

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

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| CATEGORY: Administrative | CODE NUMBER: AC-1-1 |
| TITLE: Animal Control Dangerous Dog Procedure | ADOPTED: 11/29/95 |
| | AMENDED: 08/09/05 |
| | ORIGINATING DEPARTMENT: Animal Services/County Attorney |

PURPOSE/SCOPE:

The Legislature has determined that dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure of owners to control, properly train and confine their dogs. As such, the Legislature granted local governments the authority to establish hearing procedures to classify dogs as dangerous, in conformity with Fla. Stat. § 767.12 which shall serve as the authority for this administrative code.

I. POLICY/PROCEDURE:

As used in this Code, "dangerous dog" mean any dog that, according to the records of Lee County Animal Services:

- (1) has aggressively bitten, attacked, or endangered or has inflicted severe injury [multiple bite wounds or injury needing stitches] on a human being on public or private property; or
- (2) has more than once severely injured or once killed a domestic animal while off the owner's property or while on the owner's property in any area of legal easement; or
- (3) has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or
- (4) has, when unprovoked, chased or approached persons upon the streets, sidewalks, any public grounds, or legal easement in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by Lee County Animal Services.

II. NOTIFICATION OF HEARINGS:

1.) Lee County Animal Services ("Animal Services") shall investigate reported incidents involving any dog that may be dangerous. After conducting the investigation Animal Services shall make an initial determination as to whether there is sufficient cause to classify the dog as dangerous and shall afford the owner an opportunity for a hearing prior to making a final determination.

2.) Upon an initial determination finding a dog dangerous, the Director of Animal Control or designee shall prepare a written notification to the dog owner. The notification shall be sent to the dog owner by either:

- (a) certified mail; or
- (b) hand delivery; or
- (c) personal service by the County Sheriff or other designated special process server;

3.) The notice shall:

- (a) inform the dog owner of the initial sufficient cause finding;

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(b) inform the dog owner that at the owner's request a hearing on the matter will be set no later than 21 days from receipt of the notice.

(c) inform the owner, if the dog is in his/her custody, that it shall not be destroyed prior to any hearing except by Lee County Animal Services upon the written request of the owner of record of the subject animal.

4.) The owner may:

(a) file a written request for a hearing and

(b) the request must be received by Animal Services, within 7 calendar days of the owner's receipt of notice.

5.) The subject dog, if in the custody of:

(a) Animal Services, shall not be released to the owner until the process has been completed and shall not be destroyed prior to any hearing without the written request of the owner of record of the subject animal. The owner or agent of the owner shall be responsible for all boarding costs throughout the holding period at the rate established by Administrative Code regardless of the final determination of the hearing examiner.; or

(b) The owner, shall not be destroyed by the owner prior to any hearing except by Lee County Animal Services upon the written request of the owner of record of the subject animal and the notice shall so inform the owner.

III. HEARING PROCEDURES:

1. There is hereby authorized for the purposes of this code, the use of a hearing officer for the hearings. The hearing shall be conducted before a hearing officer designated by the County Attorney's Office. The hearing officer shall be an attorney-at-law, in good standing and admitted to the practice in the State of Florida and having been in practice for at least five years.

2. The hearing shall be conducted in Lee County facilities.

3. Upon receipt of a timely, written request for hearing, the Director or designee shall schedule a hearing to be held as soon as reasonably practicable for the parties and shall provide the owner of the dog initially classified as dangerous with no less than five (5) calendar days written notice of the time, date and place of the hearing, which shall be held not more than twenty-one (21) calendar days from the date the department receives the owner's request, notwithstanding special circumstances. The notice of the hearing shall be sent to the owner by certified mail return receipt requested or to his/her attorney.

4. Hearing Procedures - each party shall have the following rights:

a) to participate in discovery upon filing a written request for discovery with the other party;

b) to be represented by counsel;

c) to call and examine witnesses;

d) to introduce evidence and exhibits;

e) to cross-examine opposing witnesses on any relevant matter;

f) to impeach any witness;

g) to issue subpoenas

h) to file motions

5. All hearings shall be conducted insofar as is practicable, in accordance with the Florida Rules of Civil Procedure and the Florida Evidence Code. However, the general nature of the hearing shall be conducted in an informal manner but with due process observed. The burden of proof shall be a simple preponderance of evidence.

6. The hearing officer is granted the authority to issue subpoenas to compel the attendance of witnesses at a hearing upon the written request of any party or upon the officer's own motion.

a) A subpoena may be served by any person authorized by law to serve process. Service shall be made as provided by law.

b) Any person subject to a subpoena may, before compliance and on timely petition, request the hearing officer having jurisdiction of the dispute to set aside the subpoena.

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c) A party may seek enforcement of a subpoena issued under the authority of this section by filing a petition for enforcement in the county court. Failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged.

d) If a party willfully fails to testify when duly subpoenaed, the hearing officer may order that the matters regarding which the questions were asked or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; or render a judgment by default against the disobedient party.

7. Witness fees may be paid as provided by law.

8. The hearing officer may receive compensation for such services at an hourly rate to be established by the County Attorney's Office, but not to exceed \$100.00 per hour. The County Attorney's Office shall solicit letters of interest from qualified individuals in the legal community who are willing to serve in such capacity.

IV. EVIDENCE:

1.) In any hearing before the hearing officer, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

2.) Parties may agree to witnesses testifying by telephone where the attendance of witnesses at the hearing would cause substantial hardship on the witness due to physical disability or where the witness is located out of state. Where parties are unable to stipulate or agree to the taking of telephonic testimony, the hearing officer may, in his/her discretion, grant such a motion by the party seeking same.

3.) Documentary evidence may be received in the form of a copy if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

4.) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

5.) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.

6.) The hearing officer shall ensure that a full record of the hearing is preserved, which record shall be public and open to inspection and transcription by any person.

7.) The hearing officer shall make all evidentiary rulings.

V. WRITTEN DETERMINATIONS OF THE HEARING OFFICER:

After due hearing, the hearing officer shall issue a determination based upon a preponderance of the evidence. Animal Services or the County Attorney's Office shall bear the burden of establishing the dangerousness of the dog; and the owner shall bear the burden of establishing any legal defenses to the classification of dangerousness.

All determinations of the hearing officer shall be in writing, signed and dated by the hearing officer, shall contain findings of fact and conclusions of law, and shall be served upon the owner by registered mail, certified hand delivery, or service in conformance with Chapter 48, Florida Statutes.

The hearing officer may take the matter under advisement, but shall notify Animal Control and the owner of such ruling within three (3) calendar days.

VI. NOTICE OF APPEAL:

1. Upon notice to Animal Control by the hearing officer that a dog has been classified as dangerous, Animal Control shall provide written notification to the owner by registered mail, certified hand delivery or service as provided hereinbefore.
2. The notice shall inform the owner that a written appeal of the hearing officer's determination:
 - a. May be filed in County Court within 10 business days of the owner's receipt of the notice of classification.
 - b. The notice of classification shall also inform the owner that the subject dog must follow all rules established for a declared dangerous dog pending a resolution of any appeal filed by the owner.
3. Upon notice to Animal Control by the hearing officer that a dog has not been classified as dangerous, Animal Control may file a written appeal of the hearing officer's determination in County Court within ten business days of the receipt of the notice of determination from the hearing officer.

VII. POST-APPEAL PROCEDURES:

1. Within 14 days after a subject dog has been classified as dangerous by Animal Control and upheld on appeal, the dog owner shall obtain a certificate of registration for the dog from Animal Control upon the receipt of all fees and costs owed to Animal Control and the payment of an annual dangerous dog registration fee. Animal Services shall establish rules for ownership, containment, and movement of dangerous dogs, and provide those rules in writing, as they may be amended from time to time.
2. Certificates of Registration shall be issued only to persons who are at least 18 years of age and who present documentation attesting to:
 - (a) a current certificate of rabies vaccination for the subject dog.
 - (b) a proper enclosure sufficient to confine a dangerous dog, that shall include concrete base with a minimum of eight inches of block above concrete base with secure fencing material that is tied into the base and secured behind the block and the enclosure shall further include a full, secure top and locking access door that must remain locked at all time the dog is inside.
 - (c) warning signs stating "Dangerous Dog" on the property at all entry points to the property.
 - (d) permanent identification of the subject dog by either:
 - (1) electronic implantation; or
 - (2) other permanent means acceptable to Animal Control.
 - (e) proof of sterilization or appointment for sterilization for the animal.
 - (f) payment of a one time \$1500 dangerous dog initial registration fee, with the acknowledgement of additional annual registration fees of \$500 per year.

VIII. OWNERSHIP REQUIREMENTS:

1. The owner of a dangerous dog, shall immediately notify the proper animal control authority when such dog:
 - a. Is loose or unconfined.
 - b. Has bitten a human being or attacked another animal.
 - c. Is sold, given away, or dies.
 - e. Is moved to another address.
2. The owner or keeper of a dangerous animal shall report in writing the name and address of the new owner or keeper to the Director of Animal Control prior to transfer of ownership or custody of such animal, and it shall be violation of this ordinance not to report the name and address of the new owner.
3. The owner or keeper of a dangerous animal shall report in writing or by telephone the death of such animal to the Director of Animal Control immediately, and it is a violation of this ordinance not to do so. The death of such animal shall be verified by a licensed veterinarian or an Animal Control Officer.
2. The owner shall notify Animal Control of the name, address and telephone number of any new owner if the dog is sold or given away.

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3. Criminal penalties pursuant to section Fla. Stat. § 767.12(7) shall apply to all violations of this Administrative Code.

4. Any violation of the requirements of a dog that has been declared dangerous, or any other violation of the animal control ordinance related to a declared dangerous dog, shall result in the confiscation of the dog for euthanasia in accordance with Florida Statutes (§767.13). The owner of the dangerous dog must surrender the animal, but may request a hearing within 10 days.