



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT: PROPOSED AMENDMENTS TO  
TITLE VII (ANIMAL ORDINANCE)  
OF THE SAN JOSE MUNICIPAL  
CODE**

**DATE:** March 21, 2007

Approved

Date

3/21/07

**COUNCIL DISTRICT:** Citywide  
**SNI AREA:** N/A

## RECOMMENDATION

- (a) 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, define new terms and make technical changes.
- (b) Approval of an ordinance amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to update the list of animal infractions to include the new code sections.

## OUTCOME

Approval of these recommendations will update existing animal related codes to reflect contemporary municipal animal care and control practices, define new terms, reorganize Title VII, and make various technical non-substantive and conforming changes. These amendments should strengthen the provisions regulating the proper care of animals.

## BACKGROUND

During the last two decades, the City has adopted ordinances related to animals and amended specific sections in response to issues and concerns of the moment. In 2004, the City Council amended specific portions of Title VII that were more pressing to the operation of the Animal Care and Services Division ("ACS"). Specifically, the City Council adopted ordinances that changed the dangerous dog regulations to better distinguish and define varying levels of aggressive dog behavior,

changed the limits on the number of pets per dwelling unit, regulated the use of off-leash parks, and required animal rescuers to register for a permit. Title VII, however, requires a comprehensive review to incorporate, among other topics, a duty of care for animals.

The proposed amendments to Title VII were developed after reviewing other jurisdictions for best practices, seeking feedback from ACS staffs' experiences, and collaborating with the Animal Advisory Commission. The Animal Advisory Commission is a group of interested people appointed by the Director of Parks, Recreation, and Neighborhood Services and comprised of animal advocates, rescue groups, veterinarians, wildlife representatives and other individuals with an interest in animal care and control. The Commission developed these recommendations over the course of several months of study sessions and research guided by ACS staff. Public comments on the changes were heard at the Building Strong Neighborhoods Committee on June 19, 2006. Four subsequent public meetings were hosted in the community to solicit public comment and discussion on the proposed amendments.

## ANALYSIS

The proposed amendments to Title VII generally fall into one of the following categories:

### *Technical, Non-substantive and Conforming Changes:*

The proposed ordinance would reorganize Title 7 and make various technical, non-substantive and conforming changes. Some of these amendments include replacing outdated references to positions such as the "County Animal Control" or the "Director of Neighborhood Preservation" that are no longer responsible for animal care and services. The proposed ordinance would also reflect that an independent administrative Hearing Officer would conduct certain hearings instead of the Director or Administrator of ACS. Finally, the proposed ordinance would reorganize the Title to reflect a more logical grouping of topics without affecting the meaning, purpose, or intent of the sections contained within.

### *Owner or Guardian:*

The term "guardian" has been added throughout the Title. A "guardian" will be equally responsible for the safety and care of the animal and the public. Guardians are independently defined and include any person who has control of, or responsibility for, an animal, but are not the principal owner of the animal. This improves the ability of ACS division to identify a responsible party when the owner is not present. There is some concern that using the word "guardian" will weaken the legal ownership that a person currently enjoys. It is important to recognize that these proposals do not seek to weaken the property rights involved and in cases where the property interest may be challenged (ex: a dangerous dog hearing), the word guardian is not applicable.

### *Duty of Care:*

Title VII does not currently contain a comprehensive law that establishes a minimum standard of care for domestic animals. The proposed ordinance would add a new chapter that imposes on the owner or guardian, animal facilities, and animal rescuers, a duty to provide for the animal's basic needs such as food, water, shelter, and veterinary care. This amendment would specifically describe these basic care requirements. The State of California has anti-cruelty laws that make it a crime to abuse or neglect a domestic animal. A violation of these state laws can be prosecuted as a misdemeanor or felony. ACS will continue to work with the District Attorney's Office to seek

criminal enforcement based on anti-cruelty laws for the most egregious abuse and neglect cases. The proposed ordinance, however, would provide the City an administrative alternative to address an owner or guardian's failure to meet an animal's basic care requirements by establishing a more detailed minimum standard of care.

*Livestock and Small Animals:*

The City's population has grown since the regulations relating to the keeping of livestock and small animals were first enacted. Livestock include horses, pigs, cattle, goats and similar animals. Small animals are rabbits, chickens, turkey, geese, and like animals. Residential communities are now in smaller lot sizes and are therefore more likely to be impacted by the keeping of livestock and small animals than they were 20 years ago. The proposed ordinance would reduce the number of small animals that can be housed in residential areas and increase the setback requirements for keeping livestock or small animals. For example, current law prohibits keeping any small animals in an outdoor space unless there is a minimum of 15 feet between the area the animals are kept and the next closest human dwelling unit. The minimum setback increases as space increases and allows up to 25 small animals if the distance to the next closest human dwelling unit is more than 50 feet away. The proposed ordinance would increase the minimum distance from 15 to 20 feet, and reduce the maximum number of small animals from 25 to 20.

*Sales of Animals:*

Title VII currently prohibits any person from selling an animal at any outdoor location or in any area that is not specifically permitted for the sale of animals (i.e. pet stores, vet clinics, a legal kennel, or shelter). This prohibition includes registered animal rescue groups. Registered animal rescue groups are 501 c3 non-profit groups whose mission is to place homeless animals in new adoptive homes. Registered animal groups rescued 2,655 animals from the City shelter in 2006. In order to encourage the animal rescue groups' efforts to find new homes for these animals, the proposed ordinance would permit animal rescue groups registered with the City to conduct outdoor sales of animals or use alternate sites, other than those specified in the Code. The proposed ordinance would also prohibit the sale or giving away of live animals at raffle events, or as a prize.

ACS regulates registered animal groups. As part of obtaining and maintaining a valid registration, these groups would be subject to inspections, and revocation of the privilege if violations are found. The rescue group would have to notify ACS at least a week in advance regarding the proposed location, the location would be subject to approval, and the rescue group would be required to display their rescue ID for the public at the event. The sale of animals at flea markets would remain prohibited.

Currently, registered rescue groups are exempt from the pet limit laws, have access to homeless animals at the Animal Care Center that would not otherwise be available to the public, and have access to the City's low cost spay and neuter clinic.

*Rabies Vaccinations:*

Title VII currently contains a requirement that all San José veterinarians must submit rabies vaccination information to the ACS, the animal licensing authority. The owner of the animal can also provide proof of rabies vaccination. The proposed amendments would clarify that the veterinarians' obligation is mandatory upon request and is not relieved by the possibility that the owner is similarly required to provide proof. It is much more difficult to collect rabies information

from each individual pet owner than from a few dozen veterinarians and shot clinics. Weekend shot clinics that operate in pet stores currently submit rabies information to ACS. ACS processes more than 1,000 animal bites each year and would use this information to establish a database of vaccinated animals and to regulate animal license compliance.

San Mateo County currently requires all veterinarians to submit rabies vaccination information by the tenth day of each month. Similarly, Alameda County veterinarians are required to report any client who does not present a current animal license. In Santa Clara County, veterinarians are required to allow the licensing authority to audit all rabies vaccination certificates annually.

*Trapping:*

The proposed ordinance would require persons who use live animal traps to remove, release, or transfer the animal in a timely manner, provide food, water and care to prevent suffering, prevent the trapped animal's exposure to the elements, and euthanize or dispose in accordance with applicable law. These changes are recommended to help regulate how people use live animal traps and to establish a standard for action by the person who is conducting the trapping.

*Mandatory Spay and Neuter:*

Previously, ACS had been proposing a mandatory spay and neuter law for all dogs and cats in San José. Under the current Municipal Code, an owner may have one unspayed animal per dwelling unit and that unspayed animal may breed once each calendar year. Mandatory spay and neuter laws have been passed in Los Angeles County, Santa Cruz County, and similar laws are currently being proposed for Sacramento County, Riverside County, and L.A. City.

Currently, there is a significant effort to pass mandatory spay and neuter legislation statewide for all California residents. It is recommended that San José suspend current efforts to pass a local law and support the State legislation.

**POLICY ALTERNATIVES**

*Alternative # 1: Enact Mandatory spay and neuter of dogs and cats.*

**Pros:** Reduce unwanted animals in community, reduce euthanasia in animal shelter, clarify that breeding of dogs and cats not is allowed, healthier dog and cat population, less aggression from unneutered dogs.

**Cons:** If state law passes, City would have to adopt state code (lose some local control). If state law fails, then a City law may be more difficult to enforce. Increased permitting by ACS division and increased enforcement activity.

**Reason for not recommending:** Uncertainty about state law.

**PUBLIC OUTREACH/INTEREST**



**Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The proposed changes were presented for discussion to the Parks Recreation and Neighborhood Services Commission on May 17, 2006, and received public comment on June 16, 2006 at the Building Strong Neighborhoods Committee meeting. The Animal Care and Services Division hosted four different public meetings to discuss these proposed changes. All meetings were posted in accordance with the Brown Act and overall attendance at the four meetings was about 100 participants. Each meeting had a presentation/summary of proposed changes and also permitted question and answer or discussion periods. The Animal Advisory Committee hosted two of the four meetings. The dates of the meetings were July 27, September 16, October 5, and November 2, 2006. Participants were notified through email lists, the Neighborhood Development association lists, and all participants who signed in were given notification of future meetings. On September 15, 2006 the San José Mercury News published an article about the proposed changes and announced one of the public meetings.

The overwhelming interest was about the mandatory spay and neuter law. Many people who show dogs and cats in competition were worried how the law change would impact them. In addition, dog and cat breeders had concerns about increased regulation. Many people who show or breed animals were willing to accept increased regulation of “non-professionals” as long as it did not impact their business or hobby. There were also many people who do not show or breed dogs and cats that were in favor of a mandatory spay and neuter law.

There were a few concerns about adding the word “guardian” to the animal laws, however, there was also public support for adding this word. The primary concern was that using the word guardian would change the legal property status of an animal, and that a “guardian” who does not own the animal might be more liable – such as a veterinarian.

There were some concerns expressed about the location of sale of animals exemption for registered animal rescuers. Changes were made to include ACS notification of the location, subject to approval, and displaying registration numbers for the public. The sale of animals at flea markets would remain prohibited.

There was overwhelming support for requiring that owners, guardians, and animal facilities responsible for the care of animals follow a minimum standard of care.

## COORDINATION

Preparation of this memorandum was coordinated with the City Attorney’s Office.

**FISCAL/POLICY ALIGNMENT**

The proposed ordinance would increase the owner, guardian, and animal facility's responsibility for the animals they keep by requiring a minimum standard of care. The proposed ordinance would also clarify and correct language throughout the Title and reorganized the Title so that the sections are more logically grouped together. These proposals clarify enforcement for Animal Services Officers by adding definitions and identifying responsible persons, and they support efforts to reduce the excess population of domestic animals, which decreases euthanasia in the City Animal Care Center.

The requirement that veterinarians submit vaccinations to the City will enable the City to increase monitoring and compliance of rabies vaccinations, and improve the rate of animal licensing.

**CEQA**

CEQA: Not a Project.

  
ALBERT BALAGSO  
Director, Parks, Recreation, and  
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