

CITY COUNCIL REPORT

DATE: 6/5/2017
TO: Mayor and Councilmembers
FROM: Police Chief Kevin Treadway
CC: Josh Copley, Shane Dille, Leadership Team
SUBJECT: Feeding Wildlife Ordinance

This report is in response to a request for information on the feeding wildlife ordinance.

DISCUSSION

On 9-17-2013, the Flagstaff City Council adopted an ordinance prohibiting the feeding of wildlife in the city limits, (ordinance #6-01-001-0023). The primary enforcement agency on this ordinance is AZ Game and Fish. The Flagstaff Police Department can receive calls for service regarding complaints from citizens but will work with Game and Fish in the enforcement of this ordinance.

Attached is the original staff summary authored by Deputy Chief Miller of the Flagstaff Police Department for discussion with council. Also attached is the Special Order drafted by the Flagstaff Police Department describing the ordinance and how it is to be enforced.

Records at the Flagstaff Police Department indicate we have received no calls for service related to this ordinance since it was adopted. We contacted Game and Fish and were advised that they have written four written warnings and one citation, (two of these warnings and the citation have been issued to the same individual) since the ordinance was enacted. Additionally, they have spoken to a “few” other individuals giving verbal warnings in what they refer to as “educational opportunities” since the ordinance was enacted.

This report is for information only.

Title:

Consideration of Ordinance No. 2013-20, an Ordinance adopting the prohibition of intentionally or knowing feeding wildlife.

Recommended Action:

1. Read Ordinance 2013-20 for the first time by title only.
2. Move to read Ordinance 2013-20 for the final time by title only. (This requires a unanimous vote of the Councilmembers present. Charter, Art. VII, Sec. 6)
3. Read Ordinance 2013-20 for the final time by title only and adopt.

Policy Decision of Reason for Action:

The Flagstaff Police Department in collaboration with the Arizona Game and Fish Department is requesting the approval of Ordinance 2013-20, which would prohibit the feeding of wildlife, with exception to birds and squirrels.

Financial impact:

There is no financial impact to the City of Flagstaff by adopting this ordinance.

Connection to Council:

Effective governance by addressing constituents concerns.

Has There Been Previous Council Decision on This:

Yes, there has been prior discussion of a proposed ordinance. During the Council work session on May 14, 2013 Larry Phoenix with the Arizona Game and Fish Department presented Council with the PowerPoint presentation, "Wildlife Anti-Feeding Ordinance". At the conclusion of the presentation staff was directed by Council to move forward with review of an ordinance.

Options and Alternatives:

- Adopt Ordinance 2013-20 making it unlawful to intentionally or knowingly feed wildlife
- Amend Ordinance 2013-20
- Do not adopt Ordinance 2013-20

Background/History:

In the past several years the Arizona Game and Fish Department has received several complaints from citizens in Flagstaff regarding the intentional feeding of wildlife, specifically deer and elk. Intentional feeding attracts wildlife to a specific area and over a very short course of time they become habituated to humans and become a nuisance. They also damage the property of homeowners. Once attracted and habituated to humans they pose a public safety concern as wildlife become dependent on humans for food, less wary of humans and may become dangerous, unpredictable and aggressive. Feeding will also create unnatural crowding and can attract predators such as coyotes, lions, bobcats and bears. One person feeding could potentially cause problems for themselves and surrounding neighbors by drawing predators into the area. There are also concerns that the food source that is being used can actually harm wildlife as it is usually not formulated for consumption by wildlife and can especially harm young animals. Feeding will concentrate wildlife and increase animal to animal contact further spreading disease such as eye and respiratory infections and in many cases rabies.

The City of Flagstaff and the Flagstaff Police Department has worked in collaboration with the Arizona Game and Fish Department on the draft of this ordinance in an effort to address public concerns, public safety, and the welfare and safety of wildlife

Key Considerations:

By adopting Ordinance 2013-20 it will regulate the intentional feeding of wildlife by taking a proactive approach to feeding issues that are a concern to the citizens of Flagstaff and the Arizona Game and Fish Department at both the state and regional level. This ordinance will help address public safety and nuisance wildlife issues associated with feeding activities. Any peace officer in the state may enforce revised statutes. An officer with the Arizona Game & Fish Department can enforce this ordinance as the Flagstaff Municipal Court will accept citations issued by a state certified law enforcement officer.

Arizona Revised Statute 13-2927 does prohibit the feeding of wildlife; however it only applies in counties with a population of more than (280,000) two hundred eighty thousand persons. (Coconino County population 134,511 census 2011) Therefore, there are no state statutes or county ordinances that prohibit the feeding of wildlife. The Flagstaff Police Department has been in communication with the Coconino County Sheriff's Department and they have had recent discussions with County administration about adopting an ordinance as well. The Arizona Game and Fish Department has approached the Coconino County Board of Supervisors on three separate occasions, but for reason unknown the ordinance has not gained any traction.

Within the state several other counties and municipalities such as Navajo, Cochise, and Gila Counties and the cities of Pinetop-Lakeside and Showlow have adopted wildlife feeding ordinances however, they are specific to the issues regarding bears, coyotes, javelinas, and mountain lions. In 2012 the City of Scottsdale enacted an ordinance prohibiting the feeding of wildlife; however this is specific to their city parks only and does not encompass other properties, public or private within the city limits.

Community Benefits and Considerations:

The Flagstaff Police Department and the Arizona Game and Fish believe that increased education is the key element of this ordinance. It will also deter individuals from feeding wildlife in areas that are impacted by wildlife. The ordinance will be enforced based on complaints generated by the public.

Community Involvement:

The proposed ordinance and staff summary will be posted in accordance with law, and interested persons are invited to comment at the City Council meetings at which the ordinance will be under consideration.

A public outreach meeting was held on July 22, 2013 at the Flagstaff Police Department and a second public outreach meeting was held on August 12, 2013 at the Arizona Game and Fish Department. The meetings were advertised in the Arizona Daily Sun, the City of Flagstaff web page, the Flagstaff Police Department Facebook page and Twitter.

On July 22, 2013 the first of two public meetings was held. A Power Point presentation was given by Game and Fish Officer Larry Phoenix, and City Attorney Marianne Sullivan was present to answer legal questions. There were twenty (20) people in attendance with a group of (5) five people who are opposed to the ordinance. Some that are opposed to the ordinance voiced concerns that the city does not need any more ordinances, while at least one individual voiced concerns that the ordinance was specific to the homeowners of Continental Country Club. One individual felt that the feeding of deer and/or elk was not the reason for attracting wildlife, but instead the availability of water in the area. At the conclusion of the meeting a question of whether or not the proposed ordinance could be put to a vote by city residents rather than decided by the City Council. Four (4) people in attendance voiced support for the ordinance with the remaining eleven (11) did not voice support or opposition.

On August 12, 2013 the second public meeting was held at the Arizona Game and Fish Department. Game and Fish Officer Larry Phoenix gave a power point presentation and City Attorney Marianne Sullivan was also present to answer legal questions. There were twelve (12) people in attendance; seven (7) in attendance were present at the last meeting. Out of the twelve (12) citizens in attendance only two (2) voiced opposition to the ordinance. Four (4) in attendance voiced support, with the remaining six (6) not voicing support or opposition.

Much of the opposition revolved around the information provided by Larry Phoenix. He was continually challenged over the habituation of wildlife to humans, the attraction of wildlife due to intentional feeding and the concentration of wildlife to a specific area, which increases animal to animal contact further spreading disease such as eye and respiratory infections and in many cases rabies. One citizen in opposition stated, "Feeding wildlife is a distraction, habituation to humans is not an issue nor is the concentration of wildlife." This citizen believes that there is no harm in the intentional feeding of wildlife. He adamantly refutes any negative impacts feeding has on wildlife and also refutes any dangers wildlife may pose to humans.

For those that voiced support, all of whom live in Continental Country Club, felt that the City in collaboration with the Arizona Game and Fish Department has a responsibility to not only protect the citizens but also to protect wildlife. One citizen stated, "As a community member who lives in the County Club I support the ordinance. The entire city has a responsibility to assist with wildlife issues." This citizen further stated that she would support anything that would "keep wildlife wild. I appreciate the ordinance." Another citizen also stated she lives in the Country Club area and said that her neighbors were feeding deer. What began with six deer has now turned into thirty and the neighbors have since moved. The deer have now become a nuisance on her property.

At the conclusion of the meeting Marianne Sullivan responded to the question of whether or not the Council had the option of sending the ordinance out to the public for a vote. She advised that the council did not have that option and if the ordinance were to be placed on a ballot there would need to be a referendum sponsored by a citizen or citizen group. In response, one citizen stated that if the ordinance passed he would sponsor a referendum to repeal it.

Expanded Options and Alternatives:

Do not adopt Ordinance No. 2013-_____

Amend Ordinance No. 2013-_____

Attachments/Exhibits:

Power Point presentation by Game and Fish Officer Larry Phoenix

Wildlife Feeding Ordinances: Navajo County, Cochise County, & Gila County. City of Scottsdale, Pinetop-Lakeside and Showlow

Ordinance & ARS 13-2927

Ordinance No. 2013- _____

- IV. **Enforcement:** An Arizona Game and Fish Officer, Animal Control Officer or any state certified peace officer may issue a written warning or citation for the violation of this section.
- V. **Separate Offenses:** Each violation pursuant to this section shall constitute a separate offense and each day a violation remains unabated may constitute a separate offense.
- VI. **Penalties:**
1. Upon a first violation of this section, an officer shall issue a written warning and provide the person with wildlife educational materials.
 2. If there is a violation of this section within sixty (60) days from the date a warning was issued, the new violation is a petty offense punishable by a fine not to exceed one hundred and fifty dollars (\$150.00).
 3. If there is a violation of this section and the person has previously been convicted within ninety (90) days of violating this section it is a petty offense punishable by a fine not less than one hundred and fifty dollars (\$150.00) and not more than three hundred dollars (\$300.00).
 4. If there is a violation of this section and the person has previously been convicted two or more time within one hundred and eighty (180) days of violating this section, it is a class three misdemeanor punishable by a fine of not more than seven hundred and fifty dollars (\$750.00) and thirty (30) days in jail and up to one year of probation.

Walt Miller
Deputy Chief of Police