

8.04.181 Potentially dangerous and vicious dogs.

(a) Except as otherwise provided under the provisions of subsections (b) through (m) of this section, the provisions of Chapter 9, Articles 1 through 5, Sections 31601 through 31683 and any amendments thereto exclusive of Sections 31602, 31603, 31606 and 31644 of the Food and Agricultural Code are adopted and incorporated by reference herein.

(b) "Potentially dangerous dog" means any of the following:

(1) Any dog which, when unprovoked on two separate occasions within the prior thirty-six month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner/guardian or keeper of the dog;

(2) Any dog which, when unprovoked, bites a person causing a less severe injury than as defined in Section 31604 of the Food and Agricultural Code;

(3) Any dog which, when unprovoked, has killed, seriously bitten, inflicted injury or otherwise caused injury attacking a domestic animal off the property of the owner/guardian or keeper of the dog.

(c) "Vicious dog" means any of the following:

(1) Any dog seized under Section 599aa of the Penal Code and upon the sustaining of a conviction of the owner or keeper under subdivision (a) of Section 597.5 of the Penal Code;

(2) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being;

(3) Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in Section 8.04.181(b) of this chapter or is maintained in violation of Section 31641, 31642 or 31643 of the California Food and Agricultural Code.

(d) "Animal services department" means that agency appointed as the animal services agency for the county of Marin under the provisions of Section 8.04.110 of this chapter.

(e) "Director" means executive director of the animal services agency or any person authorized to act on his/her behalf.

(f) A hearing on whether a dog shall be declared potentially dangerous or vicious shall be conducted in the following manner:

(1) If the director has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious as defined by this section, a hearing shall be conducted. The director shall prepare a petition specifying the basis as to why the dog is potentially dangerous or vicious.

(2) Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the director to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition.

(3) Prior to commencement of the hearing and if the allegations of the petition indicate that the dog is potentially dangerous as defined under subsection (b) of this section, the county administrator or his/her designee

may offer in writing mediation services as an alternative to a hearing provided both the complainant and the owner/guardian agree in writing to mediation. Mediation must be concluded within thirty days of the offer to mediate. If mediation is refused or is unsuccessful, then the matter shall be referred to a hearing under subsection (f)(1) of this section.

(4) The county administrator or his/her designee shall designate a hearing officer from a panel of up to five persons whose membership shall be designated by the board of supervisors. Hearing officer applicants shall have had a minimum of five years experience as a practicing attorney and prior experience in administrative, arbitration or mediation hearings. Prior experience in care and control of animals shall also be considered but is not necessary. The hearing officer shall conduct a hearing on whether a dog shall be declared potentially dangerous or vicious. The hearing officer shall be compensated for the actual hours devoted to the hearing and its determination at the existing hourly rate or fraction thereof allowed a traffic referee of the county superior court.

(5)(i) The county administrator or his/her designee shall provide written notice to the owner/guardian of the specific behavior of the animal alleged in the petition and the date upon which a hearing will be held to consider the petition. The hearing shall be held within the time limits set forth by the Food and Agricultural Code Section 31621 or any amendments thereto. The notice shall advise the owner/guardian of the consequences of a finding of potentially dangerous or vicious. The hearing shall be open to the public and the hearing officer may admit into evidence all relevant evidence, and exercise the full scope of authority set forth in Food and Agricultural Code Section 31621. Service of the notice shall be made in accordance with Section 1.04.190 of this code. Where the owner/guardian's address of any animal is unknown, notice of the hearing shall be given by posting the same in the office of the director and by publication in a newspaper of general circulation. Notice shall then be deemed given on publication of the notice.

(ii) A hearing may be continued if the hearing officer deems it necessary and proper or upon a showing of good cause.

(iii) The time for hearing and the hearing provisions of subsection (d)(5)(i) of this section shall be stayed if mediation services are offered pursuant to the provisions of subsection (f)(3) of this section. The time for hearing and the hearing provisions of this subsection shall recommence at the date the county administrator or his/her designee has determined in writing that mediation has not been accepted or has been unsuccessful.

(6) In cases where complaint(s) from the public serve as the evidentiary basis for the director to prepare a petition, at least one of the complainants or his or her designee in the matter must appear and testify at the hearing or the complaint shall be dismissed.

(7) If the owner/guardian fails to appear at the hearing, the hearing shall nevertheless proceed and an appropriate order shall be issued.

(8) The hearing officer shall consider all relevant responsible evidence without regard to the formal rules of evidence, including circumstances of mitigation, and the record of any prior violations by the owner/guardian.

(9) All witnesses shall testify under oath or affirmation. The oath shall be administered by the hearing officer. The hearing officer may, when appropriate, request the production of oral or documentary evidence which is reasonably necessary and relevant to conduct a hearing. All proceedings shall be tape recorded.

(10) The hearing officer shall issue a written determination based upon a preponderance of the evidence, which shall be mailed to the owner/guardian within seven days after the hearing is completed.

(11) If an animal is found to be potentially dangerous or vicious by a preponderance of the evidence, the animal shall be so designated on the records of the animal services agency. Such a designation shall be considered in future determinations involving the animal and/or owner/guardian.

(12) The owner of a dog for which a potentially dangerous petition has been issued may irrevocably waive his right to a hearing and any further appeal under Food and Agricultural Code Section 31622 and accept all conditions, sanctions and penalties set forth in Food and Agricultural Code Sections 31641, 31642 and 61643, and subsection (k) of this section. The county administrator or his/her designee will mail a waiver form to the dog owner/guardian. The waiver must be signed by the dog owner/guardian and received by the county designee within thirty days from the date of agreement to waive or a hearing will be scheduled within thirty days of the agreement to waive.

(g) In accordance with the provisions of Food and Agricultural Code Section 31641, the owner/guardian of a potentially dangerous dog shall in addition to the regular licensing fee, pay to the animal control agency an annual fee as may be established by separate ordinance of the board of supervisors for the increased costs of maintaining the records of the dog.

(h) The owner/guardian of a dog determined to be vicious shall, in addition to the regular licensing fee, pay to the animal control agency an annual fee as may be established by separate ordinance of the board of supervisors to provide for the increased costs of maintaining the records of the dog.

(i) The owner/guardian of a dog determined vicious shall, at his/her own expense, have the vicious animal registration number assigned to the dog tattooed upon the dog's left ear or, if the left ear is not available, on the left inner thigh, by a licensed veterinarian or a person trained, authorized and licensed to do business as an animal tattooist. As an alternative to tattooing, an owner/guardian may have a microchip injected beneath the skin, and between the shoulder blades of the animal by a licensed veterinarian. The owner shall provide proof satisfactory to the animal services agency of such tattooing or microchipping within thirty days of the vicious determination.

(j) The owner/guardian of a vicious dog shall, within ten days of such determination, upon request by the animal services agency present said animal at the animal services agency and allow photographs and measurements of the animal to be taken for purposes of identification.

(k) The owner/guardian of a dog found potentially dangerous under subsection (b) of this section, who has no additional violations of any of the provisions of this title, within a thirty-six-month period from the date of designation as potentially dangerous, shall be removed from the list of potentially dangerous dogs by the director. The dog may be, but is not required to be, removed from the list of potentially dangerous dogs prior to the expiration of the thirty-six-month period if the owner/guardian of the dog demonstrates to the director that changes in circumstances or measures taken by the owner/guardian, such as training of the dog, have mitigated the risk to public safety.

(l) The owner/guardian of a dog found vicious under subsection (c)(3) of this section, who has no additional violations of any of the provisions of this title, after a thirty-six-month period from the date of designation as vicious, may apply to the director to remove the animal from the list of vicious animals. The director shall have the discretion to remove the animal from the list of vicious animals upon proof of the successful completion of at least eight weeks of formal obedience training, other similar evidence of training, or other rehabilitative efforts designed to mitigate the risk to public safety. (Ord. 3377 § 1 (part), 2003)