



Planning, Development & Transportation

Community Development & Neighborhood Services

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MEMORANDUM

TO: Mayor and City Councilmembers

THRU: Darin Atteberry, City Manager *DA*  
 Diane Jones, Deputy City Manager  
 Steve Roy, City Attorney *SR by BS*  
 Karen Cumbo, PDT Director *my (for KC)*  
 John Hutto, Police Chief *JH by BS*  
 Laurie Kadrich, CDNS Director *LK*  
 Jim Szakmeister, Police Captain of Patrol *JS by BS*

FROM: Beth Sowder, Neighborhood Services Manager *BS*  
 Hal Dean, Police Lieutenant *HD by BS*  
 Bill Porter, Animal Protection and Control Captain *BP by BS*  
 Rick Bachand, Environmental Program Manager *RB by BS*  
 Bronwyn Scurlock, Assistant City Attorney *BS by BS*

RE: Animal Control Code and Protocol Changes

DATE: January 2, 2013

This memo outlines recommended changes to the Animal Protection & Control (APC) Codes and protocol in response to a City Council request to make them more responsive to citizen concerns.

**Bottom Line**

Staff recommends decriminalizing all of the animal codes (Section 4 of the Municipal Code) except for vicious, dangerous, and cruelty sections. Staff also recommends changes in the APC protocol to ensure responsiveness and flexibility to citizen concerns and complaints. Staff also plans to transfer the management of the Animal Protection and Control contract from Police Services to Neighborhood Services. These changes will enable the City to make progress in addressing the issues of barking dogs and other animal nuisances in our community.

**Decriminalization**

Currently, all animal codes (Municipal Code Sec. 4) are criminal misdemeanors, subject to a penalty of \$1000 and up to 180 days in jail. Decriminalizing all of the animal codes (except vicious, dangerous, and cruelty) will result in more effective enforcement of violations that adversely affect the livability of neighborhoods, such as:

- Animals at large

- Animal disturbance of peace and quiet
- Public nuisance
- Licensing

The Code Sections we are not recommending to be decriminalized included:

- Sec 4-70 Improper Treatment
- Sec 4-74 Maltreatment of a Performance Animal
- Sec 4-96 Dangerous Dog
- Sec 4-97 Vicious Animal
- Sec 4-119 Use of Poison Restricted
- Sec 4-157 Killing or capturing of wild animal

Most of the City's nuisance codes were decriminalized in 2006, and the process has proven to be effective. Civil citations require that the property owner or tenant correct the violation, while also assessing a fine for the violation. Fines increase with repeat violations, creating a financial incentive for property owners and tenants to avoid further violations. This system of progressive penalties provides an immediate fine, while concurrently discouraging repeat violations and encouraging compliance.

Although the City has had experience with decriminalizing the nuisance codes, it is not common practice for animal control ordinances to be decriminalized. We think it is a new and innovative approach to more effectively deal with animal codes issues, and, as such, we will monitor the impacts to make sure it is meeting the expectations and to identify any problems so they can be addressed quickly.

Additionally, there is some concern that decriminalizing the off-leash section of the ordinance might give the perception of diminishing the severity of the violation. The Natural Areas and Trails Rangers have expressed some concern about this, and wish to avoid a reversal to the considerable progress made over the past decade. Moreover, Council has directed staff as part of the 2013/2014 BFO process to develop a companion Park Ranger program whose intent is to reduce the number of dogs off leash and animal waste violations on city park properties.

The amount of the fine is set by the Municipal Judge. Staff recommends that the fines be set at an amount that discourages violations (currently, nuisance code violations start at \$100 for the first offense, \$300 for a second violation, and any subsequent citations would be doubled). Staff also recommends utilizing the same process that is currently used for multiple violations which is that repeat violations (more than two) can be charged as a criminal misdemeanor to more strongly discourage repeat violations.

The benefits of decriminalizing the animal codes include:

- The penalty more appropriately fits the crime (fine rather than potential jail time)
- Burden of proof is less, which should result in more convictions
- Easier process to serve the citation (more efficient process), which should allow for the issuance of more citations
- Repeat violations can become criminal
- Financial incentive to avoid repeat violations (progressive penalties)

- More expeditious process
- Civil process has proven to be an effective tool (Code Compliance and other jurisdictions)
- Does not become a criminal misdemeanor on their record (unless it's a repeat violation)
- No jury trials

The cons of decriminalization include:

- Can't use jail time as a motivator or deterrent (except for repeat violations)
- Can't issue a warrant if they don't pay a fine; however, unpaid fines are sent to collections and would affect credit ratings
- Concern with possible perception of diminishing the severity of the violation; especially while Council has provided additional support and direction to develop a Park Ranger Program
- Concern with possible negative impact to the considerable amount of progress made over the past decade in City Natural Areas

By decriminalizing the animal codes, the process would be easier for the APC Officers (e.g. can post the citation on the door if the person is not home rather than returning to the property numerous times trying to find someone at home to serve the criminal citation). This should increase the number of citations issued for disturbance (barking dog). With these changes, APC Captain Bill Porter, estimates that we may see a total of 525 actual citations issued by APC in a year (this would be up from approximately 400-450).

In view of the number of citations for animal disturbance that may result from these changes, the Judge has indicated that she would be willing to have Municipal Court continuing to manage the processing of these citations. However, they could not begin doing that work for a couple of months. Additionally, the funding for the Court Referee will need to be paid by Neighborhood Services (Neighborhood Services currently pays for the Referee's time to hear nuisance citation hearings). Chapter 19 of the Municipal Code outlines the process for civil infractions. Minor amendments may need to be made to include the animal codes.

#### **Other Animal Code Changes**

Minor changes to the other animal codes include:

- License and identification tags – clarification
- Rabies vaccination – clarification
- Improper Care and treatment – add section that prohibits confining an animal within a parked vehicle when it's above 80 degrees Fahrenheit

#### **Animal Protection and Control Contract Management**

Staff is currently discussing transferring management of the APC contract from Police Services to Neighborhood Services because of the decriminalization (civil issue) and animal issues are primarily neighborhood livability concerns. Neighborhood Services has experience with managing enforcement of civil infractions and working with neighborhood issues. The ultimate goal is to provide better, more responsive customer service, and potential improvements have been identified that include:

- Information on City's web page – Neighborhood Services will work closely with Animal Control to put user-friendly information on the City's Neighborhood Services web page to instruct citizens about what to do about animal nuisances and how to effectively report them.
- Assist with protocol changes to Animal Control – Assist citizens who wish to remain anonymous and gather the information needed to pursue resolution. Neighborhood Services will also be able to work more closely with citizens who have animal issues in their neighborhood and more readily identify when an issue is appropriate for mediation or some other form of assistance.
- Assist with the civil infraction process – Neighborhood Services began enforcing civil infractions several years ago when most of the nuisance codes were decriminalized.
- Identify and improve evaluation and measurement tools.

#### **Protocol Changes for barking dogs**

Discussions have included the need for APC protocol changes to ensure that it matches the language and intent of the ordinance. These changes include:

- Allow for anonymous complaints when they provide enough information to follow up on the complaint - address or very close description of where the violation is, type of violation, how often it occurs, etc.
- Do not need to provide description of the dog; however, encourage them to provide a description of the dog if they can because it will help verify the violation.
- Allow for some flexibility regarding the address (e.g. if they know it is the house directly behind them then we can figure it out). However, we cannot take complaints that are too vague (e.g. "in the vicinity of Cherry & Whitcomb").
- Can issue citation to anyone at residence (anyone over the age of 18 at the residence can be considered the owner or keeper of the animal).
- Police will still respond to animal calls after hours.
- Police can verify the problem and refer it to APC the following day to issue the citation based on the Police Officer's observations.
- If it is a disturbance call, they can see if anyone is home to have them resolve the problem immediately.

#### **Feral Cat Colony Management Ordinance**

Because of the health concerns brought on by the recent outbreak of rabies in Larimer County and in Fort Collins, Larimer Humane Society believes it would be beneficial to look into adopting an ordinance regarding management of feral cat colonies. APC has also heard from citizens who are interested in this type of ordinance.

This topic needs additional research and outreach prior to making any recommendations about an ordinance. This topic may be brought to Council for further discussion at a later time.

#### **Next Steps**

Staff is scheduled to go to Council on February 5<sup>th</sup>, 2013 with recommended changes to the animal codes (Chapter 4). Staff would like any input/feedback from Council prior to that date if possible.