



## Legislation Text

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Ordinance to Amend and Re-Enact Chapter 5 of the City Code of the City of Hampton, Virginia Entitled "Animals" by Amending Article III, Section 5-42. - Dangerous Dogs; Penalties

### **Background Statement:**

All of the proposed, substantive amendments to Section 5-42 of the City Code of the City of Hampton, Virginia would bring the Code into alignment with changes to state code. The remaining, non-substantive amendments are solely included to improve organization and readability of this Section, for the particular benefit of Hampton Animal Response Team officers, citizens and the judges.

### **Recommendations:**

Staff and the Animal Control Advisory Committee recommend approval.

**BE IT ORDAINED** by the City Council of the City of Hampton, Virginia, that Chapter 5, Sec. 5-42 of the City Code of the City of Hampton, Virginia be amended and re-enacted to read as follows:

### **Sec. 5-42. - Dangerous dogs; penalties.**

(a) As used in this section Dangerous dog means:

(1) A canine or hybrid canine as defined in section 5-106 that has bitten, attacked, or inflicted injury on a companion animal that is a dog or cat or killed a companion animal that is a dog or cat. A canine or hybrid canine is not a dangerous dog if, upon investigation, a law-enforcement officer or animal control officer finds that (i) no serious physical injury has occurred as a result of the attack or bite; (ii) both animals are owned by the same person; or (iii) such attack originated on the property of the attacking or biting dog's owner. Serious physical injury includes a serious impairment of health or bodily function that requires significant medical attention, a serious disfigurement, any injury that has a reasonable potential to cause death, or any injury other than a sprain or strain.

(2) A canine or hybrid canine as defined in section 5-106 that has bitten, attacked, or inflicted injury on a person, including laceration, broken bone, or substantial puncture of skin by teeth. A canine or hybrid canine is not a dangerous dog if, upon investigation, a law-enforcement officer or animal control officer finds that the injury inflicted by the canine or hybrid canine upon a person consists solely of a single nip or bite resulting only in a scratch, abrasion, or other minor injury.

(b) No dog or hybrid canine shall be found to be a dangerous dog:

(1) As a result of biting, attacking, or inflicting serious injury on a dog or cat while engaged with its owner as part of lawful hunting or participating in an organized, lawful dog handling event;

(2) If the court determines, based on the totality of the evidence before it, or for other good cause, that the dog is not dangerous or a threat to the community;

- (3) Solely because it is a particular breed, nor is the ownership of a particular breed prohibited;
- (4) If the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner; or (3) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times;
- (5) If the animal is a police dog that was engaged in the performance of its duties as such at the time of the acts complained of; or
- (6) If the animal, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's property.

(c) Any law-enforcement officer or animal control officer who (i) has reason to believe that a canine or hybrid canine is a dangerous dog and (2) is located in the jurisdiction where the animal resides or in the jurisdiction where the act was committed may apply to a magistrate for the issuance of a summons requiring the owner, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue.

(d) If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact a local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous.

(e) Any law-enforcement officer or animal control officer who applies for a summons pursuant to subsection (c) shall provide the owner with written notice of such application.

(f) The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner can confine the animal in a manner that protects the public safety, he may permit the owner to confine the animal until such time as evidence shall be heard and a verdict rendered. The owner shall not dispose of the animal other than by surrender to the animal control officer or by euthanasia by a licensed veterinarian until the case has been adjudicated. Should the owner elect to euthanize the animal that is the subject of the dangerous dog investigation, the owner shall provide documentation of such euthanasia to the animal control officer. The court, through its contempt powers, may compel the owner to produce the animal and to provide documentation that the animal has been, or will be within three business days, implanted with electronic identification registered to the owner. The owner shall provide the registration information to the animal control officer.

(g) Unless good cause is determined by the court, the evidentiary hearing pursuant to the dangerous dog summons shall be held not more than thirty (30) days from the issuance of the summons.

(h) If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. The court may order the owner to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. Such restitution order shall not preclude the injured person from pursuing civil remedies, including damages that accrue after the original finding that the animal is a dangerous dog. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time as the animal is disposed of or returned to the owner.

(i) If, after hearing the evidence, the court decides to defer further proceedings without entering an adjudication that the animal is a dangerous dog, it may do so, notwithstanding any other provision of this section. A court that defers further proceedings shall place specific conditions upon the owner of the dog, including the requirement that the owner provide documentation that the dog has been, or will be within three business days, implanted with electronic identification registered to the owner. The registration information shall be provided to the animal control officer. If the owner violates any of the conditions, the court may enter an adjudication that the animal is a dangerous dog and proceed as otherwise provided in this section. Upon fulfillment of the conditions, the court shall dismiss the proceedings against the animal and the owner without an adjudication that the animal is a dangerous dog.

(j) The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia. The burden of proof shall be beyond a reasonable doubt. Unless good cause is determined by the court, the appeal of a dangerous dog finding shall be heard within 30 days from the date of appeal.

(k) If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

(l) The owner of any animal found to be a dangerous dog shall, within thirty (30) days of such finding, obtain a dangerous dog registration certificate from the local animal control officer for a fee of \$150.00, in addition to other fees that may be authorized by law. The local animal control officer or treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. By January 31 of each year, until such time as the dangerous dog is deceased, the owner shall annually renew all certificates obtained pursuant to this subsection for a fee of \$85.00 and in the same manner as the initial certificate was obtained. However, if the dangerous dog adjudication occurred within 60 days of the end of the calendar year, the first renewal shall be included in the initial registration at no additional charge to the owner. Prior to the renewal date of a dangerous dog registration each year, a local animal control officer shall conduct an inspection of the dangerous dog and the premises on which it is kept, and no certificates of renewal shall be issued without such inspection. The animal control officer shall post registration information on the Virginia Dangerous Dog Registry.

(m) All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen (18) years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable; (ii) that the animal has been neutered or spayed; (iii) that the residence where the animal is housed is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property, which signs shall remain posted at all points of entry to the home and yard as long as the animal remains on the property; (iv) that the animal has been permanently identified by means of electronic identification implantation registered to the owner, which registration information shall be provided to the animal control officer; and (v) that the owner has liability insurance coverage, to the value of at least \$100,000, that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least \$100,000. The owner shall maintain the liability insurance coverage or bond in surety so long as the individual owns the dog and the owner shall submit a certificate of insurance or evidence of such bond to the animal control officer on an

annual basis.

(n) Any owner of an animal found to be a dangerous dog shall confine the animal indoors, or, if the animal is kept outdoors and is not within the immediate physical presence of its owner, the owner shall, within thirty days of the finding that the animal is a dangerous dog, cause to be constructed a secure, locked enclosure of sufficient height and design to prevent escape by the animal or entry by or direct physical contact with any person or other animal. While so confined within the structure, the animal shall be provided for according to § 3.2-6503 of the Code of Virginia. When the animal is outdoors and not confined inside a locked enclosure as described above, the owner of the animal shall ensure the animal is controlled by a physical leash employed by the responsible adult owner and shall also ensure the animal is securely muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(o) The owner of an animal found to be a dangerous dog shall cause the local animal control officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) any change in the manner of locating the owner and the dog at any time; (iii) any transfer of ownership of the dog to a new owner, including the name and address of the new owner; (iv) any instance in which the animal is loose or unconfined; (v) any complaints or incidents of attack or bite by the dog upon any person or cat or dog; (v) any claims made or lawsuits brought as a result of any attack; and (vi) the escape, loss, or death of the dog.

Unless for good cause shown, the owner of a dangerous dog shall notify the animal control officer at least 10 days prior to moving or relocating the animal and the officer shall update the dangerous dog registry accordingly.

(p) Any contract or agreement for the use of real property, including a recorded restrictive covenant, condominium instrument of a condominium created pursuant to the Virginia Condominium Act, declaration of a common interest community as defined by Virginia Code, or cooperative instrument of a cooperative created pursuant to the Virginia Real Estate Cooperative Act, may prohibit the keeping of a dangerous dog or otherwise impose conditions that are more restrictive than those provided herein.

(q) Any owner of a canine or hybrid canine is guilty of a:

(1) Class 2 misdemeanor if the canine or hybrid canine was previously declared a dangerous dog pursuant to this section, such declaration arose out of a separate and distinct incident, and the animal attacks and injures or kills a cat or dog that is a companion animal belonging to another person;

(2) Class 1 misdemeanor if the canine or hybrid canine was previously declared a dangerous dog pursuant to this section, such declaration arose out of a separate and distinct incident, and the animal bites a human being or attacks a human being causing bodily injury.

The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

The Court may determine that a person convicted under this section shall be prohibited from owning, possessing, or residing on the same property with a dog.

(r) The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section shall be guilty of a Class 1 misdemeanor. The court may determine that a person convicted under this subsection shall be prohibited from owning, possessing, or residing on the same property with a dog.

Whenever an owner of an animal found to be a dangerous dog is charged with a violation of this section, the animal control officer shall confine the dangerous dog until such time as evidence shall be heard and a verdict rendered. Unless good cause is determined by the court, such evidentiary hearing shall be held within 30 days of the issuance of the summons. The court, through its contempt powers, may compel the owner of the animal to produce the animal.

Upon conviction, the court may (i) order the dangerous dog to be disposed of by the city pursuant to § 3.2-6562 of the Code of Virginia or (ii) grant the owner up to thirty (30) days to comply with the requirements of this section, during which time the dangerous dog shall remain in the custody of the animal control officer until compliance has been verified. If the owner fails to achieve compliance within the time specified by the court, the court shall order the dangerous dog to be disposed of by the city pursuant to § 3.2-6562 of the Code of Virginia. The court in its discretion, may order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time that the animal is disposed of or returned to the owner.

(s) All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, and the fees due to the State Veterinarian for maintenance of the Virginia Dangerous Dog Registry, shall be paid into a special dedicated fund in the treasury of the city for the purpose of paying the expenses of any training course required under Virginia Code § 3.2-6556.

(t) This section is enacted pursuant to Virginia Code § 3.2-6540, § 3.2-6540.01, § 3.2-6540.03, § 3.2-6540.04, § 3.2-6541.1, and § 3.2-6542.1.

State Law reference- Dangerous or vicious dogs, Code of Virginia, § 3.2-6540, § 3.2-6540.01, § 3.2-6540.03, § 3.2-6540.04, § 3.2-6541.1, and § 3.2-6542.1.