

ANIMAL CONTROL BOARD

MEETING APRIL 29, 2010

CALL TO ORDER 6:15 PM

ROLL CALL: Present: Diana Kay Bachmann, David Klein, Douglas Ruebke, Dennis Ulvestad

Absent: Solomon Neuhardt, Sandy Weiss

Minutes from the March 30, 2010 meeting were presented and approved.

Motion to approve: Diana Kay Bachmann

Seconded by: Dennis Ulvestad

All in favor.

Public Comment:

No public comment

New Business

None

Old Business

Discussion began with Section of Ordinance for Small Animal Permit:

The Board again discussed the option of placing per dwelling unit as apposed to owner as is currently in the Ordinance.

Definition of dwelling unit to include an addressed unit or physical address recognized by the City of Billings.

A comparison of the proposed changes for Yellowstone County Animal law to changes currently being considered for the City of Billings Animal Ordinance was the next discussion. All Board Members present felt that the City Ordinance changes were what they would like to propose to Council.

Concerns about the enforceability of the Small Animal at Large requirement of spay/neuter for a second violation with a Municipal Infraction rather than a Criminal Violation was brought forward. Animal Control Supervisor, David Klein, stated that he would forward the question to legal.

Previous discussions about including dogs acting aggressively by barking and growling behind a fence yet by doing so possibly scaring a reaction from a passerby causing them to run into a roadway or possible injury in their attempt to flee

Section with proposed changes included:

Small animal permit: means a permit that allows the premises/dwelling unit to be inspected and approved by the animal control officer, or by the health department, at a prearranged appointment established with the owner/dwelling unit occupant.

Sec. 4-402. Small animal permits.

- (a) A small animal permit is required of every owner(s) of four (4) or more dogs and/or cats per dwelling unit as defined in section 4-401. A small animal permit is required in addition to individual registrations as referenced in 4-431.
- (b) Every person(s), dwelling unit, firm or corporation granted a permit under this section shall be subject to regulation and inspection by the animal control officer or the health department. Any small animal permit granted hereunder may be revoked and cancelled by the city upon giving notice as provided in notice and appeal procedure as set forth in subsection 4-402(d).
- (c) Exclusions:
 - (1) No registration fees or small animal permits shall be required of any veterinary hospital, government animal shelter, or zoological park.
 - (2) A recognized tax exempt humane society, organization, or animal welfare society must comply with all requirements of the holder of a small animal permit, but the small animal permit fee shall be waived. No registration fees shall be required of dogs/cats waiting for adoption, but rabies vaccinations shall be required of animals over three (3) months of age held over thirty (30) days.
- (d) The city administrator shall revoke a small animal permit as follows:
 - (1) A small animal permit shall be revoked upon refusal to allow inspection, or for three (3) convicted violations of animal ordinances in a twenty-four (24) month period; or for use of shelter facilities to dispose of, or to find homes for surplus puppies and breeding stock; or any other violation of the provisions of this article.
 - (2) The city administrator shall give notice to the permittee of any revocation. The notice shall be in writing, shall specify the deficiencies or violations, advise the violator of the right to appeal, and shall be mailed by certified mail, return receipt requested or personally served. The violation shall have ten (10) days to appeal the revocation to the city council. The appeal shall be filed in writing with the city clerk. The city administrator shall cause the matter to be placed on the first available agenda. The appellant shall be notified by certified mail or personally served with notice of the date of the council meeting at least three (3) days prior to the hearing. The matter shall be considered by the council after the appellant has had an opportunity to be heard in person or by council at the regular council meeting in which the matter appears on the agenda. (Code 1967, §§ 8.08.020, 8.08.025; Ord. No. 85-4616, 1-7-85; Ord. No. 85-4676, § 2, 12-23-85; Ord. No. 03-5259, § 4, 10-27-03; Ord. No. 05-5351, § 2, 12-12-05)

Discussion then moved to the Aggressive, Potentially Dangerous, and Dangerous Sections of the Ordinance:

Board discussed and agreed to delete Aggressive Behavior from the proposed Ordinance changes that had been considered at previous meetings.

AGGRESSIVE BEHAVIOR

MEANS: any animal that in the absence of intentional provocation

(1) While off the owner's property, chases or approaches a person in a menacing fashion or apparent attitude of attack

See: 4-405.2 Aggressive behavior.

a) Any person who keeps, feeds, harbors or allows to stay about the premises occupied or controlled by him within the city any animals exhibiting aggressive behavior is guilty of maintaining a public nuisance and is guilty of misdemeanor. An animal is presumed to have exhibited aggressive behavior if it demonstrated any of the behavior set forth in section 4-401. (definition above) Such presumption is rebuttable.

Discussion of the Animal Control Board pertaining to the Potentially Dangerous Animal Section involved including dogs on their own property that may be behind a fence yet run up to the fence barking and snarling surprising a passerby and frightening them into a defensive action that might result in their running into traffic or because of a previous health issue cause a heart attack. It was decided by all, that these situations should be considered potentially dangerous. With the addition of line four (below) in the Potentially Dangerous Definition it was the hope of the Animal Control Board that something could be done to prevent such incidents.

POTENTIALLY DANGEROUS ANIMAL

MEANS: any animal that in the absence of intentional provocation

(1) While off the owner's property, chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal; or

(2) While on the owner's property causes bodily injury to a person; or

(3) While off the owner's property kills a domestic animal, excluding birds, rodents and reptiles.

(4) While on or off the owner's property displays behavior that may reasonably be assumed to pose a threat to public safety.

(5) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

Sec: 4-405 Potentially dangerous behavior.

- a) Any person who keeps, feeds, harbors or allows to stay about the premises occupied or controlled by him within the city any animals exhibiting potentially dangerous behavior is guilty of maintaining a public nuisance and is guilty of misdemeanor. An animal is presumed to have exhibited potentially dangerous behavior if it demonstrated any of the behavior set forth in section 4-401. (definition above) Such presumption is rebuttable.
- b) The owner or keeper convicted of having a potentially dangerous animal shall forthwith register the animal as such with the animal control division. The owner of the potentially dangerous animal must comply with and must show the animal control division sufficient evidence that the following requirements are met within thirty (30) days following registration:

 - (1) A securely enclosed structure be provided by the owner suitable to prevent unauthorized entry and designed to prevent the animal from escaping. The enclosure must also provide protection from the elements for the animal.
 - (2) The owner or keeper shall display a sign on his or her premises warning that there is a potentially dangerous animal on the property. These signs shall be visible and capable of being read from the public roadway and from any normal means of entry to the premises. In addition, the owner or keeper shall conspicuously display a sign with a warning symbol that will inform children of the presence of a potentially dangerous animal.
 - (3) The owner or keeper shall have the animal spayed or neutered if the animal has not been spayed or neutered prior.
- (c) The owner or keeper of an animal convicted of having a potentially dangerous animal shall notify the animal control division within twenty-four (24) hours of a change of address, or death of the animal. Immediate notification will be required if the animal is loose.
- (d) The owner or keeper of an animal convicted of having a potentially dangerous animal shall not sell, transfer or give away the animal, other than to the Animal Shelter for disposal.
- (e) The animal control officer is empowered to make whatever inquiry is deemed necessary to ensure compliance with the above provisions. Should it be found that the owner or keeper is in noncompliance

with these provisions, the animal shall be immediately confiscated, impounded, and destroyed.

DANGEROUS ANIMAL

Means: any animal that in the absence of intentional provocation:

- (1) Inflicts serious bodily injury to a person on public or private property; or
- (2) Is involved in a continuous sustained attack upon a person, not allowing the victim any means of escape, regardless of the extent of injury or defensive action required; or
- (3) Is previously found to be potentially dangerous and while on or off the owner's property chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or small animal;
- (4) Inflicts injury to a person on public or private property, which injury results in the death of the person.
- (5) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

- (a) *After receiving an affidavit of complaint and upon making a decision that seizure is a reasonable precaution to insure the health and safety of people and/or animals nearby, the Animal Control Officer may order the immediate seizure and impoundment of the animal. A search warrant shall be obtained from Municipal Court to enter onto private property to search for an animal which is allegedly dangerous or has been previously determined to be dangerous, if permission to enter the subject premises is denied by a person in lawful possession. If the animal cannot be safely approached, a tranquilizer projector may be used by Department personnel. The cost of securing said animal(s), pending the determination of dangerous, shall be borne by the owner. The animal(s) involved may be confined at the animal care facility or other location designated by the Animal Control Officer until the dangerous animal final determination in Court. If an animal is determined to be dangerous, it will remain in confinement as directed by the Animal Control Supervisor or his/her designee. An animal that has been determined to be dangerous cannot be returned to the owner until the owner is able to demonstrate his ability to comply with all the requirements for a dangerous animal as defined in Section 4-405.5.*
- (b) *The owner of an animal impounded must pay the costs of care for the animal while it is in the custody of the Department prior to the release of the animal to the owner. Reasonable expenses for this care include, but are not limited to the cost of housing, feeding, emergency veterinary medical care, immunization and routine veterinary medical care for the animal.*

(c) If an animal is held in impoundment by the Department for more than thirty (30) days, the owner of the animal must pay the actual costs accrued for the first thirty (30) days of impoundment, and every thirty (30) days thereafter until the matter for holding the animal has been finalized. The Department will mail a notice and statement of costs to the owner of the animal at the address on file with the Department. All costs must be paid within a maximum of three (3) business days following the receipt of the notice and statement. If the costs have not been paid within the allotted three (3) business days, this will be considered a voluntary relinquishment of the animal by the owner and the animal shall immediately become the property of the City.

Sec. 4-405.5. Dangerous behavior.

- (A)** Any person who keeps, feeds, harbors or allows to stay about the premises occupied or controlled by him within the city any animal exhibiting dangerous behavior is guilty of maintaining a public nuisance and is guilty of a misdemeanor. An animal is presumed to have exhibited dangerous behavior if it demonstrated any of the behavior set forth in section 4-401. Such presumption is rebuttable. Upon conviction of maintaining a public nuisance with a particular dangerous animal, said animal may be ordered by the court to be destroyed by the animal control officer. An animal involved in a fatal attack on a person will be impounded and destroyed by the animal control officer.
- (B)** The owner or keeper convicted of having a dangerous animal shall forthwith register the animal as such with the animal control division. The owner of the dangerous animal must comply with and must show the animal control division sufficient evidence that the following requirements are met within thirty (30) days following registration:
 - (1)** A securely enclosed structure is provided by the owner suitable to prevent unauthorized entry and designed to prevent the animal from escaping. The enclosure must also provide protection from the elements for the animal.
 - (2)** The owner or keeper shall display a sign on his or her premises warning that there is a dangerous animal on the property. These signs shall be visible and capable of being read from the public roadway and from any normal means of entry to the premises. In addition, the owner or keeper shall conspicuously display a sign with a warning symbol that will inform children of the presence of a dangerous animal.
 - (3)** The owner or keeper of a dangerous animal shall present proof of procurement of liability insurance in the amount of at least

one hundred thousand dollars (\$100,000.00), covering the twelve-month period during which registration is sought. This policy shall contain a provision requiring the City of Billings to be named as an additional insured and requiring that the City of Billings to be notified by the insurance company at least ten 10 days in advance of any cancellation termination or expiration of the policy.

- (4) The owner or keeper shall, at his or her own expense, have the dangerous animal registration number provided by the animal control division tattooed upon the inner side of the right ear *or have a microchip implanted* by a licensed veterinarian *for identification purposes.*
- (5) *The owner or keeper shall have the animal spayed or neutered if the animal has not been spayed or neutered prior.*

(C) The owner or keeper of an animal convicted of having a dangerous animal shall notify the animal control division within twenty-four (24) hours of a change of address, or death of the animal. Immediate notification will be required if the animal is loose.

(D) The owner or keeper of an animal convicted of having a dangerous animal shall not sell, transfer or give away the animal, other than to the Animal Shelter for disposal.

(E) The animal control officer is empowered to make whatever inquiry is deemed necessary to ensure compliance with the above provisions. Should it be found that the owner or keeper is in noncompliance with the provisions, the animal shall be immediately confiscated, impounded, and destroyed.

(F) *The dangerous animal shall at all times wear a collar approved by the City visible at fifty (50) feet so that the animal can be identified as a dangerous animal. The dangerous animal, when taken outside the enclosure, must be securely muzzled in a manner that will not cause injury to the animal nor interfere with its vision or respiration, but shall prevent it from biting any person or animal; and the dangerous animal must be restrained by a chain or cable six (6) feet in length.*

(Ord. No. 90-4829, § 6, 5-7-90)

Sec. 4-405.6. Justifiable use of force.

While on the owner's property or off the owner's property and under the owner's control, an animal is justified in using the force or threat to use force necessary: to defend himself or a person; to prevent or terminate a person's unlawful entry into or attack upon his owner's property; or to prevent or terminate a person's trespass on or other criminal interference with his owner's property. A defense of justifiable use of force is an affirmative defense to sections 4-405 and 4-405.5.

(Ord. No. 90-4829, § 7, 5-7-90)

Sec. 4-405.7. Fee for registration of potentially dangerous or dangerous animal.

Any person required to register a potentially dangerous or dangerous animal as set forth in sections 4-405 or 4-405.5 shall pay a registration fee in an amount set by council resolution. Said **dangerous animal registration fee is in addition to all other fees. Registration shall be required within seven (7) days following conviction and renewed annually from month of purchase for the life of the animal. Animal Control Officers shall perform annual inspections of the area where animals are to be kept to insure compliance with all requirements.**

Next meeting was not set however discussion was to not meet in May, prepare changes in the Ordinances that have been discussed, and meet again in June hopefully coming to an agreement and finalization of the Ordinance changes to be present to Council.

Meeting was adjourned 7:45pm