STUDY SESSION STAFF REPORT

MEETING DATE: **5-8-07** **ITEM NO.:**

SUBJECT: **REVISIONS TO ANIMAL CONTROL ORDINANCE**

DATE: **May 3, 2007**

FROM: **City Attorney's Office**

PRESENTATION BY: **Kimberly Hall Barlow, City Attorney and Sgt. Phil Myers**

FOR FURTHER INFORMATION CONTACT: **Kimberly Hall Barlow, City Attorney, (714) 446-1400**

RECOMMENDED ACTION:

Consider and discuss proposed revisions to animal control ordinance (Title 3) and Parks and Recreation provisions relating to dogs in City parks (Section 12-42 of Title 12, and give direction to staff.

BACKGROUND:

It has been more than twenty years since the last major revision to the City's Animal Control ordinances. Numerous changes in the character of the community, the Food and Agriculture Code and other areas of the law have occurred in the interim. The Animal Control staff requested numerous changes in order to bring the City's codes current and to make enforcement easier. Definitions and punishments have been made consistent with those in the Food and Agriculture Code.

DISCUSSION:

Most of the changes proposed in the attached draft ordinance are included at the request of Animal Control Staff, including the updated definitions, revision to the provisions relating to the setting of and billing for license fees and late charges, change in the number of animals which may be kept, deletion of animal zones, prohibition on feeding stray animals and animal slaughter prohibition. The City Attorney's Office has added an appeal process to provide due process to any animal owner who wishes to contest a potentially dangerous or vicious dog determination.

A proposed provision relating to licensing of cats has been added at the request of Member Dixon.

Neither the existing code, nor the proposed code amendments, contain dog-breed specific provisions, as was consistent with former state law. However, in 2005, the California Legislature amended state law to allow cities to enact breed-specific ordinances with certain restrictions. Such provisions have not been included in the proposed amendments, but can be added at the direction of City Council.

Section 31601(a) of the Food and Agriculture Code provides in part that "[t]he necessity for the regulation and control of vicious and potentially dangerous dogs is a statewide problem, requiring statewide regulation." Section 31601 through section 31683, enacted in 1989, contains the state law governing potentially dangerous and vicious dogs, including specific definitions of what constitutes a potentially dangerous or vicious dog. This set of laws is not specific as to dog breed and covers how dogs may be declared potentially dangerous or vicious by petition to the superior court and regulated by license and vaccination, seizure and impoundment, restraints, and/or destruction. These provisions have been incorporated into the proposed code amendments.

Additionally, Section 31641 provides:

> All potentially dangerous dogs shall be properly licensed and vaccinated. The licensing authority shall include the potentially dangerous designation in the registration records of the dog, either after the owner or keeper of the dog has agreed to the designation or the court or hearing entity has determined the designation applies to the dog. The city or county may charge a potentially dangerous dog fee in addition to the regular licensing fee to provide for the increased costs of maintaining the records of the dog.

However, a dog must be declared to be a potentially dangerous dog as defined in Food and Agriculture Code section 31602 or a vicious dog under section 31603 by following the procedures set forth in section 31621, which include petitioning the superior court to declare the dog potentially dangerous or vicious, in order for the City to charge the extra fee. Provisions allowing for an extra fee under these provisions have not been added to the City's proposed code changes due to the impracticability of charging a fee high enough to cover the costs of seeking a court order.

Formerly, Section 31683 of the Food and Agriculture Code provided that the state laws regulating potentially dangerous and vicious dogs would not preclude cities from adopting or enforcing their own programs for the control of such dogs, so long as these programs did not regulate dogs in a manner that was breed-specific. However, the Legislature passed Senate Bill 861 in 2005, effective January 1, 2006, amending this section so that city enforcement programs may not be breed-specific "*except as provided in Section 122331 of the Health and Safety Code.*" SB 861 also added Section 122331 to the Health and Safety Code. This new section reads:

> (a) Cities 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.
>
> (b) Jurisdictions that implement programs described in subdivision (a) shall measure the effect of those programs by compiling statistical information on dog bites. The information shall, at a minimum, identify dog bites by severity, the breed of the dog involved, whether the dog was altered, and whether the breed of dog was subject to a program established pursuant to subdivision (a). These statistics shall be submitted quarterly to the State Public Health Veterinarian.

The change in state law allows the City to enact an ordinance regulating breeding of pit bulls or other aggressive breeds and requiring that all pit bulls (or other designated breeds) be spayed or neutered. However, the City may not declare that pit bulls (or other designated breeds) are inherently potentially dangerous or vicious by ordinance. Furthermore, the changes in state law are limited to mandatory spay or neuter programs and breeding requirements and do not allow the City to ban pit bulls or other specific breeds entirely. If the Council wishes to include this type of provision in its animal control codes, direction should be given to staff to add these provisions to the draft ordinance before agendizing the matter for Council action.

ALTERNATIVES CONSIDERED:

Staff has reviewed a variety of statutes, ordinances, and enforcement options relating to animals and has selected for inclusion in the proposed ordinance those which will bring the animal code to current legal standards and aid staff in licensing and enforcement efforts. The Council may determine to delete any proposed new provision, add different or additional provisions for breed specific restrictions, or otherwise request changes to the proposed draft ordinance before it is returned to the Council for final action.

FISCAL REVIEW:

There is no fiscal impact on the City relating to this item.

LEGAL REVIEW:

The City Attorney prepared the draft ordinance with extensive input from the Police Department. No additional review is necessary.

CONCLUSION:

It is anticipated that a final ordinance with changes directed by City Council will be brought back to a Regular City Council meeting for appropriate action.

KIMBERLY HALL BARLOW
City Attorney

CHRISTOPHER SHAWKEY
Chief of Police

ALLAN ROEDER
City Manager

Attachment: Redlined Animal Code