. He added that loyalties are different between legislators and employees of city government. As an employee, loyalty is to the city, but as an elected official, judgments must be made as to whether to represent the city or the constituent in particular matters. That aspect was not captured in the initial proposal. Councillor Speedy said that he hopes that the standards between the executive branch and the legislative branch with respect to conflicts of interest are virtually identical.

The motion to forward Proposal No. 141, 2008 to the full Council carried by a vote of 7-0.

Mr. Cotterill said that this proposal is significantly better than it was when it was originally introduced. Councillor Cockrum thanked Mr. Cotterill and Mr. Cochran for working with the Council to develop a working proposal.

There being no further business, and upon motion duly made, the meeting was adjourned at 6:56 p.m.

Respectfully Submitted,

Robert Lutz, Chair

RL/nsm