

Introduced by:	O'Brien
Date:	08/17/99
Hearing:	09/07/99
	09/21/99
Action:	Postponed until 10/12/99
	Postponed until 11/02/99
Action:	Enacted as Amended
Vote:	5 Yes, 4 No
Action:	Vetoed by Mayor - 11/16/99
Action:	Veto overridden on 12/06/99
Vote:	6 Yes, 2 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 99-49**

**ENACTING CHAPTER 8.10 OF THE KENAI PENINSULA BOROUGH CODE OF  
ORDINANCES PROVIDING FOR LIMITED DOG CONTROL IN THE AREAS 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 records show combined 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 nonareawide basis; and

**WHEREAS,** while a majority of the voters voting in the nonareawide advisory election held October 6, 1998 did not support the boroughs 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:

### **CHAPTER 8.10. DOG CONTROL.**

#### **8.10.010. Jurisdiction.**

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

#### **8.10.020. Application.**

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

#### **8.10.030. 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 animal control officer may only be enforced by the cities of Homer, Kenai, Seward and Soldotna 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 cities of Homer, Kenai, Seward and Soldotna of \$25,000 per year for costs incurred in enforcing this chapter. In addition to any such payment by the borough, 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. Such contracts shall provide that each party shall indemnify the other for damages caused by the responsible party. Additionally, where the enforcement district includes areas not accessible by road, the contracting city shall go to the airport or other arranged location to collect a delivered dog. The borough mayor, or his designee, shall be responsible for administering this chapter on behalf of the borough, provided that enforcement of this chapter shall only be by contract with the cities as set out above.

#### **8.10.040. Impoundment.**

A. An animal control officer may accept custody of any dog that is reasonably suspected by the officer to have bitten a person. Notice of impoundment shall be provided to the owner in accordance with city procedures adopted by the city council. Nothing in this chapter shall be construed to require an animal control officer to pursue or capture any dog.

B. Pursuant to contract, an animal control officer may only capture a dog outside of the animal control shelter in response to a request from a state trooper who reasonably suspects that the dog has bitten a person. An animal control officer or his designee may capture such a dog by any reasonable means, and may pursue a dog onto private property in the course of effecting such an impoundment.

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

D. An impounded dog shall be taken to the appropriate animal control shelter and confined in a humane manner in accordance with impoundment procedures adopted by the city impounding the dog.

**8.10.050. Interference with animal control officer.**

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

**8.10.060. 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 animal control officer shall promptly make reasonable efforts to notify the owner in writing of this designation.

**8.10.070. Disposition of dogs.**

Dogs not deemed vicious shall be either released or disposed of in accordance with the standard procedures adopted by the city which has custody of the dog. Dogs deemed to be vicious may not be redeemed, but shall be disposed of in a humane manner following exhaustion of all appeal rights as set out in this chapter.

**8.10.080. Fee schedule.**

Fees for redeeming an impounded dog shall be charged in accordance with the standard fee schedule for redemption of dogs ordinarily charged by the city with custody of the dog, subject to the provisions of this chapter. Such redemption fee may include costs and fees ordinarily charged by the city for impoundment, boarding, care and maintenance of the dog, but may not include fines or penalties. This chapter does not authorize cities to charge fees for enforcing laws not included in the borough code. Copies of all fee schedules authorized by this code shall be available at the contracting city's offices and at the borough clerk's office.

**8.10.090. 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 an impounded dog within the time frame provided by the city pursuant to its standard procedures;
- (3) in writing releases the dog to the borough; or
- (4) 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.

#### **8.10.100. Hearings and Appeals.**

A. A person who owns a dog designated by an animal control 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 mayors decision shall be filed with the superior court in Kenai, Alaska within 30 days of the mayors 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 8.10.090 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 mayor 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 mayor shall render a written decision with findings regarding the forfeiture. The mayor 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 clerks 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.

#### **8.10.110. 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.

#### **8.10.120. Definitions.**

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

Animal means a vertebrated domestic or domesticated member of the Kingdom Animalia;

Animal control officer means a person charged by law with the duty to enforce provisions of this title.

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.

Dangerous dog means any dog which has bitten a person or persons on one or more separate occasions, causing the persons 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.

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.

"Domesticated" means animals adapted to human use or pleasure.

"Enforcing entity" means either the borough or the city within the borough enforcing this chapter pursuant to an agreement with the borough.

Impoundment means the seizure of dogs by the methods set forth in this chapter.

Located means the physical site of either the dogs residence or the place where the dog is situated when it commits an act subjecting it to impoundment pursuant to this chapter.

Owner means a person or group of persons having title, keeping, harboring and having custody or control of a dog or cat.

Person includes an individual, a joint venture, partnership, corporation, or unincorporated association.

Serious injury means a deep puncture wound, laceration, avulsion, or deep soft tissue or bony injury to a human being requiring professional medical evaluation and treatment.

Trespass means to enter on the land of another without lawful permission.

Vicious dog means a dog that has bitten any person or persons on three or more separate occasions, causing the persons 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.

**SECTION 2.** 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 3.** That the mayor is authorized to negotiate and execute contracts with the cities of Homer, Kenai, Seward and Soldotna consistent with the provisions of section 1 of this ordinance. The administration shall offer such contracts to the cities within 90 days of the effective date of this ordinance, and to the assembly for final approval within 150 days of the effective date of this ordinance.

**SECTION 4.** Within one year of the effective date of section 1 of this ordinance, the administration shall provide an accounting to the assembly, by district of all dogs impounded and all associated costs, and summarizing all issues and concerns associated with implementing this ordinance.

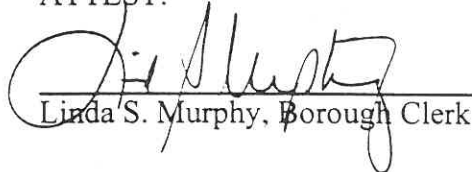
**SECTION 5.** That the sum of \$100,000 be appropriated from the general fund to account 100.94910.43008, Animal Control Services, to be used for payment to the cities as provided in this ordinance.

**SECTION 6.** That section 3 of this ordinance shall be effective immediately upon its enactment, and sections 1, 2, 4 and 5 of this ordinance shall become effective within 30 days of the final date the cities of Homer, Kenai, Seward, and Soldotna have all executed contracts with the borough for the enforcement and administration of this chapter. If the contracts are not approved by the city councils and the borough assembly within 180 days of the date of this ordinance then this ordinance shall automatically expire.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 2ND DAY OF NOVEMBER, 1999.**

  
William Popp, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

