

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
SUBJECT: INTRODUCTION OF AN ORDINANCE RELATING TO
THE REQUIREMENTS, RESTRICTIONS,
PROHIBITIONS, AND DEFINITIONS OF
POTENTIALLY DANGEROUS OR VICIOUS ANIMALS
AND A COMPANION RESOLUTION TO INSTITUTE
FEES FOR NEW PERMITS TO BE ISSUED TO
ANIMALS DETERMINED TO BE POTENTIALLY
DANGEROUS OR VICIOUS
STAFF PRESENTER: BRIEN J. FARRELL, CITY ATTORNEY
AGENDA ACTION: ORDINANCE AND RESOLUTION

ISSUE

Should the City Council adopt an ordinance relating to potentially dangerous or vicious animals and a companion resolution to institute fees for new permits to be issued to animals determined to be potentially dangerous or vicious?

BACKGROUND

Current law permits an animal control officer who has probable cause to believe that a dog is potentially dangerous or vicious to petition to have a hearing, either in the Superior Court or before an administrative hearing officer, for the purpose of determining whether the dog in question should be declared potentially dangerous or vicious. In response to numerous vicious attacks by dogs on persons or other animals, in October 2005 SB861 authorized local governments to enact ordinances instituting breed-specific spay or neuter programs and breeding requirements, provided the ordinance does not declare a breed potentially dangerous or vicious.

For the past several years, the City has contracted with Sonoma County Animal Regulations Division to provide animal control services. This agenda item proposes amendments and additions to existing City animal control regulations in order to maintain consistency in implementation and enforcement with the recently amended Sonoma County animal regulations. This ordinance adopts the breed-specific requirements and broadens the definition of a potentially dangerous or a vicious dog to include all animals that cause injury to persons or other animals. Its companion Resolution will add fees for new permits: These

fees are for a three-year permit and are assessed at \$100 for a potentially dangerous animal and \$250 for a vicious animal that is ordered released from impound. These fees, authorized by Food and Agriculture Code section 31641 defray the costs of maintaining records relating to a potentially dangerous or vicious animal. These fees are based on the Sonoma County Animal Regulation Division's determination of its costs, including registration record keeping, inspections, preparation of the petition to the Superior Court, and attendance at the court in support of the petition. Those charges are passed on to the City for Sonoma County Animal Regulation Division's services. The City would recover those charges through the imposition of these fees. (The law only allows recovery of fees for actual costs of governmental services.)

SUMMARY

During the preliminary review of this ordinance on September 5, 2006, the City Council directed staff to make several additions to the proposed ordinance. As outlined below, the additions would require owners of dangerous/vicious animals:

- To erect warning signs on their property to provide notice to the public of the animal's status;
- To provide that the animal, while off the owner's property, be conspicuously tagged ("red-tagged") for easy visual notice to the public of the animal's status;
- To muzzle their animal when the owners or the agents of the owners take the animal off the owner's property.

ANALYSIS

In response to Council suggestions, the following changes have been made to the proposed ordinance:

1. Sign Requirements. The ordinance was revised with the intent to make clear that the Poundmaster will establish, in rules and regulations, reasonable and necessary standards for signs and the location(s) on the property where they will be placed to insure both compliance with the ordinance and uniformity throughout the city. The costs of acquisition, design, construction, erection, and repair of such signs are to be at the owner's sole expense.

2. 'Red-Tag' Requirements. The Poundmaster will establish rules and regulations to identify the nature, design, color, and other appropriate standards designed to alert the public that the 'red-tagged' animal has been declared potentially dangerous or vicious. Because the particular animal will vary in size and weight, we envision that the rules and regulations will be far more detailed than staff can determine prior to the adoption of the ordinance. There are several options that we are currently exploring. For example, Los Angeles County requires that the animal be required to wear "a bright fluorescent yellow collar visible at 50 feet in normal daylight, which will be provided by the department at the owner's expense." Another option is to require that the animal

wear a securely fitted “vest” or “jacket” of a given color scheme that would be appropriate to its size and weight. This could also be embossed with a specifically worded warning. By designating the Poundmaster to establish rules and regulations that details the standards will permit time to research what availability, cost, and design are available in the marketplace and as material and technology change, the Poundmaster can modify the rules accordingly while protecting the public from further harm by the animal.

3. The Muzzle. This device will vary with the type of animal, its size, and its weight in the construction, strength, materials, and design. By allowing the Poundmaster to establish standards by rules and regulations, the City will be in a position of being able to utilize changing technology of materials, styles, and construction while protecting the public from further harm by the animal.

RECOMMENDATION

The City Attorney and Sonoma County Animal Regulations Division recommend that the Council adopt an ordinance relating to the requirements, restrictions, prohibitions, definitions of potentially dangerous animals, vicious animals, pit bull dogs, pit bull mixes, dogs at large, and mandatory spay and neutering, and to adopt its companion Resolution to institute fees for new permits to be issued to animals determined to be potentially dangerous or vicious.

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Attachment: Proposed ordinance with revisions made subsequent to the September 5, 2006, Council meeting indicated in red text.

7-04.010 General provisions.

For purposes of this chapter, unless the context clearly indicates otherwise, certain words and phrases shall have the meanings given them in this section.

(A) “Animal” means all nonhuman members of the animal kingdom including domestic, exotic and livestock species.

(B) “Animal Control Officer” means the Poundmaster and any individual authorized by the Poundmaster to act on his or her behalf in the enforcement of the provisions of Title 7 of the Santa Rosa City Code.

(C) “Assistance dog” means a specifically trained canine assigned to a disabled person for the specific purpose of assisting the disabled person. Assistance dogs include, but are not limited to, guide dogs for the blind, hearing dogs, canine companions and pet-assisted therapy dogs.

(D) “City Health Officer” means that individual designated by the City Council to enforce and observe quarantine regulations and other provisions relating to public health within the City of Santa Rosa.

(E) “Collar or other device” means a device that is required by this chapter to be worn to designate the status of the animal as a dangerous or vicious animal. The Poundmaster shall establish within 20 days of the effective date of this ordinance such rules and regulations for the design and wearing of a collar or other device which should be visible at 50 feet during normal daylight hours. The collar or other device shall be made available by the Poundmaster and provided for the animal at the owner’s expense.

(F) “Domestic animal” means any animal customarily kept by humans for companionship, including, but not limited to: dogs, cats, birds, rabbits, hamsters, mice, turtles and the like.

(G) “Enclosure” means a fence or structure suitable to prevent the entry of young children, and which is suitable to confine a vicious animal in conjunction with other measures which may be taken by the owner or keeper of the animal. The enclosure shall be designed in order to prevent the animal from escaping. The animal shall be housed pursuant to Section 597t of the California Penal Code.

(H) “Exotic animal” means any species of animal not considered domestic or livestock. For the purpose of this definition “exotic animal” includes, but is not limited to: nonpoisonous snakes and lizards and pot-bellied pigs.

(I) “Kennel” means any place or premises devoted to the keeping, harboring, breeding, buying, or selling of four or more dogs, or six or more mammalian animals of the same species, age four months or over.

(J) “Livestock” means any animal customarily kept by humans for the purpose of providing food, clothing or work, including, but not limited to: equine, bovine, ovine, caprine, porcine and fowl, but excluding bees.

(K) “Muzzle” means any device that an animal is required to wear by this chapter to prevent the animal from biting a person or other animal. At the discretion of the Poundmaster, rules and regulations shall be established within 20 days of the effective date of this ordinance for the design and use of such devices. These regulations are intended to provide flexibility of design appropriate to the specific animal to be muzzled.

(L) “Owner” means any person who owns, keeps or harbors an animal, for 15 or more consecutive days, except a veterinarian or an operator of a kennel or pet shop

engaged in the regular practice of his business as such. "To own" an animal is to keep, harbor or shelter an animal for 15 consecutive days or more.

(M) "Pet shop" means any premises devoted to the commercial trade of selling live animals for use as pets.

(N) "Pit Bull" means any Staffordshire Bull Terrier, American Pit Bull Terrier, or American Staffordshire Terrier breed of dog, or any mixed breed of dog which contains, as an element of its breeding, the breed of Staffordshire Bull Terrier, American Pit Bull Terrier, or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier.

(O) "Potentially dangerous animal" means any of the following:

(1) Any animal which, when unprovoked, bites a person that is less than a severe injury.

(2) Any animal which, when it is off the property of its owner or keeper, and is unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury by attacking a domestic animal.

(3) Any animal which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off the property of the owner or keeper of the animal.

(P) "Poundmaster" means that person appointed in accordance with Section 7-16.010.

(Q) "Service dog" means any dog under the control of a peace officer in the performance of, or training for, public service.

(R) "Severe injury" means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

(S) "Vicious animal" means any of the following:

(1) Any animal seized under Section 599aa of the California Penal Code and upon the sustaining of a conviction of the owner or keeper under subdivision (a) of Section 597.5 of the California Penal Code.

(2) Any animal which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being.

(3) Any animal previously determined to be and currently listed as a potentially dangerous animal which, after its owner or keeper has been notified of this determination, continues the behavior described in the definition of potentially dangerous animal set out above, or is maintained in violation of Section 7-12.100 and/or Section 7-30.040.

7-30.050 Disposition of potentially dangerous animals.

(A) An animal determined to be a potentially dangerous animal, either after the owner of the animal has agreed to the designation, or after the court has determined the designation applies to the animal, shall be placed on a list of potentially dangerous animals by the Poundmaster and shall be maintained by the owners as follows:

(1) A potentially dangerous animal shall be properly licensed and vaccinated. The Poundmaster shall include the potentially dangerous designation in the registration records of the animal and shall charge a potentially dangerous animal fee, the amount of which shall be established by resolution of the City Council, in addition to the license fee required in Section 7-12.020. The owner shall post a sign on the premises facing the public street

(2) A potentially dangerous animal, while on the owner's premises, shall, at all times, be kept indoors, or in a secure enclosure. A potentially dangerous animal may be off the owner's premises only if it is restrained

(a) by a substantial leash not exceeding six (6) feet in length and it is under the control of a responsible adult, and

(b) by an approved muzzle that will not cause injury to the animal or interfere with its vision or respiration but shall prevent it from biting any person or animal, and

(c) by fitting the animal with an approved collar or other device which must be clearly visible at all times for the purpose of designating the animal as a potentially dangerous animal.

(3) The owner shall be responsible for the cost of posting one or more large signs, as determined to be necessary by the Poundmaster, in a conspicuous place on the property, which is visible and capable of being read from the fronting street or public highway, stating in substantially the following form:

“LEGAL NOTICE: By order of the Superior Court of Sonoma County, one or more animals at this place have been declared to be potentially dangerous animal(s). Therefore, when the animal is off this property, it must be restrained by a leash, be muzzled, and carry an approved collar or other device to give notice to the public of its designation by the court as a potentially dangerous animal. This property is being watched by the Poundmaster to assure compliance with this order. **WARNING:** Removing or defacing this notice without permission from the Poundmaster is a violation of the Santa Rosa City Code Section 1-30.300.”

This sign shall be prepared and posted by the Poundmaster.

(4) If a potentially dangerous animal dies, or is sold, transferred or permanently removed from the City, the owner shall notify the Poundmaster of the changed conditions and new location of the animal in writing within two (2) working days after such change.

(B) If there are no additional instances of the behavior described in the definition of “potentially dangerous animal” in Section 7-04.010 within a thirty-six (36) month period from the date of designation as a potentially dangerous animal, the animal shall be

removed from the list of potentially dangerous animals by the Poundmaster. The animal may be, but is not required to be, removed from the list of potentially dangerous animals prior to the expiration of the thirty-six (36) month period if the owner of the animal demonstrates to the satisfaction of the Poundmaster that changes in circumstances or measures taken by such owner, such as training of the animal, have mitigated the risk to public safety.

7-30.060 Disposition of vicious animals.

(A) An animal determined to be a vicious animal may be humanely destroyed by the division when it is found, after proceedings conducted pursuant to this article, that the release of the animal would create a significant threat to the public health, safety and welfare.

(B) If it is determined that an animal found to be vicious shall not be destroyed, the court shall impose conditions upon the ownership of the animal that protect the public health, safety and welfare, including reserving jurisdiction to order destruction of the animal upon any further violation of this article or state law. Any enclosure that is required as a condition of ownership shall be a secure enclosure. A vicious animal shall be properly licensed and vaccinated. The Poundmaster shall include the vicious designation in the **permanent** registration records of the animal and shall charge a vicious animal fee, the amount of which shall be set by resolution of the City Council pursuant to Section 7-12.020. Animals declared vicious may not be kept on premises where minor children reside or are present.

(C) (1) A vicious animal, while on the owner's premises, shall, at all times, be kept indoors, or in a secure enclosure. A vicious animal may be off the owner's premises only if it is restrained

(a) by a substantial leash not exceeding six (6) feet in length and it is under the control of a responsible adult, and

(b) by an approved muzzle that will not cause injury to the animal or interfere with its vision or respiration but shall prevent it from biting any person or animal, and

(c) by fitting the animal with an approved collar or other device which must be clearly visible at all times for the purpose of designating the animal as a vicious animal.

(2) If a vicious animal dies, or is sold, transferred or permanently removed from the City, the owner shall notify the Poundmaster of the changed conditions and new location of the animal in writing within two (2) working days after such change.

(3) The owner shall be responsible for the cost of posting one or more large signs, as determined to be necessary by the Poundmaster, in a conspicuous place on the property, which is visible and capable of being read from the fronting street or public highway, stating in substantially the following form:

“LEGAL NOTICE: By order of the Superior Court of Sonoma County, one or more animals at this place have

been declared to be potentially dangerous animal(s). Therefore, when the animal is off this property, it must be restrained by a leash, be muzzled, and carry an approved collar or other device to give notice to the public of its designation by the court as a potentially dangerous animal. This property is being watched by the Poundmaster to assure compliance with this order. **WARNING:** Removing or defacing this notice without permission from the Poundmaster is a violation of the Santa Rosa City Code Section 1-30.300.

This sign shall be prepared and posted by the Poundmaster.

(D) The owner of any animal determined to be vicious that is not destroyed shall present proof acceptable to the Poundmaster that the owner has procured liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00) covering any damage or injury which may be caused by the vicious animal. Such liability insurance shall not be cancelled, unless the owner shall cease to own the animal prior to expiration of the vicious animal license. Coverage shall be evidenced by an endorsement by the insurer will provide the City at least thirty (30) days advance notice of cancellation.

7-30.300 Violations and penalties.

(A) Every person who violates any provision of this chapter is guilty of a misdemeanor and shall be subject to the provisions of Section 1-28.010 of this code.

(B) In addition to or in lieu of the penalties contained in Chapter 1-28, any violation of this chapter involving a potentially dangerous animal shall be subject to a civil penalty not to exceed three thousand dollars (\$3,000.00). Any violation of this chapter involving a vicious animal shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00).

(C) Any animal declared by a court of competent jurisdiction to be a potentially dangerous or vicious is a public nuisance.

(D) An owner of an animal declared to be a potentially dangerous or vicious is strictly liable for the conduct of the animal and has a nondelegatable duty to protect others from injury.