

ORDINANCE NO. 5769

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) 6.18, "DANGEROUS DOGS," AND DECLARING AN EMERGENCY.

WHEREAS, current ordinances concerning the classification and disposition of dangerous dogs unreasonably limit the discretion of the appointed Hearings Office to fashion remedies appropriate to the circumstances; and

WHEREAS, the Albany City Council has created a citizen and council work group to review the City's ordinances concerning dangerous dogs; and

WHEREAS, the foregoing work group has carefully and comprehensively reviewed the existing and proposed dangerous-dog ordinances and has sought and considered public input concerning these ordinances; and

WHEREAS, the changes proposed herein have received the unanimous support of the work group.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: AMC Chapter 6.18 is amended to read as follows:

Sections:

- 6.18.010 Definitions.
- 6.18.020 Classification of levels of dangerousness.
- 6.18.030 Identification of dangerous and potentially dangerous dogs – Appeals – Restrictions pending appeal.
- 6.18.040 Regulation of potentially dangerous dogs.
- 6.18.050 ~~Euthanasia for dangerous dogs~~ **Consequence of a determination that a dog is dangerous.**
- 6.18.055 Notice of location of "potentially dangerous" or "dangerous" dog in city.**
- 6.18.060 Penalty.
- 6.18.070 **Quarantine or Impoundment** pending adjudication ~~of infraction~~.

6.18.010 Definitions.

As used in this chapter, unless the context requires otherwise:

- (1) "Dog at large" means any dog:
 - (a) On private property without the permission of the owner or person entitled to possession and not restrained by a physical control device and under the control of a person capable of physically restraining the dog; or
 - (b) On public property and not restrained by a physical control device and under the control of a person capable of physically restraining the dog.
- (2) "Council" means the City Council of the City of Albany.
- (3) "Dangerous dog" means any dog that has been found to have engaged in any of the behaviors specified in AMC 6.18.020(2).
- (4) "Director" means the person appointed by the Council to act under this chapter. **The person appointed will be someone deemed by the Council to be generally experienced in reviewing investigatory reports and generally accepted judicial processes.**
- (5) "Euthanized" means put to death in a humane manner by a licensed veterinarian or animal control officer.
- (6) "Hearings Officer" means the City Council or a person appointed by the City Council to review the correctness of the Director's determination that a dog has engaged in any of the behaviors specified in AMC 6.18.020. Any person appointed as the Hearings Officer will be an individual deemed by the Council to be generally experienced in judicial processes.
- (7) **"Impoundment" means City custody of a dog at a county animal control shelter or other secure facility designated by the Director or designee for such purpose.**

(8) "Owner" means the person having a possessory property right in a dog or who harbors, cares for, exercises control over or knowingly permits a dog to remain on premises occupied by that person.

(9) "Person" means any natural person, association, partnership, firm or corporation.

(10) "Potentially dangerous dog" means any dog that has been found to have engaged in any behaviors specified in AMC 6.18.020(1).

(11) "Physical control device" means a sufficiently strong collar connected to a leash or tether made of chain links, or other material as strong, so as to prevent the escape of a dog.

(12) "Quarantine" means an order directing isolation of the dog or other instructions designed to protect the public pending a determination of a dog's classification. Quarantine may also include impoundment at the county animal control facility or any other secure facility designated by the Director or Hearings Officer for such purpose.

(13) "Serious injury" means any physical injury that results in a broken bone or ~~the need for stitches, or any other medical condition, including emotional or psychological injury determined by the Director, in consultation with a health care worker, the County Health Officer, the County Health Officer's designee, or any medical doctor to be of equal or greater severity.~~ (Ord. 4847 § 1, 1989) **impairment of any organ, limb, or digit reasonably anticipated to have a duration of more than ten (10) days or a wound of more than half an inch, measured in all directions, requiring or justifying medical closure through stitches, staples, or any other similar medical procedure, or any other medical condition determined by the Director, in consultation with any medical doctor, to be of equal or greater severity. The Director may also refrain from classifying an injury as serious which would otherwise meet the definition above based upon information from a medical doctor justifying such decision.**

(14) "Victim" means the owner of the domestic animal(s) injured by the dog in question or the human being bitten or seriously injured, whichever forms the basis for the classification. In the case of a minor child, the victim is the parent or legal guardian of the minor child.

6.18.020 Classification of levels of dangerousness.

(1) A dog shall be classified as potentially dangerous based upon specific behaviors exhibited by the dog as follows:

(a) While at large, on more than two occasions within a single 24-month period, it bites any domestic animal, or

(b) While at large, it bites a human being or seriously injures any domestic animal.

(2) A dog shall be classified as dangerous if it causes the serious injury or death of any person or kills any domestic animal. A dog classified as a potentially dangerous dog shall thereafter be reclassified as a dangerous dog if, after the owner has received notice of the potentially dangerous classification, the dog again engages in conduct which would classify it as a potentially dangerous dog.

(3) The Director shall have the authority to refrain from classifying a dog as dangerous or potentially dangerous, even if the dog has engaged in the behaviors specified in subsections (1) or (2) above, if the Director determines that the behavior was caused by abuse, or torment, ~~of the dog~~ or other provocation **of the dog or if the injury was the result of intervention by the injured party in a fight between the dog and another animal.**

(4) No dog shall be found to be dangerous or potentially dangerous if it is a dog trained for law enforcement purposes and is on duty under the control of a law enforcement officer at the time it exhibits behavior under subsection (1) or (2) above. (Ord. 4847 § 1, 1989).

(5) The Director shall be expected, absent unusual circumstances, to make the classification within thirty (30) days of the quarantine or impoundment of the dog in question.

(6) Any City officer or employee authorized by the Director may quarantine or impound any dog that is proposed for classification as dangerous or potentially dangerous.

6.18.030 Identification of dangerous and potentially dangerous dogs – Appeals – Restrictions pending appeal.

(1) The Director shall have authority to determine whether any dog has engaged in the behaviors specified in AMC 6.18.020. The determination shall be based upon an investigation that includes ~~observation~~ **documentation** of the dog's behavior by animal control officers or by other witnesses who personally

observed the behavior **or are otherwise qualified to provide relevant and probative evidence.** ~~If the determination is based upon observations of witnesses other than animal control officers, the witnesses must first sign affidavits attesting to their observations or evidence behavior and must agree to provide testimony regarding the dog's behavior if called upon to do so.~~

(2) The Director shall give the dog's owner written notice by certified mail or personal service of the dog's specific behavior, of the dog's classification as a dangerous or potentially dangerous dog, and of the additional restrictions applicable to that dog by reason of its classification. **The Director is encouraged to share this information with victims as well.** Other forms of notification which result in actual notice of the information required above, shall be sufficient. If the owner denies that the behavior in question occurred, the owner may appeal the Director's decision to the Hearings Officer by filing, with the Director, a written request for hearing. The request for hearing must be received, by the Director, within ~~40~~ **fifteen (15)** days of the following, whichever occurs first:

(a) The date of mailing of notice to the owner, by certified mail;
(b) The date the notice is personally served upon the owner; or
(c) The date when the owner acquired actual knowledge of the information required to be contained in the notice.

(3) The Hearings Officer shall hold a public hearing on any appeal from the Director's decision to classify a dog as a dangerous or potentially dangerous dog. The owner and any other person having relevant evidence concerning the dog's behavior as specified in AMC 6.18.020 shall be allowed to present testimony. **Information concerning medical condition rendered by a medical doctor may be presented as testimony at the hearing or in writing. Any written medical information offered at the hearing shall be made available to the Director, owner, and victim at least five (5) days prior to the hearing. The hearing shall be audio-recorded by the Hearings Officer. Any party to the hearing may also audio-record the hearing, but the audio recording prepared by the Hearings Officer shall be the official recording which shall be part of the record of the proceeding. The hearing procedure shall not be deemed flawed nor the outcome invalidated due to technical failures or other good-faith errors which impair the audibility or completeness of recording.** The Hearings Officer shall determine whether the behavior specified in AMC 6.18.020 was exhibited by the dog in question. The Hearings Officer shall issue an order containing his/her determination, which shall be final. **The Hearings Officer may recess the hearing to a later date and request that either party provide additional evidence if the Hearings Officer determines that such evidence would be helpful to the decision. Failure by a party to provide the requested evidence may be considered by the Hearings Officer in making a decision, but the Hearings Officer shall have no obligation to request supplemental evidence or continue the hearing simply because a party to the proceeding does not present compelling evidence.**

(4) Once the owner has received notice of the dog's classification pursuant to subsection (2) above, the owner shall comply with the restrictions specified in the notice until such time as the Director's decision is reversed on appeal. Additionally, the Director shall have authority to impound the dog pending completion of all appeals if the Director has reasonable grounds to believe that the owner of the dog has failed to comply with any of the restrictions specified in the notice of classification. If the Director's decision concerning the classification of the dog is upheld on appeal, the dog's owner shall pay to the City all costs incurred in the dog's impoundment.

(5) If the Director finds that a dog is a dangerous dog, the dog shall be impounded pending the completion of all appeals. If the Director's decision is upheld on appeal, the dog's owner shall pay to the City all costs incurred in the dog's impoundment. (Ord. 4847 § 1, 1989).

(6) The Hearings Officer shall be expected, absent unusual circumstances, to make the classification within ninety (90) days of the quarantine or impoundment of the dog in question.

6.18.040 Regulation of potentially dangerous dogs.

In addition to complying with all other requirements of this chapter, the owner of a potentially dangerous dog shall:

(1) Physically restrain the dog to prevent it from having **off-leash** access to any public sidewalk, roadway, adjoining property, or any other portion of the property from which the public is not excluded. **A potentially dangerous dog shall not be allowed off the premises of the owner or keeper except while on a leash not**

to exceed ten (10) feet in length and, if the Director finds warranted, wearing a muzzle of sufficient strength and construction to prevent the dog from biting a human or animal.

(2) Fasten to a collar and keep on the dog at all times such tag as may be issued by the City of Albany, identifying the dog as a potentially dangerous dog.

(3) Pay an annual fee of [_____] at the time the tag described in subsection (2) above is issued and a like fee each year thereafter so long as the dog remains within the corporate limits of the City of Albany. This fee shall be in addition to any other license fee.

(4) Notify the Director by certified mail where the dog is kept within 10 days of any change.

(5) Post a warning sign, supplied by the Director, at the location the dog is kept, in a conspicuous place visible from the public sidewalk or road adjoining the property or, if no such public sidewalk or road adjoins the property, then at the boundary line of the property where access is provided to the property.

(6) Have a microchip implanted in the dog which includes its classification status and the applicable Albany Police Department case number and provide the microchip identification information number to the Director.

(7) Keep the dog licensed by the applicable licensing authority.

(NOTE: Rabies vaccination will be required in order to maintain license status.)

(8) The requirements of this section shall apply to any person to whom ownership of a potentially dangerous dog is transferred. (Ord. 5026 § 1, 1993; Ord. 4847 § 1, 1989).

(9) The owner of any dog classed as potentially dangerous may apply to the Director, after the expiration of at least two (2) years from the date of original classification or one (1) year following completion of training ~~conducted by a dog trainer certified by the Association of Pet Dog Trainers licensed veterinarian board certified in the specialty of veterinary behavior~~, designed and conducted to address the behavior upon which the original classification was based to have the classification as "potentially dangerous" removed as follows:

(a) ~~If an application follows training by a board certified veterinary behavioral specialist~~, the application must be accompanied by a written statement from the trainer describing the trainer's qualifications, the course of training, and results thereof.

(b) If the application is based on any circumstance other than the training described in (a) above, the application must be accompanied by a written statement describing the grounds for the requested relief.

(c) The application must be accompanied by an application fee in an amount to be set by the City Council by separate resolution.

(d) The classification of "potentially dangerous" shall only be removed if the Director or Hearings Officer has received clear and convincing evidence that the dog is unlikely to ever again engage in behavior justifying a dangerous or potentially dangerous classification.

(e) The Director shall notify the owner of his/her decision in writing; and if the Director declines to remove the potentially dangerous classification, the owner may appeal the Director's decision to the Hearings Officer by filing, with the Director, a written request for a hearing. The request for a hearing must be received by the Director within fifteen (15) days following whichever first occurs:

(i) The date of mailing of the notice to the owner, by certified mail;

(ii) The date the notice is personally served upon the owner; or

(iii) The date when the owner acquired actual knowledge of the information required to be contained in the notice.

(f) The Hearings Officer shall hold a public hearing on an appeal from the Director's decision not to lift the classification that a dog is potentially dangerous. The owner and any other person having relevant evidence concerning the dog's rehabilitation or other circumstances which make it unlikely that the dog will ever re-offend may present testimony. The hearing shall be audio recorded by the Hearings Officer. Any party to the hearing may also audio record the hearing, but the audio recording prepared by the Hearings Officer shall be the official recording which shall be part of the record of the proceeding. The hearing procedure shall not be deemed flawed nor the outcome invalidated due to technical failures or other good faith errors which impair the audibility or completeness of the recording. The Hearings Officer shall issue an order containing his/her determination which shall be final.

6.18.050 ~~Euthanasia for dangerous dogs~~ Consequence of a determination that a dog is dangerous.

(1) **Unless an alternative disposition is adopted pursuant to the provisions of Section 2 below, any dog that has been found to be a dangerous dog shall be euthanized. If a dog is euthanized by a licensed veterinarian, the veterinarian shall certify to the City of Albany that the dog has been euthanized. (Ord. 4847 § 1, 1989).**

(2) **Following the hearing called for in AMC 6.18.030(3) to review the Director's decision to classify a dog as dangerous, the owner or person in control of the dog may propose an alternative to euthanasia ("alternative" or "alternative order") in the event that the Hearings Officer affirms the Director's classification of the dog as dangerous. Before determining the acceptability of any alternative, the terms of the alternative must be provided to the Director in writing and the Director will thereafter provide written notice of the terms of the proposed alternative to the victim. If the alternative is relocation, the Director shall also provide written notice to the law enforcement agency with jurisdiction in the location where relocation is proposed. The Hearings Officer shall not consider any proposed alternative until and unless such notice has been provided to all listed parties and they have been given a ten- (10) day opportunity to submit written comments to the Hearings Officer concerning the terms of the proposed alternative. In considering a proposed alternative, the Hearings Officer shall take into consideration the extent to which abuse, torment, or provocation, while not excusing the dog's behavior, may have been a factor in the behavior and the extent to which the proposed alternative mitigates against a reoccurrence of these factors. The alternative may only be accepted by the Hearings Officer as an alternative to euthanasia in the event that the Hearings Officer determines, based upon substantial evidence in the record, that all of the following conditions have been met:**

(a) **All costs associated with the quarantine and impoundment of the dog pending adjudication as provided at 6.18.070 have been paid; and;**

(b) **The alternative will have no additional costs to the City; and;**

(c) **A relocation alternative shall include specific conditions concerning the future care, control, and supervision of the dog which satisfies the Hearings Officer that the dog is unlikely to repeat the behavior upon which a classification is based, including disclosure to subsequent owners of the dog's classification and the behavior which resulted in the classification. Removal from the city limits, without more, shall not satisfy these criteria. Examples of appropriate conditions, depending upon the behavior which resulted in the classification, may include prohibitions against ownership transfers to households containing minor children or other vulnerable parties, prohibitions on relocation to urban areas, or any other condition deemed by the Hearings Officer to be reasonably necessary to reduce the likelihood of re-offense.**

(3) **In the course of presenting an alternative as called for in Section 2 above, the burden of proof shall rest with the owner or person in control of the dog. In deciding upon an appropriate alternative, the Hearings Officer may, but is not required to, solicit the opinion of third parties who, in the exclusive discretion of the Hearings Officer, have special knowledge or expertise that may be helpful in fashioning an appropriate alternative.**

(4) **If an alternative is adopted for a dangerous dog, all of the terms thereof shall be incorporated into a written order.**

(5) **A dog which, subsequent to adoption of an alternative order, again engages in behavior from which it could be classified as dangerous or potentially dangerous shall be euthanized.**

6.18.055 Notice of location of potentially dangerous or dangerous dog in city.

(1) **No person shall keep within the city any dog which has previously been classified as potentially dangerous or dangerous by any jurisdiction other than the City of Albany without providing notice to the City as required herein. This requirement shall also apply to any dog that has received any classification or designation by any jurisdiction other than the City of Albany as a result of the dog having caused injury to any person or animal. If such classification resulted from serious injury to a human being or the death of an animal, the dog may not be relocated to the City of Albany. Thereafter, all provisions of this ordinance shall apply to any dog lawfully relocated to the City of Albany as if the classification had been made by the City. The notice required herein shall be given in writing to the**

Albany Police Department within five (5) days of the animal first being kept within the City and shall contain the following information:

- (a) The name, address, and date of birth of the animal's owner or keeper; and
- (b) The address at which the animal will be kept; and
- (c) The jurisdiction which classified the dog; and
- (d) The behavior from which the classification resulted.

(2) This section shall not apply to dogs brought into the City by any unit of government for purposes of impoundment or quarantine or by any person for veterinary care.

6.18.060 Penalty.

The violation of any provision of this chapter shall be punishable subject to the penalties set forth in AMC 1.04.010. In addition to these penalties, the Municipal Court Judge may order the dog in question euthanized if the Judge finds that the owner of the dog has failed to comply with any of the requirements of this chapter after having received notification that the dog in question has been classified as a dangerous or potentially dangerous dog. (Ord. 4927 § 1, 1990; Ord. 4847 § 1, 1989).

6.18.070 Quarantine or impoundment pending adjudication of infraction.

(1) If the owner of any dog is cited for ~~an infraction based upon the~~ a violation of any provision of this chapter, the Director may **quarantine or** impound the dog pending adjudication of the ~~infraction violation~~ if, in the exercise of reasonable discretion he/she believes that the dog constitutes a threat to public safety and/or private property. If the dog's owner is ~~convicted of the infraction~~ **adjudged to have committed the violation** which caused the impoundment, the dog's owner shall pay to the City all costs incurred in the dog's **quarantine or** impoundment. ~~and unless such costs are paid within 10 days of the sentencing order, date when the owner is convicted of the infraction, the dog shall be euthanized. Euthanasia shall not relieve the owner of his/her responsibility to pay all quarantine or impoundment costs previously incurred.~~ (Ord. 4847 § 1, 1989)


(2) Any dog considered for classification as potentially dangerous or dangerous may be quarantined or impounded if the Director or designee, in the exercise of reasonable discretion, believes that the dog constitutes a threat to public safety and/or private property. If the dog is ultimately classified as potentially dangerous or dangerous, the dog owner shall pay to the City all costs incurred in the dog's quarantine or impoundment.

Section 2: Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect immediately upon its passage by the Council and approved by the Mayor.

Passed by the Council: December 7, 2011

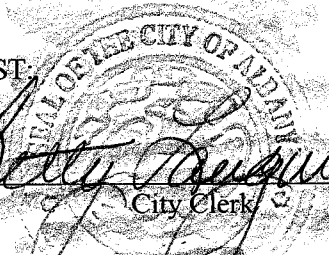

Approved by the Mayor: December 7, 2011

Effective Date: December 7, 2011



Mayor

ATTEST

City Clerk