Vicious Animals in the Proposed Unified Animal Ordinance
For Orange County, North Carolina

May 15, 2013

Introduction

Attached is the section of the current version of the proposed unified ordinance pertaining to vicious animals. My goal is to identify what I will call "the elements" of this section to assure that the Animal Services Advisory Board has clarity about these elements. I will do so by creating a context for receiving the attached, and of course, I will be glad to discuss specific elements of the attached at the board's request.

Creating a Unified Ordinance

Recall that the unified ordinance comes from our experience with the existing county animal control ordinance and the comparable ordinances in the towns of Chapel Hill and Carrboro. All three of these ordinances are available online at http://orangecountync.gov/AnimalServices/info.asp.

Our working group consisted of the staff attorney for Animal Services, the Carrboro Police Chief, a Carrboro Police Captain, the staff attorney for the Chapel Hill Police Department with animal control responsibilities, our Animal Control Manager and me in my role as Animal Services Director. Our work practice was to compare the same or similar section of the three ordinances and to decide which made the most sense in light of our combined experience in providing effective animal control services in our respective jurisdictions.

In doing so, we identified some key gaps based upon our experience. These gaps are:

1. Required microchipping for identification
2. Clearly defined enclosure requirements
3. Enclosure requirements for animals declared under local as well as state law
4. Bites and aggression on owner's property
5. Impoundment authority as needed to assure public safety
6. Appeal process of declarations made under local law

More will be said below about these gaps.

State Law

A number of concerns have risen from our experience applying the general statutes that apply to potentially dangerous and dangerous dogs in North Carolina. Some of these regard the making of such declarations and others concern compliance with the requirements for keeping a declared animal.

Notable concerns from an enforcement standpoint are:

1. No microchipping requirement (leaving legal issues of identification)
2. No leashing requirement on property when an owner is in attendance
3. Less than unambiguous criteria for confinement ("in a securely enclosed and locked pen")
4. No impoundment authority when there are infractions

Notable concerns also arise from the perspective of reviewing bite reports made by residents to decide whether an animal should be declared potentially dangerous. The primary concern is this:

- A "non-severe bite" on the owner's property is not a basis for deeming a dog potentially dangerous under NCGS.

Severe in this context means "any physical injury that results in broken bones, or disfiguring lacerations or required cosmetic surgery or hospitalization."

Consider then a child bitten by a neighbor's dog on the property of the dog owner in which there are multiple punctures and one or more lacerations, but nothing that qualifies the injuries as "severe." There is thus no basis for declaring the dog a danger with the purpose of preventing another incident of the same kind.

Local Law

The last gap has been filled by the available local ordinances. In other words, dogs responsible for "non-severe" bites on the owner's property have been declared vicious under broader and more inclusive provisions of local ordinance.

Until the recent case I described earlier, our operational understanding has been that there must be criminal trespass or trespass for criminal purposes. We understood these two things:

1. The commission of a crime on the dog owner's property entailed a trespass and thus that a dog bite is excepted from the general provision.
2. That a person having been officially trespassed by the police or the property owner should not be on the dog owner's property and thus that a dog bite is excepted from the general provision.

Under the unified ordinance, there would essentially need to be a criminal trespass (or tort) for a dog that bites someone on its owner's property to be excepted from the general provision. There also would be an exception if the property was posted in a "manner reasonably likely to come to the attention of intruders." Other exceptions are detailed under this section of the proposed unified ordinance on page 18 of the attachment.

Three other observations are in order to assure that I have completed my review of the gaps and elements of the vicious animal component of the proposed unified ordinance. One is that the confinement requirements of the three ordinances for the County, Chapel Hill and Carrboro vary drastically. In the case of the County's animal control ordinance, no more stringent restraint is required of the owner of a vicious animal than for any other dog owner.

The second observation concerns so-called "watch dogs" in the local ordinances. Unlike other types of security dogs, these require no prior registration with animal control under the existing ordinance. Indeed, it could be virtually any dog since "it is one that barks and threatens to bite any intruder that has not been specially trained or conditioned for that purpose."

The third observation is that there is not a process of appeal in Orange County's vicious animal ordinance. One is created by the unified ordinance just as it creates confinement requirements and eliminates "watch dogs" from the general category of security dogs.

Conclusion

We are seeking to create a unified animal ordinance because animal services are more unified and integrated than they have been in the past in Orange County. Effective July 1, 2013, Animal Services is expected to provide services to all of Orange County except municipal Mebane.

I believe that this effort has been outstanding for a number of reasons. One is that it is collaborative and motivated by a strong sense of the need to create new forms of service that are not anchored in traditional boundaries. Another is that the effort has been guided by a deep respect for the rule of law and a strong sense of public service as well as professional duty.

The gaps that are being filled, finally, are ones that have become apparent—sometimes painfully apparent—from our combined experience in trying to address and resolve the concerns of residents from all areas and walks of life in Orange County.

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