

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Wednesday, July 6, 2011

WORKSHOP

Minutes

TIME & PLACE: The Mayor and the City Commission of the City of Truth or Consequences in the County of Sierra and State of New Mexico met in a Workshop Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Wednesday, July 6, 2011 at 6:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Montgomery who presided and Mary B. Penner, City Clerk acted as Secretary of the meeting.

ATTENDANCE: Upon calling the roll the following Commissioners were reported present:

Hon. Lori S. Montgomery, Mayor
Hon. Evelyn B. Renfro, Mayor Pro-tem
Hon. Steve Green, Commissioner
Hon. Frances Luna, Commissioner
Hon. Freddie Torres, Commissioner

Also present:

Ellen Lindsey, Acting City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk

QUORUM: There being a quorum present the Commission proceeded with the business at hand.

PROPOSED DANGEROUS DOG ORDINANCE: Mayor Montgomery stated they will receive public input from 6:00-7:00 P.M. She indicated there were packets that were available at City Hall that include several documents, and asked when they are making their comments if they could please reference which document they are talking about so they can make notes.

City Attorney Rubin at this time introduced Mr. Randy Van Vleck who is the League Counsel from the New Mexico Municipal League.

During the Workshop the City Commission received numerous comments from the public emphasizing our current animal control ordinance, which have included personal incidents regarding aggressive dogs.

There were 17 members of the public that spoke during public input, and most of the statements included stricter enforcement of the city's animal control ordinance. Also numerous emotional pleas of concern were voiced with the need of placing more responsibility upon the pet owner's.

During public input several concerns were voiced; including fencing, proper enclosure of animals, surety bonds, homeowners insurance, ACO authority to enter private yards, barking dogs, including somewhere in the ordinance the wording of **attempts** in regards to an animal causing injury, and including something about emotional

attack, **enforcement** was mentioned over and over, defining the word **potentially**, owner's responsibility, animal cruelty, enforce legislation, dogs running at large, contradiction in our current city animal control ordinance, how many dogs allowed, and it was suggested that the city provide a weekly report regarding ACO activity, and possibly using the funding on the GRT tax implementation in 2012 allocated towards this situation to allow enforcement of these laws for **safety** in our town.

The Mayor thanked everyone for their input and concerns, and opened it for discussion from the Commission.

It was the consensus of the Commission of the need of enforcement and the need of compiling an ordinance revision, and going forward. Several concerns of the Commission were of course the **enforcement**, to support these people, the possibility of surety bonds, homeowner's insurance, entering property whether it being a legal problem.

Municipal League Attorney Van Vleck stated those definitions, potentially dangerous dogs, dangerous dogs, and stated that there really isn't a need to go to vicious because a dangerous dog is equated with vicious dogs, and stated that one definition is somewhat antiquated, and stated they key here is absolutely your definitions, and that they need to define on how they are going to fall into a different category, and how they want to handle that category of animals. He stated it is certainly well within their purview, and indicated a lot of what these folks said is absolutely true, and that this is an owner problem

Mr. Van Vleck stated that some of these ordinances compared to the one that we have in place now...the one Santa Fe has in place, and the one the State has in place is primarily a similarity, and that they determine if the dog is dangerous or potentially dangerous if it bites again it's removed and destroyed, and stated that is really a civil remedy.

He stated they have in their authority the ability to enforce criminal penalties if they choose to up to a certain amount, and indicated they do have the authority to punish within certain perimeters, and stated there as a gentleman that spoke about a dog coming at him off a leash...that's clearly a violation of the animal control ordinance, and stated if they tweak this a little bit...that offense there could be punishable by a \$500.00 fine and/or 90 days in jail...that's the extent of your authority.

Mr. Van Vleck offered the Commission several ideas as to what type of changes could be considered and what authority the Commission had to criminalize animal control ordinance violations, and how this could be written into effective legislation. He stated very little of what he has heard today can't be addressed in this ordinance in some respect or another, and stated they can pass ordinances so long as they are not inconsistent with State Law, and that promote your health, safety, morals and general welfare...the key here is whether or not that provision that you're talking about runs inconsistently with the states dangerous dog ordinance statute.

City Attorney Rubin stated that he was going to point out: ...dangerous dog ordinance you still have the vicious animal ordinance on the books which does address your concern about a dog which has already bitten in one prior occasion, and as Randy Van Vleck points out you have the old vicious animal ordinances and then

you have the dangerous dog ordinance which was passed later on. And indicated it is kinda interesting to have these two different ordinances...but interesting the State Statute is the same thing.

Mr. Van Vleck stated one of the things that were mentioned was special permits for multiple animals. And stated if they know of someone who has a potentially dangerous dog or a dangerous dog...I think that is the first step is to license them, and put additional requirements on them, and to criminalize the behavior if they don't follow through with what they are supposed to do, and indicated those are some steps he thinks they can take.

He stated on the persistent barking dog issue, and depending on the violation you can make each day a separate violation...persistent barking dog issue, and indicated the problem with your barking dog ordinance is in the definition...it's got to be persistent and continuous. And stated what type of changes that could be considered some of the hurdles and constraints that might be encountered and how animal control issues could involve civil and property rights consideration, and the difficulty that might be encountered through enforcement process.

Commission members looked at several items they would like to see in the pending ordinance, and they were all in agreement that the city should criminalize animal control ordinance violations, and tentatively endorse a provision that would set a minimum fine of \$100.00 for any violation, and would allow for a maximum fine of \$500.00 and up to 90 days in jail. And the Commission also agreed that all incidents involving dangerous dogs would be addressed in Magistrate Court and unlike Municipal Court has jurisdiction to institute civil penalties.

During the discussion it was asked about the Santa Fe Ordinance, and Mr. Randy Van Vleck indicated that Santa Fe is a Home-Ruled Municipality. And explained that statutory city's like Truth or Consequences only have those powers that are expressly given to them by the State Legislature...meaning you have an operational ceiling...Santa Fe is exactly the opposite...they can legislate in any manner that they choose so long as State Legislature is not expressly prohibited them from doing so. So the question now is we have to decide whether...with this type of an ordinance within the consistency standard that we have to operate under existing statutes...existing statute meaning the dangerous dog statute which is basically your ordinance. And stated if we can craft an ordinance a lot like Santa Fe that we're comfortable arguing that is consistent with State Law then I say go for it...but that's gonna be the test as to whether or not...whatever you come up with is consistent with what's currently on your books because what is currently on the your books basically is the State Law as far as dangerous animals.

Chief Gallagher, asked if we are required to allow them with the registration of dangerous dog...or can we do like Santa Fe?

Mr. Van Vleck stated the law is...there is case law out there that says a municipality can be more stringent than State Law...not less stringent...you're suggesting that you're not going to allow the licensing of potentially dangerous animals which is permitted under State Law...two questions...first of all it's clearly more stringent...the question is...does that rise to be consistent with State Law, and I think...that's where the fight is going to be if you were to

adopt something like that, and someone would take you to task for adopting it...you can be more stringent so long as you're not inconsistent...I got a feeling that might be deemed inconsistent.

He stated what they are dealing with in your current ordinance...a potentially dangerous dog and a dangerous dog, and indicated the State obviously set it up this way for a reason, and need to know why the State did it this way.

The Commission stated they need to merge the document and bring it back for approval and go from there, and stated staff has done most of the leg work.

Mr. Van Vleck stated there is an internal inconsistency in your current ordinance...Section 3-9 & 3-10 and carries through to 3-11, and that they specify some fines, and referred to 3-11 subsection (12)...\$100.00 fine, and stated that is all they can do, but if they want to beef that up, and indicated what they really need to do is...if this is the direction you want to go is make all violations of this code punishable by up to a \$500.00 fine and up to 90 days in jail, and stated that would then give the judge the authority to say okay...unlawful use of a license tag...it's not gonna be \$100.00 fine...it's gonna be a \$300.00 fine, and you're gonna spend 2 days in jail. And stated under this current scenario the judge cannot do that.

Regarding the barking dogs they asked Roy Schoenradt how he currently is handling the situation, and he indicated it would be nice to have it within a certain time limit, and stated right now he sits and gives it 10 minutes, and if he does not hear any barking he drives away.

Mr. Van Vleck stated that may not be a bad idea...adds a time limitation, and stated that way they have a distinct parameter here that he can go sit and put a stop watch on that dog, and if that dog is barking or howling for 20 minutes then they give a citation.

Mr. Van Vleck stated they need to address the fees, and look at a breeder's permit, and that they require a permit before anybody breeds an animal. And stated that Rio Rancho has a breeder's permit.

Commission members decided to include provisions limiting owners to only four animals, and that a kennel permit would be required for five or more dogs. And stated they would also like define some of the ordinance revisions, and that further discussion was needed as to other types of pets.

Roy Schoenradt talked about licensing possibly with Dr. Cardwell since we have a contract, and have the licenses at Dr. Cardwell's to issue, and indicated it has to be written as such, and stated that would help them.

Acting Manger Lindsey stated the concern that Dr. Cardwell is his powers of enforcement...if somebody says no I'm not gonna get a

city license...what is his power to make them get that.

Roy Schoenradt stated you all can make him do that...that could be part of the agreement with the contract...saying an animal will not be returned to the owner unless you have to get a city license. He stated he has wanted to add and that they have a contract with Elephant Butte, and that he would like to see the fines increased.

The Commission directed City Attorney Rubin along with Chief Gallagher and Acting City Manager Lindsey to compile a proposed Ordinance revision and bring it back to their meeting of July 26, 2011.

The Mayor thanked everyone for their comments.

ADJOURNMENT: There being no further business to come before the Commission the meeting was adjourned.

APPROVAL: PASSED AND APPROVED this _____ day of _____ 2011, on motion duly made by Commissioner _____, seconded by Commissioner _____, and carried.

ATTEST:

LORI S. MONTGOMERY
MAYOR

Mary Penner,
City Clerk