

NO. 44800-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

BRIAN BESAW, et ux, Appellants

v.

PIERCE COUNTY, et al., Respondents

RESPONDENT PIERCE COUNTY'S BRIEF

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I. INTRODUCTION

Relying on misstatements of fact rather than the unrefuted facts of record, as well as on Animal Control ordinances that were not in effect at the time in question, Plaintiffs Besaw appeal the summary judgment dismissal of their action against Pierce County. Plaintiffs base their appeal on the argument that a later decision of this Court in *Gorman v. Pierce County*, 176 Wn.App. 63, 307 P.3d 795 (2013) – which likewise concerned different facts and different ordinances – recognized a duty that would have required Pierce County to prevent a dog from biting Mr. Besaw when the latter entered his neighbor's fenced yard, knocked on that neighbor's door, and a dog he knew was confined to that house "slithered out" to bite him. The actual facts of record, actual ordinances in existence at the time in question, and unambiguous applicable Supreme Court and Court of Appeals precedent all confirm instead that the dismissal of Plaintiffs' negligence claim was properly granted because no duty existed, no duty was breached, and no proximate cause existed. Dismissal of the County should be affirmed.

II. STATEMENT OF THE ISSUES

1. Where the facts of record and ordinances existing at the time show Animal Control had no duty to require confinement of Plaintiffs' neighbor's dog, did the "failure to enforce exception" to the public duty doctrine

somehow require Animal Control to have the dog confined anyway?

2. Where the unrefuted factual record shows Animal Control never received a prior report of an attempted attack by the dog which later bit Mr. Besaw, did Plaintiffs meet their burden of producing evidence on which a jury could reasonably find Animal Control breached a duty owed them?

3. Where Mr. Besaw entered his neighbor's fenced yard to knock on that neighbor's door, and a dog he knew was confined therein later "slithered out" to bite him, did Pierce County proximately cause that bite because it had not ordered the already confined dog to be confined?

III. STATEMENT OF THE CASE

On July 5, 2011, Plaintiff Brian Besaw was bitten by a white pit bull¹ – one of his neighbor Calvin Johnson's two dogs.² This occurred

¹ So that the Court does not somehow overlook the dog's controversial breed, plaintiffs as a courtesy describe the dog as a "pit bull" 34 times – and helpfully boldface the words "**pit bull**" 28 times – in their 35-page brief. *See generally* App. Br. If this not-so-subtle overemphasis is an unstated attempt to imply this breed somehow is inherently dangerous, such a categorical legislative determination not only does not exist in the PCC and is outside the role of Animal Control officers, but repeatedly has been rejected by the Courts. *See Rivers v. New York City Housing Authority*, 694 N.Y.S.2d 57 (App. Div. 1st Dep't 1999) (noting plaintiff's failure to demonstrate pit pull displayed any signs of vicious or violent behavior prior to the incident); *State v. Murphy*, 168 Ohio App. 3d 530, 860 N.E. 2d 1068 (3d Dist. 2006) (holding trial court erred in rendering verdict that defendant's dogs were vicious based on the "history" of pit bulls); *Ferrara ex rel. Com. of Mass. Dept. of Social Services v. Marra*, 823 A.2d 1134 (R.I. 2003) (holding trial court properly declined to take judicial notice that pit bulls were inherently dangerous by virtue of their breed).

² Plaintiffs assert "[w]hat is at issue in this case is two **pit bulls**," which they label a "pack." AB 6 n. 2 (bolding in original). In fact, only the white dog bit Besaw while the second – a brown dog – attempted to protect him from the first. *See* CP 3 ¶ 5.2, 65, 173.

when Plaintiff went into that neighbor's fenced yard to talk to Johnson about a lawn mower, spoke with him on the porch after knocking on the door behind which he knew the white dog was confined, and that dog then "slithered out" of the house door when the owner opened it to go back in. *See* CP 2 ¶ 5.1; CP 48 lns 2–8.

Mr. Besaw testified the reason he did not fear going into the Johnsons' fenced and gated yard to knock on their door, though he was familiar with their dogs and knew that they were present within the house, was because he: 1) had no reason to fear the dogs; 2) knew the Johnsons also were present; and 3) had never seen either dog being vicious toward anyone. CP 42, 46–47, 49–50. Though Mr. Besaw in prior years had contacted Animal Control three times – and Ms. Besaw once – it was only to report that the two Johnson dogs were running unleashed in the neighborhood. *See* CP 38–39, 42 lns 1–4. Even as to this reported behavior, Mr. Besaw admits that at the time he was bitten while on the Johnson's front porch and after entering their enclosed yard, Animal Control had "got on them quite a bit, so [the Johnsons] were kind of keeping them in a lot more and keeping a little bit better eye on them there for a little bit." CP 47.

After being bitten, Plaintiff drove himself to the emergency room where medical personnel documented a three centimeter long and one cen-

timeter wide laceration on his arm with no broken bone, requiring no sutures or pain medication, and for treatment only applied lidocaine topically and a steristrip and sent Plaintiff home after 90 minutes without need for any further medical care – indeed, within three weeks the injury had healed uneventfully. CP 51–52, 53, 54–57, 62–64. When Plaintiff the next day made a report to Pierce County Animal Control, it was the first and only report the agency had received of Johnson's white dog menacing anyone.³ See CP 45:12–15, 248, 348.

On August 26, 2012, Mr. Besaw and his wife Carmen filed suit naming Pierce County as well as Kristie and Calvin Johnson, but served only Pierce County. Their alleged causes of action included a claim the County was liable for Mr. Besaw being bitten while on the Johnson property because it allegedly "was negligent in the supervision and control of

³ Mr. Besaw's brief alleges an Animal Control Supervisor "was aware of the prior history of the Johnson **pit bulls** would [sic] approach people in the neighborhood in a menacing fashion" (emphasis added, bold in original), but its citation to the record does not support this allegation concerning the white Johnson dog in question. Compare AB 11 with CP 284. Instead, the record confirms that in 2008 a different dog in the neighborhood owned by a different person had "charged" someone, and after the owner was contacted by Animal Control, he and his dog moved away – three years before the incident here. CP 40-41, 77. Otherwise, records only show on June 24, 2011, a neighbor reported hearsay information that he had been told one of the two Johnson dogs – never identified as the white dog at issue here – had bitten his adult daughter at an unknown location under unknown circumstances, but when Animal Control contacted his daughter she would not cooperate as required for enforcement under the PCC. CP 60, 78. See also PCC 6.070-.010(A). Even after Besaw reported being bitten on July 5, 2011, the only other first-person report of menacing dog behavior concerned the other Johnson dog – not the white dog that bit Besaw – and that was by another neighbor who would not provide a "written complaint" as Animal Control had specifically requested and the Code required for enforcement. CP 80–81, 82–85, 87; PCC 6.070.010(A). See also discussion *infra* at 9-13.

... *potentially dangerous* animals in Pierce County" and "failed to enforce ordinances regarding control of ... *potentially dangerous animals*." CP 5 ¶ 5.13 (emphasis in original).

However, the Pierce County Code (hereinafter "PCC") at the time of the incident defined a "potentially dangerous" animal instead as an animal which "when unprovoked: (a) inflicts bites on a human, domestic animal, or livestock either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds or private property in a menacing fashion or apparent attitude of attack, or (c) any animal with a known propensity, tendency, or disposition to attack unprovoked or to cause injury or otherwise to threaten the safety of humans, domestic animal, or livestock on any public or private property." See PCC 6.02.010(X) (emphasis added). Animal Control only had "the ability to declare an animal as potentially dangerous if there is probable cause to believe the animals falls [sic] within the definitions ... in Section 6.02.010 X" and such had to 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 Section 6.02.010 X; or 2) Animal bite reports filed with the County or the County's designees; or 3) Actions of the animal witnessed by any animal control officer or law enforcement officer; or 4) Other substantial evidence." PCC 6.070.010(A)

(emphasis added). Only if such a designation was made and not successfully appealed, PCC 6.07.010(E), would a "potentially dangerous animal" be subject to permitting, fees, and requirements of a "proper enclosure," etc., as described in PCC 6.07.025. *See* PCC 6.070.020.⁴

Because the law did not allow any such declaration before Mr. Besaw had been bitten, the County owed no duty to Plaintiffs at the time he was bitten, breached no duty to them, and did not proximately cause them any harm, and therefore the County moved to dismiss all Plaintiffs' claims. *See* CP 14–33. Though their complaint also had alleged claims of "negligent infliction of emotional distress," "violation of RCW 16.08.040 – Dog Bite Liability," and that the dog that bit Mr. Besaw somehow was a "dangerous" animal (*i.e.*, had caused "physical injury which results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery"),⁵ *see* CP 5 ¶s 5.3, 6.1–6.3; PCC 6.02.010(AA), Plaintiffs only opposed dismissal of the claim that the

⁴ Appellant's brief mischaracterizes Animal Control Supervisor Brian Bowman's testimony as stating that a "potentially dangerous dog" must be "in a kennel when inside." AB 11. In fact, both the supervisor's testimony and County Code at the time instead show a dog so categorized had to be confined either in an enclosed structure or "indoors;" *i.e.*, simply "[i]nside a house" as were both Johnson dogs at the time of the incident in question. *See* CP 284, 348; PCC 6.07.010(Z).

⁵ Appellant's Brief for some reason repeatedly refers to the "dangerous dog" ordinance and statute, AB 24, 28, but they did not resist dismissal of that claim below, *see* CP 103-26, 312-13; 3/22/13 VRP 5, 15-22, and their briefing in this Court makes no effort to argue – much less show – its requirements were met. *See e.g.* RAP 10.3, 10.4. Indeed, the record affirmatively instead shows the requirements for declaring a dog "dangerous" under PCC 6.02.010(N), PCC 6.02.010(AA) were not met. *See* CP 51-52, 53, 54-57, 62-64.

white dog should have been declared "potentially dangerous" and somehow prevented by the County from "slither[ing]" out its door to bite Mr. Besaw. *See* CP 103–126. On March 22, 2013, the trial court granted summary judgment for Pierce County and dismissed it with prejudice. *See* CP 369–70.⁶

Plaintiffs appeal only the dismissal of their negligence claim, and do so exclusively claiming a duty was owed them under the "failure to enforce exception" regarding animal control ordinances governing "potentially dangerous dogs," that the County breached that duty and proximately caused Mr. Besaw to be bitten by the white dog that was enclosed within Johnson's house until he came into that dog's enclosed yard, knocked on its door, and it later "slithered out" to attack him. *See e.g.* AB 7–8.

IV. ARGUMENT

The appellate Court "reviews summary judgment *de novo*," *Washington Federal Sav. and Loan Ass'n v. McNaughton Group*, __ Wn.App. __, *3, 2014 WL 389549 (2014), and "may affirm on any basis supported by the record." *Steinbock v. Ferry County Public Utility Dist. No. 1*, 165 Wn.App. 479, 485, 269 P.3d 275 (2011). *See also* CR 56. Defendants

⁶ Appellants claim the trial court "did not separately analyze the 'failure to enforce' exception," AB 10, *see also id.* at p. 5 n. 1, but the record shows the trial court addressed all the briefed and argued issues; *i.e.*, both "exceptions to the public duty doctrine," the lack of any breach of duty, and lack of proximate cause. *See* 3/22/13 VRP 1-2, 8-14, 16-17, 21, 24-26 (emphasis added).

meet their burden on summary judgment "by 'showing' – that is pointing out ... that there is an absence of evidence to support the nonmoving party's case." *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225 n. 1, 770 P.2d 182 (1989) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). See also *Lake Chelan Shores Homeowners Ass'n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn.App. 168, 179, 313 P.3d 408 (2013). A suit should be dismissed then where plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Young, id.* at 225 (citing *Celotex, id.* at 322); *Lake Chelan Shores Homeowners Ass'n, supra*. In other words:

A defendant in a civil action is entitled to summary judgment when that party shows that there is an absence of evidence supporting an element essential to the plaintiff's claim. The defendant may support the motion by merely challenging the sufficiency of the plaintiff's evidence as to any such material issue. In response the nonmoving party may not rely on the allegations in the pleadings but must set forth specific facts by affidavit or otherwise that show a genuine issue exists.

Las v. Yellow Front Stores, 66 Wn.App. 196, 198 (1992).

Plaintiffs' burden on summary judgment is not met just because they present at least some evidence on a claim because a "scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."

Anderson v Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). *See also Seiber v. Poulsbo Marine Center, Inc.*, 136 Wn.App. 731, 736 (2007) ("if the plaintiff, as the non-moving party, can only offer a 'scintilla' of evidence, evidence that is 'merely colorable,' or evidence that 'is not significantly probative,' the plaintiff will not defeat the motion"). Here, Plaintiffs not only failed to meet their burden after the County "pointed out" their lack of evidence of a breach of duty or causation, but the County went further and affirmatively disproved any such claim.

A. RECORD SHOWS NO GENUINE ISSUE OF MATERIAL FACT EXISTS

Though Appellant's Brief claims that "material question [sic] of facts abound," AB 19, it identifies none. In place of facts, Plaintiffs substitute misstatements of the record. Some of the most egregious are:

1. "Prior to Besaw's bite, Pierce County Animal Control was aware of at least 13 incidents related to the Johnson pit bulls" that "concern the same dogs, demonstrating that the dogs were a danger to the community" AB 11 (emphasis added, bold in original).

Review of the actual record for each of the supposed "13 incidents" listed at pages 11–14 of Appellant's brief disproves this mischaracterization. Indeed, the factual record shows why Mr. Besaw testified he had no fear of Johnson's dogs until after he was bitten. *See* CP 42, 46–47, 49–50.

- *"August 16, 2008, report of aggressive behavior,"* AB 11: The term "aggressive behavior" has no meaning under PCC provisions for "potentially dangerous" animals but is a term dispatchers used based only on a citizen's call rather than facts as determined by an investigation. CP 283. Though the Besaws claim on this date "one of the Johnson pit bulls" charged someone, AB 13 (emphasis added, bold in original), the record instead shows the call concerned a different (*i.e.*, "brown") dog owned by a different master (*i.e.*, "Russo") who years before Mr. Besaw was bitten had moved and taken his dog with him. See CP 205, 216, 243–244, 268.

- *"October 11, 2009, report that dogs were roaming and loose in the neighborhood,"* AB 11: While on another call (not in response to a "report") an Animal Control officer observed Russo's dog "and a puppy come visit me" – not "the two Johnson **pit bulls**" as Plaintiff claims, AB 13 (bold in original). See CP 212, 297.

- *"December 18, 2009, report that the dogs were roaming and loose in the neighborhood,"* AB 12: Again Russo's dog and a puppy were allowed to "run all over the neighborhood," CP 210, 298, rather than "the two **pit bulls** in question" as Plaintiff again invents. See AB 13 (bold in original).

- *"January 29, 2010, report that the dogs were demonstrating aggressive behavior in the neighborhood,"* AB 12: The actual investigation

describes no "aggressive behavior" or "attempt to attack" by "the Johnson **pit bulls**," AB 13 (bold in original), but only Russo's dog "wandering again" and a "friendly and playful" puppy "going after r/p's shitzu" in order to "play with my dogs." *See* CP 208, 275, 336 (emphasis added).

- "*February 16, 2010, CAD Incident Report for the dogs running loose*," AB 12: This is a duplicate computer notation of the same incident listed below that is mischaracterized by Plaintiffs as a separate event, wherein an Animal Control officer found no dog loose and "gate and fence are secure." CP 296. Though Plaintiffs were shown below that this was not a separate incident, *see* CP 315, they again misstate it to this Court.

- "*February 15, 2010, report that the dogs were demonstrating aggressive behavior in the neighborhood*," AB 12: The actual investigation describes no "aggressive behavior" toward any person but only that a "younger dog" – not shown to be "the Johnson Dog in question," AB 13, – was "out and trying to get the rp's cat" but the officer "did not see or hear any dogs" and no cat was "gotten" because it reportedly had ran out of Plaintiffs' yard when it saw one of the dogs and simply was chased down the street. *See* CP 205, 245, 338.

- "*May 3, 2010, report that the dogs were demonstrating aggressive behavior in the neighborhood*," AB 12: The actual investigation describes no "aggressive behavior" by "the dangerous Johnson dogs," AB

13, but that the County was sent email and photos dated in February showing only the dogs "continuing to get out of their yard." CP 200, 202–03. Though Plaintiff is correct that roaming dogs are an infraction, AB 13, it is neither a mandatory infraction nor a ground for declaring them "potentially dangerous." *See* PCC 6.02.010(X).

- "*June 2, 2010, report that the dogs were demonstrating aggressive behavior in the neighborhood,*" AB 12: No report, computer record, or testimony about any incident on this date is cited by Plaintiffs nor found in the record. *See e.g.* CP 143–46; RAP 10.3(a)(5). Again, though Plaintiffs were notified below that there was no factual basis for this alleged "incident," *see* CP 315, they continue to misstate it here.

- "*August 2, 2010, report of dogs being loss [sic] on the streets,*" AB 12: This investigation was not an incident but a "follow-up" about "roaming/loose animal" where "owner was warned." *See* CP 198, 299.

- "*September 3, 2010, loose dog complaint,*" AB 12: Another duplicate computer notation of an incident reported below, *see* CP 300 – misstated again as a separate event despite Plaintiffs previously being shown it is the same incident as that listed for the day before. *See* CP 315.

- "*September 2, 2010, report that the dogs were demonstrating aggressive behavior in the neighborhood,*" AB 12: Dispatcher labeled a citizen call as reporting "aggressive behavior" but investigation showed

complaint was only that dogs "come into r/p's yard and cause problems, the pits scare the r/p's shitzus" which Plaintiffs testified caused spouse "to run out and grab the dogs because the pit bulls were out and" she only was "[a]fraid for our little dogs." *See* CP 196, 339:11–21 (emphasis added).

- "*September 12, 2010, report of 2 aggressive **pit bulls**,*" AB 12 (bold in original): Report only described a "disturbance" at the Johnson residence by people – not dogs – that consisted of a "verbal v. friends' girlfriend Christy" whom the caller said "has 2 aggressive pit bulls." CP 301.

- "*June 24, 2011, report of bite on a person,*" AB 12: Though Plaintiffs claim Officer Page "knew that the dog in question had bitten another adult just two weeks prior to Besaw," AB 15 (emphasis added), the record instead shows all the officer was advised on this date was of a hearsay report by a father who had been told of an earlier supposed incident involving his adult daughter, was never told the white Johnson dog "in question" was involved, but was told by the father and daughter that she "didn't want nothing to do with it." *See* CP 194, 275–76, 343–46. Though Plaintiffs further misstate that "Page did not attempt to personally talk to this victim," AB 14, the unrefuted contemporaneous report and sworn unrefuted testimony in the record instead is that Officer Page personally "spoke with her over the phone" at which time the adult daughter refused to cooperate or report so that it could not be declared "potentially danger-

ous" under the PCC's requirements. *See* CP 194, 275–76; PCC 6.070.010(A).

2. "The dogs were finally declared potentially dangerous ... even though the dogs had previously bitten and threatened others." AB 17 (emphasis added).

Only the white dog that bit Plaintiff was declared "potentially dangerous," CP 159, 164, and – as shown above – its biting Mr. Besaw was the cause of that declaration because it was the first and only report of that dog ever biting or menacing any person. *See also* CP 45:12–15, 248, 348.

3. "Under Pierce County's own code, when two or more dogs are part of an attack and only one bites, all dogs are potentially dangerous (CP 354)." AB 18.

First, it has been shown that the two Johnson dogs were not "part of an attack" either before, during, or after Mr. Besaw's being bitten. Second, the ordinance cited by Plaintiffs was not enacted until after the incident in question. *Compare* CP 89 (PCC 6.02.010 (effective 5/8/09)) *with* CP 348–54 (PCC 6.02.010 (effective 10/1/11)).

4. "[A]ny potentially dangerous dog which is in violation of the restrictions contained in Section 6.07.020 shall be seized and impounded. PCC 6.07.040." AB 22 (emphasis added). *See also* AB 30–31.

Not only did the white dog not qualify as "potentially dangerous" before biting Mr. Besaw – and hence its owner could not be "in violation of the restrictions contained in Section 6.07.020" – but the cited PCC

6.07.040 nowhere states even a previously declared "potentially dangerous" animal that later is in violation "shall be seized and impounded." CP 100. At the time of Besaw being bitten, that ordinance instead stated only that such animals were "subject to seizure and impoundment consistent with PCC 6.07.045," and the latter section expressly provided only that such animals "may be seized and impounded." *See* CP 100–01 (PCC 6.07.040, PCC 6.07.045 (effective 5/8/09)) (emphasis added).

5. "If an owner had for [sic] or more infractions in a five year period or two findings of potentially dangerous or dangerous animals within a ten year period, Pierce County was to prohibit the owner from owning animals for not less than ten years. PCC 6.03.030." AB 31

PCC 6.03.030 nowhere states "Pierce County was to prohibit" ownership of animals but that such was a penalty to be imposed by the court for this "gross misdemeanor" if charged by the prosecutor and "found to be committed by the district court." *See* PCC 6.03.030(B). Further, no ordinance requires Animal Control to issue an infraction, much less ensure it is "found to be committed by the district court."

6. "Had Pierce County designated the dogs in question potential [sic] dangerous after the first bite, the dogs would have been required to be 'confined indoors' prior to Besaw's attack and unable to escape the house to bite him." AB 18 (emphasis added).

First, ordinances existing at the time provided no legal basis to declare "the dogs in question potential[ly] dangerous." *See* PCC

6.02.010(X), 6.07.010(A). *See also discussion infra.* at 9-13. Second, Mr. Besaw's own testimony is that because the County was in fact "on them quite a bit" for the dogs roaming the neighborhood, the Johnsons at the time in question had been "keeping them in a lot more and keeping a little bit better eye on them." CP 47. However, despite the white dog being "confined indoors" by being kept in the house before its reported "first bite" – *i.e.*, that of Plaintiff on July 5, 2011 – confinement in a "proper enclosure" did not prevent the Johnsons from negligently allowing it to "slither" through the door when it was opened after Besaw came onto their porch and knocked on that door. CP 159–60, 250:17–22, 252:2–8, 348–49. *See also* PCC 6.02.010(Z) (confinement in "proper enclosure" means either confinement "indoors or in a securely enclosed and locked pen or structure") (emphasis added); PCC 6.07.020 ("potentially dangerous" dog to be in a "proper enclosure" or "muzzled ... when outside of its primary residence"); CP 284, 348; PCC 6.07.010(Z).

Any review of the actual underlying documents misleadingly cited by Plaintiffs refutes their misstatements of fact. Mischaracterization does not meet the burden of demonstrating a factual dispute that is both genuine and material. Instead, the undisputed record affirmatively shows that no genuine issue of material fact exists to dispute that prior to Mr. Besaw being bitten by the white Johnson dog on July 5, 2011, the County had no

actionable evidence that dog – alone or with any other – had done anything previously other than gotten out of its yard, attempted to play with and thereby scare Plaintiffs' small dogs, and may have been the Johnson dog that once chased a cat without harming it when the latter ran out into the street. These unrefuted facts show that County Animal Control had no ground to declare the white dog "potentially dangerous" and no role in causing it to "slither" out its enclosure's door to bite Mr. Besaw after he came into its fenced yard, went onto its porch, and knocked on the door knowing the dog was confined behind it.

As shown below, under these unrefuted facts of record the County was not negligent because as a matter of law it owed Plaintiffs no legal duty, committed no breach, and proximately caused them no harm.

B. NO NEGLIGENCE CLAIM EXISTS AS A MATTER OF LAW

The "essential elements of actionable negligence are: (1) the existence of a duty owed to the complaining party; (2) a breach thereof; (3) a resulting injury; and (4) a proximate cause between the claimed breach and resulting injury." *Pedroza v. Bryant*, 101 Wn.2d 226, 228, 677 P.2d 166 (1984). Hence, where a "plaintiff fails to present evidence to prove each essential element of the negligence claim, then summary judgment for the defendant is proper." *Sligar v. Odell*, 156 Wn.App. 720, 731, 233

P.3d 914 (2010) (affirming dismissal of dog bite claim) (emphasis added).

Here, summary judgment is proper because there is no genuine issue of material fact and the County is entitled to judgment as a matter of law since it owed plaintiffs no duty, committed no breach, and proximately caused them no injury.

1. **County Owed No Duty to Prevent Plaintiff From Being Bitten by a Confined Dog After Plaintiff Entered Fenced Yard And Knocked On Its Enclosure's Door**

The threshold determination in any negligence action "is a question of law; that is, whether a duty of care is owed by the defendant to the plaintiff." *Alexander v. County of Walla Walla*, 84 Wn.App. 687, 692–93, 929 P.2d 1182 (1997) (citing *Taylor v. Stevens County*, 111 Wn.2d 159, 163, 759 P.2d 447 (1988)) (emphasis added). As a matter of law: "Whether the defendant is a governmental entity... or a private person ... to be actionable, the duty must be one owed to the injured plaintiff, and not one owed to the public in general." *Id.* at 693. *See also Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 785, 30 P.3d 1261 (2001). Because the "general rule at common law is that a private person does not have a duty to protect others from the criminal acts of third parties," *Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 199, 943 P.2d 286 (1997) (quoting *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 223, 802 P.2d 1360 (1991)), the government likewise "has no duty to pre-

vent a third person from causing physical injury to another." *Couch v. Dep't of Corr.*, 113 Wn.App. 556, 564, 54 P.3d 197 (2002), *rev. denied*, 149 Wn.2d 1012 (2003) (dismissal of wrongful death suit). *See also*, *Sheikh v. Choe*, 156 Wn.2d 441, 448, 577, 128 P.3d 574 (2006) (reversing ruling government should have prevented assault since "our common law imposes no duty to prevent a third person from causing physical injury to another" so "State is not liable for its negligent conduct even where a duty does exist unless the duty was owed to the injured person and not merely the public in general"); *Estate of Davis v. Dept of Corr.*, 127 Wn.App. 833, 841, 113 P.3d 487 (2005) (wrongful death claim dismissed because there "is no general duty to protect others from the criminal acts of a third party").

It therefore is well settled that under the public duty doctrine, "recovery from a municipal corporation is possible only when the plaintiff can show that the duty breached was owed to her individually, rather than to the public in general." *Bratton v. Welp*, 145 Wn.2d 572, 576, 39 P.3d 959 (2002) (emphasis added). *See also Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 785, 30 P.3d 1261 (2001) ("no liability may be imposed for a public official's negligent conduct unless it is shown that 'the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general

(i.e., a duty to all is a duty to no one)"); *Vergeson v. Kitsap County*, 145 Wn.App. 526, 535, 186 P.3d 1140 (2008) ("under the public duty doctrine, a government entity is not liable for a public official's negligence unless the plaintiff shows that the government breached a duty owed to her individually rather than to the public in general"). A public policy served by the public duty doctrine is that "legislative enactments for the public welfare should not be discouraged by subjecting a governmental entity to unlimited liability." *Taylor*, 111 Wn.2d at 170.

Plaintiffs allege in a footnote that the Supreme Court in *Robb v. City of Seattle*, 176 Wn.2d 427, 295 P.3d 212 (2013), supposedly "debunked the notion" that the public duty doctrine requires an exception before government can be liable for negligence if "it violates recognized legal duties, such as, those set forth in the Restatement (Second) of Torts." AB at 25 n. 3. In fact, *Robb* actually expressly held "we do not reach the question of whether the public duty doctrine would act to bar this action," and instead reversed and ordered dismissal of a suit alleging police negligence because it found no duty existed under the Restatement. *See* 176 Wn.2d at 439 n. 3 (emphasis added). No liability existed because, like here, allegations of "[m]ere nonfeasance is insufficient to impose a duty on law enforcement to protect others from the criminal actions of third parties" since there is "no affirmative act in this case, only an omission,

because law enforcement did not create a new risk of harm but instead failed to eliminate a risk" *Id.* (emphasis added). See also *Coffel v. Clallam County*, 47 Wn.App. 397, 403, 735 P.2d 686 (1987) (affirming dismissal of claim law enforcement failed to protect citizen because claims "based on the inaction of these defendants, fits squarely within the rule of the public duty doctrine"). Indeed, after its decision in *Robb* a unanimous Washington Supreme Court again required summary judgment dismissal so as to avoid having "our public duty doctrine ... seriously undermined" and warned against "subverting our public duty doctrine" or attempting "an end-run around this Court's law on the public duty doctrine." *Lahey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 929, 931, 296 P.3d 860 (2013).

Because the "duties of public officers are normally owed only to the general public ... a breach of such a duty will not support a cause of action by an individual injured thereby." *Hostetler v. Ward*, 41 Wn.App. 343, 361, 363–64, 704 P.2d 1193 (1985) (emphasis added). See also *Aba Sheikh v. Choe*, 156 Wn.2d 441, 448, 128 P.3d 574 (2006) (verdict on claim government should have prevented assault was reversed since "our common law imposes no duty to prevent a third person from causing physical injury to another"); *Estate of Davis v. Dep't of Corr.*, 127 Wn.App. 833, 841, 128 P.3d 574 (2005) (wrongful death suit dismissed since there is no "duty to protect others from the criminal acts of a third party"). Fail-

ure of officers to enforce the law against a third party is not a basis for suit since:

The relationship of police officer to citizen is too general to create an actionable duty. Courts generally agree that responding to a citizen's call for assistance is basic to police work and not special to a particular individual. [Citation omitted.] Courts frequently deny recovery for injuries caused by the failure of police personnel to ... investigate properly or to investigate at all. [Citations omitted.]

Torres v. City of Anacortes, 97 Wn.App. 64, 74, 981 P.2d 891 (1999), *rev. denied*, 140 Wn.2d 1007 (2000). Hence, a "claim for negligent investigation is not cognizable under Washington law." *See Fondren v. Klickitat Cy*, 79 Wn. App. 850, 853 & 863, 905 P.2d 928 (1995) (court erred in failing to dismiss). *See also Donaldson v. Seattle*, 65 Wn.App. 661, 671, 831 P.2d 1098, *rev. dismissed*, 120 Wn.2d 1031 (1993) (the "overall law enforcement function ... does not generate a right to sue for negligence" in murder by a third party). One "reason courts have refused to create a cause of action for negligent investigation is that holding investigations liable for their negligent acts would impair vigorous prosecution and have a chilling effect upon law enforcement." *Dever v. Fowler*, 63 Wn.App. 35, 45, 816 P.2d 1237 (1991).

Here, the allegations of Plaintiffs' complaint specifically sought to impose liability on Pierce County because – when Mr. Besaw was on the porch in the Johnson's fenced yard and their dog "slithered out" the house

door and bit him – the County supposedly had been "negligent in the supervision and control of ... *potentially dangerous* animals" since it allegedly had "failed to enforce ordinances regarding control of ... *potentially dangerous animals.*"⁷ Complaint, CP 5 ¶ 5.13 (emphasis added and in original). However, to overcome the public duty doctrine's general rule of non-liability, an alleged claim of "failure to enforce" first requires proof that: "(1) governmental agents responsible for enforcing statutory requirements possess actual knowledge of a statutory violation, (2) these agents fail to take corrective action despite a statutory duty to do so, and (3) the plaintiff is within the class of persons the statute intended to protect." *Vergeson*, 145 Wn. App. at 538 (emphasis added).

Such "failure to enforce" claims are "narrowly construed."

Donohoe v. State, 135 Wn. App. 824, 849, 142 P.3d 654 (2006) ("We construe this exception narrowly"); *Ravenscroft v. Washington Water Power*

⁷ Plaintiffs also make conclusory assertions concerning other ordinances. *See e.g.* AB 23 (citing PCC 6.03.010 ("at large" infraction), PCC 6.04.010 (license requirement)). However, neither these ordinances nor any fact supporting their violation were mentioned in the complaint. Compare CP 5 with CR 9(i) (requirements for pleading ordinance). *See also* *Lundberg v. Coleman*, 115 Wn.App. 172, 180, 60 P.3d 595 (2002) (plaintiff cannot raise claims "not substantiated in any of the pleadings") *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn.App. 18, 26, 974 P.2d 847 (1999) (plaintiffs "cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along"). Similarly, Appellants' brief fails to analyze how these ordinances create a duty under the "failure to enforce" exception, how they were breached by the County, or how a failure to enforce them supposedly proximately caused Mr. Besaw to be bitten. *See* AB 25-28. *See also* RAP 10.3, 10.4; *Joy v. Department of Labor and Industries*, 170 Wn.App. 614, 285 P.3d 187 (2012) ("Other than this conclusory statement, she provided no further argument or citation to authority establishing that she had some sort of vested or substantive right under" a statute).

Co., 87 Wn.App. 402, 415, 942 P.2d 991 (1997) ("failure to enforce' exception is construed narrowly"). Though – as shown later – such "failure to enforce" claims are "also limited by the requirements of foreseeability ... and proximate cause," *Bailey v. Town of Forks*, 108 Wn.2d 262, 271, 737 P.2d 1257 (1987), that exception's requirements for imposing a duty to protect Plaintiffs are absent here as a matter of law.

a. Animal Control Lacked "Actual Knowledge" of a Violation of "Ordinances Regarding Control of ... Potentially Dangerous Animals"

Plaintiffs cite *Gorman v. Pierce County*, *supra.*, *Livingston v. City of Everett*, 51 Wn.App. 655, 659, 751 P.2d 1199 (1988), and *King v. Hutson*, 97 Wn.App. 590, 987 P.2d 655 (1999), ostensibly because in those cases there were "prior complaints that the offender dog had been acting aggressively towards humans and other pets." AB 26–27. However, no similar complaints were present in the instant case. *See discussion infra.* at 9-13. Indeed, in *Gorman* the dogs who latter attacked plaintiff had, among other things, previously "aggressively confronted" a "next door neighbor in his yard, preventing [him] and his son from leaving ... for approximately 90 minutes," had "chased Gorman ... into Gorman's house," had "bit Gorman's pant leg," and were seen "chasing a child on rollerblades." *See* 176 Wn. App. at 69–71. In *Livingston*, the dogs previously had "bit the apartment maintenance man," and "lunged at her young nephew." 50 Wn.App. at 657.

In *King* – even though prior reports noted a group of dogs had been "aggressive" and showed "threatening behavior by the dogs toward his children" since they "chased the Kings' children" – the Court held the trial court "properly granted the County's motion for summary judgment on the issue of whether the County had a duty to confiscate [the dog] before he attacked Mrs. King" because the "failure to enforce" exception created no County duty owed plaintiff since the dog "did not fit the statutory definition of 'dangerous dog' prior to" the attack. *See* 97 Wn.App. at 592, 595 (emphasis added).

Plaintiffs cannot meet their burden on summary judgment merely by alleging, contrary to the record and without authority in the law, that this test is met because officers supposedly knew of (now downsized) "seven prior complaints against the Johnson dogs running loose, acting aggressively or biting a human." *Compare* AB 30 (emphasis in original) *with discussion supra.* at 9-13. Though it is true there had been at best 2 or 3 complaints over the years identifying the white dog at issue as "running loose," *id.* at 11-12, as in *King*, this does not meet the test for a "potentially dangerous" animal. *See* PCC 6.02.010(X). As to Plaintiffs' use of the undefined terms "marauding" and "aggressive behavior," they fail to identify what the white dog had supposedly done to warrant those descriptions or cite any applicable ordinance using and defining those terms. It has been extensive-

ly documented instead that there was no knowledge of a report of the white Johnson dog ever "biting a human." *See discussion supra.* at 9-13.

Plaintiffs' baseless argumentative assertions do not substitute for the required proof that Animal Control had actual knowledge the white dog that later bit Besaw had previously violated the specific terms of PCC 6.02.010(X) by having "when unprovoked: (a) inflict[ed] bites on a human, domestic animal, or livestock either on public or private property, or (b) chase[ed] or approach[e]d a person upon the streets, sidewalks, or any public grounds or private property in a menacing fashion or apparent attitude of attack, or (c) [had] a known propensity, tendency, or disposition to attack unprovoked or to cause injury or otherwise to threaten the safety of humans, domestic animal, or livestock on any public or private property." Hence, the record is devoid of any evidence, much less the required "sufficient" evidence "on which the jury could reasonably find for the plaintiff," that any Animal Control officer had "actual knowledge" of a violation of "ordinances regarding control of ... *potentially dangerous animals*" regarding the dog in question.

The first requirement of the "failure to enforce" exception is therefore unmet because there is no evidence that Animal Control had "actual knowledge" that the white Johnson dog that later bit Mr. Besaw had met the ordinance's requirements to be declared a "potentially dangerous dog" –

much less been "previously found to be potentially dangerous." *See* PCC 6.02.010(N) & (X). *See also Atherton Condominium Apartment-Owners Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 532–33, 799 P.2d 250 (1990) (actual knowledge "does not encompass facts which the ... official should have known"); *Moore v. Wayman*, 85 Wn.App. 710, 723, 934 P.2d 707 (1997) ("constructive knowledge ... is not enough" for "actual knowledge"); *Zimbelman v. Chaussee Corp.*, 55 Wn.App. 278, 282, 777 P.2d 32 (1989) ("Knowledge does not include what an official might have known if he had performed his duties more effectively or vigilantly").

b. No Failure "to Take Corrective Action Despite a Statutory Duty to Do So"

Plaintiffs assert "[t]his case actually presents more substantial evidence than the reported cases directly on point." AB 18. However, just as Plaintiffs' factual claims are unsupported by their cited "evidence," so too a review of their cited authority reveals they are neither "on point" nor show a duty was owed to them here.

Plaintiffs first erroneously argue: "In *Gorman*, the Appellate Court found that the Pierce County Animal Control ordinances which are also at issue in this case, implicated the failure to enforce exception to the Public Duty Doctrine because under the terms of provisions of such ordinances, Pierce County had an obligation to act." AB 26 (emphasis added). In

Gorman the County "contested only the second element" of the "failure to enforce" exception, 176 Wn.App. at 79, and the ordinances at issue were unlike those "at issue in this case." This is so because the exclusive basis for imposing a duty in *Gorman* was the specific language of the "former PCC 6.07.010(A)" which at that time provided: "The County or the County's designee *shall* classify potentially dangerous dogs." *See* 176 Wn.App. at 78 (emphasis added and in original).

In contrast, at the time Mr. Besaw was later bitten in July of 2011, PCC 6.07.010 contained no mention of "classify[ing] potentially dangerous dogs," but only stated that Animal Control "shall have the ability to declare an animal as potentially dangerous" – and then only "if there is probable cause to believe the animal falls within the definitions set forth in" one the ordinance and such discretion had to be "based on" certain specific types of evidence that are not present here. *See* CP 95 (PCC 6.07.010(A) (effective 5/8/09)). In that law enforcement officers even "have discretion as to whether they will ... make an arrest once they have probable cause," *State v. Fry*, 168 Wn.2d 1, 8–9 (2010), under the ordinances as they existed at the time in question, they certainly had discretion whether to declare a dog "potentially dangerous" even when – unlike here – there is both probable cause to do so and the required evidence. Here, of course, the record is clear that until Besaw was bitten Animal Control of-

ficers lacked the requisite: "1) ... 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 Section 6.02.010 X; or 2) Animal bite reports filed with the County or the County's designees; or 3) Actions of the animal witnessed by any animal control officer or law enforcement officer; or 4) Other substantial evidence." See PCC 6.070.010(A); *discussion supra.* at 9-13.

This is so because there can be no "statutory duty" to "take corrective action" unless a statute or ordinance gives "a specific directive to the governmental employee as to what should be done" in the particular instance. *Pierce v. Yakima County*, 161 Wn.App. 791, 800, 251 P.3d 270 (2011) (emphasis added). Hence, the "failure to enforce exception" has no application when the statute does not provide a specific directive to the employee, but instead "merely vests discretion in the [employee] in th[e particular] situation." *Id.*, at 801. See also *Donohoe*, 135 Wn.App. at 849 ("failure to enforce" exception "applies only where there is a mandatory duty to take a specific action to correct a known statutory violation," and such "does not exist if the government agent has broad discretion about whether and how to act"); *Torres*, 97 Wn.App. at 74 (statute did not create duty to arrest assailant before girlfriend's murder because there was no "statute creating a mandatory duty to arrest and therefore did not establish

a duty based on a failure to enforce"); *Donaldson*, 65 Wn. App. at 671 (no claim for failure to arrest for assault before murder because though "the DVPA clearly establishes a mandatory duty to arrest ... when the abuser is on the premises," no such duty exists where the "violator is absent" since "the act does not so provide").

Plaintiffs next cite *Livingston*, 50 Wn.App. at 659, arguing it was "[l]ike this case." However, as the same Division of the Court of Appeals later explained:

In *Livingston*, the animal control officer released a dog which he had reason to believe was dangerous and the dog attacked a child. The ordinance provided that an impounded animal shall be released "if, in the judgment of the animal control officer in charge, such animal is not dangerous or unhealthy." Everett Municipal Code 6.04.140(E)(1). [Therefore] ... there was a specific directive to the governmental employee as to what should be done.

McKasson v. State, 55 Wn.App. 18, 25, 776 P.2d 971 (1989) (emphasis added). Here, the County never had control over the white Johnson dog, never affirmatively acted to "release[]" it, and had no prior information it was "potentially dangerous" as defined by the law. Like *McKassen* which affirmed summary judgment dismissal – but unlike *Livingston* – the PCC imposes "no such directive" but rather is "replete with 'mays,' and throughout the statutes, broad discretion is vested in" Animal Control officers. *Id.* See also *Halleran v. Nu West, Inc.*, 123 Wn. App. 701, 715, 98

P.3d 52 (2004) (*Livingston* inapplicable because "there was a specific legislative directive to take corrective action").

Hence, though Plaintiffs cite the former PCC 6.07.010 and make the conclusory assertion that "Pierce County was required to classify potentially dangerous dogs," AB 30, the applicable PCC 6.07.010 did not do so at the time of Mr. Besaw being bitten. Accordingly, the second "failure to enforce" requirement also is absent because there was no failure to take some statutorily required corrective action as to Johnson's white dog before Plaintiff was bitten.

c. Besaws Are Not "Within the Class of Persons the Statute Intended to Protect"

Finally as to the "narrow exception's" requirement that plaintiffs be "within the class of persons the statute intended to protect," Appellant's Brief only makes the conclusory assertion that "Plaintiff Brian Besaw and his neighbors were within the class of people expected to be protected by the statutes and ordinances." AB 30. However, there can be no duty "to enforce" PCC 6.07 et seq. owed the Besaws as individuals because the analysis required by this requirement of the exception dictates otherwise.

As noted above, "duties of public officers are normally owed only to the general public" so that "a breach of such a duty will not support a cause of action by an individual injured thereby." *Hostetler*, 41 Wn.App.

at 361, 363–64. Here, PCC 6.07 et seq. was not "intended to protect" any "class of persons" but to benefit the public in general. Compare *Bailey*, 108 Wn.2d at 268 ("failure to enforce" exception created duty "owed to a particular plaintiff or a limited class of potential plaintiffs, rather than the general duty of care owed to the public at large," where statute protected "users of public highways from accidents caused by intoxicated drivers") with *Jamison v. Storm*, 426 F. Supp.2d 1144, 1160 (W.D. Wash. 2006) (statute did not "protect a particular circumscribed class of persons" so plaintiff "cannot establish that she is within the class of persons intended to be protected" and hence "failure to enforce" claim "fails as to the 'duty' element as a matter of law"). Hence, like its first two elements, the third requirement for a "failure to enforce" is also absent because: "The public duty doctrine requires that the plaintiff seeking recovery from a public entity or government employee demonstrate a breach of duty owed to the individual plaintiff, not 'the breach of a general obligation owed to the public in general,' *i.e.*, a duty owed to all is a duty owed to none." See *Cummins v. Lewis County*, 124 Wn.App. 247, 253, 98 P.3d 822 (2004) (quoting *Beal v. City of Seattle*, 134 Wn.2d 769, 784, 954 P.2d 237 (1998)). See also *Aba Sheikh*, 156 Wn.2d at 577 ("under the public duty doctrine, the State is not liable for its negligent conduct even where a duty

does exist unless the duty was owed to the injured person and not merely the public in general").

The closest Plaintiffs come to confronting this requirement is to claim they were within the "ambit of the risk created by the officer's negligent conduct" and cite without explanation *Livingston*, 50 Wn.App. at 659 (plaintiff within animal control ordinance because under *Bailey*, 108 Wn.2d at 269-70, and *Mason v. Bitton*, 85 Wn.2d 321, 325-26, 534 P.2d 1360 (1975), he came within "the ambit of the risk created by the officer's negligent conduct"). See AB 32. However, that same Court almost immediately thereafter admitted *Mason's* analysis did not apply to "failure to enforce" arguments because it was "not [a] failure to enforce case[]," *McKasson*, 55 Wn.App. at 25, and *Bailey's* "ambit of risk" analysis that had expressly relied on *Mason*, see 108 Wn.2d at 270, apparently ended 25 years ago with *Livingston*. In any case, Plaintiffs nowhere explain how the "ambit of the risk" extends to those later bitten by a dog that had never before been reported to have bitten or even threatened to bite any human being – much less where the dog had not been previously declared "potentially dangerous." Plaintiffs certainly do not explain how a risk created by a supposed failure to declare the white dog "potentially dangerous" and to have it confined to a "proper enclosure" somehow extends to the class of those who are bitten because that dog gets out of the enclosure.

These Plaintiffs therefore are outside "the class of persons the statute intended to protect" and cannot meet this third requirement because they must "demonstrate a breach of duty owed to the individual plaintiff, not 'the breach of a general obligation owed to the public in general,' i.e., a duty owed to all is a duty owed to none."

2. Pierce County Breached No Duty

Separate and apart from the legal requirement of duty, Plaintiffs as a matter of law also were required to prove "a breach thereof." *See Pedroza v. Bryant*, 101 Wn.2d 226, 228, 677 P.2d 166 (1984). Though Plaintiffs misstate the facts on this issue, they only mention the word "breach" in passing in their conclusion and nowhere directly address that essential element. *See* AB 35. In short, Plaintiffs ignore that even if the law were different and a legal duty had been owed specifically to them, Animal Control would have been precluded from declaring the white dog "potentially dangerous" under PCC 6.07.010(X). This is so because that ordinance provided that an Animal Control officer cannot declare an animal "potentially dangerous" unless there was "probable cause to believe the animal falls within the definitions" of that term under the Pierce County Code and such was "based on" certain specific types of evidence that are not present here.

First, the "probable cause" requirement dictated the existence of facts and circumstances within the officer's knowledge that "are sufficient to cause a person of reasonable caution to believe," *State v. Huff*, 64 Wn. App. 641, 646, 826 P.2d 698 (1992) (defining probable cause) – in this case – that the dog was "potentially dangerous" under the ordinance. Here, before Plaintiff was bitten, there is no evidence of any fact or circumstance "within the officer's knowledge" that would have lead a "person of reasonable caution to believe" that "when unprovoked" the white dog previously had "inflict[ed] bites on a human, domestic animal, or livestock," or "chase[d] or approach[e]d a person ... in a menacing fashion or apparent attitude of attack," or had a "known propensity, tendency, or disposition to attack unprovoked or to cause injury or otherwise to threaten the safety of humans, domestic animal, or livestock on any public or private property." *See* PCC 6.02.010(X).

Second, even when probable cause to act does exist, before an animal can be declared "dangerous" or "potentially dangerous" under the Code it also required: "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 ["dangerous" or "potentially dangerous" under the Code]; or 2) Animal bite reports filed with the County or the County's designees; or 3) Actions of the animal witnessed by any animal control of-

ficer or law enforcement officer; or 4) Other substantial evidence." Here, the record confirms none of the specifically required evidence was previously held by Animal Control. *See discussion supra.* at 9-13. Hence the second essential element of a negligence claim also is absent because there is no evidence the County breached any requirement under the code.

3. **No Proximate Cause Between County and Besaw Being Bitten When Door Opened and White Dog "Slithered Out"**

In *Hartley v. State*, 103 Wn.2d 768, 777–79, 698 P.2d 77 (1985),

the Supreme Court established that:

Washington law recognizes two elements to proximate cause: Cause in fact and legal causation. [Citations omitted.] Cause in fact refers to the "but for" consequences of an act – the physical connection between an act and an injury. Legal causation, on the other hand, rests on policy considerations as to how far the consequences of defendant's acts should extend. It involves a determination of whether liability should attach as a matter of law given the existence of cause in fact. If the factual elements of the tort are proved, determination of legal liability will be dependent on "mixed considerations of logic, common sense, justice, policy, and precedent."

Where "the facts do not admit of reasonable differences of opinion, proximate cause is a question of law to be decided by the court." *Pratt v.*

Thomas, 80 Wn.2d 117, 119, 491 P.2d 1285 (1972). *See also Granite*

Beach Holdings, LLC v. State ex rel. DNR, 103 Wn.App. 186, 195, 11

P.3d 847 (2000) (summary judgment affirmed because "[w]here reasona-

ble minds could reach but one conclusion, questions of fact may be determined as a matter of law"); *LaPlante v. State*, 85 Wn.2d 154, 531 P.2d 299 (1975) (same).

"Legal causation" on the other hand is always a question of law for the court. *See Colbert v. Moomba Sports, Inc.*, 163 Wn.2d 43, 51, 176 P.3d 497 (2008); *Alger v. Mukilteo*, 107 Wn.2d 541, 545, 730 P.2d 1333 (1987). It focuses "on 'whether, as a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability.'" *Kim v. Budget Rent A Car Sys.*, 143 Wn.2d 190, 205, 15 P.3d 1283 (2001). In a case such as this, dismissal on summary judgment is appropriate either where: 1) plaintiffs "cannot meet this burden" that "but for [defendant's] breach of duty" they would not have been injured by a third party, *Lynn v. Labor Ready, Inc.*, 136 Wn.App. 295, 311, 826 P.2d 698 (2006); or 2) where a county does not fall within the "boundaries of legal causation, even assuming the validity of plaintiffs' factual allegations." *Hartley, supra.* at 784 (Supreme Court reversed trial court's denial of CR 56 motion).

The record in this case contains no evidence a declaration that the white dog was "potentially dangerous" would have prevented Plaintiff from being bitten when it "slithered out" the house door, and there was no

"foreseeable" connection between the lack of such a designation under the Code and Plaintiff's being bitten.

a. Failure to Declare Dog "Potentially Dangerous" Was Not Cause in Fact of Dog "Slithering" Out to Bite Besaw Who Had Contacted Neighbor in House Where He Knew Dog Also Was Confined

Any theoretically successful declaration that the white Johnson dog was "potentially dangerous" under the code only would have required the Johnsons – among other less pertinent things – to keep it in a "proper enclosure." *See* PCC 6.07.030(A). A "proper enclosure" expressly includes the designated animal being "confined indoors" when "on the owner's property." PCC 6.02.010(Z); CP 348–49. When on July 5, 2011, Plaintiff stood on the Johnson porch and spoke with Calvin Johnson next to the door, knowing the dogs were within, the white dog was "confined indoors" while "on the owner's property" – just as if it had been declared a "potentially dangerous" animal. CP 2, 42, 46–50. Indeed, Plaintiff admits that it was because Animal Control "got on them quite a bit" that the Johnsons "were kind of keeping them in a lot more and keeping a little bit better eye on them there for a little bit." CP 47. Hence, it cannot be said that "but for" the County's supposed failure under the code to declare it a "potentially dangerous" animal, Mr. Besaw would not have been bitten while in a dog's gated yard when that dog "slithered out" the house door.

Even in wrongful death actions, our courts similarly have held there is no cause in fact and required summary judgment where to "prove cause-in-fact, [plaintiff] had to be able to show that, but for [defendant's] breach of duty, Owens would not have killed Cordova" yet plaintiff "has not and cannot meet this burden." *See Lynn*, 136 Wn.App. at 311. So too here, Plaintiffs have no evidence that but for the County's failure to declare the white dog a "potentially dangerous" animal it would not have "slithered" out of the door to its "proper enclosure" and bitten Mr. Besaw. Because there is no evidence the white dog would not have "slithered out" the door "had [the County] acted differently," any "cause in fact" is absent as a matter of law.⁸

Ignoring the actual "cause in fact" argument at issue here, Plaintiffs cite *Champagne v. Spokane Humane Society*, 47 Wn.App. 887, 896, 737 P.2d 1279 (1987), WPI 15.01 and 15.04, to argue "the fact that the

⁸ Similarly, had Animal Control instead exercised its discretion to issue an infraction for being "at large" and for some reason chosen to incur the expense to the taxpayers of having the white dog "seized and impounded," PCC 6.030.010(A), the Johnsons could have "redeemed" it "within 48 hours." PCC 6.020.070. *See also Hungerford v. State Dept. of Corrections*, 135 Wn.App. 240, 253, 139 P.3d 1131 (2006) (summary judgment dismissing wrongful death claim brought by murder victim's estate because "[e]ven if [plaintiff] could produce evidence that ... the trial court would have imposed ... sentence but for [the government's] alleged negligence, he presents no evidence that [the criminal] would have been in jail on the day of [the decedent's] murder had [the government] acted differently"); *Bordon ex rel. Anderson v. State Dept. of Corrections*, 122 Wn.App. 227, 241-42, 95 P.3d 764, rev. denied, 154 Wn.2d 1003 (2004) (dismissing wrongful death claim since no proximate cause that death was result of convict's release since it required "a jury to guess not only whether and when the violation would have been pursued but also whether a judge would have done something ... and what that different result would have been"). Again, had Animal Control so acted, the bite here still would have occurred.

Johnsons may be negligent in allowing their pit bulls to run loose and attack people does not excuse Pierce County's negligence in failing to enforce its animal control ordinances, to impound and/or control the pit bulls based on the prior violations by the Johnsons." AB 32–33. However, just as Plaintiffs' factual assertions are disconnected from the factual record because Mr. Besaw was not bitten due to the white dog "running loose," their reference to concurrent and superseding causes are disconnected from the "cause in fact" arguments actually made by the County and the actual grounds for dismissal in the trial court. *Id.* Such evasion cannot avoid the undisputed record that establishes on July 5, 2011 – due to Animal Control having "got[ten] on them quite a bit," CP 47 – the white dog was in such an enclosure because it was being kept within the Johnson house. *See* CP 250–51, 348–50. Accordingly, summary judgment was appropriate for lack of cause in fact because nothing in the record would allow a reasonable jury to conclude that "but for [defendant's] breach of duty" Plaintiffs would not have been injured by a third party. *See Lynn*, 136 Wn.App. at 311.

b. Failure to Declare Johnson's White Dog "Potentially Dangerous" Was Not Legal Cause of Bite

In reversing a failure to dismiss for lack of legal causation, our Washington Supreme Court noted that even where "the factual elements of

the tort are proved, determination of legal liability will be dependent on 'mixed considerations of logic, common sense, justice, policy, and precedent.'" *Hartley*, 103 Wn.2d at 779. The determination of these "confines of the defendant's liability ... necessarily involves a foreseeable risk, a threatened danger of injury, and conduct unreasonable in proportion to the danger." *Hunsley v. Giard*, 87 Wn.2d 424, 435, 553 P.2d 1096 (1976) (quoting W. Prosser, *Torts* § 43 at 250 (4th ed. 1971)). For example, where parents of a girl raped and murdered by a "high risk" sex offender who had not been required to comply with registration guidelines sued a county for her wrongful death, our Supreme Court in *Osborn v. Mason County*, 157 Wn.2d 18, 20, 25, 134 P.3d 197 (2006), reversed and required dismissal because she "was not a foreseeable victim" of the alleged County negligence.

So too here, Mr. Besaw was not a "foreseeable victim" because his claim is that the County failed to declare the white dog a "potentially dangerous" dog so as to require the owner to, among other things, confine it to a "proper enclosure." However, here he was bitten only when he knowingly entered onto that owner's gated property and the dog "slithered out" the door of its "proper enclosure" after Mr. Besaw purposefully sought out the occupants of the house. Hence, there is no "legal cause" because, as a matter of law, a supposed failure to order the white dog confined does not

create a "foreseeable risk" that Plaintiff would come onto the owner's fenced property while that dog was in fact within an enclosure and be bitten when it escaped its enclosure because the occupant allowed it to "slither" through that enclosure's door. *See e.g. Kim*, 143 Wn.2d at 205 ("The focus in legal causation analysis is on 'whether, as a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability'").

Plaintiffs' summary, single paragraph discussion of legal causation asserts without any cited legal basis that "the exact manner in which such danger came to fruition was not exactly predictable is not important under the law, so long as the injury fell within the general field of danger that should have been anticipated." AB 34. However, municipal liability is in fact "limited by the requirements of foreseeability ... and proximate cause," *Bailey*, 108 Wn.2d at 271. *See also Osborn*, 157 Wn.2d at 20 (dismissal because decedent "was not a foreseeable victim" of the alleged county negligence). Plaintiffs simply ignore this authority that there can be no "legal cause" because an alleged failure to order the white dog confined does not create a "foreseeable risk" that Mr. Besaw would come onto the owner's fenced property while that dog was in fact so confined and be bitten when it left its confinement because the occupant allowed it to "slither" through its door. *See e.g. Kim*, 143 Wn.2d at 205 ("The focus in

legal causation analysis is on 'whether, as a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability"). Indeed, Plaintiffs fail to explain how under the actual facts of record Mr. Besaw came within the "general field of danger" even under their own asserted legal causation principles.

V. CONCLUSION

Because the Besaws fail to show any of the required elements of negligence – duty, breach, or proximate cause – their negligence claim was properly dismissed on any one of those grounds. Accordingly, Pierce County respectfully requests the Court affirm its dismissal below.

DATED this 18th day of March, 2014.

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CERTIFICATE OF SERVICE

On March 18, 2014, I hereby certify that I electronically filed the foregoing RESPONDENT PIERCE COUNTY'S BRIEF with the Clerk of the Court and I delivered the same via electronic mail and to ABC Legal Messengers with appropriate instruction to forward the same to:

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**TITLE 6
EFFECTIVE 5/8/09
AS AMENDED BY
ORDINANCE 2009 - 17**

Chapter 6.02

ANIMAL CONTROL – GENERAL PROVISIONS

Sections:

- 6.02.010 Definitions.**
- 6.02.020 Authorized Agents May Perform Duties.**
- 6.02.025 Licenses Required.**
- 6.02.030 Authority to Pursue.**
- 6.02.040 Notice of Impounding Animal.**
- 6.02.050 Hindering an Officer.**
- 6.02.060 Interference With Impounding.**
- 6.02.070 Redemption of Dogs.**
- 6.02.075 Redemption of Livestock.**
- 6.02.080 Redemption of Animals Other Than Dogs and Livestock.**
- 6.02.085 Mandatory Spay/Neuter for Impounded Dogs and Cats – Deposit – Refund – Exceptions.**
- 6.02.088 Conditions of Release.**
- 6.02.090 Injured or Diseased Animals.**
- 6.02.100 Duties Upon Injury or Death to an Animal.**
- 6.02.110 Poisoning of Animals.**
- 6.02.120 Abatement of Nuisances.**
- 6.02.140 Severability.**

6.02.010 Definitions.

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

- A. "Adult" means any animal seven months of age or over.
- B. "Adequate food and water" means food or feed appropriate to the species for which it is intended. Both food and water must be in sufficient quantity and quality to sustain the animal and should be in containers designed and situated to allow the animal easy access.
- C. "Adequate shelter" means a structure that keeps the animal clean, dry, and protected from the elements, allows the animal to turn around freely, sit, stand and lie without restriction, and by application does not cause injury, disfigurement, or physical impairment to the animal.
- D. "Altered" shall mean to permanently render incapable of reproduction (i.e., spayed or neutered).
- E. "Animal" means any nonhuman mammal, bird, reptile or amphibian including livestock and poultry as defined herein.
- F. "Animal Control Agency" means that animal control organization authorized by Pierce County to enforce its animal control provisions.
- G. "Animal Shelter" means that animal control facility authorized by Pierce County.
- H. "At large" means off the premises of the owner or keeper of the animal, and not under restraint by leash or chain or not otherwise controlled by a competent person.
- I. "Auditor" means Pierce County Auditor.
- J. "Cat" means and includes female, spayed female, male and neutered male cats.

- K. "Competent adult" means a person 18 years of age or older who is able to sufficiently care for, control, and restrain his/her animal, and who has the capacity to exercise sound judgement regarding the rights and safety of others.
- L. "County" means Pierce County.
- M. "Court" means District Court or the Superior Court, which courts shall have concurrent jurisdiction hereunder.
- N. "Dangerous Animal" means any animal that when unprovoked:
1. inflicts severe injury on or kills a human being without provocation, or
 2. inflicts severe injury on or kills an animal without provocation while the animal inflicting the injury is off the property where its owner resides, or
 3. has been previously found to be potentially dangerous, the owner having received notice of such and the animal again aggressively bites, attacks, or endangers the safety of humans or other animals.
- An animal shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the property where the owner resides, or was tormenting, abusing, or assaulting the animal, or was committing or attempting to commit a crime.
- O. "Dog" means and includes female, spayed female, male and neutered male dogs.
- P. "Gross Misdemeanor" means a type of crime classification that, while not a felony, is ranked as a serious misdemeanor. The maximum penalty for a gross misdemeanor is 365 days in jail and/or a \$5,000.00 fine.
- Q. "Humane trap" means a live animal box enclosure trap designed to capture and hold an animal without injury.
- R. "Impound" means to receive into the custody of the Animal Control Authority, or into the custody of the Auditor or designee.
- S. "Juvenile" means any animal from weaning to seven months of age.
- T. "Livestock" means all cattle, sheep, goats, or animals of the bovidae family; all horses, mules, other hoof animals, or animals of the equidae family; all pigs, swine, or animals of the suidae family; llamas; and ostriches, rhea, and emu.
- U. "Misdemeanor" means a crime classification with a maximum penalty of 90 days in jail and/or a \$1,000.00 fine, pursuant to Section 1.12.010 of this Code.
- V. "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.
- W. "Owner" means any person, firm, or corporation owning, having an interest in, or having control or custody or possession of any animal.
- X. "Potentially Dangerous Animal" means any animal that when unprovoked: (a) inflicts bites on a human, domestic animal, or livestock either on public or private property, or (b) chases or approaches a person upon the streets, side-walks, or any public grounds or private property in a menacing fashion or apparent attitude of attack, or (c) any animal with a known propensity, tendency, or disposition to attack unprovoked or to cause injury or otherwise to threaten the safety of humans, domestic animal, or livestock on any public or private property.
- Y. "Poultry" means domestic fowl normally raised for eggs or meat, and includes chickens, turkeys, ducks and geese.

- Z. "Proper Enclosure" means, while on the owner's property, the animal shall be 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 a locking door with a padlock, secure sides, a concrete floor, and a secure top attached to the sides, and shall also provide protection from the elements for the animal. The structure must comply with all applicable provisions of local Building and Zoning Codes.
 - AA. "Severe injury" means any physical injury which results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.
 - BB. "Unconfined" means not securely confined indoors or in a securely enclosed and locked pen or structure upon the premises of the person owning, harboring or having the care of the animal.
 - CC. "Vicious" means chasing or approaching a person or animal in a menacing or apparent attitude of attack or the known propensity to do any act which might endanger the safety of any person, animal, or property of another.
 - DD. "Warning Sign" means a clearly visible and conspicuously displayed sign containing words and a symbol (to inform children or others incapable of reading) warning that there is a dangerous animal on the property.
- (Ord. 2008-14 § 1 (part), 2008; Ord. 2005-108 § 1 (part), 2005; Ord. 99-17 § 1 (part), 1999; Ord. 95-151S § 2 (part), 1996; Ord. 92-35 § 1 (part), 1992, Ord. 89-235 § 3, 1990; Ord. 87-40S § 1 (part), 1987)

6.02.020 Authorized Agents May Perform Duties.

Wherever a power is granted to or a duty imposed upon the Sheriff, the power may be exercised or the duty may be performed by a Deputy of the Sheriff or by an authorized agent of Pierce County, deputized by the Sheriff.

- A. The animal control authority shall be a division of the Pierce County Auditor. The duly elected auditor of Pierce County shall be the director of the animal control authority.
- B. The animal control authority is authorized to enforce the provisions of the Pierce County Code and the laws of the State of Washington as they pertain to animals.
- C. All animal control officers must be special deputies commissioned by the Pierce County Sheriff.

(Ord. 2008-14 § 1 (part), 2008; Ord. 87-40S § 1 (part), 1987)

6.02.025 Licenses Required.

Licenses required are for regulation and control. This entire Title shall be deemed an exercise of the power of the State of Washington and of the County of Pierce to license for regulation and/or control and all its provisions shall be liberally construed for the accomplishment of either or both such purposes. (Ord. 2005-108 § 1 (part), 2005)

6.02.030 Authority to Pursue.

Those employees or agents of the County charged with the duty of seizing animals running at large may pursue such animals onto County-owned property, vacant property, and unenclosed private property, and seize, remove, and impound the same. (Ord. 95-151S § 2 (part), 1996; Ord. 87-40S § 1 (part), 1987)

6.02.040 Notice of Impounding Animal.

Upon the impoundment of any animal under the provisions of this Title, the animal control agency shall immediately notify the owner, if the owner is known, of the impounding of such animal, and of the terms upon which said animal can be redeemed. The impounding authority shall retain said animal for 48 hours following actual notice to the owner. The notifying of any person over the age of 18 who resides at the owner's domicile shall constitute actual notice to the owner. If the owner of said animal so impounded is unknown, then said animal control agency shall make a reasonable effort to locate and notify the owner of said animal. (Ord. 99-17 § 1 (part); 1999; Ord. 95-151S § 2 (part), 1996; Ord. 87-40S § 1 (part), 1987)

6.02.050 Hindering an Officer.

It is unlawful for any person to interfere with, hinder, delay, or impede any officer who is enforcing the provisions of this Title as herein provided. A violation of this Section is a misdemeanor. (Ord. 2008-14 § 1 (part), 2008; Ord. 87-40S § 1 (part), 1987)

6.02.060 Interference With Impounding.

It is unlawful for any person to willfully prevent or hinder the impounding of any animal, or to by force or otherwise remove any animal from the animal shelter without authority of the person in charge of the animal shelter, or without payment of all lawful charges against such animal, or to willfully resist or obstruct any officer in the performance of any official duty. A violation of this Section is a misdemeanor. (Ord. 2008-14 § 1 (part), 2008; Ord. 95-151S § 2 (part), 1996; Ord. 87-40S § 1 (part), 1987)

6.02.070 Redemption of Dogs.

The owner of any dog impounded under this Title may redeem said dog within 48 hours from time of impounding by paying to the animal control agency the appropriate redemption fee and providing proof of such animal's current pet license at the time of redemption. The first time a dog is impounded within a one year period, the redemption fee is \$25.00; for the second impound within a one year period the redemption fee is \$50.00; for the third and subsequent impounds within a one year period the redemption fee is \$75.00. If a dog is wearing a current pet license at the time of the first impound, no redemption fee will be collected. In addition to the redemption fee, the redeemer shall pay all charges associated with the care and keeping of such dog, including the first and last days the dog is retained by the impounding authority. This boarding charge will be collected for the first time impound whether the animal is wearing a pet license or not. If an impounded 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 provision. In case such dog is not redeemed within 96 hours, it may be humanely destroyed or otherwise disposed of within the discretion of the animal control agency. (Ord. 2008-14 § 1 (part), 2008; Ord. 99-17 § 1 (part), 1999; Ord. 97-111 § 2, 1997; Ord. 88-138 § 1, 1988; Ord. 87-40S § 1 (part), 1987)

6.02.075 Redemption of Livestock.

The owner of livestock impounded under this Title may redeem said livestock within 48 hours from time of impounding by paying to the impounding authority a redemption fee of \$35.00 per animal for small livestock (i.e., goats, sheep, swine, ostriches, rhea, emu, etc.) and a redemption fee of \$75.00 per animal for larger livestock (i.e., cattle, horses, mules, llamas, etc.). In addition, the cost of a private livestock hauler, if one is used, is to be paid at the time of redemption. In addition to the redemption fee, the redeemer shall pay all charges associated with

the caring and keeping of such animal, including the first and last days that the animal is cared for by the impounding authority. The livestock may be cared for by a private boarding facility, in which case that facility's boarding fees and all associated costs shall be paid at the time of redemption. (Ord. 2008-14 § 1 (part), 2008; Ord. 99-17 § 1 (part), 1999)

6.02.080 Redemption of Animals Other Than Dogs and Livestock.

The owner of any animal other than a dog or livestock impounded under the provisions of this Title may redeem it within 48 hours from the time of impounding by paying to the animal control agency the appropriate redemption fee and providing proof of such animal's current pet license (if applicable) at the time of redemption. In addition to the redemption fee, the redeemer shall pay all charges for the care and keeping of such animal, equal to the current total daily rate, including the first and last days, that the animal is retained by the impounding authority. If such animal is not redeemed by the owner within 48 hours, it may be humanely destroyed or otherwise disposed of at the discretion of the animal control agency; provided, however, that any animal so impounded less than two months of age, at the discretion of the animal control agency, may be humanely destroyed or otherwise disposed of at any time after impounding. (Ord. 2008-14 § 1 (part), 2008; Ord. 99-17 § 1 (part), 1999; Ord. 95-151S § 2 (part), 1996; Ord. 88-138 § 2, 1988; Ord. 87-40S § 1 (part), 1987)

6.02.085 Mandatory Spay/Neuter for Impounded Dogs and Cats – Deposit – Refund – Exceptions.

- A. **Mandatory Spay/Neuter.** Any unaltered dog or cat that is impounded more than once in any 12-month period may not be redeemed by any person until the animal is spayed or neutered. The alteration shall be accomplished by the shelter or by transport of the animal by animal control personnel to any duly licensed veterinarian in Pierce County. In all cases, the veterinarian fees shall be paid at the time of redemption by the animal's owner.
- B. **Exceptions.** The alteration shall not be required upon a showing of proof of alteration from a licensed veterinarian. The alteration shall not be required if the owner or other person redeeming the animal provides a written statement from a licensed veterinarian stating that the spay or neuter procedure would be harmful to the animal.

(Ord. 2008-37 § 1, 2008; Ord. 2008-14 § 1 (part), 2008; Ord. 2005-108 § 1 (part), 2005; Ord. 92-35 § 1 (part), 1992)

6.02.088 Conditions of Release.

The animal control agency is authorized to refuse to release to its owner any animal which has been impounded more than once in a 12-month period unless satisfied that the owner has taken steps that the violation will not occur again. The agency may impose reasonable conditions which must be satisfied by the owner before release of the animal, including conditions assuring that the animal will be confined. Any violation of the conditions of release is unlawful and shall constitute a Class 3 Civil Infraction pursuant to Chapter 1.16 PCC. (Ord. 99-17 § 1 (part), 1999)

6.02.090 Injured or Diseased Animals.

Any animal suffering from serious injury or disease may be humanely destroyed by the animal control agency; provided, that the animal control agency shall immediately notify the owner, if the owner is known, and if the owner is unknown, make a reasonable effort to locate and notify the owner. (Ord. 95-151S § 2 (part), 1996; Ord. 87-40S § 1 (part), 1987)

6.02.100 Duties Upon Injury or Death to an Animal.

The operator of a vehicle involved in an accident resulting in injury or death to an animal or livestock, shall immediately stop the vehicle at or as near to the scene of the accident as possible, and return thereto, and shall give to the owner or other competent person having custody of the animal, the name and address of the operator of the vehicle and the registration number of the vehicle involved in the accident. If the owner or other competent person is not the person at the scene of the accident, the operator shall take reasonable steps to locate the owner or custodian of said animal and shall supply the information herein above required. If the animal is injured to the extent that it requires immediate medical attention and there is no owner or custodian present to look after it, the operator of said vehicle shall immediately report the situation to the appropriate law enforcement agency. A violation of this Section is a misdemeanor. (Ord. 2008-14 § 1 (part), 2008; Ord. 95-151S § 2 (part), 1996; Ord. 87-40S § 1 (part), 1987)

6.02.110 Poisoning of Animals.

No person shall place or expose or cause to be placed or exposed in any yard or lot of vacant or enclosed land, or on any exposed place or public place, or on any street, alley, or highway, or other place where the same may be taken internally by a child, person, or by any animal, any poisonous substance which, if taken internally may cause death or serious sickness. The provisions of this Section shall not apply to the killing by poison of any animal in a lawful and humane manner by its owner or by a duly authorized agent of such owner or by a person acting pursuant to instructions from a duly constituted public authority. A violation of this Section is a misdemeanor. (Ord. 2008-14 § 1 (part), 2008; Ord. 95-151S § 2 (part), 1996; Ord. 87-40S § 1 (part), 1987)

6.02.120 Abatement of Nuisances.

- A. It shall be unlawful for any person, firm, or corporation to own, keep, harbor and/or maintain any animal or to cause, allow, permit or participate in any of the following, which are, singly or together, hereby declared to be a public nuisance:
1. Public disturbance noises and public nuisance noises as defined in Chapter 8.72.090-100.
 2. Any animal which enters upon private or public property, so as to damage or destroy any real property or personal property thereon.
 3. Any animal which chases, runs after, or jumps at, vehicles using the public streets and alleys.
 4. Any animal which snaps, growls, snarls, jumps at or upon, or otherwise threatens persons lawfully using public sidewalks, streets, alleys or other public ways.
 5. Any non-domesticated animal, either predatory or non-predatory, in the custody, possession or control of any person within the county, which due to its size, habits, natural propensities or instincts represents a danger or potential danger to people or property, if such animal is not securely confined, restricted or restrained or under control.
 6. Dogs running in packs, defined as more than one dog.
 7. Any animal, whether licensed or not, which runs at large; provided, however, that this Section shall not apply to service animals; to animals participating in animal shows or exhibitions; or to dogs participating in organized dog training classes.
 8. Any animal which enters any place where food is prepared, served, stored or sold to the public; provided, however, that this subsection shall not apply to any person using a service animal or duly authorized law enforcement officers using dogs in performance of their duties.

9. Animals confined, staked or kept on public property without prior consent of the public entity having custody, control, or ownership of the property.
 10. Animals kept, harbored or maintained and known to have a contagious disease, unless under the treatment of a licensed veterinarian or being kept for medical research by a licensed facility as lawfully authorized.
 11. Animals on public property not under control.
 12. Any species of animal designated by the state board of health as dangerous to the public, except as lawfully authorized for fur farming by a licensed facility.
 13. Any vicious animal which runs at large.
 14. The taking from the wild, or the holding in captivity, or the having in one's possession, or the exportation from or importation into the county of any species designated in WAC 232-12-019, 232-12-004, and 232-12-007, together with amendments thereto, as protected wildlife, as furbearing animals, or as game fish, birds, or animals, except as lawfully authorized.
- B. In addition to any fine or penalty imposed by the Court in such action, the offender may be ordered to forthwith abate and remove the nuisance; and if the same is not done by the offender within 24 hours, the same shall be abated and removed under the direction the officer authorized by the order of said Court, which order of abatement shall be entered upon the docket of the Court and made a part of the judgement in the action.
- C. Any such person shall be liable for all costs and expenses of abating the same when the nuisance has been abated by any officer of Pierce County or the animal control agency of Pierce County, 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; and in all cases where the officer is authorized by the Court, shall abate any nuisance and he/she shall keep an account of all expenses attending the abatement; and in addition to other powers herein given to collect the costs and expenses, Pierce County may bring suit for the same in any Court of competent jurisdiction against the person keeping or maintaining the nuisance so abated.
- (Ord. 2008-14 § 1 (part), 2008; Ord. 87-40S § 1 (part), 1987)

6.02.140 Severability.

If any provision of this Title or its application to any person or circumstances are held to be invalid, the remainder of this Title or the application of the provisions to other persons or circumstances shall not be affected. (Ord. 87-40S § 1 (part), 1987)

Chapter 6.03

ANIMAL CONTROL – VIOLATIONS, PENALTIES

Sections:

- 6.03.005 Exclusions.
- 6.03.010 Infractions.
- 6.03.020 Misdemeanors.
- 6.03.030 Gross Misdemeanors.
- 6.03.040 Penalties.

6.03.005 Exclusions.

Nothing in this Chapter applies to accepted husbandry practices used in the commercial raising or slaughtering of livestock or poultry, or products thereof, or to the use of animals in the normal and usual course of rodeo events. (Ord. 2008-14 § 1 (part), 2008)

6.03.010 Infractions.

The following are declared to be Class 3 Civil Infractions:

- A. **Animals at Large.** It is unlawful for the owner or person having control or custody of any animal to cause or permit such animal to leave the premises of the owner, unless the animal is under physical restraint adequate to the size and nature of the animal. Exceptions to this restriction are pets engaged in formal training, hunt or competition, or service dogs engaged in activity for which they are trained or in service. Any such animal may be seized and impounded. A violation of this subsection is a Class 3 Civil Infraction.
- B. **Agitating an Animal.** It is unlawful to intentionally agitate, harass, or provoke an animal. A violation of this subsection is a Class 3 Civil Infraction.
- C. **Animal Bites.** It is unlawful to own an animal that bites a person while such person is on public property or lawfully on private property. A violation of this subsection is a Class 3 Civil Infraction.
- D. **Animals Chasing Livestock.** It is unlawful for the owner or person having control or custody of any animal to cause or permit such animal to chase another owner's livestock when not engaged in the specific work of herding said livestock as approved and permitted by the owner of the livestock. A violation of this subsection is a Class 3 Civil Infraction.
- E. **Animals Chasing Vehicles on Public Roads.** It is unlawful for the owner or person having control or custody of any animal to cause or permit such animal to chase, run after, or jump at vehicles lawfully using the public road, street, avenues, alleys, and ways. Any such animal may be seized and impounded. A violation of this subsection is a Class 3 Civil Infraction.
- F. **Animals Jumping and/or Threatening Pedestrians.** It is unlawful for the owner or person having control or custody of any animal to cause or permit such animal to frequently or habitually snarl at, growl at, jump upon, or threaten persons upon the public sidewalks, roads, streets, alleys, or public places. Any such animal may be seized and impounded. A violation of this subsection is a Class 3 Civil Infraction.

- G. Confinement of Female Dogs and Cats in Heat.** Every female dog and cat in heat shall be confined in a building or secure enclosure in such a manner that such female dog or cat cannot come into contact with a male of the species, except for planned breeding. It is unlawful for any person having control or custody of a dog or cat in heat to cause or permit such animal to be unconfined. Any dog or cat not so confined when in heat, whether or not such dog or cat is licensed, may be seized and impounded, and will be subject to mandatory spaying in accordance with the process in Chapter 6.02.085. A violation of this subsection is a Class 3 Civil Infraction.
- H. Failure to License.** A violation of Section 6.04.060 is a Class 3 Civil Infraction.
- I. Damaging Property.** It is unlawful for the owner or person having control of any animal to cause or permit their animal to leave the premises of the owner and thereafter cause damage to anything of value which does not exceed \$250.00, including another pet or livestock. A violation of this subsection is a Class 3 Civil Infraction.
- J. Failure to Provide Adequate Care.** It is unlawful for any owner or person having control or custody of any animal to fail to provide:
1. Adequate food and water as defined in Section 6.020.010 B.;
 2. Adequate shelter as defined in Section 6.020.010 C.;
 3. Appropriate habitat and medical care; or
 4. Fail to maintain facilities housing animals in a healthful, sanitary, and safe manner.
- Under circumstances not amounting to animal cruelty as defined in RCW 16.52.205 or 16.52.207, a violation of this subsection is a Class 3 Civil Infraction. (Circumstances that amount to animal cruelty as defined in RCW 16.52.205 and 16.52.207 are addressed pursuant to those provisions.)
- K. Confinement of an Animal in a Motor Vehicle.** It is unlawful for an owner or person to confine any animal in a motor vehicle in such a manner that places it in a life- or health-threatening situation by exposure to a prolonged period of extreme heat or cold, without proper ventilation or other protection from such heat or cold. In order to protect the health and safety of such animal, an animal control officer or law enforcement officer who has probable cause to believe that this Section is being violated shall have the authority to enter such motor vehicle by any reasonable means under the circumstances, after making a reasonable effort to locate the owner. A violation of this subsection is a Class 3 Civil Infraction.
- L. Public Disturbance Noise and Public Nuisance Noise Made by an Animal.** Any Public Disturbance Noise made by an animal and Public Nuisance Noise made by an animal is unlawful and shall be enforced under the provisions of Chapter 8.72 PCC. Violations and penalties are defined in Chapter 8.72.
- M. Sale or Transfer of Animals in Public Places Prohibited.** It is unlawful to sell, barter or otherwise transfer for the purpose of changing ownership any animal in an area open to the public unless such activity is licensed pursuant to Chapter 5.24 PCC. A violation of this subsection is a Class 3 Civil Infraction.

(Ord. 2008-14 § 1 (part), 2008)

6.03.020 Misdemeanors.

The following are declared to be misdemeanors:

- A. Abandonment of Animal.** It is unlawful for the owner or person having control or custody of any animal to place such animal under circumstances which manifest or constitute a willful intent to abandon it, or to abandon an animal by leaving it on the street, road, or highway, or in any public place or on private property without the property owner's permission. A violation of this subsection is a misdemeanor.

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- B. **Animals Injuring Private and Public Property.** It is unlawful for the owner or person having control of any animal to cause or permit their animal to leave the premises of the owner and thereafter cause damage to anything of value which exceeds \$250.00, including another pet or livestock. Any such animal may be seized and impounded. A violation of this subsection is a misdemeanor.
- C. **Duties Upon Injury or Death to an Animal.** A violation of Section 6.02.100 is a misdemeanor.
- D. **Hindering an Officer.** A violation of Section 6.02.050 is a misdemeanor.
- E. **Interference with Impounding.** A violation of Section 6.02.060 is a misdemeanor.
- F. **Poisoning of Animals.** A violation of Section 6.02.110 is a misdemeanor.
- G. **Selling Ill or Injured Animals.** It is unlawful for any person to sell an animal knowing it to be ill or injured. A violation of this subsection is a misdemeanor.
- H. **Refusal to Quarantine.** It is unlawful for any person to refuse to quarantine or permit the quarantine of an animal when and as required by Section 6.08.040. A violation of this Section is a misdemeanor.
- I. **Operating a Facility without a License.** It is unlawful for any person to own, maintain, or have six or more dogs and/or cats, or operate a commercial kennel or cattery, boarding kennel/cattery, short-term boarding facility, or pet shop, within the unincorporated areas of Pierce County without an applicable license as provided for and defined by Chapter 5.24. A violation of Chapter 5.24 is a misdemeanor.
- J. **Potentially Dangerous Wild Animals.** A violation of Chapter 6.16 is a misdemeanor.
(Ord. 2008-14 § 1 (part), 2008)

6.03.030 Gross Misdemeanors.

The following are declared to be gross misdemeanors:

- A. **Animals Injuring Humans or Animals.** It is unlawful for the owner or person having control or custody of any animal to cause or permit such animal to cause injury to a human or animal which is acting in a lawful manner. Any such animal may be seized and impounded. A violation of this subsection is a gross misdemeanor.
- B. **Habitual Violator.** Any owner receiving two or more convictions, singularly or in combination, of crimes relating to animals within a ten-year period, or any combination of two findings of potentially dangerous and/or dangerous animals within ten years, or any four infractions, singularly or in combination, pursuant to Chapter 6.03 found to be committed by the district court within a five-year period shall be guilty of a gross misdemeanor. Any person designated as a "Habitual Violator", shall be prohibited from owning animals for a period of not less than ten years.
- C. **Penalty for Failure to Control or Comply with Restrictions.** A violation of Section 6.07.040 is a gross misdemeanor.
- D. **Use of an Animal in Illegal Activity.** No person shall keep, maintain, control, or retain custody of any animal in conjunction with or for the purpose, whether in whole or in part, of aiding, abetting, or conducting any illegal activity or committing any crime within unincorporated Pierce County. Any such animal may be seized and impounded. A violation of this subsection is a gross misdemeanor.
- E. **Possession of a Dangerous or Potentially Dangerous Animal where Prohibited.** It is unlawful to bring an animal into unincorporated Pierce County that has been declared to be dangerous or potentially dangerous by any other agency, animal control authority, hearing examiner, municipality or court. The owner of such animal shall be guilty of a

gross misdemeanor under circumstances evidencing that the animal was intentionally brought into unincorporated Pierce County by the owner or at the request or acquiescence of the owner.

F. Relocation of Dangerous or Potentially Dangerous Animal without Proper Notice.

When an animal has been declared dangerous or potentially dangerous by any agency, animal control authority, hearing examiner, municipality or court, the owner of the animal 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 notice as indicated in Section 6.07.035.

(Ord. 2008-14 § 1 (part), 2008)

6.03.040 Penalties.

Unless specifically designated in this Chapter as a misdemeanor or gross misdemeanor, any violation of this Chapter is unlawful and shall constitute a Class 3 Civil Infraction pursuant to Chapter 1.16. Such penalty is in addition to any other remedies or penalties specifically provided in this Title. For each act herein prohibited of a continuing nature, each day shall be considered a separate offense. (Ord. 2008-14 § 1 (part), 2008)

Chapter 6.04

LICENSING OF DOGS AND CATS

Sections:

- 6.04.010 License Required.**
- 6.04.020 Purchase of License.**
- 6.04.030 Fees.**
- 6.04.040 Late Payment Penalty.**
- 6.04.050 License Not Transferable.**
- 6.04.060 License Violation – Civil Infraction.**

6.04.010 License Required.

It is unlawful for any person to own, keep, or have control of a dog or cat over the age of eight weeks, whether confined or not, in the unincorporated areas of Pierce County without having a current license tag attached to the collar or harness which is worn by the dog or cat. Any dog or cat which is off the premises of its owner must have a current license, regardless of its age. If any dog and/or cat which is required to be licensed is found without a current license, it may be seized and impounded by the animal control agency or the Pierce County Sheriff, provided, such seizure and impoundment will not preclude the issuance of a civil infraction. Hunting dogs, during a controlled hunt, need not wear a license tag. No more than five dogs and/or cats may be individually licensed by a residence in Pierce County. Dogs and cats are exempt from the above licensing provisions when they are in the custody of a recognized animal rescue group. In order to qualify as a recognized group, proof of registration with the Internal Revenue Service pursuant to IRC 501(c)(3) must be submitted to the Pierce County licensing authority by the group. (Ord. 2008-14 § 1 (part), 2008; Ord. 99-17 § 3 (part), 1999; Ord. 97-111 § 4 (part), 1997; Ord. 95-151S § 4 (part), 1996; Ord. 92-35 § 3 (part), 1992; Ord. 87-40S § 3 (part), 1987)

6.04.020 Purchase of License.

A. All dog or cat licenses shall be obtained by paying the required license fee in the amounts and within the time limits as provided in this Chapter to the Auditor, or to the Auditor's designated licensing agent. The license shall remain in force for a period of 12 months from the date of issuance, expiring on the last day of the 12th month. There is no prorating of any license fee. Renewal licenses will retain the original expiration period whether renewed prior to, on, or after their respective renewal month. The applicant shall be furnished with such license and a metal tag; or in the case of a kennel license, the year of issuance and the words "Pierce County". The tag shall be attached to a collar or harness which will be worn by the dog or cat at all times.
(Ord. 2009-27 § 1, 2009; Ord. 2005-108 § 1 (part), 2005; Ord. 2002-19s3 § 2 (part), 2002; Ord. 97-111 § 4 (part), 1997; Ord. 87-40S § 3 (part), 1987)

6.04.030 Fees.

The license fees for the ownership, keeping, or having control of dogs and/or cats in unincorporated Pierce County shall be as follows:

- A. Adult Dogs:
 - altered \$ 20.00
 - unaltered \$ 55.00
- B. Adult Cats:
 - altered \$ 12.00
 - unaltered \$ 55.00
- C. "Temporary Tag" dogs/cats (30 days)..... \$ 0.00
- D. "Juvenile" dogs (up to 6 months old)..... \$ 10.00
- E. "Juvenile" cats (up to 6 months old) \$ 6.00
- F. Duplicate License Tag for a dog or cat \$ 5.00
- G. Reduced rates for senior citizens, 65 years of age or older, and individuals with a permanent disability:
 - 1. Dogs:
 - altered \$ 10.00
 - unaltered \$ 30.00
 - 2. Cats:
 - altered \$ 5.00
 - unaltered \$ 30.00

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.

Individuals with a permanent disability, residing in unincorporated Pierce County, qualify for the reduced fee specified in G. above, provided that the dogs and cats are not used for a commercial purpose. To qualify for this reduced fee, individuals with a permanent disability must provide proof of permanent disability to the Auditor, or the Auditor's designated licensing agent, in the form of a U.S. Department of Veterans Affairs Identification Card or documentation showing at least 30 percent permanent disability, a Washington Department of Licensing parking placard issued for permanent disability under RCW 46.16.381, or any other means that the licensing agency, Auditor, or the Auditor's designated licensing agent deems an appropriate proof of permanent disability.

The Pierce County Auditor is authorized to establish agents for the purpose of selling pet licenses on its behalf. The agents shall be allowed to collect a service charge of \$4.00 for each new pet license or renewal transaction. This service fee may be negotiated at a different rate if included in a contract for shelter and adoption services.

(Ord. 2009-104 § 2, 2009; Ord. 2008-14 § 1 (part), 2008; Ord. 2005-108 § 1 (part), 2005; Ord. 2002-19s3 § 2 (part), 2002; Ord. 98-10 § 1, 1998; Ord. 97-111 § 4 (part), 1997; Ord. 95-151S § 4 (part), 1996; Ord. 92-35 § 3 (part), 1992; Ord. 90-152 § 1, 1990; Ord. 89-235 § 1, 1990; Ord. 87-40S § 3 (part), 1987)

6.04.040 Late Payment Penalty.

- A. Any person who fails to obtain a license within 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 within 60 days of the license expiration date shall pay a penalty of \$20.00 per license.

- B. No late payment penalty shall be charged on new license applications if:
1. The owner submits proof of purchase or acquisition of the animal within the preceding 30 days; or
 2. The owner has moved into the County 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. 97-111 § 4 (part), 1997; Ord. 92-35 § 3 (part), 1992; Ord. 87-40S § 3 (part), 1987)

6.04.050 License Not Transferable.

Dog or cat licenses as provided for in this Chapter shall be nontransferable. A person may not use a license for another dog or cat that he/she owns, if the dog or cat for which it was issued is no longer owned by such person. It is unlawful for any person to give, sell, exchange, or otherwise transfer a dog or cat license to another person, even if it is to be used for the same dog or cat for which it was originally issued.

Dog or cat license fees are nonrefundable.

(Ord. 2008-14 § 1 (part), 2008; Ord. 87-40S § 3 (part), 1987)

6.04.060 License Violation – Civil Infraction.

Any violation of Sections 6.04.010, 6.04.020, or 6.04.050 of this Chapter is unlawful and shall constitute a Class 3 civil infraction pursuant to Chapter 1.16 PCC. Provided, that if the person presents evidence of a valid license to the District Court, the citation shall be dismissed without cost, except that the court may assess court administration costs of \$25.00 at the time of dismissal. (Ord. 2008-14 § 1 (part), 2008; Ord. 2008-14 § 1 (part), 2008; Ord. 99-17 § 3 (part), 1999; Ord. 97-111 § 4 (part), 1997; Ord. 87-40S § 3 (part), 1987)

Chapter 6.07

DANGEROUS AND POTENTIALLY DANGEROUS ANIMALS

Sections:

- 6.07.010 Declaration of Animals as Potentially Dangerous – Procedure.**
- 6.07.015 Declaration of Animals as Dangerous – Procedure.**
- 6.07.020 Registration, Permits and Fees for Potentially Dangerous Animals.**
- 6.07.025 Registration, Permits and Fees for Dangerous Animals.**
- 6.07.030 Confinement and Identification of Dangerous or Potentially Dangerous Animals.**
- 6.07.035 Notification of Status of a Dangerous or Potentially Dangerous Animal.**
- 6.07.040 Penalty for Failure to Control or Comply with Restrictions.**
- 6.07.045 Impoundment of Dangerous or Potentially Dangerous Animals.**

6.07.010 Declaration of Animals as Potentially Dangerous – Procedure.

- A. The animal control authority shall have the ability to declare an animal as potentially dangerous if there is probable cause to believe the animals falls within the definitions set forth in Section 6.02.010 X. The 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 Section 6.02.010 X.; or
 - 2. Animal bite reports filed with the County or the County's designee; or
 - 3. Actions of the animal witnessed by any animal control officer or law enforcement officer; or
 - 4. Other substantial evidence.
- B. **Exclusions.** An animal shall 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 animal 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 animal, 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 animal, or who was committing or attempting to commit a crime.
- C. The declaration of a potentially dangerous animal shall be in writing and shall be served on the owner in one of the following methods:
 - 1. Certified mail 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 animal.
 - 2. The name and address of the owner of the animal, if known.
 - 3. The whereabouts of the animal if it is not in the custody of the owner.
 - 4. The facts upon which the declaration of potentially dangerous animal is based.
 - 5. The availability of a hearing in case the person objects to the declaration, if a request is made within ten calendar days.
 - 6. The restrictions placed on the animal as a result of the declaration of a potentially dangerous animal.

7. The penalties for violation of the restrictions, including the possibility of destruction of the animal, and imprisonment or fining of the owner.
- E. If the owner of the animal wishes to object to the declaration of a potentially dangerous animal:
 1. The owner may request a hearing before the County, or the County's designee, by submitting a written request and payment of a \$125.00 administrative review fee to the Auditor or the Auditor's designee within ten calendar days of receipt of the declaration, or within ten calendar days of the publication of the declaration pursuant to Section 6.07.010 C.3.
 2. If the Auditor or the Auditor's designee finds that there is insufficient evidence to support the declaration, it shall be rescinded, and the restrictions imposed thereby annulled.
 3. If the Auditor or the Auditor's designee finds sufficient evidence to support declaration, the owner may appeal such decision pursuant to Pierce County Hearing Examiner Code Chapter 1.22 PCC; provided that the appeal and the payment of an appeal fee of \$250.00 must be submitted to the Auditor or the Auditor's designee within ten calendar days after the finding of sufficient evidence by the Auditor or the Auditor's designee.
 4. An appeal of the Hearing Examiner's decision must be filed in Superior Court within 15 calendar days of the date of the Hearing Examiner's written decision.
 5. During the entire appeal process, it shall be unlawful for the owner appealing the declaration of potentially dangerous animals to allow or permit such animal to:
 - a. Be unconfined on the premises of the owner; or
 - b. Go beyond the premises of the owner unless such animal is securely leashed, under the control of a competent adult, and humanely muzzled or otherwise securely restrained.

(Ord. 2008-14 § 1 (part), 2008; Ord. 2005-108 § 1 (part), 2005; Ord. 99-17 § 4 (part), 1999; Ord. 92-35 § 4, 1992; Ord. 89-235 § 2 (part), 1990; Ord. 89-192 § 1, 1989; Ord. 87-40S § 4 (part), 1987)

6.07.015 Declaration of Animals as Dangerous – Procedure.

- A. The animal control authority shall have the ability to declare an animal as dangerous if there is probable cause to believe the animal falls within the definitions set forth in Section 6.02.010 N. The 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 Section 6.02.010 N; or
 2. Animal bite reports filed with the County or the County's designee; or
 3. Actions of the animal witnessed by any animal control officer or law enforcement officer; or
 4. Other substantial evidence.
- B. **Exclusions.** An animal 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 animal 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 animal, 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 animal, or who was committing or attempting to commit a crime.
- C. The declaration of a dangerous animal shall be in writing and shall be served on the owner in one of the following methods:

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1. Certified mail 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 animal.
 2. The name and address of the owner of the animal, if known.
 3. The whereabouts of the animal if it is not in the custody of the owner.
 4. The facts upon which the declaration of dangerous animal is based.
 5. The availability of an appeal in case the person objects to the declaration, if a request is made within ten calendar days.
 6. The restrictions placed on the animal as a result of the declaration of a dangerous animal.
 7. The penalties for violation of the restrictions, including the possibility of destruction of the animal, and imprisonment or fining of the owner.
- E. If the owner of the animal wishes to object to the declaration of a dangerous animal:
1. The owner may request a hearing before the County or the County's designee by submitting a written request and payment of a \$250.00 administrative review fee to the Auditor or the Auditor's designee within ten calendar days of receipt of the declaration, or within ten calendar days of the publication of the declaration pursuant to Section 6.07.015 C.3.
 2. If the Auditor or the Auditor's designee finds that there is insufficient evidence to support the declaration, it shall be rescinded, and the restrictions imposed thereby annulled.
 3. If the Auditor or the Auditor's designee finds sufficient evidence to support declaration, the owner may appeal such decision pursuant to the Pierce County Hearing Examiner Code, Chapter 1.22 PCC; provided that the appeal and the payment of an appeal fee of \$500.00 must be submitted to the Auditor or the Auditor's designee within ten calendar days after the finding of sufficient evidence by the Auditor or the Auditor's designee.
 4. An appeal of the Hearing Examiner's decision must be filed in Superior Court within 15 calendar days of the date of the Hearing Examiner's written decision.
 5. During the entire appeal process, it shall be unlawful for the owner appealing the declaration of dangerous animals to allow or permit such animal to:
 - a. Be unconfined on the premises of the owner; or
 - b. Go beyond the premises of the owner unless such animal is securely leashed, under the control of a competent adult and humanely muzzled or otherwise securely restrained.
- F. In the case wherein an animal is found to be a dangerous animal pursuant to the procedures in 6.07.015 because the animal killed a human being without provocation, after the exhaustion of appeal therefrom, the dangerous animal shall be forfeited to the County and be humanely euthanized.
- (Ord. 2009-17 § 1, 2009; Ord. 2008-14 § 1 (part), 2008)

6.07.020 Registration, Permits and Fees for Potentially Dangerous Animals.

Following the declaration of a potentially dangerous animal and the exhaustion of the appeal therefrom, the owner of a potentially dangerous animal shall obtain a permit for such animal from the animal control agency, and shall be required to pay the fee for such permit in the amount of \$250.00 to the Auditor or the Auditor's designee. In addition, the owner of a

potentially dangerous animal shall pay an annual renewal fee for such permit in the amount of \$250.00 to the Auditor or the Auditor's designee.

Should the owner of a potentially dangerous animal fail to obtain a permit for such animal or to appeal the declaration of a potentially dangerous animal, the County or the County's designee is authorized to seize and impound such animal and, after notification to the owner, hold the animal for a period of no more than five days before destruction of such animal.

A registration and permit will be issued to the owner of a potentially dangerous animal upon payment of the permit and inspection fees if the owner is able to pass a site inspection within the prescribed timeframe by meeting the following inspection criteria:

- A. A proper enclosure of the animal with a posted warning sign as defined in Sections 6.02.010 Z. and DD.;
- B. Proof that either:
 1. The animal has been microchipped (and microchip number is provided), or
 2. The animal has an identifying tattoo, either inside the left ear or inside the left, rear, upper thigh of the animal and a color, digital photo of the tattoo (in electronic format) is provided for identification purposes;
- C. Two current, color, digital photographs (in electronic format) of the animal (minimum 3" x 5" in size), for identification purposes;
- D. Proof of current rabies vaccination;
- E. Proof the animal has been spayed or neutered.
- F. Proof of a policy of liability insurance (such as homeowner's insurance) issued by an insurer qualified under Title 48 RCW in the amount of at least \$250,000.00 (with Pierce County listed as the certificate holder), insuring the owner for any personal injuries inflicted by the potentially dangerous animal, or proof of 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 \$250,000.00 and payable to any person injured by the potentially dangerous animal.
- G. Animal must be humanely muzzled, as defined in Section 6.02.010 V., when outside of its primary residence.
- H. Animal must wear a brightly 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 re-inspection fee per occurrence. Re-inspection must occur during the prescribed ten calendar day period; it does not extend the allotted timeframe.

(Ord. 2008-14 § 1 (part), 2008; Ord. 2005-108 § 1 (part), 2005; Ord. 99-17 § 4 (part), 1999; Ord. 89-235 § 2 (part), 1990; Ord. 87-40S § 4 (part), 1987)

6.07.025 Registration, Permits and Fees for Dangerous Animals.

Following the declaration of a dangerous animal and the exhaustion of the appeal therefrom, the owner of a dangerous animal shall obtain a permit for such animal from the animal control agency, and shall be required to pay the fee for such permit in the amount of \$500.00 to the Auditor or the Auditor's designee. In addition, the owner of a dangerous animal shall pay an annual renewal fee for such permit in the amount of \$500.00 to the Auditor or the Auditor's designee.

Should the owner of a dangerous animal fail to obtain a permit for such animal or to appeal the declaration of a dangerous animal, the County or the County's designee is authorized to seize and impound such animal and, after notification to the owner, hold the animal for a period of no more than five days before destruction of such animal.

A registration and permit will be issued to the owner of a dangerous animal upon payment of the permit and inspection fees if the owner is able to pass a site inspection within the prescribed timeframe by meeting the following inspection criteria:

- A. A proper enclosure of the animal with a posted warning sign as defined in Sections 6.02.010 Z. and DD.;
- B. Proof that either:
 - 1. The animal has been microchipped (and microchip number is provided), or
 - 2. The animal has an identifying tattoo, either inside the left ear or inside the left, rear, upper thigh of the animal and a color, digital photo of the tattoo (in electronic format) is provided for identification purposes;
- C. Two current, color, digital photographs (in electronic format) of the animal (minimum 3" x 5" in size), for identification purposes;
- D. Proof of current rabies vaccination;
- E. Proof the animal has been spayed or neutered.
- F. Proof of a policy of liability insurance (such as homeowner's insurance) issued by an insurer qualified under Title 48 RCW in the amount of at least \$500,000.00 (with Pierce County listed as the certificate holder), insuring the owner for any personal injuries inflicted by the dangerous animal, or proof of 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 \$500,000.00 and payable to any person injured by the dangerous animal.
- G. Animal must be humanely muzzled, as defined in 6.02.010 V., when outside of its primary residence.
- H. Animal must wear a brightly 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 re-inspection fee per occurrence. Re-inspection must occur during the prescribed ten calendar day period; it does not extend the allotted timeframe.

(Ord. 2008-14 § 1 (part), 2008)

6.07.030 Confinement and Identification of Dangerous or Potentially Dangerous Animals.

- A. Following a declaration of a dangerous or potentially dangerous animal and the exhaustion of the appeal therefrom, it shall be unlawful for the person owning or harboring or having care of such dangerous or potentially dangerous animal to allow and/or permit such animal to:
 - 1. Be unconfined on the premises of such person; or
 - 2. Go beyond the premises of such person unless such animal is securely leashed and humanely muzzled or otherwise securely restrained.
- B. Dangerous or potentially dangerous animals must be tattooed or have a microchip implanted for identification. Identification information must be on record with the Pierce County Auditor.
- C. Dangerous or potentially dangerous animals must be currently licensed and the registration permit to own the animals as defined under Section 6.07.020 must be kept current at all times.

(Ord. 2008-14 § 1 (part), 2008; Ord. 2005-108 § 1 (part), 2005; Ord. 97-111 § 5, 1997; Ord. 89-235 § 2 (part), 1990; Ord. 87-40S § 4 (part), 1987)

6.07.035 Notification of Status of a Dangerous or Potentially Dangerous Animal.

- A. The owner of an animal that has been classified as a dangerous or potentially dangerous animal shall immediately notify the Auditor and Sheriff when such animal:
 - 1. Is loose or unconfined; or
 - 2. Has bitten or otherwise injured a human being or attacked another animal or livestock.
- B. At least 48 hours prior to a dangerous or potentially dangerous animal being sold, given away, or moved to another location, the owner shall provide the name, address, and telephone number of the new owner to the Auditor or the Auditor's designee. The new owner shall comply with all of the requirements of this Chapter in addition to any state and/or local laws in existence in the new location.
- C. When an animal classified as dangerous or potentially dangerous dies, the owner of said animal shall submit proof (vet records, etc.) to the Auditor or the Auditor's designee within ten calendar days.

(Ord. 2008-14 § 1 (part), 2008; Ord. 2005-108 § 1 (part), 2005; Ord. 99-17 § 4 (part), 1999; Ord. 89-235 § 2 (part), 1990)

6.07.040 Penalty for Failure to Control or Comply with Restrictions.

Any person who violates a provision of Chapter 6.07 shall, upon conviction thereof, be found guilty of a gross misdemeanor. In addition, any person found guilty of violating this Chapter shall pay all expenses, including shelter, food and veterinary expenses, including identification or boarding and veterinary expenses necessitated by the seizure of any animal for the protection of the public, and such other expenses as may be required for the destruction of any such animal. The animals are subject to seizure and impoundment consistent with Section 6.07.045. Furthermore, any dangerous or potentially dangerous animal which attacks a human being or animal may be ordered destroyed when, in the court's judgment, such dangerous or potentially dangerous animal represents a continuing threat of serious harm to human beings or animals. (Ord. 2008-14 § 1 (part), 2008; Ord. 99-17 § 4 (part), 1999; Ord. 89-235 § 2 (part), 1990; Ord. 87-40S § 4 (part), 1987)

6.07.045 Impoundment of Dangerous or Potentially Dangerous Animals.

Should the owner of a dangerous or potentially dangerous animal violate the conditions or restrictions of owning and possessing a dangerous or potentially dangerous animal contained in Section 6.07.020 or 6.07.025 or imposed by the animal control authority, hearing examiner or district court, such animal may be seized and impounded. The owner may within two business days petition the Pierce County Hearing Examiner for the dog's return. The Hearing Examiner will determine whether the animal should be returned to the owner or forfeited to the County and humanely euthanized. Notice of the hearing shall be as provided in Section 6.07.010 C.

If a decision to forfeit the animal to the County is rendered by the Hearing Examiner, the owner may prevent the animal's destruction by, within seven calendar days:

- 1. Petitioning the district court for the animal's immediate return, subject to court-imposed conditions; and
- 2. Posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of 30 calendar days from the seizure date.

If the animal control authority has custody of the animal when the bond or security expires, the animal shall be immediately forfeited to the animal control authority unless the court orders an alternative disposition. If a court order prevents the animal control authority from assuming ownership and it continues to care for the animal, the owner shall renew the bond or security, in advance, for all continuing costs for the animal's care. (Ord. 2008-14 § 1 (part), 2008)

PIERCE COUNTY PROSECUTOR

March 18, 2014 - 4:20 PM

Transmittal Letter

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Case Name: Besaw v. Pierce County, et al.

Court of Appeals Case Number: 44800-9

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Statement of Arrangements

Motion: ____

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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

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Petition for Review (PRV)

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Comments:

With Appendix 1-21

Sender Name: Christina M Smith - Email: csmith1@co.pierce.wa.us

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