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CC# _____
STATE OF WASHINGTON
By _____

NO. 30139-7-111

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

TAMARA J. METTLING,

Respondent/Petitioner,

v.

LARRY HUTCHISON and TAMI HUTCHISON,

Appellants/Respondents,

BRIEF OF APPELLANTS

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WSBA# 25251

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I. Introduction.

This case involves the issuance of an Order for Protection against the Appellants, Larry Hutchison and Tammy Hutchison (“the Hutchisons”) in favor of the Respondent, Tamara Mettling (“Mettling”). The Order for Protection is unusual in that it does not restrain the Hutchisons from having any contact with Mettling or her family. Rather, the Order for Protection restrains the Hutchisons from allowing their dogs to enter Mettling’s property. The Hutchisons challenge whether the Order for Protection was properly entered.

II. Assignments of Error.

Assignment of Error No.1

The Trial Court erred in denying the Hutchisons’ Motion for Revision.

Issues Pertaining to Assignments of Error.

Does a Court have authority to enter an Order for Protection against a person’s pets? (Assignment of Error No. 1)

If so, is the person seeking an Order of Protection required to make a showing that the pet owner knowingly and willfully directed the pet to harass the Petitioner? (Assignment of Error No. 1)

May an Order for Protection be extended beyond one year in the absence of a finding by the court that the restrained party will resume the conduct upon expiration of the order? (Assignment of Error No. 1)

III. Statement of the Case.

On April 1, 2011, Mettling filed a Petition for an Order for Protection-Harassment in Benton County Superior Court. [CP 1-13] In her petition, Mettling alleged: “I am the victim of unlawful harassment committed by Respondent, as described in the statement below.” [CP 1] Mettling does not allege that the Hutchisons directly threatened her or her children. [CP1-4] Rather, Mettling’s petition sought protection from the Hutchisons’ dogs. *Id.*

In her petition, Mettling referred to an incident that occurred on August 16, 2010, approximately eight months earlier, when a dog owned by the Hutchisons killed some of Mettling's farm animals. [CP 2] Mettling shot and killed the responsible dog. *Id.* Mettling asserted a civil claim for damages against the Hutchisons and received a settlement from the Hutchisons' insurance carrier. [CP 86] Following that incident, Mettling alleges other occasions in which the remaining dogs owned by the Hutchisons were on or near her property. [CP 2-4] Mettling does not allege that these dogs threatened or attacked her remaining animals, her children, or were otherwise a threat. *Id.* Mettling's basis for seeking the order was that her "kids are afraid of being attacked, particularly after seeing what the dogs did to the goats, chickens and pigs in August of last year". [CP 4]

Mettling was granted a Temporary Protection Order which restrained the Hutchisons from contacting her and also restrained them from "allowing their dogs to run loose off of

their property, harass and intimidate the Petitioners, their minor children and/or their animals. Further, the Respondents shall only allow their dogs to leave their property if properly leashed or restrained so the handler can control the dogs at all times.” [CP 119-120]

A hearing was held on April 15, 2011, at which time Benton County Superior Court Commissioner Joseph Schneider signed an Order for Protection-Harassment. [CP 16-17] Commissioner Schneider made the Order effective until April 15, 2015. *Id.* The Order restrains the Hutchisons “from allowing their dogs to enter the property of the Petitioners.” [CP 17] Commissioner Schneider did not restrain the Hutchisons from contacting Mettling. *Id.*

The Hutchisons filed a Motion for Revision which was denied by Judge Craig J. Matheson. [CP 18; 150] According to Judge Matheson, “The harassing conduct of the Hutchisons is repeated refusal to control their animals, causing fear and annoyance in their neighbors.” [CP 150] The Hutchisons

timely filed this appeal of the denial of their Motion for Revision. [CP 151-52]

IV. Summary of Argument.

Judge Matheson erred as a matter of law in denying the Hutchisons' Motion for Revision. Neither party could locate any authority which stands for the proposition that a pet owner is subject to an order for protection based on the conduct of the person's pets. Even if such authority does exist, Mettling did not allege facts sufficient to constitute unlawful harassment pursuant to the controlling statute. Furthermore, Judge Matheson erred in failing to reduce the effectiveness of the order to one year.

V. Argument.

RCW 10.14.020 defines unlawful harassment as follows:

- (1) "Unlawful Harassment" means a *knowing and willful course of conduct directed at a specific person* which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves

no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well being of their child.

(2)“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, *evidencing a continuity of purpose*. “Course of conduct” includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of “course of conduct”.

(Emphasis added.)

Neither party was able to locate any authority which stands for the proposition that a pet owner is subject to an Order for Protection based on the conduct of the person’s pets.

In addressing RCW 10.14.020, this Court has noted:

RCW 10.14.020(1) provides that harassing conduct be “directed at a specific person.” The words “directed at” cannot be ignored, and the only way to give them meaning is to conclude that the scienter aspect goes not only to the commission

of the conduct, but to the identity of the targeted victim as well.

The statute is not designed to penalize people who are overbearing, obnoxious or rude. It is geared to protect those victims to whom objectionable behavior is directed.

Burchell v. Thibault, 74 Wn. App. 517, 522, 874 P.2d 196 (1994).

Mettling did not allege in her petition that the Hutchisons were “knowingly and willfully” directing their dogs to harass her. Mettling’s only alleged misconduct on the part of the Hutchisons with respect to the dogs was stated as follows:

Respondents seem to keep the dogs penned most of the time during the daytime, they still run loose at night.

[CP 4]

While the Hutchisons deny that they allow their dogs to run loose at night, if such an allegation were true, such conduct could only be deemed as being directed towards the public at large, not a specific person. Moreover, Mettling does not

allege the Hutchisons allow their dogs to run loose at night for the specific purpose of harassing her. Judge Matheson did not find that the Hutchisons were directing harassing conduct towards Mettling as required under RCW 10.14.020. *Burchell v. Thibault*, 74 Wn. App. at 522. He merely found Mettling suffered fear and annoyance as a result of the Hutchisons' alleged failure to restrain their dogs. [CP 150] Such a finding, without evidence that the Hutchisons' were intentionally engaging in unlawful harassing conduct specifically directed at Mettling, is not sufficient to warrant an Order for Protection under RCW 10.14.020. *Id.*

By denying the Hutchisons' motion for revision, Judge Matheson has exposed them to criminal prosecution should their dogs unwittingly get loose and enter upon Mettling's property.¹ They face jail time of up to a year, and a \$5,000 fine, if their dogs get loose when they are not home. They face

¹ Violation of an Order for Protection is a gross misdemeanor. WPIC 36.51.

this criminal sanction even though there is not a scintilla of evidence that the Hutchisons were directing a course of harassing conduct specifically towards Mettling.

In Benton County, a dog owner may be subject to criminal prosecution under certain circumstances. *See Benton County Code Ch. 2.20 et seq.* [Appendix] However, the Code first requires that the dog be declared a potentially dangerous dog by the local animal control authority and the owner thereafter fails to control the dog. *Benton County Code Ch. 2.20.250.* Judge Matheson bypassed all of the due process requirements afforded dog owners in the Benton County Code and has exposed the Hutchisons to criminal prosecution for the actions of their dogs which are have not been declared potentially dangerous dogs. This is an absurd result.

Lastly, Judge Matheson did not even address the Hutchisons' argument that the Order for protection cannot be effective beyond one year unless the court finds the restrained

party would resume the conduct when the order expired: “An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires.” RCW 10.14.080(4). Judge Matheson did not make a finding to support extension of the order beyond one year. Accordingly, the Court should reduce the effectiveness of the order to one year if it does not vacate it entirely.

VI. Conclusion.

For the reasons set forth above, Judge Matheson erred in denying the Hutchisons’ Motion for Revision. Accordingly, this Court should reverse the denial of said motion and vacate the Order for Protection as a matter of law. Alternatively, the Court should reverse in part and direct the Superior Court to reduce the effectiveness of the order to one year.

DATED this 9th day of November, 2011.

Respectfully Submitted,



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APPENDIX

CHAPTER 2.20

POTENTIALLY DANGEROUS AND DANGEROUS DOGS

SECTIONS:

- 2.20.010 DEFINITIONS
- 2.20.020 POTENTIALLY DANGEROUS DOGS--DOGS WITHOUT PERMIT PROHIBITED
- 2.20.030 POTENTIALLY DANGEROUS DOGS--DECLARATION OF STATUS BY ANIMAL CONTROL AUTHORITY
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- 2.20.050 POTENTIALLY DANGEROUS DOGS--ELEMENTS OF DECLARATION
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- 2.20.080 POTENTIALLY DANGEROUS DOGS--VACCINATION
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2.20.010 DEFINITIONS. When used in this chapter, the definitions in this section shall apply.

(a) "Animal control authority" means Benton County Sheriff or his designee, acting alone or in concert with other local governmental units for the animal control laws of Benton County and the shelter and welfare of animals.

(b) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(c) "Potentially dangerous dog" means any dog that when unprovoked:

(1) inflicts bites on a human or a domestic animal either on public or on private property;

(2) chases or approaches a person upon the streets, side walks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or

(3) chases or approaches a person upon private property other than the owners property in a menacing fashion or in an apparent attitude of attack; provided, however, that dogs shall not be declared potentially 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 premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

(d) "Dangerous dog" means any dog that according to the records of the appropriate authority:

(1) has inflicted severe injury upon a human being without provocation on public or private property;

(2) has killed a domestic animal without provocation while off the owner's property; or

(3) has been previously found to be potentially dangerous, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals; provided, however, that dogs 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 premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

(e) "Severe injury" means any physical injury that results in broken bones or lacerations.

(f) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal.

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

[Ord. 234 (1991) ••1]

2.20.020 POTENTIALLY DANGEROUS DOGS--DOGS WITHOUT PERMIT PROHIBITED. It shall be unlawful for any owner of a potentially dangerous dog who has been notified by the animal control authority that he or she is the owner of a potentially dangerous dog, to keep such dog within unincorporated Benton County unless such owner has procured a permit for such potentially dangerous dog from the animal control authority.

[Ord. 234 (1991) ••2]

2.20.030 POTENTIALLY DANGEROUS DOGS--DECLARATION OF STATUS BY ANIMAL CONTROL AUTHORITY. The animal control authority may find and declare an animal potentially dangerous if it has probable cause to believe that the animal falls within the definition set forth in BCC 2.20.010(c). The finding must be based upon:

(a) 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 in BCC 2.20.010(c);

(b) dog bite reports filed with the animal control authority, state or local law enforcement agencies;

(c) actions of the dog witnessed by an animal control officer or law enforcement officer; or

(d) other substantial evidence admissible in district court.

[Ord. 234 (1991) ••3]

2.20.040 POTENTIALLY DANGEROUS DOGS--DECLARATION SHALL BE IN WRITING. The declaration of potentially dangerous dog shall be in writing and shall be served on the owner in one of the following methods:

(a) certified mail to the owner or keeper's last known address, if known;

(b) personally; or

(c) If the owner of a potentially dangerous dog cannot be determined, the dog will be impounded pursuant to BCC 2.18.070, and if the dog is not claimed within seventy-two (72) hours the animal control authority shall humanely destroy the dog.

(d) The owner of any animal found to be a potentially dangerous dog under BCC 2.20.030 above shall be liable for all costs incurred under this section as stated by the animal control authority.
[Ord. 234 (1991) ••4]

2.20.050 POTENTIALLY DANGEROUS DOGS--ELEMENTS OF DECLARATION. The declaration shall include the following:

(a) a description of the animal;

(b) the name and address of the owner or keeper of the animal, if known;

(c) the whereabouts of the animal, if known, if it is not in the custody of the owner;

(d) the facts upon which the declaration of potentially dangerous dog is based;

(e) the availability of a hearing in case the person objects to the declaration, if a written request is made within ten days to the district court clerk;

(f) the restrictions placed on the animal as a result of the declaration of potentially dangerous dog; and

(g) the penalties for violation of the restrictions, including the possibility of destruction of the animal, and imprisonment

and/or fining of the owner.
[Ord. 234 (1991) •• 5]

2.20.060 POTENTIALLY DANGEROUS DOGS--OBJECTION TO DECLARATION. If the owner of the animal wishes to object to the declaration of potentially dangerous dog, he may, within ten days of receipt of the declaration, appeal that declaration by submitting a written request to the clerk of the court for a hearing before the district court.

If the court finds insufficient evidence to support the declaration, the declaration shall be rescinded and the restrictions imposed thereby annulled. In the event the court finds that the animal is not a potentially dangerous dog, no court costs shall be assessed against Benton County or the animal control authority or officer.

If the court finds sufficient evidence to support the declaration, it shall impose court costs on the appellant and may impose additional restrictions on the animal.
[Ord. 234 (1991) •• 6]

[NOTE: This chapter is continued on the following page.]

2.20.070 POTENTIALLY DANGEROUS DOGS--IMPOUNDMENT.

(a) Following service of a declaration of potentially dangerous dog, the animal control authority may seize and impound the dog pending an appeal under BCC 2.20.060 or to any other court with jurisdiction, if upon investigation it is determined by the animal control authority that probable cause exists to believe the dog in question poses an immediate threat to public safety. The owner or keeper of the dog shall be liable for the full actual costs and expenses of keeping and impounding the dog, including any fees paid by the animal control authority to third-party contractors for impounding or keeping of the dog, if the dog is later adjudicated to be a potentially dangerous dog or if the owner does not object to the declaration. Such actual costs and expenses shall be paid in full to Benton County before the owner may retrieve the dog from impound.

(b) When a dog has been impounded pursuant to subsection (a) of this section and it is not contrary to public safety, the chief animal control officer shall permit the dog to be confined at the owner's expense in an approved kennel or veterinary facility; provided, that such arrangement shall be contingent upon the owner paying all costs incurred thus far by the animal control authority, including any impound or confinement fees paid by the animal control authority to any third-party contractor. Such payment shall be paid in advance of the dog being permitted to be confined at an approved kennel or veterinary facility in lieu of continued confinement at a County-operated or contracted facility
[Ord. 234 (1991) ••7; Ord. 392 (2004) § 1; Ord. 463 (2008) § 1]

2.20.080 POTENTIALLY DANGEROUS DOGS--VACCINATION. Before a permit is issued for any potentially dangerous dog, the permit applicant must present evidence that the dog has been vaccinated against rabies. Such evidence shall be a certificate of vaccination signed by a licensed veterinarian, and the certificate shall show that the vaccination does not expire within six months from the effective date of the dog permit.
[Ord. 234 (1991) ••8]

2.20.090 POTENTIALLY DANGEROUS DOGS--PERMIT REQUIRED. The owner of a potentially dangerous dog shall obtain a permit for such dog from the animal control authority and shall be required to pay the fee for such permit in the amount set forth in BCC 2.20.100. In addition, the owner of a potentially dangerous dog shall pay an annual renewal fee for such permit. No permit or renewal thereof shall be issued to the owner of a potentially dangerous dog until all prior unpaid impounding and/or boarding fees have been paid. [Ord. 234 (1991) ••9]

2.20.100 POTENTIALLY DANGEROUS DOGS--FEES. The permit fee for each potentially dangerous dog shall be \$250.00 with an annual renewal fee of \$50.00, or as hereafter established by resolution of the Board of County Commissioners, and shall be paid to the animal control authority. [Ord. 234 (1991) ••10]

2.20.110 DANGEROUS DOGS--DOGS WITHOUT PERMIT PROHIBITED. It is unlawful for an owner to have a dangerous dog in unincorporated Benton County without licensing such dangerous dog by obtaining a permit pursuant to BCC 2.20.170 herein. This section shall not apply to dogs used by law enforcement officials for police work. [Ord. 234 (1991) ••11]

2.20.120 DANGEROUS DOGS--DECLARATION OF STATUS BY ANIMAL CONTROL AUTHORITY. The animal control authority may find and declare an animal dangerous if it has probable cause to believe that the animal falls within the definition set forth in BCC 2.20.010(d). The finding must be based upon:

(a) 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 in BCC 2.20.010(d);

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(BCC 09/20/08)

- (b) dog bite reports filed with the animal control authority, state or local law enforcement agencies;
- (c) actions of the dog witnessed by an animal control officer or law enforcement officer; or
- (d) other substantial evidence admissible in district court. [Ord. 234 (1991) ••12]

2.20.130 DANGEROUS DOG--DECLARATION SHALL BE IN WRITING. The declaration of dangerous dog shall be in writing and shall be served on the owner in one of the following methods:

- (a) certified mail to the owner or keeper's last known address, if known;
- (b) personally; or
- (c) If the owner of a dangerous dog cannot be determined, the dog will be impounded pursuant to BCC 2.18.070, and if the dog is not claimed within seventy-two (72) hours the animal control authority shall humanely destroy the dog.
- (d) The owner of any animal found to be a dangerous dog under BCC 2.20.120 above shall be liable for all costs incurred under this section as stated by the animal control authority. [Ord. 234 (1991) ••13]

2.20.140 DANGEROUS DOGS--ELEMENTS OF DECLARATION. The declaration shall include the following:

- (a) a description of the animal;
- (b) the name and address of the owner or keeper of the animal, if known;
- (c) the whereabouts of the animal, if known, if it is not in the custody of the owner;
- (d) the facts upon which the declaration of dangerous dog is based;

(e) the availability of a hearing in case the person objects to the declaration, if a written request is made within ten days to the district court clerk;

(f) the restrictions placed on the animal as a result of the declaration of dangerous dog; and

(g) the penalties for violation of the restrictions, including the possibility of destruction of the animal, and imprisonment and/or fining of the owner.

[Ord. 234 (1991) ••14]

2.20.150 DANGEROUS DOG--OBJECTION TO DECLARATION. If the owner of the animal wishes to object to the declaration of dangerous dog, he may, within ten days of receipt of the declaration appeal that declaration by submitting a written request to the clerk of the court for a hearing before the district court.

If the court finds insufficient evidence to support the declaration, the declaration shall be rescinded and the restrictions imposed thereby annulled. In the event the court finds that the animal is not a dangerous dog, no court costs shall be assessed against Benton County or the animal control authority or officer. If the court finds sufficient evidence to support the declaration, it shall impose court costs on the appellant and may impose additional restrictions on the animal.

[Ord. 234 (1991) ••15]

2.20.160 DANGEROUS DOGS--IMPOUNDMENT. (a) Following service of a declaration of dangerous dog, the animal control authority may seize and impound the dog pending an appeal under BCC 2.20.060 or to any other court with jurisdiction, if upon investigation it is determined by the animal control authority that probable cause exists to believe the dog in question poses an immediate threat to public safety. The owner or keeper of the dog shall be liable for the full and actual costs and expenses of keeping and impounding the dog, including any fees paid by the animal control authority to third-party contractors for impounding or keeping of the dog, if the dog is later adjudicated to be a dangerous dog, or if the owner does not object to the declaration.

(b) When a dog has been impounded pursuant to BCC 2.20.160(a) and it is not contrary to public safety, the chief animal control officer shall permit the dog to be confined at the owner's expense in an approved kennel or veterinary facility; provided, that such arrangement shall be contingent upon the owner paying all costs incurred thus far by the animal control authority, including any impound or confinement fees paid by the animal control authority to any third-party contractor. Such payment shall be paid in advance of the dog being permitted to be confined at an approved kennel or veterinary facility in lieu of continued confinement at a County-operated or contracted facility.

[Ord. 234 (1991) ••16; Ord. 463 (2008) § 2]

2.20.170 DANGEROUS DOGS--REQUIREMENTS FOR PERMIT. The animal control authority shall issue a permit to the owner of a dangerous dog if the owner presents to the animal control authority sufficient evidence of:

(a) a proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog; and

(b) a surety bond, issued by a surety insurer qualified under Chapter 48.28 RCW or as thereafter amended, in a form acceptable to the animal control authority in the sum of at least fifty thousand dollars, payable to any person injured by the dangerous dog; or

(c) a policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW or as thereafter amended in the amount of at least fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

[Ord. 234 (1991) ••17]

2.20.180 DANGEROUS DOGS--VACCINATION. Before a permit is issued for any dangerous dog, the permit applicant must present evidence that the dog has been vaccinated against rabies. Such evidence shall be a certificate of vaccination signed by a licensed veterinarian, and the certificate shall show that the vaccination does not expire within six months from the effective date of the dog permit.

[Ord. 234 (1991) ••18]

2.20.190 DANGEROUS DOGS--PERMIT REQUIRED. The owner of a dangerous dog shall obtain a permit for the dangerous dog from the animal control authority pursuant to BCC 2.20.170 and shall be required to pay the fee for such permit. In addition, the owner of a dangerous dog shall pay an annual renewal fee for each dangerous dog permit under this section and shall submit proof of compliance with BCC 2.20.170 herein.

No permit or renewal thereof shall be issued to the owner of a dangerous dog until all prior unpaid impounding and/or boarding fees have been paid.

[Ord. 234 (1991) ••19]

[**NOTE:** This chapter is continued on the following page.]

2.20.200 DANGEROUS DOGS--FEES. The permit fee for each dangerous dog shall be \$500.00 with an annual renewal fee of \$100.00, or as hereafter established by resolution of the Board of County Commissioners, and shall be paid to the animal control authority.

[Ord. 234 (1991) ••20]

2.20.210 POTENTIALLY DANGEROUS DOGS--FAILURE TO OBTAIN PERMIT--CIVIL PENALTY. Any owner of a potentially dangerous dog who fails to obtain a permit or renewal for such dog as described in BCC 2.20.090 shall be assessed a civil penalty in the amount of \$250.00; provided, however, that no such civil penalty shall be assessed until ten days have elapsed from the date such owner is notified by the animal control authority that such a permit or renewal for such potentially dangerous dog is required, or until any appeal brought under BCC 2.20.060 has been completed, whichever is later.

In addition, the owner shall be subject to the provisions of BCC 2.20.230.

[Ord. 234 (1991) ••21]

2.20.220 DANGEROUS DOGS--FAILURE TO OBTAIN PERMIT--CIVIL PENALTY. Any owner of a dangerous dog who fails to obtain a permit or renewal for such dog as set forth in BCC 2.20.190 shall be assessed a civil penalty in the amount of \$500.00; provided, however, that no such civil penalty shall be assessed until ten days have elapsed from the date such owner is notified by the animal control authority that such a permit or renewal for such dangerous dog is required, or until any appeal brought under BCC 2.20.150 has been completed, whichever is later.

In addition, the owner shall be subject to the provisions of BCC 2.20.230.

[Ord. 234 (1991) ••22]

2.20.230 FAILURE TO OBTAIN PERMIT--IMPOUNDMENT--FEES--DESTRUCTION. Any dangerous dog or potentially dangerous dog for which a permit, or renewal thereof, has not been obtained by its owner, pursuant to BCC 2.20.090 and/or BCC 2.20.190, is subject to being impounded by the animal control authority.

The owner of any potentially dangerous dog or dangerous dog so impounded shall be liable for the actual costs incurred by the animal control authority in impounding and boarding the dog including any fees or costs paid to third-party contractors utilized to provide services in this regard. Such costs must be paid in full to the animal control authority prior to recovering possession of the dog.

Any potentially dangerous dog or dangerous dog impounded due to the failure of the owner of such dog to obtain the required permit, or renewal thereof, and which remains impounded for a period of at least three (3) days, subject to the ten (10) day appeal process in BCC 2.20.060 and BCC 2.20.150, due to the failure of the owner to obtain such permit, or renewal thereof, may be destroyed in an expeditious and humane manner by the animal control authority. The owner shall be assessed the full actual cost of destroying such dog. Such civil penalty is subject to collection in any manner allowed by law.

[Ord. 234 (1991) ••23; Ord. 463 (2008) § 3]

2.20.240 DANGEROUS DOGS--OUTSIDE PROPER ENCLOSURE AND UNRESTRAINED--CIVIL PENALTY. It is unlawful for the owner of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

Any owner who violates this provision shall be subject to the provisions of BCC 2.20.250.

[Ord. 234 (1991) ••24]

2.20.250 DANGEROUS DOGS--CONFISCATION--DESTRUCTION--VIOLATIONS--FEES--CIVIL PENALTY. Any dangerous dog shall be immediately confiscated by an animal control authority if the:

(a) owner has not validly obtained a permit for the dog under BCC 2.20.170;

(b) owner does not secure either a surety bond or the liability insurance coverage required under BCC 2.20.170;

(c) dog is not maintained in a proper enclosure;

(d) dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person.

(e) In addition, the owner shall be guilty of a gross misdemeanor pursuant to RCW 16.08.100(1) for noncompliance with this section.

(f) The owner of any dog confiscated under this section may recover such dog from the animal control authority upon the payment of a civil penalty in the amount of five hundred dollars (\$500.00), and upon reimbursing the animal control authority for all its expenses incurred thus far, including any fees and costs paid to third-party contractors contracted to provide services in this regard; provided, however, that in the event the owner has not picked up the dangerous dog within three (3) days of being notified by the animal control authority that such dog is under the control of such authority, the dog shall be destroyed in an expeditious and humane manner and the owner shall be assessed an additional civil penalty in the amount of the costs incurred by the animal control authority for the destruction of such animal.

[Ord. 234 (1991) ••25; Ord. 463 (2008) § 4]

[**NOTE:** This chapter is continued on the following page.]

2.20.260 DANGEROUS DOG--ATTACKS--CONFISCATION--DESTRUCTION--VIOLATIONS AND PENALTIES. If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony punishable pursuant to RCW 16.08.100(2). In addition, the dangerous dog shall be immediately confiscated by the animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

The owner of any dangerous dog confiscated and destroyed pursuant to this section shall be assessed a civil penalty consisting of all costs incurred by the animal control authority for the seizure, impounding, boarding and destroying of such dangerous dog. Such civil penalty shall be subject to collection in any manner permitted by law.

[Ord. 234 (1991) ••26; Ord. 463 (2008) § 5]

2.20.270 INJURY OR DEATH--CONFISCATION--DESTRUCTION--VIOLATIONS AND PENALTIES. The owner of any dog that aggressively attacks and causes severe injury or death of any human, regardless of whether there has been any previous determination of whether such dog is potentially dangerous or dangerous, shall be guilty of a class C felony punishable pursuant to RCW 16.08.100(3).

In addition, the dog shall be immediately confiscated by the animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

The owner of any dangerous dog confiscated and destroyed pursuant to this section shall be assessed a civil penalty consisting of all costs incurred by the animal control authority for the seizure, impounding, boarding and destroying of such dangerous dog. Such civil penalty shall be subject to collection in any manner permitted by law.

[Ord. 234 (1991) ••27; Ord. 463 (2008) § 6]

2.20.280 DOG FIGHTS. Any person entering a dog in a dog fight is guilty of a class C felony punishable pursuant to RCW 16.08.100(4).

[Ord. 234 (1991) ••28]

2.20.290 ENFORCEMENT. All fees and civil penalties required to be paid by owners for violations of the provisions of this chapter shall be made to the animal control authority.
[Ord. 234 (1991) ••29]

2.20.300 PAYMENT REQUIRED BEFORE RETURN OF DOG. No potentially dangerous dog or dangerous dog confiscated by the animal control authority shall be returned to any owner until such owner has paid all fees and civil penalties which have been assessed against such owner under this chapter.
[Ord. 234 (1991) ••30]

2.20.310 LIEN FOR NONPAYMENT OF FEES AND CIVIL PENALTIES. Benton County shall have the authority to place a lien upon the real property of any owner of a potentially dangerous dog or dangerous dog against whom fees and/or a civil penalty has been assessed under this chapter who has been given notice of such fees and/or civil penalty and has failed to pay such fees and/or civil penalty; provided, however, that, in the case of a civil penalty, no such lien shall be placed until thirty days have elapsed from the date of any final determination of the validity of such civil penalty.
[Ord. 234 (1991) ••31]

2.20.320 HEARINGS. Any owner against whom a civil penalty has been assessed under this chapter may contest such civil penalty by written request for a hearing in the Benton County District Court within ten working days of notification of such civil penalty by the animal control authority.
[Ord. 234 (1991) ••32]

2.20.330 FAILURE TO COMPLY. An owner who fails to pay a civil penalty assessed under this chapter within 30 days after exhausting any appellate remedies shall be guilty of a misdemeanor and prosecuted in the Benton County District Court.
[Ord. 234 (1991) ••33]

2.20.340 JURY TRIALS PROHIBITED. No right to jury trial exists in any hearing or actions brought under this chapter except as required by the United States and/or Washington State Constitutions.
[Ord. 234 (1991) ••34]

2.20.350 DESTRUCTION PENDING RESOLUTION OF HEARINGS--ADDITIONAL COSTS. Where an owner has requested a hearing pursuant to BCC 2.20.320 no potentially dangerous dog or dangerous dog which is in the possession of the animal control authority shall be destroyed until the resolution of such hearing; provided, however, that an additional cost in the amount of the actual per-day cost to the animal control authority for boarding such dog, including any cost of paying a third-party contractor for services, shall be assessed against any owner whose dog remains in the custody of the animal control authority during such hearings and where resolution of such hearing is that all or any part of the civil penalty against such owner is found to be properly assessed.
[Ord. 234 (1991) ••35; Ord. 463 (2008) § 7]

2.20.360 PAYMENT OF CIVIL PENALTIES REQUIRED. Following resolution of any contested hearing regarding a civil penalty, the owner of any dangerous dog or potentially dangerous dog in the possession of the animal control authority shall pay, prior to the dog's return as provided in BCC 2.20.300, all fees and civil penalties which may have been assessed as authorized above within three days of the final resolution of any hearing regarding such civil penalties.
[Ord. 234 (1991) ••36]

2.20.370 DESTRUCTION UPON RESOLUTION OF HEARING--ADDITIONAL CIVIL PENALTY. Any dangerous dog or potentially dangerous dog which has not been picked up from the animal control authority by its owner within three (3) days of the final resolution of any hearing regarding any civil penalties under this chapter shall be destroyed in an expeditious and humane manner; provided, however, that an additional civil penalty in the amount of the actual costs incurred by the animal control authority for impounding, boarding, and destroying such dog shall be assessed against the owner, and may be collected in any manner provided by law.
[Ord. 234 (1991) ••37; Ord. 463 (2008) § 8]

2.20.380 LOCATION AND RELOCATION OF POTENTIALLY DANGEROUS DOGS AND DANGEROUS DOGS.

(a) The owner of any dog found to be potentially dangerous or dangerous must advise the animal control authority in writing of each address the dog is located if (1) the dog is at a location for longer than thirty (30) days and (2) such location is different from the address or location on the original permit issued by the animal control authority.

(b) If an owner of a potentially dangerous or dangerous dog sells, gives away, or otherwise disposes of such dog, the owner shall notify the animal control authority of the new owner and location, who must comply with this chapter if moved within Benton County.

(c) The animal control authority will enforce and give effect to determinations of other jurisdictions regarding dangerousness if such determination may lead to a similar determination in Benton County when a dog from another jurisdiction, which has been determined potentially dangerous, dangerous, or such other designation regarding dangerousness in that jurisdiction, is brought to Benton County for a period of more than 30 days, the owner of such dog shall notify the animal control authority. Such owner and dog shall be subject to this chapter.

(d) If a dog which has been declared potentially dangerous or dangerous is destroyed or dies, the owner must present sufficient evidence of that fact to the animal control authority or the owner shall be further subject to the requirements of this chapter, including permit requirements.

(e) Any owner of a dangerous dog or potentially dangerous dog found to be in violation of this section shall be assessed a civil penalty in the amount of \$250.00.

[Ord. 234 (1991) •• 38]

2.20.390 PENALTIES. In addition to or as an alternative to any civil penalty provided in this chapter or by law, any person who violates this chapter shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000 and/or imprisonment for a term not to exceed ninety (90) days, unless otherwise indicated.

[Ord. 234 (1991) •• 39]

2.20.400 RESTITUTION. The court enforcing the provisions herein may grant restitution.
[Ord. 234 (1991) ••40]

2.20.410 IMMUNITY. Benton County, the animal control authority and any animal control officer shall be immune from any and all civil liability for any actions taken pursuant to this chapter, or for any failure to take action to enforce the provisions of this chapter. It is not the purpose or intent of this chapter to create on the part of Benton County or its agents any special duties or relationships with specific individuals. This chapter has been enacted for the welfare of the public as a whole.
[Ord. 234 (1991) ••41]

2.20.420 SEVERABILITY. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 234 (1991) ••42]

2.20.430 APPLICABILITY. This chapter shall apply to all of Benton County, Washington.
[Ord. 234 (1991) ••43]

2.20.440 EFFECTIVE DATE. This chapter shall take effect and be in full force upon its passage and adoption.
[Ord. 234 (1991) ••44]

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