


MEMORANDUM

TO: Mayor England
Vice Mayor Kostka
Commissioner George
Commissioner Samora
Commissioner Rumrell

FROM: Max Royle, City Manager 

DATE: April 22, 2020

SUBJECT: Emotional Support Animals: Review of Recommendation to Allow by Conditional Use Permit

BACKGROUND

This topic is the result of the discussion at your February 3rd meeting, when you reviewed the Planning Board's approval of an exception to allow chickens as emotional support animals at 313 A Street. Under the City's current regulations, poultry and a number of other types of animals are prohibited by the City's Land Development Regulations. Your decision at the February 3rd meeting was to vacate the Planning Board's approval and to delay for a minimum of 90 days any code enforcement action concerning the chickens at 313 A Street to give the City staff and Code Enforcement Board "...adequate time to research the issue of reasonable accommodation under federal or state laws...." (from the minutes of the February 3rd meeting).

The topic was brought to the Comprehensive Planning and Zoning Board for review at its February 18th meeting. The Board recommended the following:

- To define emotional support animals as animals that provide a sense of safety, companionship, and comfort to those with psychiatric or emotional disabilities or conditions.
- To amend Section 3.02.02 of the Land Development Regulations to allow emotional support animals by conditional use permit in all residential and commercial land use districts in the City.

You then reviewed the Planning Board's recommendation at your March 2, 2020, meeting. Your discussion concluded with Mayor England asking the Building Official and the new City Attorney to work together and bring the matter back to the Commission in the future.

The Building Official recommends that you allow emotional support animals by conditional use permit.

ATTACHMENTS

Attached is the following information:

- a. Page 1, the minutes of the Planning Board's February 18th meeting when the Board recommended to you a definition of emotional support animals and to allow them by conditional use permit.
- b. Page 2, a memo from the Building Department's Executive Assistant, Ms. Bonnie Miller, in which she provides the Planning Board's recommendation.

- c. Pages 3-4 the minutes of your March 2nd meeting, when you last discussed the topic of allowing emotional support animals.
- d. Page 5, a memo from the Building Official, in which he states the two sections of the Land Development Regulations that will need to be amended to allow emotional support animals by conditional use permit.

RECOMMENDATION

It is that you approve what the Building Official requests in his memo and that you have the City Attorney draft an ordinance to amend the two sections of the Land Development Regulations.

- D. Review and recommendation to City Commission of proposal for the regulation of emotional support animals, by amendment to Sections 2.00.00 and 3.02.02 of the City of St. Augustine Beach Land Development Regulations, to provide a definition for emotional support animals and allow emotional support animals as defined by conditional use permit application reviewed by the Planning and Zoning Board and granted by the City Commission

Mr. Law said the Commission directed City Manager Max Royle, who in turn directed him, to assist the City in the regulation of emotional support animals. Staff's suggestion as a way to do this is to allow emotional support animals by conditional use application, which would be reviewed by this Board for a recommendation to the City Commission on the qualifications of that need, and then the Commission would have the final authority to grant the conditional use or not. He searched the internet for definitions on emotional support animals, as this is the first step in figuring out how the City can regulate them. During the process of appealing the decision to allow emotional support chickens at a residential property earlier this year, the Commission delayed any code enforcement action until 120 days from the date of that meeting, to give staff time to work out regulations for emotional support animals. As the City Attorney has weighed in that a variance is not an option, he'll have to work with the City Attorney to find what kind of documentation would be needed for emotional support animals.

Ms. Odom asked if the City refunded the variance application fee paid by the lady who applied for the variance to keep chickens as emotional support animals at her home.

Mr. Law said no, the City has done nothing yet. If the Commission decides to allow emotional support animals by conditional use, this applicant would have to pay the conditional use application fee, in which case, he'd make a recommendation to the Commission that the City just swap out the fee already paid for the variance and apply it to the conditional use application fee. At the time the applicant applied for the variance, this was the only option she had to allow her to keep the chickens, as chickens are currently a prohibited use per City Code. The Board denied the variance but allowed her to keep the chickens, so it was a very confusing motion. However, Mr. Kincaid was at the City Commission meeting at which the appeal to this was heard, and he helped clarify the motion for the record. At this point, staff feels a conditional use permit is the best way to regulate emotional support animals.

Mr. Kincaid said there has to be a mechanism to make sure conditional use applications for emotional support animals are considered on a case-by-case basis. The Board is also going to need legal expertise to know on what basis they can recommend approving or denying conditional use permits for emotional support animals.

Mr. Wilson said at a minimum, he thinks applications should include detail in the form of a letter from a doctor as to what the person's problems are and that the emotional support animals are necessary, and then applicants would need to demonstrate if the emotional support animals can be safely kept on property in a residential area.

Mr. Kincaid said by definition, chickens can't be service animals, but this doesn't address service animals, which is way outside of their purview, this addresses emotional support animals. He just wants to make sure the Board has the necessary criteria to evaluate conditional use applications for emotional support animals.

Motion: to recommend the City Commission approve proposed amendments to Sections 2.00.00 and 3.02.02 of the LDRs to provide a definition for emotional support animals as "animals that provide a sense of safety, companionship, and comfort to those with psychiatric or emotional disabilities or conditions," and allow emotional support animals as defined by conditional use permit reviewed by the Planning and Zoning Board and granted by the City Commission on a case-by-case basis. **Moved** by Ms. Odom, **seconded** by Mr. Mitherz, **passed 4-1** by voice-vote with Mr. Einheuser, Mr. Kincaid, Mr. Mitherz and Ms. Odom assenting, and Mr. King dissenting.

VII. OLD BUSINESS

There was no old business.

MEMO

To: Max Royle, City Manager
From: Bonnie Miller, Executive Assistant
Subject: Definition and regulations for emotional support animals
Date: Wednesday, February 19, 2020

Please be advised at its regular monthly meeting held Tuesday, February 18, 2020, the City of St. Augustine Beach Comprehensive Planning and Zoning Board voted to recommend the City Commission approve a proposed definition and regulations for emotional support animals.

The proposed definition for emotional support animals amends Section 2.00.00, Definitions, of the City's Land Development Regulations (LDRs), to add the definition of "emotional support animals" as "animals that provide a sense of safety, companionship, and comfort to those with psychiatric or emotional disabilities or conditions," and amend Section 3.02.02 of the LDRs to allow emotional support animals by conditional use permit in all residential and commercial land use districts in the City upon application and approval, on a case-by-case basis, by the City Commission after public hearing and recommendation of the Planning and Zoning Board regarding the conditional use application.

The motion to recommend the City Commission approve the proposed definition and regulations for emotional support animals per conditional use permit was made by Ms. Odom, seconded by Mr. Mitherz, and passed 4-1 by voice-vote, with Mr. Einheuser, Mr. Kincaid, Mr. Mitherz, and Ms. Odom assenting, and Mr. King dissenting.

I. OLD BUSINESS

4. Emotional Support Animals: Review of Recommendation to Amend the Land Development Regulations (Presenter: Brian Law, Building Official)

Mayor England introduced Item 6 and asked Building Official Law for a staff report.

Building Official Law advised that emotional support animals should be done through the conditional use permit process and if the Comprehensive Planning and Zoning Board denies the permit the appeal would come to the Commission for final approval. He commented that he did not want to say what types of animals are emotional support animals because he could not say what the specific type of animals people need. He explained that this procedure does not guarantee approval, but it gets the person in front of the Comprehensive Planning and Zoning Board and Commission for help.

Mayor England agreed with having the material included from Federal Housing Administration (FHA), but is struggling to make this a conditional use permit. She explained that this is a code reasonable accommodation, not a conditional use permit. She commented that she is struggling with allowing for fees when it is as simple as following the FHA document. She suggested having this go in front of the Code Enforcement Board which would follow the FHA guidelines and maybe delay this until the new City Attorney comes onboard.

Building Official Law advised that the case that came in front of the Commission regarding the chickens was given 120-day extension and if it takes longer to come to get this resolved, he would come in front of the Commission to extend the case. He explained that he would be in favor of having it go to the Code Enforcement Board to make a decision if the City Attorney advises it can be. He explained that he just wants the person to have a voice in front of a Board or the Commission.

Commissioner Samora agreed with the conclusion of the FHA document issued in January. He explained that this is a big issue that has gone all over the country. He explained that the policy does not need to be rewritten and the City could use the FHA documentation for guidance to handle situations that come up.

Mayor England advised that a conditional use permit that is issued to that person stays and if you do a reasonable accommodation it can be recertified from a year to get a medical opinion. Reasonable accommodation is very subjective and suggested more research be done on case law.

City Attorney Wilson advised that the FHA documentation gives guidelines to a person who is renting a public owned home. This case is totally different because it is not a public rented home. He explained that if we want to do a policy that uses some of the guidelines of FHA that is one thing, but we need to change the codes to allow this accommodation to exist or not. This is more to protect the neighbors from what the person's emotional support animal is. The housing provider is the owner of the home and the codes monitor what is allowed within the codes. He explained that the Code Enforcement Board could not grant a reasonable accommodation because they can only follow the codes in place and whether it would be a violation of the code. He advised not to get the medical information but just the necessity or opinion that the person needs the emotional support animal. He suggested a process where an emotional support animal would not affect the neighborhood.

Vice Mayor Kostka advised that the Commission did not want to change the code but provide an opportunity for people with needs to be able to approach us on a case by case basis to get approval or denial. She appreciated the work that Building Official Law did.

Mayor England cited a case where a miniature horse was allowed even though there were codes in place, but the horse was a service animal not an emotional support animal.

Vice Mayor Kostka advised that the Federal Aviation Administration (FAA) just passed a law that emotional support animals are not allowed on flights. She explained that the Commission needs to protect the citizenry as well.

Mayor England advised that this is just a proposal at this point.

Mayor England opened the Public Comments section. The following addressed the Commission:

Pamela Holcomb, 312 A Street, St. Augustine Beach, FL, was glad to see that the language proposed, which was clearly not the definition of an emotional support animal, is being set aside and she will have a chance to address this. She stated that the FHA information she provided, which the Commission has. She took issue with City Attorney's conclusion that the FHA does not apply to City variances. The mini horse case in the City of Blue Ash, Ohio, dealt with livestock ordinance and was approved because it was an ADA service animal, which can only be mini horses and dogs and no other animals. She suggested that the process should be that the person writes the City and request a reasonable accommodation, the FHA standards are applied, and a decision is made. She also suggested that this should be delegated to a department for an answer and the medical information can remain confidential.

Ed Slavin, P.O. Box 3084, St. Augustine, FL, thanked the Commission for their compassion and for reading the Sixth Circuit Court's case. He advised that the Commission amended the City's FHA to include sexual orientation and gender preference. He stated that a lot of people showed up to support this little boy and people were moved and suggested an ordinance regarding reasonable accommodations. He suggested that the next City Attorney work with HUD in Atlanta and contact the attorney who specializes in fair housing to help draft the ordinance.

Mayor England closed the Public Comments section and advised that the Commission has a suggestion on this on which policy direction to take and there will be a new City Attorney and staff who will be researching this issue as well. She asked Building Official Law and the new City Attorney to work together and to bring this back to the Commission in the future.

City of St. Augustine Beach Building and Zoning Department

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To: Max Royle
From: Brian Law
CC: Bonnie Miller
Date: 02-10-2020
Re: Emotional Support Animals

Max

Below is the proposal for the regulation of emotional support animals.

Sec. 2.00.00. Definitions as used in this Appendix

Terms in the LDC shall have the following definitions.

Emotional Support Animals--- Animals that provide a sense of safety, companionship, and comfort to those with psychiatric or emotional disabilities or conditions. Although these animals often have therapeutic benefits, they are not individually trained to perform specific tasks for their handlers.

Table 3.02.02
Table of Uses by Land Use District

Legend: P=Permitted; C=Conditional Use; X=Prohibited

Uses	Land Use District							
	L	ML	M	II	CO	I	R	CN
Emotional Support Animals	C	C	C	C	C	X	X	X

Sincerely

Brian Law

Brian Law CBO, CFM, MCP
Director of Building and Zoning