

Council Communication

September 15, 2015, Business Meeting

An Ordinance Amending AMC Chapter 9.16 To Require Dog Licensing and Declare Certain Dog Behaviors to be Public Nuisances

FROM:

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SUMMARY

This agenda item seeks Council approval on first reading of amendments to current AMC Chapter 9.16 concerning dog-related nuisances. One of the proposed changes would require any owner or keeper of a dog within the City limits to have proof of licensing or proof of rabies vaccination when the dog is not on its owner/keeper's premises. The other significant proposed ordinance change specifies canine behavior that constitutes a public nuisance. Finally, the proposed ordinance includes definitions intended to clarify the application of the above substantive amendments.

BACKGROUND AND POLICY IMPLICATIONS:

At its January 5, 2015 study session, Council informally agreed to consider possible ordinance amendments concerning licensing and vaccination of dogs. In recent years, a notable increase in the number of dogs in the City, especially dogs allowed to linger for extended periods of time in downtown locations, has resulted in pedestrian safety and sidewalk passage problems, as well as concerns about unvaccinated dogs spreading certain diseases.

The current ordinance proposed for amendment is AMC 9.16 Nuisance-Dogs. One proposed change is to add a new section on definitions, proposed AMC 9.16.005, to make the meaning of terms used in subsequent provisions clear. The definition of "keeper" is a slight adaptation of that provided in ORS 609.015 *et seq.*, the Oregon statute on dog control; it includes anyone who has charge, custody, or possession of a dog, including its owner.

The definition of "service animal" that is currently in AMC 9.16.060 is proposed to be moved to the new definitions section and modified to make clear that a service animal must have completed individual training to perform tasks for a person with a disability and must be trained to obey its keeper's commands.

The addition of the dog licensing requirement to City Code reiterates Jackson County Code 612.03 and implicitly channels citation appeals to Ashland Municipal Court, probably the most appropriate venue for such matters. Under the proposed City ordinance, however, a dog's keeper has the alternative of presenting a current, valid rabies vaccination certificate in lieu of proof of licensing.

The proposed amendment adds a new provision, 9.16.070, detailing dog behaviors to be deemed a public nuisance. In a general way, these misbehaviors could be addressed through citations for violations of AMC 9.08.020 (dangerous animals to be kept under control), 9.08.030 (animals to be



kept from running at large), 9.08.110 (prohibiting scattering of rubbish), 9.08.170 (prohibiting unnecessary noise), 9.08.190B (disallowing acts or outcomes deemed injurious or detrimental to public health, safety, or welfare not enumerated elsewhere), 9.16.010 (requiring control of dogs), 11.16.060 (prohibiting obstruction of sidewalks), and 13.03.050A(3) (requiring unobstructed sidewalk passageway at least 6-foot wide) The proposed new provision on specific dog-related nuisances, however, provides consolidated, clear guidance for both dog keepers and enforcement officials. Proposed 9.16.070 incorporates provisions from similar ordinances in Albany and Medford, Oregon and Santa Cruz, California.

COUNCIL GOALS SUPPORTED:

N/A.

FISCAL IMPLICATIONS:

N/A.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Staff recommends that Council approve First Reading of the ordinance.

SUGGESTED MOTION:

I move to approve First Reading by title only of an ordinance titled “An Ordinance Amending AMC Chapter 9.16 to Require Dog Licensing and Declare Certain Dog Behaviors to be Public Nuisances” *[with the following changes...]* and move the ordinance on to Second Reading.

ATTACHMENTS:

Proposed Ordinance - Dog Nuisance Amendment



ORDINANCE NO. _____

**AN ORDINANCE AMENDING AMC CHAPTER 9.16
TO REQUIRE DOG LICENSING AND DECLARE CERTAIN
DOG BEHAVIORS TO BE PUBLIC NUISANCES**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, preventing the possible spread of rabies and fostering compliance with the dog licensing requirements of Jackson County, Oregon and other jurisdictions would benefit the citizens of Ashland; and

WHEREAS, better defining the behaviors of dogs that constitute a public nuisance in the City of Ashland would benefit the citizens of Ashland,

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.16 Nuisance -- Dogs is hereby amended to read as follows:

9.16.005 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. “Keeper” means a person who owns, harbors or has charge, control, custody or possession of a dog.

B. “Service animal” means an animal that is individually trained to perform tasks for a person with a disability and trained to obey the commands of its keeper. A pet, companion, or therapy animal is not a service animal unless the animal has successfully completed such training. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind; alerting a person who is deaf or hard of hearing; pulling a wheelchair; assisting with mobility or balance; alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks.

C. “Obstructs” means occupies sidewalk space so as to constrict uninhibited pedestrian passageway to a width of less than six (6) feet without a City permit.

D. “Menaces” means lunging, growling, snarling or other behavior by a dog that would cause a reasonable person to fear for the person’s safety.

E. “Runs at large” means that a dog is off or outside the premises from which the keeper of the dog may lawfully exclude others, or is not in the company of and under the control of its keeper.

F. “Potentially dangerous dog” means:

(1) without provocation and while not on premises from which the keeper may lawfully exclude others, menaces the person;

(2) without provocation, inflicts physical injury on a person that is less severe than a serious physical injury; or

(3) without provocation and while not on premises from which the keeper may lawfully exclude others, inflicts physical injury on or kills a domestic animal as defined in ORS 167.310.

G. “Serious physical injury” has the meaning given that term in ORS 161.015.

9.16.010 Control Required

All dogs must be confined by fence, leash, or obedience training to the property of the person owning, harboring or having the charge, care, control, custody or possession of such dog; however, it shall be permissible for a dog to be confined by fence, leash or obedience training to the property of another if such other person has given express permission. Provided, however, that the City Council may, in its discretion, designate certain areas within the City where dogs may be permitted to run free while under the owner's or keeper's control. ~~Control required~~
Violation of this section is a Class IV violation.

9.16.015 Dog License Required

A. Except as provided in 9.16.015B or C, a dog under the control of its keeper must be currently licensed pursuant to the applicable rules and regulations of the county or city where the keeper of the dog resides.

(1) Except when a dog is confined to its keeper’s premises or displayed in exhibition, its license tag, or other proof of licensing, must be attached securely to a collar or harness on the dog.

(2) A license issued for a particular dog may not be transferred to a different dog or affixed to a collar or harness of a different dog.

(3) It is unlawful for any person to steal or remove the license tag from any dog.

B. The requirement in 9.16.015A for licensing a dog may be satisfied if the keeper presents a current, valid rabies vaccination certificate for such dog upon request from a City of Ashland law enforcement officer. A citation for violation of the dog licensing requirement in 9.16.015A shall be dismissed if the dog’s keeper subsequently presents to City of Ashland Municipal Court a valid rabies vaccination certificate for such dog that was current when the citation was issued.

C. The license requirement in 9.16.015A does not apply to a dog that is less than six (6) months old.

D. Violation of this section is a Class IV violation and is subject to laws and rules for a municipal court appearance and the enforcement of Persistent Violations, AMC 10.120.

9.16.020 Vicious Dogs – Control Required

Any dog that is ~~A~~ vicious or dangerous to the safety of persons **potentially dangerous dog** must be confined by enclosure or a leash to property of its owner or keeper. ~~Vicious dogs control required~~ **Violation of this section** is a Class I violation.

9.16.030 Dog – Control Required When in Car or Truck

It is permissible for a dog to be confined to a car or truck, which is owned by its owner or keeper, and such confinement may be either by physical means or by obedience training. The duration and circumstances of the confinement shall be consistent with minimum care for the animal under Oregon statutes protecting animals from mistreatment or abuse.

9.16.040 Leash Required

Any dog not confined to property as set forth above in this chapter and which is on either public or private property must be on a leash not longer than six (6) feet in length. ~~Leash required~~ **Violation of this section** is a Class IV violation.

9.16.050 Unattended Dogs

Dogs not on private property as described above must always be attended by their owner or persons having the custody of such dog; and, it shall be unlawful for any person to tie or permit to be tied a dog or any other animal to any tree, hydrant, railing, or other object on the public property of the City of Ashland. ~~Unattended dogs are~~ **Violation of this section is** a Class IV violation.

9.16.055 Removal of Dog Waste

Any person, with the exception of a sightless person, responsible for any dog, shall be in possession of tools for the removal of, and shall remove, excrement deposited by the dog:

A. In any public area not designated to receive those wastes, including but not limited to streets, sidewalks, parking strips, the Plaza islands, city parks and trails or roads paralleling ditches, swales, culverts, canals and similar facilities owned or operated by the Talent Irrigation District or the City of Ashland, or

B. On any private property. It is an affirmative defense to a prosecution on any charge under this subsection that the property owner or person in charge of the property consented to such use of the property.

~~Removal of dog waste~~ **Violation of this section** is a Class IV violation.

9.16.060 Dogs – City Parks or Plaza Islands

Dogs, except for service animals, are not permitted in any of the ~~city~~ **City** parks or the Plaza islands under any condition except as provided in section 9.16.030; except that the Ashland Parks Commission may designate certain defined area within such parks where dogs may be allowed on a leash which conforms to the above requirement; and except that a person may walk a dog on a lease through the Plaza islands if the dog remains on the paved portions of the Plaza islands. ~~“Service animal” for the purposes of this Chapter means any animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is~~

~~not a pet or companion animal. Dogs – City Parks or Plaza Islands~~ **Violation of this section** is a Class IV violation.

9.16.065 Dogs – City Cemeteries

Dogs, except for service animals, ~~with the exception of seeing-eye dogs,~~ are not permitted in any of the City cemeteries under any condition. ~~Dogs – city cemeteries~~ **Violation of this section** is a Class IV violation.

9.16.070 Dogs - Public Nuisance.

A. The following behavior by any dog within the City limits of Ashland constitutes an unlawful public nuisance:

- 1) A dog repeatedly runs at large;**
- 2) A dog bites a person or another domestic animal;**
- 3) A dog menaces a pedestrian or passerby;**
- 4) A dog repeatedly chases vehicles or persons;**
- 5) A dog damages or destroys property of persons other than the owners or keepers of the dog;**
- 6) A dog repeatedly scatters garbage;**
- 7) A dog repeatedly trespasses on private property of persons other than the keeper of the dog;**
- 8) A dog excessively makes disturbing noises, including, but not limited to continued and repeated howling, barking, whining for more than ten (10) minutes or intermittent barking for more than thirty (30) minutes in a sixty (60) minute period, causing unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the property of the keeper. If the barking is caused by the presence of predators such as coyotes, or deer, or other wildlife, or by a person intentionally taunting the dog, then the dog is not a public nuisance;**
- 9) A dog obstructs a City sidewalk;**

B. It is unlawful for any keeper of a dog to permit such dog to be a public nuisance as described and is a Class IV violation.

SECTION 2. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however

that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of _____, 2015, and duly PASSED and ADOPTED this ____ day of _____, 2015.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2015.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney