



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 5, 2014

AGENDA TITLE:

Introduction, first reading and consideration of a motion to order published by title only, an ordinance amending Sections 4-20-60, "Voice and Sight Control Evidence Tag Fees," 6-1-16, "Dogs Running at Large Prohibited," 6-13-2, "Voice and Sight Control Evidence Tag Required," 6-13-4, "Voice and Sight Control Evidence Tag Requirements," and 6-13-5, "Suspension and Reinstatement of Voice and Sight Control Evidence Tags Upon Violations," and adding a new section 6-13-4.5, "Terms of Voice and Sight Control Evidence Tag," B.R.C.1981, and setting forth related details.

PRESENTERS:

Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Michael D. Patton, Director, Open Space and Mountain Parks
Stephen B. Armstead, Environmental Planner
Janet T. Michels, Sr. Assistant City Attorney

EXECUTIVE SUMMARY

This memorandum presents the recommended Boulder Revised Code 1981 (B.R.C.) changes resulting from an 18-month evaluation of the Voice and Sight Tag (Tag) Program. Program enhancements integrate City Council, Open Space Board of Trustees (OSBT), community and staff recommended changes to the Tag Program. This memo covers the enhancements that require City Council adoption of ordinance changes to the B.R.C (see Attachment A). The components which require amendments to the B.R.C. involve:

1. Program Application Prerequisites;
 - a. Attendance at an information class or session; and
 - b. Verification of City of Boulder dog license or rabies vaccination
2. Fees and Annual Program Renewal Requirement;
3. Fines;

4. Violations Affecting Suspension of Privileges; and
5. Reinstatement

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce on first reading and order published by title only, an ordinance amending Sections 4-20-60, "Voice and Sight Control Evidence Tag Fees," 6-1-16, "Dogs Running at Large Prohibited," 6-13-2, "Voice and Sight Control Evidence Tag Required," 6-13-4, "Voice and Sight Control Evidence Tag Requirements," and 6-13-5, "Suspension and Reinstatement of Voice and Sight Control Evidence Tags Upon Violations," and adding a new section 6-13-4.5, "Terms of Voice and Sight Control Evidence Tag," B.R.C.1981, and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic: Overall economic impacts on the business community are unknown. Businesses and organizations providing dog training services may benefit from dog guardians seeking training services to increase skills beneficial to voice and sight control.
- Environmental: The Tag Program was identified in the Visitor Master Plan (VMP) as a way to reduce adverse effects to Open Space and Mountain Parks' (OSMP) ecological and agricultural resources by increasing the level of compliance with voice and sight requirements.
- Social: Enhancements to the Tag Program are intended to both support enduring changes that will sustain a high-quality visitor experience retaining valued voice and sight control opportunities and reduce behaviors that contribute to visitor conflict.

OTHER IMPACTS

- Fiscal: Budgetary impacts to the city will depend upon enrollment in the program, which is designed to be "cost-neutral" based upon enrollments of approximately 16,000 individuals and their dogs.
- Staff time: Additional and significant staff resources would be required by the proposed program enhancements. Those additional FTEs are included in the "cost-neutral" projections and fee structure.

BOARD AND COMMISSION FEEDBACK

The OSBT heard staff's proposed enhancements to the Tag Program at a public hearing on April 10, 2013 and fee changes on May 8, 2013. All proposed enhancements passed unanimously except for two changes. A change passed by split vote (two dissenting votes) regarding suspension after a single conviction of section 6-1-20, "Aggressive Animals Prohibited;" section 8-3-5, "Wildlife Protection," or a violation of the city manager's rules involving wildlife

protection authorized by section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981. A split vote (one dissenting vote) was also involved with the board recommendation on consideration of suspension of voice and sight privileges following two convictions in a period of two years for the following: section 6-1-16, "Dogs Running at Large Prohibited," section 6-1-18, "Removal of Animal Excrement Required," subsection 6-13- 2(b), "Voice and Sight Control Evidence Tag Required," and violations of the city manager's rules not involving wildlife protection authorized by section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981. Minutes from the meetings can be found at:

<https://documents.bouldercolorado.gov/weblink8/Browse.aspx?startid=41596&row=1&dbid=0>

PUBLIC FEEDBACK

OSMP has received over 300 responses from the public about the Tag Program and has held two open houses (May 24, and 30, 2012), as well as five public hearings for community members to provide input on the evaluation and program enhancements. A compendium of these comments can be found at: <https://www-static.bouldercolorado.gov/docs/compendium-v-s-tag-program-evaluation-comments-1-201306110943.pdf>.

Attachment B contains a "timeline" of significant OSBT, council and community considerations of this matter.

BACKGROUND

The Tag Program was included in the VMP in 2005 as a trial program. The purpose of the Tag Program was to increase dog guardians' awareness of the requirements of voice and sight control and proper dog management. A monitoring component was included to inform program assessments and adaptive management. Staff evaluation of the Tag Program was based on monitoring results and subsequent discussion with OSBT and council, as well as feedback from the public and stakeholder groups. That evaluation and feedback led to the development of several program enhancement options that will require changes to relevant sections of the B.R.C.

In addition to coordinating with Parks and Recreation, Finance, Municipal Courts and the Police departments, OSMP and the OSBT have undergone an extensive process to review potential program enhancements and provide opportunities for community input. The process has included two community open houses, four OSBT study sessions, a study session with City Council and three public hearings where the OSBT took action on recommendations to City Council.

ANALYSIS

The enhancements to the program proposed by staff and resulting from City Council feedback at the public hearing on May 21, 2013 include the following Tag Program changes:

1. *Information Session:* Require Tag Program participants to attend an information session ensuring greater awareness of the program requirements, goals and objectives.
2. *Proof of Rabies Vaccination:* Require current rabies vaccination for a dog's participation in the Tag Program and City of Boulder residents to provide a valid Boulder dog license as proof of vaccination and compliance with the city's license requirement.

3. Education and Outreach Strategies: Implement education and outreach strategies to encourage compliance with the program requirements and share information about how guardians can successfully manage dogs under voice and sight control.
4. Modifications to Fines and Violations Causing Privilege Suspension:
 - a. Increase fines for failure to have a voice and sight tag on an off-leash dog and for voice and sight and off-leash dog violations.
 - b. Specify dog-related violations that contribute to the loss of Tag Program privileges including violations that cause suspension of privileges after one or two convictions.
 - c. Clarify the process for reinstatement after privileges have been suspended.
5. Participant Registration and Renewal Fees: Revise program fees including different fees for those residing outside of the City of Boulder and Boulder County and the addition of an annual renewal fee to cover program costs.

Numbers 1, 2, 4, and 5 above require council action in the form of ordinance amendments. On May 21, 2013 council requested that staff provide those specific B.R.C. changes in a form from which council could make a final decision. Therefore, staff requests council approval of the following B.R.C. amendments summarized below and provided in detail in Attachment A.

B.R.C. Section	Recommendation
4-20-60 Voice and Sight Control Evidence Tag Fees.	<ul style="list-style-type: none"> • Establishes that program application fees will be set by city manager rule pursuant to section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981.
6-13-2 Voice and Sight Control Evidence Tag Required.	<ul style="list-style-type: none"> • Increases maximum penalties to \$100 (1st conviction), \$200 (2nd conviction), and minimum \$300 (3rd conviction) within a two-year timeframe. • Allows for affirmative defense for first violation when lawful participant in the Tag Program inadvertently fails to display tag on their dog(s).
6-13-4 Voice and Sight Control Evidence Tag Requirements.	<ul style="list-style-type: none"> • Requires valid City of Boulder dog license for city residents, or proof of vaccinations for non-residents. • Requires attendance at an informational session for all guardians prior to applying for participation in the Tag Program and within the past five years for renewing participation.
6-13-4.5 Terms of Voice and Sight Control Evidence Tag.	<ul style="list-style-type: none"> • Establishes an annual renewal requirement and a Dec. 31, 2014 enrollment deadline for current tag program. Participants to comply with enhanced program requirements.
6-13-5 Suspension and Reinstatement of Voice and Sight Control	<ul style="list-style-type: none"> • Establishes immediate suspension of privileges after one conviction of any of the following violations: <ul style="list-style-type: none"> ○ Aggressive Animal Prohibited

Evidence Tags Upon Violations.	<ul style="list-style-type: none"> ○ Failure to Protect Wildlife (or Livestock) ● Establishes suspension after 2nd conviction within two years for any of the following violations: <ul style="list-style-type: none"> ○ Section 8-3- 3 “City Manager May Issue Rules,” pertaining to dog management and specifically enacted for protection of wildlife and a dog off leash in a leash-required or dog-prohibited area. ○ Section 6-1-16, "Dogs Running at Large Prohibited," pertaining to dogs running at large on OSMP or on other city lands where voice and sight control is allowed. Excludes violations for not having possession of a leash. ● Revises reinstatement by removing requirement to repay application fee, continue requiring the reinstatement fee and successful completion of an evaluation test and adds the requirement to repeat attendance of the information session. ● Establishes that a guardian who has two suspensions in three years or who has three suspensions will be ineligible for reinstatement for a period of time to be determined through an administrative hearing. ● Establishes a minimum one-year suspension for continued violations of section 6-1-16, “Dogs Running at Large Prohibited,” when privileges have already been suspended.
6-1-16 Dogs Running at Large Prohibited.	<ul style="list-style-type: none"> ● Establishes, within a two-year time frame, maximum penalties of \$100 (1st conviction), \$200 (2nd conviction), and minimum of \$300 (3rd conviction). ● Establishes minimum \$300 penalty for having dog off leash while under suspension. ● Includes violations of the city manager’s rules that affect program privilege suspension so that staff can feasibly assess prior violations.

NEXT STEPS

Staff expects to return to council for a second reading of the ordinance in April (tentatively scheduled for April 1). The ordinance includes a date of Jan. 1, 2015 for the new program requirements to go into effect. This date will allow for the completion of pre-change compliance monitoring and to ensure that components for implementing program enhancements are in place prior to implementation.

ATTACHMENTS

- A. Proposed Ordinance
- B. Voice and Sight Tag Program Enhancement Timeline

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ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 4-20-60, "VOICE AND SIGHT CONTROL EVIDENCE TAG FEES," 6-1-16, "DOGS RUNNING AT LARGE PROHIBITED," 6-13-2, "VOICE AND SIGHT CONTROL EVIDENCE TAG REQUIRED," 6-13-4, "VOICE AND SIGHT CONTROL EVIDENCE TAG REQUIREMENTS," AND 6-13-5, "SUSPENSION AND REINSTATEMENT OF VOICE AND SIGHT CONTROL EVIDENCE TAGS UPON VIOLATIONS," AND ADDING A NEW SECTION 6-13-4.5, "TERMS OF VOICE AND SIGHT CONTROL EVIDENCE TAG," B.R.C. 1981, B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. Section 4-20-60, B.R.C. 1981, is amended to read:

4-20-60. Voice and Sight Control Evidence Tag Fees.

~~(a) An applicant for a Voice and Sight Control Evidence Tag shall pay the fee established by the city manager rule pursuant to section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981, who is a resident of the City of Boulder shall pay an application fee of \$15.00, and a nonresident shall pay an application fee of \$18.75. Additional Voice and Sight Control Evidence Tags may be provided to persons who reside in the same household as the applicant upon payment of a duplicate tag fee of \$5.00.~~

~~(b) The supplemental fee pursuant to Section 6-13-5, "Suspension and Reinstatement of Voice and Sight Control Evidence Tags Upon Violations," B.R.C. 1981, shall be \$50.00, regardless of residency.~~

Section 2. Section 6-13-2, B.R.C. 1981, is amended to read:

6-13-2 Voice and Sight Control Evidence Tag Required.

(a) In addition to and in conjunction with the requirements of Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981, any dog guardian who desires to accompany a dog without a

leash held by a person shall apply for and obtain a Voice and Sight Control Evidence Tag pursuant to the procedures and requirements established by this chapter.

- (b) Any dog guardian who accompanies a dog without a leash held by a person shall cause such dog to wear and visibly display a current, lawfully obtained and displayed Voice and Sight Control Evidence Tag at all times when the dog is present on ~~open space and mountain parks~~ City of Boulder lands where voice and sight control is permitted under Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981.
- (c) The city manager may promulgate guidelines, forms, or informational materials that are necessary or desirable to assist with implementation of this chapter or its legislative intent.
- (d) The maximum penalty for a first conviction is a fine of ~~\$50.00~~ 100.00. For a second conviction within two years, based upon the date of the first violation, the maximum penalty shall be a fine of ~~\$100.00~~ 200.00. For a third and each subsequent conviction, within two years based upon the date of the first violation, the ~~maximum~~ minimum penalty shall be a fine of not less than ~~\$200.00~~ 300.00.
- (e) It is an affirmative defense to a charge of violating this Section that the dog and guardian were currently registered participants in the Voice and Sight Control program and this charge was the guardian's first violation for not displaying a Voice and Sight Control Evidence Tag.

Section 3. Section 6-13-4, B.R.C. 1981, is amended to read:

6-13-4 Voice and Sight Control Evidence Tag Requirements.

- (a) Before a Voice and Sight Control Evidence Tag shall be issued, the applicant shall ~~certify, under penalty of perjury, the following facts:~~
 - (1) Provide a valid City of Boulder dog license, or if the applicant is not a City of Boulder resident, provide proof of current rabies vaccination as provided in Section 6-1-3, "Rabies Vaccinations," B.R.C. 1981, for each dog being registered;
 - (2) ~~The applicant has watched (or listened to if visually impaired) a video~~ Provide proof of attendance, within the preceding five years, of a presentation on voice and sight control of a dog, prepared by the city and provided to the applicant by the city or its designated agents; and
 - (3) ~~Agree~~ The applicant agrees to control any dog accompanying the applicant without a leash held by a person on certain ~~open space and mountain parks~~ City of Boulder lands where voice and sight control is permitted under Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981, in the manner described in the ~~video~~ presentation on voice and sight control of a dog and consistent with the requirements of the Boulder Revised Code.

Section 4. Section 6-13-4, B.R.C. 1981, is amended by the addition of a **new section 6-13-4.5** to read:

6-13-4.5 Terms of Voice and Sight Control Evidence Tag.

The Voice and Sight Control Evidence tag issued under Section 6-13-4 shall be valid for a term of one calendar year and expire on December 31. Renewal of Voice and Sight Control Evidence Tags is subject to the fees established under Section 4-20-60, "Voice and Sight Control Evidence Tag Fees" B.R.C. 1981. The applicant shall apply for renewal of the Voice and Sight Control Evidence Tag no later than February 1 of the year immediately succeeding the year in which the license expired. Voice and Sight Control Evidence Tags issued prior to December 31, 2014 shall expire on December 31, 2014.

Section 5. Section 6-13-5, B.R.C. 1981, is amended to read:

6-13-5 ~~Revocation~~ Suspension and Reinstatement of Voice and Sight Control Evidence Tags Upon Violations.

- (a) Upon a ~~third~~ conviction for any violation of ~~section 6-1-16, "Dogs Running at Large Prohibited"~~ Section 6-1-20, "Aggressive Animal Prohibited," B.R.C. 1981, or Section 8-3-5, "Failure to Protect Wildlife (or Livestock)," B.R.C. 1981, ~~occurring on land owned by the city and constituting park land or open space land within two years of the date of the first violation,~~ the right of the dog and guardian to display any Voice and Sight Control Evidence Tag shall be suspended automatically, ~~but may be reinstated through the following procedures:~~
- (b) Upon a second conviction within two years of the date of the first conviction for any of the following violations, the right to display any Voice and Sight Control Evidence Tag by the dog or guardian shall be suspended automatically:
- (1) Section 8-3-3, "City Manager's Rules," B.R.C. 1981, where a rule specifically enacted for the protection of wildlife prohibits dogs and the dog is off leash;
 - (2) Section 8-3-3, "City Manager's Rules," B.R.C. 1981, where a rule specifically enacted for the protection of wildlife designates a leash-required area and the dog is off leash; or
 - (3) Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981, occurring on open space land or on other city properties where Voice and Sight Control privileges are authorized by that section. A violation of Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981, based solely on the accompanying guardian or keeper not having a leash in such person's possession, shall not be grounds for suspension of Voice and Sight Control privileges.

- (c) Any guardian who is convicted of violating Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981, during a period of time when privileges have been suspended shall be ineligible for reinstatement for a minimum of one year.
- (d) The right to display a Voice and Sight Control Evidence Tag may be reinstated through the following procedures:
- (1) Payment of a supplemental fee established ~~in Subsection 4-20-60(b), by City Manager Rule pursuant to Section 8-3-3, "City Manager May Issue Rules," B.R.C. 1981, in addition to the fees established by section 6-13-3, "Voice and Sight Control Evidence Tag Application," B.R.C. 1981, and prescribed by subsection 4-20-60(a), B.R.C. 1981, for an initial application (and in addition to any fines imposed under section 6-1-16, "Dogs Running at Large Prohibited," or subsection 6-13-2(d), B.R.C. 1981);~~
 - (2) Providing written proof of attendance at a City of Boulder sanctioned ~~and monitored~~ ~~showing of the video~~ presentation on voice and sight control of a dog;
 - (3) Providing written proof of attendance at and successful completion of a voice and sight control ~~evaluation certification course~~ approved by the City of Boulder; and
 - (4) Certification by the applicant for reinstatement that he or she agrees to control any dog accompanying the guardian without a leash held by a person on certain City of Boulder lands where voice and sight control is permitted under Section 6-1-16, "Dogs Running at Large Prohibited," B.R.C. 1981, in the manner described in the ~~video~~ presentation on voice and sight control of a dog.
- (e) Any guardian who has his or her Voice and Sight Tag suspended twice in three years or who has three suspensions shall be ineligible for reinstatement for a period of time to be determined at a hearing held under the provisions of Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981.

Section 6. Section 6-1-16, B.R.C. 1981, is amended to read:

6-1-16 Dogs Running at Large Prohibited.

- (a) No person owning or keeping any dog shall fail to keep the dog on the premises of the guardian or keeper unless the dog is:
- (1) On a leash held by a person; or
 - (2) Within a vehicle or similarly physically confined and without access to passers-by.
- (b) No person owning or keeping any dog shall fail to keep the dog on a leash held by a person within any area where a rule enacted by the city manager for the protection of wildlife prohibits dogs off leash.
- (c) No person owning or keeping any dog shall fail to keep that dog from entering any area where a rule enacted by the city manager for the protection of wildlife or natural resources prohibits dogs.

(bd) ~~The maximum penalty for a first conviction of this section is a fine of \$100. For a or-second conviction within two years, based on date of violation, the maximum penalty shall be is-a fine of \$2500.00. For a third and each subsequent conviction within two years based upon the date of the first violation, the minimum penalty shall be a fine of not less than \$300.00. The minimum fine for a conviction under this ordinance for a guardian who has their Voice and Sight Tag suspended under Section 6-13-5, "Suspension and Reinstatement of Voice and Sight Control Evidence Tags Upon Violations, B.R.C. 1981 shall be \$300.00. the general penalty provisions of section 5-2-4, "General Penalties," B.R.C. 1981, shall apply. The maximum penalty for a first conviction occurring on land owned by the city and constituting park land or open space land is a fine of \$50.00. For a second conviction within two years, based upon the date of violation, the maximum penalty shall be a fine of \$100.00. For a third and each subsequent conviction, the maximum penalty shall be a fine of not less than \$200.00.~~

(ee) It is an affirmative defense to a charge of violation of this section that the dog was:

...

Section 7. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 8. This ordinance shall be effective January 1, 2015. This effective date will allow for the completion of baseline monitoring of pre-change compliance and ensure that components for implementing the ordinance are in place prior to implementation.

Section 9. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 4th day of March, 2014.

Attest:

Mayor

City Clerk

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this ____ day of _____, 20__.

Attest:

Mayor

City Clerk