

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Administrative	CODE NUMBER: AC-1-1
TITLE: Animal Control Dangerous Dog Procedure	ADOPTED: 11/29/95
	AMENDED: 08/09/05; 11/01/16
	ORIGINATING DEPARTMENT: Animal Services/County Attorney

PURPOSE/SCOPE:

The Legislature has determined that dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure of owners to control, properly train and confine their dogs. As such, the Legislature granted local governments the authority to establish hearing procedures to classify dogs as dangerous, in conformity with Fla. Stat. § 767.12 which must serve as the authority for this administrative code.

POLICY/PROCEDURE:

As used in this Code, "dangerous dog" mean any dog that, according to the records of Lee County Animal Services:

- (1) has aggressively bitten, attacked, or endangered or has inflicted severe injury [multiple bite wounds or injury needing stitches] on a human being on public or private property; or
- (2) has more than once severely injured or once killed a domestic animal while off the owner's property or while on the owner's property in any area of legal easement; or
- (3) has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or
- (4) has, when unprovoked, chased or approached persons upon the streets, sidewalks, any public grounds, or legal easement in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by Lee County Animal Services.

II. NOTIFICATION OF HEARINGS:

1. Lee County Animal Services ("Animal Services") must investigate reported incidents involving any dog that may be dangerous and, if possible, shall interview the owner and require a sworn affidavit from any person, including any animal control officer or enforcement officer, desiring to have a dog classified as dangerous. After conducting the investigation Animal Services must make an initial determination as to whether there is sufficient cause to classify the dog as dangerous and must afford the owner an opportunity for a hearing prior to making a final determination.

2. Upon an initial determination finding a dog dangerous, the Director of Animal Services or designee must make an initial determination as to whether there is sufficient cause to classify the dog as dangerous and, if sufficient cause is found, as to the appropriate penalty under Florida Statute §767.12(5). The Director of Animal Services or designee must prepare a written notification to the dog owner. The notification must be sent to the dog owner by either:

- (a) registered mail; or
- (b) certified hand delivery; or
- (c) service in conformance with the provisions of Florida Statute Chapter 48 relating to service of process;

3. The notice must:

- (a) inform the dog owner of the initial sufficient cause finding and proposed penalty;
- (b) inform the dog owner that at the owner's request a hearing regarding the dangerous dog classification, penalty, or both will be set no later than twenty-one (21) calendar days and no sooner than five (5) days after the request from the owner.
- (c) inform the owner, if the dog is in his/her custody, that it must not be destroyed prior to any hearing or appeal except by Lee County Animal Services upon the written request of the owner of record of the subject animal and that the dog may not be relocated or its ownership transferred pending the outcome of the investigation and any hearings or appeals related to the dangerous dog classification or any penalty imposed under this section. If a dog is to be destroyed, the dog may not be relocated or its ownership transferred;
- (d) if a hearing is not timely requested regarding the dangerous dog classification or proposed penalty, the determination of the animal control authority as to such matter must become final.

4. The owner may:

- (a) file a written request for a hearing and
- (b) the request must be received by Animal Services, within seven (7) calendar days after the owner's receipt of notification of the sufficient cause finding and proposed penalty.

5. The subject dog, if in the custody of:

(a) Animal Services: must not be released to the owner until the process has been completed, including any hearings or appeals related to the dangerous dog classification or any penalty imposed and must not be destroyed prior to the completed process without the written request of the owner of record of the subject animal. An animal that is the subject of a dangerous dog investigation because of severe injury to a human being may be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time, or impounded and held. If the dog is to be destroyed, the dog may not be destroyed while an appeal is pending. The owner or agent of the dog is responsible for all boarding costs throughout the holding period at the rate established by Administrative Code, and other fees as may be required to humanely and safely keep the animal regardless of the final determination of the hearing examiner; or

(b) The owner: must not be destroyed by the owner prior to the completed process except by Lee County Animal Services upon the written request of the owner of record of the subject animal and the notice shall so inform the owner. A dog that is the subject of a dangerous dog investigation may not be relocated or its ownership transferred pending the outcome of the investigation and any hearings or appeals related to the dangerous dog classification or any penalty imposed under this section. If a dog is to be destroyed, the dog may not be relocated or its ownership transferred.

III. HEARING PROCEDURES:

1. There is hereby authorized for the purposes of this code, the use of a hearing officer for the hearings. The hearing must be conducted before a hearing officer designated by the County Attorney's Office. The hearing officer shall be an attorney-at-law, in good standing and admitted to the practice in the State of Florida and having been in practice for at least five years.

2. The hearing must be conducted in Lee County facilities.

3. Upon receipt of a timely, written request for hearing, the Director of Animal Services or designee must schedule a hearing to be held as soon as reasonably practicable for the parties and must provide the owner of the

dog initially classified as dangerous with no less than five (5) days written notice of the time, date and place of the hearing, which must be held not more than twenty-one (21) calendar days from the date Animal Services receives the owner's request, notwithstanding special circumstances. The notice of the hearing must be sent to the owner by certified mail return receipt requested or to his/her attorney.

4. Hearing Procedures - each party must have the following rights:

- (a) to participate in discovery upon filing a written request for discovery with the other party;
- (b) to be represented by counsel;
- (c) to call and examine witnesses;
- (d) to introduce evidence and exhibits;
- (e) to cross-examine opposing witnesses on any relevant matter;
- (f) to impeach any witness;
- (g) to issue subpoenas
- (h) to file motions

5. All hearings must be conducted insofar as is practicable, in accordance with the Florida Rules of Civil Procedure and the Florida Evidence Code. However, the general nature of the hearing must be conducted in an informal manner but with due process observed. The burden of proof is a simple preponderance of evidence.

6. The hearing officer is granted the authority to issue subpoenas to compel the attendance of witnesses at a hearing upon the written request of any party or upon the officer's own motion.

(a) A subpoena may be served by any person authorized by law to serve process. Service must be made as provided by law.

(b) Any person subject to a subpoena may, before compliance and on timely petition, request the hearing officer having jurisdiction of the dispute to set aside the subpoena.

(c) A party may seek enforcement of a subpoena issued under the authority of this section by filing a petition for enforcement in the county court. Failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged.

(d) If a party willfully fails to testify when duly subpoenaed, the hearing officer may order that the matters regarding which the questions were asked or any other designated facts must be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; or render a judgment by default against the disobedient party.

7. Witness fees may be paid as provided by law.

8. The hearing officer may receive compensation for such services at a reasonable hourly rate to be established by the County Attorney's Office. The County Attorney's Office shall solicit letters of interest from qualified individuals in the legal community who are willing to serve in such capacity.

IV. EVIDENCE:

1. In any hearing before the hearing officer, irrelevant, immaterial, or unduly repetitious evidence must be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs must be admissible, whether such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

2. Parties may agree to witnesses testifying by telephone where the attendance of witnesses at the hearing would cause substantial hardship on the witness due to physical disability or where the witness is located out of state. Where parties are unable to stipulate or agree to the taking of telephonic testimony, the hearing officer may, in his/her discretion, grant such a motion by the party seeking same.

3. Documentary evidence may be received in the form of a copy if the original is not readily available. Upon request, parties must be given an opportunity to compare the copy with the original.
4. A party must be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.
5. The rules of privilege must be effective to the same extent that they are now or hereafter may be recognized in civil actions.
6. The hearing officer must ensure that a full record of the hearing is preserved, which record shall be public and open to inspection and transcription by any person.
7. The hearing officer must make all evidentiary rulings.

V. WRITTEN DETERMINATIONS OF THE HEARING OFFICER:

After due hearing, the hearing officer must issue a written determination based upon a preponderance of the evidence. Animal Services or the County Attorney's Office bears the burden of establishing the dangerousness of the dog; and the owner bears the burden of establishing any legal defenses to the classification of dangerousness.

All determinations of the hearing officer must be in writing, signed and dated by the hearing officer, must contain findings of fact and conclusions of law. Animal Services must serve the final order on the owner by registered mail, certified hand delivery, or service in conformance with Chapter 48, Florida Statutes.

The hearing officer may take the matter under advisement, but must notify Animal Services and the owner of such ruling within five (5) business days.

VI. NOTICE OF APPEAL:

1. Upon notice to Animal Services by the hearing officer that a dog has been classified as dangerous, Animal Services must provide written notification to the owner by registered mail, certified hand delivery or service as provided hereinbefore.
2. The notice must inform the owner that a written appeal of the hearing officer's determination on classification, penalty or both:
 - (a) May be filed in Circuit Court in accordance with the Florida Rules of Appellate Procedure after receipt of the final order.
 - (b) The notice of classification must also inform the owner that the subject dog must follow all rules established for a declared dangerous dog pending a resolution of any appeal filed by the owner.
3. Upon notice to Animal Services by the hearing officer that a dog has not been classified as dangerous, Animal Services may file a written appeal of the hearing officer's determination in Circuit Court in accordance with the Florida Rules of Appellate Procedure after receipt of the final order.

VII. POST-APPEAL PROCEDURES:

Except as otherwise provided in paragraph three (3) below, the owner of a dog classified as a dangerous dog must:

1. Within 14 days after issuance of the final order classifying the dog as dangerous or the conclusion of any appeal that affirms such final order, the dog owner must obtain a certificate of registration for the dog from Animal Services upon the receipt of all fees and costs owed to Animal Services and the payment of an annual dangerous

dog registration fee. Animal Services must establish rules for ownership, containment, and movement of dangerous dogs, and provide those rules in writing, as they may be amended from time to time.

2. Certificates of Registration must be issued only to persons who are at least 18 years of age and who present documentation attesting to:

- (a) a current certificate of rabies vaccination for the subject dog.
- (b) a proper enclosure sufficient to confine a dangerous dog, that must include concrete base with a minimum of eight inches of block above concrete base with secure fencing material that is tied into locking access door that must remain locked at all time the dog is inside.
- (c) clearly visible warning signs stating "Dangerous Dog" with Animal Service issued identification number at all entry points to the property informing both children and adults of the presence of a dangerous dog. Animal Services will provide the owner with the signs to at a rate established in the Administrative Code to ensure conformity and to carry out the purpose of informing the public that a dangerous dog is on the premises.
- (d) permanent identification of the subject dog by either:
 - (1) electronic implantation; or
 - (2) other permanent means acceptable to Animal Services.
- (e) proof of sterilization or appointment for sterilization for the animal.
- (f) payment of a onetime dangerous dog initial registration fee at the rate established by Administrative Code, with the acknowledgment of additional annual registration fees at the rate established by Administrative Code.

3. If a dog is classified as a dangerous dog due to an incident that causes severe injury to a human being, based upon the nature and circumstances of the injury and the likelihood of a future threat to the public safety, health, and welfare, the dog may be destroyed in an expeditious and humane manner.

VIII. OWNERSHIP REQUIREMENTS:

1. The owner of a dangerous dog must immediately notify the proper animal control authority when such dog:

- (a) Is loose or unconfined.
- (b) Has bitten a human being or attacked another animal.
- (c) Is sold, given away, or dies.
- (d) Is moved to another address.

2. The owner or keeper of a dangerous animal must report in writing the name, address and phone number of the new owner or keeper to the Director of Animal Services prior to transfer of ownership or custody of such animal, and it shall be violation of this ordinance not to report the name, address and phone number of the new owner.

3. The new owner must comply with all of the requirements of this section and implementing local ordinances, even if the animal is moved from one local jurisdiction to another within the state. The animal control office must be notified by the owner of a dog classified as dangerous that the dog is in their jurisdiction.

4. The owner or keeper of a dangerous animal must report in writing or by telephone the death of such animal to the Director of Animal Services immediately, and it is a violation of this ordinance not to do so. The death of such animal must be verified by a licensed veterinarian or an Animal Control Officer.

5. The owner or keeper of the dangerous dog must not permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but will prevent it from biting a person or animal. The owner may exercise the dog in a securely fenced or enclosed area that does not have a top, without a muzzle or leash, if the dog remains within his or her sight and only members of the immediate household or persons 18 years of age or older are allowed in the enclosure when the dog is present. When being transported, such dogs must be safely and securely restrained within a vehicle.

6. A person who violates any provision of this section commits a noncriminal infraction, punishable by a fine not to exceed \$500.

7. Any violation of the requirements of a dog that has been declared dangerous, or any other violation of the animal control ordinance related to a previously declared dangerous dog, must result in the confiscation of the dog for euthanasia in accordance with Florida Statutes §767.13. The owner of the dangerous dog must surrender the animal, but may request a hearing, in writing to Animal Services, within 10 days in accordance with the above hearing procedures. The dog must be held and may not be destroyed while the hearing and/or appeal process is pending. The owner or agent of the owner is responsible for all boarding costs throughout the holding period at the rate established by Administrative Code, and other fees as may be required to humanely and safely keep the animal regardless of the final determination of the hearing examiner.

8. If a dog that has not been declared dangerous attacks and causes the death of a human, the dog must be immediately confiscated by Animal Services for euthanasia in accordance with Florida Statute §767.135. The owner of the dog must surrender the animal, but may request a hearing, in writing to Animal Services, within 10 days in accordance with the above hearing procedures. The dog must be held and may not be destroyed while the hearing and/or appeal process is pending. The owner or agent of the owner is responsible for all boarding costs throughout the holding period at the rate established by Administrative Code, and other fees as may be required to humanely and safely keep the animal regardless of the final determination of the hearing examiner.