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### Unified Animal Control Ordinance: An Inventory of Proposed Changes

August 14, 2013

Generally speaking, the staff involved in preparing the proposed unified animal control ordinance sought to defer efforts to create new laws. Their unanimous sentiment was that bona fide amendments should be subsequently considered on the basis of the new unified ordinance. Thus we actively resisted the adoption of new law to ensure there was no “scope creep.”

At the same time, staff did elect to propose some changes because of their belief that it made good sense to do so at this time. One reason for this is that there are clearly manifest deficiencies in the current county ordinance. It had not been updated since Animal Services was created as a freestanding county department. Indeed, it had not been considered as a whole for more than [20] years since its adoption in the late [1980s].

Another reason was that staff had become keenly aware of a number of “gaps” in the existing ordinances. They were aware of various omissions as a result of their ongoing effort to address and resolve the concerns of residents. In the absence of duly constituted public authority, they had needed to collaborate with staff attorneys from the county and municipalities to create practical “work-arounds” to effectively protect the public and assure that animals are protected.

The basic changes proposed in the unified animal control ordinance are summarized in the following section. As requested by the BOCC at its meeting on May [6], staff has identified concerns that have been raised and provided the rationale for the changes giving rise to these concerns. These concerns are discussed in the next section.

#### Basic Changes

In this section, some essential changes are identified and summarized. As they have not been addressed as concerns per se, the rationale for these changes is only briefly summarized. They are as follows:

1. Recognizing and reflecting the changes associated with the creation of Animal Services as a free standing county department in 2005. Changes of this kind include reference to the Animal Services Director (as opposed to the Animal Control Manager) and the very existence of Animal Services as a county entity.
2. Establishing more general due process rights in the form of hearings conducted by the Animal Services Advisory Board. The existing county ordinance provides no appeal mechanism for

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enforcement or other actions taken under the authority provided by the ordinance. Thus, there is a definite need for the general appeal process being proposed as part of the ordinance. In addition to the general provision for appeal, there are specific guarantees of an appeal process for the following:

- i. A vicious animal declaration
  - ii. Revocation of a kennel permit
  - iii. Public nuisance citation and/or an order to remove a nuisance animal from the county
3. Designating animal control staff (and only them) as cruelty investigators pursuant to North Carolina General Statute. Doing so assures that county animal control officers have the rights and powers of cruelty investigators. It also simplifies and expedites the use of civil injunctive processes to take effective custody and real possession of animals suffering from neglect or cruelty in its different forms.
4. Authority for assuring humane treatment of animals and humane euthanasia when warranted. Absent from the existing ordinance is the express authority to humanely euthanizing an animal suffering in exigent circumstances and to hold an animal if there is no reasonable assurance of proper care. Each of these deficiencies is remedied in the proposed ordinance.
5. Incorporating prohibitions for the keeping of wild animals and regulation for the display of wild animals and vesting regulatory authority in Animal Services. As these respective ordinances were originally written when Animal Control was a section of the county Health Department, authority was vested in the Health Director (or designee).
6. Establishing the power to revoke kennel permits for failure to comply with permit requirements themselves or with other parts of the county animal ordinance, and establishing an appeal process for such revocation. Heretofore there has been no specific authority for Animal Services to revoke permits for compliance failures. To assure that there are proper checks and balances, an appeal process is established for the permit holder to challenge any revocation.
7. Establishing authority sufficient to effectively regulate vicious and dangerous dogs and thereby ensure public safety. A number of gaps in the existing ordinance have been identified through the test of experience. These are being closed by creating explicit public authority:
  - i. Required microchipping for identification
  - ii. Clearly defined enclosure requirements
  - iii. Enclosure requirements for animals declared under local as well as state law
  - iv. Bites and aggression on owner's property
  - v. Impoundment authority as needed to assure public safety
  - vi. Appeal process of declarations made under local law
8. More specific identification of public nuisances created by cats. Cats are potentially covered as a public nuisance under the existing county ordinance but they are not dealt with as a specific species. This is a notable oversight in the existing ordinance considering the number and impacts of cats in all of our communities and it is remedied in the proposed ordinance

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### Concerns About Changes

In this section, Animal Services staff has identified and addressed the comments presented by the public regarding the proposed Unified Animal Control Ordinance at the May [6], 2013 BOCC meeting. There were seven speakers from the public, as well as two members of the Animal Services Advisory Board (ASAB) that spoke.

Each heading below has a specific format. It is for the concern to first be identified and then for the rationale for change prompting the concern to be discussed. We believe that this format meets the BOCC request for staff to identify and review the concerns raised at the meeting and their merits.

1. School of Government Involvement: Professor Aimee Wahl, J.D., of UNC's School of Government was approached by several individuals, who had asked the ASAB to have Ms. Wahl speak to them and staff before going forward with the proposed ordinance. The ASAB Chair and Vice-Chair, as well as the Animal Services Director, previously considered this request and decided that there was not a good reason to invite Dr. Wahl to interact with the ASAB over the process of ordinance unification. They did so without prejudging whether Ms. Wahl's services would be sought in regard to future ordinance amendment efforts.

Since that time, ASAB Chair Susan Elmore, DVM, has spoken with Professor Wahl and has reviewed staff's methods and the reasoning for the unified ordinance. It is the understanding of staff that given this information, Ms. Wahl has indicated she believes the approach taken has been very reasonable and that it makes good sense. She does continue to be available should staff find there to be a need for her services in the future.

2. Vicious Animals vs. Dangerous Animals: Two individuals expressed concern about the dual designation of dogs as vicious (under county ordinances) and as dangerous (under state law). There was concern over the need for both declarations and over the fact that only the state designation had a process for appeal. In addition, in the proposed ordinance, a dog is automatically declared vicious by the county when it has been declared potentially dangerous by the state, but it was not clear whether the process to overturn these declarations is equally parallel.

The proposed unified ordinance already addresses the need for an appeal process to the vicious dog declaration and has written in a process by which an appeal can be granted and issued. This absence of a guaranteed formal appeal process in the county's existing animal control ordinance is legally untenable and must be remedied.

Staff is of the opinion that there is a distinct need for both regulations for several reasons. One is that the state designation alone does not give the county necessary authority by which to regulate (and as

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needed impound) dogs that are within their jurisdiction and believed to be a threat to public safety. Another is that bites that occur on an owner's property are not covered by state laws unless they are severe. This is regardless of whether the victim is a guest, a neighbor who innocently came onto the property, or a delivery person.

3. Watchdog definition: A concern voiced by several individuals was the removal of "watchdog" from the unified ordinance's language and definitions. These individuals felt that their own dogs were watchdogs for their person and property in rural areas of the county. They felt this was an important definition to retain and that eliminating it could cause their animals to be at an unnecessarily high risk of being declared vicious or dangerous.

Staff maintains that the "watchdog" exemption in the existing ordinance creates the ability for abuse. In the first place, the term has no definition and such dogs lack any qualification. Thus it can easily be used to excuse a dog and its owner from being held responsible for behaviors that are not consistent with actual protection of person or property.

In addition, the proposed ordinance maintains the definition of a "security dog," which is one that is used for protection but which must meet training standards and be registered. Owners who have their animals deemed as "security dogs" will not be subject to those animals being declared as dangerous or vicious when protecting property or citizens from potential harm.

Finally, allowing any dog that is on an owner's property to be excused for biting with no parameters by which an act is measured is a dangerous policy from the standpoint of public health and safety. Such a policy allows for known aggressive animals to be excused from behaviors of which the public deserves to be aware and protected.

4. Trespassing and what it means: Perhaps the largest issue raised was that of trespass. This issue was closely related to the rural/town and the "watchdog" issue, but went further in contending that the unified ordinance should protect any dog attacking a person that was on its owner's property, regardless of intent. Some speakers felt strongly that a notion more complex than simply being on another's property without invitation, was not needed and would not protect their rights as landowners to protect their property by any means.

Staff maintains that the new ordinance does need a more articulated notion of trespass to assure public safety as well as the rights of dog owners. By considering whether there is criminal activity as well as whether a property is posted "no trespassing," it prevents animals from excusably attacking those who are innocently or unknowingly trespassing in a civil sense. Letter carriers, political campaigners, neighbors, children playing, and many other people could easily be on another's property without knowing or without malicious intent, and staff believes the community expects those people to be protected from attack by a dog.

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This approach gives Animal Services the ability to declare animals as vicious in some circumstances and hold them to standards that control aggressive behaviors. Should a new neighbor or other stranger approach a residence with good intention and the residence is home to a dog that is known to bite or attack, Animal Services would be unable to protect that citizen from a known behavior without such a distinction. The distinction does not prevent animals from protecting their property or family members. Dogs acting against trespassers that are on the property to commit crimes would not be subject to action and would not be declared as vicious or dangerous by Animal Services.

5. Livestock: Livestock concerns were brought to the attention of the BOCC during staff's presentation of the unified ordinance. Several individuals voiced a concern that exists both in the current ordinance and the proposed one: specifically, whether livestock should be excluded from the definition of nuisance animals when they are at-large, or whether they should have separate regulations that govern them during such episodes.

Staff has previously discussed the issue at-length with the Animal Services Advisory Board (ASAB), and together they have addressed the issue of livestock with the Agricultural Preservation Board. During those discussions, the ASAB felt there was not a need at that time to revise the current ordinance and this was presented to the BOCC without problem. Staff suggests that any additional inquiries into changing livestock regulations be made separately from the unification process if there is an interest in further consideration of this subject.

6. Rural vs. Town: Several individuals suggested that there should be some difference between regulations for the Towns and rural Orange County. No specific areas of difference were identified in addition to the points discussed above. Staff is open to considering other items as needed and appropriate, but believes these should be considered on the basis of a unified animal control ordinance.

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