



## **SAN MARCOS CITY COUNCIL MEETING**

**October 23, 2018**

**ITEM NO. 4 Ordinance 2018-1467 – An Ordinance of the City of Council of the City of San Marcos Municipal Code Chapters 6.04, 6.12, 6.20, 6.28 and 6.32 and repealing and replacing Chapter 6.24 relating to Animal Control**

### **Additional Comments**

- 1. Letter from “The Animal Council” dated October 21, 2018.**

# THE ANIMAL COUNCIL

**P.O. Box 168, Millbrae CA 94030**

**Officers:****Sharon A. Coleman***President***Gayle A. Hand***Secretary***Margaret Kranzfelder***Treasurer***Directors:****Dr. Ronald E. Cole****James S. Daugherty****Karen Johnson****Alice E. Partanen***Emeritus:**Leslie L. Altick, 1991-1996**Judith A. Brecka, 1991-2002*

Via Electronic Mail

City Council  
City of San Marcos, California  
1 Civic Center Drive  
San Marcos, CA 92069

October 21, 2018

Re: October 23, 2018 Council Agenda Item 4. - 17-1065, ORDINANCE NO. 2018-1467 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, Amendments to Title 6, Animals

Dear Mayor Desmond and Council Members:

Our friend, Dr. Harriet Seldin, asked us review the above referenced animal ordinance amendments before your Council and call to your attention some concerns with the "Irresponsible Owner" provision, section 6.04.020 Definitions, new definition (v) and substantive section 6.24.200 Declaration of Irresponsible Owner. This is a tempting but tricky idea when there are people who should not have animals, but can and should this be done by a local ordinance?

THE ANIMAL COUNCIL (TAC) is a California nonprofit, public benefit corporation founded in 1991 to seek positive, humane solutions to the challenges of detrimental animal public policies, legislation and regulation through study, analysis and application of animal husbandry, statistics and law, and at the same time preserve human benefit from all species, breeds and registries. TAC is also among the American Kennel Club Federations of Dog Clubs and Other Allied Groups, representing California

The "irresponsible owner" designation requires only 3 "citations issued" (for one person over 2 years) that could be trivial offenses with a drastically disproportionate result of seizure and forfeiture of all a person's animals -- definition, "(c) Animal shall include but not be limited to dogs, cats, birds, fishes, reptiles, and non-human mammals" and prohibition "from owning, possessing, caring for, keeping, harboring, controlling, or having custody of any Animal for a period of up to three (3) years." In some cases, this could be a bar to employment. While 6 specific code sections for the "citations issued" are stated, these are followed by a catch-all, "or any other provision under this Title as determined by the Animal Control Authority, irrespective of the Animal to which those citations apply." Presumably any offense in Title 6 could qualify as an "issued citation" for "Irresponsible Owner" status. While many Title 6 offenses are misdemeanors, others are infractions for which "citations issued" would qualify for the Irresponsible Owner designation. In the context of Title 6 that includes in 6.04.030, violations and penalties -- a subsection "Upon the conviction of a person charged with a violation of any provision of this Code Title classified as a misdemeanor, the court may order in addition to any other remedy authorized by law, that the convicted person be prohibited from owning, possessing, caring for, or having any

animal” for up to 3 years with immediate forfeiture. The current amendment allows the court to extend the prohibition with no time limit – allowing inference that the purpose of the “Irresponsible Owner” provision is to lower the threshold for determining this result, seizure and forfeiture of animals and prohibition of contact for up to 3 years with no court involvement at all unless the owner is able to appeal that far. Many animal owners lack the sophistication and means to retain appropriate legal counsel for timely challenge of administrative proceedings and might not realize the unusual overreach of this designation.

There are California Penal Code laws with options for court imposed forfeiture and time-limited prohibitions on care, custody or ownership of animals following conviction for specified criminal offenses of serious crimes involving animals, not mere irresponsibility or infractions. These statutes also include provisions for court discretion and mitigation. For persons whose employment involves animals, post-conviction prohibitions on care of animals can have greater consequences than personal ownership.

The bottom line for these changes in the San Marcos ordinance are punishments potentially disproportionate to offenses, need to protect animals or the community. Reliance on court discretion for imposing post-conviction measures is entirely different from reliance on enforcement personnel to impose them. A local news account had reported a delay in your Council’s usual adoption process so that local residents might respond to this; reportedly, none did. Understandably, no one wants to think of themselves as “irresponsible,” but this amendment uses a pejorative term in a way that invites abusive, discriminatory enforcement with results disproportionate to even infraction offenses for which actual convictions are not expressly required.

We suggest that you remove from the San Marcos ordinance, the entire “Irresponsible Owner” definition, designation and related provisions.

Very truly yours,



SHARON A. COLEMAN  
President, The Animal Council

Cc: Dr. Harriet Seldin  
The Cat Fanciers’ Association  
The American Kennel Club