

Gallup-McKinley County Animal Control Authority
April 13th, 2021 Minutes
Virtual Meeting

The Regular Meeting of the Gallup-McKinley County Animal Control Authority was called to order at 1:25 p.m. by Vice-Chair Dr. Oscar A. Palomo. Chairman Palomo stated that the meeting was being held virtually via video and telephone conferencing. The meeting was also being live streamed for the public through the City of Gallup's Facebook page. Chairman Palomo also notified the Board that there may be individuals calling in from the public to make comments during the meeting.

Upon roll call, the following were present:

Dr. Oscar A. Palomo, MD
Ruth Gonzales Baca
Henrietta Soland

Upon roll call, the following were absent:

Dorie Rowberry
Patty Holland

Presented to the Chairman and Authority Board Members for their approval were the minutes of the January 12th, 2021 meeting. Board Member Gonzales Baca motioned for approval of minutes as presented. Seconded by Board Member Soland. Motion Carried.

Upon roll call, the following votes were:

Ruth Gonzales Baca (Yes)
Henrietta Soland (Yes)
Dr. Oscar A. Palomo, MD (Yes)

Chairman Palomo asked the Madam Secretary to state the names of the individuals attending the virtual meeting. Upon roll call the following were present:

CB Strain, Planning and Development Director
Cosy Balok, Animal Protection Supervisor
Curtis Hayes, City Attorney

ITEM ONE: Quarterly Financial Report

Clyde (C.B.) Strain, Planning & Development Director began by explaining how Animal Control was right on track for fiscal year 2021 spending. Pages 1-1 & 1-2 included data from July 2020 to December 2020. C.B. anticipated Animal Control getting through the current fiscal year without having any financial issues. He reminded the Board how the

next fiscal year 2022 begins on July 1, 2021. C.B. informed the Board that if they had any detailed questions regarding the budget they could contact Patty Holland, Chief Financial Officer. She was unable to attend the meeting today because of other commitments.

Chairman Palomo asked the Board Members if they had any questions. There were none.

Chairman Palomo asked the Madam Secretary if there was anyone who called in wishing to speak to Item One. There were none.

Chairman Palomo stated that the item was closed.

Motion to accept or not accept the quarterly financial report. Board Member Soland motioned to accept Item One. Seconded by Board Member Gonzales Baca. Motion Carried.

Upon roll call, the following votes were:

Henrietta Soland (Yes)
Ruth Gonzales Baca (Yes)
Dr. Oscar A. Palomo, MD (Yes)

ITEM TWO: FY 2022 Projected Budget

The item was removed from the agenda and will be presented at a later date. No discussion on Item Two.

ITEM THREE: Discuss recommended revisions to the City of Gallup Animal Control Ordinance

Curtis Hayes, City Attorney began by explaining how he wanted to make revisions to the City of Gallup Animal Control Ordinance. There were several areas that needed to be changed regarding the Dangerous and Vicious Dog Sections. Mr. Hayes used the screen to display the McKinley County Animal Control Ordinance. He wanted to use the county's definition section as an example as to why the city's current ordinance was problematic and confusing. Mr. Hayes read aloud the county's definition of a "Dangerous Animal" from Section 2.15 of the McKinley County Animal Control Ordinance. He noted how the definition referenced "animal" and not "dog." If the city only uses the term "Dangerous Dog," then it would only apply to dogs which was not what he wanted. He spoke about how the county's definition referred to the New Mexico State Statute whereas the city's definition of "Dangerous Animal" does not. Mr. Hayes also read aloud the county's definition of a "Vicious Animal" from Section 2.50 of the McKinley County Animal Control Ordinance. Mr. Hayes explained how both definitions stated the minimum criteria of whether there was a serious injury or not, which resulted

in muscle tears, disfiguring lacerations, multiple sutures or extensive corrective or cosmetic surgery. Mr. Hayes stated that in 2005 the State Legislature adopted the Dangerous Dog Ordinance and Statute, which was where the confusion started. Mr. Hayes used the screen to display the New Mexico State Statute Dangerous Dog Act Section 77-1A-2, which listed the definitions. He read aloud the definitions for a "Dangerous Dog" and "Serious Injury". The definitions were pretty close to the city's definition of a Vicious Animal. He reminded the Board how the city had definitions for a "Dangerous Animal" and "Vicious Animal." Mr. Hayes read aloud the state's definition for a "Potentially Dangerous Dog," which was pretty similar to the city's "Dangerous Animal" definition. That's the confusion; there's a "Vicious Animal" and "Dangerous Dog" definition that are very similar. There's also a similarity with the definition of a "Dangerous Animal" and a "Potentially Dangerous Dog." In 2012 the city decided to take the State's Dangerous Dog Act and add it to the City of Gallup's Animal Control Ordinance. Mr. Hayes stated that if you looked at the city code section 5-3-50-1 where the Dangerous Dog Section was inserted, it's almost identical to the State's Dangerous Dog Statute. He explained how there was really no reason to do that because the State Statute says that the city can follow their procedure. Mr. Hayes continued by explaining that part of the problem with the State's procedure was that in order to declare an animal as a "Dangerous or Potentially Dangerous Dog" was by the seizure of the dog and petition to court (see State Statute Section 77-1A-4). Basically it says you go out and seize the dog and if it's not turned over voluntarily, you file a warrant. Then you file a petition in court, which would be either Municipal or Magistrate Court to determine if the dog was a "Dangerous or Potentially Dangerous Dog." A dog is not officially a "Dangerous or Potentially Dangerous Dog" until it's declared so by a court. Mr. Hayes explained how one of the things he wanted to change was to adopt a procedure that's used in other ordinances throughout the country where the initial determination is not made by the court, but made by the Animal Control Department. Mr. Hayes informed the Board how the State Statute listed some felony offenses. It states that if anyone violates a provision of the section is guilty of a misdemeanor and for a second or subsequent offense is guilty of a fourth degree felony. Mr. Hayes gave an example of where an individual did not obtain a valid registration for a Dangerous Dog or failed to notify Animal Control when the dog escaped or when the dog attacked another animal. The first time would be a misdemeanor and the second time it could go to Magistrate Court and be charged as a felony. If a Dangerous Dog causes serious injury or death to a domestic animal it's a fourth degree felony. If a Dangerous Dog causes serious injury to a human being it's a third degree felony. If a Dangerous Dog causes the death of a human being it's a third degree felony. For egregious situations, the state has sections for prosecuting an individual guilty of said crimes. The State Statute requires that it be shown if a dog had previously been found by a court to be a Dangerous or Potentially Dangerous Dog. Mr. Hayes recommended the city no longer follow that regulation.

Mr. Hayes summarized the following revisions to the City of Gallup Animal Control Ordinance:

1. Eliminate Section 5-3-49 Vicious Animals and make changes to tie together with the Dangerous Animal procedures.

2. Eliminate Section 5-3-50 Dangerous Animals, which was taken from the State Statute. The city does not need to duplicate this because it's already on the books and if they want to follow it they can. The city needs to adopt a simpler process that will be easier to follow.
3. Simplify the definitions whereas the city will only have two definitions; "Vicious Animal" and "Dangerous Animal." "Dangerous Dog" and "Potentially Dangerous Dog" definitions will be removed.
4. Change the initial determination of whether or not an animal is Vicious or Dangerous be made by Animal Control, which is one of the most important changes.
5. No person shall keep or harbor a Vicious Animal, which refers back to the definition of "Vicious Animal" which is already in the ordinance. But Mr. Hayes would like to propose a little bit of a change to that definition. Mr. Hayes read aloud the current definition of a "Vicious Animal". He wants to remove the following last two sentences: ~~"Vicious animal does not include an animal which bites, attacks, or injures a person or animal that is unlawfully upon its owner's premises. The provocation of an animal by a person is an affirmative defense to a charge of keeping or harboring a vicious animal."~~ Mr. Hayes gave the following example: if there's a child who trespasses onto a property who owns a Vicious Animal and that child is attacked and seriously injured; should that be a total defense to the animal owner? The ordinance he found that had the cleanest set of procedures for having Animal Control make that determination was San Mateo County in California. So Mr. Hayes is proposing to add the following language under Section 5-3-49, "If an Animal Protection Officer and/or peace officer investigates and determines that an animal is Vicious, the Animal Protection Officer and/or peace officer shall immediately impound, or cause to be impounded, the animal and deliver to the owner of the animal written notice of that determination on a standardized form that provides notice of the right to appeal the designation, instructions for filing an appeal, and a notice of appeal to be filed with the City Clerk." Mr. Hayes explained how this will allow Animal Control to make the determination by not having to first take the animal owners to court. Due process will be given and the revised language will detail the appeal process. The proposed language that states, "Failure of the owner to file a notice of appeal shall result in the animal being declared vicious and humanely destroyed" basically says that the owner agrees the animal is vicious and needs to be destroyed. Mr. Hayes spoke about how Section 5-3-49 lists factors to use when determining if an animal shall be declared vicious, which will help Animal Control to better assess situations. Something that the San Mateo County Ordinance had, which Mr. Hayes left out and something for the Board to consider is that not only can the animal owner appeal if an animal is Dangerous or Vicious, but also other parties. So the way Mr. Hayes wrote the proposed ordinance does not allow a potential victim (or any interested persons) to appeal Animal Control's determination; only the animal owner can appeal. This is something the Board could consider, but Mr. Hayes does not think they need to allow.
6. Adopt a new procedure for Section 5-3-49 Vicious Animals and 5-3-50 Dangerous Animals. For Dangerous Animals there is a permit process, which has

to be renewed annually. Mr. Hayes explained how Animal Control will now conduct an investigation to determine if an animal is a Dangerous Animal. Once they make their determination, they will provide written notice to the owner. If the owner does not agree, they have a right to appeal and file notice within five (5) days. If the owner does not file an appeal within five (5) days then those entire permit requirements are going to kick in. Then the owner will have seven (7) days to go to Animal Control and apply for a Dangerous Dog permit. Once the permit is issued there will be requirements that kick in as far as how that animal is restrained, where the animal is kept, etc. The Dangerous Dog permit will basically require safety precautions are in place to ensure the animal does not get out and injure another person or animal. Mr. Hayes explained how this section will have a new, simpler process for the revocation or modification of a permit. The appeal timeline process has been tightened. If there's an owner who has a Dangerous Dog permit and there are violations, then Animal Control is able to go out and either add additional conditions to the permit if there is a way to still allow the owner to continue to have the Dangerous Dog. For example, if they need fencing or additional restraints. Or Animal Control has the option to revoke the permit. If that is done, again there is an appeal process. If Animal Control decides to revoke a permit they must provide written notice and the owner has to file an appeal within five (5) days.

7. Section 5-3-9 (I) Impounding Animals had a couple of changes. The current ordinance states that an animal that has been impounded shall not be returned to the owner until there is a determination by a court to return that animal. Mr. Hayes spoke about how he added language about impounding animals pursuant to Section 5-3-49 as a Vicious Animal and Section 5-3-50 as a Dangerous Animal. He thought it was important to separate animals that are impounded because the animal could be the victim or the perpetrator. For Vicious Animals he added how the animal shall not be returned to the owner unless the Animal Control Supervisor (Cosy), a hearing officer (appeal process), or City Council (final appeal process) determines that the animal is not vicious. For Dangerous Animals they will not be returned until a Dangerous Animal permit has been obtained or the Animal Control Supervisor (Cosy), a hearing officer (appeal process), or City Council (final appeal process) determines that the animal is not dangerous. Mr. Hayes informed the Board that he left the beginning section as it was regarding animals that were impounded due to being cruelly treated, abused or simply not being provided with adequate shelter or maintenance.
8. Mr. Hayes explained how his revisions took out the determination and appeal process from the courts and put it into an administrative process, which was going to be a lot quicker. He spoke about how a standardized form will need to be used, which will be like a citation form when Animal Control is making their determinations. So he added language to Section 5-3-52-3 Suspension and Revocations of Permits notating the form and how notice needs to be provided to the owner and how to appeal.
9. Section 5-3-52-3 Appeal Procedures for Permit Denial, Suspension or Revocation or Determination That an Animal Is Dangerous or Vicious was revised to tighten up the timelines. There's already a process for an appeal for a permit of any kind,

which could be a kennel permit, dangerous dog permit, etc. The current ordinance says if you have a permit that's revoked, you file written notice and the hearing has to be conducted within sixty (60) days. Mr. Hayes thought that was too long so he changed to fifteen (15) days. If it's a situation where the city impounded someone's animal and they are providing care for that animal they need to have a fairly quick determination, which is why he shortened that timeframe. Mr. Hayes explained that if someone's animal was seized, they have five (5) days to file an appeal and the hearing has to occur within fifteen (15) days. So within twenty (20) days there is a determination by the hearing officer that the animal is vicious and is going to be destroyed or that the animal is dangerous and they have to obtain a permit. The current ordinance also says that the City Manager conducts the hearing and it makes it more confusing when it also refers to a hearing officer. Mr. Hayes changed it to where all hearings go before a hearing officer. Another timeframe he shortened was for the number of days the hearing officer has to prepare written notice of his findings and decision. The current ordinance gives ten (10) days, but it has been changed to three (3) days. And if they want to go before the City Council, the current ordinance gives fifteen (15) days to file an appeal with the City Clerk's Office. He has changed that to five (5) days.

Mr. Hayes stated that those were all the revisions he was recommending for Vicious and Dangerous Animals. He asked if there were any questions. Cosy Balok, Animal Protection Supervisor stated that she was glad Mr. Hayes cut the timeframes down being that when they impounded animals they would have them for over a month so it would help Animal Control. Where the proposed ordinance states it has to go through a hearing within so many days; Cosy wanted to know if the court clerks would know that needed to be done. Mr. Hayes reminded Cosy how his revisions would be removing the court system from the initial determination. He explained how there would be potentially two procedures going on simultaneously; one will be if there are criminal charges being filed and prosecuted in Municipal or Magistrate Court whereas they have their own timelines. And there may be this administrative hearing process going on which is going to be a much quicker process. Mr. Hayes stated that the timelines discussed will only apply to the administrative process. And frankly, he does not think most people are going to appeal. The current process says that for an animal to be determined a Vicious or Dangerous Animal all cases must file a petition to court. He believes this is a waste of time because in most situations the Animal Protection Officer will make that determination and the Animal Protection Supervisor will confirm that determination is correct. And the owner is going to recognize that their animal does fall within the definition and is not going to file an appeal.

Chairman Palomo asked Mr. Hayes what would trigger the determination of a dog being declared dangerous because if someone is running by a house and there are big dogs behind a fence barking. Since they look aggressive; is that enough for a person to complain or does the dog have to get out and bite someone? Mr. Hayes responded that it would be enough for a person to complain whereas the dog does not have to first get out and bite someone. Chairman Palomo stated that he does see a problem with that

because a lot of people will be submitting complaints when dogs are barking behind fences and they may not necessarily be vicious, but acting protectively like dogs do. Board Member Soland stated that was also concerned because she has dogs and if someone goes by her house they bark. So someone could file saying she has vicious dogs even though they are fenced in where they cannot get out. Mr. Hayes stated that they are not actually filing anything official; they are simply submitting a complaint just like if making a report to the police. He explained how they are always going to get complaints, but it doesn't mean that anything is going to be triggered. What should happen is that Animal Control goes out and conducts an investigation to determine if it is a Vicious or Dangerous Animal. Mr. Hayes reminded the Board of what the current definition was for a Dangerous Animal. Cosby stated that the officers would use the definition as their guide when making determinations. The officers wouldn't determine dogs were dangerous just because they were barking; that's simply what dogs do.

Mr. Hayes wanted to let the Board know about another revised section, which was more directed towards the City Dog Park. He was unsure if they should separate out as two different proposals when presenting to the City Council. The current Section 5-3-3 Rules and Regulations has a process stating that, "Reasonable rules and regulations may be prescribed by the City Manager to carry out the intent and purpose of this chapter, pursuant to standards created by this chapter. The City Manager may delegate such authority to the Supervisor as he or she may deem expedient." Mr. Hayes did not understand why the next sentences were there, which was why he wanted to remove the following: ~~"The Supervisor may delegate such powers to the duly appointed animal protection officers as he may deem expedient. An animal protection officer shall wear a uniform and carry appropriate identification. Identification is to be surrendered to the City upon cessation of employment."~~ Mr. Hayes feels that only the supervisor of Animal Control should have the authority and should not delegate to its employees. And he thinks the uniform and identification language was wrongfully placed in this section whereas that does not need to be in the ordinance. He also wanted to add language allowing the City Manager to prescribe rules and regulations concerning animals at the city owned parks and recreation facilities. Mr. Hayes also wants to require the posting of signs notifying the public of those rules and regulations. If those posted rules and regulations are violated, individuals could be cited to Municipal Court. Right now if someone is breaking the rules at the City Dog Park the only thing to do is to make them leave. This revision will ultimately be used to ensure compliance at the city parks. Cosby spoke about how they have had problems with aggressive dogs continually being taken to the City Dog Park. However, they had no authority to control this, but having the revised ordinance will help them. There was a brief discussion between Mr. Hayes and Cosby regarding which rules needed to be posted at the city parks.

Chairman Palomo asked the Board Members if they had any questions. There were none.

Chairman Palomo asked the Madam Secretary if there was anyone who called in wishing to speak to Item Three. There were none.

Chairman Palomo stated that the item was closed.

Motion to approve or deny staff's recommended revisions to the City of Gallup Animal Control Ordinance. Board Member Palomo motioned for approval (positive recommendation) of Item Three. Seconded by Board Member Gonzales Baca. Motion Carried.

Upon roll call, the following votes were:

Dr. Oscar A. Palomo, MD (Yes)
Ruth Gonzales Baca (Yes)
Henrietta Soland (Yes)

ITEM FOUR: Recognition of New Vice-Chair, Dr. Oscar A. Palomo

Cosy Balok, Animal Protection Supervisor thanked Dr. Oscar A. Palomo for serving as the new Vice-Chair.

Chairman Palomo asked the Board Members if they had any questions. There were none.

Chairman Palomo asked the Madam Secretary if there was anyone who called in wishing to speak to Item Four. There were none.

ITEM FIVE: Feral Cat Problem in Gallup and McKinley County

Cosy Balok, Animal Protection Supervisor informed the Board about the large increase in the amount of calls concerning stray cats. She spoke about the different factors contributing to the problem, which was the lack of space and number of traps, unwanted cats, costs of housing cats, shortage of certified veterinarians, and shelter shut downs due to COVID-19. Cosy explained how they were doing the best they could and felt that if the community was more aware of the situation they would be more understanding. This is a problem in almost every neighborhood including Gamerco, Yahtahey, Williams Acre, Jamestown, Continental Divide, and Thoreau. She wants to remain a no-kill shelter whereas this is a community problem that will take a joint effort to resolve. Cosy thanked the Board for giving her the opportunity to explain the feral cat problem. She asked the Board to review the documents in their agenda packets to help educate them. She also stated that there were some community members who wanted to help and spoke about how she worked with Charles Vargas' business to resolve the issue.

Chairman Palomo asked the Board Members if they had any questions. There were none.

Chairman Palomo asked the Madam Secretary if there was anyone who called in wishing to speak to Item Five. There were none.

During the discussion of Informational Item Five, Board Member Gonzales Baca left the meeting.

Open Floor:

Chairman Palomo asked the Madam Secretary if there was anyone who called in wishing to comment on a non-agenda item. There were none.

Chairman Palomo asked if there was anyone in attendance that would like to comment on a non-agenda item. There were none.

Motion was made by Board Member Soland to adjourn the meeting. Seconded by Board Member Palomo. Motion Carried.


Upon roll call, the following votes were:

Henrietta Soland (Yes)

Dr. Oscar A. Palomo, MD (Yes)

Authority Board meeting adjourned at 2:25 p.m.

GALLUP MCKINLEY COUNTY ANIMAL CONTROL AUTHORITY



CHAIRMAN DORIE ROWBERRY

ATTEST:



CLYDE (C.B.) STRAIN
SECRETARY TO GALLUP MCKINLEY COUNTY
ANIMAL CONTROL AUTHORITY