STAFF REPORT
CITY COUNCIL OR STUDY SESSION AGENDA

DATE: July 15, 2010 **AGENDA ITEM:** D4, #11

STUDY SESSION DATE: NA **MEETING DATE:** August 2, 2010

- **TITLE OF ITEM:** Ordinance Mandating Spay and Neutering Programs for Specific Dog Breeds
- **Brief Description:** This ordinance would require owners of pure bred and mixed breed Pit Bulls and Chihuahuas to have their pets spayed or neutered except for those animals which receive a permit for breeding.
- **Recommendation:** To impose these restrictions the Council must introduce this ordinance at the August 2 meeting for adoption on August 16.

SUMMARY: This report supplements the previous staff report received by the Council at its May 3, 2010 meeting. That report documented the need for a breed specific ordinance mandating spay and neutering to (1) reduce the risk of dog bites and dog attacks resulting in time consuming procedures to control dangerous dogs and (2) reduce the number of unadoptable stray dogs that must be euthanized. At the May 3 meeting Council directed the City Attorney to draft an ordinance that would require owners to spay or neuter pure bred and mixed breed Pit Bulls and Chihuahuas, with some exceptions. The ordinance refers to these two breeds as "Restricted Dogs."

The proposed ordinance is modeled after similar ordinances in other communities such as San Francisco, Lancaster, and Gilroy and is consistent with California Food and Agriculture Code Sections 31683 and 122331 allowing local agencies to adopt breed specific mandatory spaying and neutering programs.

Section 1 "Findings" includes much of the statistical information contained in the May 3 staff report about the affect of a dog being unaltered on the potential for bites and attacks and the impacts of these two breeds on Animal Control's limited resources. Section 2 creates Chapter 6.20 of the Municipal Code entitled "Mandatory Spay and Neuter Program." The ordinance provides for exceptions to the mandate to spay/neuter a Restricted Dog, specifically, (1) dogs under five months of age; (2) if neutering would create a high likelihood of serious bodily harm or death; (3) the dog has an unaltered restricted dog license; (4) the dog's breed is under appeal; (5) the owner has had the dog 30 days or less; (6) the dog is a show dog.

To obtain an unaltered restricted dog license, the owner must show that the dog has participated in at least one approved dog show during the previous year or proof

that the dog will be participating in an approved dog show; that the dog has been evaluated as a suitable candidate for the license for factors such as dog's lineage, temperament, and health; and that the owner has suitable space in which to raise the puppies. The ordinance limits licensed restricted dogs to one litter per 12 month period.

The ordinance provides a process for appeal of denial or revocation of an unaltered restricted dog license, and regulates the sale or transfer of unaltered restricted dogs.

Penalties for violation of the ordinance include criminal prosecution (infraction for first and second violations; misdemeanor charge for the third); impoundment and mandated spaying or neutering; recovery of cost for impoundment; and confiscation of puppies.

Staff in the Police Department and City Attorney's Office support the adoption of this ordinance as a tool to reduce uncontrolled or irresponsible breeding practices in Hollister that have had a significant impact on the city's public health and safety and the available City staff resources.

DEPARTMENT: City Attorney, Stephanie Atigh 636-4306

Police Department, Chief Jeff Miller 636-4330

This report was reviewed by the City Manager who concurs with the staff's recommendation : _____

Clint G. Quilter, City Manager

ORDINANCE NO. 1064

AN ORDINANCE OF THE CITY OF HOLLISTER ADDING CHAPTER 6.20 "MANDATORY SPAY AND NEUTER PROGRAM" TO THE HOLLISTER MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF HOLLISTER HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Findings.

The City Council adopts Chapter 6.20 based upon the following findings:

(a) The Legislature of the State of California approved of breed specific mandatory spaying and neutering by adopting Senate Bill 861 (SB 861), codified at California Food and Agricultural Code Section 31683 and California Health and Safety Code Section 122331.

(b) The intent of SB 861 was to enable local governments to pass ordinances restricting the breeding of specific dog breeds by mandating the spaying and neutering of specific dog breeds.

(c) It is the City Council's intention that nothing in this Chapter shall be deemed to conflict with state law as contained in the California Food and Agricultural Code and California Health and Safety Code.

(d) It is the City Council's intention that nothing in this Chapter shall be construed to prevent dog owners in compliance with this section from maintaining intact breeds.

(e) Pit bull breed and mixes and Chihuahua breed and mixes constitute a majority of unadopted dogs held in the Hollister Animal Shelter. In 2009 65 Chihuahuas and mixes and 120 pit bull and mixes were euthanized after the maximum holding time for adoptions had expired.

(f) In 2009 Hollister Animal Control provided intake services to 768 dogs within the city limits. Of those dogs requiring the services of Hollister Animal Control, pit bull breed and pit bull mixes constituted 18% (141) and Chihuahuas and Chihuahua mixes accounted for 23% (176).

(g) In addition, in 2008 and 2009 pit bull breed and mixes constituted 91% of dogs determined to be dangerous in the City of Hollister pursuant to Chapter 6.13 of the Hollister Municipal Code.

(h) Unaltered dogs are more likely to bite humans and other animals than altered dogs. The dog at greatest risk for biting is an unaltered male between the ages of 18 and 36 months that is running loose or is tied up, followed by unaltered females. National statistics show that 90% of human fatalities from dog bites were caused by unaltered dogs. Over 70% of the

victims of dog bites are children, and 25% of all homeowner insurance claims involve dog bites.

(i) To protect the public health, safety and welfare, it is the desire of the City Council to modify the Hollister Municipal Code consistent with SB 861, regarding the mandatory spaying and neutering of pit bull and Chihuahua breeds and the permissive maintenance and breeding of intact pit bull and Chihuahua breeds.

(j) Restricting the maintenance and breeding of intact pit bulls and Chihuahua and requiring the spaying and neutering of pit bull and Chihuahua breeds will not prevent responsible pet owners and pet breeders from owning, breeding, or showing pit bull or Chihuahua breeds.

SECTION 2. **Chapter 6.20 added.** Chapter 6.20 of the Hollister Municipal Code entitled "Mandatory Spay and Neuter Program" is hereby added to read as follows:

Chapter 6.20 Mandatory Spay and Neuter Program (California Health and Safety section 122331)

Section 6.20.005 Purpose and intent.

(a) It is the purpose and intent of this Chapter to require the mandatory spaying and neutering of all restricted dogs, as defined in Section 6.20.020, whose owners have not obtained a permit to maintain an intact restricted dog.

(b) It is the purpose and intent of this Chapter to establish a permit system allowing responsible owners to maintain an intact restricted dog and to breed restricted dogs.

Section 6.20.010 Definitions.

A. Except as otherwise provided by this section, the definitions applicable to the City's animal control regulations contained in Chapter 6.13 apply to this chapter as well.

B. As used in this chapter, the following words and phrases have the following meanings:

"Animal Control" means the department of the City that is responsible for the regulations specified in Title 6 of the Hollister Municipal Code.

"Chihuahua" includes any dog that is a Smooth Coat Chihuahua, Long Coat Chihuahua or any dog that exhibits physical traits of any one or more of the above breeds or any dog exhibiting those distinguishing characteristics which conform to the standards established by the American Kennel Club ("AKC"), United Kennel Club ("UKC"), or American Dog Breeders Association ("ADBA") for any of the above breeds.

These standards are listed on the clubs' websites, as well as online through the City of Hollister's Animal Control website.

"City" means the City of Hollister.

"Department" means Animal Control of the City of Hollister.

"Dog Registry" means the American Kennel Club ("AKC"), United Kennel Club ("UKC"), or American Dog Breeders Association ("ADBA").

"Dog Show" means an event that is sanctioned in writing by a Dog Registry.

"Pit bull" includes any dog that is a Bull Terrier, Miniature Bull Terrier, American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog that exhibits physical traits of any one or more of the above breeds or any dog exhibiting those distinguishing characteristics which conform to the standards established by the American Kennel Club ("AKC"), United Kennel Club ("UKC"), or American Dog Breeders Association ("ADBA") for any of the above breeds. These standards are listed on the clubs' websites, as well as online through the City of Hollister's Animal Control website.

"Puppy" means a dog under the age of five (5) months.

"Unaltered" means an animal that has not been spayed or neutered.

Section 6.20.020 Mandatory spaying, neutering of restricted dogs.

A. The following breeds of dogs are "restricted dogs," and are subject to the mandatory spay, neutering, and unaltered dog license requirements of this chapter:

1. Chihuahuas, as defined in Section 6.20.010; and

2. Pit Bulls, as defined in Section 6.20.010.

B. No person may own, keep, or harbor a restricted dog in violation of this section. An owner or custodian of an unaltered restricted dog must have the dog spayed or neutered or submit written proof to the department that one of the following exceptions applies:

1. The restricted dog is less than five (5) months of age;

2. The restricted dog cannot be spayed or neutered without a high likelihood of suffering serious bodily harm or death due to a physical abnormality, which has been confirmed in writing by a licensed veterinarian. If

applicable, the writing must also state the date by which the dog may be safely spayed or neutered;

3. The owner or custodian has obtained, or has submitted a complete application for, a license for an unaltered restricted dog pursuant to Section 6.20.030;

4. The determination of the dog's breed is under appeal pursuant to Section 6.20.020;

5. The owner or custodian has owned or taken possession of the restricted dog within the past thirty (30) days;

6. The restricted dog is a show dog. Within 30 days of the operative date of this ordinance, or within 30 days of taking possession or ownership of an unaltered restricted dog, the owner, guardian or keeper must submit a copy of the Dog Registry papers to the City's Animal Control demonstrating the pedigree information and show dog registration and that the dog conforms with the same breeding license guidelines set forth in this chapter.

C. Determination of Breed and Appeal.

1. Determination. The Department will make a breed determination upon request, or upon contact with, or impoundment of a dog believed to be an unaltered restricted dog. The determination shall be made by the Animal Control Supervisor in accordance with Animal Control's breed determination checklist.

2. Appeal. The dog owner or custodian may appeal a breed determination by filing a written request for appeal with the Department within ten (10) days after notice of the determination is mailed to the owner or custodian. The determination of breed by Animal Control is deemed final if a timely appeal is not received by the Department. The hearing on the appeal shall be held within thirty (30) days after the Department's receipt of the request for appeal. The Department shall mail written notification to the owner or custodian of the date, time, and place of the hearing, at least ten (10) days prior to the hearing date. Failure of the owner or custodian or agent to appear at the hearing will result in forfeiture of the right to a hearing. The hearing shall be conducted by a hearing officer designated by the Department.

3. Hearing. The hearing will be informal and the rules of evidence will not be strictly observed. The determination of the hearing officer shall be the final administrative decision.

4. Notice of determination following hearing. The Department shall mail written notification of the determination to the owner or custodian of the dog within ten (10) days after the hearing.

5. Confirmation of compliance with Section 6.20.020. The owner or custodian of an unaltered restricted dog shall comply with Section 6.20.020 within fifteen (15) days after receipt of notice of determination that the unaltered dog is subject to Section 6.20.020, by submitting written documentation confirming compliance with that section. If the dog has been moved to another location before such written confirmation is required, the owner or custodian shall provide the Department with information as to the dog's whereabouts, including current owner or custodian's name, address, and telephone number.

Section 6.20.030 Unaltered restricted dog license - Requirements.

A. An owner or custodian of an unaltered restricted dog must obtain a non-transferable license for the dog, or otherwise show compliance with Section 6.20.020. The license shall last for one year and shall be issued upon a finding by the Department that all of the following conditions are met:

1. The owner or custodian has submitted the required application form and has paid the fee required by the Department.

2. The restricted dog has participated in at least one approved dog show during the previous 365 day period or the owner or custodian has given written notice to a Dog Registry stating his/her intention that the restricted dog will participate in an approved dog show. A dog show is defined as an event that is sanctioned in writing by a Dog Registry.

3. The Department has evaluated the dog and made a finding that the restricted dog is a suitable candidate for an unaltered restricted license.

a. Factors to be considered in the evaluation include, but are not limited to, consideration of the dog's lineage, age, temperament, and health.
b. The owner or custodian of the restricted dog shall provide written confirmation that the following health screening tests have been conducted at the age recommended by the veterinary profession as to each test: Orthopedic Foundation for Animals ("OFA") or University of Pennsylvania Hip Improvement Program (PennHIP) certification on hips;

OFA certification on heart by a certified cardiologist; and a passing score on either the American Temperament Testing Society's temperament test, the AKC's Canine Good Citizen Test, or other temperament test approved by the Department.

c. The owner or custodian has a space in which to breed the restricted dog and raise the puppies that satisfies the Department's requirement that the animals will be provided safe, sanitary, and humane conditions, appropriate for breeding a restricted dog and further satisfies all applicable provisions of this Title of the Code and all applicable state animal welfare laws.

4. The owner or custodian of the restricted dog shall provide written verification that (i) the restricted dog to be bred is registered for its breed with a Dog Registry; and (ii) that the restricted dog has participated in at least one approved Dog Show during the previous 365 days or that the owner or custodian has given written notice to a Dog Registry of his/her intention for the restricted dog to participate in a Dog Show.

5. Upon approval of the application for unaltered restricted dog license, the owner or custodian must pay the $100 permit fee.

B. Keeping an unaltered restricted male adult dog together with a female dog in heat in the same dog run, pen, room, or any other space where the two dogs are allowed contact with each other that would allow the dogs to breed is considered prima facie evidence of an owner's or custodian's intent to allow the dogs to breed.

C. The owner or custodian of an unaltered female restricted dog shall not allow unaltered female restricted dogs to have more than one (1) litter within a twelve (12) month period.

Section 6.20.040 Denial or revocation of unaltered restricted dog license – Grounds and reapplication.

A. The Department shall automatically deny or revoke an unaltered restricted dog license if one or more of the following occurs:

1. The applicant or licensee is not in compliance with all of the requirements of Section 6.20.030;

2. The Department has received at least one complaint, under penalty of perjury, or otherwise verified to the satisfaction of the Department, that the applicant or licensee has allowed a dog to run loose or escape, or has

otherwise been found to be neglectful of his/her dog or other animals or has had his/her dog identified as a nuisance;

3. The applicant or licensee has been previously cited for a violation of any provision of Title 6 of the Hollister Municipal Code;

4. The unaltered restricted dog has been determined by a court or agency of appropriate jurisdiction, to be a potentially dangerous or dangerous dog, or to be a nuisance within the meaning of the Hollister Municipal Code or under state law;

5. Any unaltered restricted dog license held by the applicant has been revoked;

6. A female unaltered restricted dog has had more than one litter per twelve (12) month period;

7. The license application is discovered to contain a material misrepresentation of fact;

8. The license fee is not paid within two (2) weeks of notification that the application is approved;

9. The owner or custodian has applied for a license within the last ten (10) months.

B. Re-application for unaltered restricted dog license:

1. When an unaltered restricted dog license is denied, the applicant may re-apply for a license for another dog upon a showing that the requirements of Section 6.20.020 have been met. The applicant shall pay the full fee upon re-application.

2. When an unaltered restricted dog license is revoked, the owner or custodian of the dog may apply for a new license for another dog after a thirty-day waiting period upon a showing that the requirements of Section 6.20.030 have been met. No part of an unaltered dog license fee is refundable when a license is revoked.

3. If an unaltered restricted dog license is denied or revoked, the dog which was the subject of the application for the license shall be spayed or neutered within thirty (30) days of the denial or revocation.

C. The Department may on one or more occasions, up to one year after issuing the license, perform an inspection of the restricted dog's living quarters to ensure that the standards required to receive a license are met. The Department will give the owner or custodian a twenty-four (24) hour notice and will conduct such inspection at a reasonable time when the owner or custodian, or representative, is present. The owner, custodian, or representative shall allow the Department access to conduct the inspection. If the property does not meet the required standards, or if the owner or custodian cannot be contacted for an inspection within two (2) weeks of the Department's initial attempt, or if the owner or custodian fails or refuses to allow an inspection, the Department shall not issue a license, or the Department may revoke a previously issued license.

Section 6.20.050 Appeal of denial or revocation of unaltered restricted dog license.

A. Request for hearing.

1. Notice of intent to deny or revoke. The Department shall mail to the owner or custodian written notice of its intent to deny or revoke the license for an unaltered restricted dog, which includes the reason(s) for the denial or revocation. The request for hearing must be made in writing within ten (10) days after the notice of intent to deny or revoke is mailed. Failure to submit a timely written hearing request shall be deemed a waiver of the right to appeal the license denial or revocation.

2. Hearing officer. The hearing shall be conducted by the Department's designee.

3. Notice and conduct of hearing. The Department shall mail a written notice of the date, time, and place for the hearing not less than ten (10) days before the hearing date. The hearing date shall be no more than thirty (30) days after the Department's receipt of the request for a hearing. Failure of the owner or custodian or his/her agent to appear at the hearing will result in forfeiture of the right to a hearing. The hearing will be informal and the rules of evidence will not be strictly observed. The Department shall mail a written decision to the owner or custodian within ten (10) days after the hearing. The decision of the hearing officer shall be the final administrative decision.

4. After a hearing. If the appeal is denied, the Department may fine the owner or custodian an amount not to exceed $500, permanently confiscate any puppies and dispose of them in accordance with Section 6.08.200 of the Hollister Municipal Code, and consider the violation in future permitting decisions, or any combination of the above.

B. Change in location of dog. If the dog is moved after the Department has issued a letter of intent to deny or revoke, but has not yet denied or revoked the license, the owner or custodian must provide the Department with information as to the dog's whereabouts, including the name, address, and telephone number of the current owner or custodian.

Section 6.20.060 Transfer, sale and breeding of unaltered restricted dogs.

A. An owner or custodian residing within the city or conducting a transaction within the city who offers any unaltered restricted dog or puppy for sale, trade, or adoption must include a valid unaltered restricted dog license number with the offer of sale, trade, or adoption, or otherwise state and establish compliance with Section 6.20.020. The license number must also be supplied as part of a written agreement for the transaction to the person acquiring the dog.

B. The owner or custodian of an unaltered restricted dog over the age of five (5) months residing within the city must demonstrate compliance with Section 6.20.020 prior to the transfer of said dog, and must notify the Department of the name and address of the transferee within ten (10) days after the transfer.

C. No person may breed a restricted dog that is less than two years of age.

D. Puppies born to restricted dogs shall not be removed from the litter until they are at least eight (8) weeks of age, are fully weaned, have their first set of vaccinations, have been dewormed, and are in good general health. Said puppies that do not have show dog papers as defined in 6.20.020(B)(6) must be spayed or neutered by the owner or custodian prior to transfer.

E. Breeders and any party that acquires a puppy born to a restricted dog through purchase, trade, or adoption shall enter into a written agreement for the transaction that must include language that the acquiring party shall, at any time during the dog's life, return the puppy to the breeder if the acquiring party cannot keep it, and that breeder shall accept any such returned dog.

F. Within thirty (30) days after a litter is born to a licensed restricted dog, the owner or custodian of the adult female dog shall advise the Department in writing of the number of live puppies. When a puppy under the age of five (5) months is sold or otherwise transferred to another person, the owner or custodian shall advise the Department of the name and address of the new owner or custodian, and the microchip number of the puppy, if applicable, within ten (10) days after the transfer.

G. The Department or a valid 501 (c) (3) animal welfare and rescue organization that seeks adoptive homes for restricted dogs may transfer ownership and place ads

regarding restricted dogs without displaying or supplying a permit number as described herein.

Section 6.20.070 Penalties.

The penalties for violations of any provision of this chapter are as follows:

A. First violation. A first violation may result in the Department impounding the restricted dog in accordance with section 6.20.080. A first violation shall be an infraction punishable by a fine not to exceed $100. If the owner or custodian fails to correct the underlying cause of the violation within thirty (30) days after being notified of the violation, it shall be deemed a second violation.

B. Second violation. A violation within one (1) year of a first violation shall be deemed a second violation. A second violation is an infraction punishable by a fine not to exceed $200.

C. Third or more violation. Each subsequent violation after the second within one (1) year shall be punishable as a misdemeanor.

Section 6.20.080 Impoundment of unaltered restricted dog.

A. When an unaltered restricted dog is impounded, the owner or custodian may reclaim the unaltered restricted dog when one of the following occurs:

1. The dog is spayed or neutered by a Department veterinarian at the expense of the owner or custodian. A deposit of $150 shall be received prior to the procedure. Such expense may include additional fees due to extraordinary care required.

2. The dog is spayed or neutered by another Department-approved veterinarian. At his/her expense the owner or custodian may arrange for another Department-approved veterinarian to spay or neuter the dog, and shall pay to the Department the cost to deliver the dog to the chosen veterinarian. The cost to deliver the dog shall be based on the Department's hourly rate, billed in minimum one-hour increments. The veterinarian shall complete and return to the Department within ten (10) days, a statement confirming that the dog has been spayed or neutered and shall release the dog to the owner or custodian only after the spay or neuter procedure is complete.

3. At the discretion of the Department, the restricted dog may be released to the owner or custodian if he/she signs a statement under penalty of perjury, representing that the dog will be spayed or neutered and that he/she will submit a statement within ten (10) days, signed by the veterinarian, confirming that the

dog has been spayed or neutered. If the owner or custodian fails to comply with the terms or conditions of the statement, the Department shall have the right to impound the dog and the owner or custodian shall be charged with a second violation under Section 6.20.070.

4. During the pendency of any proceedings hereunder for the determination of breed.

B. Costs of impoundment.

1. The owner or custodian of the unaltered restricted dog shall be responsible for the costs of impoundment, including daily boarding costs if it is determined that the owner or custodian is in violation of Section 6.20.020.

2. The costs of impoundment shall be a lien on the dog, and the unaltered restricted dog shall not be returned to its owner or custodian until the costs are paid. If the owner or custodian of an impounded unaltered restricted dog does not pay the lien against the dog in full within fourteen (14) days, the dog shall be deemed abandoned to the Department.

C. The Department may confiscate the puppies born to restricted female dogs without an unaltered restricted dog license, dispose of them in accordance with Section 6.08.200 of the Hollister Municipal Code, and consider this violation in future permitting decisions.

Section 6.20.090 Allocation of fees and fines collected.

All costs and fines collected under this chapter and the fees collected shall be paid to the Department for the purpose of defraying the cost of the implementation and enforcement of this chapter.

Section 6.20.110 Relationship to Chapter 6.08.

This chapter supplements the animal control regulations contained in Chapter 6.08 of the Hollister Municipal Code. To the extent that this chapter is in conflict with Chapter 6.08, this chapter shall control.

SECTION 3. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. PUBLICATION. Within fifteen (15) days after passage, the City Clerk shall cause this ordinance to be published one time in the Free Lance, a newspaper of general circulation.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect (30) days after the adoption date.

INTRODUCED the 2nd day of August, 2010.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Hollister held on the 16th day of August, 2010, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

_____
Victor Gomez, Mayor

ATTEST:

_____
Geri Johnson, City Clerk

Approved as to Form:

_____
Stephanie Atigh, City Attorney