

2004 MAY 13 PM 2:09

City of Oakland
Agenda Report

To: Councilmember Larry Reid, Chair
Public Safety Committee
From: Lupe Valdez, City Council Legislative Analyst
Date: March 25, 2004

Re: **FOLLOW -UP REPORT RELATED TO AN ORDINANCE
AMENDING SECTION 6.04.320 OF THE OAKLAND MUNICIPAL CODE
CONCERNING THE KEEPING OF FOWL IN THE CITY AND PROHIBITING
THE KEEPING OF ROOSTERS IN THE CITY; ADDING SECTION 6.04.390 TO
THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE KEEPING OF
CERTAIN FARM ANIMALS ON PROPERTIES SMALLER THAN ONE ACRE;
ADDING SECTION 6.04.400 TO LIMIT THE NUMBER OF DOGS PER
HOUSEHOLD TO FOUR; AND ADDING SECTION 6.04.410 TO ADD
EXEMPTIONS TO THE PROVISIONS OF THIS ORDINANCE**

BACKGROUND

On March 9, 2004, Chairperson Larry Reid presented a draft Ordinance to the Public Safety Committee that would amend the Oakland Municipal Code (O.M.C) Section 6.04.320 entitled Animal Regulations as follows:

- 1) limit the number of chickens, ducks, geese and other fowl to a combination of no more than two (2) and require that they be kept in an enclosure;
- 2) prohibit roosters on any property;
- 3) prohibit the keeping of certain farm animals, i.e. sheep, goats, pigs, on any property smaller than one acre;
- 4) limit the number of dogs on any premise to four (4) (an exemption is allowed for dogs under 4 months and individuals who currently own more than four licensed dogs for the dogs they currently own);
- 5) the ordinance shall not apply to any property where such activity is permitted by any other provision of the Oakland Municipal Code or Oakland Planning Code and for which all necessary land use permits have been issued or the activity qualifies as a legal non-conforming use;
- 6) the effective date of the ordinance shall be August 1, 2004

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SUMMARY

The Public Safety Committee requested that staff return with information regarding Oakland's current enforcement policies; enforcement practices in other jurisdictions; breeding and kennel permitting policies; and options for exempting animal foster homes, properties ½ acre or larger and farm animals such as pot belly pigs. The Committee also expressed an interest in increasing the number of chickens or fowl allowed from the proposed two (2) to five (5).

The City of Oakland and the 9 jurisdictions surveyed utilize the citation method to enforce municipal codes related to animal control. Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

The City of Oakland currently regulates the breeding of animals for sale through a minor conditional use permit process under O.M.C. Section 17.50.060. The operation of kennels is also a conditionally permitted activity prohibited in residential areas under O.M.C. Section 17.50.060 and restricted by O.M.C. Section 6.04.190.

Many cities with animal limits have adopted a permit process that allows individuals to exceed the limit if they meet certain criteria established by the animal control official. Most of these cities are smaller than Oakland. Of the nine jurisdictions surveyed and compared to Oakland, only three issue a permit to exceed animal limits.

Whether or not the Council adopts an animal permit process to exceed animal limits, staff recommends amending the draft ordinance to apply the animal limits citywide instead of exempting lots sizes one acre and larger. Very few cities surveyed apply the limits based on lot size. Adopting a citywide policy will facilitate enforcement efforts.

FISCAL IMPACT

Based on information received from the Animal Control Division, implementation of the ordinance can be absorbed by existing Animal Shelter personnel.

ENFORCEMENT PRACTICES

Oakland, and the nine jurisdictions surveyed, by staff enforce violations of the animal code by citation method. Before issuing a citation and if a pet owner has had no complaint history, the city official will issue a warning first either personally or by mail. The police officer or animal control official must witness a violation before issuing a citation. For instance, before a city official issues a citation for a barking dog complaint, the official must be present to hear the barking. If the barking is audible to the official, a citation may be issued to the pet owner, but only if the pet owner is present to personally

receive the ticket. A citation can not be issued if the pet owner is not present to receive it.

Fines for violations of the Animal Code are stipulated in Section 1.28.020 of the Oakland Municipal Code entitled "Violations as Infraction" and states that the first conviction or citation shall not exceed one hundred dollars (\$100.00), the second conviction within a period of one year shall not exceed two hundred dollars (\$200.00) and the third or any subsequent conviction within a one-year period shall not exceed five hundred dollars (\$500.00). Violations beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the fine can be set up to a maximum of one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months.

Enforcement of the proposed ordinance would occur on a complaint driven basis and violations would be subject to citations as stipulated in Section 1.28.020 of the O.M.C.

BREEDING

The Public Safety Committee heard testimony that problems with the proliferation of dogs are related to illegal breeding or "back yard breeding" and that the City should establish a breeding permit requirement.

Breeding animals for sale or profit is currently a conditionally permitted activity in both residential neighborhoods and certain commercial and manufacturing zones under Section 17.50.060 of the O.M.C. Individuals wishing to breed dogs in their homes or otherwise are currently required to submit an application to the Planning Director for a minor conditional use permit.

Individuals breeding animals without a conditional use permit are subject to enforcement action by code compliance officers. Apprehending individuals involved in breeding animals without a permit is difficult and requires code compliance officers to regularly monitor local want ads, animal publications, postings and community bulletin boards. Of the cities surveyed, only Los Angeles issues breeding permits. Individuals typically applying for the permit in Los Angeles are professional breeders that need to advertise on a national level to reach customers. Ads that appear in publications with a Los Angeles address or phone number must include the breeding permit number to avoid non-compliance action.

KENNELS

As stipulated in the O.M.C. Section 17.50.060, the operation of kennels is a conditionally permitted activity in certain commercial and manufacturing zones subject to Planning Commission review and approval. Kennels or animal care activities are not allowed in any residential areas. Kennels operating without a conditional use permit are subject to enforcement action by code compliance officers.

In addition to requiring a conditional use permit, O.M.C. Section 6.04.190 further requires that a kennel operation must comply with a one hundred foot site restriction from any residence, dwelling, church, school, or public building.

PERMIT TO EXCEED ANIMAL LIMIT

The Public Safety Committee directed staff to explore the possibility of creating an exemption to exceed the animal limit for pet owners either living on large parcels, doing animal rescue, or other special circumstances.

Staff surveyed the following jurisdictions to learn if exemptions were allowed to exceed the animal limits. Staff contacted Alameda County; the three California cities closest in population to Oakland: Sacramento, Fresno and Santa Ana; the cities immediately surrounding Oakland: Alameda, Berkeley, San Leandro and Fremont; and two larger cities, Los Angeles and San Jose. Only three of the nine jurisdictions surveyed allow residents to exceed the animal limit.

City	Issues Animal Permit		Animal Limits
	Yes	No	
Sacramento		x	3 dogs, 1 chicken, roosters prohibited
Fresno		x	4 dogs,
Santa Ana	x		3 dogs, 4 chickens, rooster prohibited
San Jose		x	2 pet limit, 6 chickens, roosters over 4 months prohibited
Los Angeles		x	3 dogs, chickens and roosters allowed subject to site restrictions
Alameda		x	3 dogs, 6 chickens
Fremont	x		2 dogs, limits chickens according to lot size, prohibits roosters
Berkeley		x	4 dogs
Alameda County	x		2 dogs, 2 cats, no fowl, no farm animals

To learn more about the animal permit process, staff surveyed cities beyond this list. Most of the cities that allowed a permit process were smaller in population and size than Oakland. The most popular method utilized in these jurisdictions is the issuance of an "animal fancier's permit" While the animal fancier's permit allows a pet owner to exceed the animal limit, it also caps the total number of animals allowed. For instance, a jurisdiction may have a three dog limit with maximum number of 5 dogs allowed with an animal fancier's permit.

The animal fancier's permit exempts responsible pet owners from the pet limit and evaluates applications using criteria established by the animal control official such as:

- total number of animals requested;
- size of the animals;
- size of the yard;
- where the animals will be sheltered;
- proximity to abutting properties;
- reason for exemption i.e., animal rescue, seeing eye dog training, pure bred breeding; certain farm animals such as a pot belly pig; 4-H club pet;
- history of complaints.

.CHICKENS

The Oakland Municipal Code does not include a definition for the term fowl. Section 6.04.320 of the Oakland Municipal Code entitled "Keeping of Fowl" acknowledges ducks, geese, and chickens. The American Heritage dictionary defines fowl as: "1. Any of various birds of the order Galliformes, especially the common, widely domesticated chicken. 2. A bird, such as the duck, goose, turkey, or pheasant, that is used as food or hunted as game. 3. A bird of any kind."

Staff contacted Dr. George West of the California State Department of Agriculture to obtain standards for the keeping of chickens in urban areas. Dr. West is the State expert on fowl and is regularly contacted by cities interested in establishing limits on chickens. He indicated that there are no standards developed by the State for local jurisdictions, but that cities should be interested in regulating limits to protect the public health. His personal opinion was that five to six chickens per household should have a minimal impact if waste is properly managed and disposed of.

The Public Safety Committee expressed concern over the two chicken/fowl limit and suggested changing the number proposed in the ordinance from two to five.

VICIOUS DOG LEGISLATION

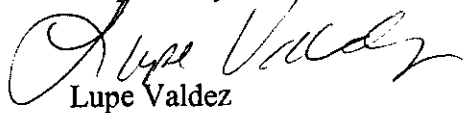
The Public Safety Committee expressed an interest in the status of legislation being proposed by Councilmember Chang related to vicious dogs. There was concern that all proposed amendments to the animal section should be considered by the Committee concurrently. Staff confirmed that Councilmember Chang will not be introducing legislation to amend the O.M.C. related to vicious dogs but will bring a proposal to the Council at a later date to establish public dog runs throughout the City of Oakland.

ACTION REQUESTED OF COMMITTEE

Staff requests that the Committee approve the proposed ordinance and direct staff to make the following modifications before forwarding to the City Council for adoption:

- 1) Eliminate language exempting parcels larger than one acre and apply animal limits on a citywide basis.
- 2) Amend the number of chicken and fowl permitted from two to five.

Respectfully submitted,



Lupe Valdez
City Council Legislative Analyst

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

04 MAY 13 PM 2:06

INTRODUCED BY COUNCILMEMBER LARRY REID

Ordinance No. _____ C.M.S.

DRAFT

AN ORDINANCE AMENDING SECTION 6.04.320 OF THE OAKLAND MUNICIPAL CODE CONCERNING THE KEEPING OF FOWL IN THE CITY AND PROHIBITING THE KEEPING OF ROOSTERS IN THE CITY; ADDING SECTION 6.04.390 TO THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE KEEPING OF CERTAIN FARM ANIMALS ON PROPERTIES SMALLER THAN ONE ACRE; ADDING SECTION 6.04.400 TO LIMIT THE NUMBER OF DOGS PER HOUSEHOLD TO FOUR; AND ADDING SECTION 6.04.410 TO ADD EXEMPTIONS TO THE PROVISIONS OF THIS ORDINANCE

WHEREAS, the City Council is concerned with protecting the quality of life, peace and quiet of all its residents; and

WHEREAS, it is the City Council's desire to address nuisances related to animal noise, smell, unhealthy and unsanitary conditions as swiftly as possible; and

WHEREAS, numerous complaints are received by the city related to the keeping of large numbers of dogs on (primarily) residential properties; and

WHEREAS, it is the City Council's desire to limit the number of dogs to 4 per household in densely populated neighborhoods in order to promote sanitation and the peace and quiet of all residents; and

WHEREAS, an overwhelming number of complaints about noise and smell are also related to roosters and chickens in residential neighborhoods; and

WHEREAS, disturbances related to rooster crowing can occur at all hours of the day and night and are difficult to abate because an officer of the city must personally hear the disturbance in order to issue a citation; and

WHEREAS, animal control officials have encountered a prevalence of illegal cock fighting when following up on rooster complaints; and

WHEREAS, it is the City Council's desire to prohibit the keeping of roosters within the city limits; and

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WHEREAS, the City Council wishes to limit the number of chickens, ducks, geese or any other fowl in dense neighborhoods to no more than (2) two in order to prevent fly infestation and the spread of disease; and

WHEREAS, existing codes do not explicitly prohibit the keeping of certain farm animals in densely populated neighborhoods; and

WHEREAS, the Council desires to limit the keeping of certain farm animals on properties that are smaller than one acre;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND
HEREBY ORDAINS AS FOLLOWS:**

Section 1

Section 6.04.320 of the Oakland Municipal Code is hereby amended to read as follows (underlined text in this section indicates new text).

“Section 6.04.320 KEEPING OF FOWL

1. It is unlawful for any person on any parcel smaller than one (1) acre to keep more than a total of two (2) (or any combination that results in the keeping of more than two) live ducks, geese, chickens or other fowls. Any such animals must be kept in an enclosure, and said enclosure shall not be allowed unless the exterior boundaries of said enclosure is more than twenty (20) feet from any dwelling, church or school.
2. It is unlawful for any person to keep, harbor or maintain roosters within the city limit.
3. This section shall not prohibit the activity provided for in section 6.04.290 of this code. This section shall also not apply to and is not intended to regulate any commercial activity that is regulated by the Oakland Planning Code.”

Section 2

Section 6.04.390 is hereby added to the Oakland Municipal Code.

“Section 6.04.390 KEEPING CERTAIN FARM ANIMALS WITHIN CITY LIMITS

1. It is unlawful for any person on any property smaller than one acre to raise or keep any sheep, goats or pigs within the city limits.
2. This section shall not prohibit the activity provided for in section 6.04.290 of this code.”

Section 3

Section 6.04.400 is hereby added to the Oakland Municipal Code.

“Section 6.04.400 NUMBER OF DOGS

1. It is unlawful for any person to keep on any one premise more than four (4) dogs if said dogs are more than 4 months old. Licensed dog kennels, licensed boarding facilities, veterinary hospitals, licensed pet shops, the Oakland Animal Control Center and the Oakland Society for the Prevention of Cruelty to Animals (SPCA) are exempt from the provisions of this section.
2. In calculating the permitted number of dogs allowed on any premise, dogs that were licensed in the City of Oakland prior to the effective date of this ordinance (August 1, 2004) shall be exempt. However, no additional dogs shall be permitted on any premise following the effective date of this ordinance when the number of dogs lawfully kept on the premise exceeds four until such time as the number of dogs on the premise drops below four. Nothing in this exemption shall be construed to allow any person who lawfully kept more than four dogs on any premise on the effective date of this ordinance to continue to keep more than four dogs in the event that any of said dogs originally kept on the property on the effective date of this ordinance are no longer kept for any reason.”

Section 4

Section 6.04.410 is hereby added to the Oakland Municipal Code.

“Section 6.04.410 EXEMPTIONS

The restrictions set forth in sections 6.04.320, 6.04.390, and 6.04.400 also shall not apply to any property where such activity is permitted by any other provision of the Oakland Municipal Code or Oakland Planning Code and for which all necessary land use permits have been issued or where no use permits are required because the activity qualifies as a legal non-conforming use as defined in section 17.114.020 of the Oakland Planning Code.”

Section 5

This ordinance shall become effective on August 1, 2004.

Section 6

If any word, sentence, paragraph, clause or phrase is ruled unconstitutional or unenforceable by any court of competent jurisdiction, said ruling shall not affect the validity of the rest of this ordinance. The City Council finds and determines that it would have enacted this ordinance without said word, sentence, paragraph, clause or phrase.

In Council, Oakland, California, _____, 2004.

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, DE LA FUENTE, NADEL, QUAN, REID
AND WAN.

NOES-

ABSENT-

ABSTENTION-

Attest: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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