

June 1, 2021

To: Mayor Parlet, Mayor Pro Tem Mattina, Council Members Turner and Froio

From: Council Member Green

Subject: Apology, request for consensus for future agenda item

Fellow council members:

First things first, I'd like to apologize for speaking discourteously near the end of Tuesday's animal abatement appeal hearing. I was frustrated and spoke in anger, which is never a good thing. As I'll explain in some detail below, after the appeal was denied I expected further council discussion about whether the abatement order conditions should be modified per the appellant's request and/or my own. When I realized the motion was to deny the appeal and affirm the original abatement order in a single vote, I reacted poorly, but with the benefit of hindsight the motion and final vote were fully proper. It was my conduct and words that were improper, and disrespectful, and for that I sincerely apologize.

Request for consensus

As I researched our vicious dog ordinance and its hearing procedures, it became apparent that the city's 1988 ordinance is not in sync with state and county law, in particular with how "vicious animal," "vicious dog" and "potentially dangerous dog" are defined. Some of the differences are listed below.

Definition/procedure	Lakeport ¹	Lake County ²	State ³
"Vicious animal" ^{1,2} , "vicious dog" ³	Unprovoked attack on human or animal under specified conditions; injury not required	Unprovoked attack on human or animal under specified conditions; injury not required	Unprovoked, aggressive attack resulting in human death or severe injury, or additional violation(s) by dog previously designated as potentially dangerous
"Potentially dangerous dog"			Two unprovoked attacks within 36-month period, or single attack on human causing injury
"Nuisance animal"		Continued violation(s) after 3 or more citations within six-month period	
Appeals	City Council	Board of Supervisors	Superior Court or local administrative hearings
Euthanasia	By order of council	By order of board	Adopted findings of threat to public safety

In terms of chronology, Lake County's vicious animal regulations were adopted in 1987, followed by Lakeport in 1988 and the state's dog-specific additions to the Food and Agricultural Code in 1989. State law permits cities and counties to adopt all, part or none of the state's dog statutes (FAC 31683). Since Lakeport's ordinance predates the state's vicious dog law, it does not incorporate any part of it.

This is pertinent to one of the statements made during the May 25 appeal hearing, namely that the appellant potentially would be able to be relieved of the abatement order after a 36-month period if no additional violations occur. That does not appear to be true after reading the state statute in question, which applies only to "potentially dangerous dogs," not to vicious or nuisance animals:

"If there are no additional instances of the behavior described in Section 31602 within a 36-month period from the date of designation as a **potentially dangerous dog**, the dog shall be removed from the list of potentially dangerous dogs. The dog may, but is not required to be, removed from the list of potentially dangerous dogs prior to the expiration of the 36-month period if the owner or keeper of the dog demonstrates to the animal control department that changes in circumstances or measures taken by the owner or keeper, such as training of the dog, have mitigated the risk to the public safety." (FAC §31644, emphasis added)

My first request is for council consensus to request staff to report back at a future council meeting how and whether it intends to make available to appellant the 36-month sunset period that was discussed at the appeal hearing, if no further violations occur. For purposes of applying state law, the council's findings of fact support a "potentially dangerous dog" designation and granting of relief on that basis.

My second request is for council consensus to give direction to staff to bring back a future agenda item to consider whether to initiate a review of the city's 1988 vicious animal ordinance and, following such review, to bring back recommendations as to whether an update may be needed. If nothing else, there is room for improvement in our hearing procedures, such as separate fact-finding and penalty phases.

Defining terms is equally important. Evidence that supports a "vicious animal" designation under Lakeport's ordinance may support either a "vicious dog" or "potentially dangerous dog" designation under state law, the latter offering greater flexibility for owners to train and exercise their dogs off-site. This type of progressive discipline makes a lot of sense, in part because it takes euthanasia off the table except for incidents of human death or severe injury. The council may or may not wish to follow state law exactly, but its definitions, hearing procedures and penalties are good starting points for discussion.

In sum, I am asking for council consensus to:

- Request staff to bring back a future agenda item discussing how and whether to remove the "vicious animal" designation from one or both of appellant's dogs after 36 months, if warranted by the owner's compliance history, in a manner similar to Food and Agricultural Code §31644.
- Request a future agenda item to consider whether to direct staff to initiate a review of Lakeport Municipal Code Chapter 6.32, pertaining to vicious animals, and bring back recommendations.

Respectfully submitted for the record,



Michael S. Green