

# SUPPLEMENTAL

COUNCIL AGENDA: 6-19-07  
ITEM: 5.2



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT:** ANIMAL ORDINANCE  
SUPPLEMENTAL INFORMATION

**DATE:** May 30, 2007

Approved

*Ray Winer*

Date

*6/1/07*

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** N/A

### **REASON FOR SUPPLEMENTAL OR REPLACEMENT**

This supplemental memo incorporates staff's analysis and response to the City Council's direction on May 1, 2007 to bring back a Proposed Ordinance that would reflect the recommendations from Councilmember Constant as set forth in his memo dated April 30, 2007.

### **RECOMMENDATION**

Consideration of staff analysis and response and direction to staff regarding the Proposed Ordinance.

Recommendation #1: Do not add the term "service dog in training" to 7.10.200. Do not add any other phrase that would include dogs in training" with service dogs.

Recommendation #2: Direct staff to develop amendments that clarify different types of breeding and clarify when breeding should be regulated.

Recommendation #3: Amend language to permit the use of a leash that is longer than six feet when in a park or open space and allows no contact between the dog and other park users unless consent is given by the affected person(s). When on any other public property (streets, sidewalks, public events) a maximum six-foot restraint is required.

Recommendation #4: Do not amend the Animal Ordinance to allow animal events in City buildings without City Manager approval. Direct staff to develop internal guidelines for appropriate use of community centers that are compatible with the presence of live animal events.

Recommendation #5: No additional language is required.

Recommendation #6: Do not remove the word “palatable” from §7.60.770

## **BACKGROUND**

On May 1, 2007 the Mayor and Council reviewed staff recommendations regarding changes to the animal regulations. Councilmember Constant recommended specific changes to the Proposed Ordinance in his April 30, 2007 memo. Council received extensive public comment and directed that a Proposed Ordinance which reflects Councilmember Constant’s recommendations and the Council’s discussion be brought back for further consideration. Staff’s initial recommendations are discussed under separate cover in a memo to Council dated March 21, 2007.

## **ANALYSIS**

The following sections of the proposed changes are reviewed in this memorandum: Service dogs in training, animal breeding, retractable leashes, animal events in city buildings, standards of care/location of sale, and the use of the word “palatable”. Staff has performed an analysis of these proposed changes and provided options and recommendations for Council consideration. This memorandum also contains responses to questions and comments about the Animal Advisory Committee. In addition, the City Attorney has provided legal analysis in a separate supplemental memo related to sections 1(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)(k)(l)(m) of Councilmember Constant’s April 30, 2007 memo.

Council requested the following:

### **Service Dogs in Training**

1.c § 7.10.200 – Add reference to “Service Dog-in-Training” having same treatment as “Service Dog” throughout the code.

(1.c) Redefining “service dogs” to include “service dogs in training” will expand the scope of the definition because it is unclear when a dog is being trained. There is no universal or industry accepted standard for determining what defines “in training” and it raises questions as to what constitutes training, how long is it acceptable to train, and under what circumstances should a dog “in training” be treated differently than any other dogs?

Staff’s proposed definition for “service dogs” under Section 7.10.200 is similar to the current law and has been changed to conform to the Americans with Disabilities Act. Under the current law, a service dog performs certain tasks and has already been trained to perform these tasks. There have been no conflicts regarding the existing law impeding service dogs that are in training. It would be difficult to distinguish a service dog in training from any other untrained dog. Staff does not recommend an exemption for untrained dogs in areas where the presence of dogs is restricted. This section was not previously recommended for substantive amendment.

**Recommendation #1:** Do not add the term “service dog in training” to 7.10.200. Do not add any other phrase that would include dogs “in training” with service dogs.

### **Animal Breeding**

1.g § 7.40.020 (D) – Add text as follows: “...of more than one litter per year of any dogs or cats...”

1.k § 7.60.030 – Add text as follows: “...of more than one (1) litter per year of dogs or cats...”

(1.g) The current law allows a person to have only one unaltered female dog or cat (Section 7.08.595(A)) and this unaltered female dog or cat can only have one litter in a calendar year. (Section 7.08.595(D)) It is unclear whether the intent of this recommendation is to allow each dog or cat on the premises one (1) litter a year or that only one dog or cat of all the dogs and cats maintained at the premises is allowed to have one (1) litter a year. If the recommendation is the former, then this change would increase the litter limit under the current law but if the intent is the latter, this recommendation would not change the current law.

A change that would allow one litter of animals from each dog and/or cat that is on the premises and allow that each dog or cat could produce a litter once per year/per animal would be a change from existing law. Currently, the maximum number of dogs and cats are five (5) total, and only three (3) of the total may be dogs. The recommendation to relax the current restrictions on breeding dogs and cats would allow the following circumstance: in a house where there were 3 dogs and 2 cats, there could be as many as three litters of dogs and two litters of cats every year and the person (s) allowing this breeding activity would not be considered a breeder of dogs and/or cats. This change would also require clarification of the existing subsection A of the same §7.040.020, which states “The number of permissible adult animals described in this section shall include no more than one unaltered female dog or one unaltered female cat.”

San José does not have many large-scale dog and cat breeders who keep dozens of breeding pairs. San Jose’s overpopulation of dogs and cats is related to small-scale breeders who generally have animals within the required limits. Limiting the number or amount of breeding that a person can allow is an appropriate strategy for reducing the number of unwanted animals in the community. The original recommendation restricts but does not prohibit breeding.

**Recommendation #2:** Direct staff to develop amendments that clarify different types of breeding and clarify when breeding should be regulated. The following parameters are recommended:

1. All dog and cat owners – Would be limited to only one litter per animal in San José. A resident would only be permitted to keep one unspayed female dog or one unspayed female cat at any one time and could not exceed the pet limits.
2. Private kennel – This classification would require a permit. A person operating a private kennel would be allowed to exceed the pet limits and would be allowed to keep more than one unspayed female. There would be no requirement for increased distance between dwelling units (currently 250ft), provided: the person could not allow the parturition of more than two litters per dwelling unit during any 12 month period; breeding dogs and cats would not be the primary function of the kennel; animal activity must be primarily indoors; and animal activity must not impact the comfortable enjoyment of adjacent property.

3. Commercial kennel – This classification would require a permit and would require a business license. A commercial kennel may exceed pet limits, and could keep more than one unspayed female. A commercial kennel could produce more than two litters per year. A commercial kennel would require 250 feet minimum space between animal activity and the next closest dwelling unit. This would not be a permitted residential use.

### **Retractable Leashes**

1.h § 7.40.040 (B) – Change the text to allow the use of retractable leashes as long as the length is maintained at no more than six (6) feet when in the presence of other animals and/or people.

(1.h) The current law does not prohibit the use of retractable leashes. The intent of the restraint provision is to require that a dog be controlled and the rationale is that a six-foot leash would generally allow a person to control the dog while allowing the dog some freedom to walk. When a person walks a dog on a six-foot leash, the dog effectively has the ability to walk six feet in all directions, or a 12-foot diameter, which is an area of 113 square feet. Most public sidewalks or bike paths are well within this perimeter.

If the intent of the recommendation is to allow a dog owner or someone with a right to control a dog the ability to have the dog on a longer leash in a more open area like a public park, an exception could be created with the proviso that the person must maintain control of the dog and that the dog does not come into physical contact with another person or animal without the consent of the person or animal owner. At all other times, including when present on a public sidewalk, street, or at public events, the owner would be required to limit the leash to six feet.

**Recommendation #3:** Amend language to permit the use of a leash that is longer than six feet when in a park or open space and allows no contact between the dog and other park users unless consent is given by the affected person(s). When on any other public property (streets, sidewalks, public events) a maximum six-foot restraint is required.

### **Animal Events in City Buildings**

1.i §7.40.100 – Change text to exempt all service dogs and police dogs, as well as to add animal events as an authorized event.

(1.i) Staff does not recommend exempting “animal events.” An “animal event” is “any temporary activity involving the display, use, or performance of a live animal for entertainment or enjoyment of the public.” (Section 7.10.025) Animal events are limited in their duration and frequency in any given year. Without the ability to evaluate a proposed animal event in a City building, Animal Care and Services would be unable to enforce these requirements. Further, some City facilities provide food service, or other services (libraries, City Hall) that are not compatible with animal use. When conducting an event with live animals in a City building the City also requires liability insurance and inspections by Animal Care and Services. The staff should preserve its ability to evaluate a proposed animal event in a City building on a case-by-case basis.

**Recommendation #4:** Do not amend the Animal Ordinance to allow animal events in City buildings without City Manager approval. Direct staff to develop internal guidelines for appropriate use of community centers that are compatible with the presence of live animal events.

#### **Standards of Care/Location of Sale**

Add language that would provide safeguards during animal rescue adoption events held at locations other than a pet store.

Chapter 7.20 Part 1 specifically defines all of the protections and provisions (standards of care) a person must make when in control of an animal. These include safety measures related to the transportation, shelter, veterinary care, provision of water and exercise of that animal. This Part provides appropriate protections and safeguards related to animals in *all* circumstances including an event like an adoption fair. Any animal rescue group that does not appropriately care for an animal and/or causes harm to an animal as a result of their participation in an adoption event would be subject to the revocation of that privilege in San José.

**Recommendation #5:** No additional language is required.

#### **Use of the word “Palatable”**

1.1 § 7.60.770 – Remove the word “palatable” from this section.

(1.1) A person can provide a food in sufficient quantity, with appropriate nutritive value but the animal may still refuse to eat. The term “palatable” is intended to create an affirmative obligation to provide the animal food it will eat as opposed to letting the animal not eat to the extent its health would suffer.

**Recommendation #6:** Do not remove the word “palatable” from §7.60.770

#### **Animal Advisory Committee**

In 2003, PRNS formed the Animal Advisory Committee (AAC) to serve as an informational and advisory group to the City’s Animal Care and Services Division. The AAC was not created by a formal action of the City Council, but rather out of the need to provide the Animal Care and Services Deputy Director with a sounding board for input and advice. Its role includes but is not limited to issues of responsible pet ownership, operations and practices, policies and legislation, and education. Council requested that staff return with additional information on the guidelines for the composition and purpose of the AAC, criteria for appointment and its role, and to ensure that all view points were represented. The council also directed that the ACS implement and follow practices to adequately post meeting notices and information regarding the AAC on the City’s web page, ensure compliance with the Brown Act and follow outreach practices similar to City Council Policy 6-30.

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PRNS provided the City council with an Informational memorandum on October 5, 2006 regarding the guidelines for the committee composition and criteria for appointment and the role of the advisory. The following is an update on those guidelines and criteria and additional information regarding posting information, meeting noticing and outreach.

The Council information memo dated October 5, 2006 provides the guidelines for committee composition including criteria for appointment and the role of the advisory.

- Composition includes 9 members from any of the following: neighborhood representatives, contract cities, professionals in the animal community (professionals include people who breed and show animals), veterinarians, animal welfare groups, and animal rescue groups. No more than 3 individuals from any one category may be represented. Currently, there are two individuals representing animal welfare, one individual representing wildlife interests, one individual who owns and operates a vet hospital and does dog rescue, and two new members pending – one is a dog trainer, one breeds and shows dogs.
- Criteria for appointment: Interest in animal services, willingness to volunteer time, participation in one of the groups mentioned in the composition, completion of application, appointment by Director PRNS. Each member serves a two year term and can be appointed to consecutive terms. Announcements for vacancies will follow existing City procedures.
- Role: Increasing community awareness and education related to responsible animal ownership; assistance and review of education programs, operational functions, proposed policies/legislation, future strategies and current practices. The Committee is advisory to the Animal Care and Services Division. It was created by the Parks, Recreation and Neighborhood Services Department and has no authority or powers granted to it.
- Staff has dedicated specific pages on the Animal Services website that incorporate all of the recommended items. Information and the application to join the AAC is currently on the website under: [www.sanjoseanimals.com](http://www.sanjoseanimals.com), alternatively, a person can navigate to the City of San José web page [www.sanjoseca.gov](http://www.sanjoseca.gov), click on departments, and then select Animal Care and Services.
- In accordance with Council direction in August 2006, all meetings of the Animal Advisory Committee are public, they are publicly noticed according to City policy and are in compliance with the Brown Act.
- Applicable City procedures were followed during the preparation and outreach related to the recommended changes to the Municipal Code. The proposed changes were presented for discussion to the Parks Recreation and Neighborhood Services Commission on May 17, 2006, and received public comment on June 16, 2006 at the Building Strong Neighborhoods Committee meeting. Animal Care and Services hosted four different public meetings to discuss these proposed changes. All meetings were posted in accordance with the Brown Act and combined attendance at the four meetings was about 100 participants. Each meeting had a presentation/summary of proposed changes and also permitted question and answer or discussion periods. Staff will continue to adhere to city policy in the future.
- Two question and answer meetings have been added in order to provide opportunity for additional public comment and review related to Councilmember Constant's memo, staff recommended changes, and supplemental information. The first meeting is scheduled June 11, 2007 at the Animal Care Center (7pm-9pm) and the second meeting will be held at City Hall on June 14, 2007 (7pm-9pm).

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**PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

See Animal Advisory Committee item above for a description of the public outreach conducted for the recommended animal ordinance changes.

**COORDINATION**

Preparation of this memorandum was coordinated with the City Attorney's Office.

**CEQA**

CEQA: Not a Project.



ALBERT BALAGSO  
Director, Parks, Recreation, and  
Neighborhood Services

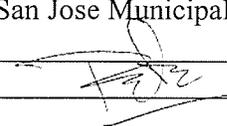
For questions please contact JON CICIRELLI, Deputy Director, at 408-361-6623.



# Memorandum

**To:** Mayor and City Council      **From:** Councilmember Pete Constant

**Subject:** Proposed Amendments to Title VII (Animal Ordinance) of the San Jose Municipal Code      **Date:** April 30, 2007

**Approved:** 

## RECOMMENDATION

1. Approval of an ordinance amending Title VII, the Animal Ordinance, of the San José Municipal Code to update existing animal related codes to reflect current municipal animal care and control practices as presented by staff in Draft Ordinance dated 04/18/2007, with the following amendments:
  - a. §7.10.125 – Remove definition of the term “Guardian,” as well as all references to the term throughout the code.
  - b. §7.10.175 – Amend definition of the term “Police Dog” to “...officially used by a peace officer...”
  - c. §7.10.200 – Add reference to “Service Dog-in-Training” having same treatment as “Service Dog” throughout the code.
  - d. §7.20.520(B) – Change use of word “shall” so that Animal Control Officers may utilize discretion to encourage compliance rather than be forced to impound every unlicensed dog or cat.
  - e. §7.20.570 – Add language to allow show dogs to receive a microchip for identification rather than metal tags at the owner’s sole expense.
  - f. §7.40.020(B) – Remove this section.
  - g. §7.40.020(D) – Add text as follows: “...of more than one (1) litter per year of any dogs or cats...”
  - h. §7.40.040(B) – Change text to allow the use of retractable leashes as long as the length is maintained at no more than six (6) feet when in the presence of other animals and/or people.
  - i. §7.40.100 – Change text to exempt all service dogs and police dogs, as well as to add animal events as an authorized event.
  - j. §7.50.010(C) – Add language that ensures that the impoundment is supported by the evidence on the record.
  - k. §7.60.030 – Add text as follows: “...of more than one (1) litter per year of dogs or cats...”

1. §7.60.770 – Remove the word “palatable” from this section.
- m. In all sections of the code that discuss hearings before a Hearing Officer, add language similar to §7.30.330 to specify a time-certain period for the owner of an animal to appeal the decision to the superior court.
2. Approval of an ordinance amending §1.08.020 of Chapter 1.08 of Title I of the San José Municipal Code to update the list of animal infractions to include the new code sections.
3. Direct staff to return to the council with guidelines for the composition of the Animal Advisory Committee (AAC), ensuring that all viewpoints are represented on the committee, criteria for appointment to the committee, and clarifying the role of the AAC.
4. Direct staff to make information about the AAC available on the city website, including but not limited to dates & times of meetings, meeting agendas & minutes, and names & affiliations of committee members.
5. Direct staff to adequately notice all meetings of the AAC according to the city’s policy for noticing and conduct meetings in accordance with the requirements of the Brown Act.
6. Direct staff to conduct greater public outreach when making significant changes to the San Jose Municipal Code, similar to the outreach outlined in City Council Policy 6-30.
7. Direct City Attorney that all summaries of substantive changes to regulations specifically include notice of sections that are removed from the regulation in addition to the current practice of noting those sections that are new or modified.

### ANALYSIS

1. §7.10.125 – Remove definition of the term “Guardian,” as well as all references to the term throughout the code.

The use of the word “Guardian” in animal laws is controversial in that many people believe it weakens the legal property status of an animal. The customary definition of the word guardian is used to define someone who is able to make legal decisions on behalf of another. A person who may have control or possession of an animal may not have this legal authority bestowed on them by the owner of the animal.

Additionally, this definition as provided will prove difficult to enforce due to the fact the definition of “Owner” in the code encompasses the exact same language as guardian. It would be nearly impossible to determine whether a person was a guardian or owner when applying the code.

2. §7.10.175 – Amend definition of the term “Police Dog” to “...officially used by a peace officer...”

Many law enforcement agencies utilize dogs to assist in enforcement. This change would clarify that any dog used by any peace officer as defined by the California Penal Code is treated as “Police Dog” as it pertains to this code.

3. §7.10.200 – Add reference to “Service Dog-in-Training” having same treatment as “Service Dog” throughout the code.

“Service Dogs-in-Training” are commonly treated as “Service Dogs.” This is necessary so that dogs can be trained in real-life situations prior to being placed into service.

4. §7.20.520(B) – Change use of word “shall” so that Animal Control Officers may utilize discretion to encourage compliance rather than be forced to impound every unlicensed dog or cat.

The primary goal of enforcement actions should be to encourage compliance rather than simply punish a violator. As the code is currently written, Animal Control Officers have no discretion when dealing with unlicensed animals and *must* impound them. Many animals that are impounded are abandoned at the shelter due to the financial burden associated with the impoundment.

As a former police officer and member of the Appeals Hearing Board I have witnessed first-hand the level of compliance that can be achieved by allowing enforcement officers a level of discretion. We are fortunate to have very highly trained Animal Control Officers that are competent to make these decisions when necessary.

5. §7.20.570 – Add language to allow show dogs to receive a microchip for identification rather than metal tags at the owner’s sole expense, as is allowed for cats.

Many residents of San José are dog fanciers. As such they raise dogs for the purposes of showing them at local, regional, and national dog shows. For many breeds a collar damages the dogs’ coat which affects their ability to compete. As we have seen at our shelter, microchips have proven very effective at identifying animals and determining their license status.

6. §7.40.020(B) – Remove this section.

This section, as written, can cause a person who has no legal or ethical connection to an animal to be issued a citation for violations of §7.40.020. For example, a person living with an adult parent who violates this section can be issued a citation for the actions of their parent. Additionally, a person who rents one room in a home can be cited for the actions of their landlord.

Absent any other compelling reason, I believe this type of enforcement action would be unconstitutional.

7. §7.40.020(D) – Add text as follows: “...of more than one (1) litter per year of any dogs or cats...” and  
§7.60.030 – Add text as follows: “...of more than one (1) litter per year of dogs or cats...”

Although these sections of the code are not noted in the staff report as changes to the code, they constitute a very significant change. Current code allows one litter per year from a female dog or cat. The proposed ordinance allows only one litter from *any* dog or

cat owned by a person. This change is significant in that it changes from one litter per year per animal to one litter per owner.

Furthermore, a second litter by an owner creates a presumption of the establishment of a "Commercial Kennel" which then subjects the owner to significantly more regulation and fees due to the city.

An occasional litter does not make a person a professional breeder or a commercial kennel. California State law recognizes this in that the State Board of Equalization does not require sales tax to be collected or paid on occasional sales and has opined that two or less litters per year are deemed to be occasional sales. The IRS likewise does not constitute income from such occasional sales as taxable.

8. §7.40.040(B) – Change text to allow the use of retractable leashes as long as the length is maintained at no more than six (6) feet when in the presence of other animals and/or people.

Retractable leashes are commonly used by the public and offer an effective way to control an animal when necessary, yet allow them additional room to roam when appropriate. The use of a longer leash provides a safer alternative than simply removing the leash for training purposes and exercise. Regulating the proper control of an animal through the responsible use of a retractable leash will benefit the community more than banning them.

9. §7.40.100 – Change text to exempt all service dogs and police dogs, as well as to add animal events as an authorized event.

As written, this section is limited to exempting only certain service dogs. It is appropriate to exempt all service dogs and especially police dogs.

Several councilmembers have sponsored animal adoption events in city owned community centers. By adding animal events as authorized events these very successful events can continue in a safe environment.

10. §7.50.010(C) – Add language that ensures the impoundment is supported by the evidence on the record.

In the case of the failure to appear at a hearing by an animal owner, it is prudent for the hearing officer to state the supporting evidence on the record before making a finding. This is common practice and is noted in other sections of the code, but appears to be missing in this section. This will ensure the record is complete in the event of an appeal to the superior court.

11. §7.60.770 – Remove the word "palatable" from this section.

In order for ordinances to be enforceable, the wording must be clear and objective. I do

not see any way for the city to support with evidence what food is palatable to an animal and what is not.

12. In all sections of the code that discuss hearings before a Hearing Officer, add language similar to §7.30.330 to specify a time-certain period for the owner of an animal to appeal the decision to the superior court.

All enforcement actions by the city must allow the public to the right of due process. As written, the proposed ordinance, in many sections, states that the decision of the hearing officer is final. Only §7.30.330 specifies the appropriate method of appeal and designates a time certain period for appeal to the superior court. The code should specify this in every section that references a hearing before a Hearing Officer.