

ORDINANCE NO. 5 8 2 9

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, CREATING A NEW CHAPTER 6.35 OF THE AUBURN CITY CODE RELATED TO DANGEROUS DOGS, HEREBY DENOMINATED AS "FRITZ'S LAW"

WHEREAS, there have been several instances within the City of Auburn where dogs have attacked, injured or damaged persons, pets and/or property; and

WHEREAS, in order to assist the City in responding to the attacks by dogs, it is appropriate for the City to review and evaluate Ordinances of other jurisdictions, studies of dangerous dogs and concerns relative thereto; and

WHEREAS, the Ordinances and literature reviewed in connection with this Ordinance, including studies, reports, news accounts, and similar documents (the legislative record) do identify concerns about the dangers associated with dangerous dogs; and

WHEREAS, in light of the other resources, materials, studies and literature reviewed in connection herewith, a review of the current code provisions of the City's Animal Control Codes revealed a need to enhance the enforcement tools to more effectively address dangerous dog cases, including enhancing some penalties, addressing training as a mitigation/enforcement tool, and providing for greater local involvement and control over some aspects of dangerous dogs.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. NEW CODE CHAPTER. That a new Chapter 6.35 of the City of Auburn Code, hereby denominated as "Fritz's law," is created to read as follows:

Chapter 6.35
Dangerous Dogs

Sections:

- 6.35.010 Dangerous dogs and related definitions.
- 6.35.020 Dangerous dogs -- Notice to owners -- Right of appeal -- Certificate of registration required -- Surety bond -- Liability insurance -- Restrictions.
- 6.35.030 Dangerous dogs and potentially dangerous dogs -- Requirements for restraint.
- 6.35.040 Dangerous dogs -- Confiscation -- Conditions -- Duties of animal control authority -- Penalties.

6.35.010 Dangerous dogs and related definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Chapter.

(1) "Potentially dangerous dog" means any dog that" when unprovoked:

(a) Inflicts bites on a human or a domestic animal either on public or private property;

(b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, or to cause injury or otherwise to threaten the safety of humans or domestic animals; or

(c) is known or should reasonably have been known by its owner to have aggressively bitten, attacked, or endangered the safety of humans or domestic animals.

(2) "Dangerous dog" means any dog that has been declared to be a "dangerous dog" pursuant to the provisions hereof, by reason of the fact that the dog:

(a) killed or inflicted severe injury on a human being without provocation on public or private property;

(b) killed or inflicted severe injury on a domestic animal without provocation while the dog is off the owner's property;

(c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans;

(d) is a potentially dangerous dog, as defined in this Chapter, that has been permitted or allowed to run free and unrestrained off the property of its owner;

(e) is a potentially dangerous dog, as defined in this Chapter, that has harassed, tormented or caused concern for the safety of persons or domestic animals; or

(f) has, since the effective date of this Ordinance, demonstrated a propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals.

It is provided, however, that a dog shall not be declared dangerous if the basis for such declaration was a threat, injury, or damage that was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or

has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

It is further provided that a dog shall not be declared dangerous if the owner of the dog can show that since the incident or action giving rise to the declaration, the owner has enrolled in and completed the American Kennel Club's Canine Good Citizen® (CGC) Program, or a comparable course or program addressing dog ownership responsibilities offered by a similarly recognized entity, which alternate course or program and/or entity shall be approved by the City. However, this proviso (this opportunity to avoid a dangerous dog declaration) shall not apply where the basis for the declaration was that the dog killed or inflicted severe injury on a human being without provocation on public or private property, as set forth in Subsection (2)(a) hereof, or has killed or inflicted severe injury on a domestic animal without provocation while the dog is off the owner's property, as set forth in Subsection (2)(b) hereof, or has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans, as set forth in Subsection (2)(c) hereof. This proviso shall also not apply to instances where a dangerous dog declaration has been previously avoided because such training was given to the same owner for this or any other dog, or to any other person involving this same dog.

It is further provided that for the purposes of Subsection (2)(d) hereof, there shall be a rebuttable presumption that a dog has been permitted or allowed to run free if the dog has been previously found running free and unrestrained off the property of its owner. This presumption may be rebutted by a showing that, since the effective date of this Ordinance, the dog has not previously been found running free and unrestrained off the property of its owner, and the owner has taken reasonable steps to prevent the dog from running free and unrestrained off the property of its owner.

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(5) "Animal control authority" means the persons and entities responsible for enforcement of the animal control laws of the city, or such person as is designated by the Mayor, whether acting alone or in concert with other responsible persons and/or local governmental units.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal.

6.35.020 Dangerous dogs -- Notice to owners -- Right of appeal -- Certificate of registration required -- Surety bond -- Liability insurance -- Restrictions.

(1) In addition to the enforcement authority with which the animal control authority has been vested pursuant to state law and/or the King County Code (adopted by reference pursuant to Chapter 6.32 of the City Code), the animal control authority shall be authorized to enforce the provisions of this Chapter, Provided that in connection with the enforcement of the provisions of this Chapter to seek to declare a dog within the City to be dangerous, the animal control authority shall employ the notification and appeal procedures as defined in this section, including serve notice upon the dog owner in person or by regular and certified mail, return receipt requested.

(2) The notice must state: The basis for the proposed action; the reasons the authority considers the animal dangerous; a statement that the dog is subject to registration and controls required by this chapter, including a recitation of the controls in subsections (6) and (7) of this Section; and an explanation of the owner's rights and of the proper procedure for appealing a decision finding the dog dangerous.

(3) Prior to the authority issuing its final determination, the authority shall notify the owner in writing that he or she is entitled to an opportunity to meet with the authority, at which meeting the owner may give, orally or in writing, any reasons or information as to why the dog should not be declared dangerous, including the owner's compliance with the AKC's CGC program, or comparable course or program provisions as provided herein, if applicable. The owner may also request a reasonable delay before the final determination is made if the owner has already enrolled in the AKC's CGC program, or comparable course or program, if applicable. The notice shall state the date, time, and location of the meeting, which must occur prior to expiration of ten (10) calendar days following delivery of the notice. The owner may propose an alternative meeting date and time, but such meeting must occur within the ten-day time period set forth in this section. After such meeting, the authority must issue its final determination, in the form of a written order, within ten (10) calendar days. In the event the authority declares a dog to be dangerous, the order shall include a recital of the authority for the action, a brief concise statement of the facts that support the determination, and the signature of the person who made the determination. The order shall be sent by regular and certified mail, return receipt requested, or delivered in person to the owner at the owner's last address known to the authority.

(4) The owner may appeal the authority's final determination that the dog is dangerous to the City's Hearing Examiner, which appeal shall be in accordance with the provisions herein and pursuant to the procedures of Section 1.25.090 of the City Code. Any such appeal by the owner shall be perfected by filing a written notice of such appeal with the City Clerk within fifteen (15) days of the date the owner received the final determination if the order was delivered in person, or within twenty (20) days of the date the order was mailed to the owner, by filing a written notice of appeal with the City Clerk. While the appeal is pending, the authority may order that the dog be confined or controlled in compliance with Section 6.35.030 of this Chapter and/or RCW 16.08.090. If the dog is determined to be dangerous, the owner must pay all costs of confinement and control.

(5) It is unlawful for an owner to have a dangerous dog in the City without a certificate of registration issued pursuant to this section. This Section and Sections 6.35.030 and 6.32.040 of the City Code shall not apply to police dogs as defined in Section 6.32.030 of the City Code and/or RCW 4.24.410.

(6) The animal control authority shall issue a certificate of registration to the owner of a dog deemed to be a dangerous dog if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under RCW Chapter 48.28 in a form acceptable to the animal control authority in the sum of at least two hundred fifty thousand dollars (\$250,000), payable to any person injured by the dangerous dog, or such surety bond that otherwise meets the requirements of Section 16.08.080 RCW; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least two hundred fifty thousand dollars (\$250,000), insuring the owner for any personal injuries inflicted by the dangerous dog, or such liability insurance that otherwise meets the requirements of Section 16.08.080 RCW.

(7) Any dog which is declared to be a "dangerous dog" pursuant to this Chapter or Chapter 16.08 RCW shall also be required to be microchipped by a veterinarian of the owner's choice, at the owner's expense. This shall be in addition to the other requirements of this Chapter and in addition to the applicable requirements for licensing as defined within this Title, and this procedure must be accomplished within thirty days after the owner's receipt of the dangerous dog declaration issued pursuant to this Chapter or Chapter 16.08 RCW.

(8) In addition to regular dog licensing fees, the owner of a dangerous dog shall pay to the City a dangerous dog registration fee in the amount of one hundred dollars (\$100) per year for the dangerous dog registration.

6.35.030 Dangerous dogs and potentially dangerous dogs -- Requirements for restraint.

(1) It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

(2) It is unlawful for an owner of a potentially dangerous dog to permit the dog to be allowed or permitted to run free and unrestrained or off-leash or not otherwise under physical restraint of a responsible person, unless within a fenced yard or similar restraint reasonably designed to prevent the dog from running free and unrestrained.

(3) The owners of dangerous dogs and potentially dangerous dogs are responsible for taking all reasonable measures to assure that the dogs do not escape

the above restraints, the failure of which responsibility shall constitute a violation of this Chapter, punishable pursuant to Section 6.35.040 hereof.

6.35.040 Dangerous dogs -- Confiscation -- Conditions -- Duties of animal control authority -- Penalties.

Any dangerous dog shall be immediately confiscated by the animal control authority if: (a) the dog is not validly registered under Section 6.35.020 of this Chapter; (b) the owner does not secure the liability insurance coverage required under said Section 6.35.020; (c) the dog is not maintained in the proper enclosure; or (d) the dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person. The owner must pay the costs of confinement and control. The animal control authority must serve notice upon the dog owner in person or by regular and certified mail, return receipt requested, specifying the reason for the confiscation of the dangerous dog, that the owner is responsible for payment of the costs of confinement and control, and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was confiscated are not corrected within twenty (20) days. The animal control authority shall destroy the confiscated dangerous dog in an expeditious and humane manner if any deficiencies required by this subsection are not corrected within twenty (20) days of notification. In addition, other than where violations are prosecuted as a felony pursuant to RCW 16.08.100, any owner who violates the provisions of this Chapter shall be guilty of a gross misdemeanor punishable in accordance with Section 9.02.030 of the City Code.

Section 2. ADMINISTRATION. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this ordinance.

Section 3. SEVERABILITY. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 4. EFFECTIVE DATE. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication, as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

PETER B. LEWIS, MAYOR

ATTEST:

Danielle Daskam
City Clerk

APPROVED AS TO FORM:

Daniel B. Heid
City Attorney

Published: _____