THE CITY OF ASHEVILLE

Staff Report

Council Meeting Date: February 14, 2023

Subject: Ordinance Amendment to Sec. 3, Art. I, Ch. 3 of the Asheville City Code (Re: Wildlife Feeding)

Staff Resource(s): Brad Branham, City Attorney

Action Requested: Adoption of an ordinance amendment to Sec. 3, Art. I, Ch. 3 of the Asheville City Code to enhance regulations concerning human interaction with wild animals to increase the safety of each.

Background:

- The North Carolina Wildlife Resources Commission has identified a significant escalation in human-bear interaction in Asheville and Buncombe County.
- This includes increasing reports of purposeful feeding of wildlife, including bears.
- Increased feeding, and similar attractants, create a dangerous, and potentially deadly, environment for both wildlife and humans
- As part of its education and outreach strategy to address this growing problem, the NC Wildlife Resources Commission recommends that the City strengthen its existing ordinance related to wildlife feeding.
- The proposed amendment includes the following updates:
    - Reducing the time frame for correcting violations from 60 to 14 days,
    - Expanding the definition of prohibited activity to include actions that would ATTRACT wild animals which would create a danger to the public or the wildlife,
    - Defining dangerous activities as those that may result in injury or death and increased disease transmission for humans and wildlife,
    - Expanding the enforcement authority to additional members of City staff as appropriate.
- Penalties for non-compliance remain unchanged (non-criminal civil penalty).
- Fines shall be $50 for the first offense, $100 for the second offense, and $150 for the third offense.

Council Goal(s):

- Neighborhood Resilience, Reimagining Public Safety

Committee(s):

- Environment and Safety - January 24, 2023 - 2-0 to move forward to City Council

Pro(s):

- Expands regulation of actions that contribute to the attraction and feeding of wildlife, including bears; and improves enforcement processes to provide better protection to the public and wildlife.

Con(s):

- None.

Fiscal Impact:

- None.

Suggested Motion:

- Motion to adopt an ordinance amendment to Sec. 3, Art. I, Ch. 3 of the Asheville City Code to expand and clarify the regulation of activities that attract bears and other wildlife, and improve enforcement processes to better address and correct violations.

Attachment(s)

- Ordinance

ORDINANCE NO. _____

ORDINANCE TO AMEND SEC. 3, ART. I, CH. 3 OF THE ASHEVILLE CITY CODE TO ENHANCE REGULATION CONCERNING HUMAN INTERACTION WITH WILD ANIMALS TO INCREASE THE SAFETY OF EACH

WHEREAS,the North Carolina Wildlife Resources Commission has identified a significant escalation in human-bear interaction in Asheville and Buncombe County, and

WHEREAS, these encounters appear to be directly linked, in part, to increasing purposeful feeding of wildlife, including bears, and

WHEREAS, feeding wildlife, and similar attractants, creates a dangerous, and potentially deadly, environment for both wildlife and humans, and

WHEREAS, as part of its education and outreach strategy to address this growing problem, the North Carolina Wildlife Resources Commission recommends that the City strengthen its existing ordinance related to wildlife feeding;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Sections 3-7 and 3-9 of Chapter 3 of the Code of Ordinances be and are hereby deleted in their entirety and substituted with the following:

Sec. 3-7 Powers and Limitations of Animal Control Officers

The powers and limitations of animal control officers shall be:

(a) To carry out the responsibilities of section 3-6, the animal control officer shall have the power to:

(1) Take up and deliver any animal at large in violation of this chapter to the animal shelter.

(2) Issue all appropriate permits, citations and notices required for the enforcement of this chapter.

(3) Recommend that an animal be declared a potentially dangerous animal if the animal control officer determines that the animal so qualifies as that term is defined in this chapter. Upon a declaration of a potentially dangerous animal by the animal control administrator, the animal control administrator shall notify the owner of the animal in writing, giving the reasons for the declaration. The owner may appeal the declaration of the animal control administrator by filing written objections with the animal control appeal board as set forth in this chapter.

(4) Organize and carry out canvasses of the city, including homes and any businesses utilizing security dogs; and, ensuring that the provisions of this chapter and state law related to animal control are adhered to.

(5) Investigate complaints of city residents with regard to animals.

(6) Protect animals from neglect or abuse.

(7) Enforce state law with regard to an owner's failure to obtain proper vaccination of dogs and cats against rabies.

(8) Investigate all reported animal bites or other exposures to suspected rabid animals, and submit reports to the Buncombe County Health Director.

(9) Issue orders or warnings, in the sole discretion of the animal control officer, regarding the presence of bears or other wild animals in an area, and directing residents in the area to remove or secure attractants within 14 days.

(i) Failure to comply with an order issued pursuant to this ordinance shall result in the issuance of a civil penalty as set forth in appendix B of this Code.

(ii) This provision may be enforced within the corporate boundaries of the city of Asheville

(10) The animal control officer shall have no duties or responsibilities with respect to organizing and carrying out rabies vaccination clinics.

(b) The authority of the animal control administrator to enforce the provisions of this chapter relating to dangerous dogs does not apply to:

(1) A dog being used by a law enforcement officer to carry out the law enforcement officer's official duties;

(2) A dog being used in a lawful hunt.

(3) A dog where the injury or damage inflicted by the dog was sustained by a domesticated animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domesticated animal appropriate to the work of the dog.

(4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort; was tormenting, abusing or assaulting the dog; had tormented, abused or assaulted the dog; or was committing or attempting to commit a crime.

Sec. 3-9. Public nuisance.

(a) The keeping of any animal in such a manner or in such numbers as to constitute a public nuisance is hereby prohibited. For the purposes of this section, a public nuisance shall include, but not be limited to, the following:

(1) The keeping of any animal which by continued or repeated howling, yelping, barking or otherwise, causes loud noises which would disturb the quiet, comfort or repose of a reasonably prudent person on adjoining property;

(2) The keeping of any animal which habitually is at large;

(3) The keeping of a cage or pen constructed and used for the purpose of restraining animals within ten feet of the outer limits of the lot upon which the cage or pen is situated; provided, however, this setback requirement shall not be applicable where the placing of the cage or pen within the ten-foot area does not result in locating the cage or pen within 50 feet of the nearest household occupied by persons other than the owner or keeper of the cage or pen. This subsection shall not apply to the fencing of all or a major portion of a lot;

(4) Allowing or permitting an animal to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers, or damaging gardens, flowers, or vegetables, or defecating upon the property of another;

(5) Maintaining animals in an unsanitary environment which results in unsightly or offensive animal waste, litter, or odor which would disturb a reasonable person on adjoining property;

(6) The keeping, possession, harboring, feeding, or attracting of animals; wild, feral or domesticated, which threaten the public health, safety and welfare of the community in a manner including, but not limited to, attracting the presence of bears or wild animals that creates a danger to humans, wildlife, or domestic animals, or causes damage to other properties; provided, that nothing herein shall be construed to prohibit keeping or maintaining a bird feeder, or from feeding birds, unless said activity constitutes an attractant and its cessation is ordered by the animal control officer, police officer, or pursuant to this chapter.

(i) For the purpose of this section, danger shall mean the potential for human injury or death, the potential for increased risk of disease transmission between animal species and humans, or the Increased potential for death or injury to the bears, livestock or companion animals.

(7) Maintaining an animal that habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, joggers, animals walked on a leash, bicycles or other vehicles;

(8) Failing to confine a female dog while in heat in a secure enclosure in such a manner that she will not be in contact with another dog, or attract other animals.

(9) Except as otherwise provided in section 3-10, the keeping of seven or more animals per household or lot, regardless of lot size and regardless of whether any of the provisions of this section are violated. This subsection shall not apply to offspring under the age of 16 weeks and to animals kept by a kennel or pet shop licensed in accordance with state and local law and to animals kept by a kennel, pet shop or other facility licensed or registered by the department of agriculture or the veterinary medical board.

(10) The tethering of any animal to public property or in a public right-of-way.

(11) After having received a warning or order from an animal control officer, other City staff, to remove the attractant, knowingly or willfully keeping or storing attractants in a manner contrary to the warning or order.

(b) Any violation of this section shall be deemed a non-criminal violation for which a civil penalty, as set forth in appendix B of this Code, may be assessed.

2. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, duty in conflict with any existing federal or state law.

3. Should any provision of this Ordinance be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Ordinance, and such action shall not affect the enforceability of the remaining provisions of the Ordinance.

4. The provisions of this Ordinance shall go into effect on February 14, 2023.

Read, approved, and adopted this 14th day of February, 2023.

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City Clerk Mayor

Approved as to form:

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City Attorney