



City Council Meeting Date: September 5, 2006

TO: Honorable Mayor and Members of the City Council

FROM: Gary P. Keefe, City Administrator

SUBJECT: ADOPTION OF STRICTER REGULATION OF DANGEROUS DOGS

RECOMMENDATION:

That City Council receive staff's report, hear public testimony, waive further reading, and introduce Ordinance No. 1534(06); approve any related ancillary requirements; and give appropriate direction to staff; or direct staff to take alternative action(s).

BACKGROUND:

In April, Councilmember Siminski asked that Council consider strengthening the City's ordinance relating to dangerous dogs, in light of the recent passage of California Senate Bill 861(05). SB861 authorizes local governments to enact legislation regulating spaying, neutering, and breeding of dogs of a specified breed.

On May 2, 2006, staff presented a draft ordinance to Council for discussion and direction. There was general support for the ordinance, and by a vote of 4-1, Council directed staff to return with a more complete ordinance that supplements existing state and local legislation. City staff has consulted with County Animal Control, and their comments have been incorporated into the proposed ordinance.

DISCUSSION:

A number of legislative schemes for regulating dangerous canine behavior already exist at state and local levels.

- A. State Laws. California Food and Agriculture Code Sections 31606 through 31683 establish regulatory procedures for identifying and controlling "potentially dangerous dogs" and "vicious dogs".

The statutes require that an animal control or law enforcement officer investigate reports of unsafe canine behavior. If the investigating officer determines that probable cause exists that a dog is potentially dangerous or vicious, the dog may be impounded at the owner's expense while the Police Chief or the Chief Animal

Control Officer petitions the Superior Court for a public hearing to determine if the dog should be declared potentially dangerous or vicious.

The dog's owner or keeper is served with notice of the hearing, which must be held between five and ten working days after service of notice. The owner or keeper may appear and give evidence why the dog should not be declared potentially dangerous or vicious. If the Judge finds that the dog is potentially dangerous or vicious, he or she is authorized to issue appropriate orders for control of the animal, including requirements for licensing, vaccination, maintenance of records of the dog's past behavior, and restraint when off the owner's premises. The judge may also order that the animal be euthanized and the owner prohibited from keeping any other dog for three years. State laws provide substantial appeal rights to the dog's owner or keeper prior to any final action.

Section 31683 authorizes a city or county to adopt stricter regulations to control potentially dangerous and vicious dogs, but the local program may not be specific as to breed except in the areas of spaying, neutering, and breeding. State law prohibits a blanket advance declaration of dangerous or vicious animal from being applied to an entire breed.

A copy of the statutes summarized above is attached at Exhibit A.

- B. Local Ordinances. Chapter 6 of the Lompoc City Code regulates the keeping of animals. The sections pertaining to dangerous canine behavior are attached at Exhibit B. The City Attorney may charge violations as infractions or misdemeanors.

The City Code provides for impoundment of dogs running at large, trespassing, biting or attacking any person or animal, or exhibiting vicious behavior. The City Administrator or his/her designee then is required to conduct a hearing to determine whether the animal is a dangerous animal. Notice of the hearing is served on the animal's keeper or owner who may attend the hearing to present evidence and call witnesses. The hearing is recorded.

In determining if an animal is dangerous, the City's Hearing Officer considers many factors, including the animal's previous biting or attacking history, the extent of injuries inflicted or property damage sustained, the number of victims, the presence or absence of provocation, evidence of characteristics of training for fighting or attack, evidence of aggressive or unpredictable temperament, the potential for effective retraining, the manner of maintenance and custody provided by the owner, the future ability of the owner to protect the public safety, etc.

After hearing evidence, the Hearing Officer may declare a dog or other animal to be a vicious animal when it has bitten, attacked, or caused injury to any human being, or when substantial evidence has been presented to show that the animal is vicious in that it constitutes an actual and serious immediate physical threat to the life, health, or safety of human beings or other animals. Lompoc City Code Section 0656.D.3 provides that “any dog or other animal “declared to be a dangerous animal shall be humanely destroyed”.

The Hearing Officer is authorized to issue appropriate orders in cases of animals determined not be dangerous. These include such measures as revocation of dog license or animal permit, prohibition against future ownership of similar animals, or release of the animal with conditions for its keeping, e.g., maintenance of liability insurance, restrictions on the place and manner of keeping the animal, and requiring permanent marking of the animal for future identification purposes.

- C. New Regulatory Authority. The laws summarized above have been in effect for many years. The hearing procedure contained in the Lompoc City Code has been used often in response to allegations of dangerous canine behavior. Petitioning for a hearing in Superior Court is another option that can be selected.

The tragic deaths of several persons from dog attacks in recent months prompted San Francisco lawmakers to request new state legislation. Prior to January 1, 2006, Food and Agriculture Section 31683 authorized a local jurisdiction to enact its own program for the control of potentially dangerous and vicious dogs. Such programs were allowed to be stricter than the state laws, provided that no program regulated such dogs in a manner specific to breed. However, SB 861(05) amended Section 31683 and adopted Health and Safety Code Section 122331 to provide that “[c]ities and counties may enact dog breed-specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements, provided that no specific dog breed, or mixed dog breed, shall be declared potentially dangerous or vicious under those ordinances”.

Jurisdictions implementing breed-specific regulations for spaying, neutering, and breeding are required to compile statistics to measure the effectiveness of the program. Quarterly reports must be submitted to the State Public Health Veterinarian identifying, as a minimum, the number of dog bites occurring during the reporting period, the severity of the bites, the breeds of the dog involved, whether the dogs were spayed or neutered, and whether the dogs were subject to the local program.

D. Cost Recovery.

Historically, Santa Barbara County has provided animal control services for the City of Lompoc, operating out of the Lompoc Animal Control Shelter. Lompoc Animal Shelter staff also provide services to the unincorporated areas of the County.

As Council will recall, the City and County operated under a fee-for-service contract for many years, but a per capita fee methodology was adopted by Santa Barbara County in July of 2002. In October of 2002, the Lompoc City Council approved a two-year agreement utilizing the per capita fee methodology for our contract with the County. The per capita fee schedule represents a substantial increase over the fee-for-service contract costs, and these new costs were phased in over a four-year period. During the first year, the County recovered 70% of their costs, followed by 80% the second year, 90% in the third year, and 100% in the fourth year (FY 2005-2006). The City costs have been:

- FY 01-02 \$ 75,000
- FY 02-03 \$133,834
- FY 03-04 \$152,942
- FY 04-05 \$195,000
- FY 05-06 \$216,927
- FY 06-07 \$217,935

The current fee structure provides approximately \$53,000 in revenue to County Animal Control. There are currently 2,270 dogs licensed in the City of Lompoc. The City of Lompoc provides \$217,935 (see attached July 2006 staff report) from the General Fund to pay Lompoc's per capita share of Animal Control Services. The City could recover the cost of this service through dog licensing fees and attempt to relieve the General Fund of this cost. To accomplish this cost recovery, the current \$17.00 annual sterilized licensing fee would need to be raised to \$85.00, and the current annual unaltered licensing fee of \$39.00 would need to be raised to \$180.00. Fees in the \$85-\$180 range will likely cause customers to avoid the cost and run the risk of penalties. Staff has therefore recommended a modest increase in fees to help recover costs.

RECOMMENDATION:

As Council directed, staff has reviewed the City's ordinances and analyzed their provisions. In light of the restrictions imposed by state law, the scope of amendment is limited. However, the following changes are recommended for Council's consideration.

A. Adoption of clearer definitions of terms used in the City's animal control regulations.

B. Approval of expansion of the definition of “dangerous animal” to include an animal declared potentially dangerous that is being kept in violation of the conditions imposed by a judge or hearing officer for its release.

C. Approval of the expansion of the definition of “potentially dangerous animal” to include an animal demonstrating unprovoked terrorizing behavior, defined as the action exhibited by an animal that, in a vicious or terrifying manner, approaches any person in apparent attitude of attack” in public areas of the City.

D. Approval of clearer definitions of service dogs and their exemptions from certain provisions of the Animal Control regulations.

E. Adoption of an anti-“bite and run” provision ---i.e., a law requiring that licensing and vaccination information for any dog biting a human must be given to the victim by the dog’s owner or keeper. The owner or keeper must also provide his or her name and address to the victim, as well as disclosing the name of the owner’s or keeper’s homeowner’s or renter’s insurance company.

F. Require mandatory spaying or neutering for all pit bulls within the City, subject to certain exemptions and appeal rights as to identity of breed and exemptions from sterilization.

[OR, IN THE ALTERNATIVE]

F. Require mandatory spaying or neutering of all dogs within the City, subject to certain exemptions and appeal rights. (This option is recommended by staff.)

G. Set forth the specific penalties for violation of any of the animal control regulations.

H. Amend the existing dog license fees as follows:

1. Sterilized dog: increase existing fee of \$17 to \$25; and
2. Unsterilized dog: change present fee of \$39 to:
 - (a) Unsterilized Per Exemption -- \$50
 - (b) Unsterilized – \$80.

The draft ordinance attached to this report contains the necessary language to enact the recommendations listed above.

SUMMARY:

Staff requests that the Council consider the proposals and recommendations contained in this report, as well as public comments, and appropriately direct staff to carry out Council's decisions by amendment to the City's animal control regulations.

Respectfully submitted,

Gary P. Keefe
City Administrator

Attachments:

- Exhibit A, Existing State Laws
- Exhibit B, Existing City Ordinances
- Exhibit C, Proposed City Code Amendments (Draft Ord. No. 1534(06)).
- Exhibit D, Animal Control Comments
- Exhibit E, Animal Control City Staff Report, July 18, 2006