

June 22, 2009

Date..... PUBLIC HEARING ON DANGEROUS ANIMAL APPEAL OF ANDREW NEWSOM

WHEREAS, Andrew Newsom, 1105 Euclid Avenue, Des Moines, Iowa, filed an application for appeal before the City Council of the City Hearing Officer's decision upholding the Chief Humane Officer's declaration of his dog as a dangerous animal; and

WHEREAS, Mr. Newsom requested an opportunity to address the City Council regarding his appeal; and

WHEREAS, Mr. Newsom has been provided with the opportunity to address the City Council on the matter of his appeal; NOW, THEREFORE,

BE IT RESOLVED (Choose one of the two alternatives):

Alternative One: That the order of the hearing officer be upheld and Mr. Newsom's dog be declared a dangerous animal and that it be humanely destroyed.

MOVED BY _____ TO UPHOLD DECLARATION AND TO HUMANELY DESTROY THE ANIMAL.

Alternative Three: That the order of the hearing officer be reversed and Mr. Newsom's dog not be declared dangerous.

MOVED BY _____ TO REVERSE DECLARATION.

FORM APPROVED:
K. Massier
 Katharine Massier
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 City Clerk

EXHIBITS FOR DANGEROUS ANIMAL

“JUSTICE”

- EXHIBIT (A)** **Hearing Officer’s Decision
(City Exhibit – A)
Pages 1-29**

- EXHIBIT (B)** **Appellant Exhibit (1)
Pages 1-3**

- EXHIBIT (C)** **Appeal for Mr. Newsom**

- EXHIBIT (D)** **Letter to Mr. Newson & Attorney
(Setting date for appeal to Council)**

- EXHIBIT (E)** **Administrative Hearing Transcript**



June 8, 2009

Andrew Newsom
1105 Euclid Avenue
Des Moines, IA 50316

Subject: Decision of Hearing Officer
Dangerous Animal

Mr. Newsom:

A hearing was held regarding your dog "Justice".

Attached is the decision of the Hearing Officer. The Hearing Officer has upheld the Chief Humane Officer's decision declaring your dog as dangerous as stated on the attached Decision and Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Rauh". The signature is stylized with a large, sweeping initial "D" and a long horizontal stroke.

Diane Rauh
City Clerk

DR:kh
Attach

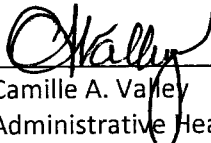
It is unfortunate Mr. Newsom is just now beginning to take the steps necessary for maintaining a "vicious dog," as evidence by the insurance rider he had just purchased on May 28, 2009. However, Mr. Newsom had been forewarned as early as November 2005 that if his dog was ever found within the City of Des Moines not properly licensed and at-large it would be seized and destroyed in a humane manner by the Animal Control Unit with the Des Moines Police Department. At that time he elected to remove his dog from the City rather than license it and comply with the requirements for maintaining a "vicious dog."

By a preponderance of all evidence in the record, the declaration that Mr. Newsom's dog is a "dangerous animal" by the Chief Humane Officer is upheld. Therefore, the Chief Humane Officer is ordered to destroy Mr. Newsom's dog, "Justice," in a humane manner, as provided under section 18-202(b) of the Des Moines Municipal Code. Furthermore, Mr. Newsom is ordered to pay all impoundment and quarantine costs, as provided under section 18-202 of the Des Moines Municipal Code.

Appeal Rights

This order may be appealed to the City Council provided a written appeal is filed with the City Clerk's office within three days after receipt of this order. The written notice of appeal shall state the grounds for the appeal and shall be delivered personally or by certified mail to the City Clerk's office. Failure to file a written notice of appeal in a timely manner shall constitute a waiver of the right to appeal this order to the City Council.

This written ruling is hereby submitted on this 5th day of June, 2009 in Des Moines, Polk County, Iowa. As provided under section 18-202(a) & (b), the City Clerk shall cause this order to be served.



Camille A. Valley
Administrative Hearing Officer

Sec. 18-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police means the legally designated chief of the police department or a designated representative.

Director of public health means the county health center director or a designated representative acting in behalf of the city.

Dog means and includes both male and female animals of the canine species.

Owner means any person owning, keeping or harboring a dog.

Vicious dog means:

- (1) Any dog which has attacked a human being or domestic animal one or more times, without provocation;
- (2) Any dog with a history, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or domestic animals;
- (3) Any dog that snaps, bites, or manifests a disposition to snap or bite;
- (4) Any dog that has been trained for dog fighting, animal fighting or animal baiting or is owned or kept for such purposes;
- (5) Any dog trained to attack human beings, upon command or spontaneously in response to human activities, except dogs owned by and under the control of the police department, a law enforcement agency of the state or of the United States or a branch of the armed forces of the United States;
- (6) Staffordshire terrier breed of dog;
- (7) The American pit bull terrier breed of dog;
- (8) The American Staffordshire terrier breed of dog; or
- (9) Any dog which has the appearance and characteristics of being predominately of the breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier.

(C42, §§ 114-6, 114-9; O.5385, 5506; C54, § 5-19; O.6002; C62, § 5-19; C75, § 7-13; O.9097; C79, § 7-13; O.9828; C85, § 7-13; O.11,095; C91, § 7-13; O.11,914)

Cross references: Definitions generally, § 1-2.

Sec. 18-56. Confinement of vicious dogs.

(a) All vicious dogs shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section. Such pen, kennel or structure must have secure sides and a secure top attached to the sides or, in lieu of a top, walls at least six feet in height and at least six feet taller than any internal structure.

(b) All pens or other structures designed, constructed or used to confine vicious dogs must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom, floor or foundation attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined dog.

(c) All structures erected to house vicious dogs must comply with all city zoning and building regulations. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition. No vicious dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition.

(d) No person shall permit a vicious dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than six feet in length. No person shall permit a vicious dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless both the dog and the leash are under the actual physical control of a person 18 years of age or older.

(e) Such dogs may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(f) Violation of this section is a misdemeanor.

(C85, § 7-27.01; O.11,095, 11,558; C91, § 7-27.01)

Sec. 18-55. Running at large.

- (a) A dog, properly licensed as required by law, shall not be deemed at large if:
- (1) The dog is on the premises of the owner or a person given charge of the dog by the owner and is either:
 - a. Restrained on those premises by an adequate protective fence or by leash, cord, chain or other similar restraint that does not allow a dog to go beyond the owner's real property line; or
 - b. At all times within the actual physical presence of and immediately obedient to the commands of the owner or person given charge of the dog by the owner. At no time shall the dog be more than six feet from such person.
 - (2) The dog is off the premises of the owner and is:
 - a. On a leash, cord, or chain or other similar restraint not more than six feet in length and under the control of a person competent to restrain and control the dog; or
 - b. Properly restrained within a motor vehicle.
 - (3) The dog is properly housed in a veterinary hospital or registered kennel.
 - (4) The owner and the dog are participating in a regularly scheduled competitive or exhibition event sanctioned or sponsored by a nationally recognized organization, local chapter thereof, or other generally recognized local organization.
 - (5) The dog and the owner are actively engaged in a generally recognized dog obedience training program or training for a generally recognized kennel club event, provided:
 - a. The dog is in the actual physical presence of the owner or trainer at all times;
 - b. The owner or trainer is at no time more than 50 feet from the dog;
 - c. The dog is immediately obedient to the commands of the owner or trainer; and
 - d. The owner or trainer has, at all times, on his or her person a leash of sufficient strength to restrain the dog.
- (b) A dog shall be deemed to be at large if it is not properly licensed or if it is not housed, restrained or controlled in one of the methods set forth in subsection (a) of this section.
- (c) Notwithstanding any other section of this article, any dog shall be deemed at large at any time when attacking persons, domestic animals, destroying property, or on a public school ground except when under restraint as set out in subsection (a)(2) of this section. Furthermore, any female dog in heat shall be deemed at large at any time except:
- (1) When housed in a building which is completely enclosed;
 - (2) When housed in a veterinary hospital or registered kennel; or
 - (3) When on the premises of the owner, provided the area on which such dog is located is:
 - a. Completely enclosed in a locked, enclosed fence, pen or other structure having a height of at least six feet; such fence, pen or structure must have secure sides which are imbedded into the ground, if the bottom of the structure is not integrally connected to the structure; or

b. If the fence, pen or structure is less than six feet in height, it must have a secure top in addition to securely imbedded sides as described in subsection (c) (3)a of this section.

Nothing in this subsection, however, shall be construed as prohibiting any owner of a female dog in heat from walking such dog with a leash, cord, chain or other similar restraint not more than six feet in length or from transporting such dog within a motor vehicle.

(d) No owner of any dog shall permit such dog to be at large at any time.

(C42, §§ 114-5, 114-6, 114-9; O.5385, 5506; C54, §§ 5-19, 5-20; O.6002, 6234; C62, §§ 5-19, 5-20; O.7499; C75, § 7-27; O.9098, 9376; C79, C85, § 7-27; O.10,855, 10,867, 10,886, 11,095; C91, § 7-27; O.11,807)

Sec. 18-203. Immediate seizure or destruction of animals.

Any animal found at large which displays dangerous tendencies, or which is an illegal animal, or which has been previously declared vicious or is vicious by breed according to article II, section 18-41 (6), (7), (8), or (9) of this chapter and has bitten without provocation a person or a domestic animal while such vicious dog was not properly confined or leashed may be processed as a dangerous animal under section 18-202 of this article, and the animal may be immediately seized anywhere within the city unless the animal is so dangerous that it cannot safely be apprehended, in which case the chief humane officer, his or her designee, or any police officer is authorized to destroy it immediately.

(C85, § 7-51; O.11,095; C91, § 7-51; O.14,415, 14,462)

