

MEMORANDUM

To: Mayor and City Council Members

From: Jon Walker, Assistant City Attorney

Re: **Summary of Proposed Changes to Title 17**

Date: October 8, 2007

This memorandum is intended to summarize all the changes currently proposed to the animal control code.

Two changes are set forth throughout the code:

The term "euthanized" replaces "destroyed" and the phrase "Humane Society" or "City" is replaced with "animal control" or "animal control authority"

Hearing Examiner fees are set at \$100 throughout Title 17.

1.

17.01.010 Definitions.

A number of definitions have been added or modified. The definitions relating to dangerous and potentially dangerous dogs have been moved to this section from chapter 17.04 TMC. The most notable changes are changes to the definition of "severe injury" and "dangerous dog" and the addition of a definition for "harboring."

A. "HARBORING"

"Harboring" is used in the code, but is not currently defined.

"Harboring" means knowingly providing food or shelter to an animal.

B. "DANGEROUS DOG"

The definition of "dangerous dog" is currently the same as the definition contained in the RCW's. The Public Safety Committee directed that a more stringent definition be crafted to address public safety concerns.

CURRENT DEFINITION THAT WILL BE REPEALED:

"Dangerous dog" - Revised Code of Washington ("RCW") 16.08.070(2), containing the definition of "dangerous dog," as now enacted or hereinafter amended, is hereby adopted by reference as if fully set forth herein. A complete copy of RCW 16.08.070(2) is on file with the City Clerk.

RCW 16.080.070:

(2) "Dangerous dog" means any dog that (a) inflicts severe injury on a human being without provocation on public or private property, (b) kills a domestic animal without provocation while the dog is off the owner's property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans.

PROPOSED LANGUAGE

"Dangerous dog" means any dog that, according to the records of the appropriate authority:

1. unprovoked, inflicts severe injury on or kills a human being on public or private property; or
2. unprovoked, inflicts injuries requiring a domestic animal to be euthanized or kills a domestic animal while the dog is off the owner's property; or
3. while under quarantine for rabies bites a person or domestic animal; or
4. was previously declared to be a potentially dangerous dog, the owner having received notice of such declaration, and the dog is again found to have engaged in potentially dangerous behavior; or
5. is owned or harbored primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting.

C. "SEVERE INJURY"

One way for a dog to be declared dangerous is for it to inflict "severe injury" on a human being. The current definition is from the RCW. The Public Safety Committee directed that a more stringent definition be crafted to address public safety concerns.

CURRENT DEFINITION THAT WILL BE REPEALED:

"Severe injury" - RCW 16.08.070(3), containing the definition of "severe injury," as now enacted or hereinafter amended, is hereby adopted by reference as if fully set forth herein. A complete copy of RCW 16.08.070(3) is on file with the City Clerk.

RCW 16.080.070:

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

This is the language that had been drafted to meet that direction:

PROPOSED LANGUAGE

"Severe injury" means any physical injury that results in (a) broken bones, (b) muscle, ligament, or tendon tears, (c) skin lacerations or puncture wounds which require sutures or surgery, or (d) transmission of an infectious or contagious disease.

D. "POTENTIALLY DANGEROUS DOG"

The definition of "potentially dangerous dog" will remain the same, but will be formatted differently. In addition, it will no longer refer to RCW 16.08.070.

2.

17.01.060 Hindering an officer – gross misdemeanor.

Action: repealed

Reason: TMC 8.17.015 defines essentially the same crime – obstructing a law enforcement officer – and will be amended via a separate ordinance to update the language to include "animal control officer" in place of "Humane Society officer."

3.

17.01.080 Redemption of dogs.

Requires that a dog be properly licensed prior to redemption from the shelter.

4.

17.01.100 Redemption of animals other than dogs and livestock.

Requires in regard to cats that all fees and charges be paid and the cat properly licensed prior to redemption.

5.

17.01.110 Mandatory spay/neuter for impounded dogs and cats –exception.

Clarifies that animal's owner is responsible for fees incurred as a result of impound and mandatory spay/neuter. No other changes are made to this section.

6.

17.01.170 Poisoning of animals – misdemeanor.

Action: repealed and replaced by adoption of RCW 16.52.190

Reason: TMC 17.01.010 does not have any exception for rat poison or slug bait, nor does it require any animal (or person) to actually be poisoned. RCW 16.52.190 addresses both these areas.

Code contains two poisoning provisions – TMC 17.01170 and TMC 8.40.010. Both address similar conduct and apply to both animals and humans. A further recommendation is to retain TMC 8.40.010 as to humans only as that section also does not require any person actually be poisoned.

CURRENT CODE SECTION THAT WILL BE REPEALED

17.01.170 Poisoning of animals –misdemeanor.

No person shall place or expose, or cause to be placed or exposed, in any yard or lot of vacant or enclosed land, or on any exposed place or public place, or on any street, alley, or highway, or other place where the same may be taken internally by a child, person, or by any domestic animal or fowl, any poisonous substance which, if taken internally, may cause death or serious sickness. The provisions of this section shall not apply to the killing by poison of any domestic animal or fowl in a lawful and humane manner by its owner or by a duly authorized agent of such owner, or by a person acting pursuant to instructions from a duly constituted public authority. A person who violates this shall be guilty of a misdemeanor.

TEXT OF RCW THAT WILL BE ADOPTED BY REFERENCE

RCW 16.52.190 Poisoning animals--Penalty.

(1) Except as provided in subsections (2) and (3) of this section, a person is guilty of the crime of poisoning animals if the person intentionally or knowingly poisons an animal under circumstances which do not constitute animal cruelty in the first degree.

(2) Subsection (1) of this section shall not apply to euthanizing by poison an animal in a lawful and humane manner by the animal's owner, or by a duly authorized servant or agent of the owner, or by a person acting pursuant to instructions from a duly constituted public authority.

(3) Subsection (1) of this section shall not apply to the reasonable use of rodent or pest poison, insecticides, fungicides, or slug bait for their intended purposes. As used in this section, the term "rodent" includes but is not limited to Columbia ground squirrels, other ground squirrels, rats, mice, gophers, rabbits, and any other rodent designated as injurious

to the agricultural interests of the state as provided in *chapter 17.16 RCW. The term "pest" as used in this section includes any pest as defined in RCW 17.21.020.

(4) A person violating this section is guilty of a gross misdemeanor.

7.

17.02.010 Animals at large on public grounds.

Clarifies exceptions for (1) off-leash areas in parks; (2) permitted special events where animals allowed off-leash (e.g. dog show); (3) other public property where the owner has authorized off-leash activities.

8.

17.02.070 Confinement of an animal in a motor vehicle.

Clarifies that entry into a vehicle will be made only if the animal is in a life threatening situation

9.

17.02.071 Removal of animals for feeding – Examination – Notice – Euthanasia – Adoption by reference **NEW SECTION**

Adopts RCW 16.52.085 to codify powers of animal control officers

10.

17.02.080 Dogs jumping and/or threatening pedestrians.

Adds language "to chase, run after" to expand definition of threatening behaviors

11.

17.02.090 Animals injuring humans, domestic animals, or livestock – gross misdemeanor.

Clarifies that penalties under this section are in addition to any penalties or civil remedies imposed for a dangerous/potentially dangerous dog

12.

17.02.091 Rabies notification **NEW SECTION**

Codifies current practice of ACCO's notifying Health Department when an animal bites a human and the bite penetrates the skin.

13.

17.02.110 Directing dog to harass or attack public officer – gross misdemeanor – minimum mandatory.

Increases mandatory minimum penalty for this offense to five days in jail and \$500 fine to reflect seriousness of offense.

It also defines “public officer”:

“Public officer” means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.

14.

17.02.032 Removal of animal waste **NEW SECTION**

Action: New section prohibiting leaving animal waste on any property, including private property, unless authorized.

Reason: ACCO’s are not authorized to enforce Title 5, where there is a similar, but less stringent prohibition.

15.

17.02.041 Roosters Prohibited **NEW SECTION**

Bans roosters in the city. Does not affect keeping hens in accordance with Chap. 5.30 TMC.

16.

17.04.010 Definitions. (Dangerous and Potentially Dangerous Dogs)

This section is repealed because the definitions are included in the definition section in 17.010.010.

17.

17.04.020 Registration of dangerous dogs – adoption by reference.

This section is repealed because the proposed changes are more stringent than the state law adopted by this section. Retaining this section would result in conflicts and inconsistencies in the code which would compromise enforcement.

18.

17.04.030 Declaration of dogs as dangerous or potentially dangerous – procedure.

This section is amended to eliminate publication as a possible method of service of a declaration. Service by publication is costly and not often effective. The two methods of service retained – personal service and by mail – are more cost effective and typically result in notice to the owner. Dog owners are required to maintain a current address with the City for licensing purposes (*see* TMC 17.05.030). Consequently, personal service or service by mail should always be effective.

Two sections are repealed to harmonize this section with others sections of the chapter. Subsection D, which is the appeals process and now addressed in a new section 17.04.031. Subsection E, regarding the control of dangerous dogs, is addressed in 17.04.033 and 050.

19.

17.04.031 Hearing Procedure – Dangerous Dogs **NEW SECTION**

Current Code: provides that the first appeal of a dangerous or potentially dangerous dog declaration to the Chief of Police or his designee. The Police Department has conducted these hearings since January 2006. If the declaration is upheld, the aggrieved dog owner may appeal to the Hearing Examiner. The City has no right of appeal.

Proposed Draft: eliminates this step of the process and provides for a direct appeal to the Hearing Examiner.

Provides that any dog declared dangerous must be euthanized after the exhaustion of appeals unless the owner meets a series of requirements to have the dog housed in a secure facility outside of the city.

Provides that the owner must appeal within ten days of service of the declaration, pay a \$100 appeal fee, and provide proof that the dog is currently and validly licensed.

20.

17.04.032 Hearing Procedure – Potentially Dangerous Dogs **NEW SECTION**

Makes the same changes to the appeal process as new section 17.04.031, but applies to potentially dangerous dogs (consequently, does not contain language regarding the euthanizing of dangerous dogs). Allows the Hearing Examiner to impose conditions not allowed under the current code (requiring liability insurance, posting warning signs) and also authorizes the Hearing Examiner to order a potentially dangerous dog be spayed or neutered.

21.

17.04.033 Failure to remove dangerous dog from City of Tacoma **NEW SECTION**

Makes it a gross misdemeanor to fail to remove a dangerous dog from the city after the Hearing Examiner allows the dog to be placed in a secure facility outside the City of Tacoma. Also makes it a gross misdemeanor to possess a dangerous dog in the city except pending appeal of a dangerous dog declaration.

22.

17.04.040 Permits and fees.

Eliminates references to "dangerous" dogs since such dogs will no longer be allowed in the city. Includes dogs declared dangerous prior to enactment of ordinance. However, the ACCO's believe that the only dog that this section would apply to has passed away.

23.

17.04.050 Confinement of dangerous dog or potentially dangerous dogs.

Current Code: a dog determined to be potentially dangerous must pay permit fees, keep the dog in a secure enclosure or muzzled while on a leash, but need not obtain liability insurance. Requires dangerous dog to be impounded (same as 17.01.040) and makes it discretionary to impound potentially dangerous dog (same as 17.01.040). Failure to surrender a dangerous dog is a gross misdemeanor and failure to surrender a potentially dangerous dog is a misdemeanor.

Proposed Draft: a dog determined to be potentially dangerous may be required to obtain liability insurance, post warning signs, and any other requirements contained in RCW 16.08 in the future for potentially dangerous *or* dangerous dogs.

24.

17.04.060 Notification of status of potentially dangerous dog.

Adds provision that person bringing a dog that has been declared dangerous, potentially dangerous, vicious, or similar designation in another jurisdiction must notify animal control and the Finance Department prior to moving the dog into the city. Makes it a misdemeanor to fail to notify Animal Control and Finance that a person has brought a dog covered by this section into the city. Makes it a gross misdemeanor to bring a dog into the city after being notified that the dog is not allowed in the city.

25.

17.04.070 Confiscation and destruction of potentially dangerous or dangerous dog.

Removes references to dangerous dogs and RCW 16.08 to harmonize with other sections in this chapter.

26.

17.04.090 Penalty for violation as to dangerous dog – gross misdemeanor – adoption by reference.

Eliminates adoption of RCW 16.08.100 because the code no longer tracks that statute. Retains the gross misdemeanor penalty for violations relating to dangerous dogs.

27.

17.05.010 License required

Clarifies that dogs must wear a tag at all times in public regardless of whether the animal is microchipped or tattooed, unless the dog is participating in a sanctioned dog show. Cats must either display a tag or allow an officer to scan or read the microchip. On private property or while competing in a show an animal need not wear a tag, but the owner must provide proof of proper licensing upon demand of an officer. Also makes it a violation (civil infraction) to refuse to allow the officer to read the tag or microchip. If the owner refuses to allow the officer to see the tag or microchip, the animal may be impounded.

Also includes language clarifying that the total number of animals (dogs, cats, or a combination) that may be owned or kept at a street address is six. The Humane Society, other approved shelters (we do not have any at this time), veterinary hospitals, and kennels that comply with title 17 are exempt from the maximum number.

28.

17.05.011 Rabies vaccination required **NEW SECTION**

Requires animals over four months of age to be vaccinated against rabies.

29.

17.05.012 Puppies and Kittens **NEW SECTION**

Makes it a violation (civil infraction) to sell or give away puppies or kittens unless they were born to an animal licensed as an unaltered animal.

Authorizes court to consider it a mitigating factor if the mother is currently spayed and licensed.

Requires that all advertisements for puppies or kittens must include the license number of the mother.

Exempts the Humane Society.

30.

17.05.020 Purchase of license.

Updates language to allow licenses to be sold by “authorized agents of the city” rather than the “shelter.”

Makes persons under age 18 ineligible to purchase a pet license.

31.

17.05.030 License records.

Requires that records of pet owners’ addresses are kept. Also requires that pet owners notify the Finance Department if they move or change their mailing address.

32.

17.05.040 License fees.

Replaces “Humane Society” with “Finance Department”

Updates language regarding temporary licenses based on experience of Tax and License Division.

Replaces “animal rescue group” with “animal welfare organization.”

Allows one free replacement tag per year.

****NOTE: NO CHANGE MADE IN LICENSING FEES****

33.

17.05.050 Impounding unlicensed or improperly licensed dogs and/or cats.

Makes it a violation to improperly license a pet, i.e., to license an unaltered pet as an altered pet.

Clarifies that the time limits in 17.01.080 and 17.01.100 apply to redeeming an animal.

Encourages the alteration of unaltered animals by directing the court to take the fact that an owner has had the animal spayed or neutered into account by either waiving or reducing the penalty for the violation of owning an unlicensed or improperly licensed pet.

34.

17.05.060 License not transferable

Updates and clarifies language regarding when the license for a pet that dies may be used for a new pet.

35.

17.05.061 Counterfeit and imitation tags **NEW SECTION**

Makes it a gross misdemeanor to create, sell, deliver, use, or possess imitation or counterfeit tags.

36.

17.06 PROBLEM PET OWNERS **NEW CHAPTER**

Creates a process to take action on persons who repeatedly violate animal control laws. A person who commits three or more violations of the municipal code can be declared a "problem owner." A "violation" is a civil infraction or crime relating to animals. A finding of committed on a civil infraction or conviction of a crime is dispositive on the issue of whether a violation occurred. The proposal also allows uncharged crimes or civil infractions to be proven as violations. An incident that results in a finding of not committed on a civil infraction or acquittal of criminal charges can never be a "violation."

The process is similar to the process for declaring a dog dangerous or potentially dangerous. The animal control supervisor makes the declaration which the person may appeal to the Hearing Examiner. Pending appeal the Animal Control Supervisor determines whether the animals need to be impounded (similar to the process for potentially dangerous dogs) based on public safety or the animal's welfare.

A person who is declared a "problem owner" is prohibited from owning, possessing, or harboring any kind of animal in the city (once any appeal is finished) for 24 months. Violation is a misdemeanor.

