

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Action: An Ordinance Concerning Amendment of Animal Regulations Regarding Service Animals

Meeting Date: June 27, 2011
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 8
Staff Contact: Keli Osborn
Contact Telephone Number: 541-682-5406

ISSUE STATEMENT

Changes are proposed to the Eugene City Code to strengthen support and enforcement for service animals, recognizing these animals as extensions of the humans they serve.

BACKGROUND

The council on June 20 held a public hearing on the proposed code changes, following an earlier work session on May 9, 2011. In the public hearing, testimony requested stronger enforcement of animal regulations and greater responsiveness. Staff will follow up with appropriate contacts in the Eugene Police Department and Lane County Animal Services (LCAS) to share these concerns.

In recent years, there have been instances in which a service animal was injured by a dangerous dog in Eugene. These actions caused great expense to the owners and significantly impacted their ability to function normally for the prolonged period without a service animal trained to meet their needs. The City Code does not distinguish service animals from domestic animals, and provisions in place for attacks on domestic animals do not provide sufficient protections or redress for people who rely on service animals.

New protections and sanctions related to service animals would take the approach that these animals are extensions of the person they are serving. People with disabilities have come to rely on professionally-trained animals to help them live more independent lives.

Service animals are animals that are individually trained to perform tasks for people with disabilities such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other special tasks. *Service animals are working animals, not pets.* Under the Americans with Disabilities Act (ADA), businesses and organizations that serve the public must allow people with disabilities to bring their service animals into all areas of the facility where customers are normally allowed to go. This federal law applies to all businesses open to the public, including restaurants, hotels, taxis and shuttles, grocery and department stores, hospitals and medical offices, theaters, health clubs, parks, and zoos.

Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. LCAS staff indicates it will provide different tags to distinguish service animals and other licensed dogs from one another.

In summary, code changes would:

- (1) Define service animal;
- (2) Expand the definition of animal abuse to include physical injury to a service animal;
- (3) Require owners to notify the Lane County Health Officer not only for animals biting humans, but for animals biting service animals as well;
- (4) Respectfully modify code language from “handicapped person” to “person with a disability”;
- (5) Add violations and sanctions for potentially dangerous dogs for causing harm to service animals; and,
- (6) Provide the Hearings Official the ability to ask for restitution and training for dogs classified as potentially dangerous dogs.

RELATED CITY POLICIES

Council Goal for a Safe Community - *A community where all people are safe, valued and welcome.*

COUNCIL OPTIONS

The council may approve or modify the proposed code changes, or may choose not to adopt the proposed ordinance.

CITY MANAGER’S RECOMMENDATION

The City Manager recommends approval of the proposed ordinance.

SUGGESTED MOTION

Move to adopt Council Bill 5051 an ordinance concerning amendment of animal regulations regarding service animals and amending sections 4.330, 4.335, 4.340, 4.395, 4.410, 4.427, 4.435 and 4.440 of the Eugene Code, 1971.

ATTACHMENTS

- A. Proposed Ordinance: An Ordinance Concerning Amendment of Animal Regulations Regarding Service Animals

FOR MORE INFORMATION

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ORDINANCE NO. _____

AN ORDINANCE CONCERNING AMENDMENT OF ANIMAL REGULATIONS REGARDING SERVICE ANIMALS AND AMENDING SECTIONS 4.330, 4.335, 4.340, 4.395, 4.410, 4.427, 4.435 AND 4.440 OF THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.330 of the Eugene Code, 1971, is amended by adding the definition of “Service animal” to the list of definitions in alphabetical order to provide as follows:

4.330 **Animal Control - Definitions.** For purposes of sections 4.330 to 4.500 of this chapter, the following words and phrases mean:

Service animal. Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Consistent with federal rules implementing the Americans with Disabilities Act, a miniature horse that has been individually trained to do work or perform tasks for the benefit of the individual with a disability may also be considered a service animal. The work or tasks performed by a service animal must be directly related to the handlers’ disability. Examples of work or tasks include, but are not limited to, assisting individuals who are vision impaired with navigation and other tasks, alerting individuals who are hearing impaired to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Section 2. Section 4.335 of the Eugene Code, 1971, is amended to provide as follows:

4.335 **Animal Abuse.**

- (1) **Animal abuse in the second degree.** A person commits the offense of animal abuse in the second degree if, except as otherwise authorized by law **or as provided in subsection (2) of this section**, the person causes physical injury to an animal.
- (2) **Animal abuse in the first degree.** A person commits the offense of animal abuse in the first degree if, except as otherwise authorized by law, the person:
 - (a) ***Causes physical injury to a service animal; or***
 - (ba) ***Causes serious physical injury to an animal; or***
 - (cb) ***Cruelly causes the death of an animal.***

- (3) Any practice of good animal husbandry is not a violation of this section.

Section 3. Subsection (1)(c) of Section 4.340 of the Eugene Code, 1971, is amended to provide as follows:

4.340 **Animal Neglect.**

- (1) As used in this section, "minimum care" means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner, includes, but is not limited to, the following requirements:
- (c) In the case of pet or domestic animals, access to a barn, dog house or other [i]enclosed structure sufficient to protect the animal from wind, rain, snow or sun and which has adequate bedding to protect against cold and dampness.

Section 4. Subsection (3)(a) of Section 4.395 of the Eugene Code, 1971, is amended to provide as follows:

4.395 **Licenses, Fees and Exceptions.**

(3) License Fees - Exceptions.

- (a) No license fee shall be required for any dog owned by a [blind] person who uses the dog as a [guide] **service animal**. A license shall be issued for such dog upon proper proof of rabies vaccination and upon filing of an affidavit by the [blind-person] **owner** showing such dog to come within this exemption. Such affidavit shall be filed with the animal regulation authority.

Section 5. Section 4.410 of the Eugene Code, 1971, is amended to provide as follows:

- 4.410** **Reporting of Biting Animals.** The owner of an animal susceptible to rabies which bites a human being **or a service animal** shall immediately notify the animal regulation authority or the Lane County Health Officer of such bite, the time and circumstances of such bite and the name and address of the person bitten, if known.

Section 6. Section 4.427 of the Eugene Code, 1971, is amended to provide as follows:

4.427 **Dogs - Certain Areas Prohibited.**

- (1) Except as provided in subsection (2) of this section, no dog owner shall permit a dog to be on Alder Street, including the sidewalks thereof, between and including the southern sidewalk of East 12th Avenue and the northern sidewalk of East 14th Avenue, nor on East 13th Avenue, including the sidewalks thereof, between and including the eastern sidewalk of Pearl Street and the eastern sidewalk of Kincaid Street.
- (2) The prohibition of subsection (1) of this section does not apply to a dog owner who maintains a lawful residence within the restricted area, to a dog assisting

law enforcement personnel, to a dog assisting ~~[a handicapped person]~~**an individual with a disability**, or to a dog inside a motorized vehicle.

Section 7. Section 4.435 of the Eugene Code, 1971, is amended to provide as follows:

4.435 Potentially Dangerous Dog.

- (1) The purpose of this section is to establish a procedure whereby dogs that pose a reasonably significant threat of causing serious injury to humans, domestic animals or livestock or property are identified and subjected to precautionary restrictions in order to prevent initial or additional injuries.
 - (a) Level 1 behavior is established if a dog at large is found to menace, chase, display threatening or aggressive behavior or otherwise threaten or endanger the safety of any domestic animal or livestock.
 - (b) Level 2 behavior is established if a dog at large is found to menace, chase, display threatening or aggressive behavior or otherwise threaten or endanger the safety of any person **or service animal**. (*Note: HRC Accessibility Committee had recommended that chasing or menacing a service animal be a Level 5 behavior – that is, more serious than chasing or menacing a person. Staff recommends this change instead.*)
 - (c) Level 3 behavior is established if a dog, while at large, bites or causes physical injury to any domestic animal or livestock.
 - (d) Level 4 behavior is established if a dog, **whether or not confined**, bites **or causes physical injury to any person or service animal**. (*Note: HRC Accessibility Committee had recommended that a dog biting or causing physical injury to a service animal be a Level 5 behavior, and this is similar to what exists as Level 4, and also appears to conflict somewhat with 1.e.1.*)
 - (e) Level 5 behavior is established if:
 1. A dog, whether or not confined, causes the serious injury or death of any person **or service animal**; or
 2. A dog, while at large, kills any domestic animal; or
 3. A dog, while at large, kills any livestock; or
 4. A dog engages in or is found to have been trained to engage in exhibitions of fighting; or
 5. A dog that has been classified as a level [4]3 potentially dangerous dog repeats the behavior described in subsection [4.435(1)(d)] **4.435(1)(c)** after the owner receives notice of the level [4]3 behavior classification.
- (2) Notwithstanding subsection 4.435(1), the director shall have discretion to refrain from classifying a dog as potentially dangerous even if the dog has engaged in the behaviors specified in subsection 4.435(1) if the director determines that the behavior was a result of the victim abusing or tormenting the dog or other extenuating circumstances.
- (3) No dog shall be classified as potentially dangerous if the behavior in question was directed against a trespasser on the property of a business which owns a licensed watchdog, providing the owner has complied with section 4.405.
- (4) No dog shall be classified as potentially dangerous if the behavior in question was directed against a trespasser that has illegally entered any residence.
- (5) Upon application of the dog owner accompanied by the fee established by the city manager, the restrictions for a dog classified under subsection 4.435(1)

shall be reviewed by the hearings official after six months for dogs classified as Level 1 or Level 2 and after one year for dogs classified as Level 3 or higher. If the dog owner can show that the behavior which caused the classification has been corrected to the satisfaction of the hearings official, then the hearings official may enter an order modifying or deleting the classification.

Section 8. Section 4.440 of the Eugene Code, 1971, is amended to provide as follows:

4.440 **Identification of Potentially Dangerous Dogs; Appeals, Restrictions**
Pending Appeal.

- (1) The director shall have the authority to determine whether any dog has engaged in the behaviors specified in section 4.435. This determination shall be based upon an investigation that includes observation of the dog's behavior by the animal regulation authority employees or by other witnesses who personally observed the behavior, sign a written statement attesting to the observed behavior and agree to provide testimony regarding the dog's behavior, if necessary. The determination may also be based on evidence that the dog's owner was fined or the dog was classified or registered in another state, county or city because the dog engaged in the behaviors specified in section 4.435.
- (2) The director shall give the dog's owner written notice by certified mail or personal service containing a description of the dog's specific behavior, classification as a potentially dangerous dog and the additional restrictions applicable to that dog by reason of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the director's decision to the hearings official within 10 days of the date the notice was received by the owner by certified mail or the owner was personally served.
- (3) The hearings official shall hold a public hearing on any appeal from the director's decision to classify a dog as potentially dangerous. The owner and any other persons having relevant evidence concerning the dog's behavior as specified in section 4.435 shall be allowed to present testimony. The hearings official shall issue an order containing the hearings official's determination, which shall be final. **The hearings official's order may include requirements that the dog's owner pay restitution to the victim, that the dog undergo training, or any other requirement that the hearings official deems reasonable under the circumstances.**
- (4) Once the owner has received notice of the dog's classification as a Level 1 to Level 4 potentially dangerous dog pursuant to subsection 4.440(2), the owner shall comply with the restrictions specified in the notice, within ten days, unless the owner appeals it to the hearings official. If the director's decision is upheld on appeal, the dog's owner shall be liable for the cost of the dog's impoundment.
- (5) If the director finds that a dog has engaged in Level 5 behavior, the dog shall be impounded pending completion of all appeals. If the director's decision is upheld on appeal, the dog's owner shall be liable for the cost of the dog's impoundment.

Section 9. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this

____ day of _____, 2011

Approved by the Mayor this

____ day of _____, 2011

City Recorder

Mayor