

TITLE 9

Counties

Provisions Affecting All Counties

CHAPTER 9. DOGS

Subchapter II. Dangerous and Potentially Dangerous Dogs

§ 920 Definitions.

For the purposes of this subchapter:

- (1) "Animal control agency" shall mean the entity acting alone or in concert with other governmental units and legally authorized to enforce the dog control laws and regulations of the State, a county or any municipality.
- (2) "Attack" shall mean the deliberate action of a dog, whether or not in response to a command by its owner, to bite, seize with its teeth or pursue any human being or domestic animal with the obvious intent to kill, wound, injure or otherwise harm the human being or domestic animal.
- (3) "Dangerous dog" shall mean any dog declared to be dangerous by the Panel pursuant to § 925 of this title or any potentially dangerous dog kept or maintained in violation of § 926(b) of this title.
- (4) "Dog" shall mean any dog or dog hybrid.
- (5) "Domestic animal" shall mean any dog, poultry or livestock.
- (6) "Owner" shall mean any person who owns, keeps, harbors or is the custodian of a dog.
- (7) "Panel" shall mean the Dog Control Panel.
- (8) "Physical injury" shall mean impairment of physical condition or substantial pain.
- (9) "Potentially dangerous dog" shall mean any dog declared to be potentially dangerous by the Panel pursuant to § 926 of this title.
- (10) "Proper enclosure" shall mean securely confined indoors or a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the dog from escaping. Such pen or structure shall have secure sides and a secure top and shall also provide protection from the elements for the animal. If the pen or structure has no bottom secured to the sides, the sides must be embedded at least 2 feet into the ground.
- (11) "Serious physical injury" shall mean physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

§ 921 Dog Control Panel; establishment; organization.

(a) The Dog Control Panel created pursuant to the former subchapter III of Chapter 17 of Title 7 shall continue to have all authority and responsibility conferred on it by that chapter and the current Panel members shall serve out their terms. The Dog Control Panel shall consist of 5 members, all of whom shall be residents of the State. Each county shall select a representative to serve for purposes of electing members of the Panel as seats on the Panel become open by resignation, expiration of a member's term, death, or other reason which may disqualify a member from serving. Each member of the Panel shall be elected by a majority vote of the 3 county representatives and each candidate for the Panel shall be voted upon separately. All new Panel members shall serve for a term of 2 years commencing on the date of their election and shall be eligible for reappointment. The composition of the Panel shall be as follows:

- (1) A licensed veterinarian who possesses at least 5 years of experience in the treatment of canines;
- (2) A member of 1 or more American Kennel Club licensed or member dog clubs for at least 5 years;
- (3) An animal behaviorist specializing in the treatment of canine behavior disorders, a member of the Association of Pet Dog Trainers or a professional dog obedience trainer, each of whom possess no less than 5 years' experience in the handling of canines;
- (4) A police officer who is a member of the Delaware State Police, a member of the New Castle County Police, or a member of the police department, bureau, or force of any incorporated city or town; and
- (5) A representative from the Delaware Society for the Prevention of Cruelty to Animals or the Kent County Society for the Prevention of Cruelty to Animals.

(b) For purposes of conducting business, 3 members of the Panel shall constitute a quorum. A majority vote of the members present at a meeting at which a quorum is present shall be required on any action or matter before the Panel. Members of the Panel shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incurred incident to their duties as members of the Panel.

(c) A chairperson of the Panel shall be chosen by the members of the Panel from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(d) Each Panel member may submit the names of up to 2 alternates to the county representatives for approval, provided the alternates meet or exceed the criteria for appointment met by the Panel member who they will represent. Upon the approval of the county representatives, an alternate may act in a Panel member's place and stead, with authority to attend all meetings of the Panel and with power to vote in the absence of the member.

(e) The county representatives shall elect a new member to fill any vacancy that has been created by the resignation, death, or other inability to serve of a Panel member. Said member shall serve for the remainder of the term of the member who has resigned, died, or who is otherwise unable to serve.

(f) Members of the Panel and alternates shall not be subject to, and shall be immune from, claims, suits, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken or performed, or recommendations made while discharging any duty or authority under this subchapter, so long as such person acted in good faith and without malice in carrying out their responsibilities, authority, duties, powers and privileges of the offices conferred by this law upon them or by any other provisions of Delaware law, federal law or regulations or any duly adopted ordinances, rules, or regulations of a county. Complainants shall bear the burden of proving malice or a lack of good faith to defeat the immunity provided herein.

(g) Any member of the Panel or alternate with a direct or indirect interest in a matter before the Panel shall recuse himself or herself from the consideration of such matter. In situations in which a Panel member or alternate does not vote by reason of a direct or indirect interest in a matter before the Panel, the presence of the Panel member or alternate shall not be counted for purposes of establishing a quorum. The fact that a Panel member or alternate has not voted by reason of a direct or indirect interest in a matter before the Panel shall in no way affect the validity of an act or actions taken regarding the matter before the Panel.

(h) Failure to attend or to be represented at 2 consecutive regular meetings of the Panel, in the absence of mitigating circumstances, shall be construed as a request by that member to resign from the Panel and a replacement may thereafter be selected by the county representatives in that member's stead.

77 Del. Laws, c. 428, § 8; 70 Del. Laws, c. 186, § 1.;

§ 922 Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner; request for hearing.

(a) An animal control constable or dog warden shall seize and impound a dog suspected of being dangerous or potentially dangerous when the warden has reasonable cause to believe that the dog:

- (1) Chased or pursued a person, including but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period;
- (2) Killed or inflicted physical injury or serious physical injury upon a human being;
- (3) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or
- (4) Was subject to, or was used to facilitate, animal cruelty or animal fighting, as alleged in a criminal complaint or charge.

(b) Any dog seized pursuant to this section shall be impounded until a final disposition as to whether the dog is dangerous or potentially dangerous. The animal control agency shall take all reasonable action to determine the identity of the owner of the impounded dog. If the owner cannot be identified within 5 days of the dog's impoundment, unless earlier disposal is recommended by a doctor of veterinary services, the animal control agency may dispose of the dog in accordance with Chapter 80 of Title 3.

(c) The owner of any seized and impounded dog shall be notified by the animal control agency by certified mail, return receipt requested, of the owner's right to a hearing before the Panel to determine whether the dog is dangerous or potentially dangerous. This notice shall require that the owner return within 7 days of receiving such notice, by certified mail or personal delivery, a signed statement indicating whether the owner wishes the hearing to be conducted or, if not, that the owner waives that owner's right to such hearing and agrees to abide by the findings and conclusions of the animal control agency or agrees to relinquish ownership of such dog, in which case the animal control agency shall dispose of the impounded dog in accordance with Chapter 80 of Title 3. If the owner cannot be notified by certified mail, return receipt requested, or refuses to sign for the certified letter, or does not reply to the certified letter with a signed statement within 7 days of receipt, the animal control agency shall dispose of the dog in accordance with Chapter 80 of Title 3.

(d) Within 21 days of an animal control agency's receipt of a request for a hearing pursuant to subsection (c) of this section, a hearing shall be held by the Panel. If a hearing is not held within that time frame, the dog shall be released to its owner and the charges made pursuant to subsection (a) of this section shall be dismissed, unless a delay is requested by the owner and approved by the Panel.

(e) Nothing in this subchapter shall be construed to interfere with the provisions for protecting human health from rabies in Chapter 82 of Title 3.

77 Del. Laws, c. 428, § 8; 70 Del. Laws, c. 186, § 1.;

§ 923 Exceptions.

(a) Notwithstanding § 922 of this title, no dog shall be considered dangerous or potentially dangerous if an injury was sustained by:

(1) A human being who, at the time the injury was sustained, was committing criminal trespass or other tort upon premises occupied by the owner of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime;

(2) A domestic animal which, at the time the injury was sustained, was teasing, tormenting, abusing or assaulting the dog; or

(3) A domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, and the injury was to a species or type of domestic animal appropriate to the work of the dog.

(b) Notwithstanding § 922 of this title, no dog shall be considered dangerous or potentially dangerous if the dog was protecting or defending a person within the immediate vicinity of the dog from an attack or assault.

(c) Notwithstanding § 922 of this title, no military, correctional or police-owned dogs shall be considered dangerous or potentially dangerous if the attack or injury to a person or domestic animal occurs while the dog is performing duties as expected.

77 Del. Laws, c. 428, § 8.;

§ 924 Hearing procedures; appeal.

(a) Upon the receipt of a request for a hearing by the Panel, the animal control agency shall fix the time and place for the hearing and notify the owner of the impounded dog by certified mail, return receipt requested, of such time and place. At such hearing, the owner shall have the right to appear either personally or by counsel or both, to produce witnesses and evidence on the owner's own behalf and to cross-examine witnesses.

(b) All hearings shall be informal and open to the public, and need not conform to standard rules of evidence. Hearsay evidence shall be allowed but may not be relied upon as the sole evidence in the Panel's determination. Deliberations of the Panel may be conducted in executive session. All proceedings of the Panel, except those held in executive session, shall be recorded and transcribed by a registered court reporter. The Panel shall determine whether the dog in question should be declared dangerous or potentially dangerous, and shall articulate on the record the reasons for its decision. The Panel shall announce its decision at the conclusion of the hearing. After announcing its decision, the Panel shall provide the owner with written notice of the action taken and the reasons therefor. The decision of the Panel is final.

(c) If a dog is determined to be dangerous, the Panel may direct the animal control agency to dispose of the dog by euthanasia in accordance with Chapter 80 of Title 3. If euthanasia is not ordered, the owner shall comply with § 925(b) of this title, except that the animal control agency may grant said owner up to 30 days from the date of the determination to comply with §§ 925(b)(1) through (3) of this title. If a dog is

determined to be potentially dangerous, the owner shall comply with § 926(b) of this title, except that the animal control agency may grant said owner up to 30 days from the date of the determination to comply with § 926(b)(1) of this title.

(d) Notwithstanding subsection (b) of this section, if a dog is determined to be dangerous and the Panel directs the animal control agency to dispose of the dog by euthanasia, the owner may appeal the Panel's decision to the Court of Common Pleas within 10 days of the receipt of the Panel's decision. The appeal and review shall be conducted according to the provisions governing judicial review of case decisions under the Administrative Procedures Act (Chapter 101 of Title 29) that are not inconsistent with this subsection. The filing of an appeal shall act as a stay of the Panel's decision, pending final disposition of the appeal.

(e) The county shall be responsible for the costs of proceedings, including but not limited to court stenographer fees, before the Panel that arise from incidents within that county.

77 Del. Laws, c. 428, § 8; 70 Del. Laws, c. 186, § 1.;

§ 925 Finding to declare a dog dangerous; duties of owner.

(a) The Panel may declare a dog to be dangerous if it finds by a preponderance of the evidence that the dog:

- (1) Killed or inflicted physical injury or serious physical injury upon a human being;
- (2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or
- (3) Was subject to, or was used to facilitate animal cruelty or animal fighting as alleged in a criminal complaint or charge.

(b) If the Panel declares a dog to be dangerous, it shall be unlawful for any person to keep or maintain such dog unless:

- (1) The dog is spayed or neutered;
- (2) The dog owner procures and maintains liability insurance in the amount of at least \$100,000, covering any damage or injury which may be caused by such dog;
- (3) The dog is confined by its owner within a proper enclosure, and whenever outside of the proper enclosure the dog is securely muzzled and restrained by a substantial chain or leash, not exceeding 6 feet, and under the control of a responsible adult, or caged;
- (4) The dog owner displays, in a conspicuous manner, a sign on the owner's premises warning that a dangerous dog is on the premises. The sign shall be visible and legible from the public highway or 100 feet, whichever is less; and
- (5) The dog owner immediately notifies the animal control agency when the dog is loose, unconfined, has attacked a human being or another domestic animal, has been moved to another address or dies.

(c) It shall be unlawful for the owner of a dangerous dog to sell, offer for sale or give away said dog to any other person or entity other than an animal control agency. If a dangerous dog is given to an animal control agency, the dog shall be disposed of by euthanasia in accordance with Chapter 80 of Title 3.

77 Del. Laws, c. 428, § 8; 70 Del. Laws, c. 186, § 1.;

§ 926 Finding to declare a dog potentially dangerous; duties of owner.

(a) The Panel may declare a dog to be potentially dangerous if it finds by a preponderance of the evidence that the dog:

- (1) Attacked or inflicted physical injury upon a human being;
 - (2) Attacked or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or
 - (3) Chased or pursued a person, including, but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.
- (b) If the Panel declares a dog to be potentially dangerous, it shall be unlawful for any person to keep or maintain the dog unless:
- (1) The dog is spayed or neutered, provided the Panel ordered the spaying or neutering as part of its decision in declaring the dog to be potentially dangerous;
 - (2) While on the dog owner's property, the dog is kept indoors or within a securely fenced yard from which it cannot escape; and
 - (3) When off the owner's premises, the dog is restrained by a substantial chain or leash, not exceeding 6 feet, and is under the physical control of a responsible adult.
- (c) If there are no additional instances of the behavior described in subsection (a) of this section within a 24-month period from the date the dog is declared potentially dangerous, the dog shall no longer be deemed a potentially dangerous dog.

77 Del. Laws, c. 428, § 8.;

§ 927 Liability of owner for costs of impoundment.

If a dog is declared dangerous or potentially dangerous the owner of the dog shall, prior to reclaiming the dog, reimburse the animal control agency its regular standard fees charged for the care of the dogs while in the animal control agency's custody plus any reasonable veterinary fees incurred for the dog during the period of impoundment. Failure of the dog's owner to pay such fees within 5 days after a final determination of whether the dog is dangerous or potentially dangerous shall result in the ownership of the dog reverting to the animal control agency. The animal control agency shall then dispose of the dog in accordance with Chapter 80 of Title 3. If a dog is determined to be neither dangerous nor potentially dangerous, the owner shall not be liable for the costs of impoundment.

77 Del. Laws, c. 428, § 8.;

§ 928 Violations by owners of dangerous or potentially dangerous dogs; penalties.

- (a) For a violation of § 925(b)(4), § 926(b)(1), (b)(2) or (b)(3) of this title, the owner of the dangerous dog or potentially dangerous dog shall be fined not less than \$50 nor more than \$100. For a subsequent offense, the person shall be fined not less than \$100 or more than \$200.
- (b) For a violation of § 925(b)(1) or (b)(5) of this title, the owner of the dangerous dog shall be fined not less than \$100 or more than \$250. For a subsequent offense, the person shall be fined not less than \$250 or more than \$500.
- (c) For a violation of § 925(b)(2), (b)(3), or (c) of this title, the owner of the dangerous dog shall be fined not less than \$250 or more than \$1,000. For a subsequent offense, the person shall be fined not less than \$500 or more than \$2,000.

(d) Any dog declared dangerous pursuant to § 925(a) of this title, which, after having been declared dangerous, kills, attacks or inflicts physical injury or serious physical injury, without provocation upon a human being or domestic animal, shall be seized and impounded by the animal control agency and disposed of by euthanasia in accordance with Chapter 80 of Title 3.

(e) Any fine imposed for a violation of this subchapter shall not be suspended to any amount less than the minimum prescribed fine and no such fine shall be payable by mail. All fines imposed following a conviction for violation of this subchapter shall be remitted by the sentencing court to the county in which the offence occurred.

77 Del. Laws, c. 428, § 8.;