
City Council Agenda Item Cover Sheet

Council Bill #

CB1910-50

Agenda dates requested:
10/23, 10/30, 11/6/2019

Briefing—10/23/2019
Proposed action—10/30/2019
Consent
Action—11/6/2019
Ordinance
Public hearing
Yes No X

Budget amendment:
Yes No X

PowerPoint presentation:
X Yes No

Attachments:
Drafted Proposed Ordinance updating Chapter 6.08 EMC regarding Dangerous and Potentially Dangerous Dogs.

Department(s) Involved:
Parks, Animal Services, Legal, Admin

Contact person:
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Initiated by:
Department head
Administration
Council President

Consideration: Ordinance

Project: Amending Chapter 6.08 EMC regarding Dangerous and Potentially Dangerous Dog

Partner/Supplier:

Location:

Preceding action:

Fund: 026/Everett Animal Services

Fiscal summary statement: “None”

Project summary statement:

House Bill (HB) 1026 concerning breed-based dog regulations was passed by the Washington State Legislature in 2019 and will take effect January 1, 2020. HB 1026 prohibits a city or county from prohibiting the possession of a dog based on breed, imposing requirements specific to possession of a dog based upon its breed, or declaring a dog dangerous or potentially dangerous based upon its breed unless certain conditions are met.

The attached proposed ordinance updates Title 6, Chapter 6.08 of the Everett Municipal Code (EMC). The changes will meet the objectives of 1) removing breed-based regulations in our municipal code and; 2) providing the City with more enforcement tools for dogs and owners, particularly those who fail to comply with other restrictions.

The changes can be categorized as:

1) Housekeeping
2) Significant Language Changes
3) New Sections

After consultation with the Legal Department and Prosecutors’ Offices, City Staff and the Animal Shelter Advisory Board recommend City Council adopt the ordinance.

Recommendation (exact action requested of Council):

Adopt an Ordinance Relating to Dangerous and Potentially Dangerous Dogs, amending Chapter 6.08 EMC as previously amended.
ORDINANCE NO. ____________

An Ordinance Relating to Dangerous and Potentially Dangerous Dogs, amending Chapter 6.08 EMC as previously amended.

WHEREAS,

A. In 2019, the State Legislature amended the State law relating to breed-based designations of dogs as dangerous or potentially dangerous dogs. The current Everett Municipal Code designates certain breeds of dogs as potentially dangerous, and must be amended to comply with the State law changes; and

B. The City Council finds that it is appropriate for the formal appeal process for dogs designated as dangerous or potentially dangerous to be reviewed first by the Everett animal control Manager prior to further appeal to the hearing examiner at the Everett Municipal Court, in order to expedite appeals; and

C. City Council finds that the City should encourage, secure and enforce those animal control measures deemed desirable and necessary for the protection of human health, safety and welfare and to prevent injury to property and cruelty to animal life.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 2 of Ordinance No. 1228-86, as amended by Section 1 of Ordinance No. 1257-86, Section 1 of Ordinance No. 2393-99, and Section 1 of Ordinance No. 2782-04, codified at EMC 6.08.010, is amended as follows, with strikeouts deleted and underlining added:

Definitions.

As used in this chapter:

A. “Owner” means any person or legal entity having a possessory property right in a dog or who harbors, cares for, exercises control over, or knowingly permits any animal to remain on premises occupied by them.

B. “Potentially dangerous dog” means:

1. Any dog that while off the owner’s premises, when unprovoked chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack such as but not limited to: snapping, lunging, baring teeth, stalking, chasing, or jumping upon a
person, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals; or

2. Any dog that when unprovoked inflicts bites on a human or a domestic animal, whether on or off the owner’s premises, either on public or private property; or

3. Any dog known by the owner to be a pit bull terrier, which shall be defined in this chapter as any American Pit Bull Terrier or Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of American Pit Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of American Pit Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier.

C. “Dangerous dog” means any dog that (1) without provocation inflicts severe injury on a human being without provocation on public or private property, (2) without provocation kills or inflicts injuries requiring euthanasia of a domestic animal without provocation while the dog is off the owner’s property premises, or (3) has been previously found to be potentially dangerous under this chapter or a comparable ordinance or statute in any jurisdiction because of injury inflicted on a human, the owner having received notice of such, and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.

D. “Severe injury” means any physical injury that results in: (1) one or more broken bones, or (2) disfiguring lacerations or avulsions, requiring multiple sutures, steri-strips, staples, or cosmetic surgery, or (3) permanent nerve damage or protracted loss or impairment of health or of the function of any body part or organ.

E. “Proper enclosure of a potentially dangerous or dangerous dog” means, while on the owner’s property or premises, a potentially dangerous or dangerous dog shall be securely confined indoors, or when outdoors 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, be of adequate size, lighting, ventilation, and be kept in a clean and sanitary condition.

F. “Under physical restraint” means that the person who has the potentially dangerous or dangerous dog under restraint has sufficient control over the dog to prevent it from attacking a human or domestic animal that is within the immediate area surrounding the dog. A dog is restrained by a secure leash not more than eight feet in length and under the physical control of a responsible person eighteen years of age or older, who is capable of restricting the dog’s movement while on or off the owner’s premises. The dog is presumed not to be under physical restraint if it chases or approaches a human or domestic animal in a menacing fashion or apparent attitude of attack, or if any injury, damage, or trespass results.

G. “Animal control authority” means an entity acting alone or in concert with other local governmental
units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

H. “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.

I. “Police dog” means a dog used by a law enforcement agency specially trained for law enforcement work and under the control of a dog handler.

J. “Dog handler” means a law enforcement officer who has successfully completed training as prescribed by the Washington State Criminal Justice Training Commission in police dog handling.

K. “Domestic animal” means either:
   1. A pet, which is defined as animals required to be licensed under the terms of EMC 6.04.030; or
   2. Livestock, as defined in EMC 6.04.020.

L. “Premises” means the real property, including a dwelling unit, motor vehicle, or enclosed space that an animal’s owner has a legal or equitable right to occupy. It does not extend into areas of common ownership or use, such as but not limited to an easement, apartment lobby, or public transportation.

M. “Secure fence” means a board or wire fence that: (1) will contain the type of dog to be restrained; (2) is securely fastened to posts firmly set in the ground; and (3) is properly maintained to keep the dog confined.

N. “Unprovoked” means that a dog does not have "provocation" or is not "provoked." "Provocation" means any action or activity, whether intentional or unintentional, which would be reasonably expected to cause a normal dog in similar circumstances to react in a manner similar to that shown by the evidence. [A dog is "provoked" if the dog was being tormented, physically abused or hurt at the time of the incident. A dog also is "provoked" if a reasonable person would conclude that the dog was defending itself, its owner or an immediate family member of its owner, its offspring, or another person or animal within its immediate vicinity from an imminent physical attack, or was defending the premises of its owner or an immediate family member of its owner from willful trespass, other tortious act, or crime; provided, a dog is not provoked under such circumstances if a reasonable person would conclude that the dog's reaction was grossly out of proportion to the act of provocation.]

Section 2. Section 3 of Ordinance No. 2393-99, as amended by Section 2 of Ordinance No. 2782-04, codified at EMC 6.08.015, is amended as follows, with strikeouts deleted and underlining added:

2019 ORDINANCE: Dangerous and Potentially Dangerous Dogs
Potentially dangerous dog or dangerous dog **outside enclosure—Requirements for confinement.**
A. It is unlawful for an owner of a potentially dangerous dog or 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 and worn in a manner that will not cause injury to the dog or interfere with its vision, panting, or respiration but shall prevent it from biting any person or animal.

B. It is unlawful for an owner of a potentially dangerous dog to (1) permit the dog to be outdoors on the owner’s premises unless the dog is contained by a secure fence or under physical restraint; or (2) permit the dog to leave the owner’s premises unless the dog is securely muzzled and under physical restraint. The muzzle shall be made and worn in a manner that will not cause injury to the dog or interfere with its vision, respiration or panting but shall prevent it from biting any person or animal.

CB. The muzzle requirement described in subsection A B of this section shall apply only to a dog declared to be potentially dangerous under Section 6.08.010(B)(1), or declared to be potentially dangerous under Section 6.08.010(B)(2) if there was any bite on a human or a bite on a domestic animal that resulted in severe injury.

**Section 3.** Ordinance No. 1228-86 is amended by the addition of a new section, which will be codified at EMC 6.08.016, as follows:

**Duty of owner to notify Everett animal control.**
A. The owner of a dangerous or potentially dangerous dog shall immediately notify Everett animal control when the owner has knowledge that the dog:
   1. Is loose or unconfined off the premises of the owner; provided that the owner shall first call 911; or
   2. Has bitten or injured a human being or domestic animal; provided that the owner shall first call 911; or
   3. Is sold, given away, dies, or is moved to another address.

B. If a dangerous dog or potentially dangerous dog dies or is euthanized, the owner shall provide animal control, within 15 days of death, a veterinary certificate of death or other proof that the dog has died.

C. If a dangerous dog or potentially dangerous dog is sold, given away, or moved to another location, the owner shall provide Everett animal control the name, address, and telephone number of the new owner, or the new address if retained by the same owner, prior to moving the dog, whether within or outside of the City of Everett. If the dog is retained by the same owner, but moved to another address within Everett, the requirements of this chapter must be met prior to moving the dog.
D. This section also applies to any dog declared dangerous or potentially dangerous under any prior ordinance. Any dog declared dangerous or potentially dangerous prior to the effective date of this ordinance must comply with all conditions imposed by Everett animal control, except as provided in Section 11 of this Ordinance.

E. Any person desiring to bring a dog to live in or visit the City of Everett which has been previously declared in another jurisdiction to be potentially dangerous or dangerous, vicious, or similar designation that meets the criteria of 6.08.010(C) or 6.08.010(H) must notify Everett animal control prior to moving the dog into the City. The person must provide all information requested by Everett animal control and must comply with all restrictions imposed by Everett animal control. If Everett animal control determines that the dog’s behavior that led to another jurisdiction’s determination that the dog is potentially dangerous, dangerous, vicious, or similar designation, Everett animal control may declare the dog potentially dangerous or dangerous, pursuant to Section 6.08.030 of this chapter.

Section 4. Section 5 of Ordinance No. 2393-99, as amended by Section 3 of Ordinance No. 2782-04, codified at EMC 6.08.020, is amended as follows, with strikeouts deleted and underlining added:

**Dangerous dogs—Certificate of registration required—Prerequisites.**

A. It is unlawful for an owner to have a dangerous dog in the city of Everett without a certificate of registration issued under this section. This section shall not apply to police dogs. Within 15 calendar days following a declaration of dangerous dog, or the exhaustion of any appeal therefrom, the owner of a dangerous dog shall obtain a certificate of registration for such dog.

B. The Everett animal control shall issue a certificate of registration to the owner of a dangerous dog upon payment of a one-hundred-dollar registration fee if the owner presents to the Everett animal control sufficient evidence of:

1. 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

2. Either:
   
   a. A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW in a form acceptable to the Everett animal control and the city attorney in the sum of at least two hundred fifty thousand dollars per dangerous dog, payable to any person injured by the vicious dangerous dog; or
   
   b. A policy of liability insurance, such as homeowner’s insurance, issued by an insurer qualified under RCW Title 48 in a form acceptable to the Everett animal control and the city attorney in the amount of at least two hundred fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

2019 ORDINANCE: Dangerous and Potentially Dangerous Dogs
C. The term for a certificate of registration is one year from the date of issuance or until the dog is moved to another address outside the corporate limits of the city of Everett, whichever is less. The owner of a dangerous dog must renew the certificate of registration annually, unless the dog is moved to another address outside the corporate limits of the city of Everett.

D. The owner of a dangerous dog shall allow an annual inspection of a proper enclosure that holds the dog. If the proper enclosure is a residence, the inspection shall be limited to the exterior of the residence. Refusal to allow an annual inspection is a violation of the certificate of registration requirement. An owner who refuses to allow an annual inspection shall have his or her certificate of registration revoked and may be fined for each day the inspection is refused.

E. An owner who fails to pass inspection will be subject to a $50.00 re-inspection fee per occurrence. Re-inspection must occur during the prescribed 15 calendar day period; it does not extend the allotted timeframe.

F. Upon each annual renewal of the dangerous dog registration, the owner shall provide two current color photographs (in electronic or printed format) of the dog for identification purposes.

Section 5. Section 6 of Ordinance No. 2393-99, as amended by Section 4 of Ordinance No. 2782-04, codified at EMC 6.08.025, is amended as follows, with strikeouts deleted and underlining added:

Dangerous dogs and potentially dangerous dogs required to be microchipped and spayed or neutered. Any dog which is declared to be a “potentially dangerous dog” or “dangerous dog” pursuant to this chapter or Chapter 16.08 RCW shall be required to be microchipped by a veterinarian of the owner’s choice, at the owner’s expense. This shall be in addition to the normal requirements for licensing as defined within this title. This must be accomplished within thirty-fifteen days after receipt of the dangerous dog or potentially dangerous dog declaration issued by the Everett animal control, or after the expiration of any appeal therefrom, pursuant to Section 6.08.030.

Section 6. Section 7 of Ordinance No. 2393-99, codified at EMC 6.08.030, is amended as follows, with strikeouts deleted and underlining added:

Declaration of potentially dangerous dog or dangerous dog—Procedure and notification requirements.
A. The Everett animal control shall have the authority to identify and classify potentially dangerous dogs and dangerous dogs. The Everett animal control may find and declare a dog potentially dangerous or dangerous, and place restrictions on the dog, if the animal control officer has probable cause to believe that the dog falls within the definitions set forth in Section 6.08.010(B) or (C). Probable cause may be based upon:

1. The written or verbal complaint or witness statement of a named and identified witness to
the dog’s behavior, citizen who is willing to testify that he or she witnessed the dog acting in a manner which causes it to fall within the definition of potentially dangerous dog or dangerous dog;

2. Dog bite reports filed with the Everett animal control;
3. Actions of the dog witnessed by any animal control officer or law enforcement officer; or
4. Other substantial evidence.

B. Upon determining that probable cause exists to believe that a dog is potentially dangerous or dangerous, the Everett animal control may declare the dog potentially dangerous or dangerous under this chapter. If a dog is declared dangerous or potentially dangerous, Everett animal control shall issue a written notice to the owner of the dog. The notice shall contain the following:

1. The name and address of the owner of the dog;
2. A brief description of the dog;
3. The location of the dog if not in the custody of the owner;
4. A brief statement of why the dog has been found to be a potentially dangerous dog or dangerous dog;

5. The specific provision or provisions of Section 6.08.010(B) or (C) of this chapter under which the animal control officer has found the dog to be a potentially dangerous dog or dangerous dog;

6. The requirements for restraint of the dog, if applicable, as determined by the Everett animal control, and when these requirements must be complied with;

7. The criminal penalty for violation of the requirements for restraint imposed by the Everett animal control, including a statement that, if the requirements are not timely met, the Everett animal control has the authority to issue a criminal citation or report such noncompliance to the Everett city attorney’s office, which has the authority to initiate a criminal action; and

8. A statement advising:
   a. That the notice may be appealed;
   b. That the failure to file a timely and complete notice of appeal will constitute a waiver of all rights to an appeal under this chapter.

C. The notice shall be served on the owner in one of the following methods:

1. First class mail and certified mail, return receipt requested, to the owner’s last known address. The effective date of service by mail is three days after mailing; or

2. Personally. If the notice is personally served, proof of personal service of the notice shall be made by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. “Personal service” means handing it to the owner’s attorney or to the owner; or leaving it at their office with their clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the owner has no office, leaving it at their dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or

3. By posting the notice on the front door of the living unit of the owner.
D. Proof of service of the notice shall be made at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, city and manner in which service was made.

Section 7. Section 8 of Ordinance No. 2393-99, codified at EMC 6.08.035, is amended as follows, with strikeouts deleted and underlining added:

Appeal of notice of potentially dangerous dog or dangerous dog.

A. Review by Everett animal control Manager. The Manager (as defined in EMC 6.04.020) shall have authority to review EMC 6.08.030 declarations of potentially dangerous dog or dangerous dog and to amend the restrictions of potentially dangerous dogs. The Manager may uphold or rescind the declaration of dangerous dog or potentially dangerous dog, or may amend it from a dangerous dog designation to a potentially dangerous dog designation. Any owner of a dog which has been declared potentially dangerous or dangerous by Everett animal control pursuant to EMC 6.08.030 may request review by the Manager.

1. This request for review must be in writing and filed at the Everett animal shelter, along with proof of a current valid pet license for the dog.

2. This request for review must be filed within six business days from the date of the notice of EMC 6.08.030 declaration of potentially dangerous dog or dangerous dog.

3. Said written request for review shall be on a form provided for that purpose by Everett animal control or other written notice, but must contain the following items:
   a. A caption reading: “Appeal of _________,” giving the name of the appellant;
   b. A brief statement of the finding being appealed, together with any material facts claimed to support the contentions of the appellant;
   c. A brief statement of the relief sought, and the reasons why the finding should be reversed, modified or otherwise set aside
   d. The current address of the appellant; and
   e. A verification, by declaration under penalty of perjury, made by the appellant as to the truth of the matters stated in the appeal.

4. Failure to file a timely and complete request for review to the Manager constitutes a waiver of all rights to an appeal under this chapter. The right to appeal to the Everett animal control Manager must be exhausted prior to further appeal to the Everett Municipal Court.

5. Upon receipt of a timely filed and completed notice of appeal, the Manager shall review the written appeal along with the written report of Everett animal control and any attached documents.
   a. The Manager shall issue a written decision granting or denying, in whole or in part, the relief requested in the request for review, along with findings of fact in support of such decision, within ten business days of receipt of the appeal. The Manager may also in his her discretion amend the restrictions of a potentially dangerous dog.
   b. The Manager’s written decision shall summarize the evidence considered in making the decision. It shall also include a statement advising that the Manager’s decision may be
appealed to the Everett Municipal Court, and that failure file a timely and complete notice of appeal to the Everett Municipal Court will constitute a waiver of all rights to an appeal under this chapter. A copy of the Manager’s decision shall be provided to the appellant either in person or via certified mail with return receipt requested and First Class mail. A copy of the evidence considered by the Manager in making his or her decision shall be made available for review upon written request of the owner, or a hard copy provided at cost.

c. The date of delivery of the Manager’s decision shall be the date evidenced by a signed returned receipt, an affidavit of service, or three (3) days after the date of mailing as shown in a declaration of mailing. When the last day of the appeal period falls on a Saturday, Sunday, or City holiday, the period shall run until five (5:00) p.m. on the next business day.

AB. Appeal to the Everett municipal court. Any owner of a dog which has been declared potentially dangerous or dangerous by the Everett animal control, pursuant to Section-EMC 6.08.030, or who wishes to appeal the Manager’s review under EMC 6.08.047, of this chapter may appeal the notice written decision of the Manager by filing at the Everett animal shelter, within fourteen-six business days from the date of the notice of the Manager’s decision, a written notice of appeal. Said written notice of appeal shall be on a form provided for that purpose by the Everett animal control or other written notice, but must contain the following items:

1. A caption reading: “Appeal of _________,” giving the name of the appellant;
2. A brief statement of the finding being appealed, together with any material facts claimed to support the contentions of the appellant;
3. A brief statement of the relief sought, and the reasons why the finding should be reversed, modified or otherwise set aside;
4. The current address of the appellant; and
5. A verification, by declaration under penalty of perjury, made by the appellant as to the truth of the matters stated in the appeal.

BC. Failure to file a timely and complete a request for review by the Manager or a notice of appeal from the Manager’s decision constitutes a waiver of all rights to an appeal under this chapter. The right to request review by the Manager under EMC 6.08.035 or EMC 6.08.047 must be exhausted prior to further appeal to the Everett municipal court.

CD. Upon receipt of a timely filed and completed notice of appeal of a Manager’s decision to the Everett municipal court, a notice of hearing shall be sent to the appellant, setting the date, time and place of the appeal hearing.

DE. The Everett municipal court hearing shall be set no less than ten nor more than thirty business days following receipt of a timely filed and complete notice of appeal. The filing of a notice of appeal shall not stay the requirements for restraint of the dog provided to the owner pursuant to Section 6.08.030(B)(5) of this chapter.
EF. The hearing examiner shall be an elected or pro tempore Everett municipal court judge, unless the mayor designates another as hearing examiner.

FG. At the Everett municipal court hearing, the City and the owner of the dog found to be a potentially dangerous dog or dangerous dog shall be permitted to present evidence in support of their position at the hearing, including testimony and new evidence which was not provided to the Manager in the request for review by Manager. The Everett municipal court appeal hearing shall be a de novo review of the Manager’s decision, a copy of which shall be provided to the hearing examiner. The Everett municipal court hearing examiner may consider the Manager’s decision, but is not obligated to follow it.

GH. 1. Dogs shall not be declared potentially dangerous or dangerous by the hearing examiner or Manager if a threat, injury, or damage sustained by a person forms the probable cause to believe the dog is potentially dangerous or dangerous, and 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.

2. At the hearing, the burden shall be on the owner of the dog, by a preponderance of the evidence, that one or more of the circumstances set forth in subsection (GH)(1) of this section exist; provided, however, that the burden as to “unprovoked” under EMC 6.08.030 is still on the City to prove by a preponderance of the evidence.

3. Subsection (G)(1) of this section shall not apply if the dog is believed to be a potentially dangerous dog pursuant to Section 6.08.010(B)(3).

HI. 1. At the conclusion of the Everett municipal court hearing, the hearing examiner shall issue a written decision.

2. At the conclusion of a hearing to determine whether a dog is to be declared dangerous, the decision of the hearing examiner may be:
   a. The dog in question is declared to be a dangerous dog; or
   b. The dog in question is declared to be a potentially dangerous dog; or
   c. The dog in question is declared to be a potentially dangerous dog; with additions, deletions and/or modifications made to the restrictions initially proposed to be placed on the dog by the Everett animal control; or
   d. The dog in question is declared to be neither dangerous or potentially dangerous.

3. At the conclusion of a hearing to determine whether a dog is to be declared potentially dangerous, the decision of the hearing examiner may be:
   a. The dog in question is declared to be a potentially dangerous dog; or
   b. The dog in question is declared to be a potentially dangerous dog, with additions, deletions and/or modifications made to the restrictions initially proposed to be placed on the
dog by the Everett animal control; or
   c. The dog in question is declared to not be a potentially dangerous dog.

4. At the conclusion of a hearing regarding the Manager’s decision under EMC 6.08.047, the
decision of the hearing examiner may be:
   a. The dog in question shall continue to be designated as potentially dangerous, with no
      amendments to the restrictions or conditions placed on the dog; or
   b. The dog in question shall continue to be designated as potentially dangerous, with
      amendments to the restrictions or conditions placed on the dog; or
   c. The dog in question shall be recategorized to remove the potentially dangerous dog
      designation, subject to the continuing record that the dog was previously declared potentially
      dangerous as outlined in EMC 6.08.047(B).

45. The decision of the hearing examiner shall be final. Proceedings to review the decision
must be instituted within fifteen days of the date of the written decision.

Section 8. Section 9 of Ordinance No. 2393-99, as amended by Section 5 of Ordinance No. 2782-
04, codified at EMC 6.08.045, is amended as follows, with strikeouts deleted and underlining added:

Dangerous and potentially dangerous dogs—Confiscation.
A. Any dangerous dog shall be immediately confiscated by the Everett animal control if the:
   1. Dog is not validly registered under this chapter or RCW 16.08.080;
   2. Owner does not secure the liability insurance coverage required under this chapter or RCW
      16.08.080;
   3. Dog is not maintained in the proper enclosure; or
   4. Dog is outside of the dwelling of the owner, or outside of the proper enclosure and not
      under physical restraint of the responsible person.

B. The owner must pay the costs of confinement and control to Everett animal control if the dog is
confiscated. The Everett animal control must serve notice upon the dog owner in person or by regular
and certified mail, return receipt requested, specifying the reason for the confiscation of the dangerous
dog, that the owner is responsible for payment of the costs of confinement and control, and that the
dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was
confiscated are not corrected within twenty days. The animal control authority shall destroy the
confiscated dangerous dog in an expeditious and humane manner if any deficiencies required by this
subsection are not corrected within twenty days of notification. In addition, the owner shall be guilty of
a gross misdemeanor punishable in accordance with Section EMC 6.08.050.

BC. If a dangerous dog of an owner with a prior conviction under this chapter or Chapter 16.08 RCW
attacks or bites a person or another domestic animal, the dog’s owner is guilty of a Class C felony,
punishable in accordance with RCW 9A.20.021. It is an affirmative defense that the defendant must
prove by a preponderance of the evidence that he or she was in compliance with the requirements for
ownership of a dangerous dog pursuant to this chapter or Chapter 16.08 RCW and the person or
domestic animal attacked or bitten by the defendant’s dog trespassed on the defendant’s real or
personal property or provoked the defendant’s dog without justification or excuse. In addition, the
dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for
the proper length of time, and thereafter destroyed in an expeditious and humane manner.

CD. The owner of any dog that aggressively attacks and causes severe injury or death of any human,
whether the dog has previously been declared potentially dangerous or dangerous, shall, upon
conviction, be guilty of a Class C felony punishable in accordance with RCW 9A.20.021. It is an
affirmative defense that the defendant must prove by a preponderance of the evidence that the human
severely injured or killed by the defendant’s dog: (1) trespassed on the defendant’s real or personal
property which was enclosed by fencing suitable to prevent the entry of young children and designed to
prevent the dog from escaping and marked with clearly visible signs warning people, including children,
not to trespass and to beware of the dog; or (2) provoked the defendant’s dog without justification or
excuse on the defendant’s real or personal property which was enclosed by fencing suitable to prevent
the entry of young children and designed to prevent the dog from escaping and marked with clearly
visible signs warning people, including children, not to trespass and to beware of the dog. In such a
prosecution, the state has the burden of showing that the owner of the dog either knew or should have
known that the dog was potentially dangerous as defined in this chapter or Chapter 16.08 RCW. The
state may not meet its burden of proof that the owner should have known the dog was potentially
dangerous solely by showing the dog to be a particular breed or breeds. In addition, the dog shall be
immediately confiscated by an animal control authority, quarantined, and upon conviction of the owner
destroyed in an expeditious and humane manner.

E. Any potentially dangerous dog or dangerous dog may be immediately seized and impounded by
Everett animal control if an Everett animal control officer has probable cause to believe that the owner
has failed to comply with the conditions or restrictions of this chapter or impced by the animal control
authority. Such impoundment shall be subject to the procedures of EMC 6.04.090.

Section 9. Ordinance No. 1228-86 shall be amended by the addition of a new section, to be
codified at EMC 6.08.047, as follows:

Potentially dangerous dogs – reclassification.
A. The Manager (as defined in EMC 6.04.020) shall have authority to, upon the owner’s written request,
review a potentially dangerous dog designation on a dog a maximum of one time per year. The Manager
may maintain the designation, amend the restrictions of the potentially dangerous dog, or remove the
potentially dangerous dog designation subject to the requirements herein. The potentially dangerous
dog designation may be removed after 36 months from the date of designation as a potentially
dangerous dog, if the Manager determines that the risk to public safety has been mitigated and the
owner and the potentially dangerous dog have had no subsequent violations of Title 6 EMC. The

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restrictions on the dog may be, but are not required to be, amended prior to the expiration of the 36-month period if the owner of the dog demonstrates to the Manager that substantial changes in circumstances or measures taken by the owner, such as training of the dog, have mitigated the risk to the public safety.

1. Any owner of a dog which has been declared potentially dangerous pursuant to EMC 6.08.030 who wishes to request reclassification of the potentially dangerous dog to remove the designation, or who wishes to request amendment to the restrictions on the potentially dangerous dog, may request review by the Manager a maximum of one time per year. The burden of proof regarding reclassification of the potentially dangerous dog or amendment of restrictions on the potentially dangerous dog shall be on the owner by a preponderance of the evidence.
   a. This request for review must be in writing and filed at the Everett animal shelter.

2. Said written request for review shall be on a form provided for that purpose by Everett animal control or other written notice, but must contain the following items:
   a. A caption reading: “Review/Reclassification of ______,” giving the name of the owner and potentially dangerous dog;
   b. A brief statement of the owner’s request, be it reclassification of a potentially dangerous dog to remove the designation, an amendment of the restrictions on the potentially dangerous dog, or both, together with any material facts claimed to support the contentions of the owner;
   c. A brief statement of the relief sought, and the reasons why the owner’s request for review should be granted;
   d. The current address of the owner; and
   e. A verification, by declaration under penalty of perjury, made by the owner as to the truth of the matters stated in the request for review.

3. Upon receipt of a completed request for review, the Manager shall review the written request for review along with the available records and reports of Everett animal control and any attached documents. The Manager may also request the dog be brought to the animal shelter for a shelter visit or may request a site visit at the animal’s residence.

4. The Manager shall issue a written decision granting or denying, in whole or in part, the relief requested in the request for review, along with findings of fact in support of such decision, within ten business days of receipt of the request for review.
   a. The Manager’s written decision shall summarize the evidence considered in making the decision. It shall also include a statement advising that the Manager’s decision may be appealed to the Everett Municipal Court pursuant to EMC 6.08.035, and that failure file a timely and complete notice of appeal to the Everett Municipal Court will constitute a waiver of all rights to an appeal under this chapter. A copy of the Manager’s decision shall be provided to the owner either in person or via certified mail with return receipt requested and First Class mail. A copy of the evidence considered by the Manager in making his or her decision shall be made available for review upon written request of the owner, or a hard copy provided at cost.
   b. The date of delivery of the Manager’s decision shall be the date evidenced by a

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signed returned receipt, an affidavit of service, or three (3) days after the date of mailing as shown in a declaration of mailing. When the last day of the appeal period falls on a Saturday, Sunday, or City holiday, the period shall run until five (5:00) p.m. on the next business day.

B. Removal of the potentially dangerous dog designation from a dog shall not in any way be considered removal of the fact that the dog has previously been declared a potentially dangerous dog for purposes of a dangerous dog declaration under EMC 6.08.030 or RCW 16.08.070(2) as currently enacted or later amended.

Section 10. Section 5 of Ordinance No. 1228-86, as amended by Section 4 of Ordinance No. 2393-99, and Section 6 of Ordinance No. 3236-11, codified at EMC 6.08.050, is amended as follows, with strikeouts deleted and underlining added:

Penalties.
A. Unless otherwise provided, any person, firm or corporation violating any of the provisions of this chapter is guilty of a gross misdemeanor and may be punished by a fine and/or imprisonment up to maximum fine amount and term of imprisonment set forth in Section EMC 10.04.080(A). Any person found guilty of violating any of the provisions of this chapter shall pay all related expenses, including but not limited to shelter, food and veterinary expenses, including identification or boarding and veterinary expenses necessitated by the seizure of the dog for the protection of the public, and such other expenses as may be required for the destruction of the dog. The dog is subject to seizure and impoundment consistent with EMC 6.08.045 and EMC 6.04.090.

B. Any person who is the owner of a dangerous dog or potentially dangerous dog and is convicted for a violation under this chapter may be prohibited from owning, possessing, controlling or having custody of any dog for a period of up to two years.

Section 11. All Potentially Dangerous Dog designations which were entered solely based on the breed-specific criteria of former Section 2 of Ordinance No. 1228-86 as amended, and not based on the dog’s behavior, shall be removed as of the effective date of this Ordinance.

Section 12. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 13. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 14. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other
matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 15. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

____________________
Cassie Franklin, Mayor

ATTEST:

____________________
Sharon Fuller, City Clerk

PASSED: ________________
VALID: ________________
PUBLISHED: ________________
EFFECTIVE DATE: ________________