

STAFF REPORT
City of Lancaster, California

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MVB

Date: January 13, 2009

To: Mayor Parris and City Council Members

From: David R. McEwen, City Attorney

Subject: **Introduce Ordinance No. 914 Amending Chapter 6.04 of Title 6 and Adding Chapter 6.08 to Title 6 of the Lancaster Municipal Code Relating to Animal Control**

Recommendation:

Introduce Ordinance No. 914, an Ordinance of the City Council of the City of Lancaster, California, amending Chapter 6.04 of Title 6 and adding Chapter 6.08 to Title 6 of the Lancaster Municipal Code Relating to Animal Control.

Fiscal Impact:

Unknown. There will be additional costs associated with the appointment and use of a City appointed hearing officer to conduct hearings for the purpose of determining whether a dog is a potentially dangerous or vicious dog. The proposed ordinance provides for the collection of such costs from the dog owner; however, there can be no assurances that all of such costs will be recovered. The County has indicated that if the City establishes a breed specific spray or neuter requirement, the County will require a DNA test to establish the breed of specified dogs. This cost will be passed on to the City, thereby allowing the City to collect such amount from the owner.

Background:

The City has previously adopted by reference the provisions of Title 10 of the Los Angeles County Code relating to Animal Control. Chapter 10.37 of the County Animal Control Ordinance adopts the procedure for dealing with potentially dangerous and vicious dogs as set forth in Food and Agricultural Code Section 31601 and following. Notwithstanding the provisions of Food and Agricultural Code Section 31683 which allows local governments to adopt a more restrictive program, the County Animal Control Ordinance does not do so. In summary, the procedure provided for by statute and adopted by the County requires the Director of Animal Control upon completion of an investigation, to petition the Superior Court for a hearing within 5-10 days to determine whether a dog is a potentially dangerous dog or a vicious dog.

A “potentially dangerous dog” is defined in Chapter 10.37 as follows:

A. Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or custodian of the dog;

B. Any dog which, when unprovoked, bites a person or otherwise engages in aggressive behavior, causing a less severe injury than as defined in Section 10.37.040;

C. Any Dog which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury to a domestic animal off the property of the owner or custodian of the dog.

A “vicious dog” is defined in Chapter 10.37 as follows:

A. Any dog that engages in or has been found to have been trained to engage in exhibitions of fighting;

B. Any dog which, when unprovoked, in an aggressive manner, inflicts severe on or kills a person;

C. Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or custodian has been notified of this determination, continues the behavior described in Section 10.37.020 or is maintained in violation of Section 10.37.130.

The decision of the Superior Court is appealable to another judge of the Superior Court who shall conduct a trial de novo. The Court is authorized to impose conditions on the ownership of a potentially dangerous dog including proper licensing, micro-chipping and vaccination at the owner’s expense. In addition, the dog must be sprayed or neutered and must pass an obedience course within 60 days after release. The dog must be housed indoors or in an enclosure which prevents children from trespassing. If the dog is taken off the owner’s property, the dog must be leashed, muzzled and under the control of an adult capable of controlling the dog.

Chapter 10.37 provides that a vicious dog may be destroyed if it is determined by the Court that release of the dog would create a significant threat to the public health, safety and welfare. If such determination is not made by the Court, conditions similar to those described above must be placed on the ownership of such dog.

I have requested, but not yet received, information on the number of instances that the procedures specified in the Ordinance have been applied in the City. Hopefully, this information will be available by the time of the Council meeting. There have been periodic reports of dogs attacking or threatening both children and adults throughout the City. While anecdotally the problem has been attributed to pit bulls, state law prevents local governments from adopting any local animal control ordinance which declares a specific breed to be a dangerous or vicious animal. In light of this restriction, I drafted a proposed ordinance that focused on the conduct of individual dogs and their owners. In addition, the proposed ordinance eliminated the

requirements of the County Animal Control Ordinance that all dogs over 4 months of age be sprayed or neutered and micro-chipped. The proposed ordinance did require that all “pit bulls” and “rottweilers” be spayed or neutered.

A copy of the draft ordinance was provided to a group of citizens whom we subsequently met with in early December. This group objected to the breed specific mandatory spay and neuter requirements. They felt that it should apply to all dogs or to none. This will be discussed further below.

This group had fewer objections to the provisions relating to potentially dangerous and vicious dogs. They did object to the requirement that a potentially dangerous dog wear a colored collar because of the potential for confusion with other collars available in pet stores. They also asked that we specify a “cage” or “bucket” muzzle. Finally, they provided language concerning obedience schools to address their concerns about the qualifications of the instructors. All of these requested changes have been incorporated in the revised draft ordinance.

The proposed ordinance was also provided to Los Angeles County Animal Control. We received comments from them by way of a conference call in mid-December. Their concerns with respect to the potentially dangerous and vicious dog provisions were primarily procedural. They had stronger objections to the breed specific spay and neuter requirements and indicated that they would require a “DNA” test in order to implement the requirements. They requested that we consider retaining the requirements of the County Animal Control Ordinance which makes the requirement applicable to all dogs with certain exceptions relating to the health of the dog and the registration of the dog for competition or breeding.

Based on the discussion with the citizens group and County Animal Control, I have substantially revised the proposed ordinance as it applies to potentially dangerous and vicious dogs but have made no changes to the provisions adopting a breed specific spay and neuter program.

Summary of Provisions Related to Potentially Dangerous and Vicious Dogs.

The revised draft incorporates the statutory definition used by the County for potentially dangerous dogs and vicious dogs with the following changes. Subparagraph A of the definition of “potentially dangerous dog” has been modified to eliminate the phrase “on two separate occasions within the prior 36-month period.” The definition of vicious dog has been amended to include the provision related to violation of the Penal Code dealing with training dogs for fighting. The hearing requirements follow the County and statutory provisions except that the initial hearing is to be held before a city appointed independent hearing officer rather than a judge of the Superior Court. The ordinance still provides for an appeal to the Superior Court. The County Animal Control Ordinance allows for satisfaction of certain conditions within 30 or 60 days following release of the dog to the owner. The proposed ordinance requires these conditions be met prior to release of the dog. The proposed ordinance places responsibility on the owners to control their dogs. Failure to do so will result in fines and potential misdemeanor prosecutions.

Attachment:

Ordinance No. 914