

Community Development Committee Meeting
4:45 pm, Thursday, August 30, 2012
Conference Room No. 1
City Office Building

Chair: Jim Dokken
Members: Bruce DeBlieck
Ron Christianson
Steve Ahmann

AGENDA

1. Public comments
2. Mobile Home Parks
3. Animal Ordinance
4. Neighborhood Issues
5. City-Wide Cleanup
6. Miscellany
7. Adjourn

1. Comments will be received from the public.
2. Kim Fedder will be present to discuss mobile home park maintenance and enforcement.
3. The Committee will continue its discussion of the Animal Ordinance options as outlined in the attachment.
4. Chair Dokken will lead discussion on maintenance issues in various neighborhoods.
5. The Committee will continue its discuss of a City-Wide Cleanup effort for 2013.
6. Any items of miscellany will be presented by staff and the Committee.
7. The Chair will call for adjournment.

MEMORANDUM

To: Bruce Peterson, Planning and Development Director

VIA EMAIL ONLY

cc: Charlene Stevens, City Administrator
Community Development Committee
Mayor Frank Yanish

From: Robert T. Scott and Christopher M. Hood

Date: August 15, 2012

Re: Animal Ordinance Options

The following memorandum presents our analysis of the options available to the City of Willmar (City) City Council (Council) regarding the draft animal ordinance amendment (draft ordinance amendment) that the City Council voted to return to the Community Development Committee (Committee) at its August 6, 2012 regular meeting, a copy of which is attached hereto as Appendix A for ease of reference.

Introduction and Background

The City's current animal ordinance, City Code Ch. 4, establishes a permitting scheme for livestock, fowl or swine (Sections 4-1-4-2), and a separate regulatory and licensing scheme for cats and dogs (Sections 4-26—4-46). With respect to the permitting scheme for livestock, fowl or swine, the City's ordinance lacks objective criteria for staff and the Council to apply in evaluating permit applications, providing only as follows:

A person desiring to keep cattle, horses, sheep, goats, fowl or swine within the city shall obtain a permit, which shall include such conditions of shelter and maintenance as may be prescribed by the city. If the designated city officer, after viewing the premises and the conditions, approves such permit for the keeping and harboring of animals or fowl within the city, the application for the permit shall be submitted to the city council for its consideration, and the council may either grant or deny such application. If granted, the permit shall permit the keeping and harboring of the animals or fowl within the city only at the pleasure of, in the discretion of, and until the further order of the council.

City Code § 4-1(b).

The lack of objective standards in this ordinance has caused confusion among City staff and the Council in considering permit applications thereunder, and at the Council's request and staff's recommendation, the Committee approved the draft ordinance amendment. The draft ordinance amendment would repeal the entirety of Sections 4.1—4.2, including the permitting scheme for livestock, fowl or swine, and replace these sections with more extensive regulations of all animals, excepting household cats and dogs which would remain subject to the regulations and licensing requirements of Sections 4-26—4-46.

Specifically, the draft ordinance amendment would generally make it “unlawful to introduce, permit, harbor, keep, care for, feed or shelter any animal” (Section 4-3), but then exempts certain animals in certain quantities and under certain conditions from the general prohibition pursuant to the objective criteria in Section 4-6. The Council appeared uneasy with the types and quantities of animals exempted in Section 4-6 (and thus allowed in the City) in voting at its August 6 meeting to send the draft ordinance amendment back to the Committee.

Analysis

The Council has broad authority to regulate animals by adopting an ordinance under their police powers. *See e.g.* Minn. Stat. 412.221, subd. 21 (“(t)he council shall have power by ordinance to regulate the keeping of animals, to restrain their running at large, to authorize their impounding and sale or summary destruction, and to establish pounds, and to license and regulate riding academies”). Accordingly, the Council has wide discretion to determine the needs of the City and regulate animals in any manner it chooses to serve the City's needs so long as it does not do so arbitrarily or unreasonably.

With specific respect to the draft ordinance amendment, the most obvious option available to the Council would be to simply change the quantities and/or types of animals that are excluded from the general prohibition on keeping animals (and thus allowed in the City) in Section 4-6. For example, if the Council determines that ten chickens are too many to be kept in a residential district, or that 50 chickens are excessive for an industrial or agricultural district, it could adjust these quantities as it sees fit. It could also change the maintenance requirements or prohibit chickens altogether from one or more zoning district (by removing chickens from the list of animals in Section 4-6 that are excluded from the general prohibition on keeping animals) if it determines that the needs of the community require it. Obviously, this approach is available to the Council for any animal specified in Section 4-6.

One complication with this approach could arise if the Council elects to prohibit a type of animal that it previously issued a permit to under the current ordinance. In general, the law treats animals as personal property. *See Corn v. Sheppard*, 229 N.W. 869 (Minn. 1930); *Soucek v. Banham*, 524 N.W.2d 478 (Minn. Ct. App. 1995); Minn. Stat. § 609.52. Therefore animal owners have the same rights with regard to their animals as with other personal property. Both the federal and state constitutions provide that no person may be deprived of their property without due process of law, which generally entails 1) notice to interested parties, and 2) a meaningful opportunity to be heard by a person or group who has the authority to make a decision on the matter. U.S. Const. amendments V and XIV; Minn. Const. art. 1, § 7; *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976). In order to avoid violating the due process rights of residents who own animals under a permit issued by the City, we recommend

allowing any animals currently in existence that are kept pursuant to a valid permit issued by the City to continue to be kept so long as the permit is valid.

Alternatively, the Council could elect to continue administering a permitting scheme, although we strongly recommend that the Council adopt objective standards and criteria that must be satisfied in order for a permit to issue if it chooses to pursue this option. We do not recommend continuing indefinitely under the existing ordinance, as the lack of substantive and objective criteria for granting permits increases the likelihood that animals will be permitted or prohibited arbitrarily and/or unreasonably.

Conclusion and Recommendation

The Council has wide discretion to determine the needs of the City and regulate animals in any manner it chooses to serve the City's needs so long as it does not do so arbitrarily or unreasonably. However, the current ordinance lacks the objective standards necessary for a fair and effective permitting scheme and needs to be updated. We recommend that the Committee first attempt to reach consensus on whether the Council's concerns with the draft ordinance amendment can be addressed simply by adjusting the quantities and/or types of animals that are allowed in the City in Section 4-6, and if so, provide specific direction to staff and the City Attorney to make such changes for introduction at an upcoming Council meeting. If the Committee would prefer to continue issuing permits, we recommend that the Committee identify objective criteria for the issuance of such permits for staff and the City Attorney to incorporate into an updated draft ordinance amendment to be presented to the Committee at a future Committee meeting.

Should you have any questions or require additional information, please contact me at (651) 225-8840.

RTS-CMH

APPENDIX A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WILLMAR, MINNESOTA AMENDING CITY CODE CHAPTER 4, ANIMALS, ARTICLE I, IN GENERAL

The City Council of the City of Willmar hereby ordains as follows:

Section 1. City Code Chapter 4, Animals, Article I, In General shall be repealed in its entirety, and replaced with the following:

Sec. 4-1. - Intent

The City of Willmar recognizes a need to balance the desire of persons to introduce, harbor, own, keep, care for, feed, or shelter an animal within the boundaries of the city limits against the general safety, health, peace, and repose of the general population of the city. It is with this intent that the following regulations are imposed.

Sec. 4-2. - Definitions

The following definitions apply for the purpose of this ordinance.

Animal shall mean any living animal, domesticated, semi-domesticated, captive-wild or wild which is not specifically named or having been identified as meeting one of the conditions listed under the "Exclusions" section of this ordinance.

At large shall mean off of lands owned or possessed by the owner and upon the public streets, sidewalks, alleys or other public or private property.

Owner shall mean any person owning, harboring or keeping an animal.

Sec. 4-3. - Keeping of animals declared a nuisance.

It is unlawful to introduce, permit, harbor, keep, care for, feed, or shelter any animal in the city of Willmar except as otherwise provided under Sec. 4-6; doing so constitutes a public nuisance.

Sec. 4-4. - Allowing animals to run at large.

It shall be unlawful for any owner or any person having the control of any animal, including those listed in Sec. 4-6, to allow or permit the same to run at large within the city.

Sec. 4-5. - Animals found to be in violation.

Animals found in violation of this ordinance shall be confiscated, held for five regular business days and summarily destroyed if not claimed. If the owner of an animal found in violation of this ordinance can be determined, the owner shall be notified of the City's possession of the animal and the date on which the animal will be destroyed pursuant to this Section. During those five regular business days an owner may arrange for the care and shelter of the animal outside the city limits of Willmar, in which case the City shall release the animal to the owner upon proof that satisfactory arrangements have been made. The owner shall pay for all costs incurred for the care, shelter and keep of the animal during the impoundment period prior to the release of the animal. In addition, the owner may also be charged with violation of this ordinance.

Sec. 4-6. – Allowable Exclusions

- (a) Animals may be kept temporarily in a designated stockyard or farm produce establishment or processing plant while awaiting further transportation or slaughter.
- (b) Animals may be introduced, harbored, kept, cared for, fed, and sheltered in connection with and during parade, county fair or circus events. The animal(s) must remain in proximity and under the control of the owner in regards to where the event is being held.
- (c) Animals may be introduced, harbored, kept, and cared for, fed, and sheltered, within the confines of a licensed pet store or licensed veterinarian business.
- (d) Dogs and household cats are regulated elsewhere under other city ordinances and shall be excluded from Sec. 4-1 through Sec. 4-6.
- (e) The following animals specifically listed under this subsection are allowed. Any person may introduce, permit, harbor, transport, keep, care for, feed, or shelter these animals but only when in compliance with the further restrictions imposed.
 - 1. Fish, reptiles, exotic birds, spiders, rats, mice, hedge hogs, guinea pigs, and hamsters are allowed with the following additional restrictions:
 - a. These animals shall remain at and contained within the actual dwelling in which the owner or caretaker resides.
 - b. If a dwelling is rented, permission from the landlord or owner to maintain animals must be obtained.
 - c. Proper care and treatment of the animal(s) are provided.

d. There are no restrictions as to the number of these animals kept.

2. Rabbits, pigeons and chickens are allowed with the following additional restrictions:

Location:

- a. These animals may only be kept in areas zoned R1, R2, AG or Industrial within the city.
- b. These animals must be kept outside the family dwelling.
- c. If the property is rented, permission from the property owner to maintain animals must be obtained.
- d. All shelters or attached fenced enclosures must have a minimum setback of ten (10) feet from the rear property line and ten (10) feet from the side property line.
- e. No structure or fenced animal yard shall be closer than twenty-five (25) feet to any residential dwelling on the adjacent lots.
- f. No structures or fenced animal yards will be allowed in the resident's front yard.

Shelter:

- g. These animals must be provided proper shelter that is fully enclosed with a well-ventilated roof and a source to maintain adequate livable temperatures during extreme heat or cold conditions.
- h. The floors of the structure shall be kept clean and sanitary with body excretions collected daily and removed from the structure.
- i. If a fenced animal yard enclosure is erected, the fenced-in area shall share a common wall of the structure, be securely constructed in a manner complying with all other city fencing ordinances, prevent predators from getting into the fenced area, prevent the animal from escaping the fenced area and be well drained so there is no accumulation of moisture.

Care and Treatment:

- j. No animal shall be allowed outside of either the shelter or properly

fenced area.

- k. Food materials shall be in closed sealable containers stored inside the structure of the provided shelter.
- l. Animals shall maintain all required vaccinations.

Number and Type of Animals Allowed with Minimum Square Footage of Each:

- m. Chickens – No roosters will be allowed. No more than ten (10) chickens shall be kept in areas zoned R1 or R2. No more than fifty (50) chickens shall be kept in areas zoned AG or Industrial. Chickens (Bantam size) shall be given a minimum of 2 sq. feet inside structure space for each chicken weighing less than two (2) pounds; (medium size) a minimum of 3.5 sq. feet for each chicken weighing two to four (2-4) pounds; and (large size) a minimum of 5 sq. feet for each chicken weighing more than four (4) pounds.
- n. Pigeons - No more than sixty (60) pigeons may be kept. Pigeons shall be given a minimum of 1 sq. feet of space for each pigeon.
- o. Rabbits - No more than ten (10) rabbits may be kept. Rabbits shall be given space with a minimum height of 14 inches with 1.5 sq. feet floor space for each rabbit weighing less than 4 lbs. (small), 3 sq. feet floor space for each rabbit weighing 4-8 lbs (medium size); and a minimum of 4 sq. feet floor space for each rabbit weighing more than 11 lbs. (large size).

Secs. 4-7-4-25.- Reserved.

Section 2. This Ordinance shall be effective from and after its adoption and second publication.

Passed by the City Council of the City of Willmar this ___ day of _____, 2012.

ATTEST:

Kevin Halliday, City Clerk

Frank Yanish, Mayor

VOTE: _____ AHMANN _____ ANDERSON _____ CHRISTIANSON
_____ DEBLIECK _____ DOKKEN _____ FAGERLIE _____ JOHNSON _____ REESE

This Ordinance introduced by Council Member: _____

This Ordinance introduced on: _____

This Ordinance published on: _____

This Ordinance given a hearing on: _____

This Ordinance adopted on: _____

This Ordinance published on: _____