



ORDINANCE NO. 2017-5

AN ORDINANCE TO AMEND CHAPTER 84 OF THE CODE OF BRIDGEVILLE AS IT RELATES TO DANGEROUS DOGS

WHEREAS, the State of Delaware 149th General Assembly passed House Bill 13 on April 27, 2017, thereby providing consistency in the law protects the public from dangerous dogs and clarifies that dogs may not be held potentially dangerous based solely on breed-specific criteria; and

WHEREAS, HB 13 became effective up the signature of the Governor of the State of Delaware on June 2, 2017; and

NOW, THEREFORE, THE COMMISSIONERS OF BRIDGEVILLE HEREBY ORDAIN:

Section 1. Amend Chapter 84-10 "Definitions; dangerous dogs." of the Code of Bridgeville, by deleting the text ~~stricken through~~ and adding the underlined text, as follows:

§ 84-10 Definitions; dangerous dogs.

[Amended 4-9-2012 by Ord. No. A12-2; 2-11-2013 by Ord. No. A13-2; 2-11-2013 by Ord. No. A13-3]

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

BOARD OF ANIMAL CONTROL

Consists of the Town Code Enforcement Officer and two members of the public who have demonstrated an interest in the matter of animal control and who have been appointed to this position by the Town Commissioners.

DANGEROUS DOG

~~A "pit bull dog," as defined in this subsection, or any dog that, because of its aggressive nature, training, or characteristic behavior, presents a risk of serious physical harm or death to human beings or would constitute a danger to human life, physical well-being, or property if not kept under the direct control of the owner. This definition shall not apply to dogs utilized by law enforcement officers in the performance of their duties.~~ The term "dangerous dog" includes any dog that has been declared dangerous by the Board of Animal Control, as provided for in §84-10B through §84-10E of this Chapter, or according to the records of the ~~Delaware Department of Natural Resources and Environmental Control State of Delaware Office of Animal Welfare~~ or any law enforcement agency:

- (1) Has aggressively bitten, attacked, endangered, or inflicted serious injury on a human being on public or private property;
- (2) Has severely injured or killed a domestic animal while off the owner's property; or
- (3) Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting.

DIRECTOR

The executive officer of the Board of Animal Control. Until a Director has been appointed by the Town Commissioners, the Town Code Enforcement Constable shall act as Director.

MUZZLE

A device constructed of strong, soft material or of metal designed to fasten over the mouth of an animal to prevent the animal from biting any person or other animal.

~~PIT BULL DOG~~

~~Includes any of the following dogs:~~

- ~~(1) The Staffordshire Bull Terrier breed of dogs;~~
- ~~(2) The American Staffordshire Terrier breed of dogs;~~
- ~~(3) The American Pit Bull Terrier breed of dogs;~~
- ~~(4) Dogs that have the appearance and characteristics of being predominantly of the breeds of dogs known as "Staffordshire Bull Terrier," "American Pit Bull Terrier," or "American Staffordshire Terrier."~~

B. Procedure for declaring a dog dangerous.

- (1) An animal control officer, police officer, or any adult person may request under oath that a dog be classified as dangerous by submitting a sworn, written complaint to the Town of Bridgeville's Board of Animal Control. Upon receipt of such a complaint, the Board of Animal Control shall notify the owner of the dog that a complaint has been filed and that an investigation into the allegations as set forth in the complaint will be conducted.
- (2) At the conclusion of an investigation, the Board of Animal Control may:
 - (a) Determine that the dog is not dangerous and, if the dog is impounded, waive any impoundment fees incurred and release the dog to its owner; or

(b) Determine that the dog is dangerous and order the owner to comply with the requirements for keeping dangerous dogs set forth in § 84-10F and § 84-10G, and if the dog is impounded, release the dog to its owner after the owner has paid all fees incurred for the impoundment. If all impoundment fees have not been paid within 10 business days after a final determination that a dog is dangerous, the Board of Animal Control may cause the dog to be humanely destroyed.

C. Notification of dangerous dog declaration.

(1) Within five business days after the Board of Animal Control has declared a dog dangerous, the Town Manager shall notify the owner by certified mail of the dog's designation as a dangerous dog and any specific restrictions and conditions for keeping the dog, as set forth in § 84-10F and § 84-10G. The Town Manager also shall notify the Town Police Department of the designation of any dog as a dangerous dog. Such notification shall describe the dog and specify any particular requirements of conditions placed upon the dog owner.

(2) The notice shall inform the dog owner that he/she may request, in writing, a hearing to contest the Board's finding and designation within five business days after delivery of the dangerous dog declaration notice.

(3) If the Town Manager cannot with due diligence locate the owner of a dog that has been seized pursuant to this section, the Board of Animal Control shall cause the dog to be impounded for not less than five business days. If, after five days, the owner fails to claim the dog, the Board of Animal Control may cause the dog to be humanely destroyed.

D. Hearing on dangerous dog declaration.

(1) The Board of Animal Control shall hold a hearing within 15 business days after receiving the dog owner's written request for such a hearing. The Board shall provide notice of the date, time and location of the hearing to the dog owner by certified mail and to the complainant by regular mail.

(2) At a hearing, all interested persons shall be given the opportunity to present evidence on the issue of the dog's dangerousness. Criteria to be considered in a hearing required by this section shall include but not be limited to the following:

- (a) Provocation;
- (b) Severity of attack or injury to a person or domestic animal;
- (c) Previous aggressive history of the dog;
- (d) Observable behavior of the dog;
- (e) Site and circumstances of the incident; and
- (f) Statements from interested parties.

(3) A determination at a hearing that the dog is in fact a dangerous dog shall subject the dog and its owner to the provisions of this section.

(4) Failure of the dog owner to request a hearing shall result in the dog being finally declared a dangerous dog and shall subject the dog and its owner to the provisions of this section.

E. Appeal from dangerous dog declaration. If the Board of Animal Control determines that a dog is dangerous at the conclusion of a hearing conducted under § 84-10D that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within seven business days after receiving notice that the dog has been finally declared dangerous.

F. Keeping of dangerous dogs. The keeping of a dangerous dog as defined in § 84-10A shall be subject to the following requirements:

(1) Leash. No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its kennel, pen or other proper enclosure unless such dog is securely attached to a chain leash no more than four feet in length. No such person shall permit a dangerous dog to be kept on a chain leash outside its kennel, pen or other enclosure unless a person capable of controlling the dog is in physical control of the leash. Under no circumstances shall an individual under the age of 21 years old be allowed to be in possession or control of a dangerous dog when it leaves the residence of the owner.

(2) Muzzle. It shall be unlawful for any dog owner or keeper of a dangerous dog to allow the dog to be outside of its kennel, pen or other 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.

(3) Confinement. Except when leashed as provided in this section, a dangerous dog shall be securely confined indoors or confined in a locked kennel, pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosed structure shall meet the following requirements:

- (a) The structure must have secure sides and a secure top, or all sides must be at least eight feet high;
- (b) The structure must have a concrete pad floor permanently attached to the sides, and
- (c) The structure must be of such a material and closed in such a manner that the dog cannot exit the enclosure on its own.

(4) Indoor confinement. No dangerous dog shall be kept on a porch or 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.

(5) Liability insurance; surety bond. The owner of a dangerous dog shall present to the Town Manager proof that he/she has procured liability insurance or a surety bond in the amount of not less than \$100,000 covering any damage or injury that may be caused by such dog. The policy shall contain a provision requiring that the Town Manager be notified immediately by the agent issuing the policy in the event that the insurance policy is canceled, terminated, or expires. In the event that the owner proves to the satisfaction of the Town Manager that insurance is not available, he/she may pay a nonrefundable cash fee in the amount of \$1,000 to the Town.

(6) Notification of escape. The owner or keeper of a dangerous dog shall notify the Town Police Department and Town Manager 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.

(7) Failure to comply. It shall be unlawful and a misdemeanor for any owner of a dangerous dog to fail to comply with the requirements and conditions set forth in this section. Any dog found to be in violation of this section shall be subject to immediate seizure and impoundment. In addition, failure to comply with the requirements and conditions set forth in this section shall result in the revocation of the permit providing for the keeping of such animal.

G. Permit and tag required for a dangerous dog.

(1) The owner of a dangerous dog shall, within three business days after the classification of the dog as dangerous or upon acquisition of the dog, annually register to obtain a permit from the Town Manager to harbor the dog.

(2) Only persons 21 years of age or older shall be allowed to own, keep or harbor a dangerous dog inside the Town's limits. The owner must offer proof of age through a valid state-issued identification card (e.g., driver's license) or certified birth certificate.

(3) Such ownership is subject to the following conditions:

(a) A color photograph of the dog showing its size and color;

(b) Proof of home ownership (e.g., deed, homeowner's policy, mortgage coupon) or lease with express written permission from the landlord allowing said dog to be harbored on the premises; and

(c) The fee for such permit shall be \$100 per year.

(4) The registration process and issuance of the permit will result in the issuance of a special tag, to be attached at all times to the dog's collar, so that an animal control officer or Town Code Enforcement Constable may readily determine if the dog has been registered.

(5) Upon registration, the permit issued by the Town Manager shall be carried by the owner at all times, and the permit must be presented to an animal control officer or Town Code Enforcement Constable upon demand.

~~H. Pit bull dogs presumed dangerous. There shall be an irrefutable presumption that a pit bull dog is a dangerous dog and is therefore subject to the requirements of this section.~~

~~I.H.~~ Notification of intent to impound.

(1) When an animal control officer or Town Code Enforcement Constable intends to impound a dog declared to be dangerous by reason of its having committed any of the acts described in § 84-10A, he/she shall notify the owner or custodian of the dog, by personal delivery or by certified mail, of the intended impoundment at least five business days prior to the intended impoundment, except as provided in § 84-10J.

(2) The notice of intent to impound shall inform the owner or custodian of the dog that he/she may request in writing, within five business days prior to the intended impoundment, a hearing before the Board of Animal Control to contest the intended impoundment and finding of a violation.

(3) Upon request by the owner or custodian of the dog for a hearing pursuant to Subsection ~~K.J.~~, a hearing shall be held within 10 business days after the request for a hearing. Notice of the date, time and location of the hearing shall be provided by certified mail to the dog's owner or custodian requesting such hearing.

(4) If the owner or custodian requests a hearing pursuant to Subsection ~~K.J.~~, no impoundment shall take place until conclusion of the hearing, except as authorized by § 84-10J.

~~J.I.~~ Immediate impoundment.

(1) A dog declared to be dangerous may be immediately impounded without a pre-impoundment hearing when a law enforcement person having jurisdiction in the matter or any animal control officer determines such immediate impoundment is necessary for the protection of public health or safety. Such immediate impoundment may be ordered for violation of § 84-10F or when the dog bites a person or domestic animal.

(2) The owner or custodian of the dog immediately impounded pursuant to Subsection ~~J.I.~~(1) shall be notified of the impoundment by certified mail within five business days after the dog's impoundment.

(3) The notice of impoundment shall inform the owner or custodian of the dog that he/she may request, in writing, a hearing to contest the impoundment within five business days after the mailing of the notice of impoundment.

(4) Upon request by the owner or custodian of the dog for a hearing under Subsection ~~K.J.~~, a hearing shall be held within 10 business days after such request. Notice of the date, time and location of the hearing shall be provided by certified mail to the dog owner requesting the hearing.

~~K.J.~~ Impoundment hearing.

(1) If, after a hearing on impoundment, the Board of Animal Control finds no violation of § 84-10F, or that the dog has not bitten an individual or domestic animal, the dog shall be returned to its owner or custodian, if already impounded, or shall not be impounded as intended.

(2) Incident to the findings and conclusions made at the impoundment hearing, the Board of Animal Control may impose reasonable restrictions and conditions for the maintenance of the dog to ensure the health and safety of the public and the animal. Such conditions may include, but shall not be limited to:

(a) Posting of bond or other proof of ability to respond in damages;

(b) Specific requirement as to size, construction and design of a kennel in which to house the dog;

(c) Requirements as to type and method of restraint and/or muzzling of the dog;

(d) Permanent marking of the dog for purposes of identification; and

(e) Payment of reasonable fees to recover the costs incurred by the Town in ensuring compliance with this section.

~~L.K.~~ Destruction.

(1) The Board of Animal Control or its designee may order the destruction of a dog that it determines to be dangerous to public health or safety, a dog that has made a vicious attack upon an individual, or a dog declared dangerous whose owner is unable or unwilling to adequately restrain it.

(2) The Board of Animal Control shall give written notice by certified mail of its intention to destroy such dog to the owner or custodian of the dog, who may request in writing, within 10 business days after delivery of such notice, a hearing to contest the intended destruction.

(3) If no hearing is requested pursuant to Subsection ~~L~~K(2), the dog shall be humanely destroyed pursuant to applicable provisions of law.

(4) If a hearing is requested pursuant to Subsection ~~L~~K(2), such hearing shall be held within 10 business days after the request, and the dog shall not be destroyed prior to the conclusion of the hearing.

(5) The dog owner shall be responsible for payment of all boarding costs and other fees as may be required for the Town to humanely and safely keep the animal during any legal proceeding.

~~M~~L Appeal from order of humane destruction. If the Board of Animal Control orders a dangerous dog to be humanely destroyed, that decision shall be final unless the dog owner applies to a court of competent jurisdiction for any remedies that may be available within 15 days after receiving notice of the destruction order. If an appeal is timely filed, the Board shall suspend the destruction order pending the final determination of the court.

~~N~~M Change of ownership.

(1) Any owner of a dangerous dog who sells or otherwise transfers ownership, custody or residence of the dog to another citizen of this Town shall, within 10 business days after such change of ownership or residence, provide written notification to the Board of Animal Control of the name, address and telephone number of the new owner. It also shall be the responsibility of the person transferring ownership or custody of the dog to provide written notification of the dog's classification as dangerous to the person receiving the dog. The previous owner shall furnish a copy of such notification to the Board of Animal Control, along with written acknowledgment by the new owner of his/her receipt of such notification. The Board of Animal Control shall notify the Town Manager of any changes of ownership, custody or residence of the dog within three business days after receiving the required information from the previous owner.

(2) Any citizen of the Town of Bridgeville receiving a dog classified as dangerous must obtain the required permit, tag and enclosure prior to acquisition of the dog. The new owner shall comply fully with the provisions of this section pertaining to obtaining liability insurance, payment of fees, and maintenance, control and ownership of a dangerous dog.

~~O~~N Continuation of dangerous dog declaration. Any dog that has been declared dangerous by any agency or department of this Town, another municipality, county, or state shall be subject to the provisions of this section for the remainder of its life. The person owning or having custody of any dog designated as dangerous by any municipality, county, or state government shall notify the Board of Animal Control of the dog's address and conditions of maintenance within five days of moving the animal into the Town of Bridgeville. The restrictions and conditions of maintenance of any dog declared dangerous by this Town, another municipality, county or state shall remain in force while the dog remains in the Town.

~~P~~O Upon proper consideration of any training certificates, community service awards, or similar certifications, the Board of Animal Control may make a recommendation to the Commissioners of the Town of Bridgeville to waive the registration fee for any dog that has been automatically deemed a dangerous dog by breed. Once the recommendation has been forwarded to the Commissioners, they shall vote on the matter. A simple majority vote shall determine whether or not the fee shall be waived. [Added 4-9-2012 by Ord. No. A12-1]

Section 2. This Ordinance shall become effective upon its adoption by a majority of all Commissioners.

COMMISSIONERS OF BRIDGEVILLE

By: Patricia M. Correll
President

Attest: Lawrence J. Smith
Secretary

First Reading: 10/09/17

Second Reading: 11/13/17

Adopted: 11/13/17

Synopsis

This ordinance creates consistency with State Code regarding designation of a dangerous dog.