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Eric Klang
Chief of Police
4638 County Road 11
Pequot Lakes, MN 56472

MEMORANDUM

To: Mayor Jim Tayloe and Members of the Pequot Lakes City Council

From: Eric Klang
Chief of Police, Pequot Lakes Police Department

Date: August 26, 2020

Re: Potentially Dangerous Dog Enforcement and Contested Hearing Process

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 Mr. Todd Lynes in the City is "potentially dangerous" within the meaning of Minnesota Statutes, section 347.50, subdivision 3.

Introduction and Background

Todd Lynes resides at 30630 Rae Ave in Pequot Lakes, MN and is the owner of a brown lab/pointer mix dog named Zaeda. He was at home on the evening of August 4, 2020 when he let Zaeda outside in the yard. Zaeda left the yard and ran towards the street towards two women walking a small dog, later identified as Peanut. Zaeda bit Peanut. Peanut did not appear to have any injuries.

The Pequot Lakes Police Department issued Mr. Todd Lynes a Notice of Potentially Dangerous Dog on August 5, 2020, which also provided him 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 Mr. Todd Lynes' request for such a hearing on August 10, 2020. City staff has notified Mr. Lynes that the City Council will conduct the hearing in a special meeting on September 1, 2020, at 6:00 p.m., preceding its regular meeting at 6:30 p.m.

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

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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 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 Zaeda is a potentially dangerous dog is grounded in the first element of the above definition: that Zaeda, when unprovoked, inflicted a bite on a dog while off the owner's (Mr. Lynes) 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.

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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/Administrator 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 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 Mr. Rose dog, Jax 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). Due to circumstances beyond our control the hearing date was moved to the following regularly council meeting date. 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).

If, after conducting the hearing, the City Council affirms the Police Department's declaration that the dogs are dangerous, the City must follow state statute regarding the requirements for potentially dangerous dogs; specifically microchip identification.

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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 Mr. Lynes’ dog, Zaeda, 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.

Simply put, if the evidence provided in the hearing supports the finding that Mr. Lynes’ dog, without provocation bit a dog while off Mr. Lynes’ 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. Mr. Lynes’ 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 September 1, 2020 are closed, such that all testimony and evidence will have been received by the Council prior to the Council’s deliberations on September 1, 2020 and subsequent decision-making. Whatever decision the City Council ultimately then decides to make to either 1) affirm, or 2) overrule the Police Department’s potentially dangerous dog declaration, 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 September 1, 2020 hearing; however it is the Council’s responsibility to determine if the evidence supports the proposed findings.

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In light of the above, we propose that the order of procedure for the City Council to hear this appeal on September 1, 2020 should be as follows:

1. Open public hearing – Mayor Tayloe
2. Opening comments on process of appeal by Mayor Tayloe and Chief Klang
3. Introductory comments by City/Police Department staff – 5 minutes
4. Appellant, Mr. Lynes, has 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 Mr. Lyne's dog, Zaeda, satisfy the statutory definition of dangerous dog and opportunity to rebut evidence submitted by and/or respond to arguments made by Mr. Lynes' – 10 minutes
6. Questions from City Council members
7. Close public hearing and record – Mayor Tayloe
8. City Council deliberations on the issue
9. City Council make a motion and to approve resolution making factual findings and order affirming or overruling the August 4, 2020 potentially dangerous dog declaration during open meeting.

Please do not hesitate to contact us with any questions.

Thank you,

Chief Eric Klang

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NOTICE OF POTENTIALLY DANGEROUS DOG

(To be completed by Officer)

Date of Notification: 8/5/2020	ICR#: 20001650
Dog Owner: Todd Lynes	
Address: 30630 ^{Rae} Rav Ave, Pequot Lakes	Phone: 218-820-6411

You are placed on notice that your dog has been defined by Minnesota State Statute 347.50 as Potentially Dangerous.

Dog's Name: Zaeda	Breed: Lab/German Shorthaired Pointer	Sex: F
Description: brown		Age: 2 years, 9 mos
Does Dog have current rabies vaccination? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	Vet Clinic: Pequot Lakes Animal Hospital	
Photograph taken? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no		

Date & Time of Incident: 8/4/2020 at approximately 1945 hours.

(Check one of the following)

- On above date, said dog, without provocation bit Peanut (Name of victim or type of domestic animal) at 30660 Rae Ave, Pequot Lakes (Location of incident).
- On above date, said dog, without provocation, while on public or private property, other than dog owner's property, chased or approached in an aggressive manner _____ (Name of victim).
- Said dog has a propensity to attack, unprovoked, causing injury or threatening the safety of humans or domestic animals as shown by the following incident:

Date of Prior Incident:	Prior ICR#:	Dog classified as Potentially Dangerous? <input type="checkbox"/> yes <input type="checkbox"/> no
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Your dog has been defined as a POTENTIALLY DANGEROUS DOG and you should familiarize yourself with the State Statutes regarding such dogs. As an owner of a potentially dangerous dog *you must have a microchip implanted in the dog for identification within 14 days of the receipt of this notice.* Proof of microchip implant must be provided to the Pequot Lakes Police Department and should include the name of the microchip manufacturer and identification number of the microchip. Please note that once a dog has been defined as a potentially dangerous dog, and the owner has been notified as such, and the dog subsequently aggressively bites, attacks, or endangers the safety of humans or domestic animals, it may be classified as a Dangerous Dog. *You may request a hearing* to determine the validity of the potentially dangerous dog declaration by filling out the attached *Request for Hearing Form* and presenting it to the Pequot Lakes Police Department within fourteen (14) days of this notice. If a request is made the owner must still comply with the requirements of section 347.515 to have a microchip implanted within 14 days of receipt of this notice.


(Signature of Officer)

**POTENTIALLY DANGEROUS DOG
REQUEST FOR HEARING**
(To be completed by Dog Owner)

Date of Request: 8-10-20	Dog's Name: Zaida
Owners Name: Tieda Lynne	Dog's Description: Half Lab, Half Bull Terrier
Owner Address: 32630 Bona Ave Dept of Intersville	Owner Telephone: 219-820-4411

- Request for hearing must be made within (14) days of receipt of notice of potentially dangerous dog determination.
- Hearing must be held within fourteen (14) days of receipt of this request.
- The hearing officer shall issue a decision on the matter within ten (10) days after the hearing.
- If a request is made the owner must still comply with the requirements of section 347.515 to have a microchip implanted within 14 days of receipt of the notice of potentially dangerous dog.

I hereby request a hearing to determine the validity of the potentially dangerous dog declaration regarding said dog.

Tieda Lynne
(Signature of Owner)

FOR OFFICE USE ONLY: Received by: JA	Date: 8/10/20	ICR# 20001650
Date of Service:		

the neighbors dog running at "Peanut". She heard "Peanut" squeal as she was attacked. She mentioned that Taya picked "Peanut" up and walked back towards their house. Seils described the dog as a brown lab looking dog. Davis was advised that "Peanut" did not appear to have any injuries. Seils did not see any blood or wounds on "Peanut".

Davis then spoke with Taya. Taya advised that she and her friend were walking "Peanut" down the street when a larger brown dog came running out of a yard (about 3 houses down from theirs). She said the dog owner, Todd Lynes, had just let the dog out. It came running after "Peanut". It attacked "Peanut". "Peanut" let out a squeal. She picked "Peanut" up and she and her friend walked back home. Taya mentioned that Lynes did yell for his dog to stop before it got to the street. The dog did not listen.

Davis then spoke with Crist. Crist advised that he has seen Lynes' brown dog at their end of the street in the past. He believes that Lyne's does do his best to keep his dogs on his own property but once in awhile they do leave the property. Crist does not want to see any charges against Lynes but does want Lynes to keep his dog on his own property. Crist is concerned for other small dogs in the neighbor hood and any small children that may live in the area.

After speaking with Seils, Crist and Taya, Davis then went to the address of 30630 Rae Ave. Upon arrival Davis spoke with Todd Lynes. Lynes advised that his dogs were in the house for the evening when they started barking. He let his lab/german short hair mixed dog, "Zada" out when she took off towards the street where he saw two girls walking a small dog. He yelled for "Zada" to stop but she did not. According to Lynes the girls picked up the small dog. They walked past his drive way then put the small dog back on the street. Lynes mentioned that it was at this time, when the girls put the dog back down, that "Zada" went after the small dog. Lynes went on to mention that he does have an invisible fence for his dogs but "Zada" seems to ignore the shock when she gets close to the invisible fence boundry. Lynes also mentioned that his dogs are protective of his property. At this time Davis advised Lynes of "Zada" being listed as a potentially dangerous dog. When asked, Lynes provided vaccine records for "Zada". The shot records were up to date (see photos of shot records in media).

Davis then cleared the scene.

Supplemental Report

ICR: 20001650

Last Modified: 08-26-2020 1436

Title: 20200826 002 Jorgens Supplemental

Created By: Matthew Jorgens

On 8-10-2020, Officer Jorgens was asked by Officer Davis to serve a potentially dangerous dog form on the owner, **Todd David Lynes** at his listed residence on 30660 Rae Avenue in Pequot Lakes. Officer Jorgens went to the residence with the paperwork and knocked on the door. A younger boy answered the door and several dog were barking inside. Officer Jorgens observed the front door open and the boy tried to control two of the dogs as they raced past him. He stated his father was not home.

Both dogs immediately surrounded Officer Jorgens and were barking uncontrollably and were biting at him. Officer Jorgens told the boy to call them off. The boy attempted to, but the choc/brown lab mix dog got more aggressive and continued after Jorgens as he backed up. Officer Jorgens started to un-holster his taser in preparation to defend himself as he was backing up towards his squad.

Officer Jorgens got in the squad and told the younger boy that they needed to do something to control the dog better. Officer Jorgens then cleared.