

ARTICLE VI. - DANGEROUS, AGGRESSIVE, AND PUBLIC NUISANCE DOGS

Sec. 6-151. - Definitions.

As used in this article, the following words and phrases shall have the meanings provided below, unless the content of their usage clearly indicates another meaning:

Aggressive dog means a dog that meets one of the following conditions:

(1)

Bites, assaults, or otherwise attacks a person without provocation on the property of the owner and causes serious bodily injury to the person, provided that the person is on the property of the owner with the owner's consent or invitation;

(2)

Has displayed aggressive tendencies that cause a person of normal sensibilities to fear the dog will attack that person or a domesticated animal without provocation while inside an enclosure, and such enclosure is not sufficient to ensure the safety of persons or domesticated animals on adjoining property or the public at large;

(3)

Has otherwise interfered with the freedom of movement of persons in a public right-of-way, regardless of whether the dog was on the property of its owner; or

(4)

A peace officer or animal control officer has reason to believe the dog has a dangerous disposition and is likely to be harmful to humans or other domestic animals.

Bodily injury means physical pain, illness, or any impairment of physical condition that results from a bite or attack by a dog.

Dangerous dog has the same meaning as provided in § 822.041 of the Texas Health and Safety Code, as amended from time to time.

Owner has the same meaning as provided in § 822.041 of the Texas Health and Safety Code, as amended from time to time.

Public nuisance dog shall mean any dog that meets one of the following conditions:

(1)

Substantially interferes with the right to enjoyment of life or property by persons other than the owner by acts including, but not limited to, frequent, long, or continued barking or howling, repeated defecation on property other than that of the owner, or damaging property other than that of the owner;

(2)

Attacks domestic animals;

(3)

Is documented by BARC, a police officer, a neighborhood protection official or a member of the public to be running at large three or more times in a 12-month period; or

(4)

Is one of a number of dogs or other animals maintained on the property owned or controlled by its owner so as to be dangerous to the public health, safety or welfare.

Secure enclosure means a fenced area or structure that is:

(1)

At least six feet in height with secure sides and a secure top; if the enclosure does not have a floor that is secured to its sides, the sides shall be embedded at least two feet into the ground;

(2)

Of sufficient size to allow the dog to move freely;

(3)

Locked;

(4)

Capable of preventing the entry of the general public, including children;

(5)

Capable of preventing the escape or release of a dangerous dog by any means, including digging, climbing, jumping, or chewing out of the enclosure;

(6)

Clearly marked as containing a dangerous dog; and

(7)

Located no less than five feet from another property line or fence adjoining the premises on which the enclosure is located.

Serious bodily injury has the same meaning as provided in § 822.001 of the Texas Health and Safety Code, as amended from time to time.

Unprovoked means action by a dog that is not:

(1)

In response to being tormented, abused, or assaulted by any person;

(2)

In response to pain or injury;

(3)

In protection of itself or its food, kennel, or nursing offspring; or

(4)

In response to a person trespassing or committing a crime on the owner's property.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-152. - Impoundment order; surrender.

(a)

Upon receipt of a sworn, written complaint by any person, in a form approved by the director, that a dog may constitute a dangerous dog, the director shall conduct an investigation. If upon investigation, the director reasonably believes that grounds exist to declare the dog a dangerous dog, he shall issue a written order containing the grounds for the order and a requirement that the dog be impounded at the city's animal impoundment facilities at the licensee's or owner's expense pending a hearing to determine whether the dog is dangerous as defined in this article.

(b)

It is unlawful for any person to refuse to surrender to any city officer or employee who has presented a true copy of the order to the person any dog for which an impoundment order has been issued.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-153. - Determination hearing.

(a)

The director shall cause written notice to be given to the licensee or owner that a hearing will be conducted to determine whether the animal is a dangerous dog. The notice shall include the following:

(1)

The place where the hearing will be conducted;

(2)

The date and time of the hearing, which shall be not later than the tenth calendar day after the impoundment of the animal; provided that the hearing officer may continue the hearing upon the written request of the licensee or owner or upon the written certification of the attending physician of a person injured by the dog that the injured person is not medically able to attend the hearing, or in the event that it is necessary to give notice of the hearing by newspaper publication;

(3)

That the licensee or owner may appear at the hearing and present evidence, cross examine witnesses and be represented by legal counsel;

(4)

That the dog may be ordered euthanized if the hearing officer finds that it is a dangerous dog; and

(5)

That the licensee or owner may request a probable cause hearing pursuant to [section 6-156](#) of this Code.

The notice shall be given by personal delivery or sent by certified mail, return receipt requested, to the last known address of the licensee or owner. If the director is unable to effect delivery of notice by personal delivery or by mail, he shall cause the notice to be published one time in a newspaper of general circulation, to be posted in a conspicuous public place at the city's animal impoundment facility, and to be posted online on BARC's website, each of which acts shall be done at least seven business days prior to the date of the hearing.

(b)

The hearing shall be conducted by the hearing officer under rules consistent with the nature of the proceeding. The burden of proof shall be upon the city to establish, by a preponderance evidence presented at the hearing, that the dog is a dangerous dog. At the conclusion of the hearing, the hearing officer shall enter a written order with factual findings as to whether the dog is a dangerous dog. At the conclusion of the hearing, the hearing officer may:

(1)

Determine that a dog is not dangerous and, if the dog is impounded, waive any impoundment fees incurred and release the dog to its licensee or owner, provided that the dog may continue to be held, if required, for the duration of any rabies quarantine period as provided by this Code;

(2)

Determine that a dog is dangerous and order the licensee or owner to comply with the requirements for ownership of a dangerous dog set forth in this article and Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended, and, if the dog is impounded, release the dog to its licensee or owner in accordance with subsection (d) of this section; or

(3)

Determine that a dog has killed or caused serious bodily injury to a person and order the dog to be seized and humanely euthanized.

(c)

If a dog is determined to be dangerous, the director shall notify the licensee or owner, either in person or by certified mail, return receipt requested:

(1)

That the dog is dangerous;

(2)

Whether the dog has been ordered to be humanely euthanized;

(3)

If the dog has not been ordered to be humanely euthanized, what the licensee or owner must do to comply with requirements for ownership of a dangerous dog and to reclaim the dog, if impounded; and

(4)

That the licensee or owner has a right to appeal a determination of dangerousness or an order to euthanize.

(d)

An impounded dog determined by the hearing officer to be dangerous shall remain impounded or confined at a location approved by the director and will not be released to the licensee or owner until the licensee or owner pays all fees incurred for impoundment of the dog and complies with all requirements for ownership of a dangerous dog set forth in this article and Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended. If all impoundment fees have not been paid and all requirements have not been met within 30 calendar days after a final determination that a dog is dangerous, the hearing officer may cause the dog to be humanely euthanized.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-154. - Requirements for owner of a dangerous dog.

Not later than the 30th calendar day after the date a licensee or owner learns that he is the owner of a dangerous dog that is not to be humanely euthanized, the licensee or owner shall:

(1)

Comply at all times with the requirements set forth in Subchapter D, Chapter 822 of the Texas Health and Safety Code;

(2)

Permit the department to implant a microchip in the dog, at the licensee's or owner's expense, which will identify it as a dangerous dog;

(3)

Affix a city-issued "dangerous dog" tag to the dog's collar that must be worn by the dog at all times and renewed annually;

(4)

Restrain the dangerous dog at all times on a leash of sufficient strength to control the dog, no longer than six feet in length and in the immediate control of a person at any time the dog is not in a secure enclosure;

(5)

Confine the dog in a secure enclosure except as provided in the preceding item;

(6)

Sterilize the dog; and

(7)

Obtain liability insurance coverage in an amount of at least \$100,000.00 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage to the department. The proof of insurance must clearly indicate that the insurer is aware that the insured dog has been declared dangerous either by the inclusion of a statement on the coverage policy itself or in an original letter on the insurer's letterhead signed by the insurance agent issuing the policy.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-155. - Seizure and impoundment of a dangerous dog

(a)

The director shall seize and impound or order seizure and impoundment, at the licensee's or owner's expense, of any dog previously determined to be dangerous if:

(1)

The licensee or owner violates any provision of this article or Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended; or

(2)

The dog causes bodily injury to any person.

(b)

If a previously determined dangerous dog has been seized and impounded under this section, the hearing officer shall conduct a hearing to determine if the dog should be returned to the licensee or owner or humanely euthanized. The hearing must be conducted within eight business days after the date of seizure, and the hearing officer shall provide written notice of the hearing either in person or by certified mail, return receipt requested, to the licensee or owner. In no event shall the hearing be conducted less than five business days after the notice has been delivered to the licensee or owner.

(c)

At the conclusion of a hearing required under this section, the hearing officer may order that the dog either be returned to the licensee or owner in accordance with subsection (d) of this section or be humanely euthanized.

(d)

A dangerous dog seized and impounded under this section shall not be returned to the licensee or owner until the licensee or owner pays all fees incurred for impoundment of the dog and complies with all requirements for ownership of a dangerous dog set forth in this article and Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended. If all impoundment fees have not been paid and all requirements have not been met within ten business days after the hearing officer issues the order to return the dog to the licensee or owner, the hearing officer may cause the dog to be humanely euthanized.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-156. - Probable cause hearing.

Any licensee or owner whose dog has been impounded may, at any time prior to the hearing scheduled pursuant to [section 6-153](#) or [6-155](#) of this Code, request an informal probable cause hearing by written request delivered to the office of the director. The hearing officer shall conduct the hearing within 48 hours after receipt of the request, Saturdays, Sundays, city holidays and days that city offices are closed excepted. The hearing shall be conducted informally, and the hearing officer may consider city investigative reports, medical records, and affidavits, as well as any testimony or documentary evidence offered by the licensee or owner. If the hearing officer finds that probable cause does not exist to detain the dog for a hearing under [section 6-153](#) or [6-155](#) of this Code, he shall cause the impoundment order to be withdrawn. If the impoundment order is withdrawn, the animal shall be released, provided that it may continue to be held, if required, for the duration of any rabies quarantine period as provided by this Code.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-157. - Unlicensed dogs, rabies quarantine.

(a)

The provisions of this article shall not be construed to require the issuance of an impoundment order or the conduct of a hearing for the impoundment or euthanasia of any dog that is found to be running at large in violation of city ordinances. In the event that any dog impounded for such cause is claimed for redemption, the director may, if he has grounds to believe that it is a dangerous dog, issue notice of a hearing pursuant to [section 6-153](#) or [6-155](#) of this Code to the person claiming the dog and continue to hold the dog unless and until it is authorized to be released pursuant to [section 6-153](#) or [6-155](#) of this Code.

(b)

The provisions of this article shall not be construed to require the issuance of an impoundment order for the impoundment of any dog for rabies quarantine pursuant to applicable provisions of the Code or state law. In the event that a dog is already impounded in the city's facilities for that reason, and the director determines that it may be a dangerous dog, he may issue a notice of hearing under [section 6-153](#) or [6-155](#) of this Code and continue to hold the dog unless and until it is authorized to be released pursuant to [section 6-153](#) or [6-155](#) of this Code.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-158. - Appeal from a determination as a dangerous dog.

If the hearing officer determines a dog is a dangerous dog under [section 6-153](#) of this Code, that decision is final unless the licensee or owner files a written appeal with a justice, county, or municipal court of competent jurisdiction not later than the 15th calendar day after the date the licensee or owner received notice that the dog is dangerous.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-159. - Appeal from an order to euthanize.

If the hearing officer orders a dangerous dog to be humanely euthanized under [section 6-153](#) or [section 6-155](#) of this Code, that decision is final unless the licensee or owner files a written appeal with the municipal court within five business days after receiving notice of the order to euthanize. If an appeal is timely filed, the director shall suspend the order to euthanize pending final

determination of the court. The appeal hearing must be a trial de novo and is a civil proceeding for the purpose of affirming or reversing the hearing officer's order to euthanize.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-160. - Dangerous dog owned or harbored by minor.

If the licensee or owner of a dangerous dog is a minor, the parent or guardian of the minor shall be liable for all injuries and property damage sustained by any person or domestic animal in an unprovoked attack by the dog.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec 6-161. - Violations; defenses.

(a)

A person commits an offense if he violates, or fails to perform an act required by, a provision of this article or Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended. A person commits a separate offense each day or part of a day during which a violation is committed, permitted, or continued.

(b)

An offense under this article is a Class C misdemeanor.

(c)

Any defense to prosecution under Subchapter D, Chapter 822 of the Texas Health and Safety Code, as amended, is a defense to prosecution under this article.

(d)

Any defense to an order to euthanize under § 822.003(f) of the Texas Health and Safety Code, as amended, is a defense under this article.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec 6-162. - Dangerous, aggressive, and public nuisance dog database; animal complaints investigated by the police department.

(a)

The department shall maintain a detailed database of all dogs deemed to be dangerous, aggressive, and public nuisances and shall make this information available to the police department. The database shall include, but not be limited to, information such as the licensee's or owner's name, address, phone number, the dangerous dog case number, the assigned microchip number, and all identifying information regarding the dog.

(b)

Any reports involving complaints of animals investigated by the police department shall be electronically transmitted to BARC and shall include all relevant information gathered as a result of the response to the incident.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-163. - Dangerous dogs designated by another animal control authority.

It is unlawful for any person to own, harbor, or maintain custody or control of a dog that has been declared to be dangerous, aggressive, vicious, public nuisance, or otherwise designated as a potentially harmful dog by another animal control authority.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec 6-164. - Aggressive dog.

Upon receipt of a sworn, written complaint by any person, in a form approved by the director, that any dog may be an aggressive dog, the director shall conduct an investigation. If upon investigation, the director reasonably believes that grounds exist to declare the dog an aggressive dog, he shall issue a written order containing the grounds for his determination to the licensee or owner of the dog by personal delivery, or by certified mail, return receipt requested. The order shall include all requirements for licensees or owners of a dog determined to be aggressive as set forth in [section 6-165](#) of this Code and the process for appeal of the determination.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec 6-165. - Requirements for an aggressive dog; violation.

(a)

Not later than the 30th calendar day after the date a licensee or owner learns that he is the owner of an aggressive dog, the licensee or owner shall:

(1)

Permit the department to implant a microchip in the dog, at the licensee's or owner's expense, which will identify it as an aggressive dog;

(2)

Affix a city-issued "aggressive dog" tag to the dog's collar that must be worn by the dog at all times and renewed annually;

(3)

Restrain the aggressive dog at all times on a leash of sufficient strength to control the dog, no longer than six feet in length and in the immediate control of a person at any time the dog is not in a fenced area or structure that meets the requirements set forth in the following item;

(4)

Except as provided in the preceding item, confine the dog in a fenced area or a structure that is:

a.

At least six feet in height;

b.

Of sufficient size to allow the dog to move freely;

c.

Locked;

d.

Capable of preventing the entry of the general public, including children;

e.

Capable of preventing the escape or release of the dog; and

f.

Clearly marked as containing an aggressive dog; and

(5)

Sterilize the dog.

(b)

A person commits an offense if he violates or fails to perform an act required by this section. A person commits a separate offense each day or part of a day during which a violation is committed, permitted, or continued.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-166. - Appeal from a determination as an aggressive dog.

If the director determines a dog is an aggressive dog under [section 6-164](#) of this Code, that decision is final unless the licensee or owner files a written appeal with the office of the director not later than five calendar days after the date the licensee or owner receives an order from the director stating that the dog is an aggressive dog. A hearing officer shall conduct the hearing within ten calendar days of the director's receipt of the notice of appeal. The hearing shall be conducted informally, and the hearing officer may consider city investigative reports, medical records, and affidavits, as well as any testimony or documentary evidence offered by the licensee or owner. At the conclusion of the hearing, the hearing officer shall enter a written order with factual findings as to whether the dog is an aggressive dog. The written order of the hearing officer shall be sent by personal delivery or certified mail, return receipt requested, to the licensee or owner as soon after the conclusion of the hearing as practicable, but in no event more than five business days thereafter. The decision of the hearing officer shall be final.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-167. - Public nuisance dog.

(a)

Upon receipt of a sworn, written complaint by any person, in a form approved by the director, that any dog may constitute a public nuisance, the director shall conduct an investigation. If upon investigation, the director reasonably believes that grounds exist to declare the dog a public nuisance dog, he shall issue a written order containing the grounds for his determination to the

licensee or owner of the dog by personal delivery, or by certified mail, return receipt requested. The order shall include all requirements for licensees or owners of a dog determined to be a public nuisance as set forth in [section 6-168](#) of this Code and the process for the appeal of the determination.

(b)

For purposes of this section, if a dog is documented to be at large three or more times in a 12-month period by a member of the public, such documentation must consist of photographic evidence with a date and time stamp and in which the dog can be clearly identified.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-168. - Requirements for a public nuisance dog; violation.

(a)

Not later than the 30th calendar day after the date a licensee or owner learns that he is the owner of a public nuisance dog, the licensee or owner shall take all measures necessary to abate the nuisance that served as the basis for the determination of the dog as a public nuisance dog.

(b)

A person commits an offense if he violates or fails to perform an act required by this section. A person commits a separate offense each day or part of a day during which a violation is committed, permitted, or continued.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-169. - Appeal from a determination as a public nuisance dog.

If the director determines a dog is a public nuisance dog under [section 6-167](#) of this Code, that decision is final unless the licensee or owner files a written appeal with the office of the director not later than five calendar days after the date the licensee or owner receives an order from the director stating that the dog is a public nuisance dog. The hearing shall be conducted and the written order from the hearing officer shall be issued in the same manner as set forth in [section 6-166](#) of this Code. The decision of the hearing officer shall be final.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)

Sec. 6-170. - Penalties; appeal.

(a)

If a licensee or owner of a dog receives the specified number of convictions for the following offenses within a 12-month period, the director may order the dog at issue removed from the city:

(1)

One or more convictions for allowing an aggressive dog to be at large in violation of subsection [6-101\(d\)](#) of this Code;

(2)

One or more convictions for allowing a public nuisance dog to be at large in violation of subsection [6-101\(e\)](#) of this Code; or

(3)

Two or more convictions for violations of [section 6-165](#) or [section 6-168](#) of this Code.

The removal order shall be issued in writing to the licensee or owner of the dog at issue by personal delivery or by certified mail, return receipt requested. The notice shall include the reason for the order and shall inform the licensee or owner of his right to appeal the order.

(b)

If the director orders a dog removed from the city, that decision is final unless the licensee or owner files a written appeal with the office of the director not later than five calendar days after the date the licensee or owner received notice that the dog has been ordered removed from the city. A hearing officer shall conduct the hearing within ten calendar days of the director's receipt of the notice of appeal. The hearing shall be conducted informally, and the hearing officer may consider city investigative reports, medical records, and affidavits, as well as any testimony or documentary evidence offered by the licensee or owner. At the conclusion of the hearing, the hearing officer shall enter a written order upholding or overruling the director's order to remove the dog at issue from the city. The written order shall be sent by personal delivery or certified mail, return receipt requested, to the licensee or owner as soon after the conclusion of the hearing as practicable, but in no event more than five business days thereafter. The decision of the hearing officer shall be final.

(Ord. No. 2014-244, § 2(Exh. A), 3-26-2014)