

Introduced by: City Manager Healy
 Date: March 27, 2007
 Public Hearing: April 10, 2007
 Action: Adopted
 Vote: Unanimous

Yes:	No:
Pippel	
Erbey	
Vanover	
Wood	
Best	
Hanson	
Combs	

CITY OF PALMER, ALASKA

ORDINANCE NO. 07-009

AN ORDINANCE OF THE PALMER CITY COUNCIL AMENDING TITLE 6; SPECIFICALLY TERMINATING THE ANIMAL CONTROL BOARD, GRANTING THE CHIEF OF POLICE THE AUTHORITY FOR ANIMAL DETERMINATION AND CLASSIFICATION, ENACTING LANGUAGE REGARDING APPEAL PROCEDURES AND AMENDING THE FEES FOR PENALTIES

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Section 6.04.010 is hereby amended to read as follows (new language is underlined and deleted language is stricken):

6.04.010 Definitions.

In this title, the following terms have the following meanings:

“Appeal record” consisting of all pertinent records including:

1. Copies of all documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the administrative body prior to the decision from which the appeal is taken.
2. A copy of the written decision of the chief of police or police department designee, including findings and conclusions.

“Appellee” means the City of Palmer.

“Animal” means all domestic or domesticated members of the Animalia kingdom.

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“Animal shelter” means any premises designated by the city manager for the purpose of impounding or caring for animals found at large or otherwise existing in violation of this chapter.

“At large” means not under restraint.

~~“Board” means the city of Palmer animal control board.~~

“Borough” means the Matanuska-Susitna Borough.

“Cat” means a domestic or domesticated member of the family Felidae.

“Chief of police” or “chief” means the chief of the Palmer police department or designee.

“Clerk” means ~~the city of Palmer~~ city clerk.

“Dog” means any domestic or domesticated member of the family Canidae commonly known as dogs, but not a fox, coyote, wolf or any other game species the taking of which is regulated by the state, save only that any fox, coyote or wolf which is kept like a pet under a valid state permit shall be treated in like fashion as a common dog.

“Exotic animal” means any live monkey, alligator, crocodile, cayman, raccoon, skunk, fox, bear, sea mammal, poisonous snake, member of the feline family other than domestic cat (*Felis domesticus*), member of the canine family, including a wolf/dog hybrid, other than domestic dog (*Canis familiaris*) or any other animal that would require a standard of care or control greater than that required for customary household pets or common domestic farm animals.

“Humane animal care” includes, but is not limited to, providing:

- A. Sufficient wholesome and nutritious food at least once daily which will keep the animal in healthy physical condition; and
- B. Sufficient daily quantities of fresh water which meet the hydration requirements for the animal; and
- C. Adequate shelter which provides adequate air and ventilation and which prevents the animal from being exposed to inclement or adverse weather conditions, overheating from sunlight, unsanitary conditions and dirty, wet and uncomfortable conditions which may endanger the health or welfare of the animal; and
- D. Veterinary care when needed to treat the animal for sickness or disease, or to prevent suffering of the animal.

“Own” means to own, possess, keep or harbor.

“Owner” means any person, group of persons or corporation owning, possessing, keeping or harboring an animal or animals. In the event that the owner of any animal is a minor, each parent or guardian of the minor shall be responsible to ensure that all provisions of this title are complied with.

“Restraint” means:

- A. Physical confinement, as by a secure leash, chain, cable, fence or building; provided, if the confinement is by leash, chain or cable held by a person, the person must be physically able to control the animal by such means;

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- B. Under voice control by a competent person when the animal is engaged in a recognized activity, e.g., dog show, or form of training put on by an organized group where the training requires that the animal not be physically confined;
- C. Under competent voice control of a person who is physically present with an animal when that animal is on the property of the owner;
- D. A police ~~dog~~ animal under the competent voice control of a law enforcement officer, while the police ~~dog~~ animal is engaged in the performance of law enforcement activity.

Section 4. Chapter 6.06 is hereby repealed.

Section 5. Chapter 6.14 is hereby amended to read as follows (new language is underlined and deleted language is stricken):

6.14.010 Domestic animal bite and attack incidents.

- A. The chief ~~of police~~ shall investigate each reported animal bite or attack incident and shall determine whether each animal involved may be vicious, dangerous or neither.
- B. No police ~~dog~~ animal is considered dangerous or vicious if the approach, injury or damage occurred while the ~~dog~~ animal was engaged in the performance of law enforcement activity.
- C. No ~~dog~~ animal is considered dangerous or vicious if the approach, injury or damage caused by the animal was accidental or sustained by a person of sufficient age and understanding who:
 1. At the time, was committing a willful trespass or other tort upon the premises to which the owner had the legal right of possession; or
 2. Was tormenting, abusing or assaulting the ~~dog~~ animal, or has in the past tormented, abused or assaulted the ~~dog~~ animal; or
 3. Was committing or attempting to commit a crime.

6.14.020 Determination and referral.

- A. ~~If the~~ In order for the chief of police to determines that an animal ~~may be~~ is dangerous or vicious, the chief shall ~~refer the matter to the board within 30 days of the incident.~~ determine that the animal meets the following criteria and shall classify the animal accordingly:
 1. Its actions are not excused under PMC 6.14.010(C);
 2. Dangerous, meaning the animal has, without provocation, approached, in a threatening or terrorizing manner, any person in an apparent attitude of attack, where the approach was not made upon the premises to which the owner had the legal right of possession.;
 3. Vicious, meaning the animal:
 - a. Has bitten, inflicted injury, assaulted or otherwise attacked or endangered the safety of a human being; or
 - b. Has, without provocation, bitten, inflicted injury, assaulted or otherwise attacked or endangered the safety of a domestic animal; or
 - c. Has been found dangerous or vicious on a prior occasion by the chief; or
 - d. Is in violation of a previous order where the animal was classified as a dangerous or vicious animal.
- B. If the chief classifies an animal as dangerous or vicious, the chief shall require that the animal be registered with the police department (unless the animal is to be destroyed and in such case, documentation of the animal's destruction shall be delivered to the police

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- department) and determine whether to impose additional conditions if the animal is to remain in the city. The registration application shall contain the name and address of the owner, the breed, age, sex, color, and any other identifying marks of the animal, the location where the animal is to be kept and a registration fee of \$25.00 and two color photographs, three inches by five inches, clearly showing the color and approximate size of the animal. Each animal registered shall be assigned an official registration number by the department. A certificate of registration shall be issued to the owner upon payment of the registration fee and proof of sufficient evidence that the owner has complied with all of the orders prescribed by the chief.
- C. If the chief determines that additional conditions are required, the chief shall consider the following:
1. The observed and reported past and present behavior of the animal;
 2. The circumstances of the incident and the extent of the injury to the attacked person or animal;
 3. The reasonably foreseeable harm that could occur if no conditions are imposed;
 4. The owner's past history of compliance with this title, including compliance with redemption conditions which the chief has previously imposed on the owner; and
 5. The nature and location of any restraint or confinement system which the owner has in place at the time the chief makes its decision.
- D. The chief may order the owner to comply with some or all of the following conditions:
1. Confinement. The chief may order the owner of a dangerous or vicious animal to confine the animal, at all times, either indoors or, if outdoors, in a proper enclosure for a dangerous or vicious animal up to and including one consisting of a securely enclosed and locked pen or structure, suitable to prevent the entry of young children, or any part of their bodies or other foreign objects, and designed to prevent the animal from escaping. The pen or structure shall have secure sides; prevent the animal from digging out through the bottom or escaping over the top. The pen or structure shall also provide the animal protection from the elements. All pens and enclosures must comply with all zoning and building regulations of the city. The owner shall also display in a conspicuous manner a sign using the words "Beware of Dog" on the pen or structure or near the entrances to the residence where the animal is kept. At any time when the animal is not confined as required, the animal shall be muzzled in a manner as to prevent it from escaping, biting or injuring any person, and kept on a leash no longer than four feet with the adult owner or some other responsible adult attending the animal.
 2. Liability Insurance. The chief may order the owner of a dangerous or vicious animal which has caused an injury to any person or severe injury to any animal to maintain, in full force and effect, a liability insurance policy issued by an insurance company authorized to sell insurance in Alaska or by an "eligible surplus line insurer," as defined in AS 21.34.900(2), in the amount of at least \$100,000 for coverage against any damage or injury that may be caused by the animal during the period for which licensing is sought. The insurance shall contain a provision requiring the city be named as an additional insured for the sole purpose of being notified by the insurance company of any cancellation, termination or expiration of the policy.
 3. Spaying or Neutering. The chief may order the owner of a dangerous or vicious animal to arrange for the alteration of the reproductive capacity, through spaying or neutering, of the animal. Alteration shall be at the owner's expense.

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4. Obedience Class. The chief may order that the animal be enrolled in and complete obedience classes. The classes shall be at the owner's expense.
5. Humane Euthanasia. The chief may order the humane destruction of any animal that has been found to be vicious. Euthanasia shall be at the owner's expense.
- E. In the event the animal has already been impounded and if the owner consents to the conditions as set by the chief, the animal, unless destroyed, shall be released to the owner upon compliance with the conditions of release and payment of required fees. If the owner does not consent to the conditions, the chief may order the animal humanely destroyed no sooner than 96 hours (Saturdays, Sundays and holidays excluded) after service upon the owner of the chief's decision. Oral notice to the owner at the hearing shall constitute one means of service.
- F. If the chief determines that the owner has trained or conditioned an animal to be vicious or allowed or permitted the training or conditioning, the chief may require that the owner comply with any or all of the subsections contained in subsection (D) of this section (other than subsection (D)(5) of this section) as a condition to owning another animal in the city. The requirements may not extend beyond three years, commencing with a determination and classification of the owner's animal as vicious.
- ~~B. The board shall hold a hearing on the referral at the next board meeting.~~

6.14.040 Hearing procedure.

- ~~A. At the hearing, the board shall determine whether the animal is dangerous or vicious, or neither, and whether to impose any or all conditions set out in PMC 6.14.045. In making these decisions, the board shall consider the following:~~
- ~~1. The written decision of the chief;~~
 - ~~2. Statements from the victim, owner, responding officer or chief; and~~
 - ~~3. Review of any pertinent materials.~~
- ~~B. Additional witnesses who observed the event may also be heard and the owner may present witnesses to testify to the general character or demeanor of the animal, subject to the board's discretion to limit cumulative, redundant or irrelevant testimony. The board, chief and owner shall have the opportunity to question witnesses. Formal rules of evidence do not apply.~~
- ~~C. The evidence must show the board that it is more likely than not that the actions of the dog fit one of the definitions set forth in PMC 6.14.045(A). If the showing is made, the owner must show the board that the conditions of PMC 6.14.010(C) existed.~~

6.14.045 Board determination.

- ~~A. If the board determines that the animal meets the following criteria and its actions are not excused under PMC 6.14.010(C), the board shall classify the animal as follows:~~
- ~~1. Dangerous, meaning the animal has, without provocation, approached, in a threatening or terrorizing manner, any person in an apparent attitude of attack, where the approach was not made upon the premises to which the owner had the legal right of possession.~~
 - ~~2. Vicious, meaning the animal:~~
 - ~~a. Has bitten, inflicted injury, assaulted or otherwise attacked or endangered the safety of a human being; or~~
 - ~~b. Has, without provocation, bitten, inflicted injury, assaulted or otherwise attacked or endangered the safety of a domestic animal; or~~

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- c. ~~Has been found dangerous or vicious on a prior occasion by the chief of police or the board; or~~
 - d. ~~Is in violation of a previous order of the board where the animal was classified as a dangerous or vicious animal.~~
- B. ~~If the board classifies an animal as dangerous or vicious, the board shall require that the animal be registered with the police department (unless the animal is to be destroyed and in such case, documentation of the animal's destruction shall be delivered to the police department) and determine whether to impose additional conditions if the animal is to remain in the city. The registration application shall contain the name and address of the owner, the breed, age, sex, color, and any other identifying marks of the animal, the location where the animal is to be kept and a registration fee of \$25.00 and two color photographs, three inches by five inches, clearly showing the color and approximate size of the animal. Each animal registered shall be assigned an official registration number by the department. A certificate of registration shall be issued to the owner upon payment of the registration fee and proof of sufficient evidence that the owner has complied with all of the orders prescribed by the board.~~
- C. ~~If the board determines that additional conditions are required, the board shall consider the following:~~
- 1. ~~The observed and reported past and present behavior of the animal;~~
 - 2. ~~The circumstances of the incident and the extent of the injury to the attacked person or animal;~~
 - 3. ~~The reasonably foreseeable harm that could occur if no conditions are imposed;~~
 - 4. ~~The owner's past history of compliance with this title, including compliance with redemption conditions which the board has previously imposed on the owner; and~~
 - 5. ~~The nature and location of any restraint or confinement system which the owner has in place at the time the board makes its decision.~~
- D. ~~The board may order the owner to comply with some or all of the following conditions:~~
- 1. ~~Confinement. The board may order the owner of a dangerous or vicious animal to confine the animal, at all times, either indoors or, if outdoors, in a proper enclosure for a dangerous or vicious animal up to and including one consisting of a securely enclosed and locked pen or structure, suitable to prevent the entry of young children, or any part of their bodies or other foreign objects, and designed to prevent the animal from escaping. The pen or structure shall have secure sides; prevent the animal from digging out through the bottom or escaping over the top. The pen or structure shall also provide the animal protection from the elements. All pens and enclosures must comply with all zoning and building regulations of the city. The owner shall also display in a conspicuous manner a sign using the words "Beware of Dog" on the pen or structure or near the entrances to the residence where the animal is kept. At any time when the animal is not confined as required, the animal shall be muzzled in a manner as to prevent it from escaping, biting or injuring any person, and kept on a leash no longer than four feet with the adult owner or some other responsible adult attending the animal.~~
 - 2. ~~Liability Insurance. The board may order the owner of a dangerous or vicious animal which has caused an injury to any person or severe injury to any animal to maintain, in full force and effect, a liability insurance policy issued by an insurance company authorized to sell insurance in Alaska or by an "eligible surplus line insurer," as defined in AS 21.34.900(2), in the amount of at least \$100,000 for coverage against any damage~~

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~~or injury that may be caused by the animal during the period for which licensing is sought. The insurance shall contain a provision requiring the city be named as an additional insured for the sole purpose of being notified by the insurance company of any cancellation, termination or expiration of the policy.~~

- ~~3. Spaying or Neutering. The board may order the owner of a dangerous or vicious animal to arrange for the alteration of the reproductive capacity, through spaying or neutering, of the animal. Alteration shall be at the owner's expense.~~
 - ~~4. Obedience Class. The board may order that the animal be enrolled in and complete obedience classes. The classes shall be at the owner's expense.~~
 - ~~5. Humane Destruction. The board may order the humane destruction of any animal that has been found to be vicious. Destruction shall be at the owner's expense.~~
- ~~E. In the event the animal has already been impounded and if the owner consents to the conditions as set by the board, the animal, unless destroyed, shall be released to the owner upon compliance with the conditions of release and payment of required fees. If the owner does not consent to the conditions, the board may order the animal humanely destroyed no sooner than 96 hours (Saturdays, Sundays and holidays excluded) after service upon the owner of the board's decision. Oral notice to the owner at the hearing shall constitute one means of service.~~
- ~~F. If the board determines that the owner has trained or conditioned an animal to be vicious or allowed or permitted the training or conditioning, the board may require that the owner comply with any or all of the subsections contained in subsection (D) of this section (other than subsection (D)(5) of this section) as a condition to owning another animal in the city. The requirements may not extend beyond three years, commencing with a determination and classification of the owner's animal as vicious.~~

6.14.055 Animals which reside outside the city limits.

If an incident occurring in the city limits has been referred to the animal control board chief and the animal resides outside the city limits, the board chief shall follow it's the normal course and after rendering its his or her determination, provide written notification of the board's his or her findings to the animal control board or animal board of the municipality in which the animal resides. If the animal is in the possession of the city or has been impounded by the city, then the board Should the animal resume residence within the city, the chief can order that the animal be registered with the city or alternatively, if circumstances warrant, that the animal be humanely destroyed euthanized.

6.14.060 Owner compliance and right to appeal.

- ~~A. The owner shall comply with all the requirements of the chief's order within 10 business days of notification, the meeting at which the board makes the order. Personal notification shall be made by a Palmer Police Department officer.~~
- ~~B. In addition, the owner shall notify the chief of police within the 10 business day period that the owner has complied with all the requirements of the order. If within the 10 business day period the owner fails to comply or fails to so notify the chief of police, the owner shall be fined as stated in PMC 6.28.010(C).~~
- ~~B. An owner aggrieved by the decision of the board may file an appeal to the superior court in Palmer within 30 days of the board's decision or the appeal rights are waived. Written notice of intent to appeal shall be delivered personally to the chief of police within 72 hours~~

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~~(Saturdays, Sundays and holidays excluded) of service upon the owner of the board's decision. If the animal is impounded and the owner has filed a written notice to appeal, the chief shall demand in advance one month of room and board expenses.~~

6.14.065 Right to appeal.

- A. An animal owner aggrieved by the chief's classification of an animal as dangerous or vicious is entitled to a hearing before a hearing officer, pursuant to the following procedures:
1. A request for a hearing shall be in writing and filed with the clerk within five business days of the date the animal owner is served with the chief's written administrative order.
 2. Within five business days of receipt of the written request for a hearing by the clerk, a hearing date shall be set no sooner than twenty (20) calendar days, nor later than thirty (30) calendar days after receipt of the request.
 3. The chief shall file the record with the clerk regarding the case within five business days after receipt of notice of appeal
 4. Witness lists, written briefs by the animal owner and chief, and other information to be considered by the hearing officer shall be filed by the parties no less than five business days before the hearing.
- B. A person who files an appeal under this section may withdraw that appeal by a written request to the clerk.

06.14.070 Conduct of hearing.

- A. The meeting at which the hearing officer deliberates and decides an appeal shall be open to the public and a record of the hearing shall be made.
- B. The hearing shall be subject to the following order and time limitations:
1. Chief: ten (10) minutes to present his or her decision;
 2. Animal Owner: fifteen (15) minutes;
 3. Appellee: fifteen (15) minutes;
 4. Interested persons: three (3) minutes each;
 5. Animal Owner, for rebuttal: five (5) minutes.
- C. Upon hearing the evidence, the hearing officer shall deliberate and issue written findings and conclusions based on the evidence on the record within ten business days of the hearing. The decision shall include an order stating the amount of fees and costs associated with the care of the animal while the case was pending.

6.14.075 Filing Fees.

- A. A \$100 filing fee shall accompany an appeal to the hearing officer from a determination and related administrative order.
- B. If an appeal is withdrawn, the filing fee shall be reimbursed to the person who filed the appeal based on the following schedule:
1. Filing date through ten business days: 75 percent
 2. More than 11 business days after filing date: 0 percent

6.14.080 Animal fees upon appeal.

An animal whose owner is awaiting a decision on appeal may remain in impoundment at the chief's sole discretion. The owner is responsible for all fees and expenses reasonably incurred from the date of impoundment. A request to appeal a decision of the chief to the hearing officer

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shall be accompanied by advance payment of room and board fees calculated from the date of the decision of the chief to the date set for hearing by the hearing officer.

6.14.085 Appeals to Superior Court.

- A. Appeals by the animal owner from the written decision of the hearing officer shall be to the superior court in Palmer, Alaska and governed by the 600 series of the Alaska Rules of Appellate Procedure. The clerk shall estimate the cost of preparing the transcript of the hearing and compiling the record on appeal. The animal owner shall deposit the estimated costs for preparation of the transcript and record with the clerk in advance. Upon completion of the record on appeal, the clerk shall refund any excess deposit or charge to the animal owner for costs exceeding the deposit.
- B. The hearing before the superior court is an administrative appeal heard solely on the record established before the hearing officer.

Section 6. Chapter 6.28 is hereby amended to read as follows (new language is underlined and deleted language is stricken):

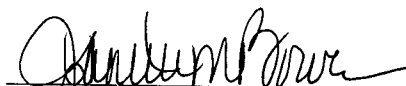
6.28.010 Penalty.

- A. The minimum penalty for owning a vicious animal at large shall be \$100.00 for the first offense, \$200.00 for the second offense and \$300.00 for every offense thereafter, where the offenses occur within one year of one another.
- B. The minimum penalty for owning a dangerous animal at large shall be ~~\$50.00~~ 75.00 for the first offense, ~~\$100.00~~ 25.00 for the second offense and ~~\$150.00~~ 75.00 for the third offense, where the offenses occur within one year of one another.
- C. If an owner fails to meet any of the duties set out in PMC 6.14.04~~5~~20(D), the owner will be subject to a ~~civil penalty as follows~~ fine of:
1. Three hundred dollars, ~~if the board determined the dog was~~ for an animal determined as vicious;
 2. Two hundred fifty dollars, ~~if the board determined the dog was~~ for an animal determined as dangerous.
- D. The penalty for all other violations is ~~\$50-75.00~~, ~~\$10~~50.00 for the second offense and \$300.00 for every offense thereafter, where the offenses occur within one year of one another.

Section 7. Effective date. Ordinance No. 07-009 shall take effect upon adoption by the City of Palmer City Council.

Passed and approved this tenth of April, 2007.


John C. Combs, Mayor


Janette M. Bower, CMC, City Clerk

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