

Open Work Session
Animal Ordinance
June 19, 2018

Mr. Cannon said there are members of the Animal Ordinance Committee present, and Council appreciates everything they have done, and appreciates them being at the meeting today.

Mr. Taylor said he can give Council a general discussion of what they have done since this Bill was originally introduced, and, if Council would like, he can hit some of the high spots. He said, as far as the general process of what has happened since it was introduced, primarily, Mrs. Hurley and he have done a lot of review and revisions. He said, in addition, they have done a cleanup and clarification of various provisions. He said they have also done a broader review and revisions, have looked at other jurisdictions in terms of their ordinances, and they have looked at various organizations that suggest provisions or, in some cases, actual ordinances. He said, when he talks about other jurisdictions, that refers to both Maryland and elsewhere because this is, essentially, a common problem throughout the Country. He said just in Maryland, for example, they have three basic types of animal control ordinances or administrations. He said the first is like Wicomico County's and is primarily in smaller Counties where it is, essentially, farmed out to the Humane Society. He said other Counties have it as part of their County Government and it can be a separate Department, or it can be a division within a Department. He said at least one County, and that would be Harford, is done by the Sheriff's Office. He said, when they had a draft in semifinal form, they referred it to Mr. Balsamo for discussion. He said it is his understanding that Mr. Balsamo has reviewed it, to some extent, with his folks, and he can speak to that later as he desires. He said they have also run this by Mr. Leslie, and have incorporated his comments in some cases. He said that is a general procedural view as to what has happened the last several months.

He said some of the high spots, and he is just going to hit a few, are that they have added the Sheriff's Office as an animal control authority. He said there is no intention for them to take it over from the Humane Society, but he thinks, as recent events have indicated, it makes sense to have them with animal control authority. He said they have added references, quotations, and extracts from State Law provisions. He said they found that the State Law, just like their animal ordinance, is somewhat complex. He said it is, basically, contained in two different parts of the State Law. He said there is some in the Local Government Article that pertains to the Local Governments, directs them, and authorizes them to do things. He said, in the Criminal Law Article, there is a fairly extensive listing and statutes that involve animal cruelty, dangerous dogs, and various other things that apply broadly to animal care and treatment. He said they thought it would be wise to have this in the County Ordinance because they believe that is where most people would look first to try to find out what the animal control law is within a particular County jurisdiction, and, of course, the State Law applies within the County jurisdictions. He said most people, he does not think, are real familiar with the State Code. He said they can find it on-line, but he thinks by and large they would look to the County Law first. He said vaccinations and rabies are a matter entirely of State Law, and they have reflected it that way using the State Law provisions. He said licensing is a local matter, though there is State authority for it, and they have changed that slightly, but not a whole lot. He said they have added a reference to a State Law provision that says a licensed dog is the personal property of the owner, which stands to reason, he thinks, but, nevertheless, could be significant in terms of some of the other provisions in the ordinance. He said there is a dangerous dog ordinance in the State Law, and they have also kept and modified, to some extent, the dangerous dog law that is in the local ordinance. He said it does get a little complex, but the State Law applies, of course, anyway, so they cannot avoid what the State Law provisions are because they are there in the ordinance. He said, however, Wicomico County's ordinance is somewhat

different in that it is a civil ordinance. He said, in other words, the penalties in Wicomico County are civil, not criminal. He clarified, the State Law is a criminal ordinance, so there is a difference in that regard. He said, in their local provisions, they have added something that has been recommended by various groups in terms of the conduct of the dog and what causes the dog to be deemed dangerous. He said it is an exemption that would apply in certain circumstances where the dog or other animal is contacted without the authorization of the owner, or it is contacted when the animal is eating, sleeping, or otherwise would not be anticipating being touched or petted because, at least in his experience, and maybe Council's too, he knows when he was a kid he got a couple dog bites under those types of circumstances. He said they have also added, partially as a result of Mr. Leslie's suggestion, that if the dog engages in a sustained attack, then the exemption does not apply. He clarified, in other words, if someone touched a dog when it is sleeping and it nips at them when it wakes up, that is one thing. He said, if it gets up and attacks and keeps biting, that is a different thing.

Mr. Taylor said Council may recall that when this came up before, there was some discussion about the required sheltering of animals, particularly during hot or cold weather. He said they have spent some time on that, and found a recent Baltimore County ordinance that was passed this past winter as a result of a dog freezing to death, and they amended their animal control ordinance with something to address this, which is called Oscar's Law. He said, if anyone follows Baltimore County Legislation, Oscar was the name of the dog. He said it uses 32 degrees and 90 degrees as threshold points. He said there is no automatic requirement that a dog or other animal be brought inside when it either goes below 32 or above 90 degrees, but there is a variable standard. He said it provides that, under those circumstances, if it goes below or above those two temperatures a reasonable person would reasonably conclude that it would pose an adverse risk to the health or safety of the animal based on its age, size, physical condition, or thickness of its hair or fur, and that is language right out of the Baltimore County ordinance. He said, under those circumstances, if a reasonable person would conclude there is a risk, it has to be sheltered. He said there is also a general requirement that if an animal is not regularly kept in a home, there must be suitable shelter provided, and that is, again, out of the Baltimore County ordinance.

Mr. Taylor said probably the most major change, in his opinion, would be the Animal Appeal Board. He said, just to run through some of the things they are suggesting they do, there would be no special members, and by that he means having any status to being a member of a group. He clarified, in other words, anybody could be a member. He said Council and the Executive can certainly select from groups with special interests in animal rights and animal control, but they are just simply saying there is no particular qualification by status. He said it is still five seats with two alternates, and they have added due process requirements. He said, in doing research, they found there is a growing animal rights movement, including that there are now cases around the Country, sometimes called Doggie Due Process Cases, that extend rights, which are somewhat similar to what they would see in a criminal or traffic procedure in district court, to decisions made for euthanization or dangerous dog decisions. He said they have provided that the hearings have to be quasi-judicial in nature. He said he has not been to one, but, from what he has heard, they are probably pretty much quasi-judicial now, and he does not think they are adding a lot to that. He said it would require there be testimony under oath, keeping of a record, and that the decision be made based on the testimony presented at the hearing, and not what he would call ex parte communications, which is when the members of the Board go out and talk to people outside of the hearing, and then when it comes time to make a decision they would say they talked to that person, and what they said. He said he thinks, parenthetically, that is something they might want to actually add in there, and that it should not be based on ex parte communications. He clarified, they have not said that, but he thinks that is a significant matter. He said they have provided that the burden of proof will be on the Animal Control Authority with the feeling being, if someone is

going to euthanize a dog, or, essentially, take it away, the decision to appeal the Animal Control Board should present a clear and convincing case. He said he does not think that is going to add a whole lot of difficulty, but it does prevent an Animal Control Officer from coming into the hearing and just simply saying "Based on what people told me, I think this is a dangerous dog." He said, in most cases, the Animal Control Officer is not going to have seen any of the activity of the dog that resulted in someone claiming it as dangerous. He said he thinks, when it gets to the hearing level, the witnesses should be there and give testimony, and he thinks that will serve some purpose that will be beneficial, generally, to the County, as well as to the dog owners, in that only strong cases will be presented, and if they are challenged, the Animal Control Authority will have developed a record they can present to the Animal Control Appeals Board that will carry the day. He said he thinks it will also result in less appeals to the Circuit Court, and that is significant because that is where the real expense comes when a dog is impounded pending a dangerous dog determination. He said there is some expense initially. He said the Appeals Board stages can be done fairly quickly, but, if the owner appeals it into the Circuit Court, the time is probably increased by a factor of ten. He said it can go beyond the Circuit Court level, and be appealed to Annapolis. He said he thinks that is fairly rare, but it can happen, so they might be talking about impounding the dog for eight to ten months, or possibly a year or more if there were an appeal to the Court of Special Appeals in Annapolis. He said that is some of their thinking on these changes he has just discussed with regard to the Appeals Board.

Mr. Taylor said they have changed, to some extent, the civil penalties. He said they have done some reduction of amounts as they seem to be extremely high for the nature of the particular infraction. He said they have also introduced what he calls staging, which is that there would be an increase in the fines based on repeat offenses within a certain time period, and they have used one year for a second offense and then a third or subsequent offense after that so they can call it staggered or staging.

Mr. Taylor said they also, he thinks, have adopted all of the Councilmembers' concerns that were expressed several months ago. He said he will not go over those, but he believes they are all in there, and he thinks Mrs. Hurley agrees with him on that. He said that is a quick overview of all of this.

Mr. Taylor said he has one more thing, which is based on a conversation he just had with Mr. Joe Holloway this morning. He said he thinks there is a provision in the Dangerous Dog Ordinance where they might want to change the timing slightly that an owner receives before his or her dog can be euthanized. He said he can get into that when they discuss that part if Council wants him to, or do it now, but maybe the best thing to do is start at the beginning and go to the end. Mr. Joe Holloway clarified, it was not just a dangerous dog, but a dog they had picked up.

Mr. Joe Holloway asked if the part where Mr. Taylor has included the Sheriff's Department should be local jurisdiction, such as the Town of Fruitland or Delmar. He said he knows Salisbury has their own animal control people, but Mr. Taylor wants to send the Sheriff's Department into the Town of Delmar to take care of an animal control problem, and he thinks that should be the Delmar Town Police. He then asked if that should be changed to the local jurisdiction, except in the County where it would be the Sheriff's Department, to which Mr. Taylor responded, he thinks this would only apply in the municipalities other than Salisbury. Mr. Joe Holloway clarified, that is what he is saying. He then asked if their police departments should be responsible for that instead of the Sheriff's Department, being they have police departments, to which Mr. Taylor responded, offhand he does not know. He said he thinks maybe it is best to keep it within the Sheriff's Department, but it is Council's decision and not his. Mr. Joe Holloway said the Sheriff's Department seems to have enough to do as it is, and the other towns have their own police departments.

Mr. Aaron Balsamo, Director of the Humane Society, came before Council. He said Mr. Taylor pretty much covered everything. He said they have gone over this quite a few times together, so, honestly, he just wants to get input from the Councilmembers, and answer any questions asked of him, or the Committee members. He said they can discuss anything that is still concerning as he knows in the past there have been concerns with language on certain issues and things like that, so he is definitely open to any discussion, and he is sure the members who are present are open to discussing as well.

Mr. Joe Holloway said he has a question about the 72-hour threshold for the adoption or euthanization notification. He then said, if somebody's dog is confiscated on a Friday, and they cannot get in touch with the owner, he thinks that is a pretty short time, to which Mr. Balsamo responded, if it is towards the end of the week or with a holiday, he has never seen anything in the writing, even with the old code, that designated between business days and calendar days. He said he has always directed the staff at the shelter and animal control to count it as business days, so weekends and holidays are excluded. He said, if his dog was running at large and was picked up, it is pretty unfair if Saturday and Sunday counted against him, and he had to get in there Monday, or if there was a holiday. He said they have always done business days on this. He said, when the animal comes into the shelter, one of the very first things they do is scan it for a microchip. He said, if the animal has a microchip, they can look up the number and contact the owner. He said the next thing they do is take a picture and place it on their website. He said then, once that hold period is up, if no one has contacted them or they do not have previous lost reports on that specific animal, they begin to do the behavioral assessment to place the dog up for adoption. He said, if they do have a microchip and on day two they make contact with an owner, they then start those three days back over again. He said that is how they typically do it, to which Mr. Joe Holloway responded, he thinks they need to include language on that. He said he knows that is what Mr. Balsamo does, but he may not always be the director. He said this is the law they are writing, so he thinks it needs to be clear. Mr. Balsamo said, if they want, they can add in specifically that it is business days. Mr. Joe Holloway said he would also like to see it a little longer than 72 hours as that could be a pretty short time for somebody. Mr. Balsamo said the State minimum is 72 hours from the time of pickup. He said every County Law he has looked up, shelter, or animal control agency he has talked to are different with some being 7 days, some 5 days, and some are the 3-day minimum, and it really is kind of up in the air. Mr. Joe Holloway asked if people do 5 days, to which Mr. Balsamo responded, yes, he has seen 5 days. He said he has seen 7 days, but he forgets which County. He said a lot of them stick with the minimum of the 3 days. Mr. Joe Holloway said he would be more comfortable with 5 business days. Mr. Taylor said he thinks that is something they can put in before this comes up for the first reading. Mr. Cannon said this is a recommendation for a change, so Mr. Taylor should be sure to take note of that.

Mr. Joe Holloway asked how Council feels about the Sheriff's Department with regards to animal authority. He said Executive Culver is present. He then asked what he thinks, to which Executive Culver, from the audience, responded, when there is a dangerous animal, they are always called out anyhow, but they have a lot on their plate right now. Mr. Joe Holloway clarified, he is talking about if it is in the Town of Fruitland or the Town of Delmar, and he feels they should be calling their police departments, to which Mr. Davis responded, it probably would be enforced by County Ordinance. Mr. Balsamo said, typically, when they get a call in Delmar or Fruitland, if the calls come in through 911 or the police department directly, they are called out with Fruitland or Delmar. He said, if Animal Control has an issue where they know the owner is going to be combative, or something along those lines, and they are in Fruitland, they call the Fruitland Police Department. He said, if they are in Delmar, they call the Delmar Police Department. He clarified, they do not call the Sheriff's Department. Mr. Joe Holloway asked if the way this ordinance is written is stating the Sheriff's Department is to be called, to which Mr. Taylor responded, it is to give them animal control authority, and does not prevent the process Mr. Balsamo is now using. Mr. Balsamo said his understanding of what is written in there is it would be giving them the

authority. He said he has his two Animal Control Officers, and, if one is on vacation and the other officer is in Willards, and there is a call in Nanticoke and a Sheriff's Deputy happens to be there, he would then have the authority to issue a citation for that if he is there, as opposed to waiting half an hour or 45 minutes for the Animal Control Officer to get across the County. Mr. Hall asked if there is special training required for the Sheriff for animal control, to which Mr. Balsamo responded, no, he would not imagine there would need to be. He said, if it is a citation, they would just need to be familiar with it. He said training for animal control can be sporadic as it is with getting training dates and things like that. Mr. Hall said he just wants it on the record that they do not have to send the Sheriffs to school, to which Mr. Balsamo responded, he would not recommend that. He said, for after-hours calls, weekends and nights, the Sheriff's Department is with them on most of those calls anyway.

Mr. Roscoe Leslie, Attorney, came before Council. He said, as far as the content of the changes, he has no problem with most of it, and he has been involved with this quite a bit in the nitty-gritty with Mr. Balsamo. He said one of his biggest issues is with formatting. He said some of the State Law provisions that have been incorporated are kind of just cut and pasted into this, and there are some inconsistencies with the terminology throughout the ordinance. He said it is unclear about what definition applies here, and what definition applies there. He said, as Mr. Taylor said, it is already State Law, so he does not know if they need to incorporate it. He said they do not incorporate State Law in other things that are applying, so he is not sure if they have to do it here. He said he just worries about the repetition and inconsistencies of terms. He continued, for instance, the dangerous dog provisions are in here, and then they have a dangerous animal provision, so there is almost the same content in two different places in the code, and he is not sure how that is really going to work out. He said he thinks some thought needs to go into looking at the document, and making all of the terms consistent throughout the document. He said there are just some definitional things he does not quite understand. He said they also did mention the exception reading "No animal may be declared potentially dangerous or dangerous if the injury was sustained by a person who was touching or petting the animal without the express permission of the animal's owner, while the animal is asleep, or in a condition or action in which it is not normally touched, such as eating, drinking, engaging with offspring, playing, growling, barking, sick, injured, etc." He said they added the sustained attack, but this is an exception that one could drive a truck through, along with the clear and convincing standard. He said, again, he thinks they made some changes that said it had to be a sustained attack, but he still thinks it is a very large exception. He said that, along with the clear and convincing standard at the Animal Appeal Board rather than a preponderance of evidence standard, is, basically, going to be really, really difficult to have a dog declared potentially dangerous or dangerous. He said, if that is what Council wants, that is fine, but he just wants to make them aware it is a very, very hard standard to prove, and the exception is very broad. He said he just wanted to raise that issue with Council.

Mr. Hall asked Mr. Leslie if there are any other issues he is concerned about that have not been addressed, to which Mr. Leslie responded, the State Law issues, the terminology, and inconsistencies in there are the big ones. He said there are other little things he has shared with them, but those are the ones he thought were the most important. Mr. Hall said his concern is, before they do another Work Session on this, these items should be resolved before they are brought to Council. Mr. Joe Holloway asked Mr. Leslie to send Council an email with his concerns. Mr. Cannon said an email would help, but it sounds to him like Mr. Leslie is almost suggesting that 30 percent of this document needs to be reworked. He repeated, from what Mr. Leslie is saying, it sounds like there is a great deal of it that he is suggesting needs to be reworked, to which Mr. Leslie responded, he does not have a problem with most of the content, but it is more the nitty gritty formatting. He said he raised the dangerous dog provision content, and, again, if that is what Council wants the policy to be, that is up to them. He said he just wants to make Council aware of how he thinks it will turn out, and he thinks it is just going to be very

difficult for animal control to declare a dog dangerous. He said everybody will appeal, and everybody will win the appeal. Mr. Kilmer said preponderance of evidence is about 51 percent. He then asked what percentage is clear and convincing, to which Mr. Leslie responded, it is more like 75 percent. He then asked Mr. Taylor if that is fair, to which Mr. Taylor responded, that is fair. He said they toyed with the two standards, but he thinks if they were taking somebody's property away from them under these circumstances, he thinks clear and convincing, which he does not think, frankly, is that hard to meet if there is a real situation with a dangerous dog and a witness. Mr. Leslie said preponderance of evidence is the standard.

Mr. Joe Holloway said the County entered into this back in 2007, he believes, when a child got hurt in Willards. He said there is a big difference between a dog dragging a child off a bicycle, mauling him, and just about killing him, and somebody walking up to a dog that is asleep and petting him, and the dog wakes up and snaps at him and nips his finger. Mr. Leslie said, generally, the way it is set up to be deemed potentially dangerous is "one free bite," and, if it happens again, it then moves up to dangerous. He said he thinks with this provision it still cannot be declared potentially dangerous if it is just a certain situation. He said the one bite rule is how it is right now, and they get one free bite. Mr. Kilmer said it states "If they are drinking or playing, is sick, injured, etc." He asked what if they took out the "etc.," to which Mr. Leslie responded, what else is a dog going to be doing besides those things. Mr. Taylor said he would like to add to this. He clarified, this is to distinguish between a situation where a dog just runs up and attacks someone. He said these are situations where, essentially, a person should not be touching someone's animal, and he does not think they can drive a truck through it. He said any of these dangerous dog provisions are subjective to a fairly significant extent, and one could ask what exactly is a dangerous dog. He said he thinks this is a very reasonable exception, and they have added that if a sustained attack results, then that exception would not apply.

Mr. Cannon asked Mr. Leslie to email Council his suggestions. Mr. Taylor said he has one other thought on this because his guess is, perhaps, there will be other comments. He said perhaps he and Mrs. Hurley will have to sit down again on this, and perhaps they could sit down with Mr. Leslie. He said that is just a thought, to which Mr. Cannon responded, he agrees. Mr. Taylor said it might save Mr. Leslie from having to write the email.

Mr. Cannon asked if the Sheriff's Office has been brought into this as far as a representative, to which Mr. Taylor responded, no. Mr. Cannon said he thinks it is very important because, if they are going to put anything in the ordinance in reference to the Sheriff's Office, they need to know what their involvement might be, whether it is licensing, or whether it is enforcement. He said he thinks they need to recognize this, and give them feedback on what their obligation is, and their ability to fulfill that obligation or not. Mr. Joe Holloway asked if this is any different than what is being done now since they are calling the Sheriff's Office anyway, to which Mr. Balsamo responded, the biggest difference would really be giving them the ability to write a citation if, for example, they see a dog running down the road, and it runs back to somebody's house. He clarified, this would give them the clear-cut authority of writing a running at large citation on the spot as opposed to calling Animal Control and telling them they saw a dog running at large, which then brings up the issue of writing a citation for something they did not actually witness. Mr. Cannon said this gives the Sheriff's Office the authority and the responsibility, so he just does not want to create this thing where somebody says they called the Sheriff's Department, and they told them to call Animal Control, and it all starts going back and forth again. Mr. Balsamo said the Sheriff's Office knows they have been working on this law, but they have not been asked, as far as he knows, about this part actually being written in.

Mr. Cannon said they will have to have another Work Session in reference to Mr. Leslie's information, and he would hope that after that they will be able to wrap this up because he knows it has gone on for quite a while. He said it has been carefully reviewed, but it is about time to wrap this up. Mr. Joe Holloway said it is better to take time and have it right, to which Mr. Cannon responded, that is true. He asked if another Work Session in two weeks is enough time, to which Mr. Taylor responded, he would think so. He said he thinks, in the meantime, as they have had some comments here today by Council and by Mr. Leslie, he and Mrs. Hurley should sit down with Mr. Leslie, and that would, perhaps, keep him from having to send an email. He said they could certainly go over this item by item. He said, if the Councilmembers have any further comments, as this is a long ordinance, or if there is anything they have not said and happen to think about, they can let him know. He said he thinks that meeting could be early next week.

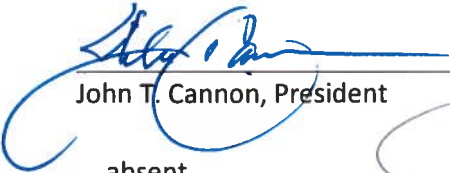
Mr. Balsamo asked if any of the committee members have anything they would like to add. Ms. Crystal Weimer, member of the Animal Ordinance Committee, came before Council. She said she does not have the law in front of her, but Mr. Taylor referred to a reasonable person concluding whether to seize a dog in reference to weather conditions and shelter conditions. She said the law talks a lot about unsafe and unsanitary conditions, and she was thinking that could be very subjective. She said what an unsafe or unsanitary condition could be to her, or to an animal control officer, could be completely different to a neglectful owner. She said she was wondering if maybe the unsafe and unsanitary conditions could be defined under the definition section. She said the term unsafe and unsanitary conditions is in there often, and maybe under definitions it could say "An officer should reasonably conclude the animal would pose an adverse risk to their overall health and safety" because, again, she thinks it could be very subjective as far as what Mr. Balsamo or his officer would consider unsafe or unsanitary, and what an owner would consider unsafe or unsanitary. She said she thinks it is very vague. Mr. Taylor said he will add one other thing. He said, rather than saying an officer would consider it, it should say a reasonable person because that really should be the standard. Ms. Weimer then asked who the reasonable person is because it could be different, to which Mr. Taylor responded, the problem is that an average person is not going to know what an animal control officer might think, and that could be variable as well. He said they cannot avoid the variability. Mr. Kilmer said the reasonable person standard is pretty common in law, and that is what is used throughout law in terms of what happens. Ms. Weimer asked if the officer would be the reasonable person, to which Mr. Kilmer responded, it would be up to the judge. Mr. Taylor said, if it were appealed, it would be up to the judge. Ms. Weimer asked if it would be enough for an officer to seize a dog if they thought the animal was in an unsafe or unsanitary condition, and whose decision it is for somebody to conclude that an animal is in an unsafe condition to seize it. Mr. Cannon asked if there is any reason to create that definition, or have a more specific definition, to which Mr. Taylor responded, as he said, he would use the reasonable person standard because that is very common. He said he understands it can differ as far as what a reasonable person would think, but nobody is going to know what an animal control officer would think, as that is also up in the air. He said he thinks, if it were appealed, the judge would probably tend to go to the reasonable person standard, so he thinks that ought to be in there. Mr. Kilmer said, if there was a husky outside in 95-degree weather unprotected, that is obviously unreasonable, whereas, if a husky was in 30-degree weather, it may be okay because of the dog, so he thinks they need to have some sort of leeway with the different types of dogs, and he thinks the reasonable person standard might be able to capture that. He said it is not the neglectful owner standard. Ms. Weimer said, since that is not in the verbiage, would that not be up for debate, to which Mr. Kilmer responded, if they wanted to appeal it. He said, if they have a judge who is a reasonable person, the judge would say it is clearly not reasonable to leave a husky out in 95-degree weather in direct sunlight for hours on end, even if the neglectful owner says that is what they always do. He said most legal cases come down to what a judge says. He said, regardless of what someone

thinks, the judge makes the decision, or the appeals board. Mr. Balsamo said, at some point, the judge will set the precedent on it. Mr. Cannon said he understands Ms. Weimer's concern because he is of the same nature and wants things crystal clear, but, unfortunately, when it comes to these types of definitions, it could be across the board. He said there are a million different interpretations, such as Mr. Kilmer suggested, and there are so many different types of dogs that all require different standards, and possibly different circumstances. He said he thinks the default is the reasonable person, and they allow that one element to be in there to cover their bases because, if they try to get too specific, there may be too many reasons for them to work around that legally. Mr. Joe Holloway said he thinks they run into the same thing with code enforcement a lot of times. He said what is one person's standard of living is not another person's standard of living, and that is very hard to define in code enforcement as far as the way people keep their yards or houses inside or out. He said it is pretty tough to define. Mr. Joe Holloway said, if an animal control officer approaches a residence where somebody is keeping an animal in an unsafe or unsanitary condition, and they bring it to the people's attention, with the thought of having to go to court, or the threat of a fine, they are going to improve the conditions pretty rapidly, he would think, for the most part, although there are exceptions. Mr. Kilmer said this gives the officers enough leeway to do what they need to do to protect the dogs, to which Mr. Balsamo responded, he feels it does. He said they take an abundance of pictures when they seize an animal because, if they write a citation or file a criminal charge, if a person challenges it and it goes to court, even for just a ticket to fight the ticket because they do not want to pay the fine, as far as he is concerned, the burden of proof is on animal control to tell the judge why they took the animal, and, at that point, it really falls on the judge to either agree or disagree. Mr. Cannon said he guesses what they are really saying is that, even though it gives the appearance of being somewhat vague, it would hold up in court, to which Mr. Taylor responded, yes. He said he will add that Baltimore County Council went through this same type of discussion on Oscar's Law that he mentioned earlier, as far as what the standard should be, and who should be the determiner, and they came up with the reasonable standard, which is typical. He said courts probably would look a little askance at it if they just said the animal control officer can make the decision based on whatever criteria he or she deems to be applicable. He said that is called arbitrary and capricious, and, often times, that type of a decision will get shot down in court, which is another reason why the reasonable person standard tends to be the one that is used.

Mr. Taylor said he, Mrs. Hurley, and Mr. Leslie will get together early next week, and, if Mr. Balsamo would like to come, that would be fine too. He said they will see if they can hammer out something either for another Work Session or a first reading. There was no further discussion.

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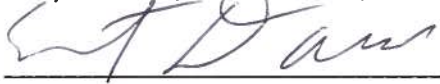
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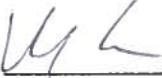
John T. Cannon, President

absent 

Larry W. Dodd, Vice President, District 3



Ernest F. Davis, District 1



Marc Kilmer, District 2



John B. Hall, District 4

Joe Holloway, District 5

absent

Matt Holloway, At-Large



Laura Hurley, Council Administrator