



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano
Dave Knopf

SUBJECT: Urgency Ordinance to Control
Feral Pig Population

DATE: October 22, 2020

Approved		Date	10/22/20
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SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

The purpose of the supplemental memorandum is to provide the Mayor and City Council an update and information from staff related to the recommendation of the urgency ordinance and/or regular ordinance.

RECOMMENDATION

- (a) Accept staff recommendation to not adopt an urgency ordinance and/or regular ordinance to amend Section 10.32.140 of Chapter 10.32 of Title 10 of the San José Municipal Code to allow the use of bow and arrow on wild pigs, or
- (b) In the alternative, consider and adopt a temporary urgency ordinance, and consider and approve a regular ordinance, to amend Section 10.32.140 of Chapter 10.32 of Title 10 of the San José Municipal Code to exclude a person with a valid trapping license and authorized by the California Department of Fish and Wildlife pursuant to a wild pig depredation permit from the prohibition of the shooting of bows and crossbows in the City of San José if certain criteria are met.

OUTCOME

Staff is not recommending the adoption of the urgency ordinance and/or regular ordinance due to public safety concerns. However, staff has provided a draft ordinance as an alternative if the Mayor and City Council choose to adopt an urgency ordinance and/or regular ordinance.

BACKGROUND

Feral or wild pigs continue to be a destructive nuisance in the City of San José. Recent reports indicate that such pigs continue to inflict damage on private property, most recently the Coyote Creek Golf Club which has been affected due to damages, customer complaints, and repairs.

In 2015 the Council amended Municipal Code Section 10.32.010 to allow a person to dispatch a feral pig with a firearm pursuant to a depredation permit so long as that pig was in a trap and the San José Police Department was notified one hour before discharge of the firearm. However, despite efforts to trap them, it has been reported that some feral pigs have become “trap wise,” meaning they can no longer be trapped. No other means are available to dispatch such pigs as Section 10.32.010 of the municipal code only allows for the discharge of a firearm if the pig is trapped and Section 10.32.140 of the Municipal Code prohibits the use of any projectile weapon like a bow or crossbow.

At the Rules and Open Government Committee on September 30, 2020, staff was directed to prepare a temporary urgency ordinance to allow a licensed trapper, pursuant to a depredation permit approved by the California Department of Fish and Wildlife, to use a bow and arrow on private property for the purposes of wild pig depredation.

During the City Council Meeting on October 6, 2020 staff was provided additional time to address the public safety concerns related to the urgency ordinance and/or regular ordinance. Staff was also asked to evaluate the possibility of wild pig depredation in the following areas: The Villages, Silver Creek Country Club, The Meadowlands, and Almaden Valley.

ANALYSIS

Currently, Section 10.32.140 of Chapter 10.32 of Title 10 of the San José Municipal Code (SJMC) allows wild pigs who are caught in traps to be dispatched by using a firearm. Allowing the discharge of a firearm for trapped wild pigs, lowers the risk for public safety.

In order to evaluate a potential emergency ordinance to allow for the dispatching of un-trapped animals with a bow and arrow, staff from the San José Police Department (SJPD) and Public Works – Animal Services Division (ASD) met with California Fish and Wildlife (CDFW) to discuss the public safety concerns, related to the use of bow and arrow for wild pigs that do not enter traps. It was concluded that utilizing bows and arrows, for loose wild pigs, within City of San José limits will be a public safety issue for the following two primary reasons:

- 1) Per California Fish and Game section 3004 it is unlawful to hunt animals within 150 yards of an inhabited dwelling without express consent of the person in the dwelling. The exact text of the law is as follows “ (a) *It is unlawful for a person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, while within 150 yards of an occupied dwelling house, residence, or other building, or within 150 yards of a barn or*

other outbuilding used in connection with an occupied dwelling house, residence, or other building, to either hunt or discharge a firearm or other deadly weapon while hunting. The 150-yard area is a "safety zone." (b) It is unlawful for a person to intentionally discharge a firearm or release an arrow or crossbow bolt over or across a public road or other established way open to the public in an unsafe and reckless manner."

A review of golf courses within the City limits shows that of the roughly 9 courses, the only course without multiple inhabited dwellings within 150 yards is Coyote Creek Golf Course (CCGC). Therefore, the only golf course that would likely be able to receive a CDFW permit would be CCGC. However, several portions of CCGC are less than 150 yards from Highway 101, which has a large volume of vehicles traveling on it throughout the day and night.

- 2) Due to the proximity to Highway 101 as well as the possibility that there would be someone on the golf course during the evening hours, staff has safety concerns with the potential for errant arrows if someone were to be allowed to hunt wild pigs using a bow and arrow at CCGC.
- 3) Additionally, arrows do not provide an immediate and quick method to incapacitate a wild pig, which could result in a wild pig fleeing an area wounded and causing a public safety issue. An injured animal can cover a longer distance and may be difficult to track after fleeing an area.

In general, the use of bow and arrow for depredation purposes is generally discouraged by CDFW unless there is a valid safety reason and no other means are available. The goal of any depredation is to humanely dispatch an animal in a quick manner to reduce suffering and to prevent an animal from escaping. CDFW also encourages property owners to make fencing improvements and implementing hazing devices or techniques to discourage animals from entering and staying on a property.

As mentioned previously, due to safety concerns, staff is not recommending proceeding with this emergency ordinance at this time. Staff will reach out to the owners of CCGC to discuss other potential solutions.

CONCLUSION

During the City Council Meeting on October 6, 2020 staff was provided additional time to address the public safety concerns related to the urgency ordinance and/or ordinance to address wild pigs that were causing damage and not entering traps.

At this point staff is not recommending the adoption of the urgency ordinance and/ or ordinance to allow the use of bow and arrow on wild pigs due to public safety reasons.

EVALUATION AND FOLLOW-UP

No additional follow-up is required unless directed.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

POLICY ALTERNATIVES

If the Mayor and City Council choose to adopt the urgency ordinance to allow for a person with a valid trapping license issued by the California Department of Fish and Wildlife to use a bow or crossbow for the purposes of wild pig depredation, staff would recommend the following amendments to be added to the proposed urgency ordinance and/or ordinance:

- 1) Possession of and compliance with the requirements of a wild pig depredation permit duly issued and approved by the California Department of Fish and Wildlife pursuant to California Fish and Game Code Sections 4005 and 4181, and Section 401 of Title 14 of the California Code of Regulations, as may be amended;
- 2) Notice of intent to engage in wild pig depredation with a bow or crossbow is provided to the San José Police Department, Park Ranger Unit with the Department of Parks, Recreation & Neighborhood Services, Santa Clara County Sheriff's Office, California Highway Patrol, and California Department of Fish and Wildlife at least twenty-four (24) hours prior to any planned depredation activities. Notice shall include the wild pig depredation permit number, location within the City where planned activities will take place, and the name of any trapper who will make use of a bow or crossbow for wild pig depredation;
- 3) No bow or crossbow may be used within 150 yards of a public street or highway, or within 150 yards of any structure used as a permanent or temporary residence unless the structure is owned or occupied by the party for which the depredation permit was issued;

Any person engaged in depredation activities in accordance with this subsection C. shall wear a visible mark on the back of a vest, jacket, shirt, or similar article of clothing that is hunter or blaze orange.

If the City Council makes the required determination of urgency under Charter Section 605, the urgency ordinance would take effect immediately upon adoption and be effective until the end of the year, or through December 31, 2020. The adoption of a regular ordinance through the City's regular process would result in the above parameters being enacted into law until amended or

repealed by subsequent act of the City Council. If a regular ordinance were passed for publication on October 27, 2020, and a second reading were to occur on November 10, 2020, the regular ordinance would become effective on December 11, 2020.

Adopting an urgency ordinance and/or regular ordinance would apply to all private properties within the limits of the City of San José if approved for a wild pig depredation permits and subject to the alternative criteria listed above. In addition, “any structure used as a [] temporary residence” is intended to apply to create a 150-yard safety-zone around areas where an encampment may be located.

PUBLIC OUTREACH

This memorandum will be posted on the City Council agenda website for the October 27, 2020 Council Meeting.

COORDINATION

Staff consulted with the City Attorney’s Office, Department of Planning, Building and Code Enforcement, and California Fish and Wildlife Department during the preparation of this report.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

If the urgency ordinance is adopted, the environmental impacts of this change, are addressed by a Final EIR entitled “Santa Clara Valley Habitat Plan,” Resolution No. 76546, and the Addendum to the FEIR prepared for this Ordinance File No. PP13-103.

/s/
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/s/
DAVE KNOPF
Acting Chief of Police San Jose Police

For questions, please contact Jay Terrado, Deputy Director (408) 794-7223.