




Office of the City Manager

ACTION CALENDAR

October 24, 2006

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Kate O'Connor, Animal Services Manager

Subject: Specific Standards For Care of Dogs Kept Outdoors

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) by adding Section 10.04.140, as proposed by the Citizens Humane Commission with minor revisions to 10.04.140(G).

CURRENT SITUATION AND ITS EFFECTS

After the Humane Commission took action to recommend the proposed Ordinance Requiring Specific Standards For Care of Dogs Kept Outdoors on private premises, the State Legislature enacted Senate Bill 1578 (Attachment 1). Senate Bill 1578 establishes rules and regulations for tethering dogs outdoors and will go into effect on January 1, 2007. This new state law does not preempt the Humane Commission's proposed Ordinance. However, the City Attorney made a small revision to Section G of the Humane Commission's proposed ordinance in order to harmonize the proposed ordinance with the new state law. (Proposed Ordinance—Attachment 2). The Humane Commission chairperson was advised of and approved of the City Attorney's small revision to the Commission's proposed ordinance. Therefore, this revised version (Attachment 2) is recommended for Council approval, not the original version submitted by the Humane Commission.

CONTACT PERSON

Jim Hynes, Animal Services, 981-7000

Attachments:

- 1: Senate Bill 1578
- 2: Humane Commission Proposed Ordinance—City Attorney's revisions

Attachment 1:

TEXT: THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 8 (commencing with Section 122335) is added to Part 6 of Division 105 of the Health and Safety Code, to read:

CHAPTER 8. Dog Tethering

122335. (a) For purposes of this chapter, the following terms shall have the following definitions:

- (1) "Animal control" means the municipal or county animal control agency or any other entity responsible for enforcing animal-related laws.
 - (2) "Agricultural operation" means an activity that is necessary for the commercial growing and harvesting of crops or the raising of livestock or poultry.
 - (3) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative thereof.
 - (4) "Reasonable period" means a period of time not to exceed three hours in a 24-hour period, or a time that is otherwise approved by animal control.
- (b) No person shall tether, fasten, chain, tie, or restrain a dog, or cause a dog to be tethered, fastened, chained, tied, or restrained, to a dog house, tree, fence, or any other stationary object.
- (c) Notwithstanding subdivision (b), a person may do any of the following in accordance with Section 597t of the Penal Code:
- (1) Attach a dog to a running line, pulley, or trolley system. A dog shall not be tethered to the running line, pulley, or trolley system by means of a choke collar or pinch collar.
 - (2) Tether, fasten, chain, tie, or otherwise restrain a dog pursuant to the requirements of a camping or recreational area.
 - (3) Tether, fasten, chain, or tie a dog no longer than is necessary for the person to complete a temporary task that requires the dog to be restrained for a reasonable period.
 - (4) Tether, fasten, chain, or tie a dog while engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by the State of California if the activity for which the license is issued is associated with the use or presence of a dog. Nothing in this paragraph shall be construed to prohibit a person from restraining a dog while participating in activities or using accommodations that are reasonably associated with the licensed activity.

(5) Tether, fasten, chain, or tie a dog while actively engaged in any of the following:

(A) Conduct that is directly related to the business of shepherding or herding cattle or livestock.

(B) Conduct that is directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

(d) A person who violates this chapter is guilty of an infraction or a misdemeanor.

(1) An infraction under this chapter is punishable upon conviction by a fine of up to two hundred fifty dollars (\$ 250) as to each dog with respect to which a violation occurs.

(2) A misdemeanor under this chapter is punishable upon conviction by a fine of up to one thousand dollars (\$ 1,000) as to each dog with respect to which a violation occurs, or imprisonment in a county jail for not more than six months, or both.

(3) Notwithstanding subdivision (d), animal control may issue a correction warning to a person who violates this chapter, requiring the owner to correct the violation, in lieu of an infraction or misdemeanor, unless the violation endangers the health or safety of the animal, the animal has been wounded as a result of the violation, or a correction warning has previously been issued to the individual.

(e) Nothing in this chapter shall be construed to prohibit a person from walking a dog with a hand-held leash.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE SECTION 10.04.140 ESTABLISHING REQUIREMENTS FOR OWNERS/GUARDIANS OF DOGS PLACED OUTDOORS ON PRIVATE PREMISES

BE IT ORDAINED by the City Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 10.04.140 is added to read as follows:

10.04.140 Care requirements for dogs housed or left outdoors on private premises.

A. Scope. The requirements of this section apply only to privately owned and operated premises, and dogs kept on said premises by the owner, occupant, or agent thereof.

B. Definitions. A dog is “housed” outdoors under this section, if the dog is kept outdoors for 12 or more hours in a single day. A dog is “left” outdoors under this section, if the dog is kept out of doors for more than 1 hour but less than 12 hours in a single day without the presence or supervision of a human being, or without independent access to a habitable indoor space such as through a doggy door.

C. Shelter. If a dog is housed or left outdoors, its owner/guardian shall provide a “shelter” structure or other space for the dog that has a roof, a floor, and walls on three sides. The shelter shall (a) be of adequate size to allow the dog to stand up and turn about freely, stand easily, sit and lie in a comfortable normal position, (b) be structurally sound and maintained in good repair to protect the dog from injury, (c) effectively allow the dog to remain dry during rain and have shade from the sun, (d) have a floor made out of material that will not injure the dog’s feet or legs, and that is free of substantial cracks, depressions, and rough areas where insects, rodents or eggs from internal parasites may lodge, or that may cause injury to the dog, (e) be kept free of broken glass or other materials that may cause injury to the dog, (f) be kept clean and maintained in a manner designed to insure the best possible sanitary conditions, e.g. excreta shall be removed from the shelter as often as necessary, and (g) if the ambient temperature falls below the temperature to which the dog is acclimated, also include adequate bedding material or other means of protection from the cold.

D. Water. If a dog is housed or left outdoors, the owner/guardian shall provide the dog easy access to clean and fresh water at all times, unless doing so is restricted for veterinary care. If the water is kept in a container, the container shall be designed sufficiently to prevent tipping and spilling of the water contained therein. If necessary, the container shall be secured to a solid structure or secured in the ground. Water containers shall be kept clean, kept out of sun, and must be emptied and refilled with fresh water at least once a day. If an automatic or demand device provides the water, the water supply connected to the device must function whenever a dog that is housed or kept outdoors is outdoors.

E. Food. If a dog is housed outdoors, or left outdoors for more than 4 hours, the owner/guardian shall provide (a) sufficient food daily to maintain proper body weight and good health, which shall be free from contamination, wholesome, palatable, and of sufficient quantity and nutritive value to meet the daily requirements for the condition and size of the animal, and (b) a food receptacle that is easily accessible to the dog and located so as to minimize

contamination by excreta and/or insects, and that shall be durable and kept clean. If a disposable food receptacle is used, it must be discarded after each feeding. Self-feeders may be used for the feeding of dry food, and they shall be sanitized regularly to prevent molding, deterioration or caking of feed. Spoiled or contaminated food shall be disposed of in a sanitary manner.

F. Fencing. All dogs that are housed, left, or otherwise placed outdoors for any period of time on a single premise shall be confined by fencing or other barriers that prevent the dog from escaping the premise and running at large, and unspayed female dogs shall be confined during heat in a manner that adequately prevents unintended pregnancy.

G. Tethering. The fence/barrier requirement in this section remains applicable even if the dog is lawfully tethered to a stationary object or cable line. In the limited circumstances in which Health and Safety Code section 122335 allows tethering a dog on privately owned and operated premises, the tether shall be (a) attached to the dog by a non-choke collar or body harness, (b) short enough to prevent the dog from coming within one foot of a perimeter fence or barrier, and (c) long enough to allow the dog to move around, relieve itself away from the space of its confinement, and when required by this section, have access to adequate water, food, and shelter as provided in Penal Code Section 597t.

H. Adequate Space: All dogs that are housed or left outdoors shall be provided with enough space to ensure adequate separation between food, water and bedding, and areas to eliminate.

I. Health restrictions. A dog shall not be housed, left, or otherwise placed outdoors by any person, if doing so will impose suffering on the dog.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the glass case located near the walkway in front of old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.