



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 02/13/07
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Police Chief
SUBJECT: Animal Control Regulations

RECOMMENDATION:

It is recommended that City Council introduce the attached ordinance amending the Hayward Municipal Code relating to animal control regulations.

BACKGROUND:

A Police Department budget objective for 2006-2007 is to evaluate the feasibility of amending the existing regulations to address the issue of vicious dogs and to place greater responsibility on the owner of the animal to comply with stipulations placed on the animal by the City, through the Animal Services Bureau. The accompanying ordinance amends the current ordinance to bring it in alignment with California State Law. State law addresses any aggressive animal behavior that does not involve injury or damage to property or persons by defining it as a "potentially" dangerous dog. The City's current ordinance does not address a potentially dangerous dog, only vicious, that causes injury or harm or any defensive action a person might have to take to prevent injury. The amendment removes the word "vicious animal" and adds "potentially dangerous and dangerous animal." This will broaden Animal Services' ability to enforce aggressive animal behavior in the City.

In 1974 the Animal Control Regulations were amended to include a Vicious Animal Section in order to maintain control of animals that were involved in attacks on other animals and persons. The amendment of this ordinance allows our enforcement officers to impound dogs that are displaying aggressive behavior, running loose through neighborhoods or displaying any signs of aggression toward persons, and forces their owners to appear at a hearing with Animal Services to address the issues with their animals. This in turn will place the responsibility of owning an aggressive breed dog on the owners, and will allow Animal Services to place stipulations such as training, spay, neuter, and property inspections to ensure the animal is in a secured environment.

The ordinance would allow the City more authority to act on animal behavior in a preventive manner by being proactive instead of reactive to potentially dangerous and dangerous animal behavior.

Prepared by:



Paul Sanchez, Animal Services Manager

Recommended by:



Lloyd Lowe, Chief of Police

Approved by:



Jesús Armas, City Manager

Attachment: Draft Ordinance

DRAFT



ORDINANCE NO. 07-

AN ORDINANCE AMENDING CERTAIN SECTIONS OF
CHAPTER 4, ARTICLE 4 OF THE HAYWARD MUNICIPAL
CODE AND INSERTING NEW SECTIONS 4-4.49 AND 4-4.56
RELATING TO ANIMAL CONTROL REGULATIONS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. Chapter 4, Article 4 of the Hayward Municipal Code is hereby amended to
read in full as follows:

“ARTICLE 4

ANIMAL CONTROL REGULATIONS

Section	Subject Matter
4-4.01	DEFINITIONS
4-4.05	ENFORCEMENT
4-4.10	KEEPING OF CERTAIN ANIMALS AS CONSTITUTING PUBLIC NUISANCE
4-4.11	UNNECESSARY NOISES
4-4.12	ABANDONMENT
4-4.13	ANIMALS AT LARGE ON PUBLIC PROPERTY
4-4.14	ANIMALS ON PRIVATE PROPERTY
4-4.15	KNOWLEDGE OF BITE-DUTY TO REPORT
4-4.16	BITING ANIMALS TO BE QUARANTINED
4-4.17	ANIMALS DYING WHILE UNDER QUARANTINE
4-4.20	LICENSE REQUIRED
4-4.21	EXEMPTIONS

Section	Subject Matter
4-4.22	LICENSE APPLICATION
4-4.23	ANTI-RABIES VACCINATION REQUIRED
4-4.24	TERM OF LICENSE
4-4.25	ISSUANCE OF TAGS AND CERTIFICATES
4-4.26	OWNER TO ATTACH TAG
4-4.27	REMOVAL OF REGISTRATION TAG PROHIBITED
4-4.28	LOST AND DESTROYED TAG TO BE REPLACED
4-4.29	COUNTERFEIT AND IMITATION TAGS
4-4.30	DOG FANCIER PERMIT
4-4.40	IMPOUNDING OF ANIMALS
4-4.41	STRAY ANIMALS
4-4.42	NOTIFICATION TO OWNER
4-4.43	RECLAIMING ANIMALS
4-4.44	DISPOSITION OF IMPOUNDED ANIMAL
4-4.46	SUMMARY DESTRUCTION
4-4.47	DISPOSITION OF WILD ANIMALS
4-4.49	POTENTIALLY DANGEROUS ANIMAL
4-4.50	DANGEROUS ANIMALS A PUBLIC NUISANCE
4-4.51	INVESTIGATION AND NOTICE
4-4.52	CONFINEMENT OF ANIMAL
4-4.53	HEARING
4-4.54	FINDINGS, DECISION, AND ORDER

Subject	Subject Matter
4-4.55	COSTS OF IMPOUNDMENT
4-4.56	HEARING ADMINISTRATION CITATION
4-4.60	FEES AND CHARGES
4-4.70	INFRACTIONS AND MISDEMEANORS”

Section 2. Chapter 4, Article 4, Sec. 4-4.01 subparagraph (g) of the Hayward Municipal Code is hereby amended to read in full as follows:

“(g) Dangerous Animal Definition. “Dangerous Animal” shall mean any animal, except one assisting a peace officer engaged in law enforcement duties, which demonstrates any of the following behavior:

- (1) Any animal that has killed or caused the death of another domestic animal;
- (2) An unprovoked attack which results in property damage or in an injury to a person when such person is conducting himself or herself peacefully and lawfully;
- (3) An unprovoked attack on another animal which occurs on property other than that of the owner of the attacking animal; or
- (4) Any animal previously determined to be, and is currently designated as a potentially dangerous animal which, after its owner or keeper has been notified engages in any subsequent behavior as provided under subparagraph (h).”

Section 3. Chapter 4, Article 4, Section 4-4.01 subparagraph (h) of the Hayward Municipal Code is hereby added to read as follows:

“(h) Potentially Dangerous Animal Definition. “Potentially Dangerous” shall mean any animal, except one assisting a peace officer engaged in law enforcement duties, which demonstrates any of the following behavior or shown a propensity to:

- (1) Threaten the safety of another animal which occurs on property other than that of the owner of the aggressive animal;
- (2) Act aggressively requiring the person to take defensive measures;
or
- (3) Poses a threat to public safety.

For the purposes of section 4-4.01, a person is conducting himself or herself peacefully and lawfully upon the private property of an owner of an animal when he or she is on such property in the performance of any duty imposed on such person by state or local law, or by the laws of postal regulations of the United States, or when he or she is on such property upon invitation, either express or implied.”

Section 4. Chapter 4, Article 4, is hereby amended to add Sec. 4-4.49 to read in full as follows:

“POTENTIALLY DANGEROUS ANIMAL AND DANGEROUS ANIMAL..

“SEC. 4-4.49 POTENTIALLY DANGEROUS ANIMAL. The presence in the City of an animal which is in fact presumed potentially dangerous under the definition set forth in Section 4-4.01 (h) shall be subject to the procedures set forth in Section 4-4.51 through 4-4.55. The procedures described shall be cumulative and in addition to any other procedure provided in regulations of the City or in laws of the State of California for abatement of any of the conditions described herein, and abatement hereunder shall not produce or affect any other action, civil or criminal, or the exercise of a remedy thereunder, for the maintenance of any such condition.”

Section 5. Chapter 4, Article 4, Sec.4-4.50, is hereby amended to read in full as follows:

“SEC. 4-4.50 DANGEROUS ANIMAL AND PUBLIC NUISANCE. The presence in the City of an animal which is in fact a dangerous animal, or which is presumed dangerous under the definition set forth in Section 4-4.01 (g), shall constitute a public nuisance and may be abated as such by the procedures set forth in Section 4-4.51 through 4-4.55. The procedures described shall be cumulative and in addition to any other procedure provided in regulations of the City or in laws of the State of California for abatement of any of the conditions described herein, and abatement hereunder shall not produce or affect any other action, civil or criminal, or the exercise of a remedy thereunder, for the maintenance of any such condition.”

Section 6. Chapter 4, Article 4, Sec. 4-4.51, is hereby amended to read in full as follows:

“SEC. 4-4.51 INVESTIGATION AND NOTICE. Any animal quarantined pursuant to Section 4-4.16 for biting a human being or other animal and any incident reported to the Chief of Police concerning a potentially dangerous animal or dangerous animal may be investigated. If, based upon the investigation, it is concluded there is probably cause to believe that the animal is a potentially dangerous animal or dangerous animal, the owner shall be notified in writing or the determination that the animal is vicious within five (5) days of the making of the determination.

Notice of the determination that an animal a potentially dangerous animal or dangerous animal shall include notice of the right of the owner to a hearing as to whether the animal is a potentially dangerous animal or dangerous animal and a public nuisance, and if so found, what measures will be taken to abate the public nuisance. Notice shall be given in writing by first class mail in substantially the following form:

NOTICE REGARDING POTENTIALLY DANGEROUS ANIMAL OR DANGEROUS ANIMAL

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Article 4 of Chapter 4 of the Hayward Municipal Code, it has been determined that there is probable cause to believe that you have an interest in, or have control or custody or possession of, or are keeping that certain animal described below, and that said animal is a potentially dangerous animal or dangerous animal.

[Description of Animal and Facts Giving Rise to Notice]

FURTHER NOTICE IS HEREBY GIVEN that you have a right, within seven (7) working days of the date of this notice, to request a hearing before an animal control supervisor or other hearing officer as designated by the Chief of Police as to whether the animal is a potentially dangerous animal or dangerous animal and a public nuisance, and if found to be a potentially dangerous animal or dangerous animal and a public nuisance, what measures will be taken to abate the public nuisance. The hearing officer will consider the written reports from the undersigned and other oral and documentary evidence in making a decision. You and other interested parties may present written and oral evidence at the hearing.

If you do not request a hearing the determination that the animal is a potentially dangerous animal or dangerous animal and therefore a public nuisance will stand, and the hearing officer may issue such orders as deemed necessary for abatement of the public nuisance. Abatement may include, but not be limited to, confinement, fencing, muzzling, leashing, or destruction.

Dated:

Animal Control Officer
City of Hayward
Telephone No."

Section 7. Chapter 4, Article 4, Section 4-4.53, of the Hayward Municipal Code is hereby amended to read as follows:

"SEC. 4-4.53 HEARING. An owner notified pursuant to Section 4-4.51 that there is probable cause to believe an animal is a potentially dangerous animal or dangerous animal shall have the right to request a hearing by an animal control supervisor or other hearing officer as designated by the Chief of Police. The request for a hearing shall be made within seven (7) working days of the date of the notice and the hearing shall be held within fifteen (15) days of the request.

The owner of the animal and other interested parties shall be heard and may present both oral and documentary evidence. Evidence that establishes that an animal has demonstrated any of the types of behavior set forth in Section 4-4.01 (g) shall result in a rebuttable presumption the animal is a potentially dangerous animal or dangerous animal.

The hearing officer shall not be bound by the common law of statutory rules of evidence and procedure, and shall make such inquiry and conduct the hearing in a manner which is best calculated to ascertain the substantial rights of the public and of the owner. A hearing may be continued, if necessary, but not beyond the fifteen (15) days after the initial hearing date.”

Section 8. Chapter 4, Article 4, Section 4-4.54 of the Hayward Municipal Code is hereby amended to read as follows:

“SEC. 4-4.54 FINDINGS, DECISION, AND ORDER. Within five (5) working days of the conclusion of the hearing, the hearing officer shall make findings in writing and render a decision, which shall be final when issued, on whether the animal is a potentially dangerous animal or dangerous animal and a public nuisance. If the hearing officer determines the animal is a potentially dangerous animal or dangerous animal and a public nuisance exists, the hearing officer shall issue written orders for abatement of the public nuisance. Abatement, as determined to be necessary and reasonable in a given case, may include, but not be limited to:

- a. Confinement;
- b. Fencing;
- c. Muzzling;
- d. Leashing;
- e. Posting of warning signs;
- f. Providing proof of public liability insurance;
- g. Spay or neuter;
- h. Attendance and successful completion of behavior training classes;
- i. Micro-chip;
- j. Humane destruction of the animal.

A copy of the findings, decision, and order shall be delivered personally to the owner or sent by registered mail, return receipt requested, to the owner at the last known address.”

Section 9. Chapter 4, Article 4, Section 4-4.55 of the Hayward Municipal Code is hereby amended to read as follows:

“SEC. 4-4.55 COSTS OF IMPOUNDMENT. If the hearing officer finds the animal is a potentially dangerous animal or dangerous animal, the City incurred costs of impoundment, and when applicable, abatement, shall be assessed to and be the responsibility of the owner and shall constitute a debt owed to the City. A statement of costs shall be sent to the owner in conjunction with the findings, decision, and order. Costs shall be due and payable within thirty (30) days after the mailing or personal delivery of the findings, decision, order, and cost statement. If costs assessed are not paid upon becoming due and payable, they may be collected in any manner in which any other debt owed to the City may be collected.

If the order includes the release of an animal found to be a potentially dangerous animal or dangerous animal to the owner or some other person, the animal shall not be released until such costs have been paid in full. If such costs have not been paid within thirty (30) days after the mailing or personal delivery date of the order, the Chief of Police may order the animal disposed of in any manner provided by law.”

Section 10. Chapter 4, Article 4, Section 4-4.56 of the Hayward Municipal Code is hereby added to read in full as follows:

“SEC. 4-4.56 HEARING STIPULATION(S) COMPLIANCE. Failure to satisfy any stipulation contained in an order of the hearing officer within the time period provided in the order as provided under section 4-4.54 shall constitute an infraction of the municipal code and punishable by payment of a fine as provided for in section 1-3.00.”

Section 11. SEVERANCE. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 12. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2007, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2007, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS: