

MINUTES OF THE RULES & ORDINANCES COMMITTEE
October 21, 2019
East Conference Room

Present: Chairwoman George and Councilmembers Litten & Rader

Others: Councilman Anderson, Mayor Summers, Director Butler, Assistant Director Swallow, and Deputy Clerk Lascu taking minutes.

Call to Order: 6:12 p.m.

AGENDA

Approve the minutes of the October 7, 2019 Rules & Ordinances Committee

Chairwoman George made a motion to approve the minutes from the previous committee meeting on October 7th, which was seconded by Councilman Rader. All members voted in favor. Motion passed.

Discussion on dog registration requirements

Councilman Anderson discussed a proposal to restructure fees at the Lakewood Animal Shelter to encourage registration with the county. In his research, he found that there is a fee associated with taking one's dog back from the animal shelter after it has been lost. Last year a total of \$1,600 were paid by owners to pick up their dogs. As currently structured, it costs \$20 for the first day and \$10 for each additional day if one's dog is being held at the Lakewood Animal Shelter. It costs \$20 to register one's dog with county for a year and \$200 for a lifetime registration. Anderson proposed that the county registration fee amount of \$20 per year be taken off of the fee amount that the Lakewood Animal shelter imposes on owners to incentivize them to register their dogs with the county. Members expressed support for the idea and questioned if an ordinance was necessary to accomplish this goal. Mayor Summers indicated that he will be meeting with Animal Control personnel on October 28th at 1:30 p.m. and will discuss the proposal with them. If legislative action is needed in order to implement the proposal, he will follow up with the members of the committee.

ORDINANCE 16-19 - AN ORDINANCE enacting new Chapter 110, Access Public Records, of the Codified Ordinances of the City of Lakewood to create transparency and timely easy-of-access to public records and set requirements for the city's online public records request system. (Placed on 1st reading and referred to Rules & Ordinances Committee 5/20/19; 2nd reading 6/3/19)

Assistant Director Swallow initially began discussion with a line by line review of changes she had made to Ordinance 16-19 based on discussions with the committee during its last meeting. In order to save on time and open up conversation, she provided a general alternative approach to

Ordinance 16-19 in the form of a draft public records policy, offering that it could allow Council the opportunity to make a statement on the importance and value of having strong public records availability. The current policy was recently augmented to include provisions regarding electronic records, some of which can be found in the proposed Ordinance 16-19. Members of the administration indicated that it could be a better approach because it is easier to change than an ordinance. Members of the Law Department also noted that they removed the section 110.99 from the initial draft of Ordinance 16-19, as the city does not have jurisdiction to enforce the penalty proposed in it. Mayor Summers stated that from an operator standpoint, a policy is more a living document and can be more nuanced than ordinances. Policies can also help the city anticipate the possibility of exceptions and allow a nimbler approach to a public records request. Council has the opportunity to affirm a public records policy through a resolution affirming the policy. Chairwoman George asked if most cities codify a public records ordinance or just have a policy in place. Director Butler indicated that every city must have a policy, and in his experience, he has never seen a local code take on a public records provision, which is not to say that it is not important. There is already a thick body of state law that governs all cities in the state regarding public records.

Members of the committee questioned that if Council chose to adopt a resolution supporting a public records policy, could the body require that it be notified if a future administration changed it. It was also mentioned that members believed that the county had adopted a public records ordinance and how a city adopting one would be any different. Mayor Summers and Director Butler stated that in home rule counties, such as Cuyahoga, they have the ability to do what cities do, however they historically have not exercised that right to legislate. It was added that city home rule trumps county level home rule, and that the administration is not suggesting that Lakewood could not adopt a public records law. It just may be easier to go the policy adoption route to make things easier from an operator standpoint, as there is large amounts of state public records law and previous court decisions to navigate. Policy resolution adoption would permit Council to weigh in on this important issue without running afoul of state code.

Members of the committee asked the administration to explain its reasoning regarding the removal of the penalty section of the ordinance. Director Butler gave an example dating back to 2016 when Lakewood passed its human rights ordinance. The ordinance stated aggrieved parties could sue his or her employer in court for a civil cause of action, which would lead to a court decision on the case. The city then learned that cities in Ohio cannot create jurisdiction for courts outside of municipal criminal offenses. The administration and Council create crimes that can be prosecuted in Lakewood Municipal Court by the city's judge. The courts are the exclusive domain of the state and outside of municipal crimes, the state courts hear every other type of case. Members further questioned whether Council could make it a criminal offense to not comply with a public records ordinance. Director Butler indicated that Council could make it a crime, however the presence of such a law could make it more difficult to hire people in the Law Department due to potential criminal penalties that could be imposed on an employee.

Members of the committee stated that they each would like to do a deeper review of the city's current public records policy, which was distributed at the meeting. It was discussed that Council could require that a public records policy only be amended by a vote of the body. Chairwoman George summed up the conversation by noting that the matter at hand is whether committee wants to go the ordinance or policy route in updating the city's public records procedure and made note of the significant burden of an ordinance conflicting with state code.

Director Butler gave an example case where the Law Department has taken significantly longer than average to make a decision on a public records request due to its complexity and it causing contradiction between records law and state expungement law. The case involved an employee who was disciplined years ago for not disclosing prior criminal convictions of a harassing/menacing nature. A hearing was held and the employee chose to resign instead of being fired, however the discipline issued to that employee became a matter of public record. Some of those prior criminal convictions have been expunged in court and the employee requested that the matters be expunged from his/her personnel file. The Law Department is still trying to figure out how to address the request and whether it can redact the file, as state law says to expunge it and records law says to keep it. Director Butler stated that his department can normally release a standard personnel file request within a day after redaction. He noted that when the city records request portal is up and running, the average turnaround time for a request should be a day or two. The new system will have a public facing component where the public can see how long a request is taking to fulfill. As a point of comparison, Cleveland's average turnaround time for a request is 28 days. In regard to the new city records request portal, Councilman Rader stated that he really liked NextRequest the most out of the 3 vendors that came to the city. He added that making a public records law that is criminalizing in nature would make it extremely punitive and makes him hesitant to codify an ordinance, however he would still like to go through the policy given by the administration at the meeting thoroughly. Councilman Litten suggested scheduling another meeting on the matter to review the policy in depth. Chairwoman George stated that the committee would like a provision requiring Council approval in order to change the policy added into the draft policy. Director Butler encouraged members to email him with other ideas that they would like to see included as well. Councilman Litten encouraged the drafters of the ordinance to make sure their intent is reflected in the policy. Councilman Anderson stated that he understands certain parties involved in the ordinance are beholden to their respective parties and campaign contributors. He added that the public records policy path makes it more conducive for the city to respond to public records requests.

The meeting was adjourned at 6:50 p.m.