TOWN OF UPTON, MASSACHUSETTS

BOARD OF SELECTMEN

BY CERTIFIED MAIL

October 24, 2016

Mr. Thomas Sullivan
98 Glenview Street
Upon, MA 01568

NOTICE OF DANGEROUS OR NUISANCE
DOG HEARING

Dear Mr. Sullivan:

On Tuesday, **November 1, 2016 at 6:30 PM** in the Upton Town Hall, Room 203 located at 1 Main Street, Upton, MA, the Board of Selectmen, acting as Hearing Authority pursuant to Massachusetts General Laws, Chapter 140, Section 157, will hold a public hearing to determine whether the dog owned and/or kept by you in the Town of Upton is a Nuisance Dog or Dangerous Dog as those terms are defined in said statute. This Notice is based, in part, on a two written complaints alleging that on or about February 6, 2016 and September 4, 2016, your dog was not under your control and without justification attacked two persons causing physical injuries.

In accordance with its statutory authority, the Board of Selectmen will conduct a public hearing, which shall include an examination of the complainant under oath, and based on the credible evidence and testimony presented, it may make such findings and order concerning the restraint or disposal of said dog as may be deemed necessary.

You are invited to attend the hearing and at that time you may produce any documentation and/or witnesses. You may be represented by counsel at your own expense if you so choose.

If you have any questions in this regard, you may contact me at 508-529-6901.

Sincerely,

Blythe C. Robinson
Town Manager

Cc: Chief Michael Bradley
Michael Moran, Animal Control Officer
Board of Health

BOARD OF SELECTMEN
James A. Brochu, Chairman
Robert J. Fleming
Gary Daugherty

TOWN MANAGER
Blythe C. Robinson
One Main Street • Suite 1 • Upton, MA 01568
T: 508.529.6901 • F: 508.529.1010

For Date: 02/06/2016 - Saturday

Call Number	Time	Call Reason	Action	Priority	Duplicate
16-1544	1110	Phone - ANIMAL COMPLAINT	FURTHER INVEST.NEEDED	2	

Call Taker: 90A - COMMUNICATIONS OFFICER ROBERTA LAMOTHE
Primary Id: 68 - PATROL OFFICER MICHAEL D BENJAMIN
Location/Address: 98 GLEN VIEW ST
Calling/Inv. Party: DUMONT, JOHN V @ 41 WHITEWOOD RD Apt. #B - MILFORD, MA 01757
Race: W Sex: M
Narrative: **02/06/2016 1116 COMMUNICATIONS OFFICER ROBERTA LAMOTHE**
RP ADVISING HE WAS BIT BY A DOG AT APPROXIMATELY 1030 HOURS TODAY

1129 68 SPEAKING WITH PARTIES

Refer To Incident: 16-14-OF

Upton Police Department
Incident Report

Incident #: 16-14-OF
Call #: 16-1544

Date/Time Reported: 02/06/2016 1110
Report Date/Time: 02/06/2016 1141
Status: No Crime Involved

Reporting Officer: PATROL OFFICER MICHAEL BENJAMIN

Signature: _____

#	INVOLVED	SEX	RACE	AGE	SSN	PHONE
1	**SULLIVAN, THOMAS J** 98 GLEN VIEW ST UPTON MA 01568-1206	M	W	43	027-52-3902	774-217-3013

Military Active Duty: N
BODY: NOT AVAIL. COMPLEXION: NOT AVAIL.
DOB: 10/26/1972 PLACE OF BIRTH: NOT AVAIL.
LICENSE NUMBER: MA S22304104 ETHNICITY: NOT HISPANIC

[CONTACT INFORMATION]

CallBack Number (Primary) 774-217-3013

#	EVENTS(S)
1	**DOG BITE**

LOCATION TYPE: Highway/Road/Alley/Street Zone: D,E,F/UPTON CENTER-NORTH
98 GLEN VIEW ST
UPTON MA 01568

#	VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
1	**DUMONT, JOHN V** 41 WHITEWOOD RD Apt. #B MILFORD MA 01757	M	W	53		508-479-7939

DOB:
INJURIES: Apparent Minor Injury
ETHNICITY: Not of Hispanic Origin
RESIDENT STATUS: Non Resident
VICTIM CONNECTED TO OFFENSE NUMBER(S): 1
CONTACT INFORMATION:
CallBack Number (Primary) 508-479-7939

NARRATIVE FOR PATROL OFFICER MICHAEL D BENJAMIN

Ref: **16-14-OF**

Entered: 02/06/2016 @ 1146 Entry ID: 68
Modified: 02/10/2016 @ 1349 Modified ID: 68

On Saturday, 2-6-16, at approximately 11:15 a.m., John Dumont, age 53, of41B Whitewood Road Milford, called to report he was bitten by a dog while jogging by 98 Glen View Street, Upton, at approximately 10:30 a.m. He stated two dogs ran out of the front yard of the property, and he was subsequently bitten in the upper right arm by the larger dog, possibly a Great Pyrenees. He stated he sustained one or more puncture wounds and would be reporting to the minute clinic to have it examined and cleaned out. I spoke to the owner of the dogs, Thomas Sullivan, age 43, of 98 Glen View Street, Upton. He confirmed that his dogs ran out of the yard after two joggers at approximately 10:30 a.m, running through his invisible fence. He identified Mr. Dumont as the jogger who was bitten, stating Dumont was bitten in the arm. I subsequently contacted Animal Control Officer Michael Moran and provided him with the aforementioned information. Mr. Moran responded to 98 Glen View Street and spoke to Mr. Sullivan. He confirmed that the Great Pyrenees' rabies certificate was up to date, expiring 10-18-18, quarantined the dog at home for a ten day period, and will follow-up with the owner after that time.

SIGNED: _____ DATED: 2-6-15
Ptl. M. Benjamin

For Date: 09/04/2016 - Sunday

Call Number	Time	Call Reason	Action	Priority	Duplicate
16-9796	0903	Phone - ANIMAL COMPLAINT	INVEST'D/INVEST.TO FOLLO	2	

Call Taker: 96 - Dispatcher MARYELLEN PALMIERI
Primary Id: 73 - PATROL OFFICER NICHOLAS J PALMIERI
Location/Address: 8 WOOD ST
Calling/Inv. Party: Unknown 617-549-8630
ZANCHI, KRISTI L @ 8 WOOD ST - UPTON, MA 01568-1621
Race: W Sex: F
Involved Party: SULLIVAN, ANDREA M @ 98 GLEN VIEW ST - UPTON, MA 01568
ID: 73 - PATROL OFFICER NICHOLAS J PALMIERI
Disp-09:04:00 Arvd-09:10:43 Clrd-09:49:54
Location Change: [UP 740] SULLIVAN - 98 GLEN VIEW ST [Modified: 09/04/20160953]
Narrative: **09/04/2016 0907 Dispatcher MARYELLEN PALMIERI**
RECD CALL FROM R/P REPORTING SHE WAS BIT BY A DOG FROM 98 GLENVIEW. R/P WILL BE SEEKING OWN MEDICAL.
73 RESDPONDING.
0905 - ACO MORAN CALLED AND MESSAGE LEFT.
0910 - ACO MORAN RESPONDING TO 8 WOOD ST.
0935 - ACO MORAN ON SCENE.
ACO MORAN AND 73 CLEAR OF WOOD AND RESPONDING TO 98 GLENVIEW ST.

SEE 73'S REPORT.

Refer To Incident: 16-177-OF

Upton Police Department
Incident Report

Incident #: 16-177-OF
Call #: 16-9796

Date/Time Reported: 09/04/2016 0903
Report Date/Time: 09/04/2016 1500
Status: No Crime Involved

Reporting Officer: PATROL OFFICER NICHOLAS PALMIERI

Signature: _____

#	INVOLVED	SEX	RACE	AGE	SSN	PHONE
1	**SULLIVAN, ANDREA M** 98 GLEN VIEW ST UPTON MA 01568	F	W	44	010-68-6885	

Military Active Duty: N
BODY: NOT AVAIL.
DOB: 08/16/1972
LICENSE NUMBER: MA S85997916
COMPLEXION: NOT AVAIL.
PLACE OF BIRTH: NOT AVAIL.
ETHNICITY: NOT HISPANIC

#	EVENTS(S)

LOCATION TYPE: Highway/Road/Alley/Street Zone: D,E,F/UPTON CENTER-NORTH
98 GLEN VIEW ST
UPTON MA 01568

1 **Animal Complaint - DOG BITE**

#	VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
1	**ZANCHI, KRISTI L** 8 WOOD ST UPTON MA 01568-1621	F	W	38		508-529-3938

DOB:
INJURIES: Apparent Minor Injury
ETHNICITY: Not of Hispanic Origin
RESIDENT STATUS: Resident
TAKEN TO: OTHER CARE FACILITY/DR OFFICE
VICTIM CONNECTED TO OFFENSE NUMBER(S): 1
RELATION TO: SULLIVAN ANDREA Stranger
CONTACT INFORMATION:
Work Phone (Primary) 617-549-8630
CallBack Number (Primary) 508-529-3938

NARRATIVE FOR DETECTIVE NICHOLAS J PALMIERI

Ref: 16-177-OF

Entered: 09/04/2016 @ 1513 Entry ID: 73
Modified: 09/04/2016 @ 1542 Modified ID: 73

On Sunday, September 4, 2016 at approximately 0903 hours this department received a call from Kristi Zanchi, 8 Wood St, Upton who called to report that she was bit by a dog from 98 Glen View St. Mrs. Zanchi denied medical assistance, indicating that she would be going on her own. Dispatch advised me of the reported incident and I requested that the Animal Control Officer (ACO) be called to respond.

This detective responded to the scene and spoke with Mrs. Zanchi and her friend. Mrs. Zanchi indicated that she and her friend (with her dog) were walking along Glen View St when they observed two dogs run towards them from 98 Glen View St. The two dogs, were described as larger dogs, one white and the other black, possibly being Great Pyrenees. Mrs. Zanchi stated that the white dog charged at them, jumped up and bit her on the left arm and left back/abdominal area. Mrs. Zanchi showed me the wounds where the dog had bitten her and broke the skin, resulting in bleeding, swelling and slight bruising. Mrs. Zanchi was asked if she wished to have emergency medical services respond but she denied this and again indicated that she would seek her own medical assistance. With Mrs. Zanchi's approval I obtained photographs of the injuries. ACO Michael Moran arrived on scene and was advised of the circumstances of this incident and the location where the dogs were believed to reside. ACO Moran indicated to Mrs. Zanchi that he would obtain and relay to her all pertinent rabies vaccination information.

ACO Moran and I responded to 98 Glen View St, the Sullivan residence, and ACO Moran spoke with a male party named Tom who was overseeing the property while the family was away on vacation. The owner of the dogs was identified as Andrea Sullivan and ACO Moran was able to make contact with her on Tom's phone. The circumstances of the situation were relayed to Mrs. Sullivan and she was advised that the white dog would need to be quarantined and the matter would be dealt with further upon her return. While ACO Moran was speaking with Mrs. Sullivan, I spoke with Tom regarding the incident. I was informed that prior to the biting incident the white dog was restrained on a leash but apparently as Mrs. Zanchi and her friend walked by the dog pulled away and broke free. ACO Moran issued in-hand to the caretaker the Quarantine Order and explained the requirements of said order. Additionally, a citation was issued to be delivered to Mrs. Sullivan. Upon clearing 98 Glen View St ACO Moran confirmed that the dog was up-to-date with its rabies vaccination, which expired on February 18, 2018.

No further investigation into this matter is required.

Nicholas J. Palmieri
Detective, #73

Dated: September 4, 2016

Upton Police Department
Images Associated with 16-177-OF

On September 4, 2016 my friend and I were walking on Glenview Street. Two dogs from 98 Glenview ran out of their yard and crossed the street to where we were walking. One of the dogs (a black one) just sniffed at the dog who was with us. The other dog (a white one) came after me and bit me several times on the arm and on my side. The bites required medical care and the ones on my arm will likely leave permanent scars.

Kristi Zanchi
8 Wood St, Upton

THE OWNER OR KEEPER OF A LICENSED DOG SHALL CAUSE IT TO WEAR AROUND ITS NECK OR BODY A COLLAR OR HARNESS TO WHICH SHALL BE SECURELY ATTACHED A TAG

The Commonwealth of Massachusetts

Town of Upton

In accordance with the provision of Ch. 140, Sec. 137 Of the MGL's license id hereby issued to the person named below to keep the dog herein described for one year from the first day of April. Said dog is numbered and registered by said laws.

This License Expires March 31, 2017

TOWN CLERK

A dog owner who fails to license his Dog before March 31 of any year, shall be Fined the sum of $10.00 (ten) dollars

License Type: Dog License **Fee:** 10.00

Date Issued: 06/08/2015 **Tag No.** 15569

Issued To: SULLIVAN THOMAS

Address: 98 GLENVIEW ST
UPTON, MA 01568

Name of Dog: LOUIS **Age:** 1

Breed: GREAT PYRENEES

Color: WHITE

Rabies Expires: 02/18/2018 **Phone:** (508) 634-6880 (

Issuing Clerk:

IF A DOG IS PERMINENTLY REMOVED TO ANOTHER TOWN A TRANSFER LICENSE MUCH BE SECURED IN SUCH TOWN. EVERY DOG THREE MONTHS OLD OR OVER MUST BE LICENSED AND TAGGED

BOARD OF HEALTH #_____

TOWN OF UPTON MASSACHUSETTS

Tel. - 508-529-6813 Fax – 508-529-0010
email: animalcontrol@uptonma.gov

Mailing address: 1 Main Street, Box 3
Upton, MA 01568

ANIMAL CONTROL DEPARTMENT

Animal Control Officer - Michael Moran
508-612-9752

NOTICE OF VIOLATION

Date: 2-6-16 Time: 12:15P

Name: Thomas Sullivan Contact Phone: 774-217-3013

Address: 98 Glenview

A COMPLAINT HAS BEEN REGISTERED FOR VIOLATION OF:

✓ Town of Upton By-Law Chapter 16-Leash Law
____ Town of Upton By-Law Chapter 16-Dog Licensing
✓ Mass General Law Chapter 140 Section 157 Vicious dogs; nuisance; barking or other disturbance; annoyance to sick person; attacks on other dogs
____ Mass General Law Chapter 272 Section 77 Cruelty to Animals
____ Other:_____

Violation	Fine (Additional Kennel Fees apply)
✓ Failure to Restrain Dog: (leash law)	____ $25.00 Pick Up Fee *plus*
Rabies vaccine Act # 15-0442 Exp. 2/18/18	____ $25.00 First Offense ____ $45.00 Second Offense ____ $55.00 Third Offense ____ $65.00 Fourth Offense ____ $75.00 Fifth Offense
____ Failure to License	____ $50.00
____ Nuisance Barking or other disturbance	____ $35.00
✓ Quarantine Order/Bite or exposure	____ $25.00
✓ Vicious Dog Attack	____ $50.00 *Hearing may be required by the Board of Selectmen*
____ Cruelty to Animals	____ $50.00 *Criminal charges may also apply*
____ Other	____ $_____

Pd by check

All fines must be paid within seven days. You may make a payment at the Board of Health office located at 1 Main Street, Ground Floor, room # 2 or mail a payment to: *UBOH, 1 Main Street, Box 3, Upton MA 01568*. Checks should be made payable to: *Town of Upton*.

SIGNATURE:

Animal Control Officer — Date: Feb 6, 16

BOARD OF HEALTH
BOARD OF SELECTMEN

TOWN OF UPTON **MASSACHUSETTS**

Tel. - 508-529-6813 Fax – 508-529-0010
email: animalcontrol@uptonma.gov

Mailing address: 1 Main Street, Box 3
Upton, MA 01568

ANIMAL CONTROL DEPARTMENT

Mike Moran, Animal Control Officer
508-612-9752

NOTICE OF VIOLATION

Date: Sept 4, 14 Time: 946 Am
Name: Adam Sullivan
Address: 98 Glen Dow
Phone: 508 277 3102

A COMPLAINT HAS BEEN REGISTERED FOR VIOLATION OF:

- ✓ Town of Upton By-Laws Chapter 16 Canine Control
- ✓ Mass General Law Chapter 140 Section 157 Vicious dogs; nuisance; barking or other disturbance; annoyance to sick person; attacks on other dogs
- ___ Mass General Law Chapter 272 Section 77 Cruelty to Animals

Violation	Fine*
✓ Failure to Restrain Dog	✓ $ 25.00 ACO Pick Up Fee *(also applies to vicious dogs)* ___ Warning First Offense ✓ $ 50.00 Second Offense ___ $100.00 Third and subsequent offense
✓ Vicious Dog - Attack/Bite/ Failure to restrain	___ $ 50.00 First Offense ___ $100.00 Second Offense ___ $200.00 Third and subsequent offense
___ Failure to License	___ $ 10.00 *late fee*
___ Nuisance Barking	___ $ 25.00

TOTAL DUE: $ 75.00 **Additional Kennel Fees may also apply*

Additional Comments: Dog Bite Lady
2 Time

A.C.O. Signature: [signature]

This fine must be paid within seven days from the date of issue. You may make your payment at the Board of Health office located in the Town Hall, 1 Main Street, ground floor or mail your payment to: UBOH, 1 Main Street, Box 3, Upton MA 01568. Make checks payable to: Town of Upton.

Please note Non-criminal dispositions in accordance with G.L. c 40 sec. 21D and the town bylaws, may also be enforced when warranted at a maximum penalty of $300.00 per day.

№ 0023

NUISANCE AND DANGEROUS DOGS
G.L. c. 140, § 157

Important Definitions:

"Attack" - an aggressive physical contact initiated by an animal.

"Dangerous dog" – a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

"Nuisance dog" – a "dog that: (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (iii) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under the circumstances.

Sample Motions for Hearing Authority:

Nuisance Complaint:
Not a Nuisance Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to **[insert listing of facts]**, that **[the hearing authority]** find the dog complained of is not a nuisance dog and that the complaint be dismissed; or

Is a Nuisance Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to **[insert listing of facts]**, that **[the hearing authority]** find the dog complained of is a nuisance dog by reason of **[choose one or more of the three reasons listed above in the definition of "Nuisance dog"]**

Dangerousness Complaint:
Not a Dangerous Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to [insert listing of facts], that [the hearing authority] find that the dog complained of is not a dangerous or nuisance dog and that the complaint be dismissed; or

Is a Dangerous or Nuisance Dog:

Nuisance Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to **[insert listing of facts]**, that **[the hearing authority]** find that the dog complained of is a nuisance dog by reason of **[choose one or more of the three reasons listed above in the definition of "Nuisance dog"]**; or

Dangerous Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to **[insert listing of facts]**, that **[the hearing authority]** find that the dog complained of is a dangerous dog by reason of **[choose one or both of the reasons listed above in the definition of "Dangerous dog"]**.

Remember that a determination that a dog is dangerous **cannot** be: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was

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reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to any of the following circumstances:

- the dog was protecting itself, its offspring, another domestic animal or a person from attack;
- the person attacked or threatened was committing a crime upon the person or property of the owner or keeper of the dog;
- the person attacked or threatened was teasing or otherwise provoking the dog; or
- at the time of the attack or threat, the person or animal attacked or threatened had breached an enclosure or structure in which the dog was kept apart from the public.

Further, be aware that if the person attacked or threatened is under the age of 7, a rebuttable presumption exists that such person was not committing a crime, provoking the dog or trespassing.

Remedies:

Nuisance Complaint: If the hearing authority deems a dog a nuisance dog, the hearing authority may, in its discretion, order the owner or keeper of the dog to take action to ameliorate the nuisance behavior.

Dangerousness Complaint: If the hearing authority deems a dog a dangerous dog, it shall order one or more of the following remedies be imposed:

(i) that the dog be humanely restrained, but not chained, tethered or otherwise tied to an inanimate object including a tree, post or building;

(ii) that the dog be confined to the premises of its owner or keeper, either indoors or outdoors properly sheltered from the elements in a securely enclosed and locked pen or dog run area with a secure roof and, if the enclosure has no floor, with sides not less than 2 feet embedded into the ground;

(iii) that when removed from the premises of the owner or keeper, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 3 feet in length;

(iv) that the owner or keeper provide documented proof of no less than $100,000 insurance for claims resulting from intentional or unintentional acts of the dog, or of reasonable efforts to obtain such insurance if a policy has not been issued;

(v) that the owner or keeper provide the licensing authority, animal control officer or other entity identified in the order, information by which a dog may be identified, including, for example, photographs, videos, veterinary examination, tattooing or microchip implantations or a combination of information;

(vi) that the dog be altered so it is unable to reproduce, unless its owner or keeper provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of a medical condition; or

(vii) that the dog be humanely euthanized.

No order shall be issued directing that a dog deemed dangerous be removed from the town or city in which the owner of the dog resides.

Be reminded that the sample votes and proposed remedies set forth herein may serve as the basis for actual votes or remedial orders, but any actual votes or remedial orders must be prepared on a case-by-case basis in light of the specific facts at issue and in conformance with applicable statutory language.

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Local Regulation of Nuisance and Dangerous Dogs – Recent Developments

This is the second in a series of three memoranda exploring the extensive amendments to the Commonwealth's animal control laws. Effective on October 31, 2012, An Act Further Regulating Animal Control" (the "Act") substantially revised the procedures for responding to complaints about nuisance and vicious dogs pursuant to the provisions of G.L. c. 140, §157. To simplify the detailed process, attached is a two-page summary of the new standards and process.

The Regulatory Framework

Pursuant to the prior version of G.L. c.140, §157, municipal officials responded to complaints that dogs were "nuisance[s] by reason of vicious disposition or excessive barking or other disturbance". However, the statute failed to define these terms or otherwise establish appropriate remedial action in the event a dog was found to be a nuisance.

The Act addresses this issue in part. Specifically, the Act deletes the phrase "nuisance by reason of vicious disposition or excessive barking or other disturbance" and replaces it with, and defines, the terms "attack", "nuisance dog" and "dangerous dog". Additionally, the statute explicitly excludes certain factors or circumstances as bases for a finding that a dog is dangerous, including, for example, the fact that a dog is a particular breed, or a situation in which a dog was protecting its offspring or owner. Further, the Act proposes seven specific remedies for ameliorating nuisances caused by dangerous dogs. Importantly, while these amendments provide guidance as to how to resolve dog complaints, the Act continues to provide local officials with sufficient discretion to protect the public safety based upon particular facts.

Proceedings at the Local Level

Under the prior and current versions of G.L. c.140, §157, the process for determining whether a dog is a nuisance begins with a written complaint. The Act now gives municipalities greater flexibility in delegating responsibility for handling dog complaints by expanding the list of officials authorized to address complaints to include: mayors in cities; boards of selectmen in towns; or, in any city or town, the chief or commissioner of the police department, or their designee, or other person charged with the responsibility of handling dog complaints.

Upon receipt, the hearing authority is required to investigate or cause the investigation of the complaint. The investigation must include an examination of the complainant under oath. While it was common for municipalities to conduct such examination at a public hearing, the Act now requires the complaint be decided based upon "credible evidence and testimony presented

at [a] public hearing in the municipality." As with other types of adjudicatory hearings, although the formal rules of evidence will not apply, we recommend that all witnesses be sworn and the proceedings be recorded for use in the event of an appeal.

The hearing authority should proceed in two steps. First, there must be a determination of whether the dog is a nuisance or dangerous. In making this determination, the hearing authority will be guided by the new definitions set forth in the Act. If the hearing authority decides the dog is not a nuisance or dangerous, the inquiry ends and the hearing authority must dismiss the complaint.

If the hearing authority deems the dog a nuisance, it may "further order that the owner or keeper of the dog take remedial action to ameliorate the cause of the nuisance behavior." As with the prior version of the statute, the Act does not establish any parameters for such remedial action, if any, but rather, it leaves the response to the complaint to the discretion of the hearing authority. In contrast, if the hearing authority deems the dog dangerous, it shall order one or more of the seven remedies ranging from restraint to euthanization. The list includes remedies commonly invoked by municipalities, and allows the hearing authority discretion to decide on an appropriate combination most suited to the facts of a particular case. However, the Act strictly prohibits the common practice of "banishment", i.e. ordering removal of a dog from the municipality in which its owner or keeper resides. Further, the Act codifies the common law rule prohibiting the regulation of dogs in a manner that is specific to breed.

Appellate Procedure

The Act does not alter past practice relative to appeals. The owner or keeper of a dog aggrieved by a hearing authority's decision may file an appeal in the local district court within ten days after issuance of the order. The initial hearing on the appeal is before a district court clerk magistrate who shall hear the witnesses and affirm the order unless it shall appear that it was made without proper cause or in bad faith, in which case the order shall be reversed. Either party aggrieved by the decision of the clerk magistrate may then request a *de novo* hearing before a justice of the district court, who may, based upon the credible evidence and testimony presented at trial dismiss the complaint ,or deem the dog a nuisance or dangerous dog. Although the Act states that the decision of the court after a *de novo* hearing is final and conclusive upon the parties, the Appeals Court found that the same language in the prior version of the statute provides for a further appeal to Superior Court pursuant to the provisions of G.L. c. 249, §4.

The Act does, however, provide municipalities with significantly greater enforcement authority during the pendency of the appeal by authorizing a petition to the district court for an order of impoundment. The district court may issue such an order upon a finding of probable cause that the dog is dangerous. The Act requires the owner to pay the costs of impoundment if the municipality prevails in the appeal and authorizes the municipality to recover such costs through a lien on the owner's real estate or as an additional surcharge on the owner's motor vehicle excise tax.

Enforcement

The Act provides enhanced penalties for the failure to comply with a municipal or court order. If an owner or keeper of a dog violates an order issued under G.L. c.140, §157, the dog is subject to seizure and impoundment by a law enforcement or animal control officer and the owner or keeper may be subject to criminal penalties or prohibited from licensing a dog within the Commonwealth for up to five years. The Act also authorizes the issuance of fines for failure to comply with such orders – a fine of not more than $500.00 or imprisonment for not more than 60 days, or both, for a first offense and a fine of not more than $1,000.00 or imprisonment for not more than 90 days or both for a second or subsequent offense. The Act also prohibits anyone over 17 with "actual knowledge" that a dog has been deemed dangerous from allowing a child under 17 to own, possess or have the care or custody of such dog, and further requires a dog's dangerousness be disclosed prior to transfer of possession or ownership.

In summary, the Act makes substantial revisions to the process for addressing vicious dog complaints. We recommend, therefore, that any municipal hearing authority addressing such complaints carefully review the revised definitions and procedures to ensure any action taken is consistent with the new statutory requirements.

Please contact Gregg Corbo at gcorbo@k-plaw.com or 617.556.0007 with further questions.

KOPELMAN AND PAIGE
The Leader in Public Sector Law

HOW TO CONDUCT A PUBLIC HEARING

There are three types of Public Hearings:

- **Adjudicatory Hearings** – hearings to determine the legal rights, duties or privileges of specifically named persons or entities, such as license violations or dangerous dog hearings.
- **Application Hearings** – hearings to act on applications for a license, permit, variance or other approval.
- **Regulatory Hearings** – hearings on adoption or amendment to a public body's rules or regulations.

Basic Framework – Four Step Process

Step 1 – Notice

- Prior to conducting any public hearing, proper notice must be given to all interested parties.
- Timing - Substantive law will dictate when the notice needs to be sent and to whom. In the absence of a statutory requirement, ten days' notice is generally acceptable for due process purposes. At a minimum, the notice must comply with the Open Meeting Law by posting at least forty-eight hours prior to the hearing, except in an emergency, calculated as required by law.
- Content - Substantive law will also dictate the content of the notice. Generally, notice must include the date, time and location of the hearing, statutory basis, and a brief statement of facts.
- Delivery – Unless addressed by applicable substantive law, when individual notice is required, it should be sent certified mail and first class mail, or in any other manner reasonably likely to provide actual notice to interested parties, e.g. service by constable.

Step 2 - Open the Hearing

- The Chair should open the meeting by reading the hearing notice into the record and asking staff to confirm that notice was published, posted and served upon interested parties as required by law. For Application hearings, the Chair should confirm that the application is complete.
- The Chair (or Town Counsel if present) should establish ground rules, informing those present that: testimony will be limited to the issues directly related to the subject matter of the hearing; only one person will be permitted to speak at a time; all discussion will go through the Chair; all parties will be expected to conduct themselves civilly; and argument between parties will not be permitted. The proceeding should be recorded and the recording preserved.
- Before taking testimony, witnesses must be sworn. The Chair may ask anyone who intends to testify to stand, raise his/her right hand and swear that "the testimony I am about to give in this matter is the truth, the whole truth and nothing but the truth."

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Step 3 – Collect Evidence

- Adjudicatory Hearings generally proceed in two phases: (1) collection of evidence of the violation from staff and/or complaining parties; and (2) collection of evidence in defense from the subject of the hearing and/or supporting witnesses.

- Application and Regulatory Hearings also proceed in two phases: (1) collection of evidence from the applicant/proponent and those wishing to speak in favor of the application or regulation; and (2) collection of evidence from those in opposition to the application or regulation.

- For each person who testifies, the Chair should ask them to identify themselves by stating their name and address for the record. Witnesses may be questioned by members. In Adjudicatory Hearings, however, witnesses may first be cross-examined by a representative of the hearing target.

- Any documentary or physical evidence should be given a unique identifier as part of the record and made available for inspection by interested parties. Such documents must be maintained as part of the official meeting record.

Step 4 – Deliberate and Decide

- When it is determined that all relevant testimony and evidence has been presented, the Chair should entertain a motion to "close the evidentiary portion of the hearing". Once the vote is taken, the Chair should declare the evidentiary portion of the hearing closed and inform the public that deliberations will begin.

- Members must then deliberate, in open session and in a manner that can be followed by those in attendance, i.e., in loud, clear voices.

- For Adjudicatory Hearings, members will vote on two issues: (1) whether there was a violation; and (2) if so, what, if any, action should be taken. To insulate a decision from challenge, members must separately consider each violation and, in connection therewith, make specific findings of fact.

- For Application Hearings, members will vote on whether to grant the license, permit or approval, and if so, whether to impose any conditions thereon. In order to insulate the decision from challenge, members must separately consider each criterion for issuance and make specific findings of fact to support that criterion.

- For Regulatory Hearings, following submission of written or oral testimony, members will deliberate and then vote on whether to adopt, rescind or amend regulations.

- Once final votes are taken, the Chair should entertain a motion to close the public hearing, and staff should be directed to prepare proper notice of the decision or other action taken, in accordance with applicable law. For Adjudicatory and Application proceedings, written notice should be sent, certified and first class mail, as soon as possible to all interested parties including any right of appeal, and such notice may also be required to be filed with the municipal clerk. For Regulatory proceedings, further notice or publication of the decision may be required.

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