ARTICLE 4-2: IMLA MODEL ORDINANCE REGULATING DANGEROUS DOGS

Section

A public safety ordinance providing for responsible ownership of and licensing and keeping of potentially dangerous dogs, dangerous dogs, and vicious dogs within the corporate limits of the City of _____, authorizing impoundment and disposition of certain dogs, and repealing all ordinances in conflict therewith.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____:

SECTION 4-201. Authorization.

This Ordinance is enacted pursuant to the general police power, the authorities granted to cities and towns by the _____ State Constitution, and Sections _____ through _____ of the _____ State Code.

SECTION 4-202. Purpose and Intent.

The purposes of this Ordinance are to promote the public health, safety, and general welfare of the citizens of the City of _____.

SECTION 4-203. Definitions.

When used in this Ordinance, words have their common meaning and in addition the following words, terms, and phrases, and their derivations have the following meaning:

(a) *Animal control officer* means any person employed or appointed by the City who is authorized to investigate and enforce violations relating to animal control or cruelty under the provision of this Ordinance.

(b) *At large* means a dog that is not on its owner's property and not leashed.

(c) *Bite injury* means any contact between an animal's mouth and teeth and the skin of a bite victim which causes visible trauma, such as a puncture wound, laceration, or other piercing of the skin.

(d) *Dangerous dog* means any dog that has caused a bite injury and is not a vicious dog.

(e) *Director* means the Director of the Department of Animal Control.

(f) *Domestic animal* means an animal of a tamed species commonly kept as pets and includes livestock

(g) *Enclosure* means a fenced or walled area having a fence or wall height of at least six (6) feet suitable to prevent the entry of young children and suitable to confine a dog.

(h) *Impoundment* means seizing and confining a dog by any police officer, animal control officer or any other public officer under the provisions of this Ordinance.

(i) *Muzzle* means a device constructed of strong, soft material or of metal, designed to fasten over the mouth of a dog that prevents the dog from biting any person or other animal and that does not interfere with its respiration.

(j) *Potentially dangerous dog* means a dog that while *at large*: (1) behaves in a manner that a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to a person or *domestic animal*, or (2) causes injury to a *domestic animal.*

(k) *Provocation* means any action or activity, whether intentional or unintentional, which would be reasonably expected to cause a normal dog in similar circumstances to react in a manner similar to that shown by the evidence.

(l) *Owner* means any person, partnership, or corporation having a right of property in an animal, or who keeps or harbors a dog, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her.

(m) *Sanitary condition* means a condition of good order and cleanliness to minimize the possibility of disease transmission.

(n) *Serious physical injury* means disfigurement, protracted impairment of health, or impairment of the function of any bodily organ.

(o) *Vicious dog* means a dog that without provocation or justification bites or attacks a person and causes serious physical injury or death or is declared vicious under this title.

SECTION 4-204. Determination of Status.

(a) The animal control officer may find and declare a dog potentially dangerous, dangerous, or vicious if the officer has probable cause to believe that the dog falls within the definition of "vicious dog", "dangerous dog" or "potentially dangerous dog". The finding must be based upon:

(i) The written complaint of a person who is willing to testify that the animal has acted in a manner which causes it to fall within the definition of "vicious dog", "dangerous dog" or "potentially dangerous dog"; or

(ii) Dog bite reports filed with the animal control officer as required by city ordinance or state law; or

(iii) Actions of the dog witnessed by any animal control officer or law enforcement officer; or

(iv) Other substantial evidence admissible in court.

(b) The declaration shall be in writing, and shall be served by the animal control officer:

(i) On the owner if known using one of the following methods:

1. Regular mail to the owner's last known address, or by certified mail directed to the owner at the owner's last known address; or

2. Personally; or

3. If the owner cannot be located by one of the first two methods, by publication in a newspaper of general circulation and posting a notice on the property of the owner;

(ii) Where the owner is not known publication in a newspaper of general circulation.

(c) The declaration shall contain the following information:

(i) Name and address of the owner of the dog if known and if not known that fact.

(ii) A description of the dog.

(iii) Whereabouts of the dog.

(iv) Facts upon which the declaration is based.

(v) Restrictions placed upon the dog and when the owner is not known the intended disposition of the dog.

(vi) Penalties for violation of the restrictions, including possibility of destruction of the animal and fine and imprisonment of owner.

(vii) Availability of a hearing to contest the declaration by submitting a written request to the Board of Appeals within fifteen days of receipt of the declaration or if notice is given by publication or posting within 15 days of the earlier of the date the notice first appears in the newspaper or the property is posted.

(d) A dog may be declared dangerous under this section if the dog has within a twelve-month period attacked and killed a domestic animal on more than one occasion. For purposes of this subsection only, a domestic animal does not include any feral animal or does not apply where the attack was upon a domestic animal that was at large or upon a domestic animal that was tormenting or attacking the dog.

(e) Dogs shall not be declared dangerous, potentially dangerous or vicious if the threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, provoking or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, provoked or assaulted the dog or was committing or attempting to commit a crime.

(f) *Notice*. When notice is given by regular mail to the owner's last known address, notice is effective on the third day after the notice was placed in the mail, postage prepaid, to the owner's last known address. When notice is given by certified mail, notice is effective when received; provided however, if certified mail delivery has been refused, notice is effective by publication or posting and whenever notice is accomplished by publication or posting the notice is effective and deemed received on the earlier of the day the property is posted or the newspaper is published.

SECTION 4-205. Potentially Dangerous Dogs.

(a) No person shall maintain a potentially dangerous dog without a license or otherwise in violation of this section.

(b) No person owning, harboring or having the care or custody of a potentially dangerous dog shall permit the dog to go at large or leave the owner's property unless the dog is securely leashed and muzzled.

(c) *Spaying/Neutering*. All owners of potentially dangerous dogs must spay or neuter the dog and provide proof of sterilization to the Director of Animal Control within 14 days of the animal control officer declaring the dog potentially dangerous.

(d) In addition to any other penalty for a violation of this section, a court may revoke the authority of a person to keep a potentially dangerous dog within the city.

(e) The owner of a potentially dangerous dog may apply to the Director of Animal Control to have the declaration waived after two (2) years upon meeting the following conditions:

(i) The owner and offending dog has no subsequent violations of this Chapter of the Code; and

(ii) The owner of the dog has complied with all the provisions of this act for a period of two (2) years; and

(iii) The owner provides proof to the Director of Animal Control of successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist, certified through the American College of Veterinary Behaviorists (ACVB) or equivalent training.

If the Director finds sufficient evidence that the dog owner has complied with all conditions in this subsection, the application shall be forwarded to the Court to rescind the potentially dangerous dog declaration.

SECTION 4-206. Dangerous Dogs.

(a) No person shall maintain a dangerous dog in violation of this section.

(b) *Keeping of a Dangerous Dog*. Once a dog has been declared dangerous, it shall be kept in a secure enclosure subject to the following requirements:

(i) *Leash.* No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its enclosure unless such dog is securely attached to a leash not more than four (4) feet in length and walked by a person who is both over the age of eighteen and who has the physical ability to restrain the dog at all times. No owner shall keep or permit a dangerous dog to be kept on a chain, rope or other type of leash outside its enclosure unless a person capable of controlling the dog is in physical control of the leash.

(ii) *Muzzle*. It shall be unlawful for any owner or keeper of a dangerous dog to allow the dog to be outside of its proper enclosure unless it is necessary for the dog to receive veterinary care or exercise. In such cases, the dog shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the dog's breathing or vision.

(iii) *Confinement.* Except when leashed and muzzled as provided in this Section, a dangerous dog shall be securely confined in a residence or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light, and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:

(1) The structure must have secure sides and a secure top, or all sides must be at least six (6) feet high;

(2) The structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and

(3) The structure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own.

(iv) *Indoor Confinement.* No dangerous dog shall be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog shall be kept in a house or structure when the windows or screen doors are the only obstacle preventing the dog from exiting the structure.

(v) *Signs*. All owners, keepers or harborers of dangerous dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog."

(vi) *Liability Insurance, Surety Bond*. Subject to judicial discretion, the owner of a dangerous dog may be required to present to the Department of Animal Control proof that he has procured liability insurance or a surety bond in the amount of not less than one hundred

thousand dollars ($100,000) covering any damage or injury that may be caused by such dangerous dog. The policy shall contain a provision requiring that the City be notified immediately by the agent issuing it if the insurance policy is canceled, terminated or expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a dangerous dog. The dog owner shall sign a statement attesting that he shall maintain and not voluntarily cancel the liability insurance policy during the twelve (12) month period for which a permit is sought, unless he ceases to own or keep the dog prior to the expiration date of the permit period.

(vii) *Identification Photographs*. All owners, keepers, or harborers of dangerous dogs must within ten (10) days of determination provide to the Animal Control two color photographs of the registered dog clearly showing the color and approximate size of the dog.

(viii) *Microchip*. All owners, keepers or harborers of dangerous dogs must within ten (10) days of determination microchip the dog and provide microchip information to the Director of Animal Control to register the dog as dangerous.

(ix) *Spaying/Neutering*. All owners, keepers or harborers of dangerous dogs must within ten (10) days of determination spay or neuter the dog and provide proof of sterilization to the Director of Animal Control.

(x) *Sale or Transfer of Ownership Prohibited*. Sale - No person shall sell, barter or in any other way dispose of a dangerous dog registered with the City to any person within the city unless the recipient person resides permanently in the same household and on the same premises as the owner of such dog, provided that the owner of a dangerous dog may sell or otherwise dispose of a registered dog to persons who do not reside within the city. Owner must disclose dog's status as a dangerous dog to anyone to whom the owner transfers custody or care of the dog.

(xi) *Notification of Escape*. The owner or keeper of a dangerous dog shall notify the Department of Animal Control immediately if such dog escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the dog bites or attacks a person or domestic animal.

(xii) *Failure to Comply*. It shall be a separate offense to fail to comply with the restrictions in this section. Any dog found to be in violation of this Section shall be subject to immediate seizure and impoundment pursuant to 4-208. In addition, failure to comply with the requirements and conditions set forth in this Ordinance shall result in the revocation of the dog's license and the permit providing for the keeping of such dog.

(c) A dangerous dog owner may apply to the Director of Animal Control to have the declaration waived after three (3) years upon meeting the following conditions:

(i) The owner and offending dog has no subsequent violations of this Chapter of the Code; and

(ii) The owner of the dog has complied with all the provisions of this act for a period of three (3) years; and

(iii) The owner provides proof to the Director of Animal Control of successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist, certified through the American College of Veterinary Behaviorists (ACVB) or equivalent training.

If the Director finds sufficient evidence that the dog has complied with all conditions in this subsection, and has sufficient evidence that the

dog's behavior has changed, the application shall be forwarded to the Court to rescind the dangerous dog declaration.

SECTION 4-207. Vicious Dogs.

It shall be unlawful to keep, possess, or harbor a vicious dog within the city limits.

(a) The provisions of this article shall not apply to a police dog being used to assist one or more Law Enforcement Officers acting in an official capacity

(b) The Director of Animal Control may order a dog euthanized that has been declared vicious.

(c) The owner of a dog that the Director declares to be vicious may appeal that determination to the Board of Appeals within 15 days of the declaration. If an appeal is timely filed, the order to destroy the animal is suspended pending the final determination of the Board except when the Director declares that public health and safety require the immediate destruction of the animal as in the case of rabies.

(d) The owner of a vicious dog shall be liable for and shall pay all costs associated with impoundment, removal, or euthanasia of said animal. The owner shall pay any other associated costs incurred.

SECTION 4-208. Immediate Impoundment.

(a) A dog suspected of being dangerous or vicious may be immediately impounded when the Director of Animal Control or the Director's designee determines such immediate impoundment is necessary for the protection of public health or safety.

(b) If the owner of the dog impounded under subsection (a) of this section is not reasonably ascertainable at the time of impoundment, the Director shall immediately notify the owner by mail sent to the owner's last known address postage prepaid which upon the passage of three days be deemed complete or by personal service within five (5) business days after the dog's impoundment.

(c) The notice of impoundment shall inform the owner of the dog that the owner may request, in writing, a hearing to contest the impoundment. Upon receipt of the notice of impoundment either through personal service or by mail (receipt is complete three days after mailing to the last known address of owner postage prepaid), the owner has 5 business days to request a hearing by serving on the Director of Animal Control a written request for the hearing.

(d) Upon request by the owner of the dog for a hearing under subsection (c), a hearing must be held within ten (10) business days after receipt of the request. Notice of the date, time and location of the hearing shall be provided by regular mail to the dog owner requesting the hearing. The impoundment hearing shall determine if the dog poses a risk to public health and safety **[insert here the appropriate standard: preponderance of the evidence; clear and convincing evidence; or beyond a reasonable doubt]** or if the dog could be released. If the trier of fact determines the dog does not pose a risk to public health and safety, the dog shall be immediately released back to the owner pending further proceedings either administrative or judicial.

(e) The owner must pay all of the cost of the impoundment and upon request must post sufficient funds to cover the anticipated costs for continued impoundment. In the alternative, the owner may propose a suitable facility where the dog could be contained and maintained at the sole cost of the owner and upon approval of the Director the dog may be impounded at that facility under the terms and conditions set by the director. Failure to post funds sufficient to pay for the costs of impoundment constitutes a waiver of any rights the owner may have to a hearing under this Section.

(f) If the owner timely appeals an impoundment

or seizure, the owner may also seek review of the Director's determination of boarding costs by filing an appeal with the Board of Appeals within 5 days after the Director issues a demand for prepayment. The Board or a designee, must review the Director's decision within 2 business days after receiving the appeal. The owner must provide the Board with information sufficient to show that requiring prepayment of boarding costs would be a serious financial hardship on the owner. The Board may ask the owner to provide additional information at an informal hearing conducted in person or by telephone. The Director must not require the owner to prepay any boarding costs pending the Board's decision. The Board may make any decision the Director could have made such as requiring the owner to prepay boarding costs retroactive to the initial boarding date of the animal, posting a bond, or placing the animal in a suitable facility at the owner's sole expense. The owner may ask the Board to review the Director's decision regarding prepayment of boarding costs as part of its review of the underlying appeal.

(g) If the owner is successful in appealing the decision to impound the dog, the Director must refund to the owner any costs paid for the impoundment.

SECTION 4-209. Continuation of Dangerous Dog Declaration.

Any dog that has been declared dangerous or vicious by any agency or department of this City, another municipality, county, or state shall be subject to the provisions of this Ordinance. The person owning or having custody of any dog designated as potentially dangerous or dangerous by any municipality, county, or state government shall notify the Department of Animal Control of the dog's address and conditions of maintenance within ten (10) days of moving the animal into the City of _____. The restrictions and conditions of maintenance of any dog declared dangerous by this City, another municipality, county, or state shall remain in force while the dog remains in the City. No dog declared a potentially dangerous, dangerous, or vicious dog by any other designation agency or department of another municipality, county, or state based solely on size, breed, mix of breeds, or appearance shall be subject to this Section.

SECTION 4-210. Reckless Dog Owner.

(a) Any person convicted of:

(i) a violation of the City of ____ Code of Ordinances Chapter on Animals three (3) or more times in a 24 (twenty-four) month period; or

(ii) a violation of this Article two (2) or more times in any five-year period, shall be declared a reckless dog owner.

(b) The Director of Animal Control shall issue a notification of the declaration of Reckless Dog Owner to the person with the following:

(i) name and address of the person subject to the declaration, and;

(ii) the description, violation, and conviction that led to the declaration, and;

(iii) the name, description, and license number of all dogs subject to the effects of the declaration, and:

(iv) instructions on appealing the declaration to the Board of Appeals.

(c) Once declared a reckless dog owner, the city licenses of all dogs owned by the person shall be revoked, and the person shall not own, keep, possess, or harbor a dog for a period of 5 (five) full years from the date of the declaration.

(d) A person declared to be a reckless dog owner may apply to the Director of Animal Control to have the declaration waived after two (2) years upon meeting the following

conditions:

(i) The person has no subsequent violations of this Chapter of the Code; and

(ii) The person has complied with all the provisions of this act for a period of two (2) years; and

(iii) The person provides proof to the Director of Animal Control of successful completion of a program designed to improve the person's understanding of dog ownership responsibilities and based upon an interview with the Director of Animal Control establishes that understanding.

If the Director finds sufficient evidence that the person has complied with all conditions in this subsection, the Director may rescind the reckless owner declaration subject to conditions that can help to ensure no future violations. If the Director declines to remove the declaration, the person aggrieved may appeal to the Board of Appeals within 30 days of that decision. Upon appeal, the person must provide clear and convincing proof that ownership of a dog in the future will be handled responsibly and not in violation of any law or ordinance.

SECTION 4-211. Penalties.

(a) Any person violating this Article shall, upon conviction, be punished by a fine of not less than $500.00 nor more than $1,000.00, by imprisonment in the county jail for a term not to exceed 180 days, or by both such fine and imprisonment. [Note: In some jurisdictions this may be labelled a civil fine, in others a misdemeanor and in others the jurisdiction may choose to make violations both a civil offense as well as a criminal offense. See optional provisions below.]

(b) Upon conviction of a violation of this Article, the court may order abatement of the violation and order restitution be paid to any person injured as a result of the violation up to the maximum amount allowed by law.

SECTION 4-212. Appeals.

(a) Any person aggrieved by a decision of the Director of Animal Control to declare a dog potentially dangerous, dangerous or vicious, or to declare a person a reckless dog owner, or to impound a dog, or to have a dog euthanized may appeal the decision to the Board of Appeals within 30 days of the decision unless a different period is provided under this Title. A person aggrieved by a decision of the Board of Appeals may appeal that decision to the courts in accordance with and pursuant to state law and the rules of court.

(b) If the Director of Animal Control orders a dog to be euthanized for public health or safety reasons other than for rabies, the owner may immediately appeal that decision to the courts and upon a showing of good cause the court may suspend the order to euthanize the dog until the appeal is finally resolved.

SECTION 4-213. Conflicting Ordinances.

All other ordinances of the City of _____ that conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4-214. Severability.

The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or phrase of the Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect; it being the legislative intent that this Ordinance shall remain in effect notwithstanding the validity of any part

DANGEROUS DOGS: EDITOR'S COMMENTARY

I. Introduction

This IMLA Model Ordinance is intended to assist local government attorneys involved in drafting legislation aimed at regulating, but not prohibiting, the ownership and care of dogs that are viewed as either a nuisance or dogs that pose an extraordinary risk of danger to persons and property if not properly controlled. Because it is aspirational, it may contain provisions that are difficult if not impossible to implement within certain jurisdictions. Therefore, the drafters encourage any attorney using this ordinance for reference to also check applicable local and state laws.

In preparing this Model and its accompanying commentary we consulted numerous sources, including sample ordinances that IMLA has received from several member cities and counties. Language and provisions included in the IMLA Model were borrowed from ordinances and statutes reviewed from the States of Idaho and Illinois; Roeland Park, Kansas: Skokie, Illinois; South Bend, Indiana; Montgomery County, Maryland, and Fairfax County, Virginia.

II. Drafting Overview

There are several general guidelines to keep in mind when drafting an ordinance to regulate or prohibit the keeping of dangerous or vicious dogs:

- Define what is meant by a “potentially dangerous”, “vicious” or “dangerous” dog, depending on what categories you choose to use.
- Establish procedures by which a dog comes to be classified as such.
- Establish the actions/hearings that satisfy the due process clause that a pet owner may take to contest the designation of his or her dog.
- State the burden of proof in the ordinance. If there are criminal penalties, the burden of proof must be beyond a reasonable doubt for each element.
- Specify the actions that a dog owner must take if the dog is finally declared dangerous at the end of an administrative hearing or court proceeding.
- Describe the penalties that the local government will impose if the dog owner does not comply with the established requirements.
- Consider a registration and mapping of dangerous or vicious dogs in your city.

III. The Police Power to Regulate Dangerous Dogs

Property rights in dogs are of an imperfect or qualified nature. As a rule, governmental bodies may be powerless to enact a general ban on the ownership of dogs.[1] At the same time, however, it is well established that ordinances regulating the keeping of animals within the jurisdictional limits of a particular

[1] *See In re Ackerman*, 6 Cal. App. 5, 13 (1907).

local governmental entity are a valid exercise of the police power delegated from the state provided that the ordinance is reasonable. In *Sentell v. New Orleans & Carrolton R.R.*, the constitutionality of a New Orleans ordinance requiring pet owners to obtain license tags for their dogs and a Louisiana state statute requiring all dogs to be registered was contested.[2] In upholding both the state law and city ordinance, the United States Supreme Court concluded that dogs are subject to the full force of the police power and may be destroyed or otherwise regulated in whatever manner the legislature deems reasonable for the protection of citizens.[3]

Many state courts have since held that a legislative body has broad police powers to control all dogs as means of guarding against public nuisances that endanger people, such as those posed by vicious dogs. Typical of such cases is *Thiele v. Denver*, in which the Colorado Supreme Court stated unequivocally that a dog, like all other property, is held by its owner subject to the inherent police power of the state and cannot be used or held in such way as to injure others or their property.[4] In *King v. Arlington County*, the Virginia Supreme Court held that a county law making it illegal to keep a dog known to be vicious or which has evidenced a disposition to attack human beings was a valid exercise of the county's police power.[5] However, evidence considered in evaluating "known propensity" for dangerousness is generally contested, so it is more effective to list specific behaviors over general terms.[6]

More recently, courts have held that although in the eyes of the law, dogs are property, they are much more than an "inanimate object like, say, a toaster."[7] To justify the state's assertion of its authority on behalf of the public, it must appear that the interests of the public require such interference. Also, the means chosen must be reasonably necessary to accomplish the government's purpose and not unduly oppressive upon individuals.

IV. Breed-Specific/Discriminatory Regulations

Because local governments enjoy such broad discretion when regulating the keeping of dogs, ordinances aimed at dangerous dogs and their owners that apply to all breeds usually do not raise questions about whether a city or county has overstepped its legal bounds. More controversial, however, is the use of breed descriptions to automatically characterize a dog as vicious or dangerous or in some other way restrict ownership of that breed. Nowhere is this more common than in legislation pertaining to alleged pit bull terrier dogs. At least twenty-one states currently prohibit breed discriminatory measures.[8] Note that the 2005 version of this model ordinance contains breed-specific language that has subsequently been removed. Rather than attempt to regulate certain specific breeds, the current 2018 ordinance contains a strong general vicious dog category which is broadly applicable to all dangerous and vicious dogs. Unlike general vicious dog ordinances, breed-specific/discriminatory laws are not

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[2] *See Sentell v. New Orleans & Carrolton R.R.*, 166 U.S. 698 (1897)

[3] *See Id*. at 704.

[4] *See Thiele v. Denver*, 312 P.2d 786, 789 (Colo. 1957)

[5] *See King v. Arlington County*, 81 S.E.2d 587, 589 (Va. 1954)

[6] *See e.g*. *State v. Hanson*, No. 90,372 (Kan. 2004).

[7] *See Lira v. Greater Houston German Shepherd Dog Rescue, Inc*. (No. 14,0964) (Tex. 2016) (regarding the transfer of ownership of a stray dog from a municipality to a dog rescue).

[8] For a list of states banning this type of legislation, please see BEST FRIENDS ANIMAL SOCIETY, *Anti-Breed-Specific Legislation By State* https://bestfriends.org/resources/anti-breed-specific-legislation-state (last accessed Aug. 1, 2018).

automatically accepted as valid and have faced numerous court challenges from both dog owners and breed or humane organizations.[9] The challenges that such laws face are usually based on allegations of overinclusiveness, underinclusiveness, vagueness, violating equal protection, and lacking a rational basis.

The vast majority of local governments have addressed public safety by passing comprehensive breed neutral vicious dog ordinances that apply to dogs of all breeds.[10] These ordinances focus on the behavior of the owner and the behavior of the dog. Like other animal control ordinances, comprehensive breed-neutral ordinances are usually considered legitimate exercises of the local police power and are much less controversial than attempting to correctly identify and regulate an entire breed, especially if criminal penalties are involved and the municipality must prove the dog to be of the alleged breed beyond a reasonable doubt.

Additionally, keep in mind that even in cities with breed specific/discriminatory prohibitions, there must always be exceptions for service dogs under Title II of the Americans with Disabilities Act. The United States Department of Justice states in its guidance that it "does not believe it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs based on local concerns that these breeds may have a history of unprovoked aggression or attacks."[11]

A. *Commentary from Best Friends Animal Society on Breed-Specific Legislation:*

Thirty years ago, municipalities used breed specific/discriminatory ordinances in an attempt to regulate dangerous dogs based on faulty media reports not backed by science. Today, dog behavior has been scientifically studied and reported in peer reviewed journals such as the Journal of the American Veterinary Medical Association. Ordinances that attempt to target specific breeds have shown to be ineffective at enhancing public safety, expensive to enforce, and an interference with dog owner's property rights.[12] The Centers for Disease Control and Prevention recommends against ordinances targeting breeds of dogs, and the American Bar Association House of Delegates passed a resolution in 2012 urging local governments to repeal breed specific ordinances and enact comprehensive breed neutral dangerous dog ordinances with due process protections for dog owners.

> *"Resolved, that the American Bar Association urges all state, territorial, and local legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous*

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[9] *See e.g.* Plaintiff's Complaint, *Nelson v. Town of New Llano*, No. 2:14-cv-00803 (W.D. LA May 26, 2014); Plaintiff's Motion for Preliminary Injunction, *Nelson v. Town of New Llano*, No. 2:14-cv-00803 (W.D. LA May 26, 2014); Plaintiff's Memorandum in Support of Motion for Preliminary Injunction, *Nelson v. Town of New Llano*, No. 2:14-cv-00803 (W.D. LA May 26, 2014); *Schreiner v. City of Clay*, No. CV2013-903036.00, (Ala.Cir.Ct. Sept. 14, 2014)

[10] *See* ANIMAL FARM FOUNDATION, INC., *Breed Specific Legislation Map*, https://animalfarmfoundation.org/community-advocates/bsl-map/ (last visited Aug. 20, 2018).

[11] 28 C.F.R. § 35.136 Supp. 81 (2010); *see also Sak v. City of Aurelia, Iowa*, 832 F. Supp. 2d 1026, 1033 (ND Iowa 2011)

[12] *See e.g.* City of Topeka, Proposed Ordinance on Animal Cruelty and Dangerous Dogs, https://www.pitbullinfo.org/uploads/7/8/9/7/7897520/topeka_kansas_against_bsl.pdf (last visited Aug. 20, 2018); PRINCE GEORGE'S COUNTY, *Report of the Vicious Animal Legislation Task Force* (2003); PRINCE GEORGE'S COUNTY, *Report of the Vicious Animal Legislation Task Force: Appendices* (2003)

dog/reckless owner laws that ensure due process protections for owners, encourage responsible pet ownership and focus on the behavior of both dog owners and dogs, and to repeal any breed-discriminatory or breed-specific provisions."

Breed specific/discriminatory ordinances make the presumption that behavioral traits are dominated by genetics, not by environment, even though there is no clear scientific basis for this presumption. Repeated studies using animal welfare professionals including veterinarians and municipal animal control officers have shown that visual breed identification of dogs is highly unreliable when compared to the actual genetic breed ancestry of the dog.[13]

V. Due Process Challenges

The most common constitutional challenge to a dangerous dog ordinance is procedural due process. Many drafters make the mistake of not allowing for a fair hearing before declaring a dog dangerous.[14] A defendant requires notice and fair opportunity to be heard.[15]

The imposition of restrictions on dog ownership creates a meaningful interference with the owner's possessory interest in that property, such that it acts as a constitutional deprivation of property. The restrictions act to effectively limit the ability of the owner to engage in previously allowed activities, such as letting the dog run off-leash, playing ball without a muzzle on one's own property, and these restrictions often apply for the life time of the dog. (IMLA's model ordinance allows for an application to appeal the lifetime regulations).

As personal property, a dog owner has a constitutionally protected property right in his dog which may not be deprived except in accordance with due process of law. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."[16] The determination of what due process protections apply requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest.[17] Regarding the private interest affected, a Washington court has held that "the private interest involved is the owner's interest in keeping their pets…is greater than a mere economic interest, for pets are not fungible. So, the private interest at stake is great."[18]

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[13] *See* Victoria L. Voith, *Shelter Medicine: A Comparison of Visual and DNA Identification of Breeds of Dogs;* Kimberly L. Olson, *Pit Bull Identification in Animal Shelters*, University of Florida, 2012; Kathleen C. Croy, et al., What kind or [sic] dog is that? Accuracy of dog breed assessment by canine stakeholders, Abstract online; and Victoria L. Voith, et al., *Comparison of Visual and DNA Breed Identification of Dogs and Inter-Observer Reliability*, 3 Am. J. of Sociological Research 17 (2013)

[14] *See County of Pasco v. Riehl*, 635 So.2d 17 (1994)

[15] *See Coe v. Armour Fertilizer Works*, 237 US 413, 424-425 (1915)

[16] *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)

[17] *See Id.* at 335

[18] *See Rhoades v. City of Battleground*, 115 Wash.App. 752, 766 (2003)

Dangerous dog ordinances can have civil or criminal components. Most state statutes establish the burden of proof for the municipality as either a preponderance of the evidence or clear and convincing evidence if the penalty is civil, and beyond a reasonable doubt if the penalty is criminal.[19] The court in C*ity of Pierre v. Blackwell*, held that because the City of Pierre's ordinance had a criminal penalty for keeping a dangerous dog, the City needed to prove the dangerousness of the dog beyond a reasonable doubt.[20] Moreover, because the court relied solely on the animal control officer's decision as to the dangerousness of the dog, and there was no independent assessment of the evidence presented by both sides, procedural due process was not satisfied.

VIII. Reference Materials

Additional information on animal control and regulating dangerous dogs may be obtained by contacting:

- American Bar Association, Tort, Trial & Insurance Practice Section, Animal Law Committee: https://apps.americanbar.org/dch/committee.cfm?com=IL201050
- American Veterinary Medical Association: https://www.avma.org
- National Animal Care and Control Association: http://www.nacanet.org/
- National Canine Research Council: http://www.nationalcanineresearchcouncil.com/
- American Bar Association Resolution 100, Aug. 6-7, 2012, *available at* https://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/Resolution_100.authcheckdam.pdf

IX. Optional Provisions

A. *Guard Dog Provisions*

This section is provided as an option as some may believe the jurisdiction should allow owners to use their dogs as security even though the dogs are potentially dangerous or dangerous. Although we do not endorse it, this option provides some suggested language if the local jurisdiction prefers to use it:

[Optional*] Guard dogs.

The owner of a potentially dangerous or dangerous dog may apply to the Director to put the dog into service as a guard dog. The owner must describe in a written application how the dogs will be used and how the use may differ from any condition required for maintaining a potentially dangerous or dangerous dog. The Director must review the application and either approve the proposed use and terms of use, deny the use or terms of use and may issue an order authorizing the use under terms established by the Director.

B. *Alternative Penalty Provisions*

[19] *See In re Winship*, 397 U.S. 358, 364 (1970)

[20] *See* C*ity of Pierre v. Blackwell*, 635 N.W.2d 581 (SCt. S.D. 2001)

*** We do not endorse this view**

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This section offers options for different penalty provisions:

[Optional] Civil Penalties.

(a) Any person violating this Article is guilty of a civil violation and must pay a fine of $500.00.

(b) If a court finds that a person has violated this Article, in addition to any fine imposed the court may order abatement of the violation and order restitution be paid to any person injured as a result of the violation up to the maximum amount allowed by law.

[Optional] Criminal Penalties.

(a) A violation of this Article is a misdemeanor punishable upon conviction by a fine of up to $1000 or imprisonment of up to six months in jail or both such fine and imprisonment.

(b) Upon conviction for a violation of this Article, the court in addition to any penalty imposed, may order abatement of the violation and order restitution be paid to any person injured as a result of the violation up to the maximum amount allowed by law.