

Introduced by: O'Brien, Scalzi
Date: 12/08/98
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01/19/99
Action: Withdrawn by O'Brien
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 98-76**

**ENACTING CHAPTER 8.10 OF THE KENAI PENINSULA BOROUGH CODE OF
ORDINANCES PROVIDING FOR LIMITED DOG 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 these cities 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, Kenai, Soldotna, Seward and Homer's combined records indicate approximately 3,868 dogs and cats were either picked up or dropped off at the pounds in 1997, and about 1,625 of those animals were from the borough area outside the cities; and

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

WHEREAS, Kenai, Soldotna, Homer, Seward and Seldovia combined records show 55 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, while a majority of the voters voting in the nonareawide advisory election held October 6, 1998 did not support the borough providing animal control in the areas outside of the cities, a majority did vote in favor of providing dangerous animal control, rabies control and the disposal/adoption of abandoned or loose-running animals through contracts with cities if the borough were to exercise animal control powers; and

WHEREAS, it is desirable to implement limited dog control measures in the areas outside of the cities in a manner that will provide some compensation to cities for services they are already providing to borough residents living outside of cities, without enacting pervasive and costly new regulations;

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. "Dangerous dog" means any dog which has bitten a person or persons on one or more separate occasions, causing the person's skin to break, regardless of whether the act is done in a playful or hostile manner, unless the injury was sustained by a person who, at the time the injury was sustained, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog, or was testing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime.
- e. "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.
- f. "Domesticated" means animals adapted to human use or pleasure.
- g. "Enforcing Entity" means either the borough or the city within the borough enforcing this chapter pursuant to an agreement with the borough.
- h. "Impoundment" means the seizure of dogs by the methods set forth in this chapter.
- i. "Located" means the physical site of either the dog's residence or the place where the dog is situated when it commits an act subjecting it to impoundment pursuant to this chapter.
- j. "Mad dog" means a dog that shows symptoms of suffering from rabies, including without limitation foaming at the mouth, extremely aggressive and combative behavior, and highly sensitive to touch and other kinds of stimulation.

- 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. "Serious injury" means a deep puncture wound, laceration, avulsion, deep soft tissue, or bony injury to a human being requiring professional medical evaluation and treatment.
- n. "Trespass" means to enter on the land of another without lawful permission.
- o. "Vicious dog" means a dog that has bitten any person or persons on three or more separate occasions, causing the person's skin to break, regardless of whether the act is done in a playful or hostile manner, or a dog that has caused serious injury or death to a human being. A dog is not deemed vicious under this chapter if the injury was sustained by a person who, at the time the injury was sustained, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog, or was testing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime.

8.10.020. Jurisdiction.

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

8.10.030. Application.

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

8.10.040. Enforcement.

Administration and enforcement of this chapter is subject to the appropriation and availability of funds. Enforcement districts shall be established encompassing all areas of the borough outside of the cities. Provisions of this chapter requiring enforcement by an officer may only be enforced by first-class cities within the borough pursuant to agreements with the borough. The mayor is authorized to enter into either annual or long-term agreements with cities in the borough for enforcement of this chapter within agreed upon enforcement districts, subject to assembly and city council approval. Such agreements shall provide for compensation to the first-class cities of \$25,000 per year for costs incurred in enforcing this chapter. In addition to any such payment by the borough, it is anticipated that cities shall retain all related fees collected by the cities. Cities are not obligated to handle or respond to calls in the absence of an agreement.

8.10.050. Rabies.

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

B. Any dog 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 reasonably suspected by the animal control officer to be infected with the rabies virus shall be quarantined for a minimum of ten days at the designated animal control center.

D. Whenever borough law conflicts with state law concerning rabies control, state law shall control.

E. The owner of a quarantined dog shall bear the expense of keeping the dog while it is quarantined.

8.10.060. Impoundment and redemption.

A. An animal control officer, or any police officer, or their designee may capture or accept custody of any dog that is reasonably suspected by the officer to have bitten a person or to be infected with the rabies virus. Except as otherwise specifically provided, nothing in this chapter shall be construed to require an officer to pursue or capture any dog. An officer shall make reasonable efforts to capture and impound a dog the officer initially determines appears to be either vicious or infected with the rabies virus.

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

C. To effect an impoundment, an officer or his designee may capture a dog that appears to be either vicious or infected with the rabies virus by any reasonable means. To effect an impoundment of a dog alleged to be dangerous but not vicious, an officer or his designee may capture a dog by calling the dog or, when deemed necessary, by the use of a baited live capture cage trap.

D. When responding to a call in the borough outside the city, pursuant to a contract with the borough entered under this chapter, an officer is acting under the legal authority of the borough.

E. An impounded dog 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 rabies vaccination requirements, and paying all applicable fees. Dogs designated as vicious may not be redeemed, but shall be disposed of as provided in this chapter. Immediately upon impounding a dog, the animal control officer shall make reasonable efforts to notify the dog's owner of the impoundment and the conditions under which the owner may redeem the dog. Dogs not vaccinated against rabies and showing symptoms of rabies shall be quarantined as provided in KPB 8.10.050.

8.10.070. Interference with officer.

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

8.10.080. Designation of dog as dangerous or vicious.

The animal control officer shall be responsible for promptly determining, based on reasonably reliable evidence including pictures, doctor reports, affidavits, personal interviews, medical records and other similar evidence, whether an impounded dog is either dangerous or vicious. The animal control officer shall document all reported bites, whether or not the dog is impounded, and shall maintain records of all supporting evidence of any reported bites, whether or not the dog is deemed

vicious or dangerous, for a minimum of ten years. When the animal control officer determines a dog is vicious or dangerous, the officer shall promptly make reasonable efforts to notify the owner in writing of this designation.

8.10.090. Disposition of dogs.

No dog may be disposed of less than 120 hours from the time of initial impoundment. Dogs deemed to be vicious or infected with rabies shall be disposed of in a humane manner following exhaustion of all appeal rights. Dogs not deemed to be either dangerous, vicious or infected with rabies and not redeemed by the owner within the allotted time period, may be either disposed of in a humane manner or made available for adoption upon payment of all accruing fees. Dogs designated as dangerous or showing symptoms of a major infectious or contagious disease other than rabies, shall not be available for adoption but may be redeemed by the owner upon payment of all applicable fees.

8.10.100. Protection of life or property.

Pursuant to AS 03.55.010 as now enacted or hereinafter amended, any person may lawfully kill any vicious or mad dog running at large.

8.10.110. Fee schedule.

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

- A. Medical care.....Actual veterinarian charges.
- B. Impoundment:
 - Dogs weighing less than 15 pounds..... \$3.00 per day or partial day for feeding plus the \$25 impoundment fee.
 - Dogs weighing 15 pounds or more..... \$5.00 per day or actual costs, whichever is greater, for feeding, plus the \$25 impoundment fee.

8.10.120. Forfeiture.

- A. The borough may consider all rights of ownership in a dog forfeited if the owner:
 - (1) is ordered by the court to forfeit the dog;
 - (2) fails to claim on dog within the time frame set forth in 8.10.090;
 - (3) in writing releases the dog to the borough; or
 - (4) fails to turn over a dog to an animal control officer upon request.
 - (5) fails to pay impoundment, boarding fees, veterinarian fees, and other costs and expenses reasonably incurred by the enforcing entity for the care and maintenance of a dog.

B. Any forfeited dog shall be subject to the impoundment, adoption, and euthanasia provisions of this chapter.

8.10.130. Hearings and Appeals.

A. A person who owns a dog 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 10 days of the date of notice of such designation. Upon timely receipt of an 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 a dog subject to the forfeiture provisions of KPB 8.10.120 shall be served with a written notice of forfeiture if the owner can reasonably be located and served. The owner may protest the forfeiture by filing a protest on a form either available at the borough clerk's office or otherwise provided by the borough within five days of service of the notice of forfeiture. The borough may grant a forfeiture protest hearing if the owner files with the borough clerk a written request for a hearing within the time provided for filing a protest of the forfeiture. 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 dog to the owner with or without conditions, or uphold or modify fees or costs related to the impoundment and care of the dog. 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 dog owner to the superior court within 30 days pursuant to Part VI of the Alaska Rules of Appellate Procedure.

C. Whenever a person is required to be served under this chapter, service may be by first class mail or in person. When service is by first class mail, it must be postage-prepaid and addressed to the last known address of the person being served. A document shall be deemed served on the date it is postmarked by the United States Postal Service. When a document is required to be filed under this chapter, it must be received by the borough clerk's office on the date provided for filing. A fax copy may be filed with the clerk, so long as the original is also filed with the clerk within three business days of the filing due date.

8.10.140. 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 \$300 may be imposed for each violation. Each day that a violation occurs may be considered a separate 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 dogs not currently vaccinated against rabies must be vaccinated within six months of the effective date of this ordinance.

SECTION 3. That evidence of dog bites inflicted prior to the effective date of this ordinance may be considered for purposes of determining whether a dog is vicious, but only when the dog has also bitten a person after the effective date of this ordinance.

SECTION 4. That this ordinance shall become effective within 45 days of its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS *
DAY OF *, 1999.**

Ronald Wm. Drathman, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk