



CITY OF CONCORD

New Hampshire's Main Street™

REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Carlos P. Baía, Deputy City Manager-Development
DATE: October 26, 2016
SUBJECT: Response to resident regarding canine DNA testing proposal

Recommendation

Accept this report.

Background

At the October 11, 2016 City Council meeting, a request from resident Jon Kelly of 21 Washington Street in Penacook requested that the City investigate the feasibility of instituting a system whereby all licensed dogs in Concord would be DNA-tested and cataloged, and then specimens of dog feces found in the City could be tested and—if determined to match a cataloged dog—a fine would be assessed to the dog's owner for not picking up after the pet.

Discussion

Currently, the City licenses approximately 5,000 dogs annually. The annual cost to license a dog is between \$2-\$10 as provided by RSA 466, which regulates the licensing of dogs. A portion of the fees collected are transferred to the State of New Hampshire.

Mr. Kelly contemplates a system where a DNA specimen would be collected from each dog licensed in Concord and cataloged by a private lab. According to a cursory online examination, there is, at least, one private company advertising such a service for a fee of \$35 per dog. Based on their advertising, the company's target market are condominium associations. Should the City collect this sample, Mr. Kelly suggests that the cost be passed onto dog owners at the time of licensing. Should dog owners refuse to provide their dogs' DNA, Mr. Kelly recommends they face a "stiff fine." Upon cataloging, Mr. Kelly then proposes that if dog feces is reported in the City, it be collected by the Police Department and sent for testing. The same aforementioned company charges \$50 for this subsequent "poop and run incident" test (see attached). Were the test to find a match from the DNA database, Mr. Kelly suggests a \$300 fine be issued to the dog owner.

After review of the applicable state laws and local ordinances, it is clear that the City does not have the authority to require DNA testing for dogs as such regulation exceeds the authority granted to municipalities by the State. RSA 466:4 occupies the field for charging

fees for the licensure of dogs on an annual basis. This statute makes no provision for the requirement of DNA testing of dogs. In fact, RSA 466:1-d(I) explicitly protects the privacy of dogs and their owners by preventing municipalities from sharing dog registration “records, information or lists” with third parties unless compelled by court order or on a limited, case-by-case basis when the third party is a government entity or law enforcement agency on “official business.” Additionally, it is clear that given that the fee structure set forth in the statute is also tied into payments to the NH Department of Agriculture under RSA 466:9, it seems very unlikely the Legislature intended to reserve dog licensure fee setting authority to municipalities. It seems more likely that the Legislature intend to occupy the field of dog licensing fees, and that a city ordinance that imposed an additional fee for DNA testing to be kept on file would conflict with RSA Chapter 466 and therefore be invalid. It’s also worth noting that even though RSA 47:17, XI authorizes municipalities to “regulate the keeping of dogs and their running at large, require them to be licensed, and authorize the destruction of those kept or running at large contrary to the ordinance,” this authority does not override the provisions of RSA Chapter 466 as to warrant the proposed licensure requirement that dogs be tested for their DNA and kept on file with the City.