

Chapter 6.05

*Adopted
4/8/11*

DOG REGULATIONS

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6.05.010 Definitions.

For purposes of BMC 6.05.010 through 6.05.160, the following terms have the following meanings:

- (1) Attempts to bite: The overt actions of a dog which constitute a substantial step toward the actual biting of one or more persons.
- (2) Dog: Any animal of the canine species.
- (3) Invitee: A person who comes upon the premises at the occupant's invitation, express or implied, upon business which concerns the occupant, or who comes upon the premises after the occupant, expressly or impliedly, had led such person to believe that the premises were intended to be used by the visitor. For purposes of this chapter, "invitee" also includes licensees (i.e., a person who comes upon the premises for his or her own purposes with the express or implied consent of the occupant) such as postal carriers, meter readers, firefighters and police officers.
- (4) Leash: A cord, chain, strap or other flexible material, not over eight feet (8') in length, of sufficient strength to control the dog.
- (5) Neutered dog: A male dog incapable of producing young.
- (6) Own, owned or owning: Having a right of property in a dog, caring for or acting as the custodian for a dog or knowingly permitting a dog to remain on or about premises occupied by that person.
- (7) Owner: Any person having a right of property in a dog or who harbors or keeps a dog or who has it in his or her care, or acts as its custodian, or who knowingly permits a dog to remain on or about the person's premises.
- (8) Running at large: Any dog will be considered running at large when it is off or outside of the premises belonging to the owner of such dog, or not under the control of its owner by means of a leash, or contained in or on a vehicle.
- (9) Spayed: A female dog incapable of producing young.

(10) Unlicensed: Any dog not on the property of its owner and not wearing a current license tag as required under this chapter.

6.05.020 Personal property.

Dogs are hereby declared to be personal property.

6.05.030 Licenses.

(1) Every owner whose dog has a set of permanent canine teeth or has attained the age of four months, whichever occurs first, must immediately obtain a license for such dog from the city clerk.

(2) Licenses will be issued on a calendar-year basis and will be valid only for the year issued. The annual license fee will be reduced by 50% for applications received after June 30.

(3) No license will be issued until after a current certificate of vaccination for rabies is presented to the city clerk.

(4) Owners must renew the license each year before the license expires for as long as they own the dog.

(5) At the time of issuance of the license, the city clerk will issue a license tag to the owner. The license tag must be attached securely to a collar or harness on the dog for which it was issued. If a license tag is lost, the owner may obtain a duplicate license tag upon satisfactory proof of loss and payment of the required fee.

6.05.040 Fees.

(1) The license fee that is due and payable upon the issuance of a license, and the other fees required to be paid under the provisions of this chapter, will be determined by resolution of the city council.

(2) Exceptions.

(a) Where the owner is legally blind, the owner will not be required to pay a license fee for his or her guide dog. The city clerk will issue a license to such owner upon the owner's delivery of (i) a current certificate of vaccination for rabies, and (ii) a signed written statement that the subject dog has been specifically trained for, and is in actual use as, an aide to the owner.

(b) The license fee will be reduced by 10% with respect to dogs that have been spayed or neutered. To obtain this reduced fee, an owner must present to the city clerk a certificate from a licensed veterinarian stating that the subject dog has been neutered or spayed.

6.05.050 Rabies inoculation.

All dogs must be inoculated against rabies unless specifically exempt under state or federal law. It is the responsibility of the owner to demonstrate to the city's satisfaction that the subject dog falls within an exemption under state or federal law. Owners must at all times possess a current certificate of vaccination for rabies for each dog owned.

6.05.060 Dogs running at large.

Every owner must ensure that his or her dog does not run at large in the city. Any owner of a dog running at large will be guilty of a violation of this chapter.

6.05.070 Dog waste.

It is a violation of this chapter for an owner to allow the owner's dog to deposit solid waste matter on any improved property other than that of the owner. It is an affirmative defense if the owner immediately removes the solid waste.

6.05.080 Nuisances.

- (1) A dog is a public nuisance if it:
 - (a) Bites or attempts to bite one or more persons;
 - (b) Chases a vehicle or person;
 - (c) Damages or destroys property of a person other than the owner of the dog;
 - (d) Scatters garbage;
 - (e) Trespasses on private property of person(s) other than its owner;
 - (f) Disturbs any person by frequent or prolonged noises; or
 - (g) Is a female in heat and running at large.
- (2) The owner of a dog will be guilty of a violation of this chapter if the dog is a public nuisance under subsection (1) of this section.
- (3) In a prosecution under this section, it is an affirmative defense that:
 - (a) The dog's owner did not allow the dog to be a public nuisance;
 - (b) The dog bites or attempts to bite a person wrongfully provoking or assaulting the dog's owner; or
 - (c) The dog bites a person or attempts to bite a person trespassing upon premises occupied by the dog's owner.

6.05.090 Impoundment procedures.

- (1) When any dog is running at large, is unlicensed, or is a public nuisance pursuant to BMC 6.05.080, the dog may be impounded.
- (2) Notice of Impoundment; Redemption; Disposal.
 - (a) Reasonable inquiry will be made as to the ownership of any dog impounded. If the owner is identified, a reasonable effort will be made to notify the owner of the following: (i) the owner's dog is impounded; (ii) the location of the animal shelter; (iii) the amount of the impoundment fee; and (iv) the dog will be destroyed as provided herein. Unless claimed by the owner, a dog will be impounded for at least three days if the dog is without a license or identification tag and for at least five days if the dog has a license or identification tag. If the dog is unlicensed, the owner must also purchase a license and pay the applicable penalty for failure to have a license before the dog will be released. A reasonable effort will be made to notify the owner of a dog before the dog is removed from impoundment.
 - (b) If the owner does not redeem the dog within the allotted time, it may be disposed of in a humane manner prescribed by the impounding facility for the city. Any impounded dog may be released to a responsible person (i) if such person provides assurances that the person will properly care for the dog and not allow the dog to be a nuisance, (ii) upon payment of the fees and costs provided in this section, and (iii) upon the person agreeing to provide a suitable home for the dog. The person thereafter will be liable as the owner of the dog as provided by this chapter. Notwithstanding the foregoing, a dog impounded for being a public nuisance under BMC 6.05.080 may not be released to its owner or other person except by order of the court.
- (3) Notwithstanding the provisions of subsection (2) of this section, any dog impounded for biting a person will be held for not less than 10 days to determine if the dog is rabid.

6.05.100 Killing certain dogs.

A dog which is displaying obvious or classic symptoms of rabies or is so vicious that it cannot be impounded without risk to human safety, or that is so seriously injured that its suffering warrants its termination, may be summarily killed in a humane manner by any police officer or properly trained employee of the city's impound facility.

6.05.110 Dangerous dogs.

The following provisions of this chapter are to establish a procedure whereby dogs that pose a reasonably significant threat of causing serious injury to humans, other animals, or property are identified and subjected to precautionary restrictions before any such serious injury has occurred.

(1) Any person who observes or has evidence of behavior described herein must promptly notify the police.

(2) A dog will be classified as potentially dangerous based upon specific behaviors exhibited by the dog. For purposes of this chapter, behaviors establishing various levels of potential dangerousness are as follows:

(a) Level 1 behavior is established if a dog at large is found to menace, chase, display threatening or aggressive behavior, or otherwise threaten or endanger the safety of any domestic animal.

(b) Level 2 behavior is established if a dog at large is found to menace, chase, display threatening or aggressive behavior, or otherwise threaten or endanger the safety of any person, or if a dog on its owner's premises is found to menace, chase, display threatening or aggressive behavior, or otherwise threaten or endanger the safety of any invitee.

(c) Level 3 behavior is established if a dog, while confined, aggressively bites any person.

(d) Level 4 behavior is established if a dog, while at large, aggressively bites or causes physical injury to any person or domestic animal.

(e) Level 5 behavior is established if (i) a dog, whether or not confined, causes the serious injury or death of any person, (ii) a dog, while at large, kills any domestic animal, (iii) a dog engages in or is found to have been trained to engage in exhibitions of fighting, or (iv) a dog that has been classified as a Level 4 potentially dangerous dog repeats the behavior described in subsection (2)(d) of this section after the owner receives notice of the Level 4 classification.

(f) Notwithstanding subsections (2)(a) through (2)(e) of this section, the chief of police has discretionary authority to refrain from classifying a dog as potentially dangerous, even if the dog has engaged in the behaviors specified in subsections (2)(a) through (2)(e) of this section, if the chief of police determines that the behavior was the result of the victim abusing or tormenting the dog or other extenuating circumstances. In any case, no dog may be classified as potentially dangerous if the behavior in question was directed against a trespasser inside any fully enclosed building on private property if all exterior doors of the building were locked at the time the trespass occurred, or if the behavior in question was directed against any person inside any motor vehicle interior (not including the open bed of a vehicle or truck) who entered the vehicle without permission of the owner or driver of the vehicle.

(3) Identification; Appeals; Restrictions Pending Appeal.

(a) The chief of police is authorized to determine whether any dog has engaged in the behaviors specified in this chapter. This determination must be based upon an investigation that includes observation of and testimony about the dog's behavior, including the dog's upbringing and the owner's control of the dog. These observations and testimony can be provided by city police officers, other employees of the city, or by other witnesses who personally observed the behavior. Each witness must sign a written statement attesting to the observed behavior and agree to provide testimony regarding the dog's behavior, if necessary.

(b) The chief of police must give the dog's owner written notice, by certified mail or personal service, of the dog's (i) specified behavior, (ii) classification as a potentially dangerous dog, and (iii) any additional restrictions applicable to the dog by reason of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the chief's decision to the city manager

by filing a written request for a hearing with the chief of police within 10 days of the date the notice was mailed to the owner by certified mail or the owner was personally served.

(c) The city manager must hold a public hearing on any appeal from the chief of police's decision to classify a dog as potentially dangerous. The owner and any other persons having relevant evidence concerning the dog's behavior will be allowed to present testimony. The city manager must determine whether behavior specified in this chapter was exhibited by the dog in question. The city manager must issue an order containing the city manager's determination, which will be final unless the owner files a written request for a hearing before the city council with the city manager within 10 days of the date the city manager's order was issued.

(d) When the city manager's order is appealed to the city council, the city council must hold a public hearing and review the chief of police's determination that the dog has engaged in any of the behaviors specified in this chapter. The city council must consider all written material that was available to the chief of police and the city manager, the city manager's order and all information offered by the owner or other persons having evidence concerning the issue of whether the dog engaged in any of the behaviors specified in this chapter. The city council must issue an order containing its decision, which decision will be final and binding.

(e) Once the owner has received notice of the dog's classification as a Level 1, 2, 3 or 4 potentially dangerous dog pursuant to this chapter, the owner must comply with the restrictions specified in the notice until such time as the chief of police's and city manager's decision may be reversed on appeal. Failure to comply with the specified restrictions pending the completion of all appeals will be a violation of this chapter for which a fine may be imposed. Additionally, the chief of police will have the authority to impound the dog pending completion of all appeals.

(f) To ensure correct identification, all dogs that have been classified as potentially dangerous will be marked with an identifying mark. The chief of police must adopt rules specifying the character, location, and manner of this marking.

(4) In addition to all other applicable laws and regulations, the owner of a potentially dangerous dog must comply with the following regulations:

(a) If the dog has engaged in Level 1 behavior, the dog must be restrained by a physical device or structure that prevents the dog from reaching any public sidewalk or adjoining property whenever that dog is outside the owner's home and not on a leash.

(b) If the dog has engaged in Level 2 behavior, the owner must confine the dog within a secure enclosure whenever the dog is not on a leash or inside the home of the owner. The secure enclosure must be located so as not to interfere with the public's legal access to the owner's property.

(c) If the dog has engaged in Level 3 behavior, the owner must meet the requirements of subsection (4)(b) above, and must also post conspicuous warning signs on the property where the dog is kept.

(d) If the dog has engaged in Level 4 behavior, the owner must meet the requirements of subsections (4)(b) and (4)(c) of this section and may not permit the dog to be off the owner's property unless the dog is muzzled and restrained by an adequate leash and under the control of a capable person.

(e) Any dog that has been found to have engaged in Level 5 behavior will be euthanized. In addition, the chief of police may suspend, for a period of time specified by the chief of police, the owner's right to own any dog in the city, including dogs currently owned by that person.

(f) In addition to the normal licensing fees, there will be an annual fee of three times the normal fee for dogs that have been classified as potentially dangerous. This additional fee will be imposed at the time the license of the potentially dangerous dog expires, and will be payable at the time the license is renewed. In any case, no dog will be classified as potentially dangerous if the

behavior in question was directed against a person engaged in criminal behavior at the time of the attack.

(g) Any owner failing to comply with a provision of this section will be guilty of a violation.

6.05.120 Parent responsibility.

It is no defense of any violation of this chapter when the true or registered owner of a dog is of such minor age as to prohibit appearing to answer such charge(s) in court, and upon such occurrence, the parent or guardian of such minor owner will be required to appear instead and assume the full responsibility of the actions of their minor owner.

6.05.130 Interference with officers.

It is unlawful for any person to interfere with, molest or harm any police officer in the prosecution of his or her duties under the terms of this chapter.

6.05.140 Penalties.

(1) Violation of any provision of this chapter constitutes a violation punishable by fine of not more than \$500.00.

(2) Every full day during which an activity continues to be conducted in violation of this chapter will be considered a separate offense.

(3) Offenses under this chapter will be tried in the municipal court as a violation and not as a crime. As a violation there is no right to jury trial or court appointed counsel.

(4) Additional Remedies:

(a) In addition to the penalties provided in this chapter, the city may sue in a court of competent jurisdiction to obtain a judgment by execution.

(b) The city may seek an injunction to prohibit a person from violating this chapter.

(c) In an action authorized by this section, if the city prevails, it may recover reasonable attorney fees to be set by the court in addition to its costs and disbursements. These fees are recoverable at all levels of trial and appeal.

(d) Whenever a fee required by this chapter is not paid when due, the city clerk may add a penalty to the fee of an amount equal to 10% of the fee for each month (or part thereof) during which the fee and accumulated penalty amounts remain unpaid. The total amount of the fee and accumulated penalties may not exceed 100% of the original fee.

6.05.150 Severability.

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unenforceable in any respect, the validity or enforceability of the section, subsection, sentence, clause, or phrase in any other respect and of the remaining sections, subsections, sentences, clauses, and phrases of this chapter will not be impaired or affected.

6.05.160 Grammatical interpretation.

For purposes of this chapter, unless it is apparent from the context that a different construction is intended, (a) each gender includes the masculine, feminine, and neuter genders, (b) the singular includes the plural and the plural includes the singular, (c) the word "or" is not exclusive and the words "include," "includes," and "including" are not limiting, and (d) words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable.

Janssen
6/8/11