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Eric Klang
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MEMORANDUM

To: Mayor Sjoblad and Members of the Pequot Lakes City Council
From: Chad Turcotte, Sergeant
Pequot Lakes Police Department
Date: February 29, 2016
Re: Potentially Dangerous Dog Enforcement and Contested Hearing Process 2016

The following memorandum addresses the process we recommend the City Council of the City of Pequot Lakes (City) follow in conducting a hearing on the Police Department's declarations that a dog owned by Annette Fennell in the City is "potentially dangerous" within the meaning of Minnesota Statutes, section 347.50, subdivision 3.

Introduction and Background

Annette Fennell resides at 3708 Fox Lane in the City, and is the owner of a German Shepherd mix dog, Mya. On July 10, 2015, Mya apparently left Ms. Fennell's property and entered a neighboring property at 3600 Rickard Rd and bit a Cockapoo dog that was on its own property.

The Pequot Lakes Police Department issued Ms. Fennell a Notice of Potentially Dangerous Dog on July 12, 2015; which also provided her with the opportunity to request a hearing before the City Council to challenge the City's declaration within 14 days from the date of the notices.

The City received Ms. Fennell's request for such a hearing on July 24, 2015. City staff has notified Ms. Fennell that the City Council will conduct the hearing in a special meeting on August 4, 2015, at 6:00 p.m., preceding its regular meeting at 6:30 p.m.

On August 4, 2015 the City Council held a special meeting at which time the Fennell's presented new information regarding their son witnessing the dog altercation that had not previously been reported to law enforcement. The City Council, at the time, deemed it appropriate to make a finding of fact that the dog was potentially dangerous at the time of the hearing.

Analysis of the law applicable to such a hearing and recommended process for administering the hearing follows.

Applicable Law

State statute and the City's (potentially) dangerous dog ordinance both factor into the City's (potentially) dog enforcement proceedings. The substantive (potentially) dangerous dog regulations the City must enforce are contained in state law, however the state statutes are largely silent on the process cities should follow to enforce the statutes. Cities do not need to have an ordinance in place in order to enforce the



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regulations in state law, however, cities are free to establish a process for such enforcement, or to supplement the statute's regulations. *See* Minn. Stat. sec. 347.53 ("nothing in sections 347.50 to 347.565 limits any restrictions that the local jurisdictions may place on owners of potentially dangerous dog.")

Minnesota Statutes, sec. 347.50, subd. 3 defines a "potentially dangerous dog" as any dog that:

1. when unprovoked, inflicts bites on a human or domestic animal on public or private property;
2. when unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
3. has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

In this case, the Police Department's declaration that Mya is a potentially dangerous dog is grounded in the first element of the above definition: that Mya, when unprovoked, inflicted a bite on a domestic animal while off the owner's (Ms. Fennell) property.

Chapter 347 of the Minnesota Statutes proceeds to outline the requirements for microchip identification requirements for potentially dangerous dogs (347.515). Section 347.53 declares that any statutory or home rule charter city may regulate potentially dangerous and dangerous dogs, with few limitations placed on local jurisdictions by the statutes.

The (potentially) dangerous dog laws must be enforced by the animal control authority or law enforcement agency whether or not there is a local ordinance on the subject. Minn. Stat. Sec. 347.565. An "animal control authority" is defined as an agency of the state, county, municipality, or other governmental subdivision of the state, which is responsible for animal control operations in its jurisdiction (Minn. Stat. sec. 347.50, subd. 7) – in this case the City itself or its Police Department would be considered to be the animal control authority.

Statute (as well as constitutional due process considerations) establishes that the owner of any dog that is declared to be potentially dangerous has a right to a hearing by "an impartial hearing officer" to contest the designation. Minn. Stat. sec. 347.541. This section states that the hearing officer "must be an impartial employee of the local government or impartial person retained by the local government to conduct the hearing." This section further establishes extensive notification requirements on animal control authorities when declaring a dog to be dangerous, each of which was complied with by the City in this case (*id.*, subd. 3); however, it does not establish clear procedural requirements for conducting such a hearing.

Section 9-2.10 of the City Code also addresses the City's handling of potentially and dangerous dogs, and while it is not entirely consistent with the state statutes – which take precedence – in all respects, it establish a procedure to be followed when a dog owner requests a hearing to contest a potentially or dangerous dog designation as follows:

If the owner of the dog requests a hearing as to the dangerous nature of his/her dog, then the City Clerk shall place the matter before the City Council at its next regular meeting. The owner may present evidence in opposition to the designation of his/her dog as dangerous or potentially dangerous. The Chief of Police or his/her designee shall present evidence to the City Council that



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supports his determination that the dog is dangerous or potentially dangerous. Following the hearing, the City Council shall make a determination of facts and issue an order as to whether such dog is properly characterized as dangerous or potentially dangerous...

City Code sec. 9-2.10(2)(C).

In our view, the above quoted language from the City Code is consistent with the statutory requirement that the City grant a dog owner a hearing by "an impartial hearing officer," with the City Council performing the responsibilities of the "impartial hearing officer." Even though the City Council is not literally "an impartial employee" or "an impartial person retained to conduct the hearing," as stated in the statute, a hearing before the full City Council would provide greater process and protection to dog owners than the statute, and would therefore satisfy the statutory requirements. Further, as noted above, state statutes expressly leave room for cities to pass their own ordinances regulating dangerous dogs. For these reasons, we recommend that the City Council conduct the hearing on whether Ms. Fennel's dog Mya is potentially dangerous within the meaning of state statute.

If requested, the hearing must be held within 14 days of the request (Minn. Stat. sec. 347.541, subd. 4), which will be satisfied by conducting the hearing on August 4, 2015. In the event that the City Council upholds the potentially dangerous dog declaration, the dog's owner will be responsible for the actual expenses of the hearing up to a maximum of \$1,000. *Id.* The hearing officer (in this case the City Council) must issue a decision on the matter within 10 days after the hearing. *Id.* The decision must be delivered to the dog's owner by hand delivery or registered mail as soon as practical and a copy must be provided to the animal control authority. *Id.*

The decision to declare a dog to be potentially dangerous must not be arbitrary and capricious, which means it must not 1) rely on factors not intended by the ordinance (or statute); 2) entirely fail to consider an important aspect of the issue; 3) offer an explanation that conflicts with evidence; or 4) be so implausible that it could not be explained as a difference in view or the result of the city's expertise. *See e.g. In re Space Ctr. Transp.*, 444 N.W.2d 575, 581 (Minn. Ct. App. 1989).

Analysis and Recommendations

In reviewing the potentially dangerous dog declaration, the City Council will be serving in what has been termed a "quasi-judicial" capacity. Unlike when the Council typically considers matters of policy in a legislative capacity, when acting in a quasi-judicial capacity, the City Council's discretion is much more limited. As a result, rather than legislating for the broad population as whole, the City Council is, in this case, making a quasi-judicial determination in a judge-like manner about specific enforcement actions undertaken by the City's Police Department regarding whether its determination that Ms. Fennel's dog, Mya, satisfy the statutory definition of potentially dangerous dog.

In quasi-judicial circumstances, the Council must follow the standards and requirements of its ordinance(s) and, if applicable, state statute. In this case, the Council must follow procedures set for in City Code sec. 9-2.10(2)(C) and the substantive requirements of Minn. State. Sec. 347.50, subd. 3 (the statutory definition of potentially dangerous dog). While the City Council has a great deal of freedom to establish its ordinances as it sees fit, once established, the Council is as equally bound by those ordinances as the public and must apply its ordinances (as well as state law) as written.

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Simply put, if the evidence provided in the hearing supports the finding that Ms. Fennell's dog, without provocation bit another domestic animal while off Ms. Fennell's property, the City Council should uphold the potentially dangerous dog declarations. If the evidence does not support such a finding, the declarations should be reversed with respect to that dog. In either case, the City Council should pass a resolution making written findings and conclusions in support of its decision.

Further, in quasi-judicial situations as this hearing, due process and equal protection are key factors courts will review in the event of further legal challenge. Due process and equal protection under the law demand that similar applicants and appellants must be treated uniformly by the City. Ms. Fennell must have adequate notice and opportunity to be heard by the City Council prior to the City Council deliberating and rendering its decision. The below recommended procedure for this hearing is intended to meet these legal standards for due process and equal protection.

Finally, City Council members should specifically note that as the judge in this case, Council members should state no opinion on the subject matter of this hearing until after the hearing and record on February 29, 2016 are closed, such that all testimony and evidence will have been received by the Council prior to the Council's deliberations on February 29, 2016 and subsequent decision-making. Whatever decision the City Council ultimately then decides to make to either 1) affirm, or 2) overrule the City's previous determination affirming the dog is potentially dangerous, the City's decisions must be supported by legally and factually sufficient findings and an order. City staff will propose findings for the Council's consideration at the February 29, 2016 hearing; however it is the Council's responsibility to determine if the evidence supports the proposed findings.

In light of the above, we propose that the order of procedure for the City Council to hear this appeal on February 29, 2016 should be as follows:

1. Open public hearing – Mayor Sjoblad
2. Opening comments on process of appeal by Mayor Sjoblad and Sgt. Turcotte
3. Introductory comments by City/Police Department staff – 5 minutes
4. Appellant, Ms. Fennell shall have the opportunity to be heard by the City Council and to show why the Police Department's potentially dangerous dog declaration should be overruled or amended – 10 minutes
5. City/Police Department staff presentation of evidence that Ms. Fennell's dog, Mya, satisfy the statutory definition of dangerous dog and opportunity to rebut evidence submitted by and/or respond to arguments made by Ms. Fennell – 10 minutes
6. Questions from City Council members
7. Close public hearing and record – Mayor Sjoblad
8. City Council deliberations on the issue.
9. City Council make a motion and to affirm or overrule the August 4, 2015 factual findings and order of potentially dangerous dog declaration during open meeting.

Please do not hesitate to contact us with any questions.

Thank you,

Sergeant Chad Turcotte