



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Sara L. Hensley

SUBJECT: SEE BELOW

DATE: 05-10-04

Approved

Date

COUNCIL DISTRICT: Citywide

SNI AREA: N/A

SUBJECT: PROPOSED REVISIONS TO THE “ANIMAL REGULATION AND RABIES CONTROL” ORDINANCE – CHAPTER 7.08 OF TITLE 7 OF THE SAN JOSÉ MUNICIPAL CODE

RECOMMENDATION

Approval of an ordinance amending Chapter 7.08 of Title 7 of the San José Municipal Code (commonly known as the “Animal Regulation and Rabies Control Ordinance”) in order to reorganize the Chapter, to make clarifying changes, to define new terms, to distinguish the role of the administrator and the Hearing Officer, to permit the issuance of three year licenses, to distinguish and define varying levels of aggressive dog behavior, to specify requirements for the hearing and appeal process for an aggressive dog incident, and to specify the requirements for maintenance of aggressive dogs.

BACKGROUND

On December 3, 2003, the Rules Committee reviewed the criteria and policies the City of San José uses in determining the seizure of dangerous animals from the owner. The review compared the City’s animal control ordinance, policies, and practices regarding aggressive dogs to the same of other public entities within the state.

Currently, the City has the authority to immediately seize any stray dog or a dog that poses an imminent threat to public safety, health, and welfare. Title 7 of the San José Municipal Code defines a vicious dog as having a known propensity, tendency, or disposition to attack or threaten the safety of persons or domestic animals without provocation. A dog is also vicious if it 1) has been trained to fight or attack, 2) is kept for fighting, or 3) is declared vicious. The presumption

of viciousness arises if the dog 1) attacked a person or domestic animal, 2) menaced a domestic animal, 3) strayed, or 4) is not licensed.

An owner may rebut the presumption of viciousness by showing the dog 1) was tormented or teased, 2) reacted to an unprovoked assault or battery against the owner, or 3) responded to a willful trespass or other tort on the private property of the owner. In the case of a stray or unlicensed dog, the owner must show that the dog does not attack, threaten, or menace people.

The ordinance provides that a hearing before the City’s Administrative Hearing Officer must take place if 1) the Animal Services Officer (ASO) has reasonable grounds to believe a dog is vicious, 2) a citizen who has been physically attacked files a complaint, 3) two or more persons who have been threatened or menaced file a complaint, or 4) the owner requests the release of a dog seized for aggressive behavior or running at large.

Part of the Animal Care and Services (ACS) policy and procedure is to have the ASO consider 1) the dog’s history of aggressive behavior, 2) the dog’s characteristics, 3) the severity of the injury, 4) the circumstances surrounding the incident (e.g. presence of provocation, trespass, or other tort), 5) the dog’s actual participation in the attack, and 6) the owner’s culpability in contributing to the incident. Any of these factors can have varying significance depending on the facts of the case. The ASO is to weigh the evidence and use their experience to determine if the aggressive behavior was an isolated incident or resulted from a predisposition to be vicious.

In calendar year 2003, ACS investigated 430 dog bite cases. These cases do not include incidents involving stray dogs, menacing dogs, or dogs that have threatened a person or other domestic animal. If the ASO’s only criteria was the ordinance, ACS estimates it would have over 1,000 cases involving dogs that are reputedly presumed vicious. In 2002, ACS had 18 requests for hearing with 3 vicious determinations. In 2003, ACS received 28 requests for hearing and 13 vicious determinations.

Pursuant to the ordinance, if the Hearing Officer declares the dog vicious, the dog is subject to Class I permit restrictions. If the Hearing Officer finds the dog is an uncontrolled stray, the dog is subject to Class II permit restrictions. An uncontrolled stray is a dog that has wandered at large from the property of its owner two times or more in a one-month period or four times in a year. Under the Class II permit, the owner must show that the dog is maintained in compliance with the restraint law.

With respect to vicious dogs under the Class I permit, the ordinance requires but does not limit the restrictions to 1) maintenance indoors with securely closed doors and windows, 2) maintenance outdoors only in a locked kennel, or 3) otherwise muzzled and leashed under the control of an adult. Additional conditions include 1) a tattoo, 2) signage at the residence, and 3) liability insurance of \$50,000. The “vicious” designation remains for the duration of the dog’s life.

The regulations of other public entities were also surveyed and they included the County of Los Angeles, City of San Diego, City and County of San Francisco, City of Oakland, and the state code. The definitions and aggressive dog restrictions in these other jurisdictions varied.

ANALYSIS

The proposed ordinance will conform the City of San José’s regulations to that of other jurisdictions. The proposed ordinance will not affect the City of San José’s ability to immediately seize a dog that presents a significant threat to the health, safety, or welfare of the community. Set forth below is a brief discussion of the key revisions.

Distinguishing Different Levels of Aggressive Dog Behavior and Maintenance Requirements

The proposed ordinance will distinguish different types of dangerous and aggressive dog behavior and provide new definitions and additional maintenance requirements for these dogs. Currently, the City of San José defines unlicensed and stray dogs which otherwise do not exhibit aggressive behavior as vicious. The existing permit requirements also do not differentiate between a dog that has caused someone to take a defensive action resulting from a sudden lunge and a dog that has caused a person severe injury or killed another domestic animal. These proposed changes would allow ACS to be more precise in regulating dangerous dogs and make the City of San José’s ordinance more consistent with other urban areas of comparable size. The proposed ordinance will:

1. Remove the presumption that uncontrolled stray dogs and unlicensed dogs that do not otherwise display dangerous or aggressive dog behavior are vicious. The proposed changes include technical references in all sections that treat these categories of dogs as vicious.
2. Distinguish several levels of dangerous and aggressive dog behavior ranging from the least threatening incident by a “potentially dangerous dog,” an escalated incident by a “dangerous dog,” to the most severe incident involving a “vicious dog.” All the public entities surveyed defined at least two levels of prohibited behavior and restricted the owner and dog in accordance with the type of violation. The proposed changes will better define the parameters for how ACS will evaluate an incident involving a dangerous dog.
3. Create a scheme of permit requirements that reflect the severity of the aggressive and dangerous dog incident. For example, if a dog has been determined to be “potentially dangerous,” the least threatening of the three designations, the owner will be required to submit photo identification of the dog, muzzle and leash the dog, spay or neuter the dog, implant a microchip on the dog, have the dog wear a special permit tag, and/or attend obedience class with the dog. As circumstances will vary with each case, these proposed changes will give ACS flexibility as to what restrictions to recommend including destruction for a “vicious” dog.
4. Impose additional permit requirements to maintain these dogs including microchip implant, obedience class, spaying or neutering, and a higher insurance policy. With the proposed changes, the Hearing Officer will also have the ability to impose fines in the amount of five hundred dollars (\$500) for each “dangerous” dog or in the amount of one

thousand dollars (\$1,000) for each “vicious” dog incident. With the additional requirements, the City of San José will be consistent with other jurisdictions.

5. Limit the ability to request a “potentially dangerous,” “dangerous,” or “vicious” dog hearing to when (a) the ACS Division files a report stating there are reasonable grounds for the designation and restrictions or (b) the owner challenges the restrictions. Currently, the ordinance permits persons who have been threatened or physically attacked to initiate a hearing.
6. Confer on the Hearing Officer the ability to restrict ownership of any dog for up to three years if ownership would create a significant threat to public health and safety. Conversely, with the proposed changes, the Hearing Officer will have the ability to drop the “dangerous” dog designation after three years of no incident and the owner has shown good cause such as efforts to mitigate the dog’s public safety risk. The “vicious” dog designation would remain for the life of the dog.
7. Amend the sections relating to the owner’s right to appeal by referencing state law limiting the time to appeal, time to pay fees, and the consequences for failing to pay the fees or file a timely appeal of the designation.

New Definitions and Technical Revisions

These proposed revisions include new definitions and technical changes to reflect contemporary titles, references to state law, and differences in the role of the Hearing Officer to that of the Administrator.

Redemption of Impounded Animals and Licensing

The proposed ordinance will change the annual license renewal requirement to allow pet owners to license their cats and dogs up to three (3) years if the rabies vaccinations remain valid during the license period. The extension of the licensing period will streamline the renewal process but still allow ACS to control for rabies.

Currently, owners are able to redeem their pets from the shelter if they pay the impoundment fee and any other costs for the care of the animal. Occasionally, the owner will not have the financial ability to pay for all the fees and the shelter does not have another reason to keep the animal. The proposed ordinance will permit owners, upon a showing of a present inability to pay, to redeem their pets and be invoiced for the fees. This exception to the requirement for immediate payment would allow ACS to reunite an otherwise healthy and well- behaved animal with its owner and lower the rate of euthanasia.

COST IMPLICATIONS

None.

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PUBLIC OUTREACH

This ordinance was circulated and endorsed by the Animal Advisory Committee at its January 7, 2004 meeting. A public hearing was held at the Parks and Recreation Commission meeting of May 5, 2004.

COORDINATION

This memorandum was coordinated with the City Attorney’s Office.

CEQA

Not a project.

SARA L. HENSLEY
Director of Parks, Recreation
and Neighborhood Services