

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, amending Olympia Municipal Code, Section 6.04.050 and Section 6.04.110, relating to animal services.

WHEREAS, the Olympia City Council adopted Ordinance No. 4338 on December 29, 1981, for the purpose of regulating the keeping of dogs, cats and other pet animals within the City of Olympia, and added Chapter 6.04 to the Olympia Municipal Code; and

WHEREAS, Olympia Municipal Code Chapter 6.04 was substantially amended by Ordinance No. 5612 on July 2, 1996, and again by Ordinance No. 6400 on March 14, 2006; and

WHEREAS, it is the intent of this Ordinance to further amend the Olympia Municipal Code, particularly relating to the process for identifying potentially dangerous dogs to utilize the hearing examiner process; and

WHEREAS, this Ordinance is supported by the staff report and attachments associated with the Ordinance along with documents on file with the City of Olympia; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11, of the Washington State Constitution and any other legal applicable authority;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 6.04.050. Olympia Municipal Code Section 6.04.050 is hereby amended to read as follows:

6.04.050 Regulations and violations relating to pet animals

Any person who harbors, keeps, possesses, maintains, or has temporary custody of a pet animal shall be responsible for the behavior of such animal whether the owner knowingly permits the behavior or not. Such person shall violate the terms of this chapter if:

A. Pet animal at large. Such person's dog is at large as defined in Section 6.04.030(D); provided, however, this section shall not prohibit the owner and pet animal from participating in an organized show or training, exercise, or hunting session in locations designated and authorized for that purpose.

B. Nuisance pet animal. Such person's pet animal constitutes a nuisance pet animal as defined in Section 6.04.030(T).

C. Pet animal on public property. Such person's pet animal is on public property such as a public park, beach, or school ground and is not on a leash held by a person who is able to maintain physical control, or proper safeguards have not been taken to protect the public and property from injury or damage from said animal, or the presence of the animal on such property is in violation of additional specific restrictions which have been posted. Such restrictions shall not apply to cats, guide dogs for the visually impaired, service animals for the physically handicapped where being off leash is necessary to the service, or to dogs on fenced areas of public property specifically designated by the City of Olympia as areas for dogs without the requirement of a leash. Pet animals on public property is a civil infraction as defined in Section 6.04.120(B).

D. Injury to a person or animal. Such person's pet animal, domestic animal or exotic animal causes injury to a person or domestic, exotic or pet animal.

E. Failure to possess removal equipment or to remove fecal material. Such person (1) fails to possess in a public park the equipment or material necessary to remove animal fecal matter when accompanying a pet animal, or (2) fails to remove animal fecal material when accompanying a pet animal off the owner's property. Failure to possess removal equipment or to remove fecal material is a civil infraction as defined in Section 6.04.120(B).

F. Failure to sterilize an adopted pet animal. Such person, when adopting a pet animal from the Animal Services Shelter, fails to have the pet sterilized within the time period specified in the written agreement, unless specifically recommended by a veterinarian in writing, or in cases of verifiable placement within a governmental law enforcement agency. Failure to sterilize an adopted pet animal is a civil infraction as defined in Section 6.04.120(B).

G. Failure to provide humane care. Such person fails to provide a pet, exotic or domestic animal with humane care as defined in Section 6.04.030(M). Failure to provide humane care is a misdemeanor as set forth in Section 6.04.120(D).

H. Failure to meet terms of quarantine. Such person fails to accept, perform or to meet the terms of a quarantine notice served pursuant to Thurston County Health Department regulation after an animal has bitten a human. Failure to meet terms of quarantine is a misdemeanor as set forth in Section 6.04.120(D).

I. Menacing behavior. Such person's animal engages in menacing behavior as defined in Section 6.04.030(R). Violation of this subsection is a civil infraction as defined in Section 6.04.120(A).

Section 2. Amendment of OMC 6.04.110. Olympia Municipal Code Section 6.04.110 is hereby amended to read as follows:

6.04.110 Potentially dangerous dog or dangerous dog

A. Classification. The Animal Services Director or designee shall have authority to classify potentially dangerous dogs and dangerous dogs. The authority to classify an animal as potentially dangerous or dangerous is in addition to a civil or criminal penalty as provided in this chapter. The Animal Services Director may find and declare an animal potentially dangerous or dangerous if there is reasonable cause to believe that the animal's action falls within the descriptions which follow. The finding must be based upon the written complaint of a person who has pertinent information and who is willing to testify that the dog has acted in a manner which may cause it to be classified as a dangerous dog or a potentially dangerous dog; and one of the following:

1. Reports on file with Animal Services about previous aggressive behavior by the dog; or
2. Actions of the dog witnessed by any Animal Services Officer or law enforcement officer; or
3. Other substantial evidence.

B. Actions resulting in designation. The following actions may result in the designation as a potentially dangerous dog or dangerous dog.

1. A dog shall be declared potentially dangerous if, unprovoked, it:

- a. Inflicts a bite or bites on a human or a pet or domestic animal either on public or private property; or
 - b. Chases or approaches a person upon the streets, sidewalks, or any public grounds or behaves in a menacing manner or assumes an apparent attitude of attack, or
 - c. Has a known propensity to attack unprovoked, or to cause injury, or otherwise to threaten the safety of humans or pet or domestic animals.
2. A dog shall be declared a dangerous dog when, according to the records of Animal Services, the dog has:

- a. Inflicted severe injury or substantial bodily harm on a human being without provocation on public or private property;
- b. Killed a pet or domestic animal without provocation while off the owner's or keeper's property; or
- c. Aggressively bitten, attacked, or endangered the safety of humans or pet or domestic animals after previously having been found to be potentially dangerous, and the owner or keeper has received written warning.

3. A dog shall not be declared potentially dangerous or dangerous if:

- a. The threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog, or
- b. The person was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused or assaulted the dog, or
- c. The person was committing or attempting to commit a crime; or
- d. Another pet animal or domestic animal has entered the property of the owner of the dog without invitation; or
- e. The dog, when on a leash, is responding to attack by another pet or domestic animal whether on or off the owner's or keeper's premises.

C. Declaration as potentially dangerous or dangerous dog.

1. Notice of Declaration. The declaration of a dog as potentially dangerous or dangerous shall be in writing and shall be served on the owner or keeper in one of the following methods, with a copy to the complaining citizen:

- a. Certified mail to the owner's or keeper's last known address; or
- b. Personally; or
- c. If the owner or keeper cannot be located by one of the first two methods, by publication once in a newspaper of general circulation in Thurston County.

2. Contents of Declaration. The declaration shall state at least:
 - a. The description of the dog;
 - b. The name and address of the owner or keeper of the dog;
 - c. The whereabouts of the dog if it is not in the custody of the owner or keeper;
 - d. The facts upon which the declaration of potentially dangerous or dangerous is based;
 - e. The availability of a hearing-review of the declaration in case the person objects to the declaration, provided if a written request for a hearing-review is made within ten days of the date of mailing of the declaration or the date of publication, if the declaration was published;
 - f. The availability of an appeal of the declaration to the animal services hearings examiner, if a written request for such an appeal is filed with the Director within ten days after receipt of the written findings pursuant to the review of the declaration;
 - fg. The restrictions placed on the dog as a result of the declaration of potentially dangerous or dangerous; and
 - gh. The criminal penalties for violation of the restrictions as set forth in Sections 6.04.120 and 6.04.130.

3. Objection to Declaration. If the owner or keeper of the dog or the complaining citizen wishes to object to the declaration of a dog as potentially dangerous or dangerous; ~~they owner or keeper may~~, within ten (10) days of receipt of the declaration, or within ten (10) days of publication of the declaration pursuant to Section 6.04.110(C)(1)(c), request a hearing-review of the declaration by before the Animal Services Director. The hearing-review will be scheduled by the Director or designee within a reasonable time of receipt of the request for ~~a hearing review~~. Pending such ~~hearing review~~, the owner or keeper of such dog shall comply with any restrictions specified in the declaration.

4. ~~Hearing on~~ Review of Declaration.
 - a. If the Director finds that there is insufficient evidence to support the declaration, it shall be rescinded, and no restrictions shall be imposed.
 - b. If the Director finds sufficient evidence to support the declaration the Director may impose the same or different restrictions.
 - c. The designation decision of the Director to rescind the declaration or to affirm the declaration as potentially dangerous or dangerous, and any resulting restrictions, shall be stated in a document containing written findings sent to the owner or keeper of the dog via regular and certified mail return receipt requested, or delivered in person to the owner. A copy of such document shall be provided to the complaining citizen by regular mail, certified mail or personal delivery.
 - d. The owner or keeper of a dog designated as dangerous will be required to obtain a certificate of registration as a dangerous dog pursuant to the provisions of Section 6.04.110(E).

5. Appeal of ~~Decision on~~ Declaration.

a. After the Animal Services Director's review of the declaration, the owner or keeper of a dog that is designated potentially dangerous or dangerous, or the complaining citizen, may appeal the designation made by the Director of Animal Services declaration to the Animal Services Hearings Examiner pursuant to the rules and procedures established by the Hearings Examiner. Joint Animal Services Commission. The owner or keeper of a dog designated potentially dangerous or dangerous must submit a written request for such an appeal shall be filed with to the Director within ten days of receipt of the written findings as specified in 6.04.110(C)(54)(dc).

a. In addition to any other requirements, the written appeal shall contain the following:

(1) A brief statement as to how the appellant is significantly affected by or interested in the decision of the Director;

(2) A brief statement of the appellant's issues on appeal, noting specific exceptions and objections to the declaration;

(3) The relief requested, such as reversal of the declaration; and

(4) Signature, address, and phone number of the appellant, and name and address of appellant's designated representative, if any.

b. Except as provided in this Chapter, the appeal shall proceed in accordance with the provisions established by the animal services Hearings Examiner for appeals.

c. Notice of the appeal hearing shall be mailed to the appellant's address as listed on the written appeal, with a copy to the owner or keeper if the appeal is filed by any other complaining citizen.

d. At the hearing, the scope of evidence and the scope of review shall be de novo.

e. The burden shall be on the animal control authority to prove, by a preponderance of the evidence, that the animal is a dangerous animal or potentially dangerous animal as defined in this Chapter.

f. The Hearings Examiner shall render a decision on the appeal within 30 calendar days following the conclusion of all testimony and hearings and closing of the record unless a longer period of time is agreed to by the parties. The Hearings Examiner may affirm, reverse or modify the decision of the Animal Services Director.

g. The decision of the Hearings Examiner shall be considered final. Decisions by the hearings examiner shall be appealable to Thurston County Superior Court.

b.—The owner or keeper shall be notified of the time and place for the appeal.

e.—While the appeal is pending, the owner must comply with any restrictions specified by the Director in his or her designation. When in a vehicle, the dog must be securely restrained to prevent escape.

d.—The Joint Animal Services Commission may affirm, reverse or modify the findings of the Animal Services Director. The decision of the Joint Animal Services Commission shall be

~~mailed by regular and certified mail return receipt requested to the owner/keeper and complaining citizen.~~

D. Control and confinement of potentially dangerous or dangerous dogs includes:

1. Potentially dangerous dogs.

- a. Must be securely leashed and under the control of a person physically able to control the animal when away from the premises of the owner or keeper; or
- b. While on the premises of the owner or keeper must be securely restrained by means of a physical device or structure such as a tether, trolley system, or other physical control device or any structure made of materials strong enough to adequately and humanely confine the dog in a manner which prevents it from escaping the premises; and
- c. Must be in conformance with other restrictions which may be set forth in the designation classifying the dog as potentially dangerous.

2. Dangerous dogs.

- a. Must be securely muzzled and leashed and under the control of a person physically able to restrain and control the dog if the dog is away from the premises of the owner or keeper; or
- b. While on the premises of the owner or keeper, the dog must be securely confined inside a locked building, kennel, pen, or other structure having secure sides, bottom, and top, suitable to prevent the entry of young children and designed to prevent the animal from escaping; and
- c. Must be in conformance with other restrictions which may be set forth in the designation classifying the dog as dangerous.

E. Certificate of registration as dangerous dog. The Animal Services Director shall issue a certificate of registration to the owner or keeper of a dangerous dog if the owner or keeper presents sufficient evidence of:

- 1. A proper enclosure to confine the dog, which meets the requirements of Section 6.04.110(D) and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property; and
- 2. A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW, in a form acceptable to the Animal Services Director in the sum of at least \$250,000, payable to any person injured by the dangerous dog, or a policy of liability insurance issued by an insurer qualified under RCW Title 48 in the amount of at least \$250,000, insuring the owner or keeper for any injuries inflicted by the dangerous dog; and
- 3. Such other identifying information as may be required by the Animal Services Director; and
- 4. Certification that the owner or keeper is aware of and understands the nature of the dog and the provisions of the law which apply to it; and
- 5. Payment of an annual registration fee for a dangerous dog in the sum of \$125.00, which shall be in addition to the annual license fee.

F. Violations following a designation as potentially dangerous or dangerous dog penalties.

1. Any potentially dangerous dog that is in violation of the restrictions contained within this section or of restrictions imposed as part of the declaration of potentially dangerous dog may be seized and impounded at the expense of the dog owner. Any dangerous dog that is in violation of the restrictions contained within this section or of restrictions imposed as part of the declaration of dangerous dog shall be seized and impounded at the expense of the dog owner. The owner shall be responsible for paying the costs of impoundment and control of the dog. The Director or his/her designee must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested, specifying the reason for the impoundment of the dangerous dog, that the owner is responsible for payment of the costs of impoundment, and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was impounded are not corrected within twenty days, and specifying the appeal procedure for a decision to destroy the animal.

The animal control authority shall destroy the impounded dangerous dog in an expeditious and humane manner if any deficiencies required by this subsection are not corrected within twenty days of notification. The appeal procedure for a decision to destroy the animal is as follows:

a. The owner or keeper of a dog that will be destroyed according to the provisions of this subsection may appeal that decision to the ~~Joint Animal Services Commission~~Hearings Examiner. The owner or keeper must submit a written request for an appeal to the Director within ten days of receipt of the notice referenced in this subsection.

b. The owner or keeper shall be notified of the time and place for the appeal. Failure to appear at the specified time will result in an order by the ~~Commission~~Hearings Examiner affirming the Director's decision.

c. The ~~Joint Animal Services Commission~~Hearings Examiner may affirm, reverse or modify the decision of the Director. The decision of the ~~Commission~~Hearings Examiner shall be sent to the owner or keeper by regular and certified mail, return receipt requested.

2. Any person violating the provisions of this section relating to keeping, securing, or confining of potentially dangerous dogs shall constitute a misdemeanor as set forth in Section 6.04.120(D), unless state law provides for a higher penalty. In addition, the person's potentially dangerous dog may be impounded by Animal Services, at the discretion of the Director of Animal Services, or his or her designee.

3. Any person violating the provisions of this section relating to keeping, securing, or confining of dangerous dogs shall constitute a gross misdemeanor as set forth in Section 6.04.120(E), unless state law provides for a higher penalty. In addition, the person's dangerous dog may be impounded by Animal Services, at the discretion of the Director of Animal Services, or his or her designee.

G. Other dangerous animals. The Animal Services Director or designee shall have authority to classify other animals as dangerous under the same criteria as used in Section 6.04.110(A) for dogs. Such designation will be based on specific actions by the animal such as those noted in Section 6.04.110(B) and the Animal Services Director or designee shall have authority to require the owner or keeper of such animal to take certain actions to control or confine the animal such as specified in Section 6.04.110(C) and (D). Once an animal has been declared potentially dangerous or dangerous, any violations of the provisions of this section will be handled in the same manner as violations under Section 6.04.110(F).

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Niehaber

CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: