

**MEMORANDUM**

Date: September 12, 2016

To: Craig Higgins, Chief of Police  
Tadeo De La Hoya, Acting City Manager  
Kay Macuil, City Attorney  
Lt. Miguel Alvarez  
Lt. Victor Figueroa

From: Glenn Gimbut, Assistant City Attorney

Re: Dangerous Dog Ordinance – Proposed Form of Petition and Summons

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This Memorandum is being written in conjunction with the proposed ordinance regarding dealing with dangerous or vicious dogs. The ordinance basically copies what the City of Phoenix has had since 1997 and certain portions of the International Municipal Lawyers Association’s Model Ordinance Service.

**BACKGROUND**

Previously, a former Lieutenant working with Ray Urias came up with a form of ordinance wherein without notice or right of hearing of any kind, the Police Department had the right to simply put down any animal it fest was dangerous. The ability of the Police Department to be “judge, jury, and executioner” without some kind of due process is dubious, however some jurisdictions have upheld the ability of a . Dogs are considered property. And traditionally government may not take property without some kind of due process of law. This principal has been applied to dogs. As an example see *Rabon v. City of Seattle*, 107 Wash.App. 734, 34 P.3d 821 (Ct. App. Div.1, 2001). As stated in 7 McQuillin Mun. Corp. § 24:292 (3d ed.):

The view has been taken that authority to regulate the keeping of dogs under the penalty of having them summarily destroyed without previous adjudication is within the police power. However the view has been taken that a dog cannot be destroyed under a vicious-dog ordinance without giving notice and an opportunity of being heard to its owner.

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ARS §11-1014 on biting animals requires a notice and hearing before an animal can be destroyed, and provides for impoundment and the owner of the animal being responsible for the costs involved. As a result, it seems prudent to have a procedure for a form of notice and a right to be heard.

PROPOSED PROCEDURE

As with any case in court, there must be some procedures for handling the matter. Municipalities can have their own unique rules of procedure, i.e. "local rules", but if the City of San Luis were to do this, the City would need to have them submitted to and approved by the Arizona Supreme Court. The easier method is to adopt by reference some form of rules of procedure that have already been approved. In this case reference has been made to the Rules of Court Procedure for Civil Traffic and Civil Boating Violations.

Rule 3 of the Rules of Court Procedure for Civil Traffic and Civil Boating Violations ("RPCTCB") provides that a case can be commenced by filing a traffic ticket or by filing a "long form complaint." What I propose is a form of long form complaint. This is because a respondent is entitled to notice and hearing. While it is possible a person will be given a complaint listing citations for civil and/or criminal offenses separately from action being taken for "dangerous dog", and it is possible to allege dangerous dog on the form for traffic complaint along with those offenses, see §95.04 (D), nonetheless it is also likely this might become a 'stand-alone' matter. If so, then a long form complaint is preferable since it does provide notice to the owner of the subject animal exactly why the City is taking action, and gives notice of the City's position at the upcoming hearing. Rule 2.3 of the Rules of Criminal Procedure describes a "long form complaint" as: "A complaint is a written statement of the essential facts constituting a public offense that is either signed by a prosecutor, **made upon an oath before a magistrate**, or made in accordance with A.R.S. § 13-3903." The attached form is a written statement of essential facts made upon an oath, and it is to be presented to the Municipal Judge for the court's consideration regarding setting a hearing.

The Rules of Criminal Procedure state that a long form complaint, if determined sufficient by the Court, will result in either a warrant for arrest or the issuance of a summons. In this case, since the determination of a dangerous dog is not the same as the determination that an individual has committed a criminal offense, a form of summons is the logical instrument. 16A A.R.S. Rules Crim.Proc., Form 3(b) is the official form for a summons where no fingerprint is required. The proposed form of summons has all of those elements and more, and gives hard notice of a hearing pursuant to §95.04(C) of the City Code. The Rule regarding what is required in a summons is Rule 3.2.B of the Rules of Criminal Procedure and here it states:

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“b. Summons. The summons shall be in the same form as the warrant except ***that it shall summon the defendant to appear at a stated date, time and place within 30 days after the filing of an indictment, information or complaint.*** At the request of the prosecutor or by direction of the court the summons shall command the defendant to report to a designated place to be photographed and fingerprinted prior to defendant's appearance in response to the summons. Failure to so report shall result in defendant's arrest at the time of defendant's appearance in response to the summons, unless good cause for such failure is shown, whereupon the magistrate shall direct the defendant to report immediately for such photographing and fingerprinting.” [Emphasis Added].

§95.04.B allows for the Court to order an impounding of an animal while a matter is pending. Both the form of the complaint and the form of the summons and notice of hearing have appropriate boxes to check if such an action is felt warranted by the investigation officer. Such an action is further authorized, and the forms attached comport with, ARS §§11-1014 and 13-1208. The City has independent authority to adopt its own police power regulations with regards to animals, namely ARS §9-240.B.21 and §§9-240.B.16.a thru §9-240.B.16.d.

## FORM OF PETITION

While the RPCTCB uses the word “complaint”, the Phoenix ordinance, from which the San Luis ordinance was modeled, uses the word “petition”. In normal civil practice before the Superior Court, the term “petition” and “complaint” are interchangeable. I have selected the word “petition” for the proposed form to comport with the ordinance.

Notice it is a kind of “check the appropriate box” type of form. Different grounds exist for a dog to be considered “dangerous” I selected the term “dangerous” instead of “vicious” namely because that was the term used in the IMLA Model Ordinance. But Phoenix and state statutes use the term “vicious.” Basically, again, the words are interchangeable. I wanted to emphasize the City was using its own police powers here since the term was being applied to animals who demonstrated they were a threat but had not yet necessarily bitten someone. (Because it can be applied to animals that are considered a threat, but have not yet bitten someone, is all the more reason for notice and a hearing before an animal can be destroyed, and a law which allows remedies other than destruction to be considered.)

The second paragraph of the proposed form of petition needs the information regarding 1) the owner or person believed to be in control of the animal, namely the name and address, and 2) a description of the dog.

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Paragraph four is one where the petitioner checks the boxes that are applicable. Notice it follows the definitions of “dangerous” as contained in the Ordinance.

Paragraph five is obvious. When involved in any case headed to court, an officer should be writing an incident report of some kind. So this proposed form asks for the name of the officer who wrote the report, then attaches that report to the petition and incorporates it by reference. While most of the time the person filing this petition will be the officer who wrote the report, please notice that it does not have to be the same person.

Paragraph six is another “check the box” and tracks the ordinance where it makes provision for impounding a dog pending hearing. However, PLEASE NOTE that the grounds for WHY a dog needs to be impounded BEFORE the owner can have “his day in court” NEEDS to be explained in detail in the incident report which is attached to the petition. The Court will read this and decide if good grounds appear. It needs to be as specific as one can make it. A dog running at large and appearing to be dangerous and a threat, even though it has not yet bitten someone, is an example of one of the scenarios justifying impound. A dog that is a threat that is on the owner’s property, yet is confined in a way that escape from the yard is likely can also be grounds for impound if the circumstances are right. Biting is ALWAYS a reason for impound. There are several good law articles on this, and the purpose of this memo is not to get too “deep in the weeds” of all the ways impound pending hearing would be justified. The point here is that the exact circumstances why the officer believes the public needs protection pending hearing need to be set out in the incident report.

## FORM OF SUMMONS

This is a form made for convenience of the Court. The Judge will read the petition, and if the Court deems it sufficient to support probable cause that the dog is dangerous, will issue the summons. The blanks to be filled in are obvious.

If the petition asks for an order of impound prior to decision after hearing and has checked that box, then if the Court agrees with that, it will check the appropriate box on the summons. The Court will fill in the blank of when the summons must be served. While possible to have service by mail, service by the police department is preferred.

## HEARING

At the day and time of hearing, the officer needs to be present and make his/her case. The hearing is informal and held like any hearing on a traffic citation.