

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: December 2, 2019

SUBJECT: Amendment to Henderson County Code §16-10 (dangerous dogs)

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Henderson County Code §16-10, showing proposed amendment

SUMMARY OF REQUEST:

After a recent court action, the Henderson County Sheriff's Office Animal Control Unit has requested an amendment to the Code provision regarding dangerous dogs. The attached proposal is the result.

For this amendment to be adopted, it must either be adopted by a unanimous vote, or by majority vote at two meetings.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Adoption of the amendment to the Code.

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt the proposed amendment to §16-10 of the Henderson County Code.

16-10. Dangerous/potentially dangerous dogs restricted.

A. General provisions. It shall be unlawful for any person to own or in any way maintain or harbor a dog that is dangerous/potentially dangerous, except as provided in this Chapter. Notwithstanding any exemption listed below, any dog which has killed a person shall be immediately euthanized by the Animal Service Center.

1. Reporting requirement. Any attack or biting by a dog upon a person, livestock, or domestic animal; transfer, gift, sale or other conveyance of ownership or possession of a dangerous or potentially dangerous dog; confinement to a Veterinary facility; removal from territorial jurisdiction of the county; animal's death must be reported by any of the following individuals:

- a. owner, keeper, harbinger of a dog deemed dangerous/ potentially dangerous or of a dog who has attacked or bitten a person or domestic animal;
- b. victim of or person witnessing such of an attack or biting;
- c. veterinarian treating a domestic animal for such an attack or biting;
- d. health care professional treating a person for such an attack or biting.

2. The report must be made to the Sheriff's Office within 24 hours of the event.

3. Failure to report an incident within 24 hours may result in criminal and civil penalties under this Ordinance and personal liability in subsequent incidents.

B. Exemptions. The provisions of this chapter do not apply to dogs causing injuries when:

1. Used by law enforcement agencies to carry out official law enforcement duties;
2. Functioning lawfully as hunting or herding dogs, or in controlling predators on the property of, or under control of, the owner when performing duties appropriate to said functions;
3. Protecting the owner or owner's premises from trespassers and other criminal perpetrators while on its owner's premises;
4. Protecting itself or its young from assault, torment, or abuse.

C. Declaration of dangerous/potentially dangerous dog. The Sheriff or his/her designee shall have the authority to declare a dog to be a dangerous/potentially dangerous dog. Any determination that a dog is dangerous/potentially dangerous shall be made in writing summarizing the available evidence and which shall be delivered or mailed by certified or registered mail to the owner. The written determinations shall order compliance with the appropriate provisions of this ordinance and may impose reasonable conditions to maintain the public health and safety.

D. Appeal. Any person who owns a dog that has been declared dangerous/potentially dangerous shall have the right to appeal this decision to the Animal Services Appellate Board.

1. Manner of appeal. The owner of a dog declared dangerous/potentially dangerous must request an appeal of the determination in writing. The written appeal must be submitted to the Animal Service Director, and must be received by the Animal Service Director or postmarked within 5 calendar days of the receipt by the owner of notice of the declaration.

2. Pending the appeal, the owner of a dog declared dangerous/potentially dangerous shall comply with the provisions of § 16-10E.

3. Hearing procedures. Once properly appealed, the Animal Service Appellate Board shall conduct a public quasi-judicial hearing to determine whether the declaration of the animal as dangerous/potentially dangerous is correct.

4. Outcome. If the dog is affirmed by the Animal Service Appellate Board as being dangerous/potentially dangerous, then the owner shall comply with the terms of § 16-10E, F, G. Any

person who owns a dog affirmed dangerous/potentially dangerous by the Animal Service Appellate Board or its designee has the right to appeal this determination to the Superior Court.

E. Enclosures and control measures for dangerous/potentially dangerous dogs. If a dog has been determined to be dangerous/potentially dangerous, as specified in this section, the dog may be retained upon the owner satisfying the following conditions:

1. The owner must insure that the dog at all times on and off the owner's property remains securely enclosed as per the Ordinance or controlled and muzzled as described below. Failure to do so shall subject the owner to penalty under this chapter:

a. Confine the dog within the owner's residence; or,

b. Erect and confine the dog (except when muzzled and controlled as required below), within 30 days in a securely enclosed and padlocked pen with a concrete bottom and secure top. The structure must be secured by a child-resistant lock. Pending construction of such pen, the dog must be confined within the owner's residence; or

c. The animal must be muzzled and under restraint by a competent person who, by means of a leash or chain, has such animal firmly under physical restraint at all times when not in a secure building or enclosure. The muzzle must be of the appropriate size for the animal, and must be of a type and model approved in advance by the Henderson County Sheriff's Office, and must be in good repair. In approving or disapproving of a particular muzzle, the Henderson County Sheriff's Office shall take into account the size and demonstrated behavior of the dog, and the potential for injury in case of a failure of appropriate muzzling.

d. Any dog deemed dangerous shall not be permitted in public recreation areas, including dog parks, parks or greenways.

2. The owner must post a warning sign, of at least 120 square inches, which is to be visible to any adjoining property from each exposure of the residence or the structure in which the dangerous/potentially dangerous dog is confined. Each sign must have an approved graphic representation of an appropriate animal such that the dangerousness of the animal is communicated to those who cannot read, including young children.

3. Microchip. Within 10 days of the determination or appeal determination, the owner of a dangerous/ potentially dangerous dog must demonstrate to the Animal Enforcement that such dog had a microchip implanted.

4. Inspection. Animal Enforcement shall cause periodic inspections to be made of the premises where the dangerous/potentially dangerous dog is kept to assure compliance with the provisions of this Ordinance. The owner must permit these inspections at any reasonable time without notice to the owner from the Animal Enforcement Officers.

5. Control Measures.

a. All control measures required by this section must be met immediately upon the determination that the animal is dangerous/potentially dangerous except for the construction of the enclosure discussed in section 1(b) of this provision. The Owner has 30 days to construct the enclosure during which time the animal must be confined indoors and may only be permitted outside under the control of a competent person by leash and the animal must be muzzled. Failure to meet all control measures may result in the immediate impoundment of the animal and civil and criminal penalties.

b. If the owner has no place to keep the animal while the structure is being constructed, the animal may be kept at the Animal Services Center or at a private establishment approved by Animal Enforcement at the owner's expense.

F. Notification. Within 24 hours:

1. Of change of address or ownership of a dangerous/potentially dangerous dog, the owner shall provide written notification of the change of address or ownership to the Sheriff, stating the full name if there's a new owner, address, and location of the new owner of the dog.

2. Of the death of a dangerous/potentially dangerous dog, the owner shall provide written notification of the dog's death to the Sheriff.

G. Notification prior to transfer. Prior to any transfer to a new owner (with or without consideration) of a dangerous/potentially dangerous dog, the owner must provide to the Sheriff a written statement, signed before a notary by the transferee (on a form obtained from the Animal Service Center), indicating the transferee's understanding of the transferee's obligations hereunder as an owner of a dangerous/potentially dangerous dog. If the dangerous or potentially dangerous dog is being transferred out of Henderson County or out of North Carolina,

1. The owner of the animal must notify the Sheriff and the new jurisdiction to which the animal is being moved that this dog has been deemed a dangerous/potentially dangerous dog;

2. The Sheriff also shall notify the new jurisdiction that the animal has been deemed dangerous and the circumstances surrounding the case.

3. The owner must comply with any local regulations regarding dangerous dogs in the new location.

H. Immediate impoundment. Any dangerous/potentially dangerous dog kept in violation of this section may be immediately impounded upon issuance of any warrant for the same, pending the outcome of the criminal action. If the owner is convicted of a criminal offense of keeping a dangerous/potentially dangerous dog in violation of this section, in addition to any criminal penalties imposed, the Animal Services Director or his/her designee may euthanize the dog. Nothing herein shall be construed to in any way limit the use of civil penalties for a violation of this section.

1. Cost of impoundment. Costs of impoundment at the Animal Services Center shall be paid by the owner or the person liable for the animal at a daily rate as determined by the County. In instances where the Animal Services Center must impound the animal(s) at a private facility or kennel, the person liable for the animal will pay the rate established by those facilities.

2. Release from impoundment.

a. No dog deemed dangerous or potentially dangerous who has been impounded by the Animal Services Center shall be released to the owner from impoundment except upon proof submitted by the owner or person liable for the animal that all the elements of this Ordinance have been met as verified by Animal Enforcement. This shall not apply in instances where criminal charges have been brought against the owner.

b. If criminal charges have been brought against the owner for failure to comply with this Ordinance or for interference with the operations of the Animal Services Center, no dog deemed dangerous shall be released from Animal Services until determined by a court of competent jurisdiction. During this time while the dog is impounded, it cannot be euthanized and the cost of impoundment shall be charged to the owner.

c. No dog deemed dangerous or potentially dangerous may be adopted.

d. All dogs deemed dangerous or potentially dangerous must be altered within 30 days of the determination.