

City of Detroit

CITY COUNCIL


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TO: President Pro Tem Gary Brown
Public Health and Safety Committee

Honorable City Council Member Brenda Jones
Internal Operations Committee

FROM: David Whitaker, Director 
Research and Analysis Division Staff

DATE: March 16, 2010

**RE: LIABILITY OF THE CITY FOR INJURIES CAUSED BY STRAY
OR DANGEROUS DOGS**

In the past few years, various council members have expressed concerns regarding problems caused by dangerous and stray dogs running loose in city neighborhoods frightening and or injuring residents. Most recently, both Council Member Brenda Jones and President Pro Tem Gary Brown have expressed these same concerns in response to complaints by city residents. President Pro Tem Brown has questioned whether the current dog ordinance is sufficient to address the needs of city residents.

Further, in January 2010, Council Member Jones, received a letter from Melissa Schwartz, an attorney who was writing on behalf of city residents who live in a Westside Detroit neighborhood. She expressed "grave concerns" about the neighborhood because the residents were "being terrorized by free-roaming pit bull dogs" which were owned by one of the residents in the neighborhood. She claimed that the residents had complained to the owner of the dogs but nothing had been done. She requested that something be done about the problem by enforcing applicable provisions of the dog ordinance. Attached to her letter were personal statements from various residents who described their encounters with and fear of the dogs. The letter from Ms. Schwartz also included a copy of a DVD of a WDIV television news show dated August 5, 2009 pertaining to the pit bulls in question. The DVD shows the dogs running outside of the owner's yard without being leashed and without supervision by the owner. As a result of this information, Council Member Jones has requested that the Research and Analysis Division (RAD) and the Law Department, prepare a report which addresses the following questions:

1. Does the city have potential liability in regards to the ordinance and this type of complaint?

2. What is Animal Control doing about these types of problems and complaints?

RAD will address these two questions as well as Council President Pro Tem Brown's concerns about possibly changing the dog ordinance.

Background

The Detroit City Council has been concerned about the problems with stray and dangerous dogs for a long time. In 2004 and again in 2009 the Council considered changing the Dog Ordinance as follows:

- Change the definition of “dangerous dog” to include specific breeds.
- Ban specific breeds known to have dangerous propensities.
- Lower the number of dogs a resident may own from four (4) to two (2).

During the 2004 public hearing related to a proposed amendment to the dog ordinance that if adopted, would have placed a ban on the ownership of pit bulls and other “dangerous breeds”, dog owners appeared en masse and expressed strong opposition to the proposed amendment to the ordinance. They noted that the **owners of the dogs** were the problem not the breed. The Animal Control division concurred with that assessment and also opposed the proposed change.

At a hearing in October 2009 two members of the Department of Health and Wellness Promotion (DHWP) appeared before Council for a discussion on proposed changes to the ordinance. Bruce King, Director of Environmental Health Services and Harry Ward, Manager of Animal Control and Care said that Detroit has one of the best dangerous animal ordinances in the country. Consequently, they did not support any of the proposed changes. Mr. King stated that the **problem is not the ordinance** but a lack of staff to enforce it. After the discussion, the proposed changes to the dog ordinance were effectively tabled with a recommendation that the department focus on enforcement of the ordinance.

The Council is well aware of the need for additional staffing to enforce the ordinance and increased the Department's budget, for staffing, in the 2007 – 2008 budget year by \$150,000 to hire three additional Animal Control Officers.¹ The budget for that year reflected funding for 14 Animal Control Officers. (Attachment 2) The budget for the following year, 2008 – 2009 did not show an increase in the number of Animal Control Officers. When RAD spoke with the division we were told that there has been no increase in the number of Animal Control Officers in the past couple of years.

¹ The 2007 – 2008 Closing Resolution (Attachment 1)

It should be noted that the problem with stray dogs is even more difficult at this time due to the harsh economic conditions experienced by city residents, many of whom abandon their pets because they can no longer afford to feed them. As a result, there may well be an increase in the number of dogs on the street, which would place an additional strain on the department.²

Current Dog Ordinance

The current dog ordinance has language which makes it unlawful for dog owners to permit their dogs to leave their property unsupervised and without a leash. The applicable section of the *Animal Control, Regulation and Care Ordinance* entitled *Dog Restraint* states as follows:

“Sec. 6-2-6. Dog Restraint.

- (a) It shall be the duty and the responsibility of the owner of any dog to keep the dog on the owner’s property.
- (b) It shall be unlawful for any owner to allow any dog to stray on public or private property, other than the private property of the owner, unless held properly by a leash or under restraint, provided, that police dogs accompanied by their handler while actively engaged in activities for which such dogs are trained are not subject to this prohibition.”

Under the current ordinance, Animal Control has the authority to issue a ticket to the owner for violations of the ordinance. The department has indicated that often when they are called out, by the time the officer(s) arrive, the dogs are no longer running loose. The officer cannot issue a ticket unless they actually observe the animal off the owner’s property or a neighbor would have to come forward and sign the ticket as a witness. After signing the ticket, the neighbor would have to go to court to testify about the violation of the ordinance. Often times, neighbors are not willing to do this. With respect to stray dogs, the ordinance allows Animal Control Officers to capture and impound any stray dog that is on public property.³

² Perhaps additional grant money could be targeted for Animal Control Officers.

³ “Sec. 6-2-7. *Treatment of Stray Dogs.*

- (a) The Animal Control Division is authorized to capture and impound any stray dog that is on public property and to return, sell, transfer, or euthanize any such animal in accordance with this chapter.
- (b) It shall be the duty of all persons to immediately notify the Animal Control Division regarding any stray dog under their control, and upon request, to turn over any stray dog to the Animal Control Division. The Animal Control Division shall impound, register, and promptly notify the owner of the dog, if any, at his or her last known address.

Based on this provision, it is RAD's opinion that the current ordinance appears to have sufficient language making it unlawful for an owner to allow his or her dogs off the owner's property without a restraint and without supervision, this is so whether the animal is menacing or not.

Procedures For Handling Complaints Of Violation of the Dog Ordinance

RAD has spoken with Mr. King and Mr. Ward regarding the procedure used to handle complaints about dangerous or stray dogs. They both indicated that when a complaint is called in, the department tries to get out to the location of the complaint as soon as practicable. They are very limited however, in what they can do because on most days, there are only an average of four Animal Control Officers to cover complaints throughout the city. Usually, the four officers on duty are divided between two trucks. Due to their limited resources, the division has to prioritize its responses to calls based on the most emergent requests. The top priority is to provide assistance to the police department, letter carriers and schools. The next level of priority would be handling individual citizen complaints.

Mr. Ward was asked to investigate the complaint made by the citizens in the Westside neighborhood referenced previously. He checked into the matter and indicates Animal Control and Care Officers have been called out to the address where the owner and the dogs reside, on numerous occasions in the last few years. Since 2004, the division has answered 11 service calls for that location. There is "a long running and very emotional neighbor dispute" in the neighborhood. Further, the Detroit Police Department 6th Precinct Community Relations office has also investigated the complaints. The owner of the dogs, has been ticketed and fined and he is now in compliance with the city's licensing requirements. The divisions records indicate he has three licensed dogs. Mr. Ward has spoken directly with the investigator and was informed that Animal Control Officers have also made follow-up visits to the location, on three separate occasions in the last year, and each time, the dogs have been properly secured and confined in the owner's yard.

Potential Liability Of The City For Injuries To Citizens Caused By Stray or Dangerous Dogs

In general, governmental entities as well as their employees are immune from tort liability for actions taken that are within the scope of their employment which causes an injury to a person or damages to property. The applicable section of the *Governmental Liability for Negligence Act, MCL 691.1407* states as follows:

"Sec. 7. (1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment

There are some exceptions to governmental immunity, however RAD does not believe any of the exceptions would apply to the facts of this case.⁴

Conclusion

Based on RAD's review of the information contained in the letter from Ms. Schwartz, it is RAD's opinion that the city is shielded from liability by the Governmental Immunity Act. With respect to changes in the dog ordinance, it is RAD's opinion that the current ordinance has sufficient provisions making it unlawful for dangerous or stray dogs to roam through the neighborhoods terrorizing or injuring residents. In addition, the residents have a remedy at law and may bring a civil action against the owner pursuant to the dog bite statute or based on a theory of common-law negligence, if they have sustained an injury.

⁴ Exceptions To Governmental Immunity - "Sec. 7. (2) (c) The officer's, employees, members, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage." " Sec. 7. (7) (a) defines "Gross negligence" as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results. "Sec. 7. (4) This act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the department of community health or a hospital owned or operated by the department of corrections and except care or treatment provided by an uncompensated search and rescue operation medical assistant or tactical operation medical assistant.

ATTACHMENT 1

ten years of service at retirement plus one hundred eighty dollars (\$180) for each year of service in excess of ten years. The recalculation of the pension benefit shall include previous pension improvement factors but shall not include special increases granted by prior separate ordinances"; and

5. That the actuarial study provided by the Detroit City Retired Employees Association be reviewed and updated by the Actuary to verify the actual cost of the increased benefit; and
6. That \$250,000 in capital bonds be sold for capital improvements to the Coleman A. Young Airport lobby for the Tuskegee Airmen Museum and Council urges the Airport Director to meet with air carriers in an effort to make the Airport revenue generating.
7. That \$57,000 be restored to the Auditor General's budget due to reductions made in its operations account; and
8. That \$150,000 be added to the Department of Health and Wellness Promotion for three (3) Animal Control Officers.
9. That \$200,000 be added to the budget of the Information Technology Services Department for the addition of two (2) positions to implement a procedure for on-line payments to the City by citizens and for payments to vendors.
10. That \$329,000 be added to the Office of the Ombudsman to support three (3) additional positions to handle citizen complaints.
11. That \$100,000 be added to the Police Commission budget for improved technology to monitor alleged police officer misconduct.
12. That \$50,000 be added to the Police Department budget for a Pilot Mediation Program designed to bring citizens with complaints together with Police Officers in an effort to mediate disputes.
13. That \$186,385 from the Police Department's Drug Forfeiture Fund be allocated for the Partnership for a Drug Free Detroit to provide prevention and leadership development programs to benefit targeted youth referred by faith-based organizations in the former 10th Precinct and that \$87,000 of those funds be used for signage around schools in Drug-Free Zones.
14. That the official compensation schedule be amended by changing the range for the Secretary to the Board of Police Commissioners (Class 93-25-01) and the Chief Investigator (93-25-02) to \$74,800 - \$114,300.
15. That, in accordance with the Administration's request, ten (10) additional positions be added to the Human Rights Department for the implementation of its

ATTACHMENT 2

CITY OF DETROIT
FISCAL 2007/2008 BUDGET

Agency A25000 Department of Health and Wellness Promotion

Fund Group Appropriation Organization Classification	Full-Time Equivalent
FG10 - General Fund Group	
10893 - Animal Control Center	
250645 - Animal Control Center	
Manager I - Health	2
Animal Control Investigator	3
Veterinarian Technician	1
Supervising Animal Control Off	3
Animal Control Officer	14
Principal Clerk	1
Office Assistant II	1
Animal Control Center Org Total	25
Animal Control Center Appro Total	25
10894 - Community & Industrial Hygiene	
250646 - Community & Industrial Hygiene	
Manager II - Health	1
Sr Asst Sanitary Engineer	1
Associate Industrial Hygienist	1
Sr Asst Industrial Hygienist	1
Head Public Health Sanitarian	1
Public Health Sanitarian Sprv	1
Public Health Sanitarian	3
Principal Clerk	1
Office Assistant II	2
Community & Industrial Hygiene Org Total	12
Community & Industrial Hygiene Appro Total	12
10895 - Food Sanitation	
250647 - Food Sanitation	
Manager I - Health	1
Head Public Health Sanitarian	1
Public Health Sanitarian Sprv	2
Public Health Sanitarian	17

CITY OF DETROIT
FISCAL 2008-2009 BUDGET

Agency A25000 Department of Health and Wellness Promotion

Fund Group	Appropriation	Organization	Classification	Full-Time Equivalent
FG10 - General Fund Group				
	10893 - Animal Control Center			
		250645 - Animal Control Center		
		Manager I - Health		2
		Animal Control Investigator		3
		Veterinarian Technician		1
		Supervising Animal Control Off		3
		<u>Animal Control Officer</u>		<u>14</u>
		Principal Clerk		1
		Office Assistant II		1
		Animal Control Center Org Total		<u>25</u>
	Animal Control Center Appro Total			<u>25</u>
	10894 - Community & Industrial Hygiene			
		250646 - Community & Industrial Hygiene		
		Manager II - Health		1
		Sr Asst Sanitary Engineer		1
		Associate Industrial Hygienist		1
		Sr Asst Industrial Hygienist		1
		Head Public Health Sanitarian		1
		Public Health Sanitarian Sprv		1
		Public Health Sanitarian		3
		Principal Clerk		1
		Office Assistant II		2
		Community & Industrial Hygiene Org Total		<u>12</u>
	Community & Industrial Hygiene Appro Total			<u>12</u>
	10895 - Food Sanitation			
		250647 - Food Sanitation		
		Manager I - Health		1
		Head Public Health Sanitarian		1
		Public Health Sanitarian Sprv		2
		Public Health Sanitarian		<u>17</u>