



# Memorandum

**To:** Mayor and City Council

**From:** Councilmember Pete Constant

**Subject:** Proposed Amendments to Title VII (Animal Ordinance) of the San Jose Municipal Code

**Date:** April 30, 2007

**Approved:** 

## RECOMMENDATION

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

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

## **ANALYSIS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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