COUNCIL REPORT

LOS ALAMOS POLICE DEPARTMENT

ANIMAL SHELTER

Chief D. Sgambellone

Chapter 6 and Wildlife Public Comment

Response and Recommendations

01/09/2024

ATTACHMENT C

BACKGROUND

On November 13th, 2023, a Town Hall was conducted regarding recommended amendments to the Chapter 6 Animal Code and a Draft Ordinance prohibiting the feeding of waterfowl and wild animals. At the Town Hall, residents were informed of the content of each Ordinance and how citizens could provide feedback on the proposed changes. A website was established for written comments on both Ordinances which remained active through December 7th and the Ordinances were scheduled for discussion at the December 12th Council meeting.

At the December 12th Council meeting, Council directed staff to provide a substantive response to the public comments that were received. The following outlines the central concerns received, grouped into categories.

REVISION OF CHAPTER 6 SEC 6-6 UNREASONABLE ANIMAL NOISE PROHIBITED

The majority of comments related to Animal Noise Prohibited concerned the use of the word, "unreasonable," and whether or not that term is enforceable or could be abused by callers to the police, or the police themselves. The word, "unreasonable" (and/or "reasonable") appears in County Code multiple times, including Chapters 6, 18, 28, 31, and 38. These words are not only used in existing code reference animals, but also with respect to vehicular noise, residential and business noise, noise related to working hours, and prohibited decibel levels.

Police Officers and Animal Control Officers are aware that the words, "reasonable and unreasonable," can be subjective and consider this among many other factors when using discretion while handling calls. As with all matters of enforcement, the accused can ultimately plead their case to a Judge who will decide whether the conduct was reasonable or unreasonable. Additionally, the Los Alamos Police Department has historically shown a great deal of discretion regarding animal related calls. From 2019 through April 18th, 2023, there were a total of 21 citations issued by Animal Control Officers; 10 of those were written warnings rather than citations forwarded to court. Of the remaining 11, 10 of those citations issued were for roaming dogs and 1 was for excessive barking. The Animal Control Officers continue to be more focused on education and providing resources rather than citing.

However, the unenforceability of the current code on animal noise has been a significant factor with respect to citations. Citizens who endure chronic animal noise need a viable remedy and the Police Department needs to be able to meet that expectation. The proposed language is legally enforceable while still allowing for discretion by the Officer.

Another area of expressed concern was submitted regarding the regulation of livestock and chickens. However, this is covered in the existing code in Sec 6-2.

The last consideration came from Council regarding the phrase, "affirmative defense." An affirmative defense is a fact or set of facts other than those alleged by the plaintiff or prosecutor which, if proven by the defendant, defeats or mitigates the legal consequences of the defendant's otherwise unlawful conduct. As it relates to this chapter, existing code allows for an affirmative

defense when the animal is provoked. This can become part of the discretionary consideration of the responding Officer, and therefore, is an important element of the code.

RECOMMENDATION: Adopt the proposed changes to the Ordinance while maintaining the otherwise existing language to include the words, "unreasonable" and "affirmative defense."

REVISION OF CHAPTER 6 SEC 6-17 UNWANTED ANIMALS

The majority of feedback received on this section includes the use of the phrase, "**MAY** accept any dog or cat," as well as the euthanasia of animals after 5 days, and being designated as a no-kill shelter. The intent of proposed language was to maintain the department's ability to control the animal population which had been threatened by people bringing in numerous dogs and cats from area shelters. Our practice clearly indicates a willingness and capacity to shelter unwanted animals from Los Alamos citizens in all other circumstances.

Secondly, the reference to the 5-day rule and euthanasia is in the existing code. The 5-day rule is designed to allow owners and keepers the ability to locate their missing dog or cat. After 5 days, the animal becomes the property of the County and may be euthanized, although that is not our practice. Annual euthanasia rates are published each year in our annual report. A euthanasia requires an acknowledgement by a licensed veterinarian that the animal's condition warrants euthanasia and approval of the Chief of Police. There was some discussion regarding the phrase, "humanely destroyed," versus, "euthanasia." The Department does not take issue with either phrase, although, "humanely destroyed," is in the existing code.

Lastly, a "no-kill shelter," has been defined as a shelter that does not euthanize healthy or treatable animals based on time limits or capacity. There is usually a threshold of 90-95% associated with this term, meaning 90-95% of animals taken in by the shelter are not euthanized. The Los Alamos Shelter does not euthanize healthy and treatable animals and has always met this threshold as described above.

RECOMMENDATION: Adopt the proposed changes to the Ordinance. Replace, "humanely destroyed," with, "euthanized," if so desired.

SECTION 6-21 ASHLEY POND WILDLIFE PROTECTED AREA AND TO THE PROHIBITING FEEDING OF WATER FOWL AND WILD ANIMALS

It appeared that the negative public feedback on feeding wildlife was well taken by Council, and as such, further discussion on this issue was postponed. With specific respect to adopting Ashley Pond as a Wildlife Protected Area, most of the comments were in support of an allowance for feeding the wildlife in this area. Several suggested the County install feeders with food that is appropriate for the Ashley Pond wildlife while adopting appropriate signage to discourage feeding the wildlife french fries, and other forms of potentially harmful human foods.

RECOMMENDATION: Adopt Ashley Pond as a wildlife protected area within the Ordinance allowing for the feeding of fish, ducks, and geese with Veterinarian recommended food options

supplied by feeders. Consider as a policy decision installing appropriate signage to discourage feeding the Ashley Pond wildlife harmful food.

SECTION 6-124 ADOPTION OF IMPOUNDED ANIMALS

The majority of concerns in this section were related to the current procedures for sterilization. Some voiced concern regarding an allowance for breeders and exceptions when sterilization would compromise the animal's growth and well-being. There was discussion regarding the appropriateness of a $25 deposit to ensure adopted animals would ultimately be sterilized and if a more substantial deposit would result in better compliance.

The New Mexico Pet Sterilization Act, 77-1-18 through 77-1-20, states that a sterilization deposit fee shall be ***at least*** $25. While a more robust fee may result in better compliance, it may also result in the less fortunate of our community not being able to pay such a fee under circumstances that would require it. It would give those that could afford such a fee the ability to adopt animals prior to them reaching six months of age, while the less fortunate would have to wait if they couldn't afford a higher fee. At the same time, pet overpopulation is an on-going concern and there must be appropriate legal standards in place to discourage it.

The Department is not opposed to making an allowance for breeders and circumstances where sterilization would compromise the animal's growth and well-being. In fact, if the pet sterilization fee is increased, we would need language about breeder exemption to discourage individuals from claiming the exemption to avoid the sterilization fee. Therefore, additional language regarding the process for exemption is warranted. Additionally, the Department is not opposed to adding language regarding an exemption for sterilization that would compromise the animal's growth and well-being.

RECOMMENDATION: Retain current language while raising the sterilization deposit fee to $100. Add allowances for breeders and in circumstances where sterilization would compromise the animal's growth and well-being.

Recommended language:

No person or animal organization may keep, harbor or maintain within the city limits any dog or cat over six months of age that has not been sterilized (commonly known as spayed or neutered) unless the owner has obtained an intact animal permit. The cost of the intact animal permit is the same as the sterilization fee. The intact animal permit may be issued with the following conditions:

(1) *Medical exemption.* The owner provides a signed statement from a licensed veterinarian, stating that the dog or cat is medically unsuited to undergo the sterilization procedure, stating the specific medical grounds for the exemption. If the veterinarian's statement establishes such medical condition is likely to be chronic or permanent, the medical exemption shall be a permanent exemption, but may be revoked upon evidence the dog has been bred since the date of the veterinarian's statement, whether intentionally or

unintentionally. All costs associated with acquiring the veterinarian's statement of justification for the medical exemption shall be the responsibility of the animal's owner.

(2) *Temporary medical exemption.* When a temporary medical condition contraindicates sterilization, the owner shall provide a signed statement from a licensed veterinarian, stating the expected date as to when the sterilization may be safely performed, which date shall be the expiration date of the temporary medical exemption. After the period of the temporary medical exemption, sterilization shall be required unless a licensed veterinarian provides another temporary medical exemption and prognosis of when the surgery may be performed. All costs associated with acquiring the veterinarian's statement of justification for a temporary medical exemption shall be the responsibility of the animal's owner.

(3) *Competition/show exemption.* A dog or cat may be exempted from the sterilization requirement if it is a competition/show animal. A competition dog or cat is one which is used to show or to compete in contests recognized and registered by an approved breed registry, such as the American Kennel Club (AKC), United Kennel Club (UKC), or American Dog Breeders Association (ADBA). Recognition of a breed registry is at the sole discretion of Animal Shelter. In order for a dog or cat to qualify for an exemption as a competition/show animal, the owner must also demonstrate satisfaction of at least one of the following requirements:

(a) The animal has competed in at least one show or competition sanctioned by the national registry or approved by the Animal Shelter within the last year.

(b) The owner is a member of a purebred breed club recognized by the Animal Shelter, which maintains and enforces a code of ethics for breeding that includes restrictions on breeding animals with genetic defects and other veterinary problems that commonly threaten the breed.

(4) *Function-bred exemption.* Function-bred means any dog bred for a specific purpose and used by the breeder for a specific purpose such as hunting, herding, coursing, agility, retrieving, scent tracking, or pointing. These dogs may be of the sporting breeds or function-bred dog either of a registered pedigreed lineage or crossbred with a nonregistered pedigreed lineage for which the animal is bred specifically for its stated sport or functional purpose including but not limited to coursing hounds, sporting dogs, search and rescue dogs, sled dogs, service dogs, police K-9's, and scent hounds. In addition, one of the following requirements must be met:

(a) The dog owner must be able to produce a pedigree showing the dog's lineage for at least five years.

(b) The dog owner must be able to produce photographic evidence of participation in the activity for which the dog is bred.

(c) The dog owner must produce other evidence as required by the Animal Shelter on a case-by-case basis. This evidence may include but is not limited to the possession of the proper equipment used for the work or sport the dog is bred for.