

Introduced by: Merkes
Date: 01/08/08
Hearing: 02/05/08 and 02/19/08
Action: Introduced and Set for Public Hearings
Action: Postponed until 02/19/08
Action: Failed to Enact as Amended
Vote: 1 Yes, 6 No, 2 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2008-01**

**AN ORDINANCE ENACTING CHAPTER 8.10 OF THE KENAI PENINSULA
BOROUGH CODE OF ORDINANCES PROVIDING FOR THE IMPOUNDMENT
AND DISPOSITION OF VICIOUS DOGS 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, there have been numerous complaints of dogs threatening and attacking people in the borough areas outside cities; and

WHEREAS, Kenai, Soldotna, Homer, Seward, and Seldovia records show combined 20 dog bites reported in 2006 and 44 dog bites reported in 2007; 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, it is desirable to provide a mechanism for impounding and disposing of dogs that have bitten one or more people in the area of the borough outside the cities; and

WHEREAS, as the cities and private individuals currently operate animal shelters in the borough it would probably be most economical for the borough to contract with one or more entities to provide this service for the borough in the areas outside of the cities;

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. VICIOUS DOGS.

8.10.110. Definitions.

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

“Animal” means a vertebrate 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 pursuant to a contract entered with the borough.

“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.

“Contractor” means a person or other entity that is a party to a contract with the borough to provide services pursuant to the enforcement of this chapter.

“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.

“Enforcing entity” means either the borough or the borough’s contractor enforcing this chapter pursuant to a contract 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 dog’s 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 other than the contractor or city when holding a dog pursuant to this chapter.

“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 one or more separate occasions, causing the person’s skin to break, if the act is done without provocation, 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 vicious dogs as defined in this chapter.

8.10.030. Application.

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

8.10.040. Enforcement.

- A. The mayor is authorized to solicit proposals for and enter into agreements with one or more public or private entities to provide services for enforcement of this chapter, subject to assembly approval of each such contract by resolution.
- B. All contracts shall include provisions requiring the contractor to promptly respond to calls from state troopers or physicians reporting an attack by a vicious dog, to reasonably attempt to capture and restrain the dog if the dog is not restrained except as provided below, and if the dog is captured and initially determined to be vicious, to house and dispose of the dog in the manner required by this chapter, with sufficient time to allow appeals to be filed and ruled upon before disposing of the dog. The contract shall require coverage throughout the area of the borough outside of all incorporated cities. If a vicious dog is reported in an area not on the road system, then the contract need not require the animal control officer to promptly capture and restrain the dog.
- C. Each contractor may employ one or more duly trained and experienced animal control officers. Contractors may provide this service through joint ventures or by subcontracting portions of the service to be provided, subject to assembly approval of any subcontracts by resolution.
- D. 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 be by contract as set out above. Administration and enforcement of this chapter is subject to the appropriation and availability of funds for this nonareawide function.

8.10.050. Designation of dog as vicious and documentation.

- A. 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 a dog is vicious.
- B. 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, for five years and then transfer the documentation to the borough. When the animal control officer determines a dog is vicious, the animal control officer shall promptly make reasonable efforts to notify the owner in writing of this designation, appeal rights, and that the dog shall be disposed of following exhaustion of all appeal rights.

8.10.060. Capture and Impoundment.

- A. Pursuant to the contract, an animal control officer may only capture a dog outside of an animal control shelter in response to a request from a state trooper or physician 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 to the extent authorized by law.
- B. 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.
- C. A captured dog initially determined to be vicious shall be taken to the appropriate animal control shelter and confined in a humane manner in accordance with contractual requirements.
- D. Nothing in this chapter shall be construed to require an animal control officer to pursue or capture any dog.

8.10.070. Interference with animal control officer.

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

8.10.080. Disposition of dogs.

Dogs not deemed vicious shall be either released to the owner or the owner's designee, or held in a shelter pursuant to the terms of the contract with the borough. 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.

8.10.090. Fee schedule.

Fees for redeeming an impounded dog held by a contractor with the borough shall be charged in accordance with the terms of the approved contract with the borough and as approved by the assembly.

8.10.100. Hearings and Appeals.

- A. A person who owns a dog designated by an animal control officer as vicious 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 Alaska Rules of Civil Procedure governing appeals from administrative agency decisions.
- B. The owner of a dog subject to the forfeiture provisions of KPB 8.10.100 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 ten 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 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.

8.10.110. 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 contract or by the city pursuant to its standard procedures;
 3. in writing releases the dog to the borough contractor; or
 4. fails to pay impoundment fees, 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.

SECTION 2. That evidence of dog bites inflicted prior to the effective date of this ordinance may not be considered for purposes of determining whether a dog is vicious.

SECTION 3. That the mayor is authorized to solicit proposals and to negotiate contracts with responding proponents consistent with the provisions of Section 1 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 this ordinance shall automatically expire on February 19, 2010, unless the assembly by ordinance has altered or extended that date.

SECTION 6. That Sections 3 and 5 of this ordinance shall be effective immediately upon its enactment, and Sections 1, 2, and 4 of this ordinance shall become effective within 30 days after assembly approval of contracts submitted for approval regarding enforcement of this ordinance.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2008.

Grace Merkes, Assembly President

ATTEST:

Sherry Biggs, Borough Clerk

Yes: Merkes

No: Fischer, Gilman, Knopp, Martin, Smith, Sprague

Absent: Long, Superman