

W. 9. a.

AGENDA COVER MEMORANDUM

Memorandum Date: August 23, 2006
Order Date: August 30, 2006

PRESENTED TO: Board of County Commissioners

DEPARTMENT: Management Services – Animal Regulation Authority

PRESENTED BY: David Suchart

AGENDA TITLE: **IN THE MATTER OF** Amending Chapter 7 of Lane Code to Add a Provision Pertaining to Capturing and Killing of a Dog or Cat (LC 7.122)

I. MOTION

For August 30, 2006: Move approval of the first reading and setting the second reading and public hearing of Ordinance No. 8-06 for September 13, 2006, at 9:00am.

For September 13, 2006: Move approval of Ordinance No. 8-06, in the matter of amending Chapter 7 of the Lane Code to add a provision pertaining to capturing and killing of a dog or cat (LC 7.122).

II. AGENDA ITEM SUMMARY

Lane County Animal Regulation Authority (LCARA) is presently unable to prosecute persons who intentionally obtain, capture, or otherwise acquire a dog or cat with the intent to kill it, and subsequently do so. Recent incidents and public condemnation of those incidents have prompted LCARA to seek this amendment of the Lane Code to enable LCARA to prosecute violations of this type.

III. BACKGROUND/IMPLICATION OF ACTION

A. Background

During the month of July 2005, it was anonymously reported to LCARA that a pest control company was capturing cats within a mobile home park in Lane County. Contact was made with the company and they stated they had captured, by the request of the park management, and then killed by gunshot seven feral or sick cats outside the park, and subsequently buried them on private property. The company produced a letter from the Oregon Department of Fish and Wildlife (ODFW) giving them authorization to “capture

fur bearing animals and non-game animals to alleviate damage, nuisance problems or public health risks for property owners.” The letter continued stating, “all sick or injured animals should be euthanized.” Immediately after this contact the company released further captured cats to LCARA. Owners of these animals, if any, did not file a complaint or report to LCARA they had witnessed their animal(s) being captured or killed. LCARA investigated the situation, and thereafter reported to the Board of County Commissioners (BCC) that it had no avenue of administrative prosecution under Lane Code. LCARA notified ODFW, the Lane County District Attorney’s Office, and Oregon Veterinary Medical Examining Board (OVMEB) of its investigation results for possible action by those agencies.

The OVMEB generated a letter dated August 22, 2005, to the pest control company advising them to cease such practice, which they described as practicing veterinary medicine without a license (see ORS 686.030, attached). LCARA staff has since been advised by the agency that, because the pest control company has decided to cease this practice, the agency would not pursue the matter further.

The ODFW stated that feral cats do not fall under their definition or jurisdiction and would need to be defined by the Department of Agriculture before that agency would act. The ODFW permit obtained by the company does allow the euthanasia of “wildlife” covered by their permit (see attachment “B”). This may be at odds with the OVMEB position that euthanizing an animal constitutes the practice of veterinary medicine.

The Lane County District Attorney’s (DA’s) office did not conclude whether or not any law may have been violated by the killing of feral cats, but did advise LCARA that, due to resource constraints, they would not be filing any charges regarding violations of the wildlife statutes even were they to conclude that a violation had occurred. The DA’s office did state that a person can face criminal liability at any time if they should knowingly take a domesticated animal from its lawful owner when they have no legal authority to do so.

Since the time LCARA issued its report on this matter to the BCC, some animal rights groups have complained that LCARA has done nothing about the killings of the feral cats. These animal rights groups have requested that LCARA be granted authority under Lane Code to prosecute any company, person, or persons that capture dogs and cats (including feral cats) for the purpose of killing them.

B. Analysis

Due to the absence of an ordinance prohibiting the intentional capturing of dogs and cats for the purpose of killing them, LCARA has no authority to prosecute these actions within the Lane Code. The closest Lane Code provision, LC 4.120, Animal Abuse, prohibits “cruelly causing the death of an animal.” Thus, it would be permissible for an owner or caretaker of an animal to kill an injured or infirmed animal, if the killing was not done “cruelly.” The draft ordinance is intended to still allow such actions by owners, but

prohibit someone from acquiring a dog or cat for the purpose of killing the animal. It is hoped that this will be at least a stop gap measure, and that as the Code revision process goes forward, and particularly as the issue of feral cats may be addressed in the future, it may be appropriate to consider further changes to the ordinance proposed.

The adoption of the proposed ordinance will make obtaining, capturing, or otherwise acquiring a dog or a cat with the intention to kill it, except as otherwise permitted by law, a Class "A" violation. A Class "A" violation carries a minimum fine of \$325, and a maximum fine of \$828, including ordinary court costs and fees.

C. Alternatives/Options

1. Approve the ordinance as presented.
2. Direct staff to modify ordinance language.
3. Do not approve ordinance.

IV. RECOMMENDATION

Staff recommends Option 1.

V. IMPLEMENTATION/FOLLOW-UP

Following Board action, staff will advise the various interested parties of any changes made to Lane Code, and will enforce same as to any future violations.

Other portions of the Animal Regulation Advisory Task Force code revision recommendations will be presented to the Board in a follow up supplemental.

V. ATTACHMENTS

Board Order
Proposed amended Lane Code Chapter 7, 7.122
ORS 686.030

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 8-06

IN THE MATTER OF AMENDING CHAPTER 7 OF
LANE CODE TO ADD A PROVISION PERTAINING
TO CAPTURING AND KILLING OF A DOG OR CAT
(LC 7.122)

The Board of County Commissioners of Lane County ordains as follows:

Chapter 7 of Lane Code is hereby amended by deleting, substituting, and adding new sections as follows:

DELETE THESE SECTION(S)

None

INSERT THESE SECTION(S)

7.122
as located on page 7-9
(a total of one page)

Said section is attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to add a provision pertaining to capturing and killing of a dog or cat (LC 7.122).

ENACTED this _____ day of _____ 2006.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 8-23-06 Lane County



OFFICE OF LEGAL COUNSEL

Oregon Revised Statutes

686.030 Acts constituting the practice of veterinary medicine. A person practices veterinary medicine, surgery or dentistry when the person does any of the following in this state:

- (1) Diagnoses, treats or prognosticates an animal medical problem.
- (2) Prescribes or administers a drug, medicine or treatment for the prevention, cure, amelioration, correction or modification of an animal problem or for euthanasia.
- (3) Induces anesthesia in an animal.
- (4) Performs a surgical or dental operation or procedure upon an animal.
- (5) Performs an embryo transfer or pregnancy, sterility or fertility evaluation.
- (6) Gives an instruction or demonstration regarding the acts described in this section, except as an agent or employee of this state or of the federal government.
- (7) Advertises or represents in any manner, publicly or privately, that the person is willing to do any of the acts described in this section. [Amended by 1987 c.651 §2a]

near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

(2) A person who commits the offense of animal abandonment commits a Class A violation. *(Revised by Ordinance No. 2-82, Effective 4.9.82; 13-86, 11.7.86; 3-89, 5.12.89; 1-00, 4.12.00)*

7.110 Dogs at Large Prohibited.

(1) No dog owner shall permit a dog to be at large.

(2) A dog owner, whose dog runs at large, commits a Class D violation.

(3) A dog owner is deemed to be negligent per se for the actions of a dog at large when the dog causes injury to a person or property. *(Revised by Ordinance No. 2-82, Effective 4.9.82; 13-86, 11.7.86; 3-89, 5.12.89; 1-00, 4.12.00)*

7.115 Continuous Annoyance.

An animal owner who permits any animal to cause annoyance, alarm, or noise disturbance for more than 15 minutes at any time of the day or night, be it repeated barking, whining, screeching, howling, braying or other like sounds which can be heard beyond the boundary of the owner's property commits a Class C violation. *(Revised by Ordinance No. 13-86, Effective 11.7.86; 1-00, 4.12.00)*

7.120 Animal Abuse.

(1) Class B Violation. A person who, except as otherwise authorized by law, causes physical injury to an animal commits a Class B violation.

(2) Class A Violation. A person who, except as otherwise authorized by law,

(a) Causes serious physical injury to an animal; or

(b) Cruelly causes the death of an animal, commits a Class A violation.

(3) Any practice of good animal husbandry is not a violation of LC

7.120. *(Revised by Ordinance No. 3-89, Effective 5.12.89; 1-00, 4.12.00)*

7.122 Capturing and Killing of Dog or Cat.

A person who, except as otherwise permitted by law, obtains, captures, or otherwise acquires a dog or a cat intending to kill it, and who subsequently does so, commits a Class A violation.

Bold indicates material being added

~~Strikethrough~~ indicates material being deleted

7.110

Lane Code

LEGISLATIVE

FORMAT

7.122

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