

Sacramento County Board of Supervisors

ANALYSIS OF THE PROPOSED ANIMAL OVERPOPULATION ORDINANCE

L. Michael Tompkins, EdD, Mediator

April 3, 2007

Background

On January 22, 2007, I was officially hired to “Provide mediation services to work with interested parties to air their concerns and oversee a process to achieve an equitable resolution with respect to divergent viewpoints of the Department of Animal Care and Regulation’s proposed Animal Overpopulation Ordinance.”

Activities to Date

- ❖ Reviewed the proposed ordinance and correspondence – mostly from those who are opposed.
- ❖ Interviewed on the phone individuals identified as stakeholders in the process: one slightly in favor, one slightly opposed and seven vigorously opposed. The objective was to understand their positions and look for opportunities for common ground when the mediation sessions occur. The telephone interviews more or less followed the questionnaire (attached) which I drafted.
- ❖ Received and reviewed additional materials provided by those opposed in person, and via email.
- ❖ Facilitated a mediation session on February 7 at the County Farm Bureau, ostensibly to negotiate and clarify the status of “working” ranch/farm animals and feral cats, as referred to in the ordinance.
- ❖ Facilitated a mediation session on February 28, with approximately 40 representatives from both sides, designed to achieve an equitable resolution, to look for areas of agreement, and draft language to amend the ordinance with the goal of consensus.
- ❖ Drafted a verbatim record of the February 28 session, and “consultant’s perceptions” of that meeting (attached).
- ❖ Met with County officials on March 2 to design additional meetings, to be attended by three or four members of both groups, and facilitated by Acting MSA Director, Bob Shanks. These meetings occurred on March 6 and 12.
- ❖ Drafted this executive summary, and a briefing to the Board, attached.

The Positions

For: Those supporting the ordinance believe that there are too many animals being killed each year, and a viable solution is to control the population by requiring spay, neuter, increased license fees for unaltered animals, fines for noncompliance, and regulating the advertising and sale of animals.

Against: Those against the ordinance believe that there is no pet overpopulation problem in Sacramento County as evidenced by a decline in the number of animals killed, the type of animals killed (mostly un-adoptable dogs and feral cats); it is a conspiracy of animal rights activists designed to eliminate pet breeding and, eventually, pet ownership. It is a coercive, unfair tax that will target responsible breeders. Back yard breeders, currently under the radar, will stay there. The ordinance is unenforceable.

Executive Summary

Based upon the foregoing activities and information collected, I have concluded that there is little opportunity for negotiation or mediation among competing viewpoints. This is due to fundamental disagreements about the need for, motivation, facts surrounding, and potential impact of the proposed ordinance, among those who are opposed.

Unfortunately, positive, interest-based negotiating on this matter is not possible, because debate has been reduced to intransigence, ideology, and name-calling on the part of those participants who are opposed.

Recommendations

1. The Board of Supervisors review this document, and seek clarification from myself or others on areas that are unclear or in contention.
2. The Board of Supervisors conduct another public hearing on the ordinance, at which this consultant will be available if called upon, followed by a vote.

Respectfully submitted,

L. Michael Tompkins, EdD
Mediator

A Briefing to the Sacramento County Board of Supervisors

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The Briefing

In the following pages I have attempted to identify the primary bones of contention of those who oppose the ordinance. Those whom I have talked to thus far represent breeders and fanciers. Veterinarians by and large support the ordinance, with some (negotiable) reservations. The issues analyzed on the following pages are those I believe are non-negotiable by the opposition – both philosophically and “fact” based. I have attempted to clarify and comment on these arguments. In the interest of transparency and fairness of this process, this document should be provided to stakeholders prior to the April 17 hearing to ensure that I have represented their positions accurately.

The Issues

The following are what I believe to be the significant issues of debate as articulated by those who oppose the ordinance. They are listed alphabetically and in no particular order of priority. On the following pages are analyses of these items.

1. Breeders
2. Claerbout, Pat
3. Enforcement
4. Feral Cats
5. Ordinance
6. Overpopulation
7. Process, This
8. Property, Private
9. Puppy Importation
10. Rights, Animal
11. Spay or Pay
12. Veterinarians' Role

Animal Ordinance Opposition Arguments and Analysis

By L. Michael Tompkins, EdD, Mediator

Issue	Contention	Analysis
1. Breeders	<p>This is a tax on responsible breeders. Irresponsible breeders will not be affected. A breeders license might be an acceptable alternative.</p>	<p>The irresponsible owners are the ones ACR receives complaints about – their dogs running loose, barking, biting. These owners will be contacted by ACR officers, as they are now, except at the same time they will enforce the spay/neuter ordinance.</p> <p>The ordinance framers are hopeful that responsible breeders will choose to comply with the ordinance and, if possible, collect the increase in their license fee through adjusting the selling price of their dogs.</p> <p>Creating a breeder’s license or permit would create an administrative process that would increase ACR’s workload. It would also place more restrictions upon the dog owner as to how many times they can breed. Also, it would only affect the owners of female dogs, and not owners of male dogs who are being bred to many females during the year.</p> <p>This idea was advanced at the Feb. 28 session. I asked those opposed to the ordinance if they supported a breeders permit, and they resoundingly said no.</p>

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2. Claerbout, Pat	Claerbout is the problem. Animal Control is broken. Data is inaccurate, tracking of animal disposition is poor, as are license records and renewal.	<p>Opponents of the ordinance have blurred the issues by combining Claerbout and animal rights in their arguments. They have personally attacked Ms. Claerbout, calling her a liar, in collusion with animal rights activists, insincere in her arguments, inaccurate in her statistics, incompetent and misleading. They have called for a Grand Jury investigation, an independent audit of Animal Care and Control, and hope to have her employment terminated.</p> <p>The politics of personal destruction weakens one's arguments and diverts attention away from the merits of the case.</p> <p>Ms. Claerbout is accountable to the public, but also she is accountable to her superiors in county government. All government operations should be audited; all government programs should be improved continually. If Ms. Claerbout is suspected of wrongdoing, she should be investigated, as with any public figure. Attacking her as a means of strengthening opposition to the ordinance is unfair, and should be factored out when analyzing this policy.</p>

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3. Enforcement	<p>The solution lies in enforcing existing laws. Knock on doors. Go after irresponsible people. Only 18% of dogs and 3% of cats are licensed. This ordinance cannot be enforced. Those under the radar will stay under the radar. People will stop licensing their animals. AVAR has \$10,000 to scan ads. That is inappropriate for private citizens to enforce. License rates go down in cities with this type of law. Veterinarians don't want to be police. Who will enforce? The DA?</p>	<p>Existing laws do not address the issue of having animals neutered. ACR currently confronts irresponsible owners, by responding to at large, welfare investigations and bites.</p> <p>The proposed ordinance will be enforced just as all other sections of the current ordinance are. Enforcement is complaint-driven and never reaches 100% compliance.</p> <p>A small percentage (18 – 23%) of people are currently licensing their pets, of which the majority are already altered. Thus, the ordinance will effect few who are currently licensed. There will also be information in the system to track those who stop licensing.</p> <p>AVAR offered \$10,000 for spay/neuter of pets if the ordinance was passed, not for enforcement.</p> <p>Immediately following license fee increases, the data suggests that rates may fall, but then increase in subsequent years. An example is King County, Washington.</p> <p>In terms of who will enforce, just as with current ordinance sections enforcement is through the citation process, Municipal Court and the DA's Office.</p>

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4. Feral Cats	The solution to the feral cats problem is education – stop feeding them; require cats to stay inside their owner’s property. Adopt a cat leash law. Need a tracking system for feral cats.	<p>The ordinance was not written as a solution to the feral cat issue, or that of loose cats, but to address the numbers of euthanized unwanted cats. Reducing the birth rate of all cats – owned or feral – is the emphasis of the ordinance.</p> <p>The ordinance does address feral cats by making people who feed them responsible for neutering them also. Many people feel strongly about the plight of feral cats and will continue to feed them to prevent starvation.</p>

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5. Ordinance	<p>It is unnecessary and will “catch” the responsible breeders.</p> <p>Scanning newspaper ads, door-to-door canvassing denies free speech. Mandatory spay/neuter denies civil liberties.</p> <p>Seeing eye dogs, police dogs, working dogs and companion dogs will be affected.</p> <p>It is a confiscatory coercive tax to raise money. It will not make people do the right thing.</p> <p>Four months is too young.</p> <p>It is not enforceable.</p>	<p>Seeing eye dogs, police dogs, working dogs, and companion dogs are exempted.</p> <p>Municipal government in the post-Prop 13 era is continually seeking ways to generate revenue to support its operations. The citizens want an effective animal control program.</p> <p>Nearly all fees, taxes, and laws are coercive.</p> <p>Spay or neuter at four months is endorsed by the Veterinary Association. The ordinance allows for an exemption by any veterinarian who believes that four months is too young for any specific animal to be altered.</p> <p>Citizens generally obey laws because they are law-abiding. An infinite number of police would be required to adequately enforce all laws.</p>

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Issue	Contention	Analysis
6. Overpopulation	<p>There is no overpopulation problem in Sacramento County. In fact, the number of animals euthanized has gone steadily downward in recent years. And, those animals euthanized are mostly feral cats and large dogs that are health or behavior problems and would not be adopted anyway.</p> <p>Irresponsible breeders are the problem.</p> <p>Nation wide the birthrate for owned animals is below replacement rate (Tufts University study).</p>	<p>ACR current statistics indicate that only 20 – 25% of the euthanized cats are feral.</p> <p>A recurring theme of the opposition is “Show me the numbers!” One response to that could be: what difference does it make? Whether it is 20,000 animals, 10,000 animals, or 5,000 animals it is nevertheless an unfortunate reality.</p> <p>The legitimate argument is: how can we reduce the number of animals put down each year, and is this ordinance a good means toward that end.</p>

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<p>7. Process, This</p>	<p>Opponents contend that the process thus far employed by the Coalition is unfair: it is skewed towards pro-ordinance people; it violates the Brown Act; it is secretive; the meetings were just for show; the selection of the mediator (yours truly) was secretive; the process employed by the mediator is clandestine.</p>	<p>These arguments suggest that the spirit of democracy has been circumvented by the Coalition. This process – like all processes – is flawed. The contention that opposing views have not been adequately voiced is not supported by the facts. I, Animal Control, and the Board of Supervisors have been inundated with information critical of the ordinance.</p> <p>I have personally interviewed (or attempted to interview) any legitimate identifiable stakeholder. I have promised them they will be notified at every step of the way, including receipt of this document.</p> <p>The opposition has urged me to view the video of the August, 2006 hearing at the Board of Supervisors, which suggests that their views were well-articulated and well-represented at that session.</p> <p>Perhaps the most significant flaw in this argument is that the opponents – contrary to the supporters – will approve of this process only if the ordinance is defeated. If not, they will prosecute their agenda directly to the Board, to the Grand Jury, and to the courts. In fact, they already have.</p>

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Issue	Contention	Analysis
8. Property, Private	Dogs and cats are private property. “I can do what I want with my own property – spay, not spay, breed, not breed. The government can’t tell me what to do with my property.”	<p>In the current era this argument is rhetorically pleasing but preposterous. One cannot alter the engine of one’s car; one must license one’s car to drive it; one cannot burn wood in one’s own fireplace, and so on. The government regulates our use of private property in hundreds of ways.</p> <p>A more salient argument might be, is this ordinance an unacceptable additional intrusion into one’s personal life; are the fees unacceptable <i>de facto</i> taxes?</p>

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9. Puppy Importation	As evidence that there is no pet overpopulation problem, critics cite importation of puppies from Stanislaus County, Mexico, and elsewhere.	Highly adoptable dogs are being transferred from overcrowded, low adoption shelters to the Sacramento SPCA. This suggests that the overpopulation problem is worse in some areas of the state than others. Some private shelters have resources that permit them to offer a chance at a new life to pets that would otherwise be euthanized. The Sacramento SPCA also takes animals from the ACR.

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<p>10. Rights, Animal</p>	<p>This ordinance is a thinly-disguised conspiracy by animal rights activists, in whose camp is Pat Claerbout, to eventually eliminate purebred breeding and pet ownership – other than that which is controlled by Animal Care and Regulation – who should not be in the pet distribution business in the first place.</p> <p>This “movement” is a vendetta against purebred animals.</p>	<p>The term “Animal Rights” is emotionally charged, and evokes images of the extremist groups who are on record as having as their end game a world where no one eats, owns, works, traps, rides, breeds, shows, competes, trains, cages, conducts research on, races, profits from, shears, hunts, herds, befriends, or wears any animals whatsoever. The only animals in the world will be those that run free.</p> <p>Like many terms, however, animal rights means many things to many people. It could mean humane treatment of animals, on which most people agree.</p> <p>The opposition to this ordinance has combined the extremist view of animal rights with the framing of this legislation. Specifically, they have articulated the belief that nearly all of those groups supporting this ordinance embrace the radical view and vision stated above.</p> <p>Simply because “Animal Rights” organizations support it, does not mean it is bad policy.</p> <p>The evidence suggests that many of those supporting this ordinance are not extremists, such as the Sacramento Valley Veterinary Medical Association.</p> <p>This is a diversion. Regardless of the stripes of the people backing it, is it good public policy? It should be evaluated only on its merits.</p>

Animal Ordinance Opposition Arguments

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Issue	Contention	Analysis
11. Spay or Pay	Opponents contend that this ordinance is part of a nation-wide conspiracy to enact Spay or Pay laws whose purpose is to eliminate breeding of show animals and pets.	<p>Elsewhere in this briefing I have acknowledged that the goal of the extremists is definitely to eliminate breeding. The question is, are those who have drafted and support this ordinance of the same mind.</p> <p>The argument against the opposition's argument is that, in Sacramento County, 90% of licensed cats and 85% of licensed dogs are spayed or neutered. In other words, nearly everyone in compliance with the licensing and rabies laws supports the idea, and acts on it.</p>

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Issue	Contention	Analysis
<p>12. Veterinarians' Role</p>	<p>Sacramento veterinarians support this ordinance, but do not want play the role of enforcer. They do not wish to report names of their customers who have gotten rabies shots for their pets.</p>	<p>Requiring the veterinarians to report all rabies vaccinations provides for equal enforcement for the proposed ordinance and current state required dog licensing, which is an important component of the state rabies control program.</p> <p>This also helps to address the issue of only being able to reach the responsible pet owners, those who voluntarily license their pets (18 – 23%). That is to say, it is believed that considerably more pet owners get rabies shots than license them.</p> <p>The veterinarians are not the enforcers, they simply report the information.</p> <p>However, inasmuch as there has been insufficient opportunity to negotiate with veterinarians on this issue, it has been withdrawn from the current draft of the ordinance. It is intended that the issue be revisited in the future.</p>

INTERVIEW QUESTIONS

Proposed Animal Overpopulation Control Ordinance

Name: _____

Date: _____

1. What is your understanding of the proposed ordinance?
2. Do you believe there is an animal overpopulation problem in Sacramento County?
3. What, in your view **would** constitute an animal overpopulation problem?
4. How many dogs and cats do you think are subject to euthanasia in Sacramento County each year?
5. How do you feel about that?
6. What is your knowledge or experience in the work of an animal shelter?
7. What would be the best way to control the population of unwanted dogs and cats?
8. What responsibility does local government have for controlling that population?
9. What is your main opposition to the proposed ordinance?

10. What do you feel will happen if the ordinance is enacted?

11. What changes would you like made to the ordinance in order for you to be able to support it?

12. What is your occupation?

13. What is your involvement with dogs and cats?

14. Whom do you represent in your views about dogs, cats, and the County's role?
(How many people? How many dogs and cats?)

15. What would you say the percentage rates were in this county: spay, neuter, rabies shots, license purchased? (Dogs/Cats)

16. Do you intend to participate in this process, or will you lobby your position separately?

17. Additional comments?

ANIMAL OVERPOPULATION ORDINANCE MEDIATION

L. Michael Tompkins, EdD, Facilitator

February 28, 2007

Guidelines

1. No personal attacks
2. One person speaks at a time
3. No speeches
4. Minimize tangential topics

Goal (of mediation)

- ❖ Open, clear process
- ❖ Document issues (parking lot)

Agenda (tentative)

- I. INTRODUCTION
- II. OPENING REMARKS
- III. DISCUSSION
- IV. CLARIFICATION (agreement/disagreement)
- V. SUGGESTED CHANGES (to ordinance)
- VI. CLOSING REMARKS

Introduction

- ❖ Name
- ❖ Involvement with animals
- ❖ Opening statement

Parking Lot

- ❖ High fees (-) (+)
- ❖ Doesn't address the real problem
- ❖ Education
- ❖ Four months old spay/neuter (-) (+)
- ❖ Success of Sacramento city rabies repository
- ❖ Too many dogs
- ❖ High rate of euthanasia
- ❖ Where are overpopulation animals coming from?
- ❖ Who's exempt and why?
- ❖ A tool to go after "backyard breeders"
- ❖ A breeder's license (-) (+)

- ❖ Property rights
- ❖ Is the position no more animals at all?
- ❖ Importation of animals
- ❖ 50% of fees goes to spay/neuter funds
- ❖ No oversight on spay/neuter funds
- ❖ Socioeconomic bias
- ❖ It's a feral cat population problem
- ❖ If feral cats reduce, rodents will increase
- ❖ (Better) enforcement of the current laws is adequate
- ❖ Definition of feral cats (free roaming)?
- ❖ Lack of recourse in the courts
- ❖ High fees as a deterrent
- ❖ Lack of representation of the general population
- ❖ Gives people the opportunity to do the right thing
- ❖ Disharmony between SPCA and Animal Control
- ❖ Constituent complaints
- ❖ Advertising
- ❖ Exemption of organizations from licensing

Doesn't Address the real problem

A) Animals that could be adopted are euthanized

The Remaining 75 Minutes (-)

- ❖ The numbers on the paper: what are we killing and why?
- ❖ Free roaming cats
- ❖ Focus on education: trap, neuter and return

The Remaining 75 Minutes (+)

- ❖ Accept that we have a community problem
- ❖ Responsible vs. irresponsible breeding (define)

Where Do We Go From Here

Three representatives plus an alternate from both sides meet with County officials and perhaps the mediator to identify common understanding of the problem and approaches to solving the problem that might be mutually acceptable. May involve modifying the ordinance or starting with a clean sheet of paper.

Summary (consultant's perceptions of the meeting)

1. There is little possibility of finding common ground between the two camps.

Evidence: a) While those opposed frequently cite "irresponsible breeders" as the problem, they refused to participate in a discussion designed to define and distinguish responsible from irresponsible breeders.

b) When an individual opposed to the ordinance suggested a breeder's license as an alternative, the group retorted in choral speaking, "No!" when asked by the facilitator if they would accept that.

c) One participant who attended Coalition meetings was asked if he would support the ordinance if license fees were not raised and he said no.

d) Those opposed do not believe there is an overpopulation problem. Their acknowledgment that there was at the end of the evening was gratuitous, and conflicts with every other comment they made at the meeting, on the phone, in person with this consultant, and in all of their correspondence.

2. The opposition is vehemently opposed to any regulation whatsoever regarding breeding "rights." To them "mediation" means withdrawing the ordinance and a confession by Pat Claerbout that she is incompetent, the shelter is poorly run, and the Coalition is a thinly-disguised animal rights conspiracy to eliminate pet ownership.

Evidence: review of their correspondence, and comments at the session implying ulterior motives of the framers. Plus, nearly all those interviewed said as much to me.

3. The tactics of the opposition are to personally attack Pat Claerbout, Animal Control, the motives of the backers, as well as to (attempt) to filibuster any hearings. Even with strong facilitation by yours truly, the opposition still spoke roughly three times longer than the supporters. The Parking Lot, for example, contains ten items of the supporters and 23 of the opposition.

4. The framers of the ordinance have spent a great deal of effort in public forums (contrary to the complaints of the opposition) and making numerous changes to the legislation. The people doing the work of animal control believe it is a good tool to assist in the task of reducing the number of animals killed, increasing the number of animals adopted, and reducing the number of community complaints against dogs and cats.