

**MINUTES OF THE
SPECIAL MEETING OF THE
WASHINGTON COUNTY QUORUM COURT**

Tuesday, March 29, 2016
5:30 p.m.
Washington County Quorum Court Room

2016 MAY 20 PM 4: 07
BECKY LEWALLEN
CO. & PROBATE CLERK
WASHINGTON CO., AR

FILED

- 72.1 The Washington County Quorum Court met in special session on Tuesday, March 29, 2016. The meeting was called to order by County Judge Marilyn Edwards. She stated that the purpose of this meeting was to discuss the dangerous animal ordinance that was tabled at the March 17 Quorum Court meeting.
- 72.2 B. Pond led the Quorum Court in prayer and in the Pledge of Allegiance.
- 72.3 MEMBERS PRESENT: Daniel Balls, Rick Cochran, Robert Dennis, Lisa Ecke, Ann Harbison, Sharon Lloyd, Eva Madison, Sue Madison, Joel Maxwell, Gary McHenry, Butch Pond, and Bill Ussery.
- 72.4 MEMBER ABSENT: Harvey Bowman, Tom Lundstrum, and Joe Patterson.
- 72.5 OTHERS PRESENT: County Judge Marilyn Edwards, County Attorney Steve Zega; Interested Citizens; and Members of the Press.
- 72.6 ADOPTION OF THE AGENDA: Judge Edwards asked if there were any additions or deletions to the agenda.
- 72.7 **R. Cochran made a motion to amend the agenda moving Citizen's Comments, ahead of the Ordinance. The motion was seconded. The motion passed unanimously by those present by voice vote.**
- 72.8 **R. Cochran made a motion to adopt the agenda as amended. The motion was seconded. The motion passed unanimously by those present by voice vote. The agenda was adopted as amended.**
- 72.9 CITIZEN'S COMMENTS: County Attorney Steve Zega explained since a public hearing was not scheduled for this meeting, this would be a regular 15-minute public comment period with the standard 3-minute limit per person. If the Quorum Court moves the ordinance up to be considered before voting tonight, then there would be another public comment period before the final vote is taken.
- 72.10 John Everett, resident of Viney Grove located 3 miles north of Prairie Grove, addressed the Quorum Court stating he was there to oppose this ordinance. He assumes this ordinance was prompted by the tragic occurrence to a bicycle rider on Highway 265 about a month ago, and he finds it interesting

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that this ordinance does not solve that problem of a person having a dangerous animal running loose and takes the first bite as there is a three bite rule. He reported that they have a lot of bicyclists in Viney Grove with groups of 5 to 60 riders at a time riding past his property.

- 73.1 J. Everett addressed the portion of the ordinance that defines “potentially dangerous” dogs stating that it is so loosely defined and the consequences are so draconian that it virtually takes away dogs in the country. He stated the ordinance says if a dog approaches or chases somebody in a menacing fashion or apparent attitude of attack unprovoked, he is labeled a potentially dangerous animal. He pointed out that the bicycle riders come by with helmets and bright spandex on and it is hard pressed to believe that a dog would not approach or chase them because from the dog’s perspective, they do not look like people they are used to, but rather look like aliens or terrorists. He stated once labeled as potentially dangerous, the owner has to pen up the animal, microchip it and possibly have it impounded.
- 73.2 J. Everett further stated that the ordinance states a law enforcement officer can take a written complaint by a bicycle rider and magically label the dog to be a potentially dangerous animal. Further, he has experienced bicycle riders in Viney Grove tormenting the dogs.
- 73.3 Cheryl West, resident of Viney Grove, addressed the Quorum Court stating that John Everett had pretty much covered everything she had to say, though she was curious as to who would be policing and enforcing these situations; to which County Attorney Steve Zega responded stating that it would be complaint driven with a reporting system by someone who is willing to testify in court that a particular dog did x, y or z and be able to identify the animal.
- 73.4 C. West asked that the Quorum Court take into consideration that their lives in the country have been changed by the many bicyclists they have on any given day and at times, this can be very dangerous. She reported times when she and her husband were attempting to move farm equipment across the roads and the bicyclists were there and would not move for them. She stated they understand why the bicyclists would want to come out and enjoy the beautiful countryside, but would just ask that they be respectful of the residents as well.
- 73.5 J. Everett then presented a petition signed by many people opposing this ordinance.

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- 74.1 Verna Hardin, resident near Devil's Den, addressed the Quorum Court stating they have an enormous number of cyclists in their area of the county as well and she is there to support the animals and rural citizens who deal with this. She stated as a 30-year resident of this area and a dog owner, most people she knows are good dog owners and anyone with a vicious dog does not keep it. By the same token, she stated that they have bicyclists in the area and their dogs do what they expect them to do as their first line of protection; they bark which alerts her that someone is on her property. She disagrees with the term "potentially dangerous" as anything can be potentially dangerous. Ms. Hardin stated that she too has witnessed the cyclists harass the dogs as they pass by her property. She stated that there must be a happy medium on how to deal with this situation.
- 74.2 Paxton Roberts, resident of Fayetteville and Executive Director of the Bicycle Coalition of the Ozarks, addressed the Quorum Court stating he was there to speak on behalf of many area cyclists. He concurs with those who have spoken that this is definitely a symbiotic relationship that needs to be had between the people who enjoy walking, running or cycling the countryside and those who reside in the county with their dogs. He grew up out in the country and has dogs himself and very much wants something to come in place that protects the dogs, their owners, and people using the roads. P. Roberts stated that cycling is becoming a large past time in this region with this area being known as an International cycling destination. He voiced his support for the ordinance and agrees that that something is needed to protect everyone concerned, stating that he has seen dogs killed from hitting bicycles and being run over and also knows dozens of people who have had their lives permanently changed from a dog chasing and causing accidents or attacking the cyclists, runners or walkers in public areas. He further thanked the Quorum Court for the time they have put into addressing this issue.
- 74.3 **R. Dennis made a motion to suspend the rules and allow John Everett to continue his conversation. A. Harbison seconded.**
- 74.4 **Judge Edwards called for a roll call vote on the motion to suspend the rules.**
- 74.5 **VOTING FOR: E. Madison, S. Madison, J. Maxwell, G. McHenry, B. Pond, B. Ussery, D. Balls, R. Cochran, R. Dennis, L. Ecke, A. Harbison, and S. Lloyd. The motion passed unanimously by those present. The rules were suspended.**

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- 75.1 John Everett readdressed the Quorum Court stating if they are just hell bent on passing a dangerous animal ordinance, there should be some dramatic changes to this one as it is extremely one-sided and unfair, and he doubts that is the intent. He stated the ordinance states if he has a dog that has been labeled as a potentially dangerous dog, it is a misdemeanor if he does not follow the rules and if a complaint is made and substantiated, the dog owner has to pay for the investigation. He stated in order to create an entirely level playing field, if the complaint lodged is not substantiated, that the complainant has to pay for the investigation as it would create some economic incentive for the complaints not be made as a harassing technique. Further, he suggested that it be a misdemeanor for the complainant to make a complaint that is not substantiated. J. Everett stated he is sure there are some cyclists that operate with a black heart, and to say that they can lodge a complaint and require him as a dog owner to jump through the hoops and, if substantiated, he gets to write a big check, have his dog castrated, microchipped and impounded, and then go to dog obedience school and the cyclist does not have to do anything other than write a note to Sheriff Helder that Mr. Everett's dog approached him in a menacing manner.
- 75.2 J. Everett stated another portion of the ordinance has an ambiguity in it that needs to be corrected is when it describes a dangerous animal. They talk about a dog that approaches someone on a public way of some kind and by reading the ordinance, he cannot figure out if that means the bike riders on the public street or the dogs on the public street or both. He stated he believes their intent was to say if the dog is on private property, he can bark, chase and approach; and if the cyclist is on public property, then no harm, no foul. He addressed the comments made about why bicyclists want to ride in rural areas such as Viney Grove, and stated one of the curious parts to him is that taxpayers have built \$16.0 million in bike trails, being able to ride from here to Missouri on designated trails built for bikes. He stated that the bike riders are becoming an enormous nuisance to those who live in the county when they refuse to get out of the way of the residents working and traveling on these roads. In closing, J. Everett stated he sees this ordinance as trying to drive a thumb tack with a sledge hammer to approach it in this fashion and he believes it should be defeated.
- 75.3 AN EMERGENCY ORDINANCE AMENDING WASHINGTON COUNTY CODE CHAPTER 2.7 IN REGARD TO DANGEROUS AND POTENTIALLY DANGEROUS ANIMALS: E. Madison introduced **An Emergency Ordinance Amending Washington County Code Chapter 2.7 In Regard To Dangerous And Potentially Dangerous Animals.**

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- 76.1 In response to a question from S. Madison, County Attorney Steve Zega stated that the ordinance still has an emergency clause on it and if it passes by 10 of the 12 JPs present, two-thirds of the full Quorum Court, then the emergency clause would go into effect. He further noted that this ordinance was actually tabled at their last meeting, so it comes back on first reading at this meeting.
- 76.2 A. Harbison concurred with Mr. Everett that it is not clear in this ordinance that the bicyclers are on public property and as long as dogs are on private property, there is no problem. Therefore, she suggested that they table this ordinance again so they can get it right to protect not only the bicyclers, but also the dog owners.
- 76.3 County Attorney Steve Zega suggested in lieu of tabling the ordinance, that they send the ordinance back to County Services Committee.
- 76.4 **A. Harbison made a motion to send the ordinance back to committee to be reworked. R. Cochran seconded.**
- 76.5 E. Madison stated that this is the third time that they have been together to discuss this ordinance. This is not new law, but law provided by County Attorney Zega from a state that has had this law on the books since 1987. She did not create the language and they have all refined it. She believes the people that have been the most affected by this are disappointed that the court keeps passing the buck on it and if it is not acceptable, vote it down and someone else draft an ordinance that solves the problem. She further stated that it will be coming back to the committee that already passed it out which makes no sense, and she believes they are not being courageous in facing the issue. E. Madison stated that since she has been on the Court, there has been no other ordinance subjected to a public hearing and they added additional notices in the newspaper of this public hearing and no one came and spoke against the ordinance with this being the first opposition from the public.
- 76.6 **County Attorney Zega stated a point of order that a motion to recommit is not debatable.**
- 76.7 **Judge Edwards called for a vote on the motion to send the ordinance back to committee to be reworked.**
- 76.8 VOTING FOR: J. Maxwell, B. Pond, R. Cochran, L. Ecke, A. Harbison, and S. Lloyd. VOTING AGAINST: E. Madison, S. Madison, G. McHenry, B.

- Ussery, D. Balls, and R. Dennis. **The motion failed with six members voting in favor and six members voting against the ordinance.**
- 77.1 **E. Madison made a motion to suspend the rules and read the ordinance by title only. S. Madison seconded.**
- 77.2 A. Harbison verified that they were now back to the original ordinance.
- 77.3 **Judge Edwards called for a vote on the motion to suspend the rules and read the ordinance by title only.**
- 77.4 VOTING FOR: E. Madison, S. Madison, J. Maxwell, G. McHenry, B. Pond, B. Ussery, D. Balls, R. Cochran, R. Dennis, L. Ecke, and S. Lloyd. VOTING AGAINST: A. Harbison. **The motion passed with eleven members voting in favor and one member voting against the motion. The rules were suspended to read the ordinance by title only.**
- 77.5 County Attorney Steve Zega read **An Emergency Ordinance Amending Washington County Code Chapter 2.7 In Regard To Dangerous And Potentially Dangerous Animals** by title only.
- 77.6 **E. Madison made a motion to adopt the ordinance. S. Madison seconded.**
- 77.7 J. Maxwell asked that when they are talking about the animal owner's property, at what point does it become not the property owner's property and become public property for the county roads and state highways that they are discussing; to which County Attorney Steve Zega responded that the public has a right to traverse, ingress and egress, on a highway as a public right-of-way so while the property owner owns it in theory, it is essentially a permanent easement granted to whichever government body owns the road.
- 77.8 J. Maxwell stated that he owns both the County road completely and up to the center line for the State highway in front of him, so he can see where this is going to be cumbersome to interpret if they are not clear at the start; and S. Zega responded stating that criminal statutes are strictly construed in favor of the accused and this could be clearer because they are giving the prosecutor an argument to win potentially.
- 77.9 **J. Maxwell made a motion to amend the Section 2.7-31 of the Ordinance to also hold complainants responsible for costs of an investigation in the event of an unsubstantiated claim. G. McHenry seconded.**

- 78.1 E. Madison stated that this is the existing ordinance and not part of what they are proposing to change, so she is confused about why this is an issue and further, she does not know how they do this when the complainant may have been making the complaint in good faith; to which S. Zega responded that she is correct that this is Washington County's law currently and it would certainly be unusual in western jurisprudence. He stated that there is a misdemeanor on the books for filing a false police report so if the officer believed that the complainant was acting in malice and bad faith, the officer could file that charge and as part of that statute, reasonable costs of the investigation can be assessed.
- 78.2 E. Madison noted that people make complaints in good faith, but law enforcement may find that there are not ample facts or witnesses and she would hate to think that they would punish those people by requiring they pay for the investigation. She stated she would rather trust law enforcement to find out if a false report was filed. She further stated that this is not part of her ordinance, but existing and if they have a problem with it, they should strike it completely instead of trying to shift the cost the other way. She stated that she can therefore not support the amendment.
- 78.3 S. Madison stated that she is concerned with the language if it is unsubstantiated by a court because a lot of these complaints will be handled by law enforcement or animal control. She noted if they cannot find out who the proper owner of the animal is, that might result in it being unsubstantiated. She stated she is concerned about changing it to disagree that might take a lot of incentive for establishing that first problem that a dog has and if you take away the option when a dog is first threatening, then its next bite or attack may be that much more vicious because they were not able to label it in the beginning as being potentially dangerous.
- 78.4 R. Dennis stated he is for having a dog ordinance because his grandson has to get off the school bus and walk by a boxer and a pit bull that were tied up, but have now been turned loose, so he comes to their house until he can get a ride home. He further stated his neighbor's dog that is rather intimidating looking was mistakenly identified as having knocked another neighbor down. Therefore, he stated common sense dictates that they have something in the ordinance to protect both ways because emotions run high and mistakes can be made. He stated that they are trying to write a law that encompasses everyone, not just cyclists and his grandson needs some protection against these dogs. R. Dennis stated he has advised constituents that this ordinance is complaint driven and if a complaint is not made, they have nothing to worry about.

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- 79.1 B. Pond stated that he believes E. Madison has done some very good work on this ordinance, but because of some public comments made at this meeting, it has been brought to light that it does need more thought and more work.
- 79.2 **S. Madison called for a point of order that discussion should be on the motion to amend the ordinance.**
- 79.3 B. Pond stated he has no problem with J. Maxwell's amendment as long as it covers the concerns of the public made at that meeting. He asked if they could have public comment on the amendment; to which County Attorney Zega responded that they would have to suspend the rules.
- 79.4 **B. Pond made a motion that they suspend the rules and allow public comments on the amendment. R. Cochran seconded.**
- 79.5 **Judge Edwards called for a vote on the motion to suspend the rules allowing for public comment on the amendment.**
- 79.6 **VOTING FOR: J. Maxwell, G. McHenry, B. Pond, R. Cochran, R. Dennis, L. Ecke, A. Harbison, and S. Lloyd. VOTING AGAINST: E. Madison, S. Madison, B. Ussery, and D. Balls. **The motion passed with eight members voting in favor and four members voting against the motion. The rules were suspended to allow for public comment.****
- 79.7 **Citizen Comments:** John Everett addressed the Quorum Court stating that the motion to amend the ordinance goes to the idea that filing a false police report is an answer to this problem which it is not. He stated in order to be guilty of filing a false police report, they have to show criminal intent, but the ordinance is stating whether it is substantiated or not. He does not believe it is fair to say if it is substantiated, the dog owner pays and if it is not substantiated, the public pays. He believes there should be some economic disincentive to the bicyclist, walker or neighbor who does not like him or his dog and wants to get the police involved, and he believes the amendment addresses that problem.
- 79.8 Paxton Roberts, resident of Fayetteville, addressed the Quorum Court stating that he thought there was already a procedure for dealing with an unsubstantiated claim; to which County Attorney Steve Zega stated that in filing a false report, you have to tell a lie to the police that a dog attacked when it in fact did not; but if you in good faith believe a certain dog attacked

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- you and the officer determines through investigation that it did not and does not file a report, that is not filing a false police report.
- 80.1 P. Roberts stated he agrees that the public should be protected from false claims, but if someone was placed under a financial burden after they had been chased or attacked prohibited them from calling, he can see this being a potential issue. He believes that some people may then be scared to file a legitimate complaint if they did not have a video or photo which would be the flip side of this.
- 80.2 In response to a question from L. Ecke, Dallas McClellan, Enforcement Captain with the Sheriff's Office, stated that a call from someone stating that they had just been chased would be immediately investigated.
- 80.3 S. Madison stated to her what will be the undoing of this entire ordinance is if someone walking home from the school bus or jogging with no one else around and they are chased by a dog and they do not video it with their phone, they probably would not call it in figuring no one would believe them, and then they would never get to step two with that dog that was threatening. She believes the whole point of having the potentially dangerous language is to identify an animal before it goes on to do a truly vicious attack. She therefore believes that J. Maxwell's motion, while attempting to add an air of fairness will take a lot of the potential good out of this ordinance.
- 80.4 J. Maxwell stated in the event that there is a dog chase or a menace with no video or witness, what would the Sheriff's Department do with such a complaint, whether this amendment is in the ordinance or not, because it becomes very difficult to do anything additional with such a complaint anyway. He questioned whether the Sheriff's Department has other recourse in this event because if there is nothing to approach, it may not make a difference for this amendment to the ordinance.
- 80.5 Captain McClellan from the Sheriff's Department addressed J. Maxwell's question stating under the County's current ordinance, if someone calls with the complaint of a dog chasing a runner or bicyclist, they would go out, take a statement from the complainant, talk to the dog owner, and then make a determination if that dog was vicious. This determination would be made from whether there had been other calls regarding this dog, questioning the dog owner about whether the dog has a history of biting, and how the dog acts towards them. He concurred with Mr. Everett that dogs act different when bicyclists go by compared to people standing around. He stated that

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they would err on the side of caution when using their own discretion in deeming a dog vicious or not.

- 81.1 J. Maxwell asked what would the cost of the investigation end up costing the complainant if such a claim was unsubstantiated; to which Captain McClellan responded that their deputies are paid an hourly rate and a general cost of what it costs to operate a vehicle per hour and probably would not be exorbitant.
- 81.2 A. Harbison asked how the proposed ordinance is different from what they currently have; to which Captain McClellan responded that there is due process for the dog owner if they do deem the dog vicious that they have not had in the past. Currently if they deem a dog vicious, they do not issue a citation, but rather tell them what they have to do to keep people safe such as keeping the dog penned up.
- 81.3 A. Harbison stated that she likes things short and simple and this ordinance has a lot of terms being used, but she really does not see much of a difference from what they currently have in place; to which D. McClellan responded that the difference is what the dog owner has to do if their dog is potentially dangerous as far as confining the dog compared to what they do now which is nothing or all. Further, he stated if the dog owner does not agree with the findings of the Sheriff's Department declaring the dog potentially dangerous or dangerous under the new ordinance, they have the right to appeal to the County Court and go through the appeal process.
- 81.4 B. Pond asked if the amendment they are discussing leaves the same amount of discretion for the officer to determine that a call was bogus or not so that a complainant would not be charged for the investigation; to which D. McClellan responded like with any other criminal charge, they have to show that the person intended to commit a criminal act or in this case intended to mislead them in making the charge.
- 81.5 E. Madison stated that the situation that Captain McClellan has talked about where they go out and decide that they cannot substantiate a complaint, the way she understands the proposed ordinance, they are talking discretion in regards to pursuing them for a false police report and the proposed amendment does not allow discretion and would require a complainant making an unsubstantiated complaint be required to pay for the Sheriff's services. She stated she does not believe the County should ever be in the business of charging citizens who file complaints about violating county ordinances and this would not be a good precedent to start. She stated she

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would be afraid to call the Sheriff's Office for fear that the financial consequences would come back on her regardless of her good faith or not in the event that the Sheriff's Office in their exercise of excellent discretion decides they cannot pursue her complaint further.

- 82.1 E. Madison further stated that there is not parity in the situations because that case will never go to court. The court could impose those fees, so the way it is drafted does not work, but on the flip side the way it is currently drafted, the person who is being held responsible as the dog owner has violated county ordinance. As they require in many instances, if you violate an ordinance, you pay the court costs which is the process. She suggested that they think really carefully about whether this is a path they want to go down because she cannot imagine because a complaint is substantiated, that they are going to start handing citizens bills for the services they already pay for through their tax dollars. She stated if the Quorum Court is this concerned over this provision, they need to strike 2.7-31 from the existing code and leave it alone and not start passing the costs of Sheriff's investigations off on citizens.
- 82.2 J. Maxwell stated perhaps wording that would make this simpler would be instead of "unsubstantiated claim" that "if it was deemed a frivolous claim by the law enforcement officer", that would give them the discretionary ability to make the call and this would give people the right to make viable complaints. He further stated that they again are talking about a fee around \$25 which would not be a prohibitive fee for people.
- 82.3 Captain McClellan responded to J. Maxwell stating if there was a case where someone intentionally filed a false report on anything that they investigate, they would not be charging them with a county ordinance, they will charge them with state law. He stated the key word for them is that they have to prove the intent of it which sometimes is very hard to do.
- 82.4 County Attorney Steve Zega concurred with Captain McClellan and for that reason when they use the word "frivolous" they enter into some interesting legal territory and he is not sure they necessarily want to put law enforcement officers in that position. Legally speaking he does not know that they should use the word "frivolous" except in the context of a civil action.
- 82.5 J. Maxwell stated the intent is to keep extra additional complaints at a minimum as they do not want to overwhelm the Sheriff's Department with numerous calls because a dog barked at someone and he believes it has the potential to really become burdensome. He stated the intent of the original wording is prevention so that dog owners and property owners sort of police

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themselves on the front end because they know there is an expense to them for the investigation. He stated "frivolous" may not be the right word, but his intent with the amendment is to give the folks registering the complaints the same idea of pause for thought before they file a claim that might be frivolous or very difficult to follow up on.

- 83.1 County Attorney Zega stated for that purpose, he does not think a word would mirror getting back into the policy areas that the JPs are talking about deterring people who make complaints in good faith. He stated if you want the same moment of pause upon the complainant that it might have upon the dog owner, they have to use the same kind of wording and the wording in the ordinance now is substantiated or unsubstantiated. He does not believe there is a whole lot of room between those things when you beyond that where there is real malice and someone is lying about an incident that is covered by the Sheriff's Department.
- 83.2 R. Dennis stated it is amazing how so few dogs cause so much trouble because it is the bad ones causing it to be bad for everybody else. He questioned what happened to the dog involved in the recent attack on Highway 265 as he had had a neighbor tell him that the dog is currently running free; to which Captain McClellan responded that it should not be running free and if it is, they are violating County ordinance. They periodically go by this area, but they answer a lot of calls in a day's time, so they will pay these people a call as this is a citable offense.
- 83.3 In response to a question from S. Lloyd, Captain McClellan stated that the cost provision in the ordinance does not mean that there is a cost assessed to someone every time a complaint is called in. He reiterated that the cost factor in the state statute is that undue cost was caused to conduct an investigation on an incident that was not true and they have to prove that there was intent to do that.
- 83.4 R. Cochran stated that J. Maxwell's amendment states "by the court" not by the law enforcement officer and this in his mind means if it went to court and the plaintiff lost, that is the only time they would be charged with a cost.
- 83.5 **With no further discussion, Judge Edwards called for a vote on the motion to amend the ordinance to also hold complainants responsible for costs of an investigation in the event of an unsubstantiated claim.**
- 83.6 VOTING FOR: J. Maxwell, G. McHenry, B. Pond, R. Cochran, L. Ecke, and S. Lloyd. VOTING AGAINST: E. Madison, S. Madison, B. Ussery, D. Balls,

R. Dennis, and A. Harbison. **The motion failed with six members voting in favor and six members voting against the ordinance.**

- 84.1 S. Madison stated that the original ordinance now before them in consideration of the public comments made, she noted that Washington County has been changing fairly dramatically which some of them do not like and some of them just have to tolerate, but this is not an exclusively rural under populated county anymore. She noted there are subdivisions out in the county that are more densely populated than the subdivision where she lives inside Fayetteville; and the public roads and trails in the county are available for use by the public residents and visitors jogging, skateboarding, skaters, bicyclists and mothers pushing baby strollers and they have some obligation as a court and as a county to protect them. She stated because of that obligation to protect their residents and visitors, they need to move forward with this ordinance at this meeting to put some steps in place to identify potentially dangerous animals to prevent another vicious attack on a citizen that they are obligated to protect.
- 84.2 Judge Edwards reported that the petition that was turned in by Mr. Everett earlier in the meeting contained 109 signatures.
- 84.3 B. Ussery addressed Ordinance #5.2 that was distributed stating that this version came about following a discussion with Paxton Roberts of the Bicycle Coalition and the Sheriff's Department in a meeting where they reviewed the ordinance. He stated that when this problem first came up, he realized that part of it was a matter of communication and that there is a responsibility on everyone's part and things that both the bicyclists and dog owners can do. He stated that the bicyclist or walker has to take the time to identify the dog and once the Sheriff's Department talks to the landowner, at that point a determination would be made. He stated the ordinance addresses either the dangerous or potentially dangerous dog, but does not address the dog that runs out and wants to lick them but is not dangerous except from the point that a bicyclist going 25 or 30 mph down the road, gets knocked over and injuries are often incurred. B. Ussery reported that the Sheriff's Department stated a high percentage of the time, once they talk to the dog owner who is usually very gracious to be a good neighbor, but it is unfortunate that this ordinance is written for people who are not good neighbors. Therefore, he stated that they tried to address a way in Ordinance #5.2 to protect the dog owners and the bicyclists as well. He believes that they are probably only a few dogs causing most of the problem and once this is addressed, he believes the bicyclists will be protected and dog owners, once they understand the rules, will do their part. He stated he would like to see them

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consider Ordinance #5.2 instead of #5.1 as it is a collaboration of all people involved that deal with this daily.

- 85.1 R. Cochran stated the title has the word "emergency" which means it would become law immediately upon passage and he does not believe that is the appropriate way to give this to their citizens in the county and instead whatever they finally decide on, should give them some time to understand what the new rules turn out to be.
- 85.2 **R. Cochran made a motion to amend the Ordinance striking the Emergency Clause from the Title and Article IV of Ordinance #5.1. A. Harbison seconded.**
- 85.3 E. Madison stated if they pass it tonight without the emergency clause, they could be looking at it not becoming into effect until August and the people this concerns would prefer that they move a little faster than that.
- 85.4 S. Madison stated that thanks to R. Dennis, they considered there was enough urgency to getting this ordinance passed and on the books, that they scheduled this special Quorum Court meeting instead of waiting until next month and incurred that expense. She stated in addition they have heard from the public, there have been newspaper articles about this and Facebook posts, so there has been a good amount of notification. She stated as they move into the summer months, they will have more walkers, runners and bicyclists along our public trails and roads and if they remove this emergency clause, they will have sat by and done nothing to address a potentially dangerous situation. By passing this ordinance at this meeting, they are not slamming a door forever because the law is changeable and they can consider B. Ussery's amendment next month and hear more comments and she believes they should defeat R. Cochran's motion.
- 85.5 L. Ecke stated that she does not believe decisions should be made when people are emotional. She stated it is her belief that human beings are above dogs, cats and pets and she values human life above them and human beings deserve the protection of one another. She stated those citizens who have spoken at this meeting are good neighbors and she does not believe this ordinance is about them, but about those who are not good neighbors and not being responsible pet owners. She stated she does not like to pass anything quickly because they need to think about things to make an educated decision, and does believe they need to pass an ordinance that protects human life.

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- 86.1 B. Pond noted at their last meeting the reason he voted to table the ordinance was to give the public and property/dog owners more time to come in and give them input and did not have anything to do with not wanting to pass the ordinance. He concurred with L. Ecke that they need to give this enough time to get it right and when they do get it right and to the point that everyone concerned can live with, they can suspend the rules to pass it.
- 86.2 A. Harbison referred to Captain McClellan's previous statement that the difference between the two ordinances is that they are giving the animal owner due process so they really do have protection for humans from the Sheriff's Department now. She stated that the Sheriff's Department has more dog calls than anything else and they are trying to strengthen the ordinance so that the Sheriff's Department can take care of the dog problem. She stated that removing the emergency clause is not an issue because the old ordinance is in place to protect the public. She stated it seems like the more words they use, the deeper they get and she believes the fewer words they use, the better off they are.
- 86.3 **B. Ussery called for the question.**
- 86.4 **With no further discussion, Judge Edwards called for a vote on the motion to amend the Ordinance, striking the Emergency Clause from the Title and Article.**
- 86.5 VOTING FOR: J. Maxwell, G. McHenry, B. Pond, R. Cochran, A. Harbison, and S. Lloyd. VOTING AGAINST: E. Madison, S. Madison, B. Ussery, D. Balls, R. Dennis, and L. Ecke. **The motion failed with six members voting in favor and six members voting against the ordinance.**
- 86.6 **B. Ussery made a motion to amend Ordinance #5.1 with #5.2. L. Ecke seconded.**
- 86.7 E. Madison stated that most of them saw B. Ussery's changes to the ordinance that evening and if they are concerned about passing ordinances in a hurry, she is concerned about making a change to the ordinance this significant that was not publicized, posted or on the agenda. She would like to see them put the changes in #5.2 on hold for further input as she is concerned that it is trying to address with #5.2 the fact that they do not have a leash law in the county which most definitely warrants extensive public discussion. She commended B. Ussery for the work he is doing and it is important to consider that third category, but suggested that they focus on

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#5.1 and work to perfect it and consider #5.2 as a great starting place on a bigger discussion about a leash law.

- 87.1 B. Ussery stated this is exactly the reason he has asked these people to come forward and talk so that they can all have an understanding. He stated many things came to light in their discussion at the Sheriff's Department and he believes if they can take a few minutes to discuss that at this time that it will really help to clarify much of this and understand how it came about.
- 87.2 S. Madison stated that she has not even read #5.2 as she did not see it until she arrived at this meeting, but as a procedural matter she was confused about B. Ussery's motion to substitute.
- 87.3 County Attorney Steve Zega explained that another JP can amend a potential ordinance at a Quorum Court meeting without it having to go back to committee. He did not believe that sponsorship was a legal requirement for an ordinance to pass and if the Court were to pass the ordinance at this meeting, it could conceivably pass without a sponsor.
- 87.4 S. Madison stated that her previous experience has been if a sponsor decided to pull a Bill down that was the end of it.
- 87.5 S. Zega stated that the custom of this Court which is somewhat a deviation from Robert's Rules has been to allow a sponsor or sponsors to recommit or pull down an ordinance on their own, and by Robert's Rules that requires permission from the body. He stated that the reality is also that a frequent parliamentary tactic is to amend a bill to the point that it is unpalatable and impassable, including to the sponsors. Therefore, he stated it was completely appropriate for B. Ussery to do this tonight and if both of the original sponsors were to say they did not want this ordinance now to pass as stated, if their fellow JPs disagree, he believes it becomes law anyway.
- 87.6 Captain McClellan stated that he met with Mr. Roberts yesterday prior to the meeting with B. Ussery to discuss the reporting system that they were intending on using if this ordinance was passed. He stated because of the due process for the dog owner and higher stakes for a dog deemed potentially dangerous or dangerous, they did not want to get anything wrong, so they felt that the cyclist or walker would have to come out to the scene to identify the dog that chased and tried to bite. He stated that during that conversation, Mr. Roberts mentioned that there are dogs that just chase because it was fun and did not try to wreck or bite them, and it was mentioned to just give those dog owners a warning about their dogs coming out on the

road which was not an option in the current ordinance. Mr. Roberts reported that there were more wrecks caused by dogs than bites and this brought up the term "hazardous dogs" and not putting those dogs under the same umbrella as "potentially dangerous" which under this ordinance require that the dog be spayed or neutered, microchipped, put in a kennel, and attend obedience school which is very costly for a dog that may not have been aggressive at all. Captain McClellan stated that this brought them to where they are now at the first tier or "hazardous dog" where even the complaint called in did not believe the dog was vicious and that way the dog would be deemed hazardous, the owner would be warned of that and if another call was made, then law enforcement would take the next action and deem the dog "potentially dangerous."

- 88.1 B. Ussery added that the "hazardous" dog would be micro chipped at the time of the first call so that it could be tracked and if there were a second or third offense, could be moved to the next level. He stated this would give them the chance to warn the dog owner that needed to be warned instead of having to go through the procedures required for a "potentially dangerous" or "dangerous" dog.
- 88.2 R. Cochran stated that the extra layer added in #5.2 does have merit in his mind and does not necessarily constitute a leash law as was suggested by E. Madison, but would identify dogs that tend to roam and get in the way of people in the road. One of his constituents, a woman in her 60's, has a friendly neighbor dog who wants to knock her down on her own property and the owners do not care since there is no leash law.
- 88.3 R. Cochran noted in #5.2, the first paragraph on page 2 the underlined language "potentially dangerous or dangerous animal" that should include "or hazardous" which would include all three categories and offered the same as a friendly amendment to B. Ussery's motion.
- 88.4 B. Ussery accepted R. Cochran's suggestion as a friendly amendment.
- 88.5 R. Cochran further addressed page 3 when they discuss "streets" and asked if county roads be included in that interpretation or do they need to say "street or road"; to which S. Zega stated that they talked about this somewhat in committee and the words, "off the owner's property" could be defined to say "county roads" and this language could be inserted in either #5.1 or #5.2, but they need to say it across the board. His opinion, however, is that the current language covers public rights of way.

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- 89.1 E. Madison stated that there is an addition on page 4 above livestock being exempt and she does not know why that is not in the definition exception because domestic animal excludes livestock by definition and then the state law governs what happens if a dog were to attack livestock and that is addressed at 2.7-34 on page 11; to which S. Zega responded that the point for that was that they do not have a lot of aggressive cows, but they do have cows that wander onto county roads and keep people from driving down the street and these animals do not need to be on the elevation escalator.
- 89.2 E. Madison stated that it makes her wonder what is an animal then because the definition for "hazardous animal", "potentially dangerous animal" and "dangerous animal" are animals that excludes livestock but she is not sure how this all fits according to the amendment. She stated if they are going to exclude livestock, do they need to limit the definition of "animal" to "domestic animal" which would already exclude it as they define domestic animal and livestock which are mutually exclusive.
- 89.3 A. Harbison stated that livestock is covered under other state law and they do not have open range laws so she believes that this should be included for clarification.
- 89.4 S. Zega stated that it is covered under the definition section, but is not in the exclusions.
- 89.5 E. Madison stated she just wants to make sure that it does not make it unclear somehow.
- 89.6 S. Zega reiterated that the entire purpose of that was to keep someone's chicken, cow or pig that got loose from being put on the "dangerous animal" escalator and potentially euthanized. He stated that putting it elsewhere in the ordinance does not seem to him to be that big of a deal as long as it is in the ordinance somewhere.
- 89.7 E. Madison stated that she does not know what "by definition" means; to which S. Zega suggested that they strike that language and just say, "livestock is exempt from the definitions". E. Madison offered striking "by definition" as a friendly amendment to B. Ussery's motion.
- 89.8 B. Ussery accepted E. Madison's motion as a friendly amendment.
- 89.9 J. Maxwell stated his concern that they are making this so broad spread that they will create a very cumbersome job for themselves and that if they are not

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careful, most dogs will be guilty and all be in this process. He pointed out that under definitions of a potentially dangerous animal (b), it is a dog that "chases or approaches a person upon the streets", and he is unsure how they will decide what a "menacing fashion" is or "apparent attitude of attack" where there is a lot of subjectivity and if they lean to a very open sense of that they will have a lot of animals that could be interpreted to fall under this ordinance.

- 90.1 B. Ussery stated that they discussed with law enforcement how to word the ordinance in such a manner that their hands would not be tied and that they would be free to do what they need to do. He stated that it will be up to law enforcement to use the guidelines and be consistent in making these determinations.
- 90.2 L. Ecke commended B. Ussery for meeting with the Sheriff's Department and for the work that he did on this ordinance. She stated that she likes that it is broad and subject to interpretation by the law and she will support it.
- 90.3 B. Ussery stated that he feels humbled by getting everyone together and what that accomplished because not only did they get this accomplished, they were able to communicate with them. It was stated if a biker would use his smart phone and dial 9-1-1, the Sheriff's Department would know where he was and they have been doing some training on how this process will be carried out. He thanked those who were involved in this meeting.
- 90.4 L. Ecke stated one of her concerns when she moved to table this was how law enforcement would carry this out, and how they would communicate with all involved.
- 90.5 B. Ussery stated that the Sheriff's Department has a form that they will give the pet owner as a warning and the stipulations they agree to that they will sign and all involved will have a copy. He stated that the names will go into a file so if it comes up again, they will know there had been a previous problem and by microchipping these dogs receiving warnings, they can keep up with those dogs where the owners have moved.
- 90.6 R. Cochran questioned the use of "vending machine" as something a dog would be tethered to and questioned whether this may open the door to something else; to which S. Zega responded stating that this was an example phrase for do not tie a dog to an inanimate object.

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- 91.1 A. Harbison stated that she wanted to emphasize that this ordinance takes effect if a dog is on other people's property or on public property, but if it is on your property, there is nothing to worry about.
- 91.2 B. Ussery stated in talking with Paxton Roberts, when this ordinance goes into effect, there will be information printed in the newspaper and a format given to the bicyclists of what is expected of them. He stated that as everyone will benefit from this ordinance, he would like to see it go into effect as quickly as possible.
- 91.3 **A. Harbison made a motion to suspend the rules and allow for public comment on #5.2. B. Ussery seconded. The motion passed unanimously by those present by voice vote.**
- 91.4 Citizen Comments: Captain McClellan addressed the Quorum Court stating that an incident with a bike rider caused this process to take place and Paxton Roberts agrees that he needs to work with the cyclists on building better relationships with those people living out in the county that they deal with as there is give and take on both sides. He stated what law enforcement has asked the Court to do for them is really more about expansion and clarification of an existing ordinance which they have improved and made it more enforceable. He stated his desire was to do away with the "first bite is free" nonsense and the only way he believed they could get there was to have a measure in the ordinance that basically allowed them to receive information, talk to a dog owner prior to someone being bitten and give them the information about what the expectations were and then if they do not abide by that and they receive a second call, they go to the next level. He believes if law enforcement has the ability to talk to responsible property and animal owners, they will do the right thing and by getting in on the front end and developing a communication stream and put people on notice, that allows them to go to the next level when an actual vicious attack occurs. He recalled bringing this forward a couple years ago when a lady jogging with her kids and one in a stroller was attacked by a German Shepherd and they really did not have the ability to do much different at that time. He stated that this ordinance is not perfect, but it is good and probably the direction they need to go and then they can build on it as time goes by.
- 91.5 E. Madison asked where it leaves them procedurally if they substitute #5.1 with #5.2 since it was not on the agenda; to which S. Zega responded if they amend it, they are on first reading and he would need to read #5.2, and if they were to pass it tonight, it would not make it an illegal ordinance.

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- 92.1 S. Lloyd stated she had not heard anything on how they were going to address the 109 signatures on the petition against this ordinance because those people should have a say. She asked if anyone against the ordinance #5.1 was involved in drafting #5.2; to which B. Ussery responded that there were not any of the 109 people at the meeting. B. Ussery stated he has spoken to a lot of citizens, many who were against this ordinance and when he explained to them that what they were doing with #5.2 would not affect the average dog owner whose dog stayed on their property and this was only aimed at those who were not taking care of their animals, everyone was in agreement.
- 92.2 John Everett stated that his whole observation from listening to this discussion is that #5.2 is designed for those who do not do the right thing. He stated that this may not be the purpose in the future when there is a whole different body of people on the Quorum Court and Sheriff's Department and the bikes may be rocket powered in ten years. He concurred with A. Harbison's suggestion that it should be short and to the point which is that the Sheriff's Department has the discretion to label a dog in three categories and whatever they want to do is okay which is what this in effect means, but it is not what it says. He stated it makes no sense to him to write this elaborate of an ordinance to address people who will not do the right thing and if they read these ordinances strictly, they are creating a nightmare for people because "potentially dangerous dogs" are so loosely defined that it will pretty much be up to what the bike rider thinks.
- 92.3 E. Madison stated what is difficult to ascertain from the petition that was being circulated is why they oppose the ordinance, and further they cannot tell where they even live and she wishes they could get constructive criticism.
- 92.4 R. Cochran suggested that County Attorney Zega read the petition that was being distributed and signed.
- 92.5 S. Lloyd responded to E. Madison if they want to get input from 109 people, then they don't make it an emergency and pass it at this meeting, but give them the opportunity to speak their mind about what their concerns are.
- 92.6 L. Ecke asked of those who had circulated the petition exactly what they communicated to those who signed it and it was noted that the person who circulated the petition was not there. She stated she would feel good about passing #5.2 at this meeting on behalf of the citizens and their safety.

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- 93.1 A. Harbison stated that the reason people signed the petition is because country people do not like to be told what to do and do not want to be told to tie their dogs up. She stated it is a culture where they have let their dogs run loose forever. She stated she has tried to explain that people who are walking, running or biking over their county roads need to be protected and if their dogs do not run out and chase people, there is no problem.
- 93.2 B. Ussery questioned whether they should read #5.2.
- 93.3 S. Zega stated that they are addressing B. Ussery's motion to amend and substitute #5.1 for #5.2; and the friendly amendments related to including "hazardous animal" throughout the ordinance and striking "by definition."
- 93.4 **Judge Edwards called for a vote on B. Ussery's motion.**
- 93.5 **VOTING FOR: E. Madison, S. Madison, J. Maxwell, G. McHenry, B. Pond, B. Ussery, D. Balls, R. Cochran, R. Dennis, L. Ecke, A. Harbison, and S. Lloyd. The motion passed unanimously by those present. Ordinance #5.1 would be substituted for #5.2 as amended.**
- 93.6 **E. Madison made a motion to suspend the rules and read the new parts only of #5.2. J. Maxwell seconded.**
- 93.7 **VOTING FOR: E. Madison, S. Madison, J. Maxwell, G. McHenry, B. Pond, B. Ussery, D. Balls, R. Dennis, L. Ecke, and S. Lloyd. VOTING AGAINST: R. Cochran and A. Harbison. The motion passed with ten members voting in favor and two members voting against the motion.**
- 93.8 County Attorney Steve Zega read **An Emergency Ordinance Amending Washington County Code Chapter 2.7 In Regard to Dangerous, Potentially Dangerous, and Hazardous Animals**, by title and the new parts as amended in #5.2.
- 93.9 E. Madison suggested that B. Ussery be added as a co-sponsor of the ordinance; to which B. Ussery agreed.
- 93.10 **E. Madison made a motion to adopt Ordinance #5.2. S. Madison seconded.**
- 93.11 S. Zega noted with the emergency clause, this would require two-thirds of the entire Court or ten votes to pass and would become effective immediately.

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- 94.1 A. Harbison stated she still believes that all they need is one paragraph stating that animal owners are responsible for the behavior of their animals.
- 94.2 Citizen Comments: There were no further citizen comments made.
- 94.3 **With no further discussion, Judge Edwards called for a vote on the motion to adopt the ordinance.**
- 94.4 VOTING FOR: E. Madison, S. Madison, B. Ussery, D. Balls, R. Dennis, and L. Ecke. VOTING AGAINST: G. McHenry, B. Pond, R. Cochran, A. Harbison, and S. Lloyd. ABSTENTION: J. Maxwell. **The motion failed with six members voting in favor, five members voting against the motion, and one abstention.**
- 94.5 OTHER BUSINESS: It was reported that T. Lundstrum's surgery went well the day before and that he was in very good spirits.
- 94.6 CITIZEN COMMENTS: A citizen in the audience commented that she had called her insurance company regarding liability insurance and according to them, they would not issue liability insurance for this purpose and it is covered under a homeowner's policy. However, if your dog is deemed dangerous, an insurance company will not cover this and would probably drop the policy.
- 94.7 ADJOURNMENT: The meeting adjourned at 8:00 p.m.

Respectfully submitted,



Carly Sandidge
Quorum Court Coordinator/Reporter