

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 6, 2005
SUBJECT: Animal Ordinance Amendment
ATTACHMENTS: Yes

SUMMARY OF REQUEST:

At the Board of Commissioner's meeting of August 1, 2005, the Board approved the first reading of several amendments to the Animal Ordinance concerning exotic animals. The purpose of this agenda item is for the Board to consider the adoption of these amendments through a second reading.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUIRED:

The Board may adopt these amendments by a majority vote at this their second reading. I will mention to the Board that staff has reviewed this ordinance and believe that there should be a few clarifications to the definition section. Should the Board wish to adopt the amendments that are currently being considered, we will propose some additional amendments at a later date.

Sec. 66A . Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Wild and exotic animals:

(1) *Wild animals dangerous to humans and property.* Wild animals are any animals not normally domesticated. For purposes of this chapter, wild animals are deemed inherently dangerous. They are deemed as such because of their vicious propensities and capabilities, the likely gravity of harm inflicted by their attack and unpredictability despite attempts at domestication. The category of wild animals includes but is not limited to:

- a. Members of the Canidae family such as wolves, coyotes, and hybrids of those breeds.
- b. Members of the Ursidae family which includes any member of the bear family or hybrids thereof.
- c. Members of the Felidae family such as wild cats, cougars, mountain lions, or panthers.

(2) *Exotic animals dangerous to humans and property.* Exotic animals are also considered to be inherently dangerous for purposes of this chapter. Like wild animals, exotic animals are dangerous because of their vicious propensities and capabilities, the gravity of harm inflicted by their attack, and unpredictability despite attempts at domestication. The category of exotic animals includes, but is not limited to:

- a. Reptiles which are poisonous, constricting reptiles more than eight (8) feet in length or any monitor lizards over four (4) feet in length.
- b. Nonhuman primates weighing greater than twenty-five (25) pounds.
- c. Members of the feline family other than domestic house cats, including, but not limited to lions, tigers and leopards.
- d. Reptiles which are members of the crocodile family, including, but not limited to alligators and crocodiles.

Wild and exotic animals do not include:

- (1) Small animals such as guinea pigs, hamsters, ferrets, hedgehogs and chinchillas.
- (2) Members of the reptile and amphibian family not specifically mentioned above such as small lizards and iguanas, salamanders, turtles and frogs.
- (3) Vietnamese pot bellied pigs, and other members of the Suidae family, except wild boar and peccary.
- (4) Horses and other members of the Equidae family.
- (5) Cows and other members of the Bovidae family.
- (6) Deer and other members of the Cervidae family.
- (7) Domestic dogs and cats.

These animals do not have dangerous propensities and pose no serious threat to the safety of persons and property within Henderson County.

Cross references: Definitions and rules of construction generally, § 1-3.

State law references: Handling of poisonous reptiles, G.S. § 14-416 et seq.; definitions relating to civil remedy for protection of animals, G.S. § 19A-1; definitions relating to the Animal Welfare Act, G.S. § 19A-23; definitions relating to veterinarians, G.S. § 90-181; local health director, G.S. §§ 130A-40, 130A-41; definitions relating to rabies, G.S. § 130A-184; animal shelters, G.S. § 153A-442.

ARTICLE XI. EXOTIC ANIMALS

Sec. 66A-. Exemptions.

The following persons, organizations and institutions shall be exempt from the provisions of this article:

(1) Any nonprofit institution, which owns or harbors exotic animals for research or educational purposes, provided that such institution is licensed by the U.S. Department of Agriculture.

Sec. 66A-. Permit requirements.

Every owner of an exotic animal, as defined in this chapter, shall be subject to the following regulations:

(1) *Permit required.* No owner may keep an exotic animal within the territorial boundaries of the county for more than five days without first obtaining and then maintaining all permits required by the federal government, the state and the county animal services department.

(2) *Application.* An owner of an exotic animal must complete an application, which may be obtained from the animal services division. The application, once completed, shall contain the following information:

- a. Name, address and telephone number of the applicant.
- b. If a corporation, the state of incorporation, the address of the principal office and the names and addresses of its officers.
- c. If other than a cooperation, the name thereof, the location of its office(s) and the names and addresses of its principal officers, directors, trustees or managing officials or partners.
- d. Statement of the applicant/owner's purpose in keeping the animal.
- e. The place of origin of the animal or class of animal.
- f. A description of the animal, including species and a picture.
- g. The address of the premises where the animal will be kept.
- h. A description of the method, materials and square footage of facilities for confinement of the animal and photos.
- i. Proof of applicant's ability to respond in damages for bodily injury or death of any person or for damages to property owned by another person which may result from the ownership, keeping, or maintenance of such animal.
- j. Copies of all federal and state permits and licenses required for the animal.
- k. A schedule of personnel who will service and maintain the enclosure or confinement facility.

- l. A listing or the applicant's training and experience with animals, especially the species stated on the application.
 - m. A copy of all health and vaccination records appropriate for such animal.
 - n. Any other information the animal services director deems necessary.
- (3) *Inspection and issuance of permit.* Upon completion of the application, the animal services director, or his designee, shall inspect the enclosure or confinement facility to determine whether or not it is adequate for the purposes of restraining and confining the particular species of animal for which the permit is requested and meets or exceeds the confinement requirements set forth in section 66A-. The animal services director shall also determine whether or not the enclosure or confinement facility can be maintained in a sanitary manner and whether the enclosure or confinement facility is designed to prevent injury to the animal and other persons who may come onto the property where the enclosure or confinement facility is located. It shall be a condition of the permit that the animal services director or his/her designee shall be permitted to inspect the enclosure or confinement facility and the animal at any time. Inspections shall be conducted at least annually.
 - (4) *Permit period.* The permit period shall begin with the fiscal year (July 1) of each year and shall run for a period of one year. Renewal applications for permits shall be made 30 days prior to the start of the fiscal year. An application for a new permit may be filed at any time during the year.
 - (5) *Permit fee.* The permit fee shall be \$75.00 per animal. This fee may be changed by the board of commissioners from time to time. The fee shall be for the fiscal year or part thereof. The permit fee shall be collected by the animal services director.
 - (6) *Special Use Permit.* A special use permit must be issued if more than 7 exotic or wild animals (same or different species) are to reside at the same residence. A request for such permit may be given to the animal services director and must be approved through the animal services committee before a special use permit may be issued.
 - (7) *Transfer of permits.* Permits issued under this article are not transferable.
 - (8) *Posting of permit.* The owner of an exotic animal shall display the permit in a prominent place on or near the enclosure or confinement facility.
 - (9) *Failure to obtain permit.* Failure to obtain a permit before possessing or owning an exotic animal in the county will subject the owner to the sanctions, penalties, fines or remedies set forth in section 66A-.
 - (10) *Failure to timely renew permit.* Failure to renew a permit by July 1 shall subject the owner of an exotic animal to the sanctions, penalties, fines or remedies set forth in section 66A-.
 - (11) *Denial of permit.* The animal services director shall have the authority to deny a permit for violation of this article pursuant to the grounds and procedures set forth in section 66A-.
 - (12) *Revocation of permit.* The animal services director shall have the authority to revoke a permit for violation of this article pursuant to the grounds and procedures set forth in section 66A-.
 - (13) *Reinstatement of permit, reinstatement fee.* The animal services director shall reinstate a revoked permit after the owner complies with this article and pays a reinstatement fee of two times the original permit fee required in subsection (5) above.

(14) *Failure to notify change of address.* Failure to notify animal services prior to moving the animal from its current location shall subject the owner of an exotic animal to the sanctions, penalties, fines or remedies set forth in section 66A-.

Sec. 66A-. Grounds for denial or revocation of a permit.

The animal services director may refuse to issue, or renew and may revoke a permit to keep, harbor or possess an exotic animal in this county, if an investigation reveals that one or more of the following conditions exist:

- (1) *Misstatement.* A material misstatement in the initial application or renewal application which was made to induce the animal services director to issue or renew a permit.
- (2) *Violation.* Violation of any provision of this article.
- (3) *Nonpayment of fees.* Failure to pay fees or penalties required by this article.
- (4) *Failure to maintain license.* Failure to obtain or maintain all federal or state licenses or permits concerning the ownership, keeping, harboring or possession of an exotic animal.
- (5) *Misrepresentation.* Substantial misrepresentation or false promises to the animal services division in connection with owning, keeping, harboring or possessing an exotic animal.
- (6) *Inspections.* Failure or refusal to allow inspection of the enclosure or confinement facility or the exotic animal.
- (7) *Failure to confine or restrain.* Failure or refusal to confine or restrain an exotic animal.
- (8) *Failure to give notice of escape.* Failure or refusal of the owner to immediately notify the animal services division of the escape of an exotic animal.
- (9) *Federal or state regulations.* Federal or state regulations issued from time to time to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one state or possession into any other state or possession.
- (10) *Failure to notify change of address.* Failure to notify animal services prior to moving the animal from its current location shall subject the owner of an exotic animal to the sanctions, penalties, fines or remedies set forth in section 66A-.

Sec. 66A-. Confinement requirements.

The secure confinement requirements for each exotic animal may vary depending on the species of animal. Confinement requirements for exotic animals shall designated by the animal services director taking into consideration the following:

- (1) The species,
- (2) Its adult height and weight,
- (3) The animal's natural habits and known tendencies,
- (4) Mode of life and natural instinct,
- (5) Area requirements for the animal to comfortable stand lay down and exercise,

- (6) Enclosure material necessary to securely confine the animal as well as prevent injury to the animal and other persons or animals that may come onto the property where the enclosure or confinement facility is located.
- (7) Type and amount of shelter necessary to keep the animal dry, cool or warm as may be necessary in the local climate,
- (8) Sanitary and care requirements,
- (9) Maintenance requirements,
- (10) The number of animals to be contained in the enclosure, and
- (11) The needs of the animal in their natural habitat.

Sec. 66A-. Sanctions, penalties, fines, remedies.

When it is determined by the animal services director that grounds for denial or revocation of a permit exist pursuant to section 66A- or that this article has otherwise been violated the animal services director may impose or initiate one or more of the following:

(1) *Notice of violation.* Upon determining that there is probable cause to believe that this article has been violated, the animal services director shall issue a written notice of violation. The notice shall state specifically which section of this article has been violated, the date of violation, the date of issuance of the notice of violation, the name and position of the person issuing the notice of violation, what acts are necessary to correct the violation and the deadline of not more than five working days from the date of service of the notice of violation for compliance. If the owner remedies the violation within the deadline, the animal services director shall send or deliver written notice of rescission of the notice of violation.

(2) *Violation and civil penalty.* **The animal services director may issue a written violation and civil penalty if the owner refuses or fails to comply with the notice of violation issued pursuant to subsection (1) above or if the owner has violated this article on more than two occasions. Each notice of violation, whether rescinded or not, shall count as a violation. The violation shall state that the owner failed or refused to comply with the written notice of violation and/or the owner has violated this article on more than two occasions. The violation shall also state that the owner shall pay a civil penalty of \$100.00 for the first day of the violation and an additional \$25.00 per day for each day the violation continues to exist. It shall be the responsibility of the owner to notify the animal services division that the violation has been corrected so that the animal services director can confirm the same. Confirmation may be made by inspection, investigation or any other method deemed necessary by the animal services director. If possible confirmation shall be made on the same day that the animal services division is notified by the owner that the violation has been corrected. In any event, confirmation shall be made no later than the next business day. If the animal services director finds that the violation has been corrected, he shall send written notification of the same to the owner. This notice of confirmation shall also state the amount of any civil penalty due. If the animal services director finds that the violation still exists or has not been fully corrected, he shall give written notice of the same to the owner. Any penalty assessed pursuant to this subsection shall be paid by the owner within 72 hours of**

receipt of the notice stating the total amount due. If the penalty is not paid within 72 hours the animal services director shall initiate a civil action in the nature of the collection of a debt. All notices under this subsection shall be served and return of service made pursuant to section 66A-.

(3) *Criminal summons.* The animal services director, in lieu of a subsection (2) above, may cause a criminal summons or warrant to be issued and served upon the owner of an exotic animal for violating any provisions of this article, but only after written notice pursuant to subsection (1) above has been given and the owner has failed or refused to comply with this article.

(4) *Denial of permit.* The animal services director shall deny the issuance or renewal of a permit if it is determined that any of the grounds stated in section 66A- exist. If the issuance or renewal of a permit is denied, the animal services director shall serve or deliver a written notice of denial to the owner pursuant to section 66A-. The notice shall state specifically why the permit is being denied and what has to be done before the permit can be issued or renewed.

(5) *Revocation of permit in emergency situation.*

a. If it is determined by the animal services director that the safety of any person or property is in immediate danger from the exotic animal, he may, in lieu of subsections (1), (2), and (3) above, revoke the permit without notice to the owner and take all necessary steps to secure the cage, pen or enclosure to prevent escape by the animal or he may immediately seize the animal for impoundment at the county's animal shelter or at some other appropriate facility. The costs of securing the cage, pen or enclosure shall be charged to the owner and if not paid the county shall initiate the filing of a civil action to collect the same.

b. If the animal services director revokes the permit without notice he shall serve the owner with written notice of the revocation within 24 hours of the revocation. The notice shall state the reason for the revocation, the steps to be taken by the animal services director to secure the cage, pen or enclosure and if the animal was seized and impounded, the time of seizure, location of the animal and what steps are necessary to redeem the animal.

c. If the animal is seized it may be impounded until the animal services director is satisfied that the animal can be securely confined on the owner's premises. The owner may redeem the animal by paying all charges, impoundment fees, by correcting the violation and by paying a permit reinstatement fee of two times the original fee. All things necessary to redeem the exotic animal must be accomplished by a date set by the animal services director. In no event shall the owner have less than five working days to redeem the animal. If the owner wishes to request a review of the seizure of the animal or reptile, the owner must file a written request for appeal pursuant to section 66A-12.

(6) *Revocation of permit in nonemergency situations.* The animal services director, in lieu of subsections (2) and (3) above, may revoke a permit in a nonemergency situation if it is determined that any of the grounds stated in section 66A- exist. He must first serve the owner with a written notice of intent to revoke the permit. The owner will then have five working days from receipt of the notice to comply with this article. If the owner fails to comply, the animal services director shall serve the owner with a written notice of revocation. The notice of revocation shall inform the owner of the reason for the revocation and inform the owner that if the violation is not corrected within three

working days from receipt of the notice of revocation, the animal services director may take all necessary steps to correct the violation which may include seizing and impounding the animal. If the animal is seized and impounded, the owner may redeem the animal or reptile by paying all charges, impoundment fees, by correcting the violation and by paying a permit reinstatement fee of two times the original fee. All things necessary to redeem the exotic animal must be accomplished by a date set by the animal services director. In no event shall the owner have less than five working days to redeem the animal or reptile. If the owner wishes to request a review of the seizure of the animal or reptile, the owner must file a written request for appeal pursuant to section 66A-. If an owner fails to redeem the animal by the date set by the animal services director, or fails to timely appeal the seizure, the animal or reptile shall become the property of the county.

(7) *Order of abatement and injunctive relief.* The county, in lieu of or in addition to subsections (1), (2), (3), (4), (5), and (6) may initiate the filing of a civil action for abatement and injunctive relief to restrain the violation or threatened violation of the article. An action instituted under this subsection shall not relieve an owner from any civil or criminal liability proscribed hereinabove, for violating this article.

(8) *Escape of an exotic animal.*

a. If an exotic animal escapes from its cage, pen or enclosure it may be tranquilized by an animal services officer with or without prior notice to the owner, but only after unsuccessful attempts to catch it and after authorization from the animal services director. If an animal services officer does tranquilize such an animal, he shall make a good faith attempt to notify the owner as soon as possible.

b. If an exotic animal escapes and is determined by an animal services officer to pose an immediate danger to the health and safety of any person or property, the animal may be humanely destroyed at the animal services officer's discretion, with or without prior notice to the owner. If the animal services officer does destroy such an animal, he shall make a good faith attempt to notify the owner of the incident.

c. If an exotic animal is seized and impounded by the animal services director after an escape, the owner shall be subject to the same sanction and penalties described in subsection (5) above.

d. If the exotic animal has caused injury to a person or another animal while at large, the animal services director shall, in addition to seizing the animal, issue to the owner a notice of intent to destroy the animal. The owner may appeal this intended action by filing a written request for appeal pursuant to section 66A-. If an owner fails to timely appeal the notice of intent to destroy the animal services director shall humanely destroy the animal.

(9) *Seizure of unpermitted exotic animals.* Animal services may seize any exotic animal if the owner does not have a required federal, state or county permit. Animal services may confine the animal until all requirements of this article have been met. The costs of confinement shall be charged to the owner.

(10) *Cost of recapturing.* The owner of any exotic animal shall reimburse the county for any overtime hours or special costs or expenses incurred by county employees while in the course of or as a result of attempts to recapture an escaped animal.

(11) Nothing herein shall have the effect of permitting any activity or condition with respect to an animal that is prohibited or more severely restricted by regulations of the North Carolina Wildlife Resources Commission.