

Ordinance No. 00577

[CITY COUNCIL MEETING MINUTES FEBRUARY 3, 2014](#)

Ordinance No. 577

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating Sections 6.10.005, 6.10.015, 6.10.025, 6.10.027, 6.10.070, amending Sections 6.10.010, 6.10.020, 6.10.030, 6.10.040 and 6.10.050, and repealing Section 6.10.060 of the Lakewood Municipal Code relative to Dangerous Dogs and Potentially Dangerous Dogs.

WHEREAS, in light of recent decisions from the Washington Court of Appeals, specifically, Downey v. Pierce County, 165 Wn. App. 152 (2011), rev. denied, 174 Wn.2d 1016 (2012) and Gorman v. Pierce County, 176 Wn. App. 63 (2013), rev. denied, — Wn.2d — (2014), it is necessary for the City of Lakewood to amend its animal control regulations in view of the holdings of these cases; and

WHEREAS, the City of Lakewood currently has two different tracks for review of determinations of “dangerous dogs,” and “potentially dangerous dogs,” as those terms are defined in RCW 16.08.070, and it is desirable to have the review procedures be identical in order to ensure transparency and avoid confusion; and

WHEREAS the procedures by which owners of dogs which have been identified as “potentially dangerous,” “and “dangerous” are more understandable when the provisions can be found in one place; and

WHEREAS in light of some changes to the animal control regulations used in surrounding jurisdictions, it is appropriate for the City of Lakewood to amend its animal control regulations accordingly

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON DO ORDAIN as follows:

Section 1. A new section 6.10.005 of the Lakewood Municipal Code, titled, “Dangerous Dogs, potentially dangerous dogs,” is created to read as follows:

In compliance with State law, Chapter 16.08 RCW, which is adopted in its entirety by reference, the following provisions apply to the keeping of dangerous and potentially dangerous dogs within the City of Lakewood.

Section 2. Section 6.10.010 of the Lakewood Municipal Code currently titled “Declaration of Dogs as Potentially Dangerous – Procedure” is retitled, “Declaration of Dogs as Dangerous or Potentially Dangerous – Procedure,” and amended to read as follows:

A. ~~The animal control agency shall classify potentially dangerous dogs.~~ The ~~agency~~ City of Lakewood may find and declare an animal dangerous or potentially dangerous if an animal control officer has probable cause to believe that the animal falls within the definitions set forth in RCW 16.08.070(1), ~~as adopted by reference~~. The finding must be based upon:

1. The written complaint of a citizen who is willing to testify that the animal has acted in a manner which causes it to fall within the definition of ~~Section 6.02.010, paragraph C~~ RCW 16.08.070(1) or RCW 16.08.070(2); or
2. Dog bite reports filed with the animal control agency; or
3. Actions of the dog witnessed by any animal control officer or law enforcement officer; or
4. Other substantial evidence.

B. The declaration of ~~potentially dangerous dog~~ shall be in writing and shall be served on the owner in one of the following

methods:

1. Certified mail to the owner's last known address; or
2. Personally; or
3. If the owner cannot be located by one of the first two methods, by publication in a newspaper of general circulation.

C. The declaration shall state at least:

1. The description of the animal.
2. The name and address of the owner of the animal, if known.
3. The whereabouts of the animal if it is not in the custody of the owner.
4. The facts upon which the declaration of dangerous dog or potentially dangerous dog is based.
5. The availability of a hearing in case the person objects to the declaration, if a request is made within ten days.
6. The restrictions placed on the animal as a result of the declaration of dangerous dog or potentially dangerous dog.
7. The penalties for violation of the restrictions, including the possibility of destruction of the animal, and imprisonment or fining of the owner.

~~D. If the owner of the animal wishes to object to the declaration of potentially dangerous dog:~~

- ~~1. The owner may request a hearing before the City Manager or a representative of the animal control agency designated by the City Manager by submitting a written request and payment of a \$25.00 administrative review fee to said City Manager or the City Manager's designee within ten days of receipt of the declaration, or within ten days of the publication of the declaration pursuant to Section 6.10.010, paragraph B.~~
- ~~2. If the City Manager or the City Manager's designee finds that there is insufficient evidence to support the declaration, it shall be rescinded, and the restrictions imposed thereby annulled.~~
- ~~3. If the City Manager or the City Manager's designee finds sufficient evidence to support declaration, the owner may appeal such decision pursuant to and in conformity with the City code requirements for appeals before the City's Hearing Examiner; provided that the appeal and the payment of an appeal fee of \$75.00 must be submitted to the animal control agency within ten (10) working days after the City Manager or the City Manager's designee finds sufficient evidence to support the declaration.~~
- ~~4. An appeal of the Hearing Examiner's decision must be filed in Superior Court within thirty (30) days of the date of the Hearing Examiner's written decision.~~
- ~~5. During the entire appeal process, it shall be unlawful for the owner appealing the declaration of potentially dangerous dogs to allow or permit such dog to:~~
 - ~~a. Be unconfined on the premises of the owner; or~~
 - ~~b. Go beyond the premises of the owner unless such dog is securely leashed and humanely muzzled or otherwise securely restrained.~~

D. Upon the issuance of a declaration, the owner shall be notified in writing that he or she is entitled to an opportunity to meet with the City Manager or designee, 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 or potentially dangerous. The timing, conduct of the meeting and the ensuing issuance of any orders shall conform with RCW 16.08.080(3)

Section 3. A new section 6.10.015 of the Lakewood Municipal Code titled, "Appeal of Declaration of Potentially Dangerous or Dangerous Dog" is created as follows:

- A. The owner of the animal may appeal the declaration of a dangerous dog or potentially dangerous dog by filing an appeal of the declaration to municipal court.
- B. The owner must submit a written notice of appeal within twenty calendar days of service of the declaration. The notice shall be filed with the Clerk of the Municipal Court. No fee shall be required for the filing of the notice of appeal.
- C. At the hearing, the burden shall be on the City to prove, by a preponderance of evidence, that the animal is a "dangerous dog," or a "potentially dangerous dog," as defined in RCW 16.08.070 and that the exclusion contained in RCW 16.08.090(3) does not apply.
- D. During the entire appeal process, it shall be unlawful for the owner appealing the declaration of a dangerous or potentially

dangerous dog to allow or permit such 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. E. In those instances where the animal has been impounded, the owner shall be responsible for the costs of redemption, boarding, and veterinary fees prior to release, excepting in those cases where the animal control authority failed to meet its burden of proof. In lieu of payment of these expenses, the owner may obtain the release of the animal by posting with the City a bond, cash, or alternate security approved by the City or the Municipal Court for such costs which have been incurred and are likely to be incurred pending appeals. If such costs have not been paid and the animal control authority meets its burden of proof, the Municipal Court may enter a monetary judgment for such costs.

Section 4. Section 6.10.020 of the Lakewood Municipal Code, titled, "Permits and Fees" is amended to read as follows:

A. Following a declaration of potentially dangerous dog and the exhaustion of the appeal therefrom, the owner of a potentially dangerous dog shall obtain a permit for such dog from the animal control agency, and shall be required to pay the fee for such permit in the amount of \$250.00. In addition, the owner of a potentially dangerous dog shall pay an annual renewal fee for such permit in the amount of \$50.00\$250.00. Should the owner of a potentially dangerous dog fail to obtain a permit for such dog from the animal control agency or to appeal the declaration of potentially dangerous dog, the animal control agency is authorized to seize and impound such dog and, after notification to the owner, hold the dog for a period of no more than five (5) days before destruction of such dog by the animal control agency.

B. Following a declaration of dangerous dog and the exhaustion of the appeal therefrom, the owner of a dangerous dog shall obtain a permit for such dog from the animal control agency, and shall be required to pay the fee for such permit in the amount of \$500.00. In addition, the owner of a dangerous dog shall pay an annual renewal fee for such permit in the amount of \$500.00

C. Should the owner of a dog subject to the provisions of this Chapter fail to obtain a permit for such dog from the animal control agency or to appeal the declaration of potentially dangerous dog or dangerous dog, the animal control agency is authorized to seize and impound such dog and, after notification to the owner, hold the dog for a period of no more than five (5) days before destruction of such dog by the animal control agency.

Section 5. A new section 6.10.025 of the Lakewood Municipal Code titled, "Owner requirements – Dog declared potentially dangerous" is created as follows:

Following the declaration of a potentially dangerous animal and the exhaustion of the appeal therefrom, the owner of the dog shall be required to:

A. Register the dog with the City of Lakewood and pay the initial registration fee set forth in LMC 6.10.020. The annual registration renewal fee is due on the anniversary date of the initial registration.

B. Keep the dog securely indoors or in a securely enclosed and locked pen or structure suitable to prevent the entry of young children and designed to prevent the dog from escaping. The pen or structure shall have a locking door with a padlock, secure sides, a concrete floor or if the pen or structure has no bottom secured to the sides, then the sides must be embedded in the ground no less than one foot, and a secure top attached to the sides, and shall provide protection for the dog from the elements.

C. Keep the dog muzzled and on a substantial leash not to exceed eight feet in length and under the control of a competent person while off the owner's property. 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.

D. Conspicuously display a sign on the owner's property warning of the presence of a potentially dangerous dog, posted and visible from all streets and public rights-of-way adjacent thereto, clearly stating "Warning, Potentially Dangerous Dog," with letter size not smaller than two and one-half inches in height. In addition, the sign shall conspicuously display a warning symbol that informs children of the presence of a potentially dangerous dog.

E. Implant a microchip in the dog for permanent identification. This information must be on record with the microchip company and the offices of The Humane Society for Tacoma and Pierce County.

Section 6. A new section 6.10.027 of the Lakewood Municipal Code entitled, "Owner Requirements – Dog declared dangerous," is created as follows:

When a dog is declared dangerous by a law enforcement officer or animal control officer, except where inconsistent with this section, the owner of the dog shall be required to abide by the conditions set forth in LMC 6.10.025. The following conditions shall also apply:

A. Possess a surety bond in the sum of at least \$250,000, payable to any person injured by the dog, or possess a liability insurance policy, such as homeowner's insurance, in the amount of at least \$250,000, insuring the owner for any personal injuries inflicted by the dog.

B. Conspicuously display a sign on the owner's property warning of the presence of a dangerous dog, posted and visible from all streets and public rights-of-way adjacent thereto, clearly stating "Warning, Dangerous Dog," with letter size not smaller than two and one-half inches in height. In addition, the sign shall conspicuously display a warning symbol that informs children of the presence of a dangerous dog.

Section 7. Section 6.10.030 of the Lakewood Municipal Code currently titled "Confinement of Potentially Dangerous Dogs," is retitled to read "Confinement of Dogs," and amended to read as follows:

Following a declaration of dangerous dog or potentially dangerous dog and the exhaustion of the appeal therefrom, it shall be unlawful for the person owning or harboring or having care of such ~~potentially dangerous dog~~ to allow and/or permit such dog to:

- A. Be unconfined on the premises of such person; or
- B. Go beyond the premises of such person unless such dog is securely leashed and humanely muzzled or otherwise securely restrained.
- ~~C. Potentially dangerous dogs must be tattooed or have a microchip implanted for permanent identification. This information must be on record at the offices of The Humane Society for Tacoma and Pierce County.~~
- ~~D. The residence or property where a potentially dangerous dog is confined must have a warning sign conspicuously posted and visible from all streets and public rights-of-way adjacent thereto, clearly stating "Warning, Potentially Dangerous Dog," with letter size not smaller than two and one-half inches in height.~~

Section 8. Section 6.10.040 of the Lakewood Municipal Code currently entitled "Notification of Status of Potentially Dangerous Dog" is retitled "Notification of Status of Dangerous Dog or Potentially Dangerous Dog," and amended to read as follows:

The owner of a dog that has been classified as a dangerous dog or potentially dangerous dog shall immediately notify the animal control agency when such dog:

- A. Is loose or unconfined; or
- B. Has bitten or otherwise injured a human being or attached another animal; or
- C. Is sold or given away or dies;
- D. Is moved to another address.
- E. Is removed from the City of Lakewood.

Prior to a dangerous dog or potentially dangerous dog being sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the animal control agency. The owner shall comply with all of the requirements of this Chapter.

Section 9. Section 6.10.050 of the Lakewood Municipal Code titled, "Penalty for Violation," is amended to read as follows:

A. Excepting those circumstances where the provisions of chapter 16.08 RCW provides a different penalty, Any person who violates a provision of this Chapter shall, upon conviction thereof, be found guilty of a misdemeanor. In addition, any person found guilty of violating this Chapter shall pay all expenses, including shelter, food, veterinary expenses for identification or certification of the breed of the animal or boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public, and such other expenses as may be required for the destruction of any such dog. Provided, that any potentially dangerous dog which is in violation of the restrictions contained in Section 6.10.020 of this Code or restrictions imposed as part of a declaration as a potentially dangerous dog, shall be seized and impounded. Furthermore, any potentially dangerous dog which attacks a human being or domestic animal may be ordered destroyed when, in the Court's judgment, such potentially dangerous dog represents a continuing threat of serious harm to human beings or domestic animals.

B. Any dangerous dog or potentially dangerous dog shall be immediately confiscated by an animal control upon the commission of any act identified in RCW 16.08.100(1) or as may otherwise be allowed by law.

C. Any person violating this Chapter shall pay all expenses, including shelter, food, veterinary expenses for identification or certification of the breed of the animal or boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public, and such other expenses as may be required for the destruction of any such dog.

D. Any dangerous dog or potentially dangerous dog which attacks a human being or domestic animal may be ordered destroyed when, in the Court's judgment, such dog represents a continuing threat of serious harm to human beings or domestic animals.

Section 10. A new section 6.10.070 of the Lakewood Municipal Code entitled, "Dog Declared Dangerous or Potentially Dangerous by Another Jurisdiction," is created as follows:

A. Any person desiring to bring a dog to live in the City which has been previously declared to be potentially dangerous, dangerous, vicious, or similar designation in another jurisdiction, under the provisions of chapter 16.08 RCW or comparable local ordinance, must notify the animal control authority prior to moving the dog to the City. The person must provide all information requested by the animal control authority and must comply with all restrictions imposed by the animal control authority. There is no right to bring into the City a dog that has been the subject of a declaration or similar process in another jurisdiction and the animal control authority will determine whether such a dog will be licensed and permitted to reside in the City.

B. Except to the extent inconsistent with this Section, an appeal from the decision of the animal control authority under this Section may be appealed in the manner set forth in LMC 6.10.015. At the hearing, the burden shall be upon the City to demonstrate the validity of the prior declaration or similar process.

Section 11. Section 6.10.060 of the Lakewood Municipal Code is repealed.

Section 12. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance.

Section 13. Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

ADOPTED by the City Council this 3rd day of February, 2014.

CITY OF LAKEWOOD

Don Anderson, Mayor

Attest:

Alice M. Bush, MMC, City Clerk

Approved as to Form:

Heidi A. Wachter City Attorney