

NO. 44542-5-II

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION II

CITY OF BONNEY LAKE,

Respondent,

v.

THOMAS MORAWEK,

Petitioner.

BRIEF OF RESPONDENT

MAILI BARBER WSBA#38470
CITY PROSECUTING ATTORNEY
CITY OF BONNEY LAKE

9002 Main Street East, Suite 200
Bonney Lake, WA 98391
253-447-3288
253-862-4208 (fax)

TABLE OF CONTENTS

I. ISSUE PRESENTED 1

II. STATEMENT OF THE CASE..... 1

 A. Statement of Facts..... 1

 B. Procedural History4

 C. Bonney Lake Municipal Code-Dangerous Dog Designation.....5

III. AUTHORITY AND ARGUMENT..... 7

 A. THE DANGEROUS DOG DESIGNATION SHOULD BE
 UPHELD BECAUSE THE CIRCUMSTANCES OF THE
 ATTACK ILLUSTRATE SUBSTANTIAL EVIDENCE AS
 TO THE ELEMENT OF PROVOCATION7

 1. Standard of Review.....7

 2. The Case At Hand Is Distinguishable From A Key Fact In The
 Downey Case.....8

 3. Morawek’s Dog Trespassing Is An Act Of Provocation;
 Accordingly Lynn’s Cat Did Not Provoke Its Own
 Attack.....9

 4. The Size Of The Animals Are A Reasonable Inference As To
 The Provocation Element.....10

 5. Hearing The Beginning Of The Attack Is Witnessing The
 Begging Of The Attack.....11

 B. SUBSTANTIAL EVIDENCE SUPPORTS THE HEARING
 EXAMINER’S DETERMINATION.....12

 C. ATTORNEY FEES AND COSTS SHOULD NOT BE
 AWARDED 15

IV. CONCLUSION16

TABLE OF AUTHORITIES

Cases

Hollis v. Garwall Inc., 137 Wn.2d 683 (1999).7
Downey v. Pierce County, 165 Wn. App 152 (Wash. App.
Div. 2 2011).....8, 9, 13, 15
Gorman v. Pierce County, 081313 WACA 42502-5-II
(Wash. App Div. 2 Aug. 13, 2013).....15
Mansour v. King County, 131 Wn. App. 255 (2006)7, 13
Quinn v. Cherry Lane, 153 Wn. App. 710 (2009).....14

Statutes

RCW 4.84.350 (1).....15
RCW 7.16.120(5).....12

Court Rules

GR 14.....10
GR 14.18
RAP 14.2.....15
RAP 14.3.....15

Bonney Lake Codes

BLMC Chapter 6.042, 4, 5, 6, 7
BLMC 6.04.0105
BLMC 6.04.010(G)10, 13
BLMC 6.04.010(G)(2).....5
BLMC 6.04.010(I)5
BLMC 6.04.1855, 6
BLMC 6.04.1866, 7

Additional Authorities

Webster’s Third New International Dictionary of the English
Language.....10

I. ISSUES PRESENTED

1. Whether the Hearing Examiner's decision should be upheld when the circumstances of the attack illustrate substantial evidence to support the provocation element?

II. STATEMENT OF THE CASE

A. Statement of Facts

On July 5, 2011, Metro Animal Control Officer Nicole Smith¹ followed up on a call from Saturday, July 2nd regarding a dog that had killed a cat. AR² 16. Since the reporting party Lynn Strong was at work, Ofc. Smith spoke to Lynn's daughter and requested that Lynn and witnesses to the incident write a written statement and call Ofc. Smith. AR 17.

On July 5, 2011, Ofc. Smith went to the address of 19417 67th ST. CT. E, Bonney Lake, and spoke to the dog's owner Thomas Morawek. Id. Morawek stated that he did not witness the attack. See AR 21. At that time, he was mowing his lawn and his dog was out with him. AR 21. He then noticed that his dog was out of sight for a moment. AR 21. When Morawek found his dog, he noticed he had a scratch on his nose. Id. Just then, the neighbor came over and told him what his dog had done. Id.

¹ Metro Animal Services are the contract animal control authority for the City of Bonney Lake. This is evidenced by the contract for services referred to at the hearing in question. A copy of the contract was also provided to the Appellant prior to hearing.

² AR, Administrative Review refers to the Hearing Examiner Hearing held on May 8, 2012.

Morawek stated he looked all over his yard and did not find the cat, so he was unsure if his dog actually had killed the cat. See AR 21-22. Ofc. Smith explained to Morawek why she was there and that she was waiting for statements from the neighbors regarding the incident. AR 17.

On July 3, 2011, Ofc. Smith went to Lynn's residence and picked up her and her son Luke's witness statements. See AR 17. Both statements state they heard an animal fight under their porch. Luke witnessed the neighbor's white dog attacking their cat on Lynn's property and then the dog took the cat back into his own yard next door. See AR 5-8, 10-14. Lynn stated that she heard the same commotion, but did not go look. See AR 6. She heard her son yelling at the dog and telling Lynn her cat was dead then the dog ran off with her cat. See AR 5-6. Ofc. Smith made phone contact with Morawek, explained that she is deeming his dog Dangerous within the City for killing his neighbor's cat, and that she would come by with paperwork. See AR 21-22.

On Thursday July 7, 2011, Ofc. Smith went to Morawek's residence, served him with the Dangerous Dog Declaration Papers, pursuant to Bonney Lake Municipal Code (herein referred to as BLMC) Chapter 6.04, and explained what he needed to do next. Morawek read, understood the papers, and signed them. AR 17.

On September 27, 2011, Bonney Lake Chief of Police Dana Powers sent Morawek notice of her decision to uphold the designation of dangerous dog. (Chief of Police Decision herein referred to as C.P. dec.)

In the notice Morawek's appeal options are outlined in the last paragraph.
See C.P. dec.

On May 8, 2012, the appeal of the declaration of dangerous dog was held in front of Deputy Hearing Examiner Terrence F. McCarthy. AR 1-33. As additional evidence, Lynn testified at the hearing that during the attack on the cat, her son went under the deck to look. AR 6. The deck is approximately four feet above ground and that it is not easy for a person to run under. Id. Lynn testified to the content in her statement and supplemented that her cat was an outdoor cat and that it came and went as it pleased. AR 8. At the hearing, Luke testified that he was on the deck and heard loud shrieking and scuffling under the porch. AR 10. He looked under and by the time he went down there the cat was no longer moving at all. Id. He stated that the cat was in the dog's mouth and he was yelling at it. Id. Luke then went a little bit under the porch but not all the way for his own safety, tried to get the dog out and it would not move. See Id. Luke began to throw things at the dog to try to scare it out. AR 11. The dog then ran away in the direction of its home with the cat in its mouth. Id. Luke stated that the whole incident took roughly about two minutes and the whole time he was watching the dog with the cat in its mouth, the cat was limp and not moving. Id. Luke stated that the cat was dead. The cat's body was never found in the yard. AR 12. Luke testified that the cat had lived at his mother's (Lynn) house for 10 years and that it had never ran

away. AR 14. Although the cat was an outside cat, the cat would come back daily to the house. Id.

The Hearing Examiner in his oral findings found (1) that the dog attacked the cat and that the attack was unprovoked, (2) the circumstantial evidence is compelling and because the cat had lived in the home for 10 years and had never run away, then it was highly unlikely that it ran away at this point, (3) the dog was carrying the cat in its mouth and the cat's body was limp; since cats are typically ferocious when attacked, they usually fight, and do not typically lie around; thus the cat must have been killed, and (4) the cat was attacked and killed on private property. See AR 30-31.

B. Procedural History

On July 7, 2011, Animal Control Officer for the City of Bonney Lake, Ofc. Smith deemed the Appellant's dog a dangerous dog. The declaration, pursuant to BLMC chapter 6.04, is based upon written complaint of citizens willing to testify under oath and probable cause found by Ofc. Smith. Morawek appealed the declaration. September 27, 2011, the Bonney Lake Chief of Police, Chief Powers, upheld the declaration of dangerous dog. Morawek then appealed to the Hearing Examiner. On May 8, 2012, Deputy Hearing Examiner Terrence F. McCarthy upheld the declaration of dangerous dog. Morawek appealed to the Superior Court. On January 18, 2013, the Honorable Judge Susan

Serko, upheld the Hearing Examiner's findings and the declaration of dangerous dog.

C. Bonney Lake Municipal Code – Dangerous Dog Designation

Pursuant to BLMC 6.04.010(G)(2), 'Dangerous dog' means any dog that according to the records of the city, has killed a domestic animal without provocation while off the owner's property. A "domestic animal" means any dog, cat, rabbit, horse, mule, ass bovine animal, lamb, goat, sheep, hog, bird, or other animal made to be domestic. BLMC 6.04.010(I). Pursuant to BLMC 6.04.185 the procedure for the declaration of animals as dangerous are as follows:

A. The animal control authority shall classify dangerous dogs. The authority may find and declare a dog dangerous when, based on the preponderance of the evidence, the animal control officer believes that the dog falls within the definitions set forth in BLMC 6.04.010. The written finding must be based upon:

1. The written complaint of a citizen who is willing to testify that the animal has acted in a manner which causes it to fall within the definition of BLMC 6.04.010;
or
2. Dog bite reports filed with the animal control authority;
or

3. Actions of the dog witnessed by any animal control officer or law enforcement officer; or
4. Other substantial evidence.

Pursuant to BLMC 6.04.186, once a dog is deemed dangerous, the permit, fees and ownership requirements are as such:

- The owner of the dangerous dog shall obtain a permit for such dog from the animal authority,
- Pay an annual renewal fee for the above permit,
- Present a proper enclosure to confine the dog, with postings on the premises with clearly visible warning signs and in addition, conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog,
- Microchip the dog and have the number recorded with the animal control authority; or provide the animal control authority with a color digital photo of an identifying tattoo on the dog,
- Present two current, color, digital photographs of the dog for identification purposes,
- Proof that the dog has been spayed or neutered, and
- Present a surety bond issued by a surety insurer reflecting a sum of at least \$500,000 payable to any person injured by the dangerous dog; or a policy liability insurance, such as

homeowner's insurance, issued by an insurer in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the dangerous dog.

III. AUTHORITY AND ARGUMENT

A. THE DANGEROUS DOG DESIGNATION SHOULD BE UPHELD BECAUSE THE CIRCUMSTANCES OF THE ATTACK ILLUSTRATE SUBSTANTIAL EVIDENCE AS TO THE ELEMENT OF PROVOCATION.

1. STANDARD OF REVIEW

When an appellate court reviews a trial court's decision on a writ of review, the court reviews the decision of the body that makes the findings and conclusions relevant to the decision. Mansour v. King County, 131 Wn.App. 255, 262 (2006). The court functions in an appellate capacity, considering questions of law de novo and evaluating factual determinations under a substantial evidence standard. Id. Substantial evidence is evidence sufficient to persuade a reasonable person of the truth of the finding. Id. The substantial evidence standard is deferential and requires the court to view the evidence and reasonable inferences in the light most favorable to the party that prevailed in the forum that exercised fact-finding authority. Id. The appellate court considers any relevant facts and reasonable inferences in the light most favorable to the nonmoving party and all questions of law are reviewed de novo. Hollis v. Garwall, Inc., 137 Wn. 2d 683, 690 (1999).

2. THE CASE AT HAND IS DISTINGUISHABLE FROM A KEY FACT IN THE DOWNEY CASE.

In Downey³, Heidi Downey’s Great Pyrenees-cross dog Blizzard allegedly “grabbed” Tina Steiner’s seven pound Pomeranian Kayla; injuring her so severely that she had to be euthanized. Downey v. Pierce Cnty, 165 Wn.App. 152, 157 (Wash.App Div. 2 2011). Steiner testified that on the morning of the incident, she had turned Kayla loose to allow her to urinate after first looking around and not seeing anything in the immediate area. See Id at 158. Steiner then turned her back to Kayla to put one of her other dogs back into the dog pen. Downey, 165 Wn.App at 158. While her back was turned Steiner heard “something,” she was not sure if it was Kayla “barking or a yip, but something.” Id. When she turned around, she saw that Downey’s dog had grabbed Kayla by the stomach and was running with her. See Id. Steiner was unsure of where the dog came from. Id. Most importantly, Steiner was inconsistent to the location of where the attack took place. Id. Steiner did indicate on a drawing of the surrounding properties that the attack took place either on or close to an access easement crossing *another* neighbor’s property. Id (emphasis added). Downey argued that the evidence showed that the incident occurred on the easement road that *leads* to her residence. Downey, 165 Wn.App at 171. (emphasis added). This argument is

³ The “provocation” portion of Downey v. Pierce Cnty is unpublished; although the citing of this case is not in accordance with GR 14.1, the case is being cited to distinguish the Courts previous analysis on the similar issue. 145 Wn.App 152, (Wash.App. Div. 2 2011).

important because both parties agreed on the location of the attack. In that case, this Court noted that an access easement likely does not grant the party benefitting from the easement the right to “reside” on that property; thus the location of the attack was on neither of the animal owner’s property. See Id.

3. MORAWEK’S DOG TRESPASSING IS AN ACT OF PROVOCATION; ACCORDINGLY LYNN’S CAT DID NOT PROVOKE ITS OWN ATTACK.

Here, on July 3, 2011, Lynn and Luke Strong were in the backyard on the back porch, when the attack occurred underneath them. See AR 10. Lynn’s cat was on her property and safely under the four foot porch. See AR 6. Neither parties dispute the location of the attack. The location of the attack is a key difference in this case from the Downey case. 145 Wn.App 152, (Wash.App. Div. 2 2011). In the Downey case, both parties lost sight of their dogs and both dogs were off their property. See Id at 171.

However, here Lynn’s cat was clearly on her own property and safely under a porch. See AR 6. Morawek’s dog was not only loose from his own property but then trespassed onto Lynn’s property. The act of trespassing should be interpreted as provocation. This key difference in the light most favorable to the City should persuade a reasonable person of the truth of finding of provocation on the dog’s part. Trespassing as provocation is just one of the circumstances of the attack that illustrate substantial evidence. Secondly, looking at the definition of “dangerous dog,” it reflects the

policy behind the ordinance. Paragraphs 1 and 2 read “‘Dangerous Dog’ means any dog that according to the records of the city: 1. Has inflicted severe injury on a human being without provocation while on public or private property; [or] 2. Has killed a domestic animal without provocation while off the owner’s property; or “ Id. (emphasis added)

It is clear that the location of the dog versus domestic animal attack is very important. The attack must occur while off the owner’s property. Arguably, the location was contemplated to allow the dog to be safe in its own home and to defend its own property regardless of “provocation.” Thus, the policy should reflect the reverse. Lynn’s cat should be safe on her own property and the act of Morawek’s dog trespassing is the provocation.

Webster’s Third New International Dictionary of the English Language states the full definition of “provocation” as, 1. the act of provoking: INCITEMENT 2. Something that provokes, arouse, or stimulates⁴. Here, trespassing is that act.

4. A REASONABLE INFERENCE AS TO THE PROVOCATION ELEMENT IS THE SIZE OF THE ANIMALS.

Another circumstance of the attack that assists in the illustration of substantial evidence is the size of the animals. On January 18, 2013, the Superior Court appeal was heard in front of Judge Serko. During her

⁴ Referenced as an authority by GR 14 Style Sheet. "Provocation." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 21 Dec. 2013. <<http://www.merriam-webster.com/dictionary/provocation>>.

ruling, she stated very clearly, that the key in this case was the burden of proof. See CP pg. 21. Judge Serko highlighted the above facts and found that there was in fact a killing, and that it occurred on the victim's property. CP 23. Additionally, Judge Serko stated that there is sufficient circumstantial evidence that there was no provocation on the part of the victim's cat. Id. This finding was based on the fact that it was dog versus cat and the relative size of these animals. Moreover, on the issue of provocation, the Appellant argues that Judge Serko's highlighting of the relative size of the animals is insufficient to support lack of provocation. See Appel Br. Pg. 8-9. However, most importantly, the Appellant is overlooking the evidence of the scratch on the dog's nose. AR 21. The relative size of dog versus cat is important to show the length of a cat's arm and paw. The scratch on the dog's nose could not occur without the dog's nose being within the vicinity of the cat's paw. Thus, it would be relatively impossible for a cat to scratch a dog's nose without the dog poking into the personal space of the cat. Provocation does *not* need to be a physical injury. Here, the dog being on the cat's property and the dog's nose coming towards the cat's personal space is provocation.

**5. HEARING THE BEGINNING OF THE ATTACK
IS WITNESSING THE BEGINNING OF THE
ATTACK.**

Moreover, evidence *does* exist as to the beginning of the attack.

Here, when Lynn and Luke Strong were in the backyard on the back porch,

both suddenly heard a horrible scream coming from under the four foot high deck. See AR 5, 10. The loud scream or shriek was the noise from the cat. See AR 6, 10. Although both Lynn and Luke were on top of the deck and did not see the attack start, they did in fact witness the attack occur. They both witnessed the attack occur by *hearing* it begin.

The Strongs testified that they were talking and the first thing they hear is the cat's scream. See Id. After that, there was a kind of scuffling under the porch. AR 10. When asked if she heard any barking or anything from the dog, Lynn answered that she heard a sound like growling. See AR 6. Neither Lynn nor Luke testified to hearing anything from animals before the cat's scream. There was no chasing of animals, no barking from the dog, no growling or hissing before the scream. The start of the noises and the fact that it was a cat's scream is a reasonable inference that the incident started when dog attacked the cat under the porch. Domesticated dogs should not kill cats.

B. SUBSTANTIAL EVIDENCE SUPPORTS THE HEARING EXAMINER'S DETERMINATION

The Appellant asserts that factual determinations of the hearing examiner were not supported by substantial evidence. As mentioned above, factual issues are reviewed for substantial evidence. RCW 7.16.120(5). Factual review is deferential and evidence should be viewed by the Court in the light most favorable to the party who prevailed

in the highest forum that exercised fact-finding authority. See Mansour, 131 Wn. App. At 263-64.

Here, substantial evidence supports the hearing examiner's decision. The testimony taken at the hearing illustrates the totality of the evidence behind the designation.

First, the location of the attack is a key fact that helps paint the picture that will persuade a reasonable person of the finding that Lynn's cat was attacked on her own property. This fact is distinguishable from the Downey case and infers that the cat did not provoke its own attack in her own home. Second, the location coupled with the dog trespassing shows provocation on the dog's part. When the attacking dog went onto private property without consent it was trespassing and thus provoked. Regardless of any argument on Morawek's dog's behalf, in this situation, it should never be justified to trespass. Accordingly, nullifying any claims that the cat provoked its own attack. Third, the policy behind the BLMC dangerous dog definition requiring that the incriminating attack occur while off the dog owner's property reflects that the ordinance considers the act of defending one's own home. Fourth, the circumstantial evidence of size is important to persuade a reasonable person regarding the element of provocation. A Tiger versus a Lion lends different reasonable inferences than a Tiger versus a Chihuahua. Fifth, the scream of the cat is telling as to the attack under the porch and the lack of other noises before

the scream infers that there was no chasing, hissing, or barking before Morawek's dog attacked the cat. See AR 5-6

Lastly, as a policy issue, there is no legal duty to observe your cat at all times while in the backyard of your own property. Even most parents look away from their child from time to time. Nevertheless, the Appellant's interpretation of the ordinance would imply that if one looks away from their cat for a brief period and a dog trespasses and engages in an attack no one would see the start of the attack; thus the trespassing dog could never be deemed dangerous. The solution is to interpret that when a dog trespasses on to the victim animal's property, the dog's act is provocation and consequently no provocation occurred on the part of the victim animal.

Ultimately, it is entirely appropriate for a hearing examiner to base his or her decision on the evidence before them and on their conclusions regarding the testimony presented at the hearing. Judgments regarding the weight of the evidence and credibility determinations are exclusive function of the trier of fact. Quinn v. Cherry Lane, 153 Wn. App. 710, 717 (2009). Thus, using the preponderance of evidence standard, the hearing examiner held that more likely than not, Morawek's dog, Scout, was unprovoked. When viewed in the light most favorable to the City, there was sufficient evidence to persuade a reasonable person of the Hearing Examiner's holding affirming the dangerous dog designation.

C. **ATTORNEY FEES AND COSTS SHOULD NOT BE AWARDED**

The Appellant cites RCW 4.84.350(1) as a request for fees.

However, the City requests this Court to find that the City's actions were substantially justified.

In Gorman v. Pierce Cnty, the County received ten complaints about an owner's dogs and did not pursue a declaration of potential dangerousness from the complaints. Three of the prior complaints involved attempted attacks. This Court found that if the county received reports of a potentially dangerous dog, it has a duty to apply the classification process to that dog. 081313 WACA 42502-5-II (Court of Appeals of Washington Div. 2 Aug. 13, 2013).

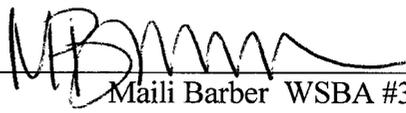
Here, a domesticated dog should not kill a cat. The City is now aware that Morawek's dog not only trespass onto the Strong's property, but killed their cat. With that knowledge and the good faith belief that the dog is a "dangerous dog," it is justified that the City must continue to defend all appeals. Additionally, in Downey, even though the Appellant was the prevailing party, the request for attorney fees on appeal was denied. Downey, 165 Wn.App at 171.

Also, the City request that an award of reasonable fees and costs per RAP 14.2 and RAP 14.3 be denied. The denial is authorized by both RAP 14.2 and 14.3.

IV. CONCLUSION

Based on the above, the City respectfully requests that the Court uphold the Hearing Examiner's designation of dangerous dog.

RESPECTFULLY SUBMITTED this 21 day of December 2013

By: 
Maili Barber WSBA #38470
Prosecuting Attorney
City of Bonney Lake

AFFIDAVIT OF MAILING AND SERVICE

The undersigned certifies and declares under penalty of perjury under the laws of the State of Washington, that on 12/21/2013,

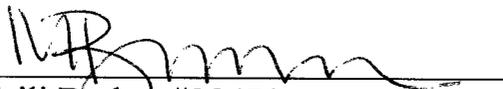
I placed one true and correct copy of the document to which this affidavit is attached in the First Class United States Mail, addressed to

Sean Small Lasher Holzapfel Sperry & Ebberson 601
Union St. Ste 2600 Seattle, WA 98101

One true and correct copy of the document to which this affidavit is attached was emailed to:

Sean Small at small@lasher.com,krachunis@lasher.com

Signed and Dated: 12/21/2013 in Issaquah, King
County, Washington



Maili Barber #38470

APPENDIX 'A'

Chapter 6.04 REGULATIONS AND LICENSING

Sections:

- 6.04.010 Definitions.
- 6.04.020 Administration.
- 6.04.030 Responsibility.
- 6.04.040 Promulgation of rules and regulations.
- 6.04.050 Power and authority of animal control officer.
- 6.04.060 Enforcement authority.
- 6.04.070 Registration and licensing of dogs and cats.
- 6.04.080 Dog and cat license fees.
- 6.04.081 Penalty for violation.
- 6.04.082 Mandatory spay/neuter and microchipping for impounded dogs and cats – Deposit – Refund – Exception.
- 6.04.090 Kennel license – Required.
- 6.04.100 Kennel license – Zoning restrictions.
- 6.04.110 Kennel standards.
- 6.04.120 Permit required for certain animals.
- 6.04.130 Livestock and poultry.
- 6.04.135 Livestock and poultry at large.
- 6.04.140 Cruelty to animals.
- 6.04.150 Animals given to minors.
- 6.04.160 Poisoning animals.
- 6.04.170 Animal exhibitions.
- 6.04.180 Harboring stray animals.
- 6.04.181 Feces removal.
- 6.04.182 Declaration of dogs as potentially dangerous – Procedure.
- 6.04.183 Permits and fees – Potentially dangerous dog.
- 6.04.184 Confinement and identification of potentially dangerous dogs.
- 6.04.185 Declaration of animals as dangerous – Procedure.
- 6.04.186 Permits and fees for dangerous dogs.
- 6.04.187 Notification of status of potentially dangerous or dangerous dog.
- 6.04.188 Possession of a potentially dangerous or dangerous dog where prohibited.
- 6.04.189 Penalty for violation.
- 6.04.190 General violations.
- 6.04.200 Impoundment.
- 6.04.210 Redemption of dog.
- 6.04.220 Animal disposal.
- 6.04.230 Violations – Penalties.
- 6.04.240 Violation – Abatement.

* Prior legislation: Ords. 584, 624, 719B, 1115 and 1116.

6.04.010 Definitions.

Within the provisions of this chapter the following definitions shall obtain:

- A. "Adult dog or cat" means any dog or cat over the age of six months.
- B. "Animal" means and includes female, spayed female, male, and neutered male domestic animals including dogs and cats and excepting those animals usually kept in cages in residences such as canaries and hamsters.
- C. "Animal at large" means any animal not confined to the premises of its owner, unless restrained by a leash, tether, or other physical control device under the physical control of a person, which enters upon public property or rights-of-way or upon land of another person without authorization of that person.
- D. "Animal control authority" means a person or entity authorized by statute or contract to enforce the animal control laws of the city.
- E. "Animal control officer" means any individual employed by, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensing of animals or seizure and impoundment of animals.
- F. "Animal exhibition" means any public display of any living animal in the promotion of entertainment, education, advertisement, or any commercial enterprise.
- G. "Dangerous dog" means any dog that according to the records of the city:
1. Has inflicted severe injury on a human being without provocation while on public or private property;
 2. Has killed a domestic animal without provocation while off the owner's property; or
 3. Has been previously found to be potentially dangerous, the owner having received notice of such, and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.
- H. "Director" shall mean the chief of the Bonney Lake police department or other appropriate city official as designated by the mayor.
- I. "Domestic animal" means any dog, cat, rabbit, horse, mule, ass, bovine animal, lamb, goat, sheep, hog, bird, or other animal made to be domestic.
- J. "Exotic, wild or dangerous animal" means any member of the animal kingdom which is not commonly domesticated or which is of a wild or predatory nature, or any domesticated animal which because of its size, vicious nature, or other characteristic would constitute a danger to human life or property if not kept, maintained or confined in a safe and secure manner.
- K. "Kennel" includes those places where five or more dogs or cats are kept for breeding and the pups or kittens are sold for profit, or where dogs and/or cats are received for care or boarding.

L. "Livestock" means all cattle, sheep, goats or members of the Bovidae family; all horses, mules, or members of the Equidae family; all pigs, swine, or members of the Suidae family; llamas; and ostriches, rhea, and emu.

M. "Muzzle" means a muzzle made in a manner that will not cause injury to the animal or interfere with its vision or respiration but shall prevent it from biting any person or animal.

N. "Nuisance" means either of the following activities of animals:

1. Habitual barking, howling, whining and other sounds so as to unreasonably disturb or annoy the occupants of two or more dwellings within the neighborhood; or
2. Trespass on private property.

O. "Owner" means any person having possessory rights, control, or custody of an animal, livestock, or poultry, or any person who knowingly permits any animal, livestock, or poultry to remain on premises occupied by him or her.

P. "Potentially dangerous dog" means any dog that when unprovoked:

1. Inflicts bites on a human or a domestic animal either on public or private property; or
2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals.

Q. "Poultry" means domestic fowl normally raised for eggs or meat, and includes chickens, turkeys, ducks, and geese; provided, that "poultry" does not include roosters. Roosters shall not be permitted under this chapter.

R. "Proper enclosure of a potentially dangerous dog or dangerous dog" means, while on the owner's property, a potentially dangerous dog or dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top and shall also provide protection from the elements for the dog.

S. "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

T. "Sexually neutered" means medically determined to be incapable of reproduction as certified by a licensed veterinarian. (Ord. 1384 § 1, 2011; Ord. 1381 § 1, 2011; Ord. 1352 § 1, 2010).

6.04.020 Administration.

The animal control authority shall operate, maintain or provide an adequate facility or arrange for the use of other adequate facilities or approved agency to receive and care for any animal delivered to his/her custody for disposition under the provisions of this chapter, which facility shall be accessible to

the public during reasonable hours for the conduct of necessary business concerning impounding animals. (Ord. 1352 § 1, 2010).

6.04.030 Responsibility.

It shall be the primary responsibility of the animal control officer to enforce the provisions of this chapter. (Ord. 1352 § 1, 2010).

6.04.040 Promulgation of rules and regulations.

The city may promulgate such rules and regulations as deemed necessary to implement, administer and enforce the provisions of this chapter; provided, that such rules and regulations are not inconsistent with anything contained herein. (Ord. 1352 § 1, 2010).

6.04.050 Power and authority of animal control officer.

The animal control officer shall be empowered to exercise the authority of a peace officer to the extent necessary to enforce this chapter, which power shall include issuance of citations and seizure of animals from upon public property, vacant property and unenclosed private property and subsequent impoundment. (Ord. 1352 § 1, 2010).

6.04.060 Enforcement authority.

Persons designated to enforce this chapter shall bear satisfactory identification reflecting the authority under which they act, which identification shall be shown to any person requesting the same. (Ord. 1352 § 1, 2010).

6.04.070 Registration and licensing of dogs and cats.

It is unlawful for any person to own, keep, or have control of a dog or cat over the age of eight weeks in the city, whether confined or not, without having a current license tag attached to the collar or harness which is worn by the dog or cat. These licenses shall be obtained by paying the required license fee in the amounts and within the time limits provided herein.

A. Dog and cat licenses must be renewed each year and obtained within 30 days of acquisition of the dog or cat. The license shall remain in force for a period of 12 months from the date of issuance, expiring on the last day of the twelfth month. There is no prorating of any license fee. Renewal licenses will retain the original expiration date whether renewed prior to, on, or after their respective renewal month.

B. A metal tag shall be furnished with each license. Such tag shall be securely attached to a collar which shall be worn by the dog or cat at all times, except when displayed in an official exhibition. The shape of the tag shall not be the same for two consecutive years.

C. In order to receive the fee advantage for altered dogs and cats, an individual must provide either proof of alteration from a licensed veterinarian or a written statement from a licensed veterinarian that the spay/neuter procedure would be harmful to the animal.

D. Any person who fails to obtain a license 30 days after the license expiration date, but before 60 days of the expiration date, shall pay a penalty of \$10.00 per license. Any person who fails to obtain a

license after 60 days of the license expiration shall pay a penalty of \$20.00 per license. No late penalty shall be charged if:

1. The owner submits proof of purchase or acquisition of the animal within the previous 30 days; or
2. The owner has moved into the city within the preceding 30 days; or
3. The animal is currently, or has been within the preceding 30 days, under the age which requires a license; or
4. The owner purchases the license(s) voluntarily, prior to in-person or field contact by animal control personnel; or
5. The owner submits other proof deemed acceptable in the animal control authority's administrative policy. (Ord. 1352 § 1, 2010).

6.04.080 Dog and cat license fees.

A. Dog and cat licenses shall be issued by the animal control authority upon application and payment of an annual license fee. The fee for each animal license shall be as set forth in a schedule of fees, available upon request from the animal control authority. Applications for a dog or cat license shall be on forms provided by the animal control authority.

B. Microchip. The city of Bonney Lake has determined that the best method of identification of animals under current technology is the microchip. Microchipping can be performed by veterinarians. If an animal owner residing inside the Bonney Lake city limits shows proof that their animal has been microchipped, the owner can receive a one-time credit of up to \$10.00 on an animal license. Proof of microchipping on the animal to be licensed is required at the time of licensing. (Ord. 1381 § 2, 2011; Ord. 1352 § 1, 2010).

6.04.081 Penalty for violation.

A person who violates any of the provisions of BLMC 6.04.070 or 6.04.080 shall be guilty of an infraction, for which the penalty shall be \$100.00 for the first offense and \$250.00 for each subsequent offense; provided, that if a person cited for a first offense under this section presents evidence of a valid license obtained subsequent to issuance of a citation or notice of infraction to the Bonney Lake municipal court, the infraction shall be dismissed without cost, except that the court may assess court administrative costs of \$25.00 at the time of dismissal. (Ord. 1352 § 1, 2010).

6.04.082 Mandatory spay/neuter and microchipping for impounded dogs and cats – Deposit – Refund – Exception.

A. The owner of an unaltered cat or dog that is impounded more than once in any 12-month period shall be required to have the cat or dog spayed/neutered and microchipped by a veterinarian as a condition of redeeming the impounded animal. At the time of redeeming the animal, the owner shall pay the sum of \$75.00 to the animal control authority as a refundable deposit. This deposit shall be held by the animal shelter to ensure that the spay/neuter and microchip procedures are performed.

B. Refund. The deposit shall be refunded upon a showing of proof of alteration and microchipping from a licensed veterinarian. If there is no proof of alteration or microchipping, the animal control shelter will retain the deposit.

C. Exception. The deposit shall not be required if the owner or other person redeeming the animal provides a written statement from a licensed veterinarian that the spay, neuter or microchip installation procedure would be harmful to the animal. (Ord. 1352 § 1, 2010).

6.04.090 Kennel license – Required.

It is unlawful and shall constitute a nuisance for any person to maintain or allow to be maintained five or more adult dogs or cats on his or her property, or on property controlled by him or her without first obtaining a kennel license. Any person renewing or applying for a kennel license must show proof in the form of a business license or bona fide membership in a purebred animal club to show that they are still engaging in the type of category for which they are applying or renewing. (Ord. 1352 § 1, 2010).

6.04.100 Kennel license – Zoning restrictions.

No kennel license shall be issued where the kennel will be maintained in an R1, R2, or R3 zone as the same are classified by the ordinances of the city, except that those persons who have applied for and received kennel licenses for the year 1979 and each year thereafter shall be entitled to renew said license in succeeding years, provided the kennel(s) is maintained as per the standards set forth in this chapter. (Ord. 1352 § 1, 2010).

6.04.110 Kennel standards.

The animal control officer shall set the standards for the operation of a kennel and the same shall be consistent so far as possible with those standards set forth by Pierce County. Said standards shall be in writing and be available at the City Hall and the police department. Kennel construction will be in accordance with the city building codes. (Ord. 1352 § 1, 2010).

6.04.120 Permit required for certain animals.

No person shall have, keep, or maintain or have in his possession, or under his control, within the city limits, any exotic, wild or dangerous animal; provided, however, that such animals may be permitted on the condition that a permit is obtained from the city. The permit shall only be granted upon showing by the applicant that adequate safeguards have been instituted and will be maintained which will effectively control the dangerous or vicious propensities of such animal, eliminating any danger to individuals or property, and providing that the keeping or maintaining of any such animal will in no way constitute a nuisance to the occupants of any surrounding property. (Ord. 1352 § 1, 2010).

6.04.130 Livestock and poultry.

A. Livestock and poultry may be maintained on residential property zoned for single-family residences.

B. It is the owner's responsibility to ensure that livestock and poultry do not create a nuisance under this chapter or BLMC Title 8.

C. Livestock and poultry shall be properly housed and fed in a suitable structure detached from the residence and pursuant to BLMC 18.22.060; provided, that such structure shall also comply with the bulk requirements of the applicable residential zone, to the extent such bulk requirements impose additional or stricter limitations on the structure than BLMC 18.22.060.

D. The keeper of any livestock or poultry shall remove all waste, food, bedding, and other debris to eliminate accumulation of insects, rodents, or disease and to eliminate noxious or offensive odors. (Ord. 1384 § 2, 2011; Ord. 1381 § 3, 2011; Ord. 1352 § 1, 2010).

6.04.135 Livestock and poultry at large.

No person owning or in control of any livestock or poultry shall allow such livestock or poultry to enter or trespass upon private or public property without the express permission of the owner or caretaker of such property. Any such livestock or poultry at large may be seized and impounded. (Ord. 1381 § 4, 2011; Ord. 1352 § 1, 2010).

6.04.140 Cruelty to animals.

A. No person shall beat, ill treat, torment, overload, overwork or otherwise abuse an animal, or cause, instigate or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans. Anyone who permits such conduct on premises under his control, and any person present as a spectator at such exhibition, shall also be deemed a violator of this section and subject to punishment therefor.

B. Cruelty to animals includes confinement of an animal within or on a motor vehicle at any location under such conditions as may endanger the health or wellbeing of the animal, including, but not limited to, extreme temperatures, lack of food, water or attention, or confinement with a dangerous animal. Any animal control or peace officer is authorized to remove any animal from a motor vehicle, at any location, when he/she reasonably believes it is confined in such conditions as described above. Any animal so removed shall be delivered to the animal control shelter after the removing officer leaves written notice of such removal and delivery, including the officer's name, in a conspicuous, secure location on or within the vehicle. (Ord. 1352 § 1, 2010).

6.04.150 Animals given to minors.

No person shall give away any live animal to a minor as a prize for, or as an inducement to enter, any contest, game or other competition, or as an inducement to enter a place of amusement, or offer such animal to a minor as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade. (Ord. 1352 § 1, 2010).

6.04.160 Poisoning animals.

It is unlawful for any person to willfully or maliciously poison any domestic animal or domestic bird; provided, that the provisions of this section shall not apply to the killing by poison such animal or bird in a lawful and humane manner by the owner thereof, or by a duly authorized servant or agent of such owner, or by a person acting pursuant to instructions from a duly constituted public authority. (Ord. 1352 § 1, 2010).

6.04.170 Animal exhibitions.

No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical or manual devices in a manner which will cause, or is likely to cause, physical injury or suffering. (Ord. 1352 § 1, 2010).

6.04.180 Harboring stray animals.

Any person who finds and harbors stray animals without knowing the animal owner's identity shall notify the animal control officer and furnish a description of the animal. The finder may surrender the animal to the animal control officer. Records of reported findings shall be retained by the animal control authority and made available to public inspection. (Ord. 1352 § 1, 2010).

6.04.181 Feces removal.

A. Allowing Deposit Prohibited. No person owning or in charge of any animal shall cause or allow such animal to soil, defile, or defecate on any common thoroughfare, sidewalk, passageway, bypath, play area, park, or any place where people congregate or walk, or upon any public property whatsoever, or upon any private property, without the permission of the owner of the property.

B. Removal of Feces Deposited. Any person owning or in charge of any animal which soils, defiles, or defecates on any common thoroughfare, sidewalk, passageway, bypath, play area, park, or any place where people congregate or walk, or upon any public property whatsoever, or upon any private property, without the permission of the owner of the property, shall immediately remove all feces deposited and shall dispose of such feces in a sanitary manner, including the use of a sealed, nonabsorbent, leak-proof container.

C. Domestic Cat Exception. This provision does not apply to domestic cats properly registered and licensed pursuant to this chapter. (Ord. 1381 § 5, 2011).

6.04.182 Declaration of dogs as potentially dangerous – Procedure.

A. The animal control authority shall classify potentially dangerous dogs. The authority may find and declare a dog potentially dangerous when, based on the preponderance of the evidence, the animal control officer believes that the dog falls within the definition set forth in BLMC 6.04.010. The written finding must be based upon:

1. The written complaint of a citizen who is willing to testify that the dog has acted in a manner which causes it to fall within the definition of BLMC 6.04.010; or
2. Dog bite reports filed with the animal control authority; or
3. Actions of the dog witnessed by any animal control officer or law enforcement officer; or
4. Other substantial evidence.

B. Exclusions. A dog may not be declared potentially dangerous if the animal control authority determines, by a preponderance of the evidence, that the threat, injury, or bite alleged to have been committed by the dog was sustained by a person who was at the time committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or who was tormenting, abusing, or

assaulting the animal, or who has been in the past observed or reported to have tormented, abused, or assaulted the dog, or who was committing or attempting to commit a crime.

C. The declaration of potentially dangerous dog shall be in writing and shall be served on the owner in one of the following methods:

1. Certified mail sent to owner's last known address; or
2. Personally; or
3. If the owner cannot be located by one of the first two methods, by publication in a newspaper of general circulation.

D. The declaration shall state at least:

1. The description of the dog.
2. The name and address of the owner of the dog, if known.
3. The whereabouts of the dog if it is not in the custody of the owner.
4. The facts upon which the declaration of potentially dangerous dog is based.
5. The availability of a hearing in case the owner objects to the declaration, if a request is made within 10 days.
6. The restrictions placed on the dog as a result of the declaration of potentially dangerous dog. The restrictions shall include confinement of the dog from the time the declaration is served to the dog owner.
7. The penalties for violation of the restrictions, including the possibility of destruction of the dog, and imprisonment or fining of the owner.

E. If the owner of the dog wishes to object to the declaration of potentially dangerous dog:

1. The owner may request a hearing before the director of the animal control authority or the director's designee by submitting a written request and payment of a \$25.00 administrative review fee to the animal control authority within 10 days of receipt of the declaration, or within 10 days of the publication of the declaration pursuant to subsection C of this section.
2. If the director or the director's designee finds that the declaration is not supported by a preponderance of the evidence, it shall be rescinded and the restrictions imposed thereby annulled.
3. If the director or the director's designee finds sufficient evidence to support declaration, the owner may appeal such decision pursuant to a hearing examiner; provided, that the appeal and the payment of appeal fee of \$75.00 must be submitted to the animal control authority within 10 working days after the director or the director's designee finds sufficient evidence to support the declaration. The hearing examiner shall have the authority to enter the following finding:

- a. Deny the designation as potentially dangerous;
 - b. Uphold the designation as potentially dangerous; or
 - c. Condition the designation as potentially dangerous for a period not to exceed 12 months, at which time the hearing examiner shall review the designation to determine if sufficient evidence to maintain the designation continues to exist. The hearing examiner shall require that during the period of conditional designation the owner shall comply with all provisions set forth in BLMC 6.04.183 and 6.04.184.
4. An appeal of the hearing examiner's decision must be filed in superior court by means of a writ of review.
5. During the entire appeal process, it shall be unlawful for the owner appealing the declaration of potentially dangerous dog to allow or permit such dog to:
- a. Be unconfined on the premises of the owner; or
 - b. Go beyond the premises of the owner unless such dog is securely leashed and humanely muzzled or otherwise securely restrained.
6. During the entire appeal process, should the owner fail to follow the restrictions outlined in subsection (E)(5) of this section, the animal control authority is authorized to seize and impound such dog for the remainder of the appeal process. The owner shall be responsible for the daily boarding fee. (Ord. 1381 § 6, 2011; Ord. 1352 § 1, 2010).

6.04.183 Permits and fees – Potentially dangerous dog.

A. Following a declaration of a potentially dangerous dog and the exhaustion of the appeal therefrom, the owner of a potentially dangerous dog shall obtain a permit for such dog from the animal control authority. In addition, the owner of a potentially dangerous dog shall pay an annual renewal fee for such permit.

B. Should the owner of a potentially dangerous dog fail to obtain a permit for such dog from the animal control authority or to appeal the declaration of potentially dangerous dog, the animal control authority is authorized to seize, impound and destroy the dog. The animal control authority shall follow the procedures contained in BLMC 6.04.189.

C. Ownership Requirements.

1. It is unlawful for an owner to have a potentially dangerous dog in the city without a permit issued under this section, except that this shall not apply to dogs used by law enforcement officials for police work.
2. The animal control authority shall issue a permit to the owner of a potentially dangerous dog if the owner presents to the animal control unit sufficient evidence of:
 - a. A proper enclosure to confine a potentially dangerous dog and the posting of the premises with a clearly visible warning sign that there is a potentially dangerous dog on the

property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a potentially dangerous dog;

b. A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least \$50,000, payable to any person injured by the potentially dangerous dog; or

c. A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under RCW Title 48 in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the potentially dangerous dog. (Ord. 1381 § 6, 2011; Ord. 1352 § 1, 2010).

6.04.184 Confinement and identification of potentially dangerous dogs.

A. Following a declaration of a potentially dangerous dog and the exhaustion of the appeal therefrom, it shall be unlawful for the owner of the potentially dangerous dog to allow and/or permit such dog to:

1. Be unconfined in a proper enclosure on the premises of such person; and
2. Go beyond the premises of such person unless such dog is securely leashed and humanely muzzled or otherwise securely restrained.

B. Potentially dangerous dogs must be tattooed or have a microchip implanted for identification. Identification information must be on record with the animal control authority. (Ord. 1381 § 6, 2011; Ord. 1352 § 1, 2010).

6.04.185 Declaration of animals as dangerous – Procedure.

A. The animal control authority shall classify dangerous dogs. The authority may find and declare a dog dangerous when, based on the preponderance of the evidence, the animal control officer believes that the dog falls within the definitions set forth in BLMC 6.04.010. The written finding must be based upon:

1. The written complaint of a citizen who is willing to testify that the animal has acted in a manner which causes it to fall within the definition of BLMC 6.04.010; or
2. Dog bite reports filed with the animal control authority; or
3. Actions of the dog witnessed by any animal control officer or law enforcement officer; or
4. Other substantial evidence.

B. Exclusions. A dog shall not be declared dangerous if the animal control authority determines, by a preponderance of the evidence, that the threat, injury, or bite alleged to have been committed by the dog was sustained by a person who was at the time committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or who was tormenting, abusing, or assaulting the dog, or who has been in the past observed or reported to have tormented, abused, or assaulted the dog, or who was committing or attempting to commit a crime.

C. The declaration of a dangerous dog shall be in writing and shall be served on the owner in one of the following methods:

1. Certified mail sent to the owner's last known address; or
2. Personally; or
3. If the owner cannot be located by one of the first two methods, by publication in a newspaper of general circulation.

D. The declaration shall state at least:

1. The description of the dog.
2. The name and address of the owner of the dog, if known.
3. The whereabouts of the dog if it is not in the custody of the owner.
4. The facts upon which the declaration of dangerous dog is based.
5. The availability of an appeal in case the owner objects to the declaration, if a request is made within 10 calendar days.
6. The restrictions placed on the dog as a result of the declaration of a dangerous dog.
7. The penalties for violation of the restrictions, including the possibility of destruction of the dog and imprisonment or fining of the owner.

E. If the owner of the dog wishes to object to the declaration of a dangerous dog:

1. The owner may request a hearing before the director or director's designee by submitting a written request and payment of a \$25.00 administrative review fee to the animal control authority or its designee within 10 calendar days of receipt of the declaration, or within 10 calendar days of the publication of the declaration pursuant to subsection C of this section.
2. If the director or designee finds that the declaration is not supported by a preponderance of the evidence, it shall be rescinded and the restrictions imposed thereby annulled.
3. If the director or designee finds sufficient evidence to support declaration, the owner may appeal such decision pursuant to a city hearing examiner; provided, that the appeal and the payment of an appeal fee of \$75.00 must be submitted to the animal control authority within 10 calendar days after the finding of sufficient evidence by the animal control authority or its designee. The hearing examiner shall have the authority to enter the following finding:
 - a. Deny the designation as a dangerous dog;
 - b. Uphold the designation as a dangerous dog; or
 - c. Condition the designation as a dangerous dog for a period not to exceed 12 months, at which time the hearing examiner shall review the designation to determine if sufficient evidence to maintain the designation continues to exist. The hearing examiner shall require

that during the period of conditional designation the owner shall comply with all provisions set forth herein.

4. An appeal of the hearing examiner's decision must be filed in superior court by means of a writ of review.

5. During the entire appeal process, it shall be unlawful for the owner appealing the declaration of dangerous dog to allow or permit such dog to:

a. Be unconfined on the premises of the owner; or

b. Go beyond the premises of the owner unless such dog is securely leashed, under the control of a competent adult and humanely muzzled or otherwise securely restrained.

F. In the case wherein a dog is found to be a dangerous animal pursuant to the procedures in this section because the dog killed or severely injured a human being without provocation, after the exhaustion of appeal therefrom, the dangerous dog shall be forfeited to the animal control authority and be humanely euthanized. The animal control authority shall follow the procedures contained in BLMC 6.04.189.

G. During the entire appeal process, should the owner fail to follow the restrictions outlined in this section, the animal control authority is authorized to seize and impound such dog for the remainder of the appeal process. The owner shall be responsible for the daily boarding fee outlined. (Ord. 1381 § 6, 2011; Ord. 1352 § 1, 2010).

6.04.186 Permits and fees for dangerous dogs.

A. Following the declaration of a dangerous dog and the exhaustion of the appeal therefrom, the owner of a dangerous dog shall obtain a permit for such dog from the animal control authority or its designee. In addition, the owner of a dangerous dog shall pay an annual renewal fee for such permit.

B. Should the owner of a dangerous dog fail to obtain a permit for such a dog or to appeal the declaration of a dangerous dog, the animal control authority is authorized to seize and impound such animal and, after notification to the owner, hold the dog for a period of no more than 10 days before destruction of such animal. The animal control authority must comply with the requirements contained in BLMC 6.04.189.

C. Ownership Requirements.

1. It is unlawful for an owner to have a dangerous dog in the city without a permit issued under this section, except that this shall not apply to dogs used by law enforcement officials for police work.

2. The animal control authority shall issue a permit to the owner of a dangerous dog if the owner presents to the animal control unit sufficient evidence of:

a. A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the

owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

b. The dog has been microchipped and the number recorded with the animal control authority; or the dog has an identifying tattoo, either inside the left ear or inside the left, rear, upper thigh of the dog and a color, digital photo of the tattoo (in electronic format) is provided to the animal control authority for identification purposes;

c. Two current, color, digital photographs (in electronic format) of the dangerous dog (minimum three inches by five inches in size), for identification purposes;

d. Current rabies vaccination;

e. Proof the animal has been spayed or neutered; and

f. A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least \$500,000, payable to any person injured by the dangerous dog; or a policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under RCW Title 48 in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the dangerous dog.

D. Following a declaration of a dangerous dog and the exhaustion of the appeal therefrom, it shall be unlawful for the owner of such dangerous dog to allow and/or permit such dog to:

1. Be unconfined on the premises of such person in a proper enclosure; and
2. Go beyond the premises of such person unless such dog is securely leashed and humanely muzzled or otherwise securely restrained.

E. The dangerous dog must wear a visible colored collar (not less than two inches in width) with current license tag at all times. Muzzle and collar must be available at time of inspection. An owner who fails to pass inspection will be subject to a \$50.00 reinspection fee per occurrence. Reinspection must occur during the prescribed 10-calendar-day period. (Ord. 1381 § 6, 2011; Ord. 1352 § 1, 2010).

6.04.187 Notification of status of potentially dangerous or dangerous dog.

The owner of a dog that has been classified as a potentially dangerous or dangerous dog shall immediately notify the animal control authority when such dog:

- A. Is loose or unconfined; or
- B. Has bitten or otherwise injured a human being or attacked another animal or livestock; or
- C. Is sold or given away or dies; or
- D. Is moved to another address.

At least 48 hours prior to a potentially dangerous or dangerous dog being sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the animal control

authority. If the new owner resides within the jurisdiction of the city, the new owner shall comply with all of the requirements of this chapter. (Ord. 1381 § 6, 2011; Ord. 1352 § 1, 2010).

6.04.188 Possession of a potentially dangerous or dangerous dog where prohibited.

A. It is unlawful to bring a dog into the city that has been declared to be potentially dangerous or dangerous by any other agency, animal control authority, hearing examiner, municipality or court without providing 48 hours' notice to the animal control authority of the intent to bring the dog into the city. Prior to bringing the dog into the city, all conditions and provisions for licensing such a potentially dangerous or dangerous dog must be met by the owner and the owner must also comply with any and all conditions and restrictions imposed by any other agency, animal control authority, hearing examiner, municipality or court which originally had declared the dog as potentially dangerous or dangerous. It is a gross misdemeanor to bring a dog into the city without following the provisions of this section.

B. Should the owner of a potentially dangerous or dangerous dog fail to obtain a permit for such dog as provided for in this chapter, the animal control authority is authorized to seize and impound such dog and, after notification to the owner, hold the dog for a period of no more than 10 days before destruction of such dog by the animal control authority. If the owner can meet the licensing requirements within 10 days, they may redeem their dog after paying all associated impound, boarding, and licensing fees. Prior to the animal control authority euthanizing the dog, the animal control authority shall follow the procedures outlined in BLMC 6.04.189.

C. When a dog has been declared potentially dangerous or dangerous by any agency, animal control authority, hearing examiner, municipality or court for the city, the owner of such dog shall be guilty of a gross misdemeanor if such animal is thereafter found to have been moved to a location other than as registered with the animal control authority without required notice. Nothing in this section relieves the owner from fully complying with any conditions, regulations, or provisions imposed by agency, animal control authority, hearing examiner, municipality or court for the city. (Ord. 1381 § 6, 2011; Ord. 1352 § 1, 2010).

6.04.189 Penalty for violation.

A. Any person who violates any provision of this chapter relating to potentially dangerous or dangerous dogs shall, upon conviction thereof, be found guilty of a gross misdemeanor; provided further, that any person found guilty of such gross misdemeanor shall pay all expenses, including shelter, food, veterinary expenses for identification or certification of the breed of the dog or boarding and veterinary expenses necessitated by the seizure of any dog for the protection of the public, and such other expenses as may be required for the destruction of any such dog.

B. Any potentially dangerous or dangerous dog which is in violation of the restrictions contained within this chapter shall be seized, impounded, and destroyed. Prior to the destruction of a potentially dangerous or dangerous dog, the owner may appeal the animal control authority's decision to seize, forfeit, and destroy the animal to the director of the animal control authority or the director's designee. The animal control authority must provide to the owner of the potentially dangerous or dangerous dog notice of the grounds for destroying the dog. The owner shall have an opportunity to rebut the decision made by the animal control authority to destroy the dog and the owner shall have the

opportunity to subpoena witnesses and records. The director must find by a preponderance of the evidence that the owner has violated this chapter and there is lawful authority to destroy the dog. (Ord. 1381 § 7, 2011).

6.04.190 General violations.

It shall be a violation of this chapter for any person or the owner of any animal to:

- A. Permit any animal to become at large;
- B. Permit any animal to be a nuisance;
- C. Fail to keep a vicious animal confined within a building or secure enclosure or securely muzzled and leashed or caged whenever off the premises of its owner;
- D. Fail to keep every female dog or cat in heat confined in a building or secure enclosure in such a manner that such female dog or cat cannot come into contact with another animal except for planned breeding;
- E. Fail to provide an animal with humane care and treatment and with sufficient good and wholesome food and water, proper shelter and protection from the weather, and veterinary care when needed to prevent suffering;
- F. Leave an animal unattended for more than 24 consecutive hours without adequate care;
- G. Abandon an animal;
- H. Confine an animal within or on a motor vehicle at any location under such conditions as may endanger the health or well-being of the animal;
- I. Use any trap for the purpose of seizing domestic animals, except that humane traps may be used in the discretion of the animal control officer for the purpose of capturing abandoned and sick animals. (Ord. 1352 § 1, 2010).

6.04.200 Impoundment.

Any animal may be impounded and held at the shelter when it is the subject of a violation of this chapter, when an animal requires protective custody and care for mistreatment or neglect, or when otherwise ordered impounded by the animal control officer.

- A. An animal is deemed to be impounded from the time the animal control officer takes physical custody of the animal.
- B. Impoundment is subject to the following holding period and notice requirements:
 - 1. Any animal wearing a current license tag from a Washington state jurisdiction outside the city, shall be held for a minimum of 48 hours (two days) from time of impoundment. The impounding officer shall make reasonable effort to give notice of the impoundment to the owner.
 - 2. Any animal wearing a current license tag issued by the city shall be held for a minimum of 72 hours (three days) from time of impoundment. The impounding officer shall make reasonable

effort to give notice of the impoundment to the owner. Reasonable effort is intended to ensure the animal control officer will ascertain whether the animal is licensed or otherwise identifiable and, if possible, return the animal to the owner together with a notice of violation of this chapter.

3. Any animal for which no identification of ownership is known or determinable shall be held for 48 hours (two days) from time of impoundment before any disposition may be made of such animal.

4. Animals held for periods prescribed in this section, and not redeemed by the owner, will be disposed of according to BLMC 6.04.220. (Ord. 1352 § 1, 2010).

6.04.210 Redemption of dog.

The owner of any dog impounded under this chapter may redeem said dog within 48 hours from the time of impounding by paying to the impounding authority a redemption fee of \$25.00 for the first time impounded within a one-year period, a redemption fee of \$50.00 for the second impound within a one-year period, and a redemption fee of \$75.00 for the third and subsequent impounds within a one-year period. If a dog is wearing a current pet license at the time of the first impound, no redemption fee shall be collected. In addition to the redemption fee, the redeemer shall pay, as a boarding charge for the caring for and keeping of such dog, the sum of \$6.00 per day for each day (to be collected for the first-time impound if wearing pet license or not), including the first and last days, that the dog is retained by the impounding authority. If such dog is not redeemed by the owner within 48 hours, then any person may redeem it within the next 48 hours by complying with the above provisions, and in case such dog is not redeemed at the end of such time, it may be humanely destroyed or otherwise disposed of within the discretion of the impounding authority. (Ord. 1352 § 1, 2010).

6.04.220 Animal disposal.

The animal control officer shall dispose of animals held for the prescribed period without redemption or adoption by transfer of the animal to Metro Animal Services; provided, however, that irrespective of any prescribed holding period, the animal control officer, upon the advice of a licensed veterinarian, may immediately dispose of any sick or injured impounded animal. (Ord. 1352 § 1, 2010).

6.04.230 Violations – Penalties.

Unless otherwise specifically set forth herein, any person violating the provisions of this chapter, or who shall create, keep, or maintain any nuisance as herein defined, shall be guilty of a misdemeanor, except those persons who permit animals to become at large (BLMC 6.04.190(A)) shall be guilty of an infraction for which the penalties shall be as follows:

1st offense within one year	\$45.00
2nd offense within one year	\$100.00
3rd offense within one year	\$250.00

Persons charged with infractions shall be processed by the municipal court in the same manner as persons charged with traffic infractions. Persons failing to appear for hearings for violations of this chapter shall be subject to the penalties set forth in BLMC 1.16.030. (Ord. 1352 § 1, 2010).

6.04.240 Violation – Abatement.

Any person violating any of the provisions of this chapter in the keeping or maintenance of any nuisance as defined in this chapter may, in addition to the fine provided for in this code by order of the court in such action, be ordered to forthwith abate and remove such nuisance. If the same is not done by such offender within 24 hours, the same shall be abated and removed under the direction of the officer authorized by the order of the court, which order of abatement shall be entered upon the docket of the court and made a part of the judgment in such action.

Any such person shall be liable for all costs and expenses of abating the same when such nuisance has been abated by any officer of the city, which costs and expenses shall be taxed as part of the costs of the prosecution against the party, liable to be recovered as other costs are recovered. In all cases where the officer as authorized by the court abates any such nuisance he shall keep an account of all expenses attending such abatement. In addition to other powers given to collect such costs and expenses in this chapter, the city may bring suit for the same in any court of competent jurisdiction against the person keeping or maintaining the nuisance so abated. (Ord. 1352 § 1, 2010).

The Bonney Lake Municipal Code is current through Ordinance 1467, passed September 24, 2013.

Disclaimer: The City Clerk's Office has the official version of the Bonney Lake Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

BONNEY LAKE MUNICIPAL COURT

December 21, 2013 - 2:52 PM

Transmittal Letter

Document Uploaded: 445425-Respondent's Brief.PDF

Case Name: Morawek v. City of Bonney Lake

Court of Appeals Case Number: 44542-5

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Affidavit of mailing is attached to the Respondent's Brief.

Sender Name: Maili C Barber - Email: **barberm@ci.bonney-lake.wa.us**

A copy of this document has been emailed to the following addresses:

small@lasher.com
krachunis@lasher.com