

AGENDA ITEM NO.

COUNCIL MEETING TBA

APPROVED BY _____

DEPARTMENT DIRECTOR _____

CITY MANAGER

March 28, 2006

FROM: JAMES C. SANCHEZ
Interim City Attorney

BY: JOHN W. FOX
Deputy City Attorney

SUBJECT: REGULATING DOGS IN THE CITY OF FRESNO

RECOMMENDATIONS

It is recommended that the Council review this report and the proposed ordinances and after receiving public input consider adopting the proposed ordinances.

EXECUTIVE SUMMARY

At its January 24, 2006 meeting, the Council considered a Report to the City Council prepared by the City Attorney's Office regarding the regulation of dangerous dogs, dogs at large and the overpopulation of dogs, and listened to input from the public. After the public hearing and after deliberating, the Council directed staff to return to Council with ordinances that would enact several of the alternatives set forth in the Report to Council.

The City Attorney's Office has prepared proposed ordinances that seek to implement the Council direction. These ordinances are attached as Exhibits "A" and "B." Exhibit "A" is the ordinance drafted to implement the direction provided by Council with regard to the regulation of animals at large and dangerous animals. Exhibit "B" is the ordinance drafted to implement the direction provided by Council with regard to the mandatory spaying and neutering of dogs.

Also included in Exhibit "A" is an alternative to the mandatory spay/neuter ordinance. This alternative sets forth additional regulations upon unspayed or unneutered dogs and new regulations regarding the breeding of dogs, and the transfer and sale of dogs and cats. This ordinance is similar to an ordinance recently adopted by the County of Fresno. This alternative has been included in Exhibit "A" after the SPCA recommended that Council consider adopting this alternative as a first step in addressing the overpopulation of dogs and cats.

Exhibit "B" has been provided per the Council's direction and so that the Council may consider adopting an ordinance mandating the spaying and neutering of all dogs in the City.

BACKGROUND

At its October 25, 2005 meeting, the Council considered the problems associated with dangerous dogs by reviewing a brief report to Council and listening to testimony from the public. After receiving the testimony from

the public, the Council directed staff to return with alternatives for the Council to consider to strengthen the City's regulation of dogs at large and dangerous dogs.

In early January 2006 the City Attorney's Office provided the Council with a draft Staff Report to Council which attempted to provide the Council with an overall understanding of the issues associated with dangerous dogs, dogs at large and dog overpopulation and provide Council with a brief summary of efforts taken by other jurisdictions in California to regulate dangerous dogs, dogs at large and dog overpopulation.

A. Council Direction

At its January 24, 2006 meeting, the Council considered the Staff Report to Council and listened to testimony from the public regarding these issues. After this hearing, the Council directed Staff to return to Council with ordinances to implement several of the alternatives set forth in the Report to Council. The alternatives that Council directed staff to implement were as follows:

Dangerous Dog Regulations

1. Amend the City's ordinance to permit the City to make a preliminary finding as to whether a particular dog is dangerous and place the burden on the dog owner to appeal this initial finding to the City's Hearing Officer.
2. Amend the ordinance regulating dangerous dogs to state that the failure to properly secure dangerous dogs on one's property is a public nuisance.

Dogs at large Regulations

1. Amend the City's ordinance to provide for a procedure to seize a particular dog that has been found at large more than 3 times during a given 12 month period and an administrative hearing which might result in an order for alteration and, removal from the City, and potentially, forfeiture of ownership if certain conditions are present.
2. Amend the ordinance regulating dogs at large to state that the failure to properly secure dogs on one's property is a public nuisance. This would permit the City to notify the property owner as well as the dog owner of the public nuisance on this property and, if necessary, place liens on the property where the public nuisance exists for any unpaid dog citations and/or abatement costs.

Spay and Neuter Regulations

1. Adopt an ordinance mandating that all dogs be spayed or neutered unless the owner can demonstrate the dog is of "show quality" or is a purebred that is bred in a responsible manner. The reason for the exception for show quality and purebred dogs is that this ordinance is designed to address unintended and irresponsible breeding. The SPCA states that irresponsible breeding of inferior quality dogs actually results in inferior progeny with vicious temperament.
2. Increase the dog license fee for dogs that are not spayed/neutered.
3. Adopt an ordinance that limits the whelping of puppies and regulates the transfer of dogs, either by sale or otherwise.

In addition, various Councilmembers commented that in preparing these ordinances staff consider alternatives that differentiate dangerous dogs and potentially dangerous dogs from "protective dogs" and to consider provisions that would permit persons to breed certain dogs even if they are not of purebred or "show" quality. Finally, Councilmembers also commented that it is likely that adopting amendments to the City's ordinances that regulate dangerous dogs, dogs at large, and the spaying and neutering of dogs will result in the need for additional funding to enforce the new ordinances.

B. Staff Implementation

On February 10, 2006, representatives of Council District 2, the City Manager's Office, the City Attorney's Office, the Department of Finance and the Department of Parks and Recreation and the Central California SPCA, and the Fresno County Department of Community and Environmental Health met to discuss the fiscal implications of the proposed ordinances. The cost estimates arrived at are included in the Fiscal Impact section of this report.

Staff has endeavored to implement the direction provided by Council while keeping in mind the comments from Councilmembers regarding the specific provisions in the ordinances designed to implement the Council directives.

1. Further Regulation of Dangerous and Potentially Dangerous Animals

With regard to further regulation of dangerous dogs, the City Attorneys Office has drafted provisions in the ordinance attached as Exhibit "A." Specifically, this ordinance contains the following amendments to the Fresno Municipal Code (FMC):

a. FMC § 9-201 has been amended to change the definition of "dog owner" to the definition of "owner." In addition, definitions of the terms "dangerous animal" and "potentially dangerous animal" have been added. The definitions distinguish "dangerous animal" from "potentially dangerous animal" by the level of probability that the animal in question will attack and cause great bodily harm or injury in the future based upon certain factors. Language has been added to the definition of "poundmaster" to specifically authorize the poundmaster to delegate certain of his responsibilities to those qualified to perform those responsibilities. This was added as a result of a meeting in which Norman Minson, Executive Director of the SPCA, who is currently designated the City's poundmaster, stated that he would need an additional employee to investigate and render opinions regarding whether a dog is dangerous or potentially dangerous.

b. FMC § 9-224, the section that establishes the procedures for regulating dangerous dogs, has been amended to change the procedure for determining if a particular animal is dangerous and should be humanely destroyed, or potentially dangerous, requiring additional restrictions. The new procedure states that if an animal is impounded after attacking, biting or injuring a person or other animal, the poundmaster shall conduct an investigation and issue a written notice of declaration stating whether the subject animal is dangerous or potentially dangerous. This notice of declaration would also contain an order that, in the case of a animal found to be a dangerous animal, would require humane destruction. In the case of an animal found to be potentially dangerous, the order would contain restrictions placed upon the animal and the animal owner. The owner of the animal then has five calendar days to appeal that notice of declaration to the City Hearing Officer. The Hearing Officer has the authority to uphold, modify or reverse the findings and order set forth in the notice of declaration. Finally, proposed FMC § 9-224(i) declares that dangerous animals and potentially dangerous animals are a public nuisance.

2. Further Regulation of Animals at large

With regard to the further regulation of dangerous dogs, the proposed ordinance attached as Exhibit "A" contains the following amendments to the FMC:

a. FMC § 9-201 has been amended to add a definition for the term "habitually at large" which states that an animal, other than a cat, is habitually at large if it is at large three times or more during any twelve month period.

b. FMC § 9-208 has been amended to establish a procedure for having a particular animal declared "habitually at large" and sets forth additional restrictions that may be placed on the animal and the animal owner including the possibility of ordering the animal owner to forfeit the animal to the poundmaster.

c. FMC § 9-208 has been amended to declare that permitting an animal, other than a cat, to be at large or maintaining one's property in a condition that permits an animal, other than a cat, to become at large is a public nuisance.

d. FMC § 9-209, which sets forth the procedure for reclaiming animals that have been impounded for being at large, to require the owner to pay all outstanding citations relating to the animal or provide proof of filing a timely appeal of a citation before the animal will be released to the owner.

3. Spay and Neuter Regulations

With regard to spay and neuter regulations, the proposed ordinance attached as Exhibit "B" adds FMC § 9-225 which requires all dogs to be spayed or neutered, with limited exceptions. The exceptions are set forth in proposed FMC § 9-225(a). The exceptions include the fact that the dog is less than 6 months of age, the dog has been in the City for less than thirty days, the dog has a medical condition that precludes alteration for a period of time, the dog is of show quality and the dog owner has obtained a breeders permit. The requirements for establishing that a dog fits within any of these exceptions is set forth in reasonable detail in the proposed FMC § 9-225. In addition, this ordinance places restrictions on the number of litters a dog may whelp during a given year and restricts the sale or transfer of ownership of dogs and cats. In order to fully implement this ordinance, amendments will have to be made to the City's Master Fee Schedule to add a fee for the breeder's permit and to increase the license fee for unspayed/unneutered "show quality" dogs. The appropriate amounts for these fees will have to be established by the City's Finance Department.

As an alternative the City Attorney's Office has included in the ordinance identified as Exhibit "A" an alternative to the mandatory spay/neuter ordinance set forth in Exhibit "B." This alternative mirrors the ordinance recently adopted by the County of Fresno. The goal of this proposed ordinance is to encourage the spaying and neutering of dogs by charging significantly more for a dog license for an unspayed or unneutered dog as compared to a license for a spayed or neutered dog. In addition, this ordinance places restrictions on the number of litters a dog may whelp during a given year and restricts the sale or transfer of ownership of dogs and cats. In order to fully recover costs related to the implementation of this alternative ordinance, amendments will have to be made to the City's Master Fee Schedule to increase the fee for an unspayed/unneutered dog from its current amount of \$10.00. Staff is in the process of evaluating current costs incurred; additional expected costs to be incurred as a result of this proposed ordinance, as well the impact of the present contract negotiations with the SPCA. It is anticipated that when staff brings the final negotiated SPCA contract forward for Council approval, fee adjustment recommendations will be made at that time as well.

COMMENTS FROM THE CENTRAL CALIFORNIA SPCA

Norman Minson, the Executive Director of the Central California SPCA, who is currently designated the City's poundmaster, has reviewed the proposed ordinances attached as Exhibits "A" and "B." With regard to the amendments to the FMC relating to animals at large and dangerous animals, Mr. Minson fully supports the proposed amendments. He has informed staff that implementation of the amendments pertaining to the investigation and declaration of a dangerous or potentially dangerous animal will require additional staff at the SPCA. These additional costs are discussed in the Fiscal Impact section of this Report to Council.

With regard to the mandatory spay/neuter requirements set forth in Exhibit "B," he stated that he is not aware of any jurisdiction with the State of California that has successfully implemented a mandatory spay/neuter ordinance. He further stated that he does not believe there currently are sufficient number facilities to spay/neuter dogs to meet current needs. He further informed us that there currently is a two month waiting list for spay/neuter services as the SPCA's veterinary clinic. He stated that if the Council adopted this mandatory spay/neuter ordinance he is concerned that the facilities offering spay/neuter services would be overwhelmed. Furthermore, he is concerned that the enforcement of such an ordinance, including administering the procedures for evaluating dogs to determine if they fit within any of the exceptions to the mandatory spay/neuter requirement, would probably necessitate additional staffing both at the SPCA and at the City.

For these reasons, Mr. Minson recommends that the City adopt the alternative to the mandatory spay/neuter ordinance which has been included in Exhibit "A" which is similar to the ordinance recently adopted by the County of Fresno. He believes that the adoption of this ordinance along with an increase in the license fee for unaltered dog licenses would be a good first step toward increasing the number of dogs that are spayed/neutered within the City of Fresno.]

FISCAL IMPACT

On February 10, 2006 a meeting was held to discuss the fiscal impact of the proposed amendments and additions to the Fresno Municipal Code. Representatives of Council District 2, the Finance Department, the Department of Parks, Recreation and Community Services, the City Attorney's Office, the Central California SPCA and the Fresno County Department of Community Health – Environmental Health Division attended the meeting. At the meeting Norman Minson, the Executive Director of the Central California SPCA stated that to effectively implement the ordinance changes he would need the following additional personnel and equipment:

Position/Equipment	Description of Duties	Estimated Cost to City	Cost Sharing? ¹
Animal Control Services Manager	This position would be responsible for investigating and issuing notices of declarations that particular animals are dangerous or potentially dangerous and monitoring compliance with any conditions placed upon the particular animals declared habitually at large or potentially dangerous. In addition, this position would be responsible for counseling owners of impounded dogs regarding steps they should take	\$40,000.00	No

¹ Because the City and County of Fresno both contract with the SPCA for animal control services, the City and County have agreed that the cost of certain expenses incurred by the SPCA to provide animal control services shall be shared. Pursuant to this agreement the City is responsible to pay 70% of those costs. The County is responsible for the remaining 30%.

	to secure their animals.		
Animal Control Officer	This animal control officer would be added to the night and weekend shifts to provide better coverage around the City during these hours. Currently, the SPCA has two animal control officers covering the entire City and County on Tuesday, Wednesday and Thursday nights and only one covering the entire City and county on Friday, Saturday, Sunday and Monday nights.	\$22,400.00	Yes
Receptionist/Dispatcher	This receptionist/dispatcher is needed to answer the increased number of calls reporting animals at large and animal attacks that the SPCA anticipates receiving once these ordinances are effective.	\$22,400.00	Yes
Shelter Buddies software program	This program permits the SPCA to accurately document animal incidents and track ownership and location of animals. It will also permit the SPCA to track any restrictions placed on animals to insure better enforcement of those restrictions. The SPCA must purchase this program because the previous program the SPCA was using has been discontinued and is no longer supported. As a non-profit corporation the SPCA was not required to pay for the previous program that has been discontinued.	\$20,720.00	Yes
Total Cost to City		\$105,520.00	

The Department of Parks, Recreation and Community Services has included a request for these additional funds in its proposed 2006/2007 fiscal year budget. With the proposed ordinance changes, including the declaration of certain conditions and activities relating to animal control as public nuisances, the City intends to utilize the cost recovery tools available in the Fresno Municipal Code to offset some of the additional costs associated with the proposed amendments to the Fresno Municipal Code. In addition, as stated previously, the Finance Department is currently studying the costs incurred by the City with regard to processing and administering dog licenses to determine the nature and extent of an increase in the license fee for unaltered dogs.

Attachment: Exhibit A - Ordinance Regulation of animals at large and dangerous animals
 Exhibit B - Ordinance Mandatory spaying and neutering of dogs

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____
MOVED BY _____ SECONDED BY _____

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
AMENDING SECTIONS 9-201, 9-208, 9-208.1,
SUBSECTION 9-209(a), SUBSECTION 9-223(a) AND
SECTION 9-224 OF THE FRESNO MUNICIPAL CODE
RELATING TO ANIMALS AT LARGE AND DANGEROUS
ANIMALS AND ADDING SECTION 9-225 TO THE FRESNO
MUNICIPAL CODE RELATING TO THE BREEDING,
TRANSFER AND SALE OF DOGS AND CATS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 9-201 of the Fresno Municipal Code is amended to read:

SECTION 9-201. DEFINITIONS. The following terms as used in this
article shall have the meaning ascribed to them in this section as follows:

(a) The term "dog owner" [when referring to an animal] shall
mean the owner or custodian of any dog [animal] of either sex or of any
age.

(b) The term "at large" shall mean an animal in or upon any
public street, public alley or other public place or in or upon an unenclosed
lot or premises, unless the animal is securely confined to the lot or
premises by a suitably strong leash or is securely and continuously held
by the owner or custodian of such animal by a strong leash suitable for
maintaining control of the animal, or the animal is confined within an
automobile.

EXHIBIT "A"

[(c) The term "habitually at large" shall mean an animal, other than a cat, that the Hearing Officer, after an administrative hearing is held pursuant to Section 1-501 et seq., finds has been at large three times or more during any twelve month period.

(d) The term "dangerous animal" shall mean any animal that has bitten, injured or aggressively pursued any human being or other animal who the Poundmaster, after conducting an investigation pursuant to subsection 9-224(a), or Hearing Officer, after an appeal hearing is held pursuant to Section 9-224(f) and Chapter 1, Article 5, finds that because of its behavior, temperament and physical characteristics combined with the manner in which it is maintained will probably cause great bodily harm to a human being or other animal in the future. No animal shall be found to be a dangerous animal if any of the circumstances set forth in subsection 9-224(h) apply.

(e) The term "potentially dangerous animal" shall mean any animal that has bitten, injured or aggressively pursued any human being or other animal who the Poundmaster, after conducting an investigation pursuant to subsection 9-224(a), or Hearing Officer, after an appeal hearing is held pursuant to Section 9-224(f) and Chapter 1, Article 5, finds that because of its behavior, temperament and physical characteristics combined with the manner in which it is maintained there is a substantial possibility that it will cause injury or great bodily harm to a human being or

other animal in the future. No animal shall be found to be a potentially dangerous animal if any of the circumstances set forth in subsection 9-224(h) apply.]

~~(e)~~ [(f)] The term "kennel" shall mean any lot, building, structure, enclosure, or premises where any animal is boarded, trained, or kept for the purpose of sale or breeding whether in special buildings or runways or not.

~~(d)~~ [(g)] The term "unlicensed dog" shall mean any dog for which the license for the current year has not been paid.

~~(e)~~ [(h)] The term "vaccination" or "vaccination against rabies" shall mean the inoculation of a dog with a rabies vaccine approved by the health officer of the city or the United States Public Health Service for use in the prevention of rabies in dogs.

~~(f)~~ [(i)] The term "poundmaster" shall mean the employee of the city responsible for the performance of pound services. When the city has contracted for the performance of such services, "poundmaster" shall mean the party with whom the city has so contracted. [The poundmaster shall have the authority to delegate any of its responsibilities set forth in Chapter 9, Article 2 to persons the poundmaster has determined are qualified to perform said responsibilities.]

~~(g)~~ [(k)] The term "animal shelter" shall mean the animal shelter operated by the poundmaster.

~~(h)~~ [(l)] The term "guide" dog shall mean any dog trained to lead a blind person.

~~(i)~~ [(m)] The term "signal" dog shall mean any dog trained to lead or assist a deaf person.

SECTION 2. Section 9-208 of the Fresno Municipal Code is amended to read:

SECTION 9-208. ANIMALS AT LARGE. ~~No person owning, or having possession, charge, custody or control of, any animal, except a cat, shall cause, permit, or allow, such animal to be at large.~~

[(a)] No person owning, or having possession, charge, custody or control of, any animal, except a cat, shall cause, permit, or allow, such animal to be at large.

[(b)] If within the twelve month period after the date the poundmaster has issued a written warning or citation for violation of subsection (a) to the person who owns or has possession, charge, custody or control of the offending animal, that offending animal is found at large on two additional separate occasions, the poundmaster may request an administrative hearing before the Hearing Officer, pursuant to Section 1-501 et seq., to seek a finding that the animal is habitually at large.

[(c)] If after hearing the evidence and argument presented at the administrative hearing held pursuant to Chapter 1, Article 5, the Hearing Officer finds that the animal is habitually at large, the Hearing Officer may order any of the following:

(1) the animal be permanently altered to prevent reproduction;

(2) the animal be secured in an enclosure approved by the poundmaster at all times specified by the Hearing Officer;

(3) the animal be tethered with a rope or cable approved by poundmaster at all times specified by the Hearing Officer;

(4) the person owning or having possession, charge, custody or control of the animal repair or replace any structure or fence used to secure the animal to the satisfaction of the poundmaster;

(5) the animal be permanently forfeited to another person who the Hearing Officer has determined would be a responsible owner of the forfeited animal;

(6) the animal be permanently removed from the City;

(7) the animal be forfeited to the poundmaster.

The Poundmaster shall place any animal forfeited pursuant to this subdivision up for adoption if the poundmaster determines the forfeited animal's temperament and physical condition make the animal an appropriate candidate for adoption. If the poundmaster determines that the forfeited animal is not an appropriate candidate for adoption, the poundmaster shall humanely destroy the forfeited animal.

(d) The Council finds that permitting an animal, other than a cat, to be at large or maintaining one's property in a condition that permits an animal, other than a cat, to become at large is a public nuisance because of the potential threats to the public's health, safety and welfare resulting from at large animals and the potential for uncontrolled breeding that results in animal overpopulation.]

SECTION 3. Section 9-208.1 of the Fresno Municipal Code is amended to read:

Section 9-208.1. INFRACTION. Violation of Section 9-208 is an infraction[.] ~~punishable by a minimum fine of one hundred dollars.~~

SECTION 4. Subsection 9-209(a) of the Fresno Municipal Code is amended to read:

(a) The owner or person entitled to the possession of any impounded animal other than those impounded pursuant to section 9-223 may at any time before the sale or disposition thereof redeem the same. Upon proof satisfactory to the poundmaster that said person is the owner of said animal, upon payment of the redemption fee and maintenance charges, [upon proof of payment of any outstanding citations relating to the impounded animal or proof of the timely filing of an appeal of said citations with the City Hearing Officer.] and in the case of a dog, upon compliance with Section 9-210, said animal shall be turned over and delivered to said owner, together with a receipt for all fees so paid, which receipt shall contain a description of the animal redeemed, the date of redemption, the name and address of the redemptioner and a statement that such animal has been redeemed.

SECTION 5. Subsection 9-223(a) of the Fresno Municipal Code is amended to read:

(a) The poundmaster shall have the power to summarily and immediately impound a dog or other animal where there is evidence it has attacked, bitten or injured any human being or other animal pending any court or dog license or animal permit revocation proceeding arising from the attack, bite or injury. The poundmaster or his duly authorized representative may enter and inspect private property to enforce the provisions of this section.

Failure to surrender to the poundmaster upon demand a dog or other animal which is subject to being impounded pursuant to this section is a misdemeanor.

A dog or other animal, impounded pursuant to the authority of this section, shall be returned to the owner or custodian as provided by section 9-224 or when it is no longer required as evidence, or if a notice of a ~~hearing~~ [an investigation to determine if an animal is dangerous or potentially dangerous] pursuant to section 9-224 ~~to declare the dog or other animal a dangerous animal~~ has not been served on the owner or custodian within seven days after the impoundment.

SECTION 6. Section 9-224 of the Fresno Municipal Code is amended to read:

SECTION 9-224. DANGEROUS ANIMAL; PROCEDURES.

(a) ~~Hearing.~~ [Investigation and Declaration. ~~A hearing shall be conducted~~ [The poundmaster shall conduct an investigation] to determine whether or not a dog or other animal confined or impounded pursuant to

section 9-223 is a dangerous [or potentially dangerous] animal. The hearing shall be conducted under this section and Chapter 1, Article 5. [Within seven days of the date of impounding the dog or other animal pursuant to section 9-223 the poundmaster shall serve upon the owner or custodian of the dog or other animal by regular and certified mail a notice of investigation to determine if the animal is dangerous or potentially dangerous. This notice shall describe the purpose of the investigation, how the investigation will be conducted, the factors the poundmaster will consider in making a finding and a deadline for completing the investigation. The investigation may include interviewing the owner(s) of the dog or other animal, witnesses, reviewing records of citations and reports of previous incidents involving the dog or other animal and evaluating the temperament of the dog or other animal through behavioral testing. In making a finding regarding whether the dog or other animal is dangerous or potentially dangerous, the poundmaster shall consider the factors set forth in subsection (c). If after completing the investigation the poundmaster finds that the dog is dangerous or potentially dangerous, the poundmaster shall serve by regular mail and certified mail a notice of declaration as described in subsection (b). If after completing the investigation the poundmaster determines that the dog or other animal is not dangerous or potentially dangerous, the poundmaster shall inform the owner of the dog or other animal of this finding and release the dog or other animal to the owner. The investigation shall be completed and any

declaration served within twenty-one calendar days of the date the dog or other animal was impounded pursuant to section 9-223.]

(b) Dangerous [or Potentially Dangerous] Animal; Declared.
[Notice of Declaration.] ~~The hearing officer after a hearing, may declare any dog or other animal, other than a dog used in law enforcement or a guide, signal or service dog, to be a dangerous animal whenever it has bitten, attacked or caused injury to any human being or other animal. The owner of a dog or other animal which has been declared dangerous shall reimburse the city for all costs associated with the hearing process. [The notice of declaration finding that a dog or other animal is dangerous or potentially dangerous shall contain:~~

(1) a physical description of the animal, including the breed, if known, and the animal's license number, if any;

(2) a statement informing the owner of the animal that the poundmaster has declared the animal a dangerous animal or a potentially dangerous animal, including a brief and concise description of the any facts that form the basis for the declaration of the animal as a dangerous animal or a potentially dangerous animal;

(3) a statement informing the owner of the animal of the possible consequences should a declaration of dangerous animal or potentially dangerous animal become final;

(4) a statement informing that the owner or custodian of the animal may appeal the declaration provided that the appeal is made in writing as provided in subsection 9-224(f).

(5) a statement that the appeal request must be in writing and filed with the City Manager's Office within five calendar days of service of the notice of declaration;

(6) if the animal is declared dangerous, an order that the animal be humanely destroyed as provided for in subsection (d);

(7) if the animal is declared potentially dangerous, an order setting forth any or all of the conditions set forth in subsection (e);

(8) a statement that failure to appeal the notice of declaration will constitute a waiver of all rights to an administrative hearing and will be a final determination of the matter, and if after ten days from the date of the issuance of the notice of declaration finding the animal potentially dangerous, the owner or custodian has failed to inform the poundmaster of an intent to comply with the conditions set forth in the notice of declaration, the animal will be deemed abandoned and may be humanely destroyed or otherwise disposed of;

(9) a statement that failure to comply with all of the conditions set forth in the notice of declaration will result in the

poundmaster proceeding with impounding and destroying or otherwise disposing of the animal.]

(c) Determination of Dangerous [or Potentially Dangerous]

Animal; Evidence. In making a determination that a dog or other animal is or is not dangerous, evidence of the following shall be considered:

(1) any previous history of the dog or other animal attacking, biting or causing injury to a human or other animal;

(2) the nature and extent of injuries inflicted and the number of victims involved;

(3) the place where the bite, attack or injury occurred;

(4) the presence or absence of any provocation for the bite, attack or injury;

(5) the extent to which property has been damaged or destroyed;

(6) whether the dog or other animal exhibits any characteristics of being trained for fighting or attack or other evidence to show such training or fighting;

(7) whether the dog or other animal exhibits characteristics of aggressive or unpredictable temperament or behavior in the presence of human beings or dogs or other animals;

(8) whether the dog or other animal can be effectively trained or retrained to change its temperament or behavior;

(9) the manner in which the dog or other animal had been maintained by its owner or custodian;

(10) any other relevant evidence concerning the maintenance of the dog or other animal;

(11) any other relevant evidence regarding the ability of the owner or custodian, or the poundmaster, to protect the public safety in the future if the dog or other animal is permitted to remain in the city.

(d) Disposition of Dangerous Animal.

(1) It shall be unlawful for any person to own, possess, harbor or keep any dog or other animal declared by the hearing officer, after a hearing, to be dangerous.

(2) Any dog or other animal declared ~~by the hearing officer~~ to be dangerous, if not already impounded by the poundmaster, shall be immediately surrendered to the poundmaster, and it is the duty of the poundmaster to take up and impound any such dog or other animal.

(3) Any dog or other animal declared to be a dangerous animal shall be humanely destroyed. ~~The hearing officer shall sign an order authorizing the destruction of the dog or other animal.~~

(e) Dog or Other Animal Found ~~Not~~ [Potentially] Dangerous; Procedure. ~~If it is determined~~ [the notice of declaration states] that the dog or other animal is ~~not~~ [potentially] dangerous, ~~but that the bite, attack~~

~~or injury was the result of improper or negligent training, handling or maintenance, the dog license or animal permit may:~~

~~(1) be revoked if it is determined that the owner or custodian is unable or unwilling to properly train, handle or maintain the dog or other animal and a similar incident is likely to occur in the future without proper training, handling or maintenance; or~~

~~(2) be reissued with reasonable terms, conditions or restrictions imposed for the training, handling or maintenance of the dog or other animal to protect the public health, safety and welfare if it is determined that the owner or custodian is able and willing to properly train, handle or maintain the dog or other animal and a similar incident is not likely to occur in the future with proper training, handling or maintenance.~~

~~Prior to reissuance of the license, the owner of the dog or other animal shall show proof that the dog or other animal has successfully completed a training course with a qualified animal or dog obedience trainer. The poundmaster shall maintain a list of animal or dog obedience trainers which, in the poundmaster's discretion, are able and qualified to successfully train animals and dogs which have exhibited dangerous behavior. Upon request, the poundmaster shall make such list available to the owner of a dog or other animal affected by the provisions of this section. in the notice of declaration the poundmaster may set forth any or all of~~

the following as conditions to owning, possessing, controlling or being in charge of the animal declared to be potentially dangerous:

(1) the animal shall be confined on the owner's premises in an enclosure approved by the poundmaster;

(2) the animal shall be kept securely muzzled, leashed and under the control of a person eighteen (18) years of age or older, and who is physically capable of restraining the animal when the animal is off the owner's property;

(3) the animal shall be photographed, microchipped or permanently marked by the poundmaster for purposes of identification;

(4) the animal shall be altered to prevent reproduction;

(5) the owner of the animal shall notify in writing any public or corporate entity, including but not limited to, the City of Fresno, County of Fresno, the postmaster, utility companies, or any other organization that sends out employees to the residence, that a potentially dangerous animal resides at that property. The poundmaster may also set a time period by which such notices must be given, and when copies of such notices must be provided to the poundmaster;

(6) The owner shall post signs on the premises where the animal is being kept that are clearly visible from points of entry to the property which state that an animal which has been declared to

be potentially dangerous is on the property. Such signs shall be provided by the poundmaster, but the costs of the sign(s) shall be the responsibility of the animal owner. The language of such signs shall be determined by the poundmaster and may be required to be in a language other than English. The poundmaster may require that such signs are posted before an impounded animal is returned to its owner or within ten days from the date the animal was declared to be a potentially dangerous animal;

(7) An animal which has been declared potentially dangerous may not be transferred to reside either temporarily or permanently at another location within the City of Fresno without prior written authorization of the poundmaster. Said authorization shall not be issued unless every term set forth in the notice of declaration can be met at the proposed new location;

(8) the owner shall allow inspections of the animal and its enclosure by the poundmaster or any law enforcement agency and produce upon demand proof of compliance with all conditions set forth in the final notice of declaration;

(9) In the event of the animal's death, the owner shall notify the poundmaster no later than forty-eight hours thereafter and, upon request, produce evidence of the animal's death to the satisfaction of the poundmaster;

(10) In the event that the animal escapes, the owner shall immediately notify the poundmaster. In addition, the owner and poundmaster shall make every reasonable effort to recapture the animal;

(11) the animal shall be permanently removed from the City of Fresno and the owner shall provide proof of said removal to the satisfaction of the poundmaster; and,

(12) the owner shall pay all impound and shelter fees incurred by the poundmaster to impound the animal during the investigation to determine whether the animal is dangerous or potentially dangerous.

If the owner fails to comply with all of the conditions ordered by the poundmaster or the hearing officer through the appeal process described in this chapter, the poundmaster shall proceed to impound and destroy or otherwise dispose of the animal.

~~(f) — Revoked License; Previously Impounded or Confined.~~

~~(1) — If a dog or other animal has been impounded or confined pursuant to section 9-223 and its license or permit has been revoked pursuant to subsection (e)(1) above and the owner or custodian wishes to reclaim and remove it from the custody of the poundmaster, the poundmaster shall release it provided the dog or other animal is taken to a location outside the city immediately and directly upon its release from impound or confinement. Failure to~~

~~permanently remove the dog or other animal immediately and directly from the city upon release from impound or confinement is a misdemeanor.~~

~~(2) — Any dog or other animal which has previously been impounded or otherwise confined pursuant to section 9-223 and which has not been claimed within five calendar days of service of a notice of revocation of its license or permit shall be deemed abandoned and shall be disposed of by the poundmaster in accordance with this article. Notwithstanding the above, the owner may enter into a written agreement with the poundmaster to take additional time to remove, or to cause the dog or other animal to be removed, to a new location outside the city. Such additional time shall not exceed ten days. For each additional day agreed to, the pound fees as established by the poundmaster shall be paid prior to the release of the dog or other animal.~~

~~(g) — Animal Identification. Any dog or other animal subject to this section must be identified by the poundmaster by the use of permanent marking prior to its release from impound or confinement.~~

[(f) — Appeal of Notice of Declaration.

(1) — The owner of the animal may appeal the notice of declaration by filing an appeal with the City Hearing Officer within five days from the date of service of such notice, a written appeal. The written appeal shall contain all of the following:

(i) a brief statement setting forth the legal interest of each of the appellants regarding the animal involved in the notice of declaration;

(ii) a brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested notice of declaration should be reversed, modified, or otherwise set aside;

(iii) The signatures of all parties named as appellants and their official mailing addresses, with statement from each appellant that each agrees to accept service of the written notice of the time and place of the appeal hearing and the decision of the City Hearing Officer at such address;

(iv) the declaration under penalty of perjury of at least one appellant as to the truth of the matters stated in the appeal.

If the owner fails to file an appeal of the notice of declaration within five days of service of the notice of declaration, the notice of declaration shall become final and fully enforceable.

(2) An owner appealing a notice of declaration finding an animal dangerous or potentially dangerous shall be required to pay the office of the City Hearing Officer, at the time the written notice

of appeal is filed, an appeal fee set forth in the Master Fee Schedule. Such fee shall be refunded to the appellant if the Hearing Officer determines that imposition of the fee is not warranted or is not in the interest of justice. No notice of appeal is valid unless accompanied by the appeal fee.

(3) Upon receipt of any appeal the office of the City Hearing Officer shall calendar it for hearing and notify the appellants and the poundmaster in writing of the date, time and location for the hearing.

(4) The appeal hearing shall be noticed and conducted under this section and Chapter 1, Article 5, except that the deadline for filing an appeal and the requirements for the contents of the appeal set forth in subsection 1-506(b) shall not apply.]

~~(h)~~ [(g)] Any person whose dog or other animal has been declared dangerous or ~~whose license or permit has been revoked under this section~~ [potentially dangerous] shall not own, possess, control or be in charge of ~~an~~ [another] animal of the species declared to be dangerous or ~~whose license or permit has been revoked~~ [potentially dangerous] for a period of three years from the date of ~~the action declaring the animal dangerous or revoking the license or permit.~~ [of the final notice of declaration of order after appeal.] The Controller shall not issue or renew any license or permit for said species of animal, except that upon the written request of the person whose dog or other animal has been

declared dangerous or ~~whose license or permit has been revoked~~
[potentially dangerous,] the poundmaster may in his discretion authorize
the issuance of a dog license.

(+)(h) No dog or other animal may be declared dangerous that
inflicts injury or damage on a person committing a willful trespass or other
tort upon premises occupied by the owner of the dog or other animal, or
teasing, tormenting, abusing or assaulting the dog or other animal, or
committing or attempting to commit a crime.

No dog or other animal may be declared dangerous if it inflicts
injury or damage on a domestic animal that was teasing, tormenting,
abusing or assaulting the dog or other animal.

No dog or other animal may be declared dangerous for taking any
action to defend or protect a human being within the immediate vicinity of
the dog or other animal from an unjustified attack or assault.

(i) The Council finds that dangerous animals and potentially
dangerous animals are a public nuisance because of the potential threats
to the public's health, safety and welfare resulting from these animals
attacking, biting, injuring or killing other persons or animals.]

SECTION 7. Section 9-225 of the Fresno Municipal Code is added to read:

[SECTION 9-225. BREEDING, TRANSFER AND SALE OF DOGS AND CATS.

The Council of the City of Fresno finds and declares that there exists a serious pet
overpopulation problem within the City of Fresno that has resulted in a threat to public
safety and health, inhumane treatment of animals, mass killing of dogs at the local

animal shelter and escalating costs for animal care and control. The Council finds that uncontrolled breeding is a cause and, without further action aimed at the source, this problem and its serious consequences will remain unabated and will increase in severity.

The Council finds that part of the solution is for all dogs over the age of five months to be spayed or neutered, unless their owners purchase the appropriate license for the privilege of maintaining the animal intact and allowing it to breed. Further, the Council finds that regulation of the transfer of dogs and cats will help alleviate the City's pet overpopulation crisis by allowing increased City control over enforcement of the dog licensing provisions and limiting the means of obtaining a dog or cat.

(a) The Unaltered Dog License shall contain the following terms and conditions:

(1) The Owner of an unaltered female dog shall not allow the whelping of more than one litter within the permit year.

(2) No offspring may be sold, adopted, bartered or otherwise transferred, whether for compensation or otherwise, until such offspring has reached the age of at least eight (8) weeks.

(3) The Owner must prominently display their Unaltered Dog License number in any advertisement to the public for the sale, adoption or transfer (whether for compensation or otherwise) of the offspring. The Owner must provide the Unaltered Dog License number to any person who purchases, adopts or receives the offspring and include the Unaltered Dog License number on any receipt of sale or transfer document.

(4) The Owner shall provide to all persons who receive any offspring, whether for compensation or otherwise, an application for a City of Fresno dog license, as well as written information regarding the City of Fresno's dog license requirements. The Owner shall obtain these documents from the poundmaster or the controller.

(b) Sale and Other Transfer of Dogs and Cats.

(1) No person shall give away any dog or cat as a prize or as an inducement to enter into any contest, lottery, drawing, game or competition.

(2) No person shall give away any dog or cat as an inducement to enter a place of business.

(3) No person shall sell or give away any dog or cat in any public place or in front of any business not owned by him/her or at any swap meet.

(4) No person shall sell, barter, exchange or offer for adoption, whether for compensation or otherwise, any dog or cat to any minor under the age of eighteen years, without the written permission of one of the minor's parents or legal guardians.

(c) Enforcement of Dog License Provisions. Any violation of this section shall be an infraction.]

SECTION 8. SEVERABILITY. The Council declares that the provisions of this ordinance are severable. If, for any reason, any sentence, paragraph, or section of this ordinance is determined by a court of competent jurisdiction to be invalid, such determination will not affect the validity of the remaining provisions of this ordinance.

SECTION 9. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2006.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2006

Mayor Approval/No Return: _____, 2006

Mayor Veto: _____, 2006

Council Override Vote: _____, 2006

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Deputy

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
ADDING SECTION 9-225 TO THE FRESNO MUNICIPAL
CODE RELATING TO THE MANDATORY SPAYING AND
NEUTERING OF DOGS AND THE TRANSFER AND SALE
OF DOGS AND CATS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 9-225 of the Fresno Municipal Code is added to read:

[SECTION 9-225 MANDATORY SPAYING AND NEUTERING OF DOGS;
SALE AND TRANSFER OF DOGS AND CATS.]

(a) No person may own, keep or harbor any dog within the City
of Fresno that the person in possession knew or should have known has
not been spayed or neutered unless:

(1) The dog is under six months of age;

(2) The dog cannot be spayed or neutered without a high
likelihood of suffering serious bodily harm or death due to a
physical abnormality. A veterinarian must certify such a condition
and determine the time frame after which the dog can be
spayed/neutered. Within thirty days of the operative date of this
ordinance, or within thirty days of taking possession or ownership of
any unspayed or unneutered dog, the owner, guardian or keeper
must submit such documentation to be verified by the
poundmaster;

EXHIBIT "B"

(3) The dog has been present in the City of Fresno for less than thirty days;

(4) The owner, guardian or keeper has obtained, or has submitted an application for a breeding permit in accordance with Subsection 9-225(d);

(5) The dog is of showing quality as defined by American Kennel Club and United Kennel Club standards for that breed. Within thirty days of the operative date of this ordinance, or within thirty days of taking possession or ownership of an unspayed or unneutered dog, the owner, guardian or keeper must submit a copy of the organization papers (American Kennel Club, United Kennel Club) to the poundmaster demonstrating the pedigree information and show dog registration and that the dog conforms with the same breeding permit guidelines set forth in subsection 9-225(d).

(b) Violation of Subsection (a) may result in the following penalties:

(1) A first violation shall be an infraction. A second and subsequent violations shall be charged as misdemeanors.

(2) A second violation of Subsection (a) may result in the poundmaster impounding the dog. In order for the owner, guardian or keeper to reclaim the dog from the poundmaster, in addition to paying the other charges and fees set out in section 9-209, one of the following must occur:

(i) The poundmaster shall have a veterinarian spay or neuter the dog. The dog owner, guardian or keeper shall pay a deposit in an amount set forth in the Master Fee Schedule prior to the procedure and will be charged the fee for such services consisting of the actual expense incurred as established by the poundmaster. There may be additional fees for any extraordinary veterinarian services provided.

(ii) In the alternative, the owner, guardian or keeper shall arrange for another veterinarian within the City of Fresno to spay or neuter and shall pay the poundmaster a fee, the amount of which is set forth in the Master Fee Schedule, which shall cover the poundmaster's costs of delivering the dog to a veterinarian of the owner, guardian or keeper's choosing. The poundmaster shall deliver the dog to the veterinarian and the veterinarian shall release the dog to the owner, guardian or keeper only after the spaying or neutering is complete.

(iii) At the discretion of the poundmaster, or his/her designee, the poundmaster may release the dog to the owner, guardian or keeper provided that the owner, guardian or keeper signs an affidavit that she/he will have the dog spayed or neutered within two months and will provide

documentation verifying that the spaying or neutering occurred. If the owner, guardian or keeper fails to have his/her dog spayed or neutered as agreed in the affidavit, the poundmaster shall have the authority to impound the dog, and the owner, guardian or keeper may be charged with a second violation of Subsection (a).

(iv) In the event that the poundmaster or his/her designee determines that payment of any fees by the owner, guardian or keeper of a dog which is impounded or otherwise taken into custody would cause extreme financial difficulty to the owner, guardian or keeper, the poundmaster or his/her designee may, at his/her discretion, waive all or part of the fees necessary for compliance with this subsection.

(c) Requirement of Permit for Breeding of Dogs. No person shall cause or allow any dog that is owned, harbored or kept within the City of Fresno to breed or give birth without first obtaining a permit as described in subsection (d). Keeping an unaltered male adult dog together with a female dog in heat in the same dog run, pen, room or any other space where the two dogs are allowed contact with one another that would allow the dogs to breed is considered prima facie evidence of an owner, guardian or keeper's intent to allow the dogs to breed.

(d) Granting or Denying a Breeders Permit. An owner or keeper of a dog may obtain a nontransferable permit that lasts for one year. If more than one owner, guardian, or keeper is involved in the breeding process, each party must apply for and be granted a breeders permit. The permit may be obtained from the poundmaster if all of the following conditions are met:

(1) The applicant has submitted the appropriate forms and fees required by the poundmaster in order to seek consideration for a breeders permit.

(2) The applicant has a space in which to breed dogs and raise the puppies that the poundmaster is satisfied will contain the animals as well as provide them with safe, sanitary, and humane conditions, appropriate for breeding dogs, which satisfies all applicable provisions of Article 9, Chapter 1 of the Fresno Municipal Code and all applicable State animal welfare laws.

(3) The poundmaster has evaluated and reached a positive conclusion regarding the suitability of the particular dogs to be bred, including consideration of their lineage, age and health condition. The poundmaster shall establish reasonable guidelines for making this determination.

(e) Breeders Permit Denial. The poundmaster shall automatically deny the breeders permit if one or more of the following occurs, and that decision shall be final:

(1) The applicant fails to pay the permit fee within two weeks of notification that the application has been approved.

Applicant may reapply for a permit after ten consecutive months.

(2) The applicant has a history of allowing dogs to run at large or escape, or has otherwise been found to be neglectful, has had his/her dog identified as a nuisance; or has previously been determined to have violated Section 9-224 of the Fresno Municipal Code.

(3) The applicant has applied for a permit within the last ten months.

(f) Inspection of Premises. The poundmaster may on one or more occasions , up to a year after issuing the permit, perform an inspection of the dogs' living quarters to ensure that the standards required to receive a permit are met. The poundmaster shall give the owner, guardian or keeper a twenty-four hour notice and will conduct such inspection at a reasonable time when the owner, guardian or keeper, or his/her representative, is present. The owner, guardian or keeper shall allow the poundmaster access to conduct the inspection. If the property does not meet the required standards, or the owner, guardian or keeper cannot be contacted for an inspection within two weeks of the poundmaster's initial attempt, or the owner, guardian or keeper fails or refuses to allow an inspection, the poundmaster shall not issue a permit,

or, if a permit has already been issued, shall proceed with seeking the revocation of the permit.

(g) Revocation of Breeders Permit. The City may, after conducting a hearing, revoke a breeders permit for violations of the provisions of Article 9, Chapters 1 and 2 of the Fresno Municipal Code. Within five days of the poundmaster's knowledge of any such violation(s), the poundmaster shall notify the permit holder in writing of the alleged violations and of his/her intent to request a hearing before the City Hearing Officer to request the revocation of the breeders permit. This written notification shall be sent by regular mail and certified mail. The poundmaster shall then request a hearing before the City Hearing Officer which shall be conducted pursuant to the provisions of Article 1, Chapter 5 of the Fresno Municipal Code. If the permit is revoked and the dog is already pregnant or the puppies are whelped, the poundmaster may impound the dogs and dispose of them by placing them for adoption, or if necessary, by humane destruction.

(h) The owner of an unaltered female dog shall not allow the whelping of more than one litter within the permit year.

(i) Sale and other Transfer of Dogs and Cats. No person shall do any of the following within the City of Fresno:

(1) Give away any dog or cat as a prize or as an inducement to enter into any contest, lottery, drawing, game or competition;

(2) Give away any dog or cat as an inducement to enter a place of business;

(3) Give away any dog or cat in any public place or in front of any business not owned by him/her or at any swap meet;

(4) Sell, barter, exchange or offer for adoption, whether for compensation or otherwise, any dog or cat to any minor under the age of eighteen years, without the written permission of one of the minor's parents or legal guardians.]

SECTION 2. SEVERABILITY. The Council declares that the provisions of this ordinance are severable. If, for any reason, any sentence, paragraph, or section of this ordinance is determined by a court of competent jurisdiction to be invalid, such determination will not affect the validity of the remaining provisions of this ordinance.

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2006.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2006

Mayor Approval/No Return: _____, 2006

Mayor Veto: _____, 2006

Council Override Vote: _____, 2006

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Deputy

JWF:ns [37173ns/ord] – 3/16/06