

CHAPTER 5b. AGGRESSIVE ANIMALS.

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6-5b-1. Attacking animals.

Subject to the affirmative defenses of Section 6-5b-4, any person owning or having charge, care, custody, or control of any animal is guilty of a class C misdemeanor if the animal approaches any human being or domesticated animal upon public or private property in an apparent attitude of attack. This is a strict liability offense.

(Ord. 2017-07, 03-15-2017) (Ord. 2003-28, 12-17-2003)

6-5b-2. Animal bite of a human being.

Subject to the affirmative defenses of Section 6-5b-4, any person owning or having charge, care, custody, or control of an animal that bites any human being upon public or private property, whether or not the bite breaks the skin, is guilty of a class B misdemeanor. This is a strict liability offense.

(Ord. 2017-07, 03-15-2017) (Ord. 2003-28, 12-17-2003)

6-5b-3. Animal bite of another domestic animal.

Subject to the affirmative defenses of Section 6-5b-4, any person owning or having charge, care, custody, or control of an animal that bites another domestic animal upon public or private property is guilty of a class C misdemeanor. This is a strict liability offense.

(Ord. 2017-07, 03-15-2017) (Ord. 2003-28, 12-17-2003)

6-5b-4. Affirmative defenses.

The following are affirmative defenses to prosecution under Sections 6-5b-1, 6-5b-2, and 6-5b-3:

(1) The victim was tormenting, abusing, or assaulting the animal or has, in the recent past, tormented, abused, or assaulted the animal.

(2) The victim was committing or attempting to commit a crime.

(3) The victim was trespassing on private property owned, leased, or rented by the person keeping the animal.

(4) The animal was on a substantial leash or lead, or within fenced private property owned, leased, or rented by the person keeping the animal, and the animal was responding to attack or to intrusion upon the property by another animal.

(Ord. 2017-07, 03-15-2017) (Ord. 2003-28, 12-17-2003)

6-5b-5. Impoundment – biting dogs and cats.

(1) The Division shall immediately impound, or

otherwise deliver for quarantine, any dog or cat where the Division has reason to believe the animal has bitten a human being or domesticated animal without provocation.

(2) After 10 days and subject to the terms of Section 6-6-7, the shelter shall return the impounded animal to the animal's owner or custodian upon payment of the applicable fees unless a complaint pursuant to Section 6-5b-6 has been filed. If a complaint has been filed, the shelter shall retain the animal until proceedings are complete and a final determination has been made whether the animal is dangerous or potentially dangerous. If the animal is ultimately declared dangerous or potentially dangerous, the animal's owner or custodian shall be responsible for all expenses of the impoundment.

(3) In lieu of impoundment, the Division may allow the animal to be confined at the owner's or custodian's expense in a City approved kennel or veterinary facility within the city. The owner or custodian shall not remove the animal from the kennel or veterinary facility without the prior written approval of the Shelter supervisor or authorized representative.

(4) Any person who owns or possesses the animal to be impounded and who refuses to surrender the animal upon demand of the Division is guilty of a class B misdemeanor.

(Ord. 2023-32, 08-03-2023) (Ord. 2017-07, 03-15-2017) (Ord. 2008-11, 11-05-2008) (Ord. 2003-28, 12-17-2003)

6-5b-6. Potentially dangerous and dangerous dogs and cats - application for hearing.

(1) Upon written application of the Division or any other person alleging that a dog or cat is or is not dangerous or potentially dangerous, the Department hearing examiner shall conduct a hearing to determine whether an animal is a potentially dangerous or dangerous animal. The application must be filed with the Department within 30 days of impoundment of the animal by the Division or other Division determination that the animal is dangerous or potentially dangerous. The application shall state the legal and factual grounds supporting the application. The hearing examiner will not conduct a hearing on an application that does not state the legal and factual grounds supporting the application. The hearing shall be conducted in accordance with the procedures provided by Section 6-5b-7.

(2) A dog or cat shall be declared potentially dangerous if, unprovoked, it:

(a) bit a human being or domesticated animal whether on public or private property;

(b) chased or approached a person upon public or private property in 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 domesticated animals.

(3) A dog or cat shall be declared dangerous when the animal has done any of the following:

(a) killed a human being or inflicted injury on a human being that created or caused protracted physical pain, permanent disfigurement, or temporary or permanent impairment of any bodily member or organ;

(b) without provocation, killed a pet, livestock,

farm animal, or other domesticated animal;

(c) bitten or endangered the safety of humans or domesticated animals after previously having been found to be potentially dangerous; or,

(d) done any of the acts listed in subparagraph (2) that would classify the animal as potentially dangerous, but after a hearing held pursuant to Section 6-5b-7, the hearing examiner reasonably believes that the animal poses an unreasonable risk of inflicting death or substantial bodily injury on a human being or domesticated animal.

(4) In making a determination whether a dog or cat is potentially dangerous or dangerous, the hearing examiner shall consider each of the following factors:

(a) any previous history of the animal attacking or biting a human being or domesticated animal;

(b) the nature and extent of injuries inflicted and the number and ages of victims involved;

(c) the location where the attack took place;

(d) the presence or absence of any provocation or other circumstance that would justify or explain the bite or attack;

(e) the extent to which property has been damaged or destroyed;

(f) whether the animal exhibits any characteristics of being trained for fighting or attacking, and any evidence to show such training;

(g) whether the animal exhibits characteristics of aggressive or unpredictable temperament or behavior in the presence of human beings or domesticated animals;

(h) whether the animal can be effectively trained or retrained to change its temperament or behavior;

(i) the manner in which the animal has been kept by its owner or custodian;

(j) the owner's or custodian's past and future ability and willingness to train and control the animal;

(k) any other relevant information or evidence regarding the ability of the owner or custodian, or the Division, to protect the public safety in the future if the animal is permitted to remain in the city.

(5) If the hearing examiner determines that the dog or cat is potentially dangerous, and if the owner or custodian is able and willing to properly train, handle, and maintain the animal, the hearing examiner may impose reasonable terms, conditions, and restrictions upon the owner's or custodian's continued possession of the animal and the training, handling, and maintenance of the animal to protect the public health, safety, and welfare.

(6) If the hearing examiner determines that the dog or cat is dangerous, the Division shall order the shelter supervisor to humanely destroy the animal.

(7) Unless otherwise precluded by order of a court of competent jurisdiction, the shelter supervisor shall authorize the destruction of the dog or cat 5 business days after a final determination either by the Chief of Police (or designee), or by the Administrative Hearing Officer under Chapter 1-28, that the animal is dangerous.

(8) Any dog or cat that is determined to be potentially dangerous by the hearing examiner shall be permanently

identified as such by the Division by the use of photographs or permanent marking, or both, prior to the animal's release from impound or confinement.

(9) Any dog or cat that is determined to be potentially dangerous, or that is determined to not be dangerous or potentially dangerous, shall be presumed abandoned if the animal is not redeemed from impound within 5 business days of notice of the determination, and may thereafter be humanely destroyed, adopted, or otherwise disposed of.

(Ord. 2017-07, 03-15-2017) (Ord. 2008-11, 11-05-2008) (Ord. 2003-28, 12-17-2003)

6-5b-7. Hearing procedures with the Division.

(1) The Chief of Police shall appoint a hearing examiner who shall exercise all powers relating to the conduct of the hearing on the application.

(2) After receiving an application alleging that a dog or cat is dangerous or potentially dangerous, the Department shall give notice of the hearing to the applicant and to the owner or custodian of the animal. The notice shall include the following:

(a) the purpose and reason for holding the hearing;

(b) the requested remedy or penalty; and,

(c) the time and place where the hearing is to be held.

(3) At the hearing, the owner of the animal, the complainant or complainants, if any, and the Division shall be given an opportunity to present evidence and to call and cross-examine witnesses.

(4) The hearing examiner may continue the hearing from time to time upon good cause being shown.

(5) Hearings need not be conducted according to technical rules relating to evidence or witnesses. Any relevant evidence shall be admissible if it is the sort of evidence on which responsible persons are accustomed to rely in conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary. Hearsay evidence may be admitted for the purpose of supplementing or explaining any direct evidence, but generally will not be sufficient in itself to support a finding. Oral evidence shall be taken only on oath or affirmation. Other evidence may be admitted upon proffer.

(6) A recording or transcript of the hearing may be taken at the expense of the party desiring the record.

(7) The burden is on the Division or complainant to show by a preponderance of the evidence that the animal should be declared dangerous or potentially dangerous.

(8) Unless otherwise granted additional time by the Chief of Police, the hearing examiner shall, within 10 days of the conclusion of any hearing, submit a written report to the Chief of Police containing a summary of the evidence and stating the hearing examiner's findings and recommendations. The report shall be a public record and shall be served upon the owner of the animal by certified mail. A failure by the hearing examiner to submit a timely report shall not constitute grounds to

challenge, overrule, or otherwise annul the hearing examiner's recommendations or the Police Chief's subsequent decision.

(9) If the hearing examiner determines that the animal is potentially dangerous, the hearing examiner shall make recommendations in accordance with Sections 6-5b-6(5). Terms, conditions, or restrictions may include the following:

(a) selection of locations within the owner's property or premises where the animal must be kept;

(b) requirements as to size, construction, materials, and design of an enclosure where the animal must be kept;

(c) specialized training from a trainer or training program approved by the Division to correct any of the animal's behavioral problems;

(d) prohibiting the addition of any new animal at the premises;

(e) types and methods of restraint, or muzzling, or both;

(f) photo identification or permanent marking, or both, for purposes of identification;

(g) payment of an additional annual \$50 license fee;

(h) procurement and maintenance of a \$25,000 liability policy insuring against personal injuries that may be caused by the animal; and,

(i) revocation of the animal license or permit.

(10) The Chief of Police shall review the hearing examiner's findings and recommendations. The Chief of Police may adopt or reject the findings of the hearing examiner, or may adopt or modify the recommendations of the hearing examiner, or may return the matter to the hearing examiner requesting additional evidence, findings, and recommendations. The Police Chief's decision shall be finalized in writing and shall be served upon the owner of the animal in person or by certified mail. The Police Chief's decision shall be considered issued for purposes of appeal and enforcement on the date of mailing to the animal owner.

(Ord. 2017-07, 03-15-2017) (Ord. 2008-11, 11-05-2008) (Ord. 2003-28, 12-17-2003)

6-5b-8. Appeal.

Appeal of the decision of the Chief of Police shall be to the Administrative Hearing Officer. The appeal must be filed with the City Recorder within 10 days of the date of mailing of the Police Chief's decision to the animal owner, pursuant to the provisions of Chapter 1-28.

(Ord. 2017-07, 03-15-2017) (Ord. 2013-07, 04-17-2013) (Ord. 2012-20, 09-19-12); (Ord. 2003-28, 12-17-2003)

6-5b-9. Penalties.

(1) It shall be a class B misdemeanor for any person to own, possess, harbor, or keep any dog or cat:

(a) after a final decision declaring the animal dangerous; or,

(b) within the city limits in violation of any term, condition, or limitation imposed upon the owner's

continued possession or control of the animal pursuant to a final decision rendered under the provisions of this Chapter.

(2) Each and every day that a violation of this Chapter continues shall constitute a separate offense.

(Ord. 2023-32, 08-02-2023) (Ord. 2017-07, 03-15-2017) (Ord. 2008-11, 11-05-2008) (Ord. 2003-28, 12-17-2003)

6-5b-10. Law enforcement animals.

The provisions of this Title do not apply to dogs used by law enforcement officers while in the course of performing police work.

(Ord. 2003-28, 12-17-2003)