

Final Version, presentation to the Washington Terrace city council

Re: Current conflict between Federal / State falconry statutes and Washington Terrace city code.

Relevant Statistics:

- Approximately 750 avian species regulated by the Migratory Bird treaty Act
- 39 are diurnal raptors
- 15 diurnal raptors common to falconry
- Approximately 5,000 licensed falconers in the U.S.
- Approximately 150 licensed falconers in Utah
- Every state except Hawaii has a falconry statute in place
- MBTA implements conventions with Mexico, Great Britain (Canada), Japan, and Russia.
- MBTA implemented in 1936, with amendments in 1972, 1976, and 2008.
- the 2008 final rule turns primary regulation over to states that meet or exceed Title 50 rules. There are currently 20 states in compliance, including Utah.
- CFR 21 & 22 of Title 50 regulate falconry at the federal level (Utah is in Region 6, headquartered in Denver, CO)
- UT R657-20 regulates falconry at the state level (Jim Parrish, Utah falconry coordinator)
- 6.04.180 regulates falconry participation within Washington Terrace city

Current federal & state licensing overview:

Apprentice class:

--a minimum period of two calendar years, with 4 months of flight time per year.

-- each apprentice must have sponsorship of a General or Master class falconer

-- the sponsor must be a state resident and must live within 100 miles

-- limited to one raptor on permit

General class:

--limited to 3 raptors on permit

--must be a General class falconer for 2 years prior to sponsoring apprentices

--must beat least General class to hack(train & release) raptors back to the wild

Master class:

--must have 5 years of contiguous experience at the General level, 7 years total

--limited to 5 raptors on permit, only 3 of which may be Golden eagles

All license classes must meet the following minimum requirements to obtain (as well as retain) licensure:

- take a 200 question written exam and pass at the 80% level
- build a suitable housing facility (mew) and have it inspected by state regulator (size is variable, from 3'x3' to 8'x8' depending on raptor species)
- obtain a specified list of equipment and have it inspected by state regulator
- consent to unannounced inspections of raptor(s), facilities, and documentation by state or federal personnel
- each raptor has its own certificate (form 3-186A). ANY change in the raptor's status must be reported to the federal database within 10 days (lost, injured, transferred, released, etc.)
- free fly(hunt) each raptor for a minimum of 4 months per calendar year, preferably at least three to four times per week
- provide an annual report to the state for each raptor held on permit specifying condition, number of days afield, and hunting success

Benefits to society (why does the state let them do this?)

--Species conservation / propagation. One year mortality in the wild is 73%, two year mortality is 88%. Falconers take a passage bird (young of the year) that would not otherwise survive, train it to hunt, then release it the following year (or the next) as a breeding-age bird. This substantially increases the number of wild raptors that reach breeding age over time.

--Wildlife rehabilitation. Injured raptors taken into rehab centers like the WRCNU , once healed, are often transferred to a private falconer for hacking back (returning to the wild). This requires at least a General class license.

--Public education. Specific rules apply (revenue neutral, no commercial use (TV, etc), must address biology and conservation, must be a bird primarily used for falconry). Falconers regularly use their birds in educational programs / talks at schools, fairs, and other public venues

Statewide, and particularly in the northern region of Utah, there are not enough new falconers coming in at the Apprentice level, or enough General class falconers willing to sponsor them, to maintain the viability of the program and meet the future needs of the community (propagation, rehabilitation, education). *A significant hurdle to the recruitment of new falconers is fear of the city government and/or conflict of the state and federal statutes with city ordinances.*

Washington Terrace Ordinance 6.04.180 is currently in conflict with federal and state regulations in that Washington Terrace city's interpretation of its ordinance 6.04.180 allows falconers to possess raptors only within a research facility for educational or scientific purposes such as in rehab

context. However, federal and state law requires a minimum of two years of falconry experience to lawfully rehab (hack back) injured raptors. Thus, Washington Terrace city only allows falconers with 2+ years of falconry experience to practice falconry but provides no mechanism to obtain those 2 years of experience.

The unintended consequence of this regulatory conflict, if not amended, will be to:

- a) bar any new falconers from participation
- b) eliminate the rehab, wildlife conservation, and educational benefits falconers provide to the community as the current General & Master Falconry license-holders retire and are not replaced.

In recognition of the benefits falconers provide to the community, as well as the inherently local nature of falconer training relationships, I am requesting that the council amend the language of 6.04.180 to refer to the relevant federal and state statutes regulating the various falconry license classifications.

Amending 6.04.180 in this way will directly benefit our community yet will in no way either lower the legal threshold for possession of Title 50 species OR impose a regulatory burden on the city of Washington Terrace.

Below are the current city, state, and federal regulations as well as three options for amending 6.04.180, each of which would resolve the current statutory conflict:

Washington Terrace City Ordinance 6.04.180

Language of the current Ordinance:

Wild Animals Prohibited

It shall be unlawful for any person to sell, offer for sale, barter, give away, keep or purchase any wild animal as defined in this chapter.

This section does not apply to the following facilities:

Animal shelters.

Zoological parks.

Veterinarian hospitals.

Bona fide research facility.

Fairgrounds or a circus.

Research facility for educational or scientific purposes.

Every facility controlling or maintaining any wild animal shall:

Maintain and keep each wild animal in a manner and by means of protective devices that prevent such animals from escaping or presenting any harm to the public or persons at the facility.

Comply with applicable state and federal regulations for handling, maintenance, and vaccinations as directed for each species.

Be kept under confinement on the premises and not run at-large.

Notwithstanding the forgoing restrictions, this part does not apply to persons who have sought and received approval by the city for raising animals for their pelts and for legal commercial purposes consistent with law.

Repealed & Reenacted by Ord. 11-07 on 11/22/2011

Current language of the Federal Title 50 Regulation:

The taking and possession of raptors are strictly prohibited except as permitted under regulations implementing the MBTA. The regulations govern the issuance of permits for activities with migratory birds. They are in title 50, Code of Federal Regulations, parts 10, 13, 21, and 22. Raptors also may be protected by State, tribal, and territorial regulations.

Current language of Utah rule R657-20

Under authority of Section 23-17-1 and in accordance with 50 CFR 21 & 22, which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state of Utah. Take of any raptor

species for the practice of falconry must be in compliance of these regulations.

Proposed amendment:

Option 1:

Federal Regulations; Prohibited Or Protected Species: It shall be unlawful for any person to keep an animal of a species prohibited or protected by title 50 of the code of federal regulations, or its successor provisions, or by any regulation of law of the state [without a valid Certificate of Registration issued pursuant to L T R657-20 and a valid Federal permit 3-186A issued pursuant to Title 50, CFR 21 and 22].

Option 2:

Federal Regulations; Prohibited Or Protected Species: It shall be unlawful for any person to keep an animal of a species prohibited or protected by

title 50 of the code of federal regulations, or its successor provisions, or by any regulation of law of the state, [except for the lawful practice of falconry by licensed falconers as regulated by UT R657-20 and U.S. Title 50, CFR 21 and 22].

Option 3:

Federal Regulations; Prohibited Or Protected Species: It shall be unlawful for any person to keep an animal of a species prohibited or protected by title 50 of the code of federal regulations, or its successor provisions, or by any regulation of law of the state, [except as permitted by UT R657-20 and U.S. Title 50, CFR 21 and 22].

ORDINANCE NO. 2012-54

AN ORDINANCE OF OGDEN CITY, UTAH, AMENDING THE OGDEN MUNICIPAL CODE BY AMENDING SUBSECTION 13-3-6.C TO ESTABLISH PERMITTED STANDARDS FOR FALCONRY WITHIN OGDEN CITY; AND BY PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AFTER FINAL PASSAGE.

The Council of Ogden City hereby ordains:

SECTION 1. Subsection amended. Subsection 13-3-6 of the Ogden Municipal Code is hereby amended to read and provide as follows:

13-3-6: [WILD ANIMALS:]

- A. Keeping Unlawful; Exceptions: Except as provided in section 13-3-6.C, it shall be unlawful for any person to sell, offer for sale, barter, give away, keep or purchase any "wild animal" as described in the definition and/or which is fierce, dangerous, noxious or naturally inclined to do harm. The animal shelter, a zoological park, veterinary hospital, humane society shelter, public laboratory, circus, sideshow, amusement show, wildlife preserve or facility for education or scientific purposes may humanely keep such animal in protective devices adequate to prevent such animal from escaping or injuring the public.

- B. Order Of Release; Authority: After consultation with a representative from the Utah division of wildlife resources, the animal services manager and his/her assistants and officers shall have the power to release or order the release of any wild animal kept under temporary permit which is deemed capable of self-survival, or to recommend other appropriate action on behalf of any animal found incapable of survival in its natural habitat.

- C. Federal Regulations; Prohibited Or Protected Species: It shall be unlawful for any person to keep an animal of a species prohibited or protected by title 50 of the code of federal regulations, or its successor provisions, or by any regulation of law of the state. This subsection shall not apply to raptors possessed by licensed falconers holding valid Utah Division of Wildlife Resources and U.S. Fish and Wildlife falconry permits, as required, so long as the conditions of the permits are being satisfied.

SECTION 2. Effective date. This ordinance shall be effective immediately upon posting after final passage.