

## LEGISLATIVE REVIEW COMMITTEE

Thursday, August 4, 2022

Via WebEx

### Committee Members Present:

Commissioner Russell Edwards, Chair  
Commissioner Jesse Houle  
Commissioner Carol Myers

### Committee Members Absent:

Commissioner Ovita Thornton  
Commissioner Allison Wright

### Staff:

Niki Jones, Assistant Manager  
Sherrie Hines, Chief Assistant Attorney  
Hugh Ogle, Public Utilities  
Doug Hansford, Building Permits & Inspection

John Spagna, Building Permits & Inspection  
Sarah George, Recorder

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Commissioner Edwards called the meeting to order at 1:03 p.m.

#### A. **Approval of Minutes:**

Commissioner Houle requested the minutes be updated to revise “Jiminez” to “Jimenez”. The June 9, 2022 minutes were approved, with that revision, with no objection.

### **Commission Identified Items of Interest:**

#### B. **Public Utilities “one lot removed” policy**

Assistant Manager Niki Jones introduced the topic. Assistant Director Hugh Ogle shared a presentation on the WS-011 Policy Update, which is referred to the “one lot removed” policy. He provided an example of a one lot removed sewer connection that was constructed. He shared that the purpose of the policy is to create an incentive and to lower a cost barrier for property owners that are one lot removed from the water and sewer system that would like to connect. He explained that this policy also encourages property owners to connect to the water-sewer system as opposed to drilling a well, digging a septic system, or creating an unauthorized joint-use water stub, meter, or sewer stub. He shared that there is the possibility of water contamination when wells or septic systems are not properly maintained and monitored; therefore, this policy also helps enhance public health and safety.

Hugh Ogle also provided an overview of the existing policy and documentation required. He shared a list of Mayor and Commission approved exceptions. To date, the Mayor and Commission has approved all exemption requests. He explained that staff recommended revising the policy to have any and all requests for the one lot removed exemption be subject to the review and approval by the Public Utilities Department Director rather than the Mayor and Commission; applicants that are denied a variance by the Public Utilities Department Director may request being added to the next available Mayor and Commission agenda for consideration of their variance request, and the Public Utilities Department would report annually to the Mayor and Commission on the approved exceptions under this policy. He noted that, under the existing policy, the timeline for approval is between 10 to 12 weeks and another 6 to 8 weeks on average for construction. He explained that, under the recommended revision, the department could approve the exemption request in a matter of days; this would significantly reduce the time associated with addressing possible failing systems and expense to the resident.

Commissioner Myers inquired about whether or not this revision would change anything with the cost and requested clarification on what the cost would be. Hugh Ogle explained that this revision would not change anything associated with the cost or the County assuming any of the cost. The numbers are based off of prices for materials to date; he explained that it would be around \$12,000 just for the materials to complete a 100 ft. extension.

Commissioner Houle requested clarification on the rationale behind changing the policy and why it was set up like this originally. Hugh Ogle explained that it was created around unification for joint use services. When there are joint use services, or multiple units being served by one, there were often only handshake agreements and no easements; when maintenance issues arrived, no one wanted to take on the responsibility for the repair or maintenance. He shared that it also provides people that do not front our utility to gain access to our services.

Commissioner Myers inquired about possible reasons an exemption request might be denied if the approval process was redirected to the Department Director. He explained that, if it is more than one lot removed, it would not fall under this policy, and the Director would not approve the request. He also noted that, if the sewer service would be the allowable distance, at this time 250 ft., they would not approve that due to the existing federal guidelines. Commissioner Myers requested clarification on whether or not residences that followed the guidelines would most likely be approved. Hugh Ogle agreed that they most likely would.

Commissioner Myers requested clarification on how this process would work for a new subdivision. Hugh Ogle explained that, if a new subdivision was being developed today, the developer would get an engineer to provide us several drawings to review and approve. Once those were approved, the developer would hire an approved utility contractor to complete the installation. Once it was installed, inspections had been passed, and the lines were approved, then the right-of-way and easements would be conveyed to ACCGov, and we would maintain the line after that time.

Commissioner Houle made a motion to advance the staff recommendation for consideration by the full Mayor & Commission. Commissioner Myers seconded. The motion passed unanimously.

**C. Investigate the noise ordinance, specifically machines, vehicles, and amplified noises**

Commissioner Edwards explained that he has fielded some complaints from residents around Dearing Street regarding loud vehicles at all hours of the night. He noted that the City of Knoxville, Tennessee is currently conducting a pilot program and have deployed a noise camera that measures the volume of a vehicle as it drives by. If the volume goes above a predetermined threshold, it will take a picture of the license plate. He shared that the City of Knoxville is testing the functionality of this device, including making sure it is properly calibrated and collecting the information that they need. He expressed interest in staff doing some outreach to Knoxville to learn more about their pilot program. He also shared that he could provide some articles to Assistant Manager Jones to help staff see what sort of products there are and how they might address this growing problem.

Commissioner Myers explained that she looked forward to learning about them. Commissioner Houle explained that they were open to looking into the noise cameras, and they would also like additional information on how we delineate between someone's vehicle that might be loud, because they broke and the muffler fell off versus loud because the individual individually modified their vehicle to be loud. They shared that they believe there is a meaningful difference there between people who are spending money to create a nuisance versus those that do not have money to spend and a nuisance results. They believe it would be worth understanding if

there is a way to delineate between the two. Commissioner Edwards explained that he does not believe there is a way to do that with the noise camera, but someone could always make an appearance in court and provide evidence to that; the judge, with their discretion, could make a determination based on the evidence provided. Commissioner Houle expressed interest in capturing that intent in the ordinance by stating it is to apply to things that have been intentionally modified.

Chief Assistant Attorney Hines explained that she would not advise capturing the intent or delineating between the two. The justification is that the noise is a problem and causes harm to the community. She shared that the law is not particularly concerned with what causes the difference. It may certainly be relevant in terms of a sentence but not whether someone committed the act or not to begin with. She advised that it would raise the question of equal protection and possibly undermine the whole ordinance.

Commissioner Myers shared that she had conducted some limited research on other communities as it pertains to gas-powered leaf blowers, and she explained that there are other communities that put restrictions on the decibel levels or the time of day. Both decibel levels and the time of day could be considered for any ordinance being drafted. Commissioner Edwards explained that, regarding gas landscape equipment, it would be prudent for them to explore more limitations on the usage of those.

Commissioner Houle explained they are imagining having two possible ordinances coming from this discussion, assuming they are both feasible: one for vehicles and one for machinery. For the ordinance on machinery, in addition to hours of use, they noted they may also want to consider duration of use. They noted there may be a process that can be created for people to request a permit or waiver for construction or if they have a professional need to have extended noise, but, otherwise, there would be a restriction on how long you could make the noise as well.

Commissioner Edwards agreed and noted that he has received complaints from residents where people have set up industrial-style operations in neighborhoods with machinery that creates a very loud decibel. He inquired about what Code Enforcement could add regarding these sort of an unlicensed noisy business operation in residential areas. Doug Hansford explained that Code Enforcement has received some complaints over the years with people setting up basically saw mills in their yards. One thing they consider is whether it is for personal use or if it is for a business. If it is for a business, they would be required to have a home occupation permit. John Spagna reiterated that they look at whether or not it is a business. If it is just someone who is just doing it for personal use, there have not been too many regulations created against that. The noise ordinance does speak to noise during daytime, but it has to be plainly audible from a further distance away, and the Code Enforcement Officer or Police Department Officer has to determine that the noise is an annoyance.

Commissioner Edwards inquired as to the required distance during the daytime. John Spagna explained that it is 300 feet during the daytime. Doug Hansford added that it is limited to 100 feet at night. Commissioner Edwards requested clarification on whether it is based on a decibel limit or the discretion of what is an annoyance. John Spagna explained that it is based on the discretion of the officer hearing it. Commissioner Edwards inquired about whether or not Code Enforcement would be assisted by clear guidance from the Commission with either a decibel limit or decibel meters. John Spagna shared that a time limit that is a little more restrictive on the weekends could be considered. He noted that, when you start to try to restrict time during the week, you are impacting landscape companies and other businesses. He explained that decibels are more difficult to enforce. He shared that you have to ensure the distance and calibration are

correct, and it can be difficult for the Attorney's Office if a citation has to be issued on a decibel level.

Niki Jones inquired about what would happen if the noise occurred during the time limit, but once the officer shows up the noise has already stopped. John Spagna explained that the officer has to witness it happening in order to issue a citation. That said, the officer can still have a conversation with the individual and provide education on the noise ordinance.

Commissioner Edwards asked the Attorney's Office about any new evolutions in code enforcement where evidence could be collected and serve as prima facie evidence. Sherrie Hines advised that it has never been the practice of the police department, who typically enforces these complaints, to issue a citation unless it is something they have witnessed themselves. She shared that they do use witness-only citations for Animal Services, but this means the person who saw it is going to have to come into court and testify; if that person is not willing to come to court, the case will not go anywhere. She also added that, one thing to bear in mind, is that we do have a noise ordinance that has been challenged and gone all the way to the Georgia Supreme Court; there is some value in considering not changing it, because, once it is change, there would not be the same protection of knowing that it will not be challenged again. She noted that the main reason they have resisted the urge to use decibels is because there is a question of what is scientifically reliable and valid enough to say that it was the specific number of decibels. She explained one final consideration is that she believes that duration is problematic for similar reasons, because it would mean that an officer would have to sit for that entire period to make sure the noise was continuous.

Commissioner Myers inquired about whether or not video evidence would count for anything. Sherrie Hines explained that it is just a question of whether the officer is going to be willing to issue that citation. While Animal Services has a history of doing witness-only citations, the Police Department does not. John Spagna added that, if Code Enforcement received a video or multiple videos, they would have a conversation with the individual and seek compliance.

Commissioner Houle explained that some of the ideas being discussed appear to be fairly impractical to try to enforce and hold up in court. They expressed interest in hearing from Code Enforcement on the potential value in making adjustments to the ordinance. Niki Jones explained that Commissioner Myers has requested staff provide an overview of the noise ordinance as it stands today. He noted that a theme that he heard in the discussion is education on our current ordinance through one-on-one interactions or through other mechanisms, like signs. Commissioner Edwards explained that he does find value in having policy that allows staff to have these conversations with people. While it might not result in a citation, he has always heard great feedback regarding Code Enforcement's ability to mitigate ordinance violations through conversation.

In addition to providing an overview of the current noise ordinance, Commissioner Myers requested staff also share the number and kind of complaints and expressed interest in hearing the ideas or perspectives from Code Enforcement. Doug Hansford that, when we discuss vehicles or parties, it would more likely fall within the Police Department's realm. He explained that staff would discuss and come back to the next meeting with any recommendations.

Commissioner Houle explained that vehicles that are modified for rolling coal are also often those that are modified to be noisier. They explained that their understanding is that there is generally a lack of enforcement for rolling coal unless a locality decides to prioritize it. They expressed interest in exploring how, when pursuing the noise ordinance modifications, to also look at the pollutants through rolling coal. They shared that they were not sure if rolling coal

could be wrapped into the charge. Commissioner Edwards explained he would be happy to bring it up with the Mayor to see if he could add rolling coal. Commissioner Houle also expressed interest in having staff do some research to look into ways to enforce rolling coal. Commissioner Myers added that, in addition to pollution, rolling coal also causes intimidation, and she agreed that there was a need to explore that further.

D. **Schedule/Agenda Changes**

The next LRC meeting is scheduled for August 25, 2022 at 1:00 p.m.

The meeting adjourned by unanimous consent at 2:04 p.m.