

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: January 5, 2009

SUBJECT: Dangerous / Potentially Dangerous Dogs

ATTACHMENTS: Yes

1. Section 66A-10 Dangerous/Potentially Dangerous Dogs

SUMMARY OF REQUEST:

Per the Board of Commissioners' direction, staff has placed the County's Dangerous/Potentially Dangerous Dog Ordinance on the agenda for discussion. Attached is a copy of the current Ordinance regarding dangerous/potentially dangerous dogs for the Board's review and discussion. Animal Enforcement staff and staff from the County Attorney's office will also be available to answer questions regarding the current Ordinance and how it is being enforced.

As the Board is aware, staff and the Animal Services Advisory Board annually reviews and recommends amendments to the County's Animal Ordinance. Staff is currently finalizing amendments to the Animal Ordinance that were reviewed by the Animal Services Advisory Board at their December 11th meeting. However, the Animal Services Advisory Committee made no substantive amendments to the Dangerous/Potentially Dangerous Dog section of the Ordinance during that meeting.

BOARD ACTION REQUESTED:

Staff recommends that the Board of Commissioners review, discuss and give direction to staff regarding the Ordinance, including making any changes as the Board feels appropriate.

Suggested Motion:

No suggested motion.

ordered to abate said nuisance within 10 days by whatever means necessary. Failure to comply within this time frame shall constitute a separate offense for each day thereafter the violation continues.

- E. Reporting. Upon receipt of a detailed complaint to the Sheriff's Office or Animal Services, Animal Enforcement Officers shall notify the owner or keeper of the offending animal that a complaint has been received and that an investigation is being conducted. Upon completion of an investigation, a written report must be submitted to the Animal Enforcement who shall make the final determination of whether there is a nuisance. After making that determination, the owner shall be notified by certified or registered mail or by hand delivery.
- F. Appeal. The owner shall have 10 days to appeal the nuisance determination to the Animal Services Appellate Board.
- G. Nothing in this provision is intended to conflict with the Henderson County Nuisance Ordinance, Noise Ordinance or other applicable section of the Henderson County Code.

§ 66A-9. Confinement of female dog during estrus (heat).

Any owner of a female dog during its estrus (heat) period shall confine said animal in a building or secure enclosure in such a manner that the dog will not be in contact with male dogs, or attract other animals. This section shall not be construed to prohibit the intentional breeding of animals within an enclosed area on the premises of the owner of the animal that is being bred.

§ 66A-10. Dangerous/potentially dangerous dogs restricted.

- A. General provisions. It shall be unlawful for any person to own or in any way maintain or harbor a dog that is dangerous/potentially dangerous, except as provided in this chapter. Notwithstanding any exemption listed below, any dog which has killed a person shall be immediately euthanized by the Animal Service Center.

(1) Reporting requirement. Any (A) attack or biting by a dog upon a person or domestic animal; (B) transfer, gift, sale or other conveyance of ownership or possession of a dangerous or potentially dangerous dog; (C) confinement to a Veterinary facility; (D) removal from territorial jurisdiction of the county; (E) animal's death must be reported by any of the following individuals:

- (a) owner, keeper, harbinger of a dog deemed dangerous/potentially dangerous or of a dog who has attacked or bitten a person or domestic animal;
- (b) victim of or person witnessing such of an attack or biting;
- (c) veterinarian treating a domestic animal for such an attack or biting;

- (d) Health care professional treating a person for such an attack or biting.
 - (2) The report must be made to the Sheriff's Office within 24 hours of the event.
 - (3) Failure to report an incident within 24 hours may result in criminal and civil penalties under this Ordinance and personal liability in subsequent incidents.
- B. Exemptions. The provisions of this chapter do not apply to dogs causing injuries when:
 - (1) Used by law enforcement agencies to carry out official law enforcement duties;
 - (2) Functioning lawfully as hunting or herding dogs, or in controlling predators on the property of, or under control of, the owner when performing duties appropriate to said functions;
 - (3) Protecting the owner's premises from trespassers and other criminal perpetrators while on its owner's premises;
 - (4) Protecting itself or its young from assault, torment, or abuse.
- C. Declaration of dangerous/potentially dangerous dog. The Sheriff or his/her designee shall have the authority to declare a dog to be a dangerous/potentially dangerous dog. Any determination that a dog is dangerous/potentially dangerous shall be made in writing summarizing the available evidence and which shall be delivered or mailed by certified or registered mail to the owner. The written determinations shall order compliance with the appropriate provisions of this ordinance and the Director or his/her designee may impose reasonable conditions to maintain the public health and safety.
- D. Appeal. Any person who owns a dog that has been declared dangerous/potentially dangerous shall have the right to appeal this decision to the Animal Services Appellate Board.
 - (1) Manner of appeal. The owner of a dog declared dangerous/potentially dangerous wishing to appeal such declaration must request in writing a hearing contesting such determination. The written appeal must be submitted to the Animal Service Director, and must be received by the Animal Service Director within 3 working days of the receipt by the owner of notice of the declaration that the animal is dangerous/potentially dangerous.
 - (2) Pending the appeal, the owner of a dog declared dangerous/potentially dangerous shall comply with the provisions of § 66A-10E.
 - (3) Hearing procedures. Once properly appealed, the Animal Service Appellate Board shall conduct a hearing to determine whether the declaration of the animal as dangerous/potentially dangerous is correct. In conducting this hearing the Animal Service Appellate Board shall operate in compliance with the North Carolina Open Meetings Law, and

shall conduct this hearing in accordance with procedures for a quasi-judicial hearing.

- (4) Outcome. If the dog is affirmed by the Animal Service Appellate Board as being dangerous/potentially dangerous, then the owner shall comply with the terms of this chapter. Any person who owns a dog affirmed dangerous/potentially dangerous by the Animal Service Appellate Board or its designee has the right to appeal this determination to the Superior Court.

E. Enclosures and control measures for dangerous/potentially dangerous dogs. If a dog has been determined to be dangerous/potentially dangerous, as specified in this section, the dog may be retained upon the owner satisfying the following conditions:

- (1) The owner must:
 - (a) Confine the dog within the owner's residence (except when muzzled and controlled as required below); or
 - (b) Erect and confine the dog (except when muzzled and controlled as required below) in a securely enclosed and padlocked pen with a concrete bottom and secure top within 30 days. The structure must be secured by a child-resistant lock. Pending construction of such pen, the dog must be confined within the owner's residence (except when muzzled and controlled as required below).
- (2) The owner must post a warning sign, of at least 120 square inches, which is to be visible to any adjoining property from each exposure of the residence or the structure in which the dangerous/potentially dangerous dog is confined. Each sign must have an approved graphic representation of an appropriate animal such that the dangerousness of the animal is communicated to those who cannot read, including young children.
- (3) The owner of the dog shall insure that the dog at all times remains enclosed or controlled and muzzled as to meet the requirements of this chapter. Failure to do so shall subject the owner to penalty under this chapter.
- (4) Confinement, muzzling and control of dangerous/potentially dangerous dogs. It shall be unlawful for any owner or person to keep any dangerous/potentially dangerous dog within the County unless it is either confined within a secure building or enclosure as set forth above, or muzzled and under restraint by a competent person who, by means of a leash or chain, has such animal firmly under physical restraint at all times.

- (5) Tattooing/Microchip. Within 10 days of the determination set forth in this section, the owner of a dangerous/potentially dangerous dog must demonstrate that such dog has been tattooed on the inside of the right hind leg with an identification number or had a microchip implanted as directed by the Animal Service Director.
- (6) Inspection. Animal Enforcement shall cause periodic inspections to be made of the premises where the dangerous/potentially dangerous dog is kept to assure compliance with the provisions of this Ordinance. The owner must permit these inspections at any reasonable time without notice to the owner from the Animal Enforcement Officers.
- (7) Impoundment. If the dangerous/potentially dog is at large during the 30 day period while enclosure is being constructed, Animal Enforcement Officers must seize and impound the dog until the enclosure is completed to the satisfaction of Animal Services as per this Ordinance. The cost of impoundment shall be paid by the owner prior to the animal's release.
- (8) All control measures required by this section must be met immediately upon a determination that the animal is dangerous/potentially dangerous, except for the enclosure discussed in 1(b) of this section which the owner has 30 days to complete.

F. Notification. Within 24 hours:

- (1) Of change of address or ownership of a dangerous/potentially dangerous dog, the owner shall provide written notification of the change of address or ownership to the Sheriff, stating the full name, address, and location of the new owner of the dog.
- (2) Of death of a dangerous/potentially dangerous dog, the owner shall provide written notification of the dog's death to the Sheriff.

G. Notification prior to transfer. Prior to any transfer (with or without consideration) of a dangerous/potentially dangerous dog, the owner must provide to the Sheriff a written statement, signed before a notary by the transferee (on a form obtained from the Animal Service Center), indicating the transferee's understanding of the transferee's obligations hereunder as an owner of a dangerous/potentially dangerous dog.

If the dangerous or potentially dangerous dog is being transferred out of Henderson County or out of North Carolina,

- a. The new owner of the animal must notify the Sheriff and the new jurisdiction to which the animal is being moved that this dog has been deemed a dangerous/potentially dangerous dog;
- b. The Sheriff also shall notify the new jurisdiction that the animal has been deemed dangerous and the circumstances surrounding the case.
- c. The new owner must comply with any local regulations regarding dangerous dogs in the new location.

H. Immediate impoundment. Any dangerous/potentially dangerous dog kept in violation of this section may be immediately impounded upon issuance of any warrant for the same, pending the outcome of the criminal action. If the owner is convicted of a criminal offense of keeping a dangerous/potentially dangerous dog in violation of this section, in addition to any criminal penalties imposed, the Animal Services Director or his/her designee shall euthanize the dog. Nothing herein shall be construed to in any way limit the use of civil penalties for a violation of this section.

1. Cost of impoundment. Costs of impoundment at the Animal Services Center shall be paid by the person liable at a daily rate as determined by the Board of Commissioners. In instances where the Animal Services Center must impound the animal(s) at a private facility or kennel, the person liable for the animal will pay the rate established by those facilities.
2. Release from impoundment.
 - (a) No dog deemed dangerous or potentially dangerous who has been impounded by the Animal Services Center shall be released to the owner from impoundment except upon proof submitted by the owner or person liable for the animal that all the elements of this Ordinance have been met.
 - (b) If criminal charges have been brought against the owner for failure to comply with this Ordinance or for interference with the operations of the Animal Services Center, no dog deemed dangerous shall be released from Animal Services until determined by a court of competent jurisdiction. During this time while the dog is impounded, it cannot be euthanized and the cost of impoundment shall be charged to the owner.
 - (c) No dog deemed dangerous or potentially dangerous may be adopted by another person until that person can prove to the Animal Services Center that the proper provisions for care and maintenance as outlined in this Ordinance have been made for the animal.