

PUBLIC SAFETY COMMITTEE

10-029-0

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE IX, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Chapter 6, Article IX of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Article IX. Dangerous ~~Animals~~Dogs.

The animal control authority shall be responsible for enforcement of Minnesota Statutes Chapter 347 within the city. In addition to the provisions of this Article, all dangerous and potentially dangerous dogs within the city are subject to regulation under Minnesota Statutes Chapter 347.

Section 2. That Section 6-91 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-91. Definitions.

For the purposes of this ~~Chapter~~Article, the following words and phrases shall mean:

(a) Dangerous animal~~dog~~. ~~Is an animal which has:~~

(1) ~~Without provocation, inflicted substantial bodily harm on a human being on public or private property; or~~ A "dangerous dog" as defined by Minnesota Statutes Section 347.50, Subd. 2; or

(2) ~~Killed a domestic animal without provocation while off the owner's property; or~~ A dog that without provocation attacks or bites more than one person or domestic animal within a period of 24 hours; or

(3) ~~Been found to be potentially dangerous and after the owner has notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or~~

~~domestic animals;~~ A dog that without provocation attacks or bites any person during an incident in which another dog also participates in the attack; or

(4) Any dog that exhibits fresh bite wounds, is observed in a fight, or is found in other circumstances in which there are indications to any police officer or animal control officer that the dog has been intentionally used, trained or encouraged to fight with another animal;

(5) A dog that while running at large (as defined by Sec.6-36 of this chapter) attacks or bites any person or domestic animal and causes bodily harm;

(b) Potentially dangerous ~~animal~~dog. ~~Is an animal which has:~~

~~(1) When unprovoked, inflicts bites on human or domestic animal on public or private property;~~ A "potentially dangerous dog" as defined by Minnesota Statutes Section 347.50, Subd. 3;

~~(2) When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or~~

~~(3) Has the known propensity, tendency or disposition to attack while unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals;~~

(c) Attack. Any unprovoked aggressive approach by a dog within six feet or closer to any person for which a reasonable person connotes intent to inflict bodily harm shall be considered an attack; including, but not limited to, any physical contact with a person or physical contact with any item the person is wearing or

holding. Any person who is physically injured, or sustains damage to personal property, in an attempt to escape from or prevent an eminent attack by a dog shall be presumed to have been attacked;

(cd) Proper enclosure. Proper enclosure means securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. Such enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

(1) Have a minimum overall floor size of 32 square feet;

(2) Sidewalls shall have a minimum height of five feet and be constructed of ~~11~~9-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be one and one-quarter inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground;

(3) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches;

(4) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate

shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel;

~~(d) Substantial bodily harm. Has the meaning given it under Minnesota Statute, Section 609.02, Subdivision 7.~~

(ed) Unprovoked. Unprovoked shall mean the condition in which the animal is not purposely excited, stimulated, agitated or disturbed. It shall be a rebuttable presumption that any attack on a child 14 years of age or younger for which a reasonable person connotes an intent to inflict bodily harm shall be considered to be unprovoked unless the child is engaged in the commission of a crime or illegal activity, including activities classified in Minnesota Statutes, Section 343, as cruelty to animals-;

Section 3. That Section 6-92 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 6-92. Attack by an ~~animal~~dog.

(a) It shall be unlawful for an owner to fail to restrain ~~an animal~~a dog from inflicting or attempting to inflict bodily injury to any person or other animal whether or not the owner is present. This Section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home with criminal intent;

(b) If any police officer or animal control officer is witness to an attack by ~~an animal~~a dog upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to the victim.

Section 4. That Section 6-93 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 6-93. ~~Designation as~~ Restrictions for potentially dangerous and dangerous ~~animals~~dogs.

(a) ~~Potentially dangerous animal. The court or animal control authority shall designate any animal as a potentially dangerous animal upon receiving such evidence that such potentially dangerous animal has, when unprovoked, then bitten, attacked or threatened the safety of a person or a domestic animal as stated in Section 6-91(b). When an animal is declared potentially dangerous, the animal control authority shall cause one owner of the potentially dangerous animal to be notified in writing that such animal is potentially dangerous.~~ Except as provided in Minnesota Statutes Section 347.51, Subd. 8, the animal control authority may place on owners of potentially dangerous or dangerous dogs any restrictions that the animal control authority deems necessary to ensure public safety;

(b) ~~Dangerous animal. The court or animal control authority shall have the authority to designate any animal as a dangerous animal upon receiving evidence of the following:~~ When outside its owner's dwelling, a potentially dangerous dog must be kept on a leash not exceeding six feet in length and must be under direct physical control or a responsible person at least 18 years old, or inside a physical fence or other secure enclosure to both restrain the potentially dangerous dog from coming into physical contact with the public and to prevent the public from coming into physical contact with that dog;

(1) ~~That such an animal has, when unprovoked, then bitten, attacked or threatened the safety of a person or domestic animal as stated in Section 6-91(a); or~~

~~(2) That such animal has been declared potentially~~

~~dangerous and/or the owner has personal knowledge of the same and such animal has then bitten, attacked or threatened the safety of a person or domestic animal as stated in Section 6-91(a); or~~

~~————— (3) That such an animal exhibits fresh wounds, scarring, or is observed in a fight, or other indications which to a reasonable person evidence that the animal has or will be used, trained or encouraged to fight with another animal; or~~

~~————— (4) That the owner of such animal has in custody or possession any training apparatus, paraphernalia or drugs used to prepare such animal to be fought with another animal;~~

~~(c) Registration of dangerous animal. A county shall issue a certificate of registration to the owner of a dangerous dog if the owner presents sufficient evidence that:~~

~~————— (1) A proper enclosure exists for the dangerous dog and a posting on the premises with a clearly visible warning sign, including a warning symbol to inform children, that there is a dangerous dog on the property; and~~

~~————— (2) A surety bond issued by a surety company authorized to conduct business in this state in a form acceptable to the county in the sum of at least \$50,000, payable to any person injured by the dangerous dog, or a policy of liability insurance issued by an insurance company authorized to conduct business in this state in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the dangerous dog;~~

~~————— (d) Warning symbol. If a county issues a certificate of registration to the owner of a dangerous dog pursuant to Minnesota Statute 347.51, Subdivision 2, the county must provide, for posting on the owner's property, a copy of a warning symbol to inform children that there is a dangerous dog on the property. The design of the warning symbol must be uniform and specified by the~~

~~commissioner of public safety, after consultation with animal control professionals. The design specification process is exempt from rule making under Chapter 14 and is exempt from Section 14-38. The commissioner shall provide the number of copies of the warning symbol requested by each county and shall charge the county the actual cost of the warning symbols received. The county may charge the registrant a reasonable fee to cover its administrative costs and the cost of the warning symbol;~~

~~———— (e) Fee. The county may charge the owner an annual fee, in addition to any regular dog licensing fees, to obtain a certificate of registration for a dangerous dog under this Section;~~

~~———— (f) Law enforcement: exemption. The provisions of this Section do not apply to dangerous dogs used by law enforcement officials for police work;~~

~~———— (g) Exemption. Dogs may not be declared dangerous if the threat, injury, or damage was sustained by a person:~~

~~———— (1) Who was committing, at the time, a willful trespass or other tort upon the premises occupied by the owner of the dog;~~

~~———— (2) Who was provoking, tormenting, abusing or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or~~

~~———— (3) Who was committing or attempting to commit a crime;~~

~~———— (h) Counties without licensing systems. If the owner of a dangerous dog resides in a county that does not license dogs under Minnesota Statute, sections 347.08 to 347.21, the owner shall obtain a certificate as required under this Section from the county auditor or other person designated by the county board in the county where the owner resides;~~

~~(i) Tag. A dangerous dog registered under this Section must have a standardized, easily identifiable tag identifying the dog as dangerous and containing the uniform dangerous dog symbol, affixed to the dog's collar at all times. The commissioner of public safety, after consultation with animal control professionals, shall provide by rule for the design of the tag.~~

Section 5. That Section 6-94 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-94. ~~Dangerous animal requirements~~ Seizure of certain dogs.

Any dog shall be immediately seized and impounded if:

(a) After having been declared potentially dangerous or dangerous, the dog subsequently attacks, bites, chases, or threatens the safety of any human or domestic animal; or

(b) Fourteen days after having received notice that the dog is potentially dangerous or dangerous, the owner has not complied with all of the requirements ordered by the animal control authority; or

(c) The dog bites or attacks a person or domestic animal while running at large in violation of Duluth City Code Section 6-36, is unlicensed, or is not properly vaccinated against rabies virus at the time the dog bites or attacks a person or domestic animal;

~~(a) Requirements. If the court or animal control authority does not order the destruction of an animal that has been declared dangerous, the court or animal control authority shall, as an alternative, order any or all of the following:~~

~~(1) That the owner provide and maintain a proper enclosure for the dangerous animal as specified in Section 6-91(c); and~~

~~(2) Post the front and the rear of the premises with~~

~~clearly visible warning signs, including a warning symbol to inform children, that there is a dangerous animal on the property as specified in Minnesota Statute 347.51; and~~

~~————— (3) Provides and shows proof annually of public liability insurance in the minimum amount of \$50,000; and~~

~~————— (4) If the animal is a dog and is outside the proper enclosure, the dog must be muzzled and restrained by a substantial chain or leash (not to exceed six feet in length) and under the physical restraint of a person 18 years of age or older. The muzzle must be of such design as to prevent the dog from biting any person or animal, but will not cause injury to the dog or interfere with its vision or respiration; and~~

~~————— (5) If the animal is a dog or cat, it must have an easily identifiable, standardized tag identifying the dog or cat as dangerous affixed to the dog's or cat's collar at all times as specified in Minnesota Statute 347.51; and~~

~~————— (6) Provides and shows proof of microchip identification as required in Section 6-99; and~~

~~————— (7) All animals deemed dangerous by the animal control authority shall be registered with St. Louis County auditor's office;~~

~~————— (8) If the animal is a dog or cat, the animal must be licensed and up to date on rabies vaccination. If the animal is a ferret, it must be up to date with rabies vaccination;~~

~~————— (b) Seizure. Animal control shall immediately seize any dangerous animal if the owner does not meet each of the above requirements within 14 days after the date notice is sent to the owner that the animal is dangerous. Seizure may be appealed to district court.~~

~~————— (c) Reclaiming animals. A dangerous animal seized under~~

~~Section 6-97(b) may be reclaimed by the owner of the animal upon payment of impounding and boarding fees and presenting proof to animal control that each of the requirements under Section 6-94 are fulfilled. An animal not reclaimed under this Section within 14 days may be disposed of as provided under Section 6-98 and the owner is liable to animal control for costs incurred in confining the animal.~~

~~(d) Subsequent offenses. If an owner of an animal has subsequently violated the provisions under this Article with the same animal, the animal must be seized by animal control. The owner may request a hearing. If the owner is found to have violated the provisions for which the animal was seized, the animal control authority shall order the animal destroyed in a proper and humane manner and the owner shall pay the costs of confining the animal. If the person is found not to have violated the provisions for which the animal was seized, the owner may reclaim the animal under the provisions of this Article. If the animal is not yet reclaimed by the owner within 14 days after the date the owner is notified that the animal may be reclaimed, the animal may be disposed of as provided under this Chapter and the owner is liable to the animal control for the costs incurred in confining, impounding and disposing of the animal.~~

Section 6. That Section 6-95 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-95. ~~Notification of new address~~ Disposition of seized dogs.

~~The owner of an animal which has been identified as dangerous or potentially dangerous must notify the animal control authority in writing if the animal is to be relocated from its current address or given or sold to another person. The notification must be given in writing at least 14 days prior to the relocation or transfer of~~

~~ownership. The notification must include the current owner's name and address, the relocation address and the name of the new owner, if any. Provided that the animal control authority does not order and require that the dog be euthanized; a dog seized under this Article may be reclaimed if, within 14 days, the owner of the dog:~~

~~(a) Provides proof of compliance with all restrictions and requirements ordered by the animal control authority; and~~

~~(b) Pays all fees associated with the impound, care and keeping of the dog; or~~

~~(c) Files an appeal of the order of the animal control authority and the dog owner complies with all requirements of keeping the dog under this Article, and Minnesota Statutes Chapter 347 if applicable, as well as paying all fees associated with the impound, care and keeping of the dog and fulfilling any conditions ordered by the administrative hearing officer.~~

Section 7. That Section 6-96 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-96. Concealing of potentially dangerous and dangerous animals~~dogs~~.

No person shall harbor, hide or conceal or refuse to present to the animal control authority any dog ~~an animal~~ which has been declared potentially dangerous or dangerous by the court, law enforcement officer, or the animal control authority ~~or by the animal control officer~~, which has been ordered into custody for quarantine, euthanasia, or other disposition.

Section 8. That Section 6-97 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-97. Authority to order ~~destruction~~ euthanasia; procedure.

(a) ~~The court or the animal control authority, upon finding that an animal is dangerous hereunder,~~ is authorized to order, as part of the disposition of the case, that the animal dog be destroyed~~euthanized~~ based on ~~a written order containing~~ one or more of the following findings of fact:

(1) The animal dog is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

(2) The owner, if known, of the animal dangerous dog has demonstrated an inability or unwillingness to control the animal dog in order to prevent injury to persons or other animals;

(b) Procedure. The court or the animal control authority, after having determined that ~~an animal~~ a dog is dangerous, may proceed in the following manner:

(1) The animal control authority shall cause one owner of the animal dog, if known, to be notified in writing or in person that the animal dog is dangerous and that an order is issued requiring the dangerous dog to be euthanized. If the dog is not already impounded, the animal control authority shall ~~may~~ order the animal dog seized ~~or make such orders as deemed proper.~~ The owner, if known, shall be notified ~~as to dates, times, places and parties bitten~~ and shall be given 14 days to appeal this order by requesting, in writing, a hearing before the ~~animal control authority~~ administrative hearing officer for a review of this determination.

(2) If no appeal is filed, the orders issued will stand ~~or~~ and the animal control authority may ~~order the animal destroyed~~ euthanize the dangerous dog.

~~If an owner requests a hearing for determination as to the~~

~~dangerous nature of the animal, the hearing shall be held before the animal control authority, who shall set a date for hearing not more than three weeks after demand for said hearing. The records of the animal control authority and police shall be admissible for consideration by the animal control authority without further foundation. After considering all evidence pertaining to the temperament of the animal, the animal control authority shall make such order as he/she deems proper. The animal control authority may order that an animal control officer take the animal into custody for destruction, if such animal is not currently in custody. If the animal is ordered into custody for destruction, the owner shall immediately make the animal available to the animal control officer and failure to do so shall be a violation of this Code.~~

(23) Nothing in this Section shall prevent the animal control authority from ordering the immediate destruction of a rabies-suspected animal pursuant to Article III of the Duluth City Code.

Section 9. That Section 6-98 of the Duluth City Code, 1959, as amended, is hereby repealed in its entirety.

Section 10. That Section 6-99 of the Duluth City Code, 1959, as amended, is hereby repealed in its entirety.

Section 11. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

Approved for presentation to council:

Department Director

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

DPD/ATTY SBH:cjk 6/7/2010

STATEMENT OF PURPOSE: This ordinance amends Chapter 6, Article IX of the Duluth City Code regarding dangerous dog regulation by the Duluth animal control authority. The purpose of this ordinance is also to amend or remove language that is superseded by or inconsistent with Minnesota Statutes Chapter 347.