

UNAPPROVED MINUTES
Earlham City Council Meeting
June 17, 2019

The Earlham City Council will meet in special session on Monday, June 17, 2019, at Earlham City Hall. Mayor Lillie called the meeting to order at 7:00 p.m. and the following answered roll: Fredericksen, Griswold, Payne, Petersen, Swalla. Staff present: Clerk Hibbs, Chief Heimdal, Officer Sand. Also present: City Attorney, Sam Braland.

1. Approval of Agenda

Motion by Petersen, second by Swalla to approve agenda.

Roll: Ayes – unanimous. Motion passes.

2. Consider motion to rescind the vicious dog determination made June 10, 2019, on black Labrador owned by Cicily Hook, and start the process again.

Mayor Lillie stated the dog's owner was not notified, in the manner put forth in the Earlham Code, of the meeting held on June 10, 2019. The only witness at that meeting was Amy Willem, the owner of the dog which was attacked. So any determination made at that meeting should be rescinded.

Motion by Fredericksen, second by Payne, to approve to rescind the vicious dog determination on black Labrador owned by Cicily Hook.

Roll: Ayes – unanimous. Motion passes.

3. Comments made by Cicily Hook and other witnesses

Owner Cicily Hook, 125 NE Plum Avenue, stated she was sorry this happened to Amy Willem and her dog, and she would be willing to pay her veterinary bill incurred due to this incident. But she does not feel she will get a fair hearing today because of the June 10th meeting, and motioned this be taken before some other body so they could make the decision on her dog. Councilmember Swalla responded that they were elected to represent the whole city, not just one citizen. He added their purpose here is to keep the citizens safe. Councilmember Payne asked if she wanted a whole new council. She repeated she did not feel she could get a fair hearing, as she believed the council has had time to think about this and council already has their minds made up. She stated the attack was an unfortunate one-time thing, and the dog has never done anything like this. She added the dog has never gotten out of her fenced in yard before and she wasn't sure how it happened. She does not feel her dogs meets the requirement set forth for a vicious dog. Mayor referred to 57.01(2)iii, "could not be controlled or restrained by the owner at the time of the attack to prevent the occurrence." Ms. Hook said she couldn't be there because she was at work. Mayor said that didn't make any difference. Her dog was loose and it should have been under her control. He repeated 57.02(2)iii "could not be controlled or restrained by the owner at the time of the attack to prevent the occurrence." She repeated she wanted a different body to hear oversee the hearing because she felt the council already has their mind made up. The Mayor stated this is not a subjective matter. 57.02(2)iii is fact, not an opinion. She asked for a continuance as she felt she had the right to tell her story with legal representation. Her attorney was not present.

Office Justin Sand stated he was notified at 7:58 of a report of two dogs fighting at 445 NE 2nd Street. When he arrived he noticed 2 dogs, a black lab and a shepherd. The black lab had the shepherd by the neck and was shaking it. He stated he got out of his vehicle and said someone yelled, "Shoot the f___ dog." He then tried to separate the dogs. He grabbed the lab by its collar – wrapped his hand around the collar, essentially choking him. He stated he was bring his duty weapon around to get ready to shoot the dog, when one of the witnesses, Dan. Weber, used pepper spray on the animal. Sand was convinced that was only reason the dog let go. If Mr. Webber had not sprayed the animal, it would be a different circumstance because Officer Sand said he would have discharged a weapon in city limits, killing an animal. He said in speaking to witnesses afterwards, David Boyd (455 NE 2nd Street) stated he threw a patio paver (a large rock) at the dog. It struck the black lab and the dog did not release. Office Sand said Mr. Webber stated he sprayed the pepper spray on the dog twice. It was only after the second instance that the dog then release. After the dog let go, Sand said he placed the animal in the back of his vehicle and transported it to the city shop to store the dog until he could get him to the vet's office in order to quarantine him, since he did bite

two people – Ms. Willem and Mr. Weber. Officer Sand said he could not determine if the animal had been vaccinated for rabies because Ms. Hook was not home. He received the paperwork the next day when he came to move the dog from city shed to vet's office. He collected witness statements on the incident and spoke with Clerk Hibbs to get issue placed on the agenda for next council meeting. Mayor Lillie asked Office Sand if he was present at the June 10th meeting and Sand stated he was not.

Amy Willem, 135 NE Cherry Avenue, stated she was walking her dog by Dave Boyd's house when she saw a black dog running toward her. She told it to go home. Then it started charging across the street. She thought it wanted to play. It went into attack mode. Not like a normal "bicker" where one dog creates dominance and then goes away. She stated the black dog instantly went for her dog's throat and started flailing him around like a rag doll. She said she was yelling at the dog and the black dog kept flailing him. She stated her dog was not fighting back while the other dog was mauling his neck. She said her dog's eyes were hemorrhaging. Other adults heard her cries for help and came. Someone stuck a stick in the black dog's mouth so it couldn't bite down anymore. Ms. Willem stated she believed the focus of the dog was to kill her dog, because he kept trying to get a better bite on the neck. She and two men kept pulling on the dog so it couldn't get a better bite. Another witness, Christy Goodrich, said the neck was in the other dog's mouth for 13-15 minutes. Willem said luckily Mr. Webber had pepper spray. She said he mentioned to her it was a continuance 30 second spray before Office Sand got there. She said this was very traumatic for her as well as the people who witnessed this. She said her dog is very, very lucky to be alive.

Theresa Henry, 505 E 1st Street, stated she left for store at 7:40 p.m. and saw the loose dog. Said she didn't know who it belonged to. She returned from the store 8 minutes later. She was at East 1st & Plum and saw a commotion. She heard a lady yell "someone help me!". Got out of car and saw two dogs. The larger dog had the smaller dog by the throat. It started shaking the other dog, like a towel. She said Willem had the large dog's front leg trying to hold it back. Dave Boyd came out of his house and tried to restrain the dog by its collar. She noticed the smaller dogs eyes were starting to bulge because it couldn't get oxygen. Blood was coming from mouth. Some witnesses were calling for someone to kill the dog. She stated this was not a normal dog scrimmage. Usually you can pull them apart. The large dog kept shaking the smaller dog. Mr. Boyd attempted to throw a brick at the dog and it didn't work. Webber offered to get pepper spray. She tried to get stick in the mouth to keep it from biting deeper. When she saw children coming around, she said she became afraid and she hit dog with stick but it didn't budge. Another neighbor came out with a baseball bat and Ms. Henry begged her not to hit the dog. Boyd yelled for someone to call 911. She said Mr. Weber sprayed dog 3 times. She and other witnesses got hit with the spray. She said she thought about the milk in her car and checked the time. It was 8:18. She mentioned she couldn't sleep for 2 days. Stated she is not for destroying any animal. She said the fence is not going to work. He has gotten out before. She has witnessed that he has gotten very anxious when he can't get back in. She believes he would be happy somewhere else. Said she's has never seen anything like this. She hates to see the dog be destroyed, believes it deserves a second chance, just somewhere else.

Angie Ridgely, 935 E 1st Street, stated she is not a witness, but a mother of 5 boys and a dog lover. Said she is concerned by giving a dog three chances in a 12 months period. Her 2 young boys walk up that street all the time to get anywhere. They love dogs and they would have been in the middle of that attack in an instant. She said she is also a teacher, and asked please don't put children at risk. She stated we live in Earlham because it is a safe place to live, and we know we can send our kids on their bike and they'll come home. Does not believe she can let her children walk up that street alone. Mentioned you can't even walk your own dog anymore. She said this attack may have been a fluke, but we cannot take that risk on fluke things. She knows everyone here is involved with and cares about kids. She asked council to think strongly on that.

Dan Weber, 445 NE 2nd Street, stated he was the one with the pepper spray. He said he seconds everything the witnesses have said, with the exception that he pretty much used a whole can of pepper spray. Once it was gone he was going to head into house to get fire arm, because there was no reaction from using the pepper spray. He was covered in pepper spray. Stated that is what he had to add to their statements.

4. Discussion on comments and determination on status of dog.

Mayor asked council for any comments. Swalla stated he is a dog lover, he's owned, and raises dog, but the council was put in this position to take care of the town people, everyone, not just one person, but everyone in town. His option is dog is vicious and needs to be out of town.

Griswold second that. States he works at Post Office and deals with this all the time. Several carriers have had dogs come after them, but they made it back to vehicle safely. Mail is stopped at residence when that happens. An owner came in said my dog would never do this, they must be lying, my dog has never done this before. Postmaster let delivery resume, and 3 months later an employee ended up getting seriously bitten. If it were my dog that did that to another dog, it would not be here today. He would have taken care of. Griswold said one witness mentioned the dog had been out before. One more time and it might be a dead animal or a seriously injured kid. He doesn't want to be the one to say okay, you can keep it, and then maybe 3 months later, here we are again.

Petersen mentioned that if something happened, everyone here would feel bad.

Payne said there are dogs who haven't shown these tendencies, and all of a sudden, for whatever reason, they do. He stated if it were his dog, he couldn't trust to have it around to take that chance.

Motion by Swalla, second by Griswold, to deem the dog vicious.

Roll: Ayes – unanimous. Motion passes.

Mayor Lillie said this instance has caused him to learn more about this ordinance than he ever hoped he would have to. He said in accordance with the ordinance, and we after we have consulted with city attorney, it is the Mayor's responsibility to be removed the dog from town. The way the ordinance is worded, the only way the animal shall be put down, is as if there is not a location outside of town that can be found for it by the owners. **So, the order is that the animal will have to find residence outside of Earlham.** City Attorney Sam Braland, wanted to clarify: the ordinance states "the Mayor shall order the person to remove it from the City or to cause it to be destroyed in a human manner". He asked if the mayor wanted to leave the option? Mayor said no, as he doesn't believe the owners want to destroy the dog, but it is their option. Therefore, he so orders that it either be removed from town, or for owners to destroy the dog, their option.

Mayor Lillie informed the owner she does have the right to appeal to the District Court. If she does choose to appeal, the animal will have to remain outside city limits until then. Ms. Hook asked how to start an appeal. She was informed to submit it to Madison County Court House.

5. Adjourn

Motion by Fredericksen, second by Swalla, to adjourn.

Being there was no further business, the meeting was adjourned at 7:42 p.m.

Jeff Lillie, Mayor

Attest: _____
Mary Sue Hibbs, Clerk/Treasurer