



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: **Second Supplemental Memo –
Proposed Title 7 Amendments**

DATE: June 7, 2007

SECOND SUPPLEMENTAL MEMO

On May 1, 2007, the City Council directed that a proposed ordinance, which reflects the Council's discussion and Councilmember Constant's recommendations as set forth in his memo dated April 30, 2007, be brought back for further consideration. Staff's response and analysis of the public policy implications are set forth in a memo under separate cover. Our office issued a memo dated April 18, 2007 summarizing the changes to the current law including which sections were deleted. Attached is the proposed ordinance that includes all changes made since the May 1, 2007 meeting with the deletions in ~~strike-through~~ and additions in underscore format. Those portions of the regulation not shown in underscore or strike-through have not changed.

DISCUSSION

The following discussion identifies the changes requested by Council with the same numbers used in Councilmember Constant's memo and specifies how the proposed ordinance addresses each recommendation:

(1a.) The term "guardian" is deleted and replaced with the phrase "a person with a right to control." This phrase is defined to mean "any person who harbors or has control, custody, or possession of an animal." Title 7 currently uses this phrase. The definition of "owner" has also been amended to mean "any person that has a property interest or acknowledges a property interest in an animal."

(1b.) All references to a "police officer" are replaced with the term "peace officer."

(1c.) The definition of "service dog" in Section 7.10.200 as originally proposed by staff reflects how the Americans with Disabilities Act (ADA) define a service dog. Council requested that the definition of a "service dog" be expanded to include any dog that is being trained to be a service dog so that these dogs can have an opportunity to train in a real life environment like a city building. Staff may discuss issues related to distinguishing between service dogs, dogs in training to be service dogs, and pets in a separate memo.

One way to allow a dog that is being trained to be a service dog to be in a city building is to create a specific exception for them in Section 7.40.100, the animals in city building provision, as opposed to having a definition of a "service dog" that is inconsistent with the ADA. This alternative is reflected in the proposed ordinance.

(1d.) The term "shall" is replaced with the term "may" in Section 7.20.520(B), the license requirement provision. Council requested the change to make sure that the animal services officer and/or peace officer retain discretion on when to impound an animal.

(1e.) The metal tag requirement in Section 7.20.570 is revised to allow a dog participating in an exhibition to not wear a metal tag if it otherwise has a microchip. An "exhibition", under Section 7.10.105 means "any organized animal conformation or agility type competition registered or chartered with a nationally recognized organization."

(1f.) The pet limit provision in Section 7.40.020(B) is revised to only regulate those individuals who live in the same dwelling unit and contribute to the violation of having too many dogs and cats. Individuals who live in the same dwelling unit but do not own or maintain a dog or cat on the premises should not be liable for the pet limit violation. This is the intent of the current law and the language has been changed to clarify the intent.

(1g.) Currently, Title 7 allows a person to have either one (1) litter of dogs or one (1) litter of cats in a calendar year. Staff recommended that the litter limit be reduced to either one (1) litter of dogs or one (1) litter of cats. Council requested that Section 7.40.020(D) be revised so that one (1) litter of dogs or cats is allowed each year. This request reflects the current law and is in the proposed ordinance.

(1h.) The restraint of dog requirement in Section 7.40.040(B) currently states, in part:

The owner or person with the right to control any dog shall keep such dog under direct physical restraint by means of a leash not to exceed six feet in length when the dog is on any public street or other public place...

Staff did not recommend any changes to the current law. Council asked that the requirement be changed to allow for use of a retractable leash for a length longer than six (6) feet if the dog "is not in the presence of other animals or people." The current law allows the use of a retractable leash as long as the leash is no more than six (6) feet.

Determining when a dog is "in the presence" of another person or animal is difficult for the person handling the dog and the Animal Services Officer enforcing the regulation. It is unclear whether the distance should be one block or out of sight. It is also possible another person or animal could be behind the dog owner but the owner is not aware of

their presence. If Council's intent is to allow a dog to be on a longer leash when it is in an environment where the dog would not otherwise create a public nuisance impact on another person or animal, we suggest the following proposed language in underscore for Section 7.40.040(B):

The owner or person with the right to control a dog shall keep the dog under direct physical restraint by means of a leash not to exceed six (6) feet in length when the dog is on any public street or any other public place...A leash of more than six (6) feet in length but no longer than twenty (20) feet in length may be used only if the owner or person with the right to control the dog can exercise direct physical restraint on the dog and the dog makes no physical contact with another person or with an animal without the consent of that person or the consent of the owner or person with the right to control the other animal.

This alternative language is in the proposed ordinance. Staff may discuss another recommendation in a separate memo.

(1i.) Under the current law, animals in city buildings are prohibited except for persons with a disability assisted by a services dog or persons authorized by the City Manager. Council asked that additional exceptions for police dogs and animals participating in animal events be added to Section 7.40.100. The proposed ordinance includes these exceptions and also includes the previously discussed exception for dogs being trained to be service dogs. Staff may discuss concerns they have with animal events in all city buildings in a separate memo.

(1j.) The Council requested that the hearing officer be required in an impoundment hearing, under Section 7.50.010(C), to make findings of Title 7 violation(s) before he or she can order that an animal be impounded. Due process does require that a finding of violation be made. The current practice is that no animals can be seized from private property without consent, a warrant based on a hearing officer's findings or other probable cause, or exigent circumstances. This change clarifies the current practice and is in the proposed ordinance.

(1k.) Staff recommended that the threshold for a commercial kennel presumption be lowered to include premises that allow the parturition or rearing of more than one (1) litter of dogs or cats per animal maintained at the premises.

Council requested that Section 7.60.030, the presumption of a commercial kennel provision, be changed to allow the parturition or rearing of more than one (1) litter of dogs or cats per animal maintained at the premises in any twelve (12) consecutive months. The proposed ordinance reflects this change.

Council's recommendation results in fewer litters per animal than under the current law. Under the current law, a person is presumed to be a commercial kennel engaging in the commercial breeding of dog or cats if there is, in part, the parturition or rearing of more

than two litters of dogs or cats in any one calendar year from the total number of females owned or maintained by that person on the premises...

Council can stay with the current law of two (2) litters per dog or cat a year, adopt a one (1) litter per dog or cat a year, or adopt a one (1) litter per dog or cat for the lifetime of the animal. It should be noted that the per animal litter limit influences but is not determinative of the total number of litters a private kennel can have because the current law does not regulate the number of animals in a private kennel. For example, a private kennel with five unaltered female dogs, if limited to one (1) litter a year per animal, could have five (5) litters a year.

(1l.) The term “palatable” is deleted from Sections 7.60.770 and 7.20.040, the food and feeding requirements for small animals and livestock and all other animals, respectively. Staff may discuss any concerns regarding this recommendation in a separate memo.

(1m.) Council asked that all hearing provisions in Title 7 state the time to appeal a hearing decision comparable to what is stated in Section 7.30.330, the hearing procedure and appeal provision for dangerous dogs. The proposed ordinance has not been changed to incorporate this change for the reasons discussed below.

Section 7.30.330 is unique in that the time to appeal a dangerous dog hearing decision tracks the Food and Agricultural Code requirement that the appeal by the dog owner be filed within five (5) days and any evidence presented in the hearing before the court is reviewed anew.

Section 1.16.010 of the Code establishes the time to appeal a hearing officer’s decision unless a Municipal Code provision sets forth a specific appeal process. Generally, appeals of hearing decisions in Title 7 and the Code must be filed within ninety (90) days. (Code of Civil Procedure Section 1094.6) On appeal, the court limits its review to the administrative record and will sustain the hearing officer’s decision as long as there is substantial evidence to support it. As such, the hearing processes in the Code do not separately address the time to appeal and to do so in Title 7 may create a negative implication for other sections of the Code. Finally, as a matter of practice, written hearing decisions specify the right to appeal and cite to CCP Section 1094.6.

Location of Sale Exemption

Staff proposes to exempt registered animal rescuers from the regulation limiting the sale of animals under Section 7.20.730 to specific locations such as an animal facility with a permit, private residence, or agricultural shows and exhibits. To maintain a valid registration, the animal rescuer must comply with a series of regulations including, but not limited to providing animals with adequate water, food, and shelter. Council requested that staff revisit Section 7.20.730 to determine if additional requirements should be imposed on the animal sale or adoption event to ensure the health and safety

of the animals and the public. Staff did not recommend any substantive changes in the proposed ordinance.

Other Clarifying Change

Throughout the proposed ordinance, the term "shall" is changed to more accurately reflect the meaning of the sentence.

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By 
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For questions please contact Rosa Tsongtaarii, Deputy City Attorney, at 408-535-1985