

Legal Memorandum

City of San Luis

To: Mayor and City Council
From: Kay Marion Macuil, City Attorney
Copy: City Manager, Acting Chief of Police, San Luis Prosecutor, and San Luis Municipal Magistrate
Date: March 7, 2018
Re: Ordinance No. 380
Dangerous Dogs Procedure

The Police Department has responded to severe incidents of dogs attacking animals and people in our community and requested more tools to deal with these situations.

Assistant City Attorney Glenn Gimbut researched the approaches to dealing with Dangerous Dogs and melding the International Municipal Lawyers Association's Model Ordinance with an Arizona ordinance, which has been in place since 1997 in Phoenix. This memo repeats his memo with only minor changes.

The Legal Issue

Pets are property under the law. Under the U.S. Constitution's 5th and 14th Amendments, governments cannot take property without due process. Due process is meaningful notice and opportunity for a hearing before the government takes property. However, the government also has the power to act in the interests of the public health, safety, and welfare.

So, the questions in the law have been:

Do the police have the power to put down a dog on-the-spot the police believe to be dangerous?

Alternatively,

must the dog-owners have a chance to have their side of the story heard under their constitutional rights to property?

Trend in the Law

Nationally, the trend is to treat dangerous dogs as Constitutionally protected property. 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.

In Arizona, ARS §11-1014 on biting animals requires 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.

With a national trend in the law and an Arizona on-point, it is prudent for San Luis to have a procedure for a form of notice and a right to be heard in dealing with dangerous dogs.

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 faster method is to adopt by reference some form of rules of procedure that the Arizona Supreme Court has already approved. In this case, Ordinance 380 refers 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 commences by filing a traffic ticket or by filing a "long form complaint." What I propose is a form of long-form complaint, because a respondent is entitled to notice and a hearing. It is possible an officer will give a dog-owner a complaint listing citations for civil and criminal offenses or both separately from a petition for "dangerous dog." It is also possible to allege dangerous dog on the form for traffic complaint along with those offenses. (See Ordinance No. 380 §95.05 (D). It is also likely this might become a 'stand-alone' matter just on the issue of whether the dog is so dangerous it needs to be put down for the safety of the community. 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 under oath, and it is to be presented to the Municipal Magistrate 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 under §95.04(C) of the City Code. Rule 3.2.B of the Rules of Criminal Procedure sets out the requirements for a summons. Here it states:

"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 a dog 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 the officer's investigation warrants impounding the dog. Impounding is further authorized, and the forms attached comport with, ARS §§11-1014 and 13-1208. The City has independent authority to adopt police power regulations with regards to animals, namely ARS §9-240(B)(21) and §§9-240(B)(16) a through §9-240(B)(16)(d).

Form of Petition

While the RPCTCB uses the word "complaint," the Phoenix ordinance, from which I modeled the San Luis ordinance, 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. However, Phoenix and state statutes use the term "vicious." 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 which 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 the Court to consider remedies other than destruction.)

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.

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 a 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 that 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

The summons form is made for the convenience of the Court. The Magistrate 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 before there is a decision made after a hearing and has checked that box. If the Magistrate agrees with that, the Magistrate will check the appropriate box on the summons. The Court will fill in the blank stating 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 the 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.