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PROTECTION**
DENVER PUBLIC HEALTH
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Denver Animal Protection

Proposed Ordinance Revisions to Chapter 8



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Why Revise Chapter 8?

- Large sections of the Code have not been revised since 1950.
- The revisions are meant to enhance public safety, public health and the environment.
- A number of issues have surfaced with the Code during prosecution such as:
 - The current Code does not make explicit the requirement to provide basic veterinary care.
 - Language related to “permitting a dog to attack” makes prosecuting dog bite/attack cases challenging.
 - There is a lack of clarity around due process in several areas.
 - Tethering provision is restrictive and difficult to enforce.
 - Abandonment only applied to animals left behind in private areas.

Why Revise Chapter 8?

- Conflicting language was identified during our comprehensive review.
- Clean up of references and terminology is needed.
- Major portions of Chapter 8 are antiquated and do not reflect current best practices.
- The language also contained outdated references to Dept. of Public Health and Environment and its Board.

Our Revision Process

- DAP and the CAO have partnered on these proposed revisions for the last 3+ years, with efforts ramping up significantly in the last 18 months.
- We held an impactful, extensive Stakeholder Process during the last half of 2017 and early 2018. DAP reached out to neighborhood organizations, key Colorado and Denver animal welfare stakeholders as well as City Council in order to inform the Stakeholder Committee.
- The final committee included sitting members representing two Council Districts and several neighborhood organizations. Other major stakeholders (such as the Colorado regulatory body PACFA and the largest shelter in the state, Dumb Friends League) served as advisory members to the Stakeholder Process and were involved in all materials.
- We also reached out to City Council members to individually present and gather feedback on our proposal after we had incorporated Stakeholder Feedback.

Significant Revisions

Barking Dog:

- We propose adding an option to provide detailed information to document barking nuisance in absence of second complainant.
- This revision will allow DDPHE to be more effective in helping to solve barking dog complaints when a single complainant has verifiable documentation of the nuisance.

Proposed Language:

“An administrative citation or a summons and complaint issued for violation of this section shall be:

- (1) signed by an Animal Protection Officer that personally witnessed the violation;*
- (2) supported by at least two (2) identified complaining witnesses from separate households; or*
- (3) supported by one (1) complaining witness if there also exists competent evidence admissible at trial to prove a prima facie case of a violation of this section.”*

Significant Revisions

Cruelty to Animals Prohibited

- Tethering language previously restricted enforcement by having specific length of tether and time limits.
- This proposal removes these references to specific length of tether and time in favor of focusing on the animal being caused distress by its tether.
- We also suggest adding affirmative defenses to cruelty to protect cases of self-defense and humane euthanasia.

Proposed Language:

“It shall specifically be cruel, dangerous or inhumane for any person to:

...

(3) Tether and leave, or permit to be left, unattended any animal on a leash, cord or chain in such a manner as to cause distress to the animal.“

Significant Revisions

Neglect of Animals Prohibited

- We propose adding “veterinary care” explicitly to prevent needless suffering.

Proposed Language:

“It shall be unlawful for any owner or keeper of any animal to fail to provide such animal with food sufficient for the species, potable water, adequate shelter from the weather, or veterinary care needed to prevent the animal from suffering.”

Significant Revisions

Abandonment

- This proposal contains a provision to prohibit abandonment in public places. Previously the abandonment language only applied to private residences.

Proposed Language:

“It shall be unlawful for any person to abandon any animal or to cause an animal to be abandoned. Abandonment is defined as the leaving unattended of any animal, by an owner or keeper, for more than one (1) hour in a place open to the public or at least seventy-two (72) consecutive hours in a private place.”

Significant Revisions

Animal Attack or Bite

- We propose changing this Section to a strict liability ordinance. This means that if an animal bites, regardless of whether the owner is present or in control of the animal at the time of the bite, the owner is liable for the incident.
- We are also proposing the inclusion of affirmative defenses to this section.

Proposed Language:

“(a) Any owner or keeper of an animal shall be liable pursuant to this Code for the behavior of such animal, and it shall be unlawful if such animal attacks or bites

...

“(b) The fact that the animal was not in the possession of the owner or keeper at the time of the attack or bite shall not constitute a defense to this section.”

Significant Revisions

Animal Attack or Bite Proposed Language Continued:

“It shall be an affirmative defense to this section that the actual or intended victim of any attack:

- (1) made an unlawful entry into the dwelling of the animal's owner or keeper;*
- (2) made unlawful entry into a vehicle in which the animal was confined;*
- (3) threatened or attacked an owner or keeper of the animal;*
- (4) provoked, tormented, abused, or inflicted injury upon the animal in such a manner as to result in the attack or bite; or*
- (5) attempted to assault another person.”*

Significant Revisions

Dangerous Animal

- DAP and CAO propose a revision to the existing Dangerous Dog section to Dangerous Animal to expand the scope of enforcement to any animal that causes injury, rather than only dogs that cause injury.
- This proposal then contains an expansion of Dangerous Animal into two tiers (Potentially Dangerous Animal, Dangerous Animal) that will help to provide more proactive management of safety needs and ideally keep more animals with their families in a safe manner.
- The two tiers differ in their enforcement outcomes and have appropriate affirmative defenses.

Significant Revisions

Dangerous Animal - Continued

- Potentially Dangerous Animal is similar to the current ordinance which allows animals to go home after an attack or bite with appropriate criteria (enclosure, signage, muzzle and/or behavior training).
- Dangerous Animal is reserved for the most severe dangerous cases. Through a court decision, the animal either becomes the property of DAP and does not have the option to be returned to its owner or is barred from the City.

Significant Revisions

Dangerous Animal – Proposed Language

“Dangerous Animal means any animal, except an animal assisting a law enforcement officer engaged in law enforcement duties, that:

- (1) Caused serious bodily injury to any other person or domestic animal, or behaves in a manner that would have resulted in such serious bodily injury except for the fact that there was physical intervention by a person;*
- (2) Been previously adjudicated as a Potentially Dangerous Animal under Section 8-63, and the owner has failed to abide by a previously issued court order issued pursuant to this division; or*
- (3) Been previously adjudicated as a Potentially Dangerous Animal under Section 8-63, and subsequently engaged in behavior that poses a substantial threat to the public.”*

Significant Revisions

Dangerous Animal – Proposed Language Continued (as housed in Proposed 8-66, Supplemental Remedies)

“The county court, in addition to any penalty imposed pursuant to section 1-13 of this Code, may order a person convicted of sections 8-61, 8-62, or 8-63 to confine the animal immediately and continuously so as to prevent the animal from attacking or biting any person or animal; remove and maintain the animal outside of the city; or other dispositive action, including disposition of the animal or surrender of ownership of the animal, as deemed necessary by the court. Failure to comply with any such order shall be deemed a violation of this section.”

Significant Revisions

Release of Impounded Animals

- We propose adding a provision for the Executive Director to have greater authority to require the owner of an impounded animal to complete certain actions. This revision allows DDPHE to be more effective in enforcing key compliance portions of the code by taking action (as defined and constrained in policy) when the animal is already in DAP's possession.

Proposed Language:

“If the owner of an impounded animal seeks to redeem the animal, the Executive Director may require the owner to:

- (1) Provide proof of ownership satisfactory to the Department;*
- (2) Comply with the license and sterilization requirements in this chapter;*
- (3) Pay any applicable redemption fees and boarding fees;*
- (4) Allow the Department to microchip the animal; and*
- (5) Allow the Department to sterilize the animal.”*

Significant Revisions

Costs of Impoundment, Provision, and Care

- This proposal suggests adding language to mimic the state's requirements for the impoundment of an animal as the subject of criminal investigation or prosecution. The owner is required to pay DAP for the cost of care for the animal in advance (30 days' worth of cost of care) of the hearing process for the criminal investigation.
- Any state neglect, abuse or cruelty charge would qualify as a criminal investigation or prosecution. Additionally, City ordinances such as cruelty/neglect, abandonment, unlawful animal attack or bite, and dangerous animal would also qualify as a criminal investigation or prosecution and be bound by this proposed requirement.

Significant Revisions

Costs of Impoundment, Provision, and Care Proposed Language

“When an animal has been impounded by Denver Animal Protection and such animal is the subject of criminal investigation or prosecution for neglect, abuse or cruelty pursuant to State law or for charges of cruelty to animals pursuant to section 8-131; neglect pursuant to section 8-132; abandonment pursuant to section 8-133; keeping place for fighting animals pursuant to section 8-134; unlawful animal attack or bite pursuant to section 8-61; or unlawful ownership of a dangerous animal or a potentially dangerous animal pursuant to sections 8-62 or 8-63; the owner or keeper of the animal must submit payment for impoundment, care, and provision costs to Denver Animal Protection in an amount determined by Denver Animal Protection to be sufficient to provide for the animal's care and provision for at least thirty (30) days, including the day on which the animal was taken into custody.”

Significant Revisions

Notification and Opportunity of a Hearing for Owner of Impounded Animal

- We propose clarifying the process for obtaining a hearing to contest the underlying impoundment.

Proposed Language:

“When the Executive Director has impounded any animal pursuant to this section, and the owner of such animal disputes the reason for impoundment, the owner of such animal may file a written petition with the Executive Director for a hearing concerning the reason for impoundment no later than five (5) days after impoundment. If the owner prevails, the animal shall be returned to the owner and the owner shall not be required to pay a shelter impound fee or maintenance or boarding fee.”

Significant Revisions

Feeding of Wildlife:

- This proposal includes a prohibition added to the wild and dangerous animals section for the feeding of wild and dangerous animals. This has no impact on bird feeders, bees or beehives. This will enhance DAP's ability to prevent the spread of rabies by preventing the gathering of skunks and other wildlife.

Proposed Language:

“It shall be unlawful for any person to own, possess, keep, maintain, feed, harbor, transport or sell within the city any living wild or dangerous animal”

Significant Revisions

Clarifying Edits and General Cleanup:

- DAP and CAO reviewed the entire chapter to ensure that language added is consistent with language used elsewhere in the code. We clarified and strengthened affirmative defenses where appropriate. We consolidated processes (such as notifications for impoundment, hearings, etc.) wherever possible, to remove duplication in certain sections and establish easy to find central locations.
- We propose adding two sections (consolidated from language scattered throughout the code), “Complaint Procedure” and “Enforcement” to clarify DAP’s role to the community.

Significant Revisions

Restructure of Chapter 8:

- The proposed revision restructures and simplifies the entirety of Chapter 8. We propose that section be combined where appropriate and moved to Articles/Divisions where they intuitively belong. This will enhance the flow and readability of Chapter 8 for constituents and any other interested party. DAP proposes to include a general statement of purpose to the very beginning of the Chapter.

Definitions:

- We propose new definitions for “keeper”, “bodily injury”, “leash”, “shelter”, “animal protection officer” and “serious bodily injury”.
- We suggest an enhancement to the definition of “owner” to cover all owners of an animal if multiple and to clarify that an “owner” refers to someone over the age of 18.
- This proposal also recommends definitions found in other places of the code be removed and added to the general definitions section. This includes (formerly) 8-55 and 8-101.

Questions?

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