

Introduced Navarre
Date: 06/16/98
Hearing: 07/14/98
Action: Failed Introduction
Vote: 4 Yes, 4 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 98-29**

**ENACTING CHAPTER 8.10 OF THE KENAI PENINSULA BOROUGH CODE OF
ORDINANCES PROVIDING FOR LIMITED ANIMAL CONTROL IN THE AREA OF
THE BOROUGH OUTSIDE OF CITIES**

WHEREAS, the cities of Kenai, Soldotna, Homer, Seward, and Seldovia presently provide animal control services; and

WHEREAS, these cities also incur significant expenses providing services for animals owned by borough residents living outside cities largely because such borough animals either travel to or are delivered to the cities; and

WHEREAS, for example, Kenai, Soldotna, and Homer's combined records indicate approximately 3,315 dogs and cats were either picked up or dropped off at the pounds, and about 1,342 of those animals were from the borough area outside the cities; and

WHEREAS, there have been numerous complaints of dogs and cats running at large in the Borough in the areas outside cities, damaging and destroying property, attacking people and other animals, and being a general nuisance; and

WHEREAS, a 1996 newspaper article showed 461 dog and cat bites were reported to the Anchorage Animal Control Center between January and November, 1996 and that children under the age of ten are the likeliest victims; and

WHEREAS, the records of the cities of Kenai, Soldotna, Homer, and Seldovia show 45 animal bites reported in 1997; and

WHEREAS, Alaska Statute 29.35.210 provides that the borough may, by ordinance, license, impound and dispose of animals on either an areawide or a non areawide basis; and

WHEREAS, it is desirable to implement limited animal control measures in the areas outside of the cities to be enforced by contract;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

SECTION 1. That a new Chapter 8.10 of the Kenai Peninsula Borough Code of Ordinances shall be enacted to read as follows:

8.10.010. Definitions.

For the purposes of this chapter, the following terms are defined as provided below, unless otherwise stated:

- a. "Animal" means vertebrated domestic or domesticated member of the Animalia Kingdom.
- b. "At large" means an animal not under restraint.
- c. "Canid Hybrid" means an owned offspring of a wild member of the genus *Canis* and the family *Canidae* bred to a member of the genus and species *Canis familiaris*. The offspring of a canid hybrid bred with a wild member of the family *Canidae*, another canid hybrid, or a member of the genus and species *Canis familiaris* is also a canid hybrid. Canid hybrids are domesticated animals.
- d. "Cat" means a member of the genus and species *Felis catus*.
- e. "Dangerous dog or cat" means any dog or cat which, due to improper or inadequate supervision or control has done an act harmful in its character to human beings or animals, regardless of whether the act is done in a playful or hostile manner.
- f. "Dog" means a member of the genus and species *Canis familiaris*, commonly known as domestic dog, but does not include other members of the family *Canidae*, such as a fox, coyote, wolf or any other game species, the taking of which is regulated by the state. For purposes of this title, "dog" shall include canid hybrids unless otherwise specified.
- g. "Domesticated" means animals adapted to human use or pleasure.
- h. "Enforcing Municipality" refers to the municipality having jurisdiction and authority to enforce this chapter in the location where the dog or cat is located. It means either:
 - (1) the borough, where enforcement is by the borough or a non-municipal contractor with the borough; or
 - (2) the city within the borough enforcing this chapter pursuant to an agreement with the borough.
- i. "Impoundment" means the seizure of dogs or cats by the methods set forth in this chapter.
- j. "Officer" means a person charged by law with the duty to enforce provisions of this title.
- k. "Owner" means a person or group of persons having title, keeping, harboring and having custody or control of a dog or cat.
- l. "Person" includes an individual, a joint venture, partnership, corporation, or unincorporated association.
- m. "Restraint" means physical confinement, as in a building or a secure enclosure, or otherwise secured, as with a muzzle, so that it cannot injure other persons or their property.
- n. "Trespass" means to enter on the land of another without lawful permission.
- o. "Vicious dog or cat" means a dog or cat that has done an unreasonable act harmful to human beings or animals which act is done in a hostile manner.

8.10.020. Jurisdiction.

The borough has jurisdiction over domestic and domesticated animals as defined in this chapter.

8.10.030. Application.

The provisions of this chapter shall apply to dogs and cats located in the area of the borough outside of the cities.

8.10.040. Dog or Cat Restraint.

A. It shall be unlawful for an owner of any dog or cat to permit such dog or cat to trespass on the property of another person. An owner of a dog or cat shall at all times take all steps reasonably necessary to ensure the dog or cat will not trespass on the property of another person.

B. It shall be unlawful for an owner of a vicious or dangerous dog or cat to permit such dog or cat to run at large within the borough. An owner or caretaker of such a dog or cat shall at all times either confine the dog or cat in a building or a secure enclosure, or otherwise secure the dog or cat as with a muzzle and leash, so that it cannot injure other persons or their property.

8.10.045. Nuisance Provision.

The following activities are declared a public nuisance and are unlawful under this chapter:

A. It is unlawful to allow any dog to bark, howl, bay, or yap, as may be heard beyond the boundary of the animal owner's property with such frequency, regardless of the time of day or night, as will annoy a reasonable person. It is unlawful to allow an animal to bark, howl, bay, or yap for 15 minutes or more at a time.

B. It is unlawful to fail to maintain in a clean and sanitary condition and free from objectionable odor all structures, pens or yards and areas adjacent thereto wherever dogs or cats are kept.

C. It is unlawful to allow any dog to frequently and habitually growl, snap at, jump upon or otherwise menace, injure or frighten persons within the borough. This does not apply to persons who are trespassing or otherwise in violation of the law.

D. It is unlawful to allow any dog or cat to defecate, dig upon or otherwise injure private or public property or a public thoroughfare.

8.10.050. Rabies.

A. No person may own a dog or cat over three months of age that does not have a current rabies vaccination.

B. Any dog or cat reasonably suspected to be infected with the rabies virus shall be immediately reported to the enforcing entity and impounded as provided in this chapter.

C. Any dog or cat reasonably suspected by the animal control officer to be infected with the rabies virus shall be quarantined for a minimum of ten days.

D. Conditions of Quarantine:

(1) Subject to subsections (D)(2) through (D)(4) of this section, while a dog or cat is quarantined, its owner shall confine the dog or cat indoors or in a secure enclosure so that it cannot leave its premises, or come in contact with persons or other animals. The dog or cat may be taken outdoors for brief periods to relieve itself, provided it is kept on a secure leash under the control of an adult. The dog or cat may be kept under equally secure conditions at a veterinary hospital or boarding kennel of the owner's choice. The owner shall inform the animal control officer where the

dog or cat is being kept. The owner or person in possession of a quarantined dog or cat shall immediately notify the Alaska Department of Health and Social Services of any evidence of sickness or disease in the dog or cat during its period of confinement and shall promptly deliver its carcass to the appropriate agency in the event of the dog's or cat's death during quarantine.

(2) No person may release a dog or cat from quarantine without the written consent of the animal control officer. The animal control officer may require that a dog or cat be inspected before releasing it from quarantine.

(3) No person may remove a quarantined dog or cat from the borough without notifying the animal control officer in writing at least 48 hours before the intended removal and obtaining the written consent of the animal control officer to the removal.

(4) The animal control officer may direct that a quarantined dog or cat be confined at an animal control center.

(5) Where borough law conflicts with state law concerning rabies control, state law shall control.

E. The owner of a quarantined dog or cat shall bear the expense of keeping the dog or cat while it is quarantined, wherever it is kept and whether the location of its quarantine is selected by its owner or directed by the animal control officer.

8.10.060. Unauthorized Dog or Cat Release.

It shall be unlawful for any person, other than an officer of the law performing duties pursuant to this chapter, to release a dog or cat from restraint without its owner's consent, except to preserve the animal's life.

8.10.070. Licensing.

A. Any dog or cat impounded under this chapter shall thereafter be registered and licensed at the owner's expense. All impounded dogs or cats over four months of age shall be licensed and registered by the borough or its contractor, and licensing and impoundment fees paid prior to release. Such license shall state the name and address of the owner and the name, breed, color, age and sex of the dog or cat. A numbered tag for the dog or cat shall be issued by the animal control officer and worn by the dog or cat at all times, securely fastened to a collar, harness or similar device. Borough licenses shall expire on December 31 each year and must be renewed by the following February 1 for any dog or cat having been impounded under this chapter. Any such dog or cat shall also be vaccinated for rabies before either licensing or release, or proof provided that the dog or cat has a current rabies vaccination.

B. An owner may voluntarily register and license a dog or cat at the owner's expense.

C. In order to encourage licensing and vaccination of dogs and cats, and animal population control, the mayor may establish one or more one-day clinics for voluntary licensing, registration, vaccination, neutering and spaying of dogs or cats within the borough. At the mayor's discretion, such clinics may be either low cost or at no charge to the public.

8.10.080. Enforcement.

Administration and enforcement of this chapter is subject to the appropriation and availability of funds. Provisions of this chapter requiring enforcement by an officer may be enforced either by the borough directly, or by private contractors or cities within the borough pursuant to agreements. Enforcement districts shall be established encompassing all areas of the borough outside of the cities.

Funds for enforcement shall be allocated in proportion to the population in each enforcement district, as established by the most recent federal decennial census. The mayor is authorized to enter into either annual or long-term agreements with private contractors or such cities for enforcement of this chapter within agreed upon enforcement districts, subject to assembly and city council approval. Such approval shall be by resolution, unless an ordinance is otherwise required by law. Such agreements shall provide for reasonable compensation to the contractors and cities for costs incurred in enforcing this chapter. As a part of such compensation, it is anticipated that cities and contractors shall retain all fees collected from owners. Cities and contractors are not obligated to handle or respond to calls in the absence of an agreement.

8.10.090. Hearings and Appeals.

A. A person who owns a dog or cat designated by an officer as vicious or dangerous may appeal that designation to the mayor or his designee by filing a written application for a hearing with the borough clerk within 30 days of the date of notice of such designation. Upon receipt of a timely application, the mayor or his designee shall conduct a hearing, providing the person with reasonable notice and opportunity to be heard. Appeals from the mayor's decision shall be filed with the superior court in Kenai, Alaska within 30 days of the mayor's decision, in accordance with the rules governing appeals from administrative agency decisions.

B. The owner of an animal subject to the forfeiture provisions of KPB 8.10.180(A)(4) or 8.10.180(B) is entitled to a Notice of Forfeiture, if the owner can be reasonably located and served. The owner may protest the forfeiture by filing a protest on a form provided by the borough within five days of service of the notice of forfeiture. The borough may grant a forfeiture protest hearing. Whether or not a hearing takes place, if the owner timely protests the forfeiture the borough shall render a written decision with findings regarding the forfeiture. The order may uphold the forfeiture, allow return of the animal to the owner with conditions, or uphold or modify fees or costs related to the impoundment and care of the animal. Any payment plan for fees or costs allowed by the final order must be secured in a manner satisfactory to the borough before the original Notice of Forfeiture is set aside. The final forfeiture order is appealable by the animal owner to the superior court within 30 days pursuant to Part VI of the Alaska Rules of Appellate Procedure.

8.10.100. Interference.

No person may interfere with, hinder, or molest an officer performing a duty under this chapter.

8.10.110. Impoundment.

A. An animal control officer, or any police officer, or their designee may capture unrestrained vicious or dangerous dogs or cats, trespassing dogs or cats, other dogs or cats in violation of any provision in this chapter, or a dog or cat reasonably suspected to be infected with the rabies virus.

B. An officer may pursue a dog or cat onto private property in the course of effecting an impoundment.

C. To effect an impoundment, an officer or his designee may capture a dog or cat by calling the dog or cat or, when deemed necessary, by the use of a baited live capture cage trap. A citizen may also capture a dog or cat which is in violation of this chapter by calling the dog or cat for capture and removal. Except as provided below, when capturing a dog or cat for impoundment,

private citizens may only use live traps, and such traps must have been approved by the animal control officer with authority for the area where the dog or cat is located. Where the dog or cat is at large and is threatening life, including domestic or wild life, or property, a citizen may use any reasonable means necessary to protect such life or property, including killing the dog or cat, provided that the owner or keeper of the dog or cat, if known or reasonably identifiable, shall be notified and given reasonable opportunity to restrain the dog or cat before it is lawful to kill it.

D. When responding to a call in the borough outside the city an officer is acting under the legal authority of the borough.

E. An impounded dog or cat shall be taken to the appropriate animal control shelter and confined in a humane manner for not less than 120 hours, unless earlier redeemed by the owner by completing registration and vaccination requirements, and paying all applicable fees. Immediately upon impounding a dog or cat, the animal control officer shall make reasonable efforts to notify the dog's or cat's owner of the impoundment and the conditions under which the owner may redeem the dog or cat. Additionally, when the impounding officer determines a dog or cat is vicious or dangerous, the officer shall promptly make reasonable efforts to notify the owner of this designation.

8.10.120. Disposition of dogs or cats.

Dogs or cats not redeemed by the owner within the allotted time period, but not less than 120 hours, may be either disposed of in a humane manner or made available for adoption upon payment of all accruing fees. Dogs or cats designated as vicious or showing symptoms of a major infectious or contagious disease shall not be available for adoption.

8.10.130. Fee schedule.

Fees for licensing or redeeming an impounded dog or cat shall be charged as follows:

Licensing:	\$5.00 per year. If the dog or cat is too large for existing municipal facilities, then the actual boarding costs will also be charged.
Replacements for lost license tags:	\$0.25.
Medical care:	Actual veterinarian charges.
Impoundment:	
Dogs or cats weighing less than 15 pounds:	\$3.00 per day or partial day for feeding plus \$25.
Dogs or cats weighing 15 pounds or more:	\$5.00 per day or actual costs, whichever is greater, for feeding, plus the \$25 impoundment fee.

8.10.140. Infractions.

An infraction is a minor offense which carries no jail sentence and cannot result in the loss of a valuable license. Except as otherwise provided in this title, any person convicted under this title

shall be deemed guilty of an infraction and shall be punished by a fine not less than \$25, nor greater than \$300.

8.10.150. Fines for Infractions.

A. The following fine schedule is hereby established for violations of the following provisions of KPB Title 8.

Code Section	Section Description	Amount of Fine
KPB 8.10.040(A)	Trespass animal, first offense	\$ 25.00
KPB 8.10.040(A)	Trespass animal, second offense	\$ 75.00
KPB 8.10.040(A)	Repeat trespass animal, three or more offenses	\$200.00
KPB 8.10.040(B)	Vicious or dangerous animal at-large	\$250.00
KPB 8.10.050(A)	Failure to have proof of rabies vaccination	\$150.00
KPB 8.10.060	Unauthorized animal release	\$100.00
KPB 8.10.100	Interference, hindering, molesting officer	\$250.00
KPB 8.10.160	Failure to respond to citation/complaint	\$ 75.00
KPB 8.10.045	Nuisance animal	\$100.00
KPB 8.10.045	Nuisance animal, repeat offense	\$200.00
KPB 8.10.180	Failure to release animal to animal control officer	\$250.00

B. The fines set forth in subsection (A) may not be judicially reduced.

8.10.160. Citations for Infractions.

A. *Citations; contents.* The citation issued for violation of the provisions of this title shall be in writing, state the nature of the violations, name the alleged violator, and contain a notice to answer to the charges against the alleged violator in the Alaska State District Court for the Third Judicial District at Kenai, Homer, or Seward, as appropriate. The citation shall further state that the defendant is entitled to a trial, to engage counsel, to confront and question witnesses, to testify, and to subpoena witnesses in the defendant's behalf. The citation shall also indicate whether a court appearance is mandatory or can be waived, shall state the fine established by borough ordinance, the procedure the defendant must follow in responding to the citation, and the consequences for failure to respond.

B. *Issuance.* Any animal control officer or other authorized agent of the borough may issue, file, and serve citations for violations of the provisions of this title.

C. *Disposition.* A person issued a citation pursuant to this title has the option of paying the applicable fine to the district court clerk upon entering the plea of "no contest" and waiving appearance in court. The defendant may enter a plea of "not guilty" and request a trial.

D. *No-contest and conviction.* Persons who do not contest the citation, who change their original plea of "not guilty" to "no-contest," or persons convicted of the offense charged shall be fined according to the fine schedule for all violations set forth in KPB 8.10.150.

8.10.170. Enforcement Discretion.

Animal control officers may issue warnings for violations of this code. A record of the animal control officer's contacts with an animal owner shall be maintained by the borough or borough's contractor.

8.10.180. Forfeiture.

A. The borough may consider all rights of ownership in an animal forfeited if the owner:

- (1) is ordered by the court to forfeit the animal;
- (2) fails to claim on animal within the time frame set forth in 8.10.110;
- (3) in writing releases the animal to the borough; or
- (4) fails to turn over an animal to an animal control officer upon request.

B. Any person who fails to pay impoundment, boarding fees, veterinarian fees, and other costs and expenses reasonably incurred by the borough for the care and maintenance of an animal may be subject to forfeiture of the person's rights and interest in the animal.

C. Any forfeited animal shall be subject to the impoundment, adoption, and euthanasia requirements of this title.

8.10.190. Civil Penalty and Statutory Injunction.

Pursuant to AS 29.25.070(b), the borough may institute a civil action against any person who violates any provision of this title. In addition to injunctive and compensatory relief, a civil penalty not to exceed the maximum amount authorized by law may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction.

SECTION 2. That all cats and dogs not currently vaccinated against rabies must be vaccinated within six months of the effective date of this ordinance.

SECTION 3. That at the general election to be held October 6, 1998 the following proposition be submitted to the qualified voters within the Kenai Peninsula Borough on an areawide basis. The proposition must receive a majority vote of those qualified to vote on the proposition in order to be approved. The proposition must be in substantially the following form: "Shall the Kenai Peninsula Borough enact Ordinance 98-29, and as may be hereafter amended by the assembly, adopting the non-areawide power to license, impound and dispose of domestic and domesticated dogs or cats."

SECTION 4. That this ordinance shall become effective only if and when the proposition described in Section 3 is approved by a majority of the qualified voters voting on the proposition at the election held on October 6, 1998. Thereafter, provisions of KPB 8.10.080 through 8.10.190 contained in Section 1 of this ordinance shall become effective as to each enforcement district of the borough when the borough

administration enters a binding agreement, or makes other provisions, for enforcement of this chapter within such district.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS
____ DAY OF _____, 1998.**

Jack Brown, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk