

Title 6

Animals*

Chapters:

6.05 Dangerous Dogs

* For nuisance provisions regarding animals, see LMC 8.10.040, 8.10.050, and 8.10.180.

Chapter 6.05

Dangerous Dogs

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6.05.010 Purpose.

The purpose of this chapter is to provide a comprehensive plan for the identification and regulation of dangerous or potentially dangerous dogs in Lyons, Oregon.

A. Recitals. It appears that:

1. Attacks by dogs in Lyons and throughout the state of Oregon demonstrate that current regulations pertaining to dogs do not effectively protect the public from the hazards posed by vicious dogs; and
2. Waiting until such dogs have been proven to be vicious by menacing or attacking persons or animals before subjecting such dogs to restrictions exposes the public to potential safety hazards; and
3. There have been serious attacks by dogs of many breeds. In determining the dangerousness of a dog, the dog's upbringing and control by the owner are at least as important as the dog's breed; and
4. Dogs that cause serious injury to humans have usually exhibited behavioral problems prior to causing such injuries. If these behavioral problems are reported to animal control authorities, precautions can be taken to limit opportunities for causing serious injury, and dogs should be restricted no more than is reasonably necessary to protect the public. Increasing the severity of

restrictions according to the seriousness of the behavioral problems displayed by a dog serves two purposes:

a. Owners of dogs with relatively minor behavioral problems are not burdened with unnecessary restrictions; and

b. Members of the public, and in particular, neighbors of persons who keep such dogs, will be more likely to report inappropriate animal behavior if the public knows that relatively minor restrictions will be imposed upon dogs that have exhibited relatively minor dangerous behavior; and

5. To monitor effectively an individual dog's potential dangerousness, a dog should be clearly identified over a period of time. Problems have been encountered because dog owners often own more than one dog of the same breed. In these cases, animal control authorities have been unable to determine whether a dog involved in inappropriate behavior is the same dog that was involved in previous incidents. Since a series of minor incidents indicates a higher level of potential dangerousness than isolated minor incidents, dogs involved in inappropriate behavior should be specially tagged to assure positive identification. Also, marking of the dog is necessary to verify the correct dog is being subjected to restrictions that have been imposed. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 1, 1990.]

6.05.020 Definitions.

As used in this chapter:

A. "Dangerous dog" means any dog that has been found to have engaged in any of the behaviors specified in LMC 6.05.030(B).

B. "Director" means the director of the Linn County dog control department.

C. "Dog" means (1) any mammal of the canine family, and includes wolves and coyotes, whether pure bred or mixed breed and (2) in all other contexts means any mammal of the canine family which has permanent canine teeth or is over the age of six months.

D. "Department" means the Linn County dog control department.

E. "Dog running at large" or "at large" means:

1. A dog that is (a) on private real or personal property without the permission of the owner or person entitled to possession of the real or per-

sonal property; and (b) not in the company of and under the control of its owner or keeper; or

2. A dog that is (a) on premises open to the public or on or in a vehicle that is on premises open to the public; and (b) not in the company of and under the control of its owner or keeper.

3. The term does not include: (a) use of a dog under the supervision of a person in order to legally hunt, chase or tree wildlife; (b) use to control or protect livestock.

F. “Dog control officer” means an employee of the department who has a duty to enforce any provisions of ORS Chapter 609, ORS 560.500 to 560.599 or 560.05 to 560.130.

G. “Owner” means any person or legal entity having a possessory right to a dog or who harbors, cares for, exercises control over or knowingly permits any dog to remain on premises occupied by that person. The term includes the dog owner, keeper of the dog, and, unless the context requires otherwise, any person to whom a dog is transferred, sold, or given pursuant to LCC 560.670.

H. “Person” means any natural person, association, partnership, firm or corporation.

I. “Pet or domestic animal” means any animal that is owned or possessed by a person, other than livestock or poultry.

J. “Potentially dangerous dog” means any dog that has been found pursuant to an investigation conducted under this chapter to have engaged in any behavior specified in LCC 560.640.

K. “Physical control device” means a collar or harness connected to a leash or tether, made of material sufficiently strong and durable to prevent the dog on which it is used from escaping or leaving the immediate physical control of its owner.

L. “Physical injury” means impairment of physical condition or substantial pain.

M. “Injured person” or “person injured” means (1) the person alleged to have been injured or killed by a dog or the representative of a person alleged to have been injured or killed by a dog, or (2) an owner of livestock who claims that his/her livestock has been chased, injured, or killed by a dog, or (3) an owner of a pet or domestic animal whose pet or domestic animal has been injured or killed by a dog.

N. “Serious physical injury” means any physical injury which creates a substantial risk of death or which causes serious and protracted disfigure-

ment, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

O. “Under the control of its owner or keeper” means that the owner or keeper of the dog is maintaining the dog in such a manner that the dog is rendered unable to bite, injure, wound, kill, or chase any person, pet or domestic animal or livestock, and that the dog is restrained by a physical control device.

P. “Vehicle” means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 2, 1990.]

6.05.030 Classification of levels of dangerousness.

A. A dog may be classified as potentially dangerous upon a finding by the director that the dog has not injured, but has menaced, chased, displayed threatening or aggressive behavior, or otherwise has threatened or endangered the safety of any person, or pet or domestic animal.

B. A dog shall be classified as dangerous if:

1. It causes a serious physical injury or death of any person, unless such serious physical injury or death was the result of the person wrongfully assaulting the dog or the dog’s owner or if the person provoked the dog while trespassing upon premises occupied by the dog’s owner;

2. It is at large or off the property of the owner and on a physical control device and causes serious physical injury or kills any pet or domestic or livestock animal; or

3. It has been classified as potentially dangerous and thereafter repeatedly exhibits behavior that could be the basis for such classification.

C. No dog shall be found to be dangerous or potentially dangerous if it is a dog trained for law enforcement purposes and is on duty and under the control of a law enforcement officer at the time it exhibits behavior under subsection (A) or (B) of this section. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 4, 1990.]

6.05.040 Identification of dangerous and potentially dangerous dogs – Appeals – Restrictions pending appeal.

A. The director shall have authority to determine whether any dog has engaged in the behaviors specified in LMC 6.05.030. The determination shall be based upon an investigation that includes observation of the dog's behavior by dog control officers or by other witnesses who personally observed the behavior. If the determination is based upon observations of witnesses other than dog control officers, the witnesses must first sign affidavits attesting to the observed behavior and must agree to provide testimony regarding the dog's behavior if called upon to do so. A parent or legal guardian of a minor child or an incapacitated person may complete and sign an affidavit and provide testimony on behalf of that minor child or incapacitated person. For purposes of this section, a minor child is a child that is less than 18 years of age at the time the affidavit is completed and signed. The director shall have authority to have a dog being investigated under this subsection marked with a permanent identifying tattoo or with a microchip implant.

B. The director shall give the owner of the dog written notice by certified mail or personal service of the dog's specific behavior, of the dog's classification as a dangerous or potentially dangerous dog, and of the additional restrictions applicable to that dog by reason of its classification. Other forms of notification, which result in actual notice of the information required above, shall be sufficient.

C. Once the owner has received notice of the dog's classification as a potentially dangerous dog, the owner shall comply with the restrictions specified in the notice until such time as the director's determination is reversed on appeal. Additionally, the director shall have authority to impound the dog pending completion of all appeals if the director has reasonable grounds to believe that the owner of the dog has failed to comply with any of the restrictions specified in the notice of classification. If the director's determination concerning the classification of the dog is upheld on appeal, the dog's owner shall pay to the county all costs incurred in the dog's impoundment.

D. If the director finds that a dog is a dangerous dog, the dog shall be impounded until the comple-

tion of all appeals, or if no appeal is taken, the time for taking any appeal has passed. If the director's determination is upheld on appeal, the dog's owner shall pay to the county all costs incurred in the dog's impoundment.

E. The owner may appeal the director's determination to the board of commissioners by filing, with the director, a written request for hearing. The request for hearing must be received, by the director, within 10 days of the following, whichever occurs first:

1. The date of mailing of notice to the owner, by certified mail;
2. The date the notice is personally served upon the owner; or
3. The date when the owner acquired actual knowledge of the information required to be contained in the notice.

F. The board of commissioners shall hold a hearing on any appeal from the director's determination to classify a dog as a dangerous or potentially dangerous dog. The owner and any other person having relevant evidence concerning the dog's behavior as specified in LMC 6.05.030 shall be allowed to present testimony. The hearing shall be conducted pursuant to LCC 560.180, and the board of commissioners shall determine whether the behavior specified in LMC 6.05.030 was exhibited by the dog in question. The board of commissioners shall issue an order setting out its determination, which shall be final. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 5, 1990.]

6.05.050 Regulation of potentially dangerous dogs.

In addition to complying with all other requirements of this chapter, the owner of a potentially dangerous dog shall:

A. Physically restrain the dog to prevent it from:

1. Interfering with the public's legal access to the property where the dog is kept;
2. Interfering with the public's use of any public sidewalk, roadway, or property adjoining the property where the dog is kept, or where the dog is allowed to be;
3. Having access to any public sidewalk, roadway, or property adjoining the property where the dog is kept or any other portion of the property from which the public is not excluded.

B. Not allow the dog to be off the owner's premises when not restrained by a physical control device.

C. Fasten to a collar and keep on the dog at all times such tag as may be issued by Linn County, identifying the dog as a potentially dangerous dog.

D. Pay an annual fee established by the county fee order, which shall not exceed \$50.00, at the time the tag described in subsection (C) of this section is issued and a like fee each year thereafter on or before the dog license renewal date, so long as the dog remains within Linn County. This fee shall be in addition to any other license fee.

E. Notify the director by certified mail where the dog is kept within 10 days of any change.

F. Post a warning sign, supplied by the director, at the location the dog is kept, in a conspicuous place visible from the public sidewalk or road adjoining the property or, if no such public sidewalk or road adjoins the property, then at the boundary line of the property where access is provided to the property.

G. Comply with any other restrictions or regulations imposed by the director which in the director's judgment are reasonably necessary to protect the health, welfare or safety of any person or property.

H. Not allow the dog to engage in behavior described in LCC 560.650 D.

I. A potentially dangerous dog may be released to the dog's owner or transferred, sold or given to another person by the owner only in compliance with this subsection.

1. A potentially dangerous dog may be released to the dog's owner or transferred, sold or given to another person by the owner only if the county, owner, and receiver of the dog, if any, first execute a written agreement as described in this subsection. The owner and receiver of the dog, if any, shall:

a. Stipulate to conditions, restrictions, requirements, and regulations for continued maintenance of the dog which are for the purpose of protecting the health, safety, and welfare of the people and property of Linn County and of the person to whom transferred or where relocated; and

b. Agree to defend, indemnify, and hold harmless the county against any claim or award for damage caused by the dog subsequent to signing the agreement; and

c. Agree not to transfer, sell, or give the dog to any other person, unless:

i. The owner or receiver of the dog can first demonstrate to the satisfaction of the director that such transfer, sale, or gift would render the dog unable to thereafter behave in such manner that this chapter regulates, requires or prohibits and this satisfaction is put in writing signed by the owner and the county; and

ii. The person to whom the dog is transferred, sold or given first signs an agreement described in this subsection.

2. After the agreement is executed by the county and transferor and transferee of a potentially dangerous dog, the dog may be transferred, sold or given to another person. The transferring owner shall:

a. Provide written proof of the new address of the dog.

3. A person to whom a dog is transferred, sold, or given shall keep the county informed of the location of the dog and comply with this chapter and any agreement executed thereunder.

J. A failure to comply with any provision or term in this section by the owner of any potentially dangerous dog or by any person to whom a potentially dangerous dog is transferred, sold, or given pursuant to this section, is a violation of this chapter.

K. The requirements of this section shall apply to any person to whom ownership of a potentially dangerous dog is transferred. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 6, 1990.]

6.05.060 Dangerous dogs – Disposal.

Any dog that has been found to be a dangerous dog shall be killed in a humane manner. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 7, 1990.]

6.05.070 Infraction.

The violation of any provision of this chapter shall constitute a Class A infraction subject to the procedures set forth in Chapter 2.40 LCC and subject to the penalties set forth at LCC 2.40.900. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 8, 1990.]

6.05.080 Requirements – Failure to comply.

Upon a finding by the board of county commissioners that the owner of a dog that has been classified as a dangerous or potentially dangerous dog

has failed to comply with any of the requirements of this chapter after having received notice of such classification, the board of county commissioners may order the dog to be killed in a humane manner. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 9, 1990.]

6.05.090 Impoundment pending adjudication of infraction.

When reasonable cause exists to cite the owner of any dog for an infraction based upon the violation of any provision of this chapter, the director may impound the dog pending adjudication of the infraction if, in the exercise of reasonable discretion, he or she believes that the dog constitutes a threat to public safety and/or private property. If the dog's owner is convicted of the infraction which caused the impoundment, the dog's owner shall pay to the county all costs incurred in the dog's impoundment and, unless such costs are paid within 10 days of the date when the owner is convicted of the infraction, the dog shall be killed in a humane manner. Such disposition of the dog shall not relieve the owner of his or her responsibility to pay impoundment costs previously incurred. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 10, 1990.]

6.05.100 Petition to rescind classification as potentially dangerous.

A. No sooner than one year after a dog has been classified as potentially dangerous, the dog owner may petition the director to rescind the classification of the dog as potentially dangerous. The petition shall be accompanied by a petition filing fee established by the county fee order, which shall not exceed \$75.00, and shall contain the information upon which the dog owner relies to support rescission.

B. The director shall consider the petition, conduct such further investigation deemed necessary by the director, and may deny the petition, grant the petition, or defer decision on the petition for not more than six months.

C. If the petition is denied, the dog owner may not petition for rescission until at least one year has passed from the date of denial.

D. In making a decision on a petition for rescission, the director shall consider all relevant factors mentioned in the petition or revealed by such further investigation that may have been conducted. [Ord. G1-2006 § 8, 2006; Ord. 05-8 § 11, 1990.]

