



NOTICE OF PUBLIC MEETING

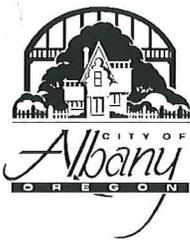
DANGEROUS DOG ORDINANCE WORK GROUP
City Hall, Municipal Court Room
Monday, October 17, 2011
5:30 p.m.

AGENDA

1. CALL TO ORDER
2. APPROVAL OF MINUTES
 - October 11, 2011. [Pages 1-6]
Action: _____
3. SCHEDULED BUSINESS
 - a. Review of public comment on draft revisions to AMC 6.18, Dangerous Dogs. [Pages 7-17]
Action: _____
4. BUSINESS FROM THE WORK GROUP
5. NEXT MEETING DATE: *To be determined.*
6. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net

The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, please notify the Human Resources Department in advance by calling (541) 917-7500.



APPROVED:

DANGEROUS DOG WORK GROUP
City Hall, Municipal Court Room
Tuesday, October 11, 2011

MINUTES

Members present: Mayor Sharon Konopa, Councilor Floyd Collins, Councilor Dick Olsen, Mark Azevedo, Larry Holverson

Members absent: Max Frederick (excused)

Staff present: Casey Dorland, Police Lieutenant; Jim Delapoer, City Attorney; Marilyn Smith, Management Assistant/Public Information Officer

Others present: None

Mayor Sharon Konopa called the meeting to order at 5:30 p.m.

APPROVAL OF MINUTES

September 13, 2011

Collins moved approval of the minutes as written; Holverson seconded. Motion approved 5-0.

REVIEW OF PUBLIC COMMENT ON DRAFT REVISIONS TO AMC 6.18, DANGEROUS DOGS

Konopa, Delapoer, and Smith explained the handouts in the agenda packet. The document labeled "Group Revisions" was submitted by Blue supporters. The document was not formatted with standard bold and strikethrough; Smith had compared the document side-by-side with the work group's draft ordinance and highlighted proposed changes. In the document labeled "Public Comment on Draft Ordinance Revisions," comments from other individuals were shown with bold and strikethrough or through comments, each labeled with the initials of the person who submitted the comment. A key listing names is included at the end of that document. The packet also included an October 5, 2011, editorial from the *Albany Democrat-Herald* and a copy of ORS 609 to which the editorial referred.

Delapoer said that he, Dorland, and Smith had met earlier today to divide the work of going through each document. Delapoer would deal with the Group Revisions and state law; Dorland would talk about Linn County dog control law; Smith, the other public comments; and Smith and Dorland would supplement Delapoer's remarks as needed.

Group Revisions: Delapoer said he believes this document was prepared mostly by Mr. Raymond's attorney, Mr. Meadowbrook. In his opinion, he said, it was written to result in Blue not being classified as a dangerous dog.

Definition of "Director": Under current City ordinance, Council has authority to appoint anyone they choose as a director. By resolution, Council has designated the Chief of Police; he supervises animal control officers and he's a City employee; so the City doesn't have to pay extra. The Group Revision proposes to hire people who are not City employees and that will limit options quite a bit. Konopa said she can't imagine any local veterinarians wanting to be involved in anything like this because it could put them in a predicament as a business person. Collins said that Dorland might qualify with his experience. Dorland agreed. Delapoer said the Council now has the authority to appoint all those people if they choose. Why specify that in the ordinance? Holverson said where the group is coming from, this isn't going to be something that comes up every week or every month. They did some checking around and found there are some people with this kind of experience who would volunteer to be on this kind of group. They would be truly qualified to deal with animal behavior issues. The Police Chief is trained in human behavior issues; he may be the least qualified person in the community to be in this position.

Azevedo asked, "What would the liability be for those individuals if the dog reoffended?" Delapoer said the City would be liable because the appointed Director would be acting in a City role. Holverson said there isn't a single person involved in his group who's said a truly dangerous or aggressive dog should not be euthanized. As an example, he cited a story about a young relative told by Bill Root at the last Council meeting. Holverson said he'd read in the paper the other day that APD picked up a dog that would meet the designation; the owner offered to have it put down, but police told him to wait until the investigation was completed. Dorland said that is standard procedure. Azevedo said City code is written to give a City official authority to make decisions. With a subset of specialists reviewing each of those things, does that make government more cumbersome? Delapoer said individuals with areas of expertise cannot judge the facts and the law on those areas; you want them to be able to judge fairly. If you want them to be quasi-judicial, you don't want an expert. A judge is supposed to just listen to the evidence that's presented. It's the job of the City Attorney and the dog's owner to present evidence. A judge can't base a decision on their own knowledge but on the facts in evidence.

The group continued to discuss the definition of "Director." Delapoer reiterated that Council already has the authority to appoint anyone they choose. He asked the group, "If a dog bit your child, would you want it reviewed by a veterinarian or a police officer?" Konopa asked if the veterinarian would need to indemnify the City. Delapoer said he didn't know why they would. As a City agent, there wouldn't be any additional liability to them. He doesn't think liability is the issue.

Collins said he opposes the Group Revisions to the Director definition. Konopa repeated that Council has the authority already to appoint anyone. Holverson said he would like to see some kind of language in there that opens the door a little bit more so it doesn't have to be someone from the Police Department.

Collins said he thinks that when the Blue case came before the judge, the defense probably did a horrible job. They didn't give Judge Scott the information he needed to make another decision. Holverson said that's where he's having the biggest problem. The Police Chief isn't the best person to have in that role. It's the Blue Code; they're going to protect each other.

Dorland said animal control officers routinely work with animals, read them, and understand what they do. When an animal control officer receives a complaint about a potentially dangerous dog, the officer takes the report to Dorland, their supervisor, and he has a professional background as a trainer. From him, it goes to the Director, and he has a check valve also. He said it sounds like the way Holverson wants this to read is to get a different outcome.

Holverson said, obviously, he's looking at this from the total opposite position. The Blue group just doesn't want to see this kind of situation happen again. When you look at the whole situation with Blue, he said, if he was a policeman in Albany, Oregon, and had been involved in 10-15 trips to the residence where Blue lived, he would be totally frustrated and would be grasping at any straw to put an end to it. He said, what finally happened with Blue, he may be wrong, was police said here's an opportunity to put an end to it, let's do it.

Dorland said he appreciates Holverson's perspective, but it's not correct. There's a difference in perception in how this case was evaluated, and it's not getting us any closer to getting it resolved.

Azevedo said if the Blue supporters really want the Blue thing to be resolved, it has to be a negotiation that's not a contentious negotiation. The toxic comments are not doing any good. There are circumstances where aggressive people and aggressive dogs mix in a bad way, and police have to resolve it in a reasonable way. There needs to be a little bit of give and take here. He would like to see a less ambiguous code with more options.

Holverson said he agrees 100 percent. A few people on the Blue committee feel that if they don't get everything they want, they don't want anything. He feels virtually everything here has been written by Delapoer and Dorland. Delapoer said he was told by Paul Meadowbrook some time ago that he would not settle for anything that doesn't result in Blue being set free. Delapoer went to Olsen in the beginning, suggesting the code should be changed to give the judge some alternatives to euthanasia. Olsen said he believes the police got so fed up with the Blue situation that they decided they had to kill the dog.

Collins said what we're arguing over is the definition. He read from 6.18.030 regarding removing language about "other probative evidence." Azevedo reminded the group that the appeal process is available for those who disagree with a decision.

Holverson asked, in a year, how often would a Director situation come into play? Dorland said APD has investigated around 70 reports of dog bites or menacing in 2011; only the worst of the worst go to the Director to be evaluated. Sinc

the first of the year, there have been two that are potentially dangerous, and none designated dangerous. Holverson suggested the wording: "when necessary, a Director will be appointed on a case by case basis," and should have these kinds of qualifications. Olsen said, "if we've got a Director that's constantly inflaming the public by making mistakes, the Council will get rid of him." The Council needs the authority to appoint someone who's appropriate.

Holverson said he knows Councilors are frustrated with the Blue group. It has a few people who are outspoken and say things that shouldn't be said, but a couple of things are high on their list of what's important; and this is one of them. Konopa said to put the definition of "Director" on hold.

Discussion moved to the definition of "quarantine." The Group Revisions adds "a humane animal control facility." Delapoer asked, "Will that be a slap in the face to Linn County?" The county pound is designated as place for quarantine or impoundment in state law. The next proposed addition calls for "conditions reasonably necessary to protect the physical or mental health of the impounded dog..." Delapoer asked how to determine a dog's mental health? That's voodoo science, he said. If not the county facility, where else would the dog be kept and who pays the bill? Konopa said citizens can lobby the county to make it more humane. Olsen said he thinks the complaint was the facility and no human contact. Delapoer said the dogs have human contact every day; they are fed every day. Olsen agreed that it shouldn't be part of the ordinance. Delapoer said these changes are making the ordinance more ambiguous.

6.18.020 (3) Group Revisions proposed to add a definition of "provocation," to be determined by an experienced veterinarian. Delapoer said there is no single universal experienced veterinarian. You can find a veterinarian for every issue. Holverson said you can find a judge for every issue. Konopa said she supports the ordinance without the addition. Delapoer said the effect of this will be to plant within the ordinance get-out-of-jail-free cards. As long as you can get a vet to say that whatever happens was result of "provocation," you get the dog out of trouble. Changes that are suggested here will make it very difficult if not impossible to get a dog declared dangerous if the owner wants to fight it. It's not what provokes a dog but how it responds to the provocation. Collins said it's incumbent on the defense to convince the judge that the action was the result of those circumstances. Holverson said if we leave this language, he has no problem with not adding the rest.

Group consensus was to not include the provocation definition.

6.18.030 adds sworn statements, photographs, and certified copies of medical records. Delapoer said those would be difficult to get in many cases and would not be consistent with the way police officers do an investigation. In most cases, they would not have photos, and it is time consuming and expensive to get certified copies of medical records. It adds to the expense and delay and a police officer's work. Holverson said, when you're gathering evidence, I'd think you would want to have them write things down. Delapoer said no case ever goes to court without documentation. Any police officer takes notes. Holverson said, when this came up before, you said this isn't modern police procedure. Dorland said that pertained to affidavits and sworn notarized signatures – police don't do that anymore. Discussion about documentation continued.

Group consensus was to make no changes to (1).

(Audio recording interrupted here)

The Group Revisions recommends replacing the Hearings Officer with the City Council as the body to hear appeals of the Director's classification. Olsen said he thinks the people who are aggrieved feel they didn't get their day in court, that the current ordinance doesn't allow the judge options. (Recording began again.)

Holverson said when you first made the recommendation to change language to give the judge other options, if the Council would have jumped on that, this whole thing would have been settled long ago. Delapoer said he offered that to Mr. Meadowbrook, but he wouldn't agree to anything that didn't have a guaranteed outcome. Discussion followed about mediation, negotiations, and settlements.

Holverson said that the City Council now has that authority but they choose to delegate that. The Council can appoint itself as the Hearings Officer. Delapoer said if the Council did not appoint a Hearings Officer, the Council would be it. The Municipal Judge is not a judge when he's a Hearings Officer and does not have authority to issue a subpoena. Olsen asked why a dog case is any different from a robbery. Delapoer explained that "adjudicating" whether a dog is dangerous or not is different from "prosecuting." Collins asked if the Blue people are requesting something that's a higher burden of proof than what we require for people. He is not willing to go there. Delapoer said a civil process has a different set of

rules from a criminal prosecution. Hearings Officers don't have subpoena power. No other ordinance in the City Code calls for a Hearings Officer; the City Council has said they're here for the tough decisions, but they have drawn the line at dog cases.

Collins said the purpose of the Hearings Officer is to review the decision of the Director. Delapoer said there is no trial in a writ of review; the judge reviews whether the law followed, was due process followed, and was the decision one that a reasonable person could have made based on the evidence presented. The existing ordinance has a provision that calls for sworn statements, but no allegation of error in the Blue case was raised at the local level. The second issue in Blue is that local proceeding was not taped, so does not comply with due process. Anyone can make an audiotape of the proceedings. If the Court's tape failed, a citizen can offer a tape to supplement the record. Discussion of trial procedures followed. Delapoer noted that a defendant is allowed one factual trial for the most serious crimes in the United States.

6.18.040 (1) Group Revisions adds "if the Director finds warranted" wearing a muzzle. Delapoer said he would give on this one though it complicates the ordinance and makes it ambiguous. Dorland sees it as an exercise in futility. Azevedo said the language as proposed should be left in; it doesn't affect anything, gives something to the Blue folks. Delapoer said it's a future liability loophole for the City. Olsen is in favor of leaving it in.

Holverson said one of the things the Blue group feels is really important is that there needs to be some language that deals with the owner. The owner should face some substantial penalties. Delapoer said we should have prosecuted Raymond at the same time as we classified the dog. The City also dropped the ball; we should have ticketed him when he said he'd remove the dog and he lied to us. Dorland said Raymond was prosecuted with the potentially dangerous classification but not with the dangerous classification case.

Group consensus is to keep the proposed language.

6.18.040 (9) Delapoer said he doesn't know what a "police dog handler trainer" is. "Oregon Police Canine Association certified trainer" may be what the Blue group means. Delapoer said this is being set up to an impossible standard.

Group consensus was to add language proposed by Osalyn Houser: "a dog trainer certified by the Association of Pet Dog Trainers." Smith will research what goes into such certification.

6.18.040 (9) (d) Group Revisions recommends removal of the phrase "clear and convincing" from the evidence to be evaluated. Delapoer said that phrase means it has to be more than a coin toss. "Clear and convincing" is a higher standard of proof. Collins said the underlying tenet for him is protection of the public.

Group consensus is to keep it in.

6.18.040 (9) (f) Group Revisions removes: "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."

Group consensus is to leave it in.

6.18.060: Group Revisions removes authority to euthanize. Azevedo asked Holverson if he is okay leaving that language in. Delapoer noted that euthanasia language remains in the group's version of the ordinance in 6.18.070. He thinks removal from this section was done by mistake. Delapoer also believes that it is a mistake to say "shall" go to be adopted because that gives judge no other option. There could be something in the record that the judge would say the alternative being proposed is not reasonable. Alternative has to be proposed by dog's owner. Only one who has standing to appeal is owner. If owner doesn't appeal, it's done. Collins likes the work group draft language better.

Group consensus is to leave original revised language.

6.18.070 (2) Group Revisions' draft shows this as (8). The Group Revisions' draft proposes that City pay costs of quarantine or impoundment if dog is not found potentially dangerous or dangerous. Current code implies that the City pays. Konopa asked what about fees in Blue's case? Delapoer said in the work group's draft, if person is convicted or dog is classified, the owner has to pay.

Discussion returned to the definition of "Director." Holverson said that was his biggest concern, and he wants to come to some agreeable different language. Azevedo asked, will there always be someone on staff at APD with some expertise like Dorland? Dorland said yes, as long as APD has a canine program, at least a certified handler if not a trainer. Delapoer asked if Holverson would tell the Blue committee that if the draft ordinance should be approved. Holverson said that's where the committee wants to be.

Azevedo asked if it would be useful for him and someone else to sit with the Blue folks and explain things, as long as they don't throw stones. Holverson said the committee wants to get this resolved; they have done everything they thought at the time was the right thing to do to keep the issue in front of the public. Collins said that he thinks that letters that were written were overly aggressive, assertive, and derogatory toward individuals; that behavior has cast an irreversible shadow on the City Council. It has done irreparable harm to the governing process in this community. People have said of the City Council we're all bad people, we have no heart. It undermines our ability to govern this community into the future. Only way Collins said he can see that even potentially getting changed is, at the completion of the process, there is somebody who stands up and makes a statement that we had a disagreement, we worked through a process, things were said that shouldn't have been said. That won't change everything but might go some way to repairing it.

Holverson said there were a lot of things said at the time of the tearing down of the house, too. He agreed to meet with Azevedo at a time to be determined.

Konopa said her plan is bring the draft ordinance to the City Council at the November 7 work session, then to the City Council for a vote on November 9. It won't be a public hearing; if it was, she thinks it won't produce comments on ordinance language but more of the same thing – getting Blue released. She thinks Azevedo's meeting is not necessary; the Blue supporters need to trust the process. This would have been resolved months ago if they hadn't filed a lawsuit. Holverson said the Blue group isn't involved in any lawsuit. Much of what's happening here was long before they got involved. Konopa said she thinks Blue's supporters main goal is to get Blue a new trial, but they have to trust the process and have to trust that we're all discussing the language that will give an alternative for a dog to go into rehab.

This ordinance won't resolve the Blue situation. Holverson said he had a chance to talk to Mr. Raymond for the first time; he's willing to give up all responsibility for the dog if it can be placed some place where it can have a normal life. To Holverson, that's the most important thing – he's willing to give up the dog. Entire group supporting Blue has never supported Mr. Raymond. They think the very worst thing that could happen is to have Blue go back to Raymond or to Texas to another family member.

Holverson asked if there is any way legally, if Mr. Raymond would sign over all responsibility, that this thing could be resolved. Delapoer said not with a guarantee that Blue escapes euthanasia. We can agree on process but can't agree in advance on the outcome. Holverson said cases that are more difficult than this one, in his mind, are worked out among the lawyers in the middle of a trial. Discussion followed regarding the differences between trials and hearings and other legal proceedings.

Review of Oregon state law: Delapoer summarized Oregon law regarding dogs. It does not classify dogs as dangerous or potentially dangerous; it only reacts to the actions of the dog. ORS 609.097(7) says if a dog has menaced or chased a person or has bitten a person, the county governing board may order that the dog be killed in a humane manner. The decision is subject to writ of review. Linn County has its own law. The *Democrat-Herald* has suggested Albany just apply state law. It's reactive rather than proactive, Delapoer said. Dorland said, under state law, any one of the actions Blue's accounted for would have put him down. State law doesn't provide more protection. The definition of serious physical injury is much more strict and severe, but you don't need to have physical injury under state law to euthanize a dog. Under state law, if you keep a dog that has inflicted a serious physical injury, you're guilty of a crime. The bottom line is, it's not a good alternative here. Delapoer said he would love to see the City get out of animal regulations altogether, but that would not provide protection to citizens for their animals. Linn and Benton Counties may have different rules.

Group consensus was not to adopt state law.

The group agreed to conclude this meeting and schedule another one to review the remaining public comments. That meeting will be at 5:30 p.m. Monday, October 17, 2011, in the Municipal Court Room. Minutes for that meeting will reflect the source of each public comment as it is discussed. The work group's draft will be updated with changes that were agreed upon at today's meeting.

Group consensus was not to hold a public hearing.

Holverson asked if Councilors feel there will be members of the Council that will vote against this? Konopa, Collins, and Azevedo said yes, in part because of personal behavior by the Blue group against the Council. Konopa has been a member of the Council for 15 years and said she has never seen this behavior before. It's sad for me to see this in the community, she said. To say we're not caring people is not fair. Azevedo said he received a phone call last week, and the caller was very negative toward him because he's a member of this work group and assumed he had taken a certain position to protect the City Council. Delapoer said he has not had anyone attack him personally. Collins noted Councilor Jeff Christman's remarks at the last City Council meeting, that threats of recall don't bother him; they make him stiffen further. Collins said he thinks we'll be extremely fortunate to pull a three-three vote with the mayor breaking the tie, even after all this effort.

Konopa said the November 9 City Council agenda will put the dog ordinance before Business from the Public.

Holverson said we're involved because we truly care about animals. They feel this dog got a bad rap because of circumstances, not because he was a vicious dog. He talked about career politicians at the federal level ignoring input from citizens. Konopa said it's unfortunate to be compared in that way because local government officials are all here because they care about the community. She added that she hears from a lot of people who say put that dog down and don't change the ordinance; the Council has to look at both sides. Azevedo said twice we've taken the City to task on land-use issues but we didn't do it by attacking individuals; we attacked the issues. We now are very involved with the community at city government level. There are lots of opportunities to be involved and to influence how things happen in a positive way. If Blue people wanted to help the City, he thinks the City would embrace them. How you choose to use your energy and channel it will determine what the outcome is and whether you feel satisfied at the end of it. This should be a community win. Don't attack the person; attack the idea.

Holverson said his closing comments at the Blue group meeting today were, if we can get a couple of these changes that are important to us, we'd drop all letters to the editor, demonstrations, sit back and be quiet, and support the final document in public and in private. Collins said, if we have a summary of what this ordinance does that the other doesn't, six or seven key bullets, it's critical. Olsen said this has been a really thoughtful review of the ordinance. He added that Councilors had been talking about a possible change to the ordinance since spring; they did not have to include a Blue supporter in considering such a change. Delapoer said he thinks the most important thing the committee wanted to achieve was an alternative so the dog doesn't have to be killed if it's classified as dangerous. That was proposed by Olsen and Delapoer before the committee ever formed. You won without even asking because we recognized that we needed to give the judge more flexibility, he said.

Collins said the fundamental tenet is that the ordinance is designed for protection of the public from the animals that misbehave; but for the animals that misbehave, the ordinance calls for a fair due process to reach a conclusion.

Delapoer noted that many of the things that are important to the Blue group have been incorporated into the proposed changes because staff agrees with them.

Next meeting date: 5:30 p.m., Monday, October 17, 2011, Municipal Court Room.

Meeting adjourned at 7:55 p.m.

Respectfully submitted,

Marilyn Smith
Management Assistant /Public Information Officer

Public Comment on
Draft Ordinance Revisions
Chapter 6.18
DANGEROUS DOGS
October 7, 2011
Updated October 8, 2011

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 the humane 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 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.**

Comment [mms1]: EH – A and B are obtuse. Could the meaning and differences be explained more clearly?

Comment [mms2]: EH -- director needs to have professional dog handling experience or must officially seek advice of dog experts with recorded documentation or court appearance. Professional dog handling experience means a veterinarian, a dog rehabilitation expert, a Humane Society or PETA dog handler, or any other professional dog handler.

Comment [mms3]: EH – Hearings Officer also needs professional dog handling experience or must officially seek advice of dog experts with recorded documentation or court appearance.

Comment [mms4]: LF

Comment [mms5]: JA – "Might want to add to the definition of quarantine as a requirement due to the dog biting and breaking the skin, per state requirement for "bite quarantine:" 10 confinement of dog."

Comment [mms6]: JA – "bite wound does not need a definition of size, minimal or maximum" Question: how does your definition of "serious injury" also pertain to another animal? As I read the definition, I can see how it pertains to a person but another animal might be questionable.

G:\Dangerous Dog Work Group (August 2011)\Public comment_Draft Ordinance Revisions - AMC 6.18_Dangerous Dogs.doc\4-Administrative Services\City Manager's Office\Dangerous Dog Work Group (August 2011)\Draft Ordinance Revisions - AMC 6.18_Dangerous Dogs.doc

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 **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.

Comment [mms7]: EH – 10 days. 30 days is too long with an animal in captivity.

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. 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 ~~10 fifteen (15) ten (10) 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 **or concerned citizen or entity, such as animal welfare group,** 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 must 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**

Comment [mms8]: TC -- "The dog should be entitled to a medical opinion as part of the procedure, not on the Director's whim."

Comment [mms9]: WM -- "Owner of the suspect dog should be required to show proof of liability insurance. Any truly dangerous animal will be dealt with by his owners when they get the bill from the insurance company that really assesses risk and charges accordingly."

Comment [mms10]: RK

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Comment [mms11]: EH – Delete. Mail service is too slow with animal in captivity.

Comment [mms12]: TAW

Comment [mms13]: TAW – should specify that this includes veterinarians and/or animal behavior specialists and that testimony can be presented in person or in writing.

Comment [mms14]: EH

Comment [mms15]: RK recommends deletion. "Our tax money could be better used elsewhere."

Comment [mms16]: EH – "This is simply not good business and can easily be misused, such as the City Council refusing to show a video at a Council meeting because supposedly the standard equipment needed wasn't furnished or available."

Comment [mms17]: EH – "only if the Hearings officer has professional dog handling experience or calls in experts in that area."

~~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.~~

Comment [mms18]: EH -- "only if the Hearings Officer has first-hand professional dog handling experience."

Comment [mms19]: EH

(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.

Comment [mms20]: TC -- should be 90 days maximum from designation to final hearing

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 6 feet in length and while wearing a muzzle of sufficient strength and construction to prevent the dog from biting a human or animal.**

Comment [mms21]: LF

(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 \$25 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.

Comment [mms22]: LF

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Comment [mms23]: LF

(4) Notify the Director by certified mail where the dog is kept within 10 14 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.

Comment [mms24]: JA: Might want to also notify the victim and neighbors or the owner/keeper of the classified dog that said dog will be located in their area. I know that signage should be enough to notify neighbors but better safe than sorry. Ditto if dog is re-classified. May also think of informing the owner/keeper's insurance company.

(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.

Comment [mms25]: RK does not agree. "Owners of potentially dangerous dog breeds should keep a vigilant eye on dog and restrain dog from becoming at large."

Comment [mms26]: JA -- consider changing to "animal" behavior

(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 licensed veterinarian board certified in the specialty of veterinary behavior, to have the classification as "potentially dangerous" removed as follows:

Comment [mms27]: OH -- "There are numerous excellent certified dog trainers in the valley with many years of experience who are very capable of evaluating, retraining and/or rehabilitating 'problem' dogs. These people are not veterinarians but typically are certified by the Association of Pet Dog Trainers."

Comment [mms28]: JA

(a) If an application follows training by a board-certified ~~veterinary-animal~~ behavioral specialist, the application must be accompanied by a written statement from the trainer describing 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.

Comment [mms29]: JA -- Question: what type of liability would fall upon the City if the said dog is re-classified by an unqualified trainer? Example: dog was retrained by neighbor not to be aggressive because he trains dogs to hunt.

(c) The application must be accompanied by an application fee ~~in an amount not to exceed \$75 to as 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.

Comment [mms30]: JA -- the dog's classification came about because the owner/keeper was negligent. Should the owner/keeper go through retraining with the dog and be confirmed by the same trainer as having done so?

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(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:

Comment [mms31]: LF

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(i) The date of mailing of the notice to the owner ~~receives notice~~ 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.

Comment [mms32]: EH – "It is too easy to claim part of the recording damaged when it might be an integral part of the defense of the animal."

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).

Comment [mms33]: TAW – should include "by a veterinarian." Strike first clause of next sentence.

(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:

Comment [mms34]: TAW – add "a concerned citizen or entity, such as animal welfare group" with means and ability to safely and effectively put the alternative into place

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

Comment [mms35]: LF
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(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 this 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 reoffense.

Comment [mms36]: EH

(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.~~

Comment [mms37]: EH – "unless the Hearings Officer is a professional dog handler or calls for professional opinion."

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

Comment [mms38]: RK disagrees with this section.

(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.

Comment [mms39]: JA – I have a problem with this because even after the dog has been classified as a dangerous dog by definition, the dog can still be given "one more chance" even though it has been proven that it is dangerous to the public or other animals. Usually a dog will not be classified as a dangerous dog unless there are prior issues with the dog.

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 cause injury to any person or animal. 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:~~

Comment [mms40]: DG – "We should take care of our own problems and not transport for another community to take... Other communities would see us as needing to accept dangerous dogs because we sent problems to other areas."

Comment [mms41]: TAW – "It is impractical to expect a dog owner to know this is the law before they move to Albany and become a resident, presumably with their pet. What could possibly be a reasonable consequence to determining someone had moved here with a dog identified as dangerous by another jurisdiction?"

G:\Dangerous Dog Work Group (August 2011)\Public comment_Draft Ordinance Revisions - AMC 6.18_Dangerous Dogs.doc\4-Administrative Services\City Manager's Office\Dangerous Dog Work Group (August 2011)\Draft Ordinance Revisions - AMC 6.18_Dangerous Dogs.doc

- (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 The outcome of the sentencing shall shall not relieve the owner of his/her responsibility to pay all quarantine or impoundment costs previously incurred. (Ord. 4847 § 1, 1989)

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 Comment [mms43]: LF

(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.

(3) If the Director or designee or the Hearings Officer finds that the owner's neglect or other action contributed to the dog's dangerous behavior, the owner shall be prohibited from owning other dogs for the duration of his or her residency in the city of Albany.

Comment [mms44]: JBCF

Additional requested addition:

- Use qualified humane resource for boarding dog during litigation; contract it out, do not use county pound.
- Set a reasonable limit on time for litigation since a live animal is involved. (EH)

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- JA: John Adair
- JBCF: John Byrne and Cheryl French
- TC: Terry L. Crook
- LF: Lloyd Fenwick
- EH: Ellen Hamill
- OH: Osalyn Houser
- DG: Doug Grimmius
- RK: Reema Khasawinah
- WM: Ward Mackey
- TAW: Troy and Andrea Wirth

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Draft Ordinance Revisions

Chapter 6.18

DANGEROUS DOGS

Updated October 12, 2011 (changes shown in bold red color)

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 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 **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. 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 ~~10~~ **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 __ feet in length and, if the Director finds warranted, while 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, 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 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 this 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 reoffense.

(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 cause injury to any person or animal. 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.**