

ORDINANCE 2015 –18

**AN ORDINANCE OF THE BOROUGH OF BAY HEAD,
COUNTY OF OCEAN, STATE OF NEW JERSEY,
AMENDING AND SUPPLEMENTING THE MUNICIPAL
CODE OF THE BOROUGH OF BAY HEAD, SO AS TO
AMEND CHAPTER 69-9, ENTITLED "VICIOUS AND
POTENTIALLY DANGEROUS DOGS."**

In accordance with the provisions set forth in the New Jersey Vicious and Potentially Dangerous Dog Act, the Borough of Bay Head has determined that it is necessary to clarify the definition of a "vicious dog" so as to avoid any ambiguity in the event such a situation arises.

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Bay Head, County of Ocean, and State of New Jersey, as follows:

SECTION 1. The Municipal Code of the Borough of Bay Head is hereby amended and supplemented so as to amend § 69-9, entitled "Vicious and Potentially Dangerous Dogs," so as to read in its entirety as follows:

§ 69-9 Vicious and Potentially Dangerous Dogs

A. Definitions and Word Usage

For the purpose of this article, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this article clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

As used in this article, the following terms shall have the meanings indicated:

ANIMAL CONTROL OFFICER

The individual who serves as a Certified Municipal Animal Control Officer or, in the absence of such an officer, the chief law enforcement officer of the municipality, or his or her designee. The Police Department, in conjunction with the Animal Control Officer, shall be responsible for enforcement of all provisions in this Chapter and shall have the power and the authority to issue summonses for violations thereof and to take such actions as proscribed hereunder to enforce the provisions hereof.

BODILY INJURY

Physical pain, illness, or any impairment of physical conditions.

DOG

Any member of the species generally referred to as "Canis Familiaris" in whole or in part.

DOMESTIC ANIMAL

Any animal kept as a pet, except those animals explicitly disallowed by ordinance, that provides companionship or amusement (excluding disability assistance animals) to its owner.

OWNER

When applied to the proprietorship of a dog, shall include every person having a right of property in such dog and every person who has such dog in his or her keeping.

PET

A domesticated animal (other than a disability assistance animal or an animal explicitly prohibited by ordinance) kept for companionship or amusement.

POTENTIALLY DANGEROUS DOG

Any dog or dog hybrid declared by the Municipal Court to be same if it finds that the dog caused bodily injury as defined herein and in N.J.S.A. 2C:11-1a to a person during an unprovoked attack, and poses a serious threat of bodily injury or death to a person; or killed another domestic animal; and poses a threat of serious bodily injury or death to a person; or poses a threat of death to another domestic animal; or has been trained, tormented, badgered, baited or encouraged to engage in unprovoked attacks upon persons or domestic animals. A dog shall not be declared "potentially dangerous" for causing bodily injury as defined herein and in N.J.S.A. 2C:11-1a to a person if that person was committing or attempting to commit a crime or if that person was tormenting or inflicting pain upon the dog in such an extreme manner that an attack of such nature could be considered provoked; or killing a domestic animal if the domestic animal was the aggressor.

SERIOUS BODILY INJURY

Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

VICIOUS DOG

Any dog or dog hybrid declared to be same if the Municipal Court finds that the dog killed a person or caused serious bodily injury as defined herein and in N.J.S.A. 2C:11-1b to a person; or has engaged in dog-fighting activities as defined in N.J.S.A. 4:22-24 and N.J.S.A. 4:22-26. A dog shall not be declared "vicious" for inflicting death or serious bodily injury as defined herein and in N.J.S.A. 2C:11-1b upon a person if that person was committing or attempting to commit a crime or inflicting pain upon the dog in such an extreme manner that an attack of such nature could be considered provoked.

B. Seizure and Impoundment

The Animal Control Officer shall seize and impound a dog when the officer has reasonable cause to believe that the dog attacked a person and caused death or serious bodily injury, as defined in § 69-A, to that person; caused bodily injury, as defined in § 69-A, to a person during an unprovoked attack and poses a serious threat of harm to persons or domestic animals; engaged in dog-fighting activities as described in N.J.S.A. 4:22-24 and 4:22-26; or has been trained, tormented, badgered, baited, or encouraged to engage in unprovoked attacks upon persons or domestic animals. The dog shall be impounded until the final disposition as to whether the dog is vicious or potentially dangerous. Subject to the approval of the Ocean County Board of Health, the dog may be impounded in a facility or other structure agreeable to the owner.

C. Notice of Seizure; Determination of Owner; Destruction of Dog

1. The Animal Control Officer shall notify the Municipal Court within three (3) working days that he or she has seized and impounded a dog pursuant to § 69-B or that he or she has reasonable cause to believe that a dog has killed another domestic animal and that a hearing is required. The Animal Control Officer shall, through a reasonable effort, attempt to determine the identity of the owner of any dog seized and impounded. If its owner cannot be identified within fourteen (14) days, that dog may be humanely destroyed.

2. The Municipal Court shall, within three (3) working days of the determination of the identity of the owner of a dog seized and impounded pursuant hereto, notify by certified mail, return receipt requested, the owner concerning the seizure and impoundment and the grounds for a hearing. The notice shall also require that the owner return within fourteen (14) days, by certified mail or hand delivery, a signed statement indicating whether he or she wishes the hearing be conducted or, if not, to relinquish ownership of the dog, in which case the dog may be humanely destroyed. If the owner cannot be notified by certified mail, return receipt requested,

or refuses to sign for the certified letter or does not reply to the certified letter with a signed statement within fourteen days of receipt, the dog may be humanely destroyed.

D. Notice of Hearing; Evidence

1. The Municipal Court shall conduct a hearing, within 30 days of the receipt of the signed statement from the dog's owner, to determine whether the dog impounded pursuant is vicious or potentially dangerous.

2. The Municipal Court shall notify the owner of the impounded dog by certified mail, return receipt requested, and Ocean County Department of Health, and State Department of Health of the date and time of the hearing. The owner shall have the opportunity to present evidence to demonstrate that the dog is not vicious or potentially dangerous.

E. Declaration of Vicious Dog

1. The Municipal Court shall declare the dog vicious if it finds by clear and convincing evidence that the dog killed a person or caused serious bodily injury as defined above or has engaged in dog fighting as described in N.J.S.A. 4:22-24 and 4:22-26.

2. A dog shall not be declared vicious for inflicting death or serious bodily injury, as defined above, upon a person if the dog was provoked. The municipality shall bear the burden of proof to demonstrate the dog was not provoked.

3. If the Municipal Court declares a dog to be vicious and no appeal is made of this ruling, the dog shall be destroyed in a humane and expeditious manner, except that no dog may be destroyed during the pendency of an appeal.

F. Declaration of Potentially Dangerous Dog

1. The Municipal Court shall declare a dog to be potentially dangerous if it finds, by clear and convincing evidence, that the dog caused bodily injury to a person during an unprovoked attack and poses a serious threat of bodily injury or death to a person; or killed another domestic animal and poses a threat of serious bodily injury or death to a person or poses a threat of death to another domestic animal; or has been trained, tormented, badgered, baited or encouraged to engage in unprovoked attacks upon person or domestic animals.

2. A dog shall not be declared potentially dangerous for causing bodily injury to a person if the dog was provoked or for killing a domestic animal if the domestic animal was the aggressor. The municipality shall bear the burden of demonstrating that the dog was not provoked.

G. Order and Schedule for Compliance

If the Municipal Court declares the dog to be potentially dangerous, it shall issue an order and a schedule for compliance which, in part, shall require the owner to comply with the following conditions:

1. To apply, at his or her own expense, to the Borough Clerk for a special municipal potentially dangerous dog license, municipal registration number and red identification tag. The owner shall, at his or her own expense, have the registration number tattooed upon the dog in a prominent location. A potentially dangerous dog shall be impounded until the owner obtains a potentially dangerous dog license, municipal registration number, and red identification tag.
2. To display, in a conspicuous manner, a sign on his or her premises warning that a potentially dangerous dog is on the premises. The sign shall be visible and legible from 50 feet of the enclosure.
3. To immediately erect and maintain an enclosure, commonly referred to as a dog run, for the potentially dangerous dog, which has sound sides, top and bottom to prevent the potentially dangerous dog from escaping by climbing, jumping, or digging and within a fence of at least

six feet in height separated by at least three feet from the confined area. The owner of a potentially dangerous dog shall securely lock the enclosure to prevent the entry of the general public and to preclude any release or escape of the potentially dangerous dog by an unknowing individual. The potentially dangerous dog shall be confined in the enclosure or, if taken out of the enclosure, securely muzzled and restrained with a tether approved by the Animal Control Officer and having a minimum tensile strength sufficiently in excess of that required to restrict the potentially dangerous dog's movements to a radius of no more than three feet from the owner and under the direct supervision of the owner.

May require the owner to comply with the following condition:

4. To maintain liability insurance in an amount determined by the Municipal Court to cover any damage or injury caused by the potentially dangerous dog. The liability insurance, which may be separate from any other homeowner policy, shall contain a provision naming the Borough of Bay Head as an additional insured for the sole purpose of being notified by the insurance company of any cancellation, termination, or expiration of the liability insurance policy.

H. Procedure for Appeal

The owner of the dog, or the animal control officer in the municipality in which the dog was impounded, may appeal any final decision, order or judgment, including any conditions attached thereto, of a municipal court pursuant to P.L. 1989, c. 307 (N.J.S.A. 4:19-17 et seq.) by filing an appeal with the Superior Court, Law Division, in accordance with the Rules Governing the Courts of the State of New Jersey, pertaining to appeals from courts of limited jurisdiction. The Superior Court shall hear the appeal by conducting a hearing de novo in the manner established by those rules for appeals from courts of limited jurisdiction.

I. Liability of Owner

1. If a dog is declared vicious or potentially dangerous and all appeals pertaining thereto have been exhausted, the owner of the dog shall be liable for the costs and expenses of impounding and destroying the dog. The owner shall incur the expense of impounding the dog in a facility other than Ocean County's dog pound, regardless of whether the dog is ultimately found to be vicious or potentially dangerous.
2. If the dog has bitten or exposed a person within 10 days previous to the time of euthanasia, its head shall be transported to the New Jersey State Department of Health laboratory for rabies testing.

J. Hearing for Subsequent Actions of Dog

If the Municipal Court finds that the dog is not vicious or potentially dangerous, the Municipal Court shall retain the right to convene a hearing to determine whether the dog is vicious or potentially dangerous for any subsequent actions of the dog.

K. Duties of Owner of Potentially Dangerous Dogs

1. Comply with the provisions of this chapter and N.J.S.A. 4:19-17 et seq., in accordance with a schedule established by the Municipal Court, but in no case more than 60 days subsequent to the date of determination.
2. Notify the Borough Clerk, the Police Department, and the Animal Control Officer if a potentially dangerous dog is at large or has attacked a human being or killed a domestic animal.
3. Notify the Borough Clerk, the Police Department, and the Animal Control Officer within 24 hours of the death, sale, or donation of a potentially dangerous dog.
4. Prior to selling or donating the dog, inform the prospective owner that the dog has been declared potentially dangerous.
5. Upon the sale or donation of the dog to a person residing in a different municipality,

notify the State Department of Health, the Ocean County Department of Health, the licensing authority, the police department, and animal control officer of that municipality of the transfer of ownership and the name, address and telephone of the new owner.

6. In addition to any license fee required, pay a potentially dangerous dog license fee as provided in this chapter.

L. Violations and Penalties; Enforcement

The owner of a potentially dangerous dog who is found by clear and convincing evidence to have violated this chapter or any rule or regulation adopted pursuant thereto or to have failed to comply with a court's order shall be subject to a fine of not more than \$2,000 per day of the violation, and each day's continuance of the violation shall constitute a separate and distinct violation. The Municipal Court shall have jurisdiction to enforce this section. The Animal Control Officer is authorized to seize and impound any potentially dangerous dog whose owner fails to comply with the provisions of this chapter or any rule or regulation adopted pursuant hereto or a court's order. The Municipal Court may order that the dog so seized and impounded be destroyed in an expeditious and humane manner.

M. Registration and License; Report of Violations

1. A potentially dangerous dog registration number and red identification tag along with a potentially dangerous dog license, upon a demonstration of sufficient evidence by the owner to the Animal Control Officer that he or she has complied with the court's orders, shall be issued. The Animal Control Officer shall verify, in writing, compliance to the Borough Clerk.
2. A notice to report violations of this chapter shall be made to the Township Clerk's office. A copy of this chapter shall be on file with the Department of Health.

N. License Fee

The fee for all potentially dangerous dog licenses shall be \$500 annually and each renewal thereof.

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3. This ordinance shall take effect after second reading and publication as required by law.

ATTEST:

APPROVED:

Patricia M. Applegate, Municipal Clerk

William W. Curtis, Mayor

Introduced on First Reading: June 1, 2015
Introduced on Second Reading: July 6, 2015
Approved on Second Reading; July 6, 2015

Patricia M. Applegate, Municipal Clerk

William W. Curtis, Mayor

