



Legislation Text

File #: 20-0275, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Derrick Abel, Police Chief

Tim Hageman, Police Captain

SUBJECT:

Public Hearing to Consider Peter Gordon's Appeal of the Police Chief's Vicious Animal Determination (Police Chief Abell).

a) **CONDUCT PUBLIC HEARING**

b) **DETERMINE THAT DOG IS VICIOUS WITHIN THE MEANING OF MANHATTAN BEACH
MUNICIPAL CODE CHAPTER 5.01**

RECOMMENDATION:

Staff recommends that after conducting a public hearing and providing the dog owner and other members of the public an opportunity to speak, the City Council determine that a male mixed-breed dog named "Oliver" constitutes a vicious animal.

EXECUTIVE SUMMARY:

The Chief of Police (the "Chief"), in his capacity as Director of Animal Control, has determined that a male mixed-breed dog named "Oliver" (the "Dog") constitutes a "vicious animal" as defined by the City's Municipal Code. City resident Peter Gordon is the owner, possessor, or one who has custody and control of the Dog. The Chief's determination was made following several written complaints from City residents that the Dog poses a danger to people and other animals, and after a very recent incident where the Dog killed another dog. Mr. Gordon has requested an appeal of the Chief's determination before the City Council, pursuant to MBMC Section 5.01.250C.

DISCUSSION:

Many of the facts incorporated by reference in this Staff Report are from the Manhattan Beach Police Department Animal Control Division Incident Report for Case No. DR20-0001651 (the "2020 Incident Report"). A true and correct copy of the 2020 Incident Report is attached hereto as **Exhibit A** and incorporated by reference herein.

A. Attack on July 29, 2020.

On July 29, 2020, at approximately 8:15 a.m., two City residents (the "Residents") were walking their five-year-old mixed-breed dog (the "Victim") in the alley just south of 33rd Street. The Dog, which was being walked off-leash by an individual later identified as Aiden Blood, attacked the Victim. Before Mr. Blood could gain control over the Dog, the Victim sustained numerous bite wounds throughout the torso. The Residents transported the Victim to the VCA Advanced Veterinary Care Center, located at 5926 Hawthorne Boulevard in the City of Hawthorne. As a direct result of the Dog's attack, the Victim later died from his injuries.

On July 31, 2020, at approximately 2:08 p.m., City Community Services Officer Michael Sweeney responded to the Residents' residence after they reported the above-referenced attack. The Residents informed Officer Sweeney of the details of the attack and identified Mr. Gordon as the Dog's owner.

On August 2, 2020, at approximately 10:54 a.m., Officer Sweeney returned to the Residents' residence. In addition, Officer Sweeney spoke with two other City residents who expressed their concerns and past experiences with the Dog. All three residents cited various instances of the Dog being walked off-leash in the neighborhood and acting "very aggressively" toward humans and other dogs. According to the three residents, the Dog had been previously removed from the City for approximately one year, during which time he was living with Mr. Gordon's son in Colorado. The Residents requested that the Dog be removed from the City.

On August 4, 2020, at approximately 1:36 p.m., Officer Sweeney made contact with Mr. Gordon, who identified Mr. Blood as the individual who was walking the Dog at the time of the above-referenced attack. Mr. Gordon stated that Mr. Blood, who is a friend of his son's, told him of the attack when Mr. Gordon returned from surfing later that day.

Based on his investigation, Officer Sweeney concluded that the above-referenced attack occurred because Mr. Blood was walking the Dog off-leash. Officer Sweeney further concluded that, based on the Dog's history of aggressive behavior, the Dog should be declared a public nuisance pursuant to the Municipal Code.

B. Additional Incidents and Complaints by City Residents.

On June, 26, 2018, the Dog was off-leash and attacked three dogs belonging to another City resident. A true and correct copy of the Manhattan Beach Police Department Dog On Dog Incident Report for Case No. 18-1900 (the "2018 Incident Report") is attached hereto as **Exhibit H** and incorporated by reference herein.

On August 4, 2020, City residents Loralie Ogden and Dexter Taylor submitted a written complaint to the City regarding the Dog. In their complaint, Ms. Ogden and Mr. Taylor acknowledge the above-referenced attack on the Victim and state that the Dog has attacked "multiple dogs in the area over the past four years." Ms. Ogden and Mr. Taylor express their concerns regarding the Dog being off-leash and advise that "[w]hen we walk our own small dog we feel compelled to carry pepper spray to protect ourselves." A true and correct copy of Ms. Ogden and Mr. Taylor's complaint is attached hereto **Exhibit B** and incorporated by reference herein.

On August 5, 2020, City resident Sylvia Rayner submitted a written complaint to the City regarding the Dog. In her complaint, Ms. Rayner alleges that Mr. Gordon regularly fails to control the Dog, either willfully or through his failure to exercise due care. Ms. Rayner alleges that the Dog has acted aggressively toward her in the past. Ms. Rayner also alleges that in June 2018, the Dog attacked and seriously injured small dogs belonging to two other City residents. Ms. Rayner further alleges that at some point last year, the Dog attacked two dogs belonging to one of her neighbors. Ms. Rayner also acknowledges the above-referenced attack on the Victim. A true and correct copy of Ms. Rayner's complaint is attached hereto **Exhibit C** and incorporated by reference herein.

On August 11, 2020, City resident Jennifer Williams submitted a written complaint to the City regarding the Dog. In her complaint, Ms. Williams alleges that approximately two years ago, she was walking her dog near the Strand when the Dog, which was off-leash, attacked her dog. Mr. Gordon, who was present during the attack, accused Ms. Williams of "overreacting." Following this attack, Ms. Williams commonly looks to see if the Dog is out and off-leash, which he regularly is. As a result, Ms. Williams has to walk around the block in order to avoid the Dog. She also warns neighbors not to walk their dogs in the vicinity of 32nd Street and Vista Drive if the Dog is out. Ms. Williams acknowledges the above-referenced attack on the Victim and asks the City to relocate the Dog "to an owner who is willing and capable of keeping [the Dog] away from other dogs, cats and children." A true and correct copy of Ms. Williams's complaint is attached hereto **Exhibit D** and

incorporated by reference herein.

C. Determination of Vicious Animal and Request for Appeal.

On August 11, 2020, the Chief determined that the Dog constitutes a vicious animal under the Municipal Code. On that same day, a Notice of Determination of Vicious Animal and Public Nuisance (the "Determination Notice") was hand-delivered to Mr. Gordon. The Determination Notice orders that Mr. Gordon remove the Dog from the City limits within seven days from the date of the Determination Notice. The Determination Notice advises Mr. Gordon that it is now unlawful for him or any other person to own, possess, or have the custody or control of the Dog within the City limits, and that his failure to remove the Dog will constitute a misdemeanor, punishable by law. The Determination Notice further advises Mr. Gordon of his right to appeal the determination at a public hearing before the City Council. A true and correct copy of the Determination Notice is attached hereto as **Exhibit E** and incorporated by reference herein.

On August 13, 2020, Mr. Gordon notified the City Attorney's Office that he would appeal the Chief's determination.

On August 19, 2020, the City Attorney's Office sent a Notice of Public Hearing on Appeal of Determination of Vicious Animal (the "Hearing Notice") to Mr. Gordon. The Hearing Notice advises Mr. Gordon that the public hearing on his appeal will take place on September 1, 2020, at 4:30 p.m. over the Zoom videoconferencing platform. A true and correct copy of the Hearing Notice is attached hereto as **Exhibit F** and incorporated by reference herein. The Notice was also hand-delivered to the Gordons on August 25, 2020.

ANALYSIS:

Chapter 5.01 of the Municipal Code provides the relevant provisions with regards to dogs and other animals in the City. A true and correct copy of Chapter 5.01 is attached hereto as **Exhibit G** and incorporated by reference herein.

A. Definition and Determination of "Vicious Animal" Under the Municipal Code.

The City Council has found and determined that "the reservation of the right and power made in [Section 5.01.250] is necessary in order to protect the public peace, health, and safety of the City and its inhabitants, not only on account of physical danger from vicious and dangerous animals, but also because of the suppression and combating of the menace of rabies." MBMC § 5.01.250(E). Municipal Code § 5.01.240 defines a "vicious animal" as "any animal or animals that constitute a physical threat to human beings or other animals" and that it is "unlawful for any person to own, possess or have the custody or control of any dangerous or vicious animal within the City limits."

The City's Director of Animal Control retains "the right and power to determine, upon written complaint from a citizen or a Community Services Officer, whether an animal is vicious." MBMC § 5.01.250(A). As the City's Parking and Animal Control Section is under the control of the City's Police Department, the Chief retains the right and power to make this determination.

If the Chief determines that an animal is vicious, "the vicious animal must be removed from the City limits by the owner, possessor, or one who has custody and control of the animal, within seven (7) days." MBMC § 5.01.250(A). If the vicious animal is not removed from the City limits within the time provided, the City's Animal Control Department has the right and power to impound the animal, and the owner is required to pay for any and all costs associated with impoundment. MBMC § 5.01.250(B).

Here, the Chief determined that the Dog constitutes a vicious animal as it constitutes "a physical threat to human beings or other animals." MBMC § 5.01.240. Specifically, the Determination Notice states that the

Chief “is informed and believes that the Dog poses a physical threat to human beings and other animals within the City limits” and “that the Dog has molested passersby, attacked other animals, and is repeatedly at-large.”

Ex. E. The Determination Notice cites to the above-referenced attack on the Victim, as well as the various complaints submitted by City residents, as support for the Chief’s determination.

B. Removal of Vicious Animal and Request for Appeal.

After a determination of a vicious animal has been made, “[t]he owner, possessor, or one having custody and control of such animal as has been determined vicious shall have the right to a public hearing of the City Council on the matter.” MBMC § 5.01.250(C). In order to request an appeal, the owner must send written notice of his or her appeal to the City Clerk’s Office, setting forth fully the grounds upon which the appeal is based. MBMC § 1.06.050(B). The owner must also submit an appeal fee of \$25 to the City Clerk’s Office. MBMC § 5.01.250(C).

Here, Mr. Gordon was provided with a copy of the Determination Notice on August 11, 2020. **Ex. E.** Two days later, Mr. Gordon notified the City Attorney’s Office that he would appeal the Chief’s determination. On August 19, 2020, the City Attorney’s Office sent the Hearing Notice to Mr. Gordon. **Ex. F.** As of the date of this Staff Report, Mr. Gordon has neither sent written notice of his appeal to the City Clerk’s Office, setting forth fully the grounds upon which the appeal is based, nor submitted the required appeal fee of \$25 to the City Clerk’s Office. MBMC §§ 1.06.050(B), 5.01.250(C).

C. Public Hearing and Determination of the City Council.

After the appeal hearing is held, the City Council must determine whether the subject animal constitutes a vicious animal. MBMC § 5.01.250(C). “The decision of the City Council shall be final and binding, and if the determination is that of a vicious animal, the owner, possessor, or one having custody or control of said animal shall have three (3) days to remove said animal from the City limits.” MBMC § 5.01.250(C).

Here, the City Council need only find that the Dog constitutes “a physical threat to human beings or other animals” to determine that the Dog is a vicious animal. MBMC § 5.01.240. The City Council should, in part, consider and examine the following evidence in reaching their decision:

- The July 29, 2020 attack on the Victim (**Ex. A**);
- The June 26, 2018 attack (**Ex. H**);
- The Residents’ complaints of and the complaints of two other City residents interviewed by Officer Sweeney (**Ex. A**);
- Officer Sweeney’s conclusions following his investigation (**Ex. A**);
- The complaint of Ms. Ogden and Mr. Taylor, as submitted to the City on August 4, 2020 (**Ex. B**);
- The complaint of Ms. Rayner, as submitted to the City on August 5, 2020 (**Ex. C**);
- The complaint of Ms. Williams, as submitted to the City on August 11, 2020 (**Ex. D**);
- The two Incident Reports (**Exs. A, H**); and
- The Chief’s determination, as issued on August 11, 2020 (**Ex. E**).

V. CONCLUSION

Based on the facts and evidence provided above, I recommend that this Honorable City Council determine that the Dog constitutes a vicious animal.

ATTACHMENTS:

1. Exhibit A: Manhattan Beach Police Department Animal Control Division Incident Report No. DR20-0001651 (8/5/2020)
2. Exhibit B: Written Complaint of City Residents Loralie Ogden and Dexter Taylor
3. Exhibit C: Written Complaint of City Resident Sylvia Rayner
4. Exhibit D: Written Complaint of City Resident Jennifer Williams
5. Exhibit E: Notice of Determination of Vicious Animal and Public Nuisance
6. Exhibit F: Notice of Public Hearing on Appeal of Determination of Vicious Animal
7. Exhibit G: Manhattan Beach Municipal Code Chapter 5.01
8. Exhibit H: Manhattan Beach Police Department Dog On Dog Incident Report for Case No. 18-1900 (6/28/2018)