



Legislation Text

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Ordinance To Amend and Reenact the City Code of the City of Hampton, Virginia by Amending Chapter 5 Entitled Animals - Article III, Dogs and Cats Generally, Section 5-42, Dangerous dogs; penalties, and Article V, Animal Welfare, Section 5-87, Impoundment of threatened, neglected, etc., animals; and Repealing and Reenacting Article V, Animal Welfare, Section 5-88, Procedure after impoundment under Section 5-87, to conform with the Code of Virginia

PURPOSE/BACKGROUND:

The amendment to Section 5-42 is a housekeeping amendment to bring City Code into compliance with Virginia Code due to statutory changes made by the 2017 General Assembly to enabling legislation relating to dangerous dogs. The amendment is necessary to remain compliant with state code.

The amendment and repeal and reenactment of the City ordinances relating to impoundment of animals brings these sections into alignment with current state code and addresses questions by the courts regarding specific language found in City's impoundment code sections. Animal Control has been proceeding with impoundment petitions under the state code while there remains uncertainty around the enforceability of the city code. By aligning the ordinances to the state code, any questions about enforceability will be resolved.

Discussion:

Approval of this amendment will ensure that Hampton's dangerous dog and impoundment ordinances comply with the provisions of the Code of Virginia.

Impact:

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Recommendation:

Approve ordinance.

BE IT ORDAINED by the City Council of the City of Hampton, Virginia that Sections 5-42 and 5-87 of Chapter 5 of the City Code of the City of Hampton, Virginia be amended to read as follows and that Section 5-88 of Chapter 5 of the City Code of Hampton, Virginia be repealed and reenacted as follows:

Chapter 5 - ANIMALS

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Article III. - DOGS AND CATS GENERALLY

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

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

1. A canine or canine crossbreed 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 canine crossbreed is not a dangerous dog if, upon investigation, a law-enforcement officer or animal control officer finds that (i) no serious physical injury, as determined by a licensed veterinarian, has occurred to the dog or cat as a result of the attack or bite; (ii) both animals are owned by the same person; or (iii) such attack occurred on the property of the attacking or biting dog's owner or custodian; or

2. A canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person. A canine or canine crossbreed 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 canine crossbreed upon a person consists solely of a single nip or bite resulting only in a scratch, abrasion, or other minor injury.

(b) No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event. No dog shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, that the dog is not dangerous or a threat to the community.

(c) Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog may apply to a magistrate serving the jurisdiction for the issuance of a summons requiring the owner or custodian, 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. 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. 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 or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. 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 upon finding the animal to be a dangerous dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. 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. 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.

(d) No canine or canine crossbreed shall be found to be a dangerous dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited.

(e) No animal shall be found to be a dangerous dog 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 or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog. No 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, shall be found to be a dangerous dog.

(f) 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.

(g) The owner of any animal found to be a dangerous dog shall, within 30 days of such finding, obtain a dangerous dog registration certificate from the local animal control officer for a fee of \$150, 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, all certificates obtained pursuant to this subsection shall be renewed annually for a fee of \$85 and in the same manner as the initial certificate was obtained. The animal control officer shall post registration information on the Virginia Dangerous Dog Registry.

(h) All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 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; and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (a) their residence 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 and (b) the animal has been permanently identified by means of electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence 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.

(i) While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. While so confined within the structure, the animal shall be provided for according to § 3.2-6503 of the Code of Virginia. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and

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.

(j) 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) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) chip identification information; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

(k) After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal (i) is loose or unconfined; (ii) bites a person or attacks another animal; or (iii) is sold, is given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.

(l) Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

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

3. Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.

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.

(m) 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.

Whenever an owner or custodian 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. The court, through its contempt powers, may compel the owner, custodian, or harbinger 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 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.

(n) 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.

(o) This section is enacted pursuant to Virginia Code § 3.2-6540(O).

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Article V. - ANIMAL WELFARE

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Sec. 5-87. - Impoundment of threatened, neglected, etc., animal.

When a humane investigator, any law-enforcement officer, an animal control officer or a licensed veterinarian finds that an apparent violation of this article has rendered an animal in such condition as to constitute a direct and immediate threat to its life, safety or health, which the owner or custodian has failed or refuses to remedy, such approved humane officer, law-enforcement officer, animal control officer or licensed veterinarian may take charge of and impound the animal in a facility which will provide the elements of good care set forth in section 5-79 and shall then proceed to take such steps as are required to dispose of the animal pursuant to section 5-88.

State law references: Impoundment; expenses; lien; disposition of animal, Code of Virginia § 3.2-6565.

Sec. 5-88. - Procedure after impoundment under section 5-87.

(a) Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health. The seizure or impoundment of an equine resulting from a violation of clause (iii) of subsection (a) or clause (ii) of subsection (c) of section 5-77 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore horses as required by 9 C.F.R. Part 11.7.

(b) Before seizing or impounding any agricultural animal, the humane investigator, law-enforcement officer or animal control officer shall contact the State Veterinarian or State Veterinarian's representative, who shall recommend to the person the most appropriate action for effecting the seizure and impoundment. The humane investigator, law-enforcement officer or animal control officer shall notify the owner of the agricultural animal and the local attorney for the locality of the recommendation. The humane investigator, law-enforcement officer or animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

1. The owner or tenant of the land where the agricultural animal is located gives written permission;
2. A general district court so orders; or
3. The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained.

If there is a direct and immediate threat to an agricultural animal, the humane investigator, law-enforcement officer or animal control officer may seize the animal, in which case the humane investigator, law-enforcement officer or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the location of impoundment, and any other information required by the State Veterinarian.

(c) Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or animal control officer shall petition the general district court for a hearing. The hearing shall be not more than 10 business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.

(d) The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If such person or the custodian is not known, the humane investigator, law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the hearing at the place provided for public notices at the city hall or courthouse wherein such hearing shall be held.

(e) 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 City shall be required to prove its case beyond a reasonable doubt.

(f) The humane investigator, law-enforcement officer, or animal control officer shall provide for such animal until the court has concluded the hearing.

If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the court determines that the animal has been (i) abandoned or cruelly treated, (ii) deprived of adequate care, as that term is defined in section 5-2 or (iii) raised as a dog that has been, is, or is intended to be used in dogfighting in violation of section 3.2-6571 of the Code of Virginia, then the court shall order that the animal may be:

1. sold by a local governing body, if not a companion animal;
2. disposed of by a local governing body pursuant to subsection D of section 3.2-6546 of the Code of Virginia, whether such animal is a companion animal or an agricultural animal; or
3. delivered to the person with a right of property in the animal as provided in subsection (g).

(g) In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care. The court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

(h) The court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section, to the provider of

such care.

(i) The court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of companion animals, the court may take into consideration the owner's past record of convictions under this chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

(j) If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as evidenced by previous convictions of violating sections 3.2-6504 or 3.2-6570 of the Code of Virginia, or section 5-77 of this code. In making a determination to prohibit the possession or ownership of agricultural animals, the court may take into consideration the owner's mental and physical condition.

(k) Any person who is prohibited from owning or possessing animals pursuant to subsection (i) or (j) may petition the court to repeal the prohibition after two years have elapsed from the date of entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.

(l) When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the Literary Fund.

(m) Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement officer, animal control officer, or licensed veterinarian.

State law references: Seizure and impoundment of animals; notice and hearing; disposition of animal; disposition of proceeds upon sale, Code of Virginia § 3.2-6569.
