



**Chapter 7 Animal Ordinance Amendments
Follow-up Briefing To
Health, Environment & Human Services
Committee**

By

Department of Code Compliance

April 26, 2005

PURPOSE

- The purpose of this briefing is to update the Health, Environment and Human Services Committee on the following five outstanding requests from the briefing of March 7, 2005
 - Request to include caged/domestic birds in the definition of domestic animal (page 3)
 - Clarify proposed changes to the prohibited animal section of Chapter 7 (page 4-16)
 - Explore feasibility of implementing effective enforcement provisions to regulate commercial breeder and provide the fiscal impact of such recommendations, including the volunteer component (page 17-25)
 - Include “Dog on Dog” attacks as a dangerous dog violation, extend same provision to cats (page 26)
 - Include invisible fence as a defense to prosecution (page 27)

INCLUDE CAGED/DOMESTIC BIRDS IN DEFINITION OF DOMESTIC ANIMAL SECTION 7-1.1 (13)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>Include in the definition of "domestic animal" any bird (other than one in the Falconiforms or Strigiforms Order) that is kept as a human's companion</p>	<p>ASC concur with staff</p>	<p>CAO has no legal concerns about adding certain birds to the "domestic animal" definition</p>

SEC. 7-6.1 PROHIBITED ANIMALS

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(a) A person commits an offense if he:</p> <ul style="list-style-type: none"> (1) owns a prohibited animal for any purpose in the city; or (2) sells, exchanges, gives away, or transfers a prohibited animal to any person in the city for use, retention, resale, or transfer as a pet or as a human's companion 	<p>ASC concurs with staff</p>	<p>CAO advises that exceptions related to "dangerous wild animals" should be consistent with those set forth in Section 822.102 of the Texas Health and Safety Code</p> <p>It is the opinion of the legal counsel for the prohibited animal division of the Department of State Health Services that the city is preempted from regulating those animals specifically exempted from regulation by the state</p>

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(b) It is a defense to prosecution under Subsection (a)(1) that the person is:</p> <p>(1) A federal, state, county, or municipal agency or an agent of such an agency acting in an official capacity that:</p> <p>(A) has all required state and federal licenses and permits; and</p>	<p>ASC concurs with staff</p>	<p>To make staff proposal consistent with state law the following changes need to be made:</p> <ul style="list-style-type: none"> •In defense (b)(2), “medical” should be deleted because state law excepts out any research facility licensed under the Animal Welfare Act

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal;</p> <p>(2) a medical research facility licensed by the United States Secretary of Agriculture under the Animal Welfare Act (7 U.S.C. Section 2131, et seq.), as amended, that:</p> <p>(A) has all required state and federal licenses and permits; and</p>	<p>ASC concurs with staff</p>	<p>•In defense (b)(4), “to a licensed veterinarian” should be deleted because state law does not require that in its exception</p> <p>•In defense (b)(5), an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code should be included</p>

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal; and</p> <p>(C) has furnished to the director, on a form approved for such by the director, a list of the prohibited animals kept by the medical research facility and the location where each such prohibited animal is kept;</p>	<p>ASC concurs with staff</p>	<p>•Defense should be added for transporting a prohibited animal in interstate commerce in compliance with the Animal Welfare Act (7 U.S.C. Section 2131, et seq.), as amended, and any regulations adopted under that act, if the person:</p> <p>(A) has all required state and federal licenses and permits; and</p>

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(3) an organization that is an accredited member of the American Zoo and Aquarium Association that:</p> <ul style="list-style-type: none"> (A) has all required state and federal licenses and permits; (B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal; and (C) has furnished to the director, on a form approved for such by the director, a list of the prohibited animals kept by the organization and the location where each such prohibited animal is kept; 	<p>ASC concurs with staff</p>	<p>(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal</p> <p>•Defense should be added for a person whose only business is to supply non-human primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the United States Secretary of Agriculture under the Animal Welfare Act (7 U.S.C. Section 2131, et seq.), as amended, if:</p>

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(4) transporting an injured, infirm, orphaned, or abandoned prohibited animal to a licensed veterinarian for care or treatment, if the person:</p> <p>(A) has all required state and federal licenses and permits; and</p> <p>(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal;</p> <p>(5) a licensed veterinarian who is temporarily treating or caring for a sick or injured prohibited animal, if the veterinarian:</p>	<p>ASC concurs with staff</p>	<p>(A) the prohibited animal is a nonhuman primate owned by and in the custody and control of the person;</p> <p>(B) the person has all required state and federal licenses and permits; and</p> <p>(C) the person is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal.</p>

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(A) has all required state and federal licenses and permits;</p> <p>(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal; and</p> <p>(C) has furnished to the director, on a form approved for such by the director, a list of the prohibited animals kept by the veterinarian and the location where each such prohibited animal</p> <p>(6) a transient circus company not based in the State of Texas, if:</p> <p>(A) the prohibited animal is used as an integral part of the circus performances;</p>	<p>ASC concurs with staff</p>	<p>•Defense should be added for a participant in a species survival plan of the American Zoo and Aquarium Association for the species of prohibited animal owned by or in the possession, control, or custody of the person, if:</p> <p>(A) the prohibited animal is an integral part of the species survival plan;</p> <p>(B) the person has all required state and federal licenses and permits; and</p> <p>(C) the person is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal</p>

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(B) the prohibited animal is kept within the city only during the time the circus is performing in the city; and</p> <p>(C) the circus:</p> <ul style="list-style-type: none"> (i) has all required state and federal licenses and permits; (ii) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal; and 	<p>ASC concurs with staff</p>	<p>11</p>

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p style="margin-left: 40px;">(iii) has furnished to the director, on a form approved for such by the director, a list of the prohibited animals kept by the circus and the location where each such prohibited animal is kept;</p> <p>(7) a television or motion picture production company that has temporary custody or control of the prohibited animal during the filming of a television or motion picture production in the city, if the production company:</p> <p style="margin-left: 20px;">(A) has all required state and federal licenses and permits;</p>	<p>ASC concurs with staff</p>	

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal; and</p> <p>(C) has furnished to the director, on a form approved for such by the director, a list of the prohibited animals kept by the production company and the location where each such prohibited animal is kept;</p> <p>(8) a college or university that owns and has possession, custody, or control of the prohibited animal solely as a mascot for the college or university, if the college or university:</p>	<p>ASC concurs with staff</p>	

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(A) has all required state and federal licenses and permits;</p> <p>(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal; and</p> <p>(C) has furnished to the director, on a form approved for such by the director, a list of the prohibited animals kept by the college or university and the location where each such prohibited animal is kept;</p>	<p>ASC concurs with staff</p>	

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(9) exhibiting a prohibited animal (other than a dangerous wild animal as defined in Section 822.101 of the Texas Health and Safety Code, as amended) at the State Fair of Texas</p> <p style="margin-left: 40px;">(A) has all required state and federal licenses and permits;</p> <p style="margin-left: 40px;">(B) is in compliance with all federal, state, and city laws or regulations applicable to the prohibited animal; and</p>	<p>ASC concurs with staff</p>	

SEC. 7-6.1 PROHIBITED ANIMALS (continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>(C) has furnished to the director, on a form approved for such by the director, a list of the prohibited animals kept by the person and the location where each such prohibited animal is kept.</p>	<p>ASC concurs with staff</p>	

COMMERCIAL BREEDERS

FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A (Continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>•Staff sees a conflict between the ASC proposal (which includes requiring a commercial breeder permit for persons selling, offering for sale, or advertising for sale a dog or cat bred at their home) and Section 51A-4.217 (b)(8)(ii) of the city code (which prohibits a person from selling, offering, or advertising products of their home occupation at or on the premises).</p> <p>•Staff is concerned that many persons who would be required to pay for a commercial breeder permit would have difficulty finding legal locations from which to sell their animals.</p>	<ul style="list-style-type: none"> • Proposes New Section 7-4.6 Commercial Breeding and Selling of dogs and cats (a) In this section, COMMERCIAL BREEDER means any person who: <ol style="list-style-type: none"> (1) breeds a dog or cat; and (2) sells, offers for sale, or advertises for sale one or more of its offspring 	<p>CAO agrees with staff that it could be confusing and inconsistent for the city to issue a \$200 annual commercial breeder permit that seems to authorize a person to sell the offspring of animals bred in his home and then, in effect, prevent the person from selling that offspring by enforcing city ordinances prohibiting such sales from residences and from most other public and private locations.</p>

COMMERCIAL BREEDERS FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A (Continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>•The ASC proposal would require implementation of a Commercial Breeder Enforcement Team consisting of the following positions and equipment:</p> <p>1 Coordinator G (Program Coordinator) 4 Animal Services Officer (D) (Inspections) 2 Computers, supplies, phones 2 vehicles, gas & maintenance 2 MDT's 5 Phone stipends <u>\$266,375.00</u> Estimated total cost for first year</p> <p>See attachment A for fiscal impact</p>	<p>(b) A person commits an offense if he breeds a dog or cat and sells, offers for sale, or advertises for sale one or more of its offspring without a commercial breeder permit issued by the director under this section.</p> <p>(c) It is a defense to prosecution under Subsection (b) that the person does not sell, offer for sale or advertise for sale more than one litter of dogs or cats within any 24 month period.</p> <p>(d) To obtain a commercial breeder permit, a person shall submit an application to the director on a form provided for that purpose. The application must include:</p> <p>(1) the name, address, and telephone number of the commercial breeder;</p>	<p style="text-align: right;">18</p>

COMMERCIAL BREEDERS

FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A

(Continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
	<ul style="list-style-type: none"> (2) the name, address, and telephone number of the location where commercial breeding will be conducted; (3) a description of the animals to be bred; and (4) any other information determined necessary by the director for the enforcement and administration of this chapter. 	

COMMERCIAL BREEDERS

FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A

(Continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
	<p>(e) The annual fee for a commercial breeder permit is \$200. The permit expires one year from the date of issuance. If the director does not receive an application for a permit renewal not less than 30 days before the permit's expiration date, a \$25 late fee will be added to the annual permit fee.</p> <p>(f) A commercial breeder permit is not transferable.</p>	

COMMERCIAL BREEDERS

FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A

(Continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
	<p>(g) The director shall revoke a commercial breeder permit if the permit holder fails to:</p> <ul style="list-style-type: none"> (1) properly restrain the dogs and cats in the care and custody of the commercial breeder; (2) adequately care for and protect the dogs and cats in the care and custody of the commercial breeder; 	

**COMMERCIAL BREEDERS
FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A
(Continued)**

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
	<p>(3) meet all requirements specified on the commercial breeder permit; or</p> <p>(4) pay all fees owed to the city for a commercial breeder permit.</p>	

COMMERCIAL BREEDERS FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A (Continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
	<p>(h) If the director denies, refuses to renew, or revokes a commercial breeder permit, the director shall send to the applicant or permit holder by certified mail, return receipt requested, written notice of the action and a statement of the right to an appeal. The applicant or permit holder may appeal the decision of the director to a permit and license appeal board in accordance with Section 2-96 of this code.</p>	

COMMERCIAL BREEDERS

FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A

(Continued)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
	<p>The filing of a request for an appeal hearing with the permit and license appeal board stays an action of the director in revoking a permit until the permit and license appeal board makes a final decision.</p> <p>(i) A person commits an offense if he breeds a dog or cat in the city that is not currently registered with the city as an unspayed or unneutered dog or cat.</p>	

**COMMERCIAL BREEDERS
FISCAL IMPACT, VOLUNTEERS COMPONENT, CH. 51A
(Continued)**

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
	ASC will provide volunteers who will research newspaper and verify addresses of breeders and will refer to Animal Services for site visits	

INCLUDE “DOG ON DOG” ATTACKS IN THE DANGEROUS DOG SECTION (extend same to cats)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney’s Office
<p>Staff does not recommend adding specific provisions addressing dogs attacking other animals for the following reasons:</p> <ul style="list-style-type: none"> •Discourages participation at off-leash parks •Estimate this would create huge impact on time and manpower to enforce as DAS receives numerous calls of both owned and stray loose dogs attacking other dogs/cats or just fighting •Fears that neighbors will use the provision to get back at one another 	<p>ASC concurs with staff</p>	<p>Under the proposed dangerous dog amendments (which track Subchapter D, Chapter 822 of the Texas Health and Safety Code), dogs committing unprovoked acts on other animals fall under the definition of dangerous dogs but only if those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person (AG Opinion No. 93-15)</p> <p>Dog attacks on other animals where a person does not fear bodily injury to himself are covered by Subchapter B, Chapter 822 of the Texas Health and Safety Code and the city would be preempted from including these types of attacks in Chapter 7.</p>

INCLUDE INVISIBLE FENCE AS DEFENSE TO PROSECUTION OF NEW CHAPTER 7, SECTION 7-3.1 (proper restraint)

Staff Proposal	Animal Shelter Commission Comments (ASC)	City Attorney's Office
<p>Staff does not recommend inclusion of invisible fence as a defense to prosecution for the following reasons:</p> <ul style="list-style-type: none"> •Dogs can go through the fence when provoked or otherwise •Not all invisible fence companies provide best quality product, installation and upkeep •Does not prevent children and other animals from entering the property •Difficult to enforce 	<p>ASC concurs with staff</p>	<p>The current proposal does not include invisible fences in the definition of "fenced yard"</p> <p>CAO agrees there could be some enforcement difficulties if invisible fences are allowed</p>

***BREEDER ENFORCEMENT PROPOSAL
THREE YEAR FISCAL NOTE***

Items	FY 2005-06**	FY 2006-07	FY 2007-08
Personnel costs	\$181,507.00	\$226,884.00	\$226,884.00
Supplies/materials	\$4,256.00	\$5,320.00	\$5,320.00
Services/other charges	\$9,712.00	\$12,140.00	\$12,140.00
Capital outlay	\$70,900.00	\$0.00	\$0.00
Total Costs	\$266,375.00	\$244,344.00	\$244,344.00

** FY 2005-06 reflects 9 months funding assuming the program starts January 1, 2006 and includes an one time cost for vehicles and repairment.

FY 06-07 and FY 07-08 reflect full year funding.

***Assumes the continued use of volunteers.