

ATTACHMENT A

**A RESOLUTION ACCEPTING THE REPORT ON
PIT BULL TYPE DOGS AND ANIMAL WASTE**

Resolution No. 48/2002-03

**BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF
CARRBORO:**

**Section 1. The Board hereby accepts the report on pit bull type dogs and animal waste
and gives the town staff the following directions:**

Memorandum

Date: 10/2/2002
To: Mayor and Board of Aldermen
Cc: Chief Carolyn Hutchison, Captain Joel Booker
From: Amanda Stipe, Animal Control Officer *AS*
RE: Jurisdictional Treatment of Pit Bulls

I found no local area that treats pit bulls any differently than any other breed or mix breed of dog.


When dealing with aggressive dogs, most counties and municipalities utilize their own local ordinances [dangerous, vicious, or nuisance] unless the situation warrants use of the state statute pertaining to dangerous dogs [NCGS 67-4.1 through 4.5].

Surveyed areas include:

- Wake County (Holly Springs contracts with Wake County)
- Raleigh
- Cary
- Durham
- Alamance County
- Orange County
- Chapel Hill
- New Hanover County
- Asheville/Buncombe County
- Charlotte/Mecklenburg County

AS

MEMORANDUM

TO: MAYOR AND BOARD OF ALDERMEN
FROM: AMANDA STIPE, CARRBORO ACO 
SUBJECT: PIT BULLS
DATE: 8/6/02
CC: MIKE BROUGH, WILLIAM MORGAN, AND CHIEF CAROLYN HUTCHISON

Currently, the Animal Control Section of the Town Ordinance does not specifically address pit bull type dogs. "Pit bull" is a generic term used to describe a type of dog. A pit bull is not a breed of dog.

What does the Town Ordinance address?

1. Biting dogs

Must be quarantined for a period of 10 days. Then, depending on the situation and severity of the bite, the biting dog may be:

- i. Declared a nuisance,
- ii. And, or, declared a potentially dangerous or a dangerous dog.
- iii. Additionally, the dog may be declared as vicious under state law.

2. Loose dogs off their owner's property may be:

- a. Impounded at the Orange County Animal Shelter,
- b. Or, fined.

What is a Nuisance Dog? (Briefly) A dog that the administrator determines to:

1. Habitually or repeatedly, without provocation, chases, snaps at or attacks pedestrians, bicycles, or vehicles even if the animal never leaves the owner's property, unless restrained by a pen or fence.
2. Seriously interferes with reasonable use and enjoyment by neighboring residents of their property because of odor, or noise making.
3. Is a female in heat not in a building or secure enclosure.

4. Damages the property of anyone other than its owner or keeper, including but not limited to, turning over garbage containers or damaging flora by digging, defecating, or urinating, or causing injury to domesticated livestock or pets.
5. Without provocation, inflicts on any person a serious injury requiring treatment by a physician, including but not limited to a bite or scratch that breaks the skin.

What are the penalties for a nuisance dog?

1. The owner must correct the problem within 48 hours of notification by the Office of Animal Control that their dog is a nuisance.
2. Owner must prevent a recurrence after those 48 hours or the Office of Animal Control will issue a letter of removal of the nuisance dog. Removal of the dog can be by either taking the dog from the town or euthanizing the dog.
3. Owner may be charged with a misdemeanor under NCGS 14-4.
4. Owner may be fined \$25.00 for violation after notification of nuisance.
5. The Town of Carrboro may issue injunctions or orders of abatement.

What is a potentially dangerous dog? A dog that the administrator determines to have:

1. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.
2. Killed or inflicted severe injury on a domestic animal when not on the owner's real property.
3. Or, approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

What is a dangerous dog? A dog that the administrator determines to have:

1. Without provocation has killed or inflicted severe injury on a person.
2. Engaged in one or more of the behaviors listed for a potentially dangerous dog.
3. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

Under this section, severe injury is defined as any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

However, the declaration of potentially dangerous and dangerous dogs does not apply when:

- 1) The dog is used by law enforcement to carry out official duties.
- 2) A dog being used in a lawful hunt.
- 3) A dog where the injury or damage inflicted was while the dog was working as a hunting, herding, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.
- 4) A dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or other tort, was tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

What are the penalties for potentially dangerous and dangerous dogs?

Under the Town's Ordinance and NC Law, potentially dangerous and dangerous dogs have no distinctions between them.

No person may leave them unattended on the owner's real property unless the dog is confined indoors, in a securely enclosed and locked pen, or in another structure designed to adequately restrain the dog. The dog cannot go beyond the owner's real property unless the dog is leashed and muzzled, or otherwise securely restrained and muzzled.

If the owner transfers possession or ownership of the dog, the owner shall provide written notice to the ACO and the new owner.

Violations of these requirements subject the owner to:

1. Misdemeanor charges punishable by fine not to exceed \$100.00 or imprisonment for not more than 30 days, or both.
2. If the potentially dangerous or dangerous dog attacks a person and causes physical injuries requiring medical treatment in excess of \$100.00, misdemeanor charges punishable by a fine of up to \$5,000, imprisonment up to 2 years, or both.
3. Liability for civil damages for any injuries or property damage the dog inflicts upon a person, property, or other animal.

What is a vicious dog? Under NC Statute 130A-200, a local health director deems a dog to be vicious and a menace to the public health when the animal has attacked a person causing bodily harm without being teased, molested, provoked, beaten, tortured or otherwise harmed.

What are the penalties for vicious dogs?

The animal must be confined to the owner's property. However, the animal may be permitted to leave its owner's property when accompanied by a responsible adult and restrained on a leash.

Violations of these requirements subject the owner to:

1. Impoundment of the animal at the owner's expense.
2. Misdemeanor charges.
3. Any other appropriate fines or citations relevant to the situation under Town Ordinance (ex. at large).

As the Animal Control Officer, I feel we should not have breed/type specific ordinances for the Town of Carrboro.

Why?

- 1) Difficulties with identification. Is it a hound mix, pit mix, or lab mix? How many different breeds and their crosses do you include? Do you analyze DNA and Pedigrees?
- 2) Difficulties with enforcement. Variable town limits and borders. Do you fine/cite visitors with these dogs for bringing these dogs to the area? Pet therapy dogs and Canine Good Citizens, if pit bull type dogs, would not be allowed into the town. Who has the authority to remove the dog from town? Notification procedures? What are the time limits for removal of the dog? Legal appeals.
- 3) Difficulties with the criminal element. Dog fighters and criminals ignore laws. Once a breed is banned, criminals who use these dogs to guard drugs or their houses will move to another type of dog or another species of animal.

What can we do?

We can strengthen our existing ordinance by:

1. Incorporating more stringent leash laws,
2. Increasing penalties for violations,
3. Increasing licensing fees for intact animals,
4. Establishing guidelines for responsible pet ownership,
5. And, educating dog owners about the financial and legal consequences for failing to follow them.

For additional information on the breed-specific topic, please review the following websites:

www.pbrc.net

www.cdc.gov/ncip/duip/dogbites.htm

M E M O R A N D U M

TO: Carrboro Mayor and Board of Aldermen

FROM: William C. Morgan, Jr.

RE: Breed Specific Dog Ban

DATE: August 7, 2002

This memo is in response to a question regarding banning or restricting certain breeds of dogs within the Town. Commonly referred to as "breed specific" bans, ordinances of this type have been adopted in a number of jurisdictions, and of course there have been court challenges to the bans. For the most part, carefully drafted breed specific bans and/or regulations have been upheld by the courts. Judicial decisions generally focus on whether the ordinance is unconstitutional due to vagueness. Within that inquiry, two issues emerge: (1) whether the law provides adequate notice to citizens of what is prohibited; and, (2) whether the ordinance provides adequate standards to prevent arbitrary enforcement. Two cases illustrate this inquiry.

In American Dog Owners Association, Inc., et al. v. City of Lynn, 404 Mass. 73, 533 N.E.2d 642, the City of Lynn passed an ordinance regulating the ownership of pit bulls, requiring the owners of pit bulls within the City to keep their pit bulls fenced in at all times on the property of the person to whom they were registered. A single violation resulted in a \$50.00 fine and banishment of the animal from the city. The ordinance was challenged as being void for vagueness. The plaintiffs alleged that the definition of pit bull was not specific enough to put owners of pit bulls on notice, or to allow people of average intelligence to know they were breaking the law, or to prohibit law enforcement officers from making arbitrary enforcement decisions. The ordinance offered two definitions of pit bull: (1) "American Staffordshire, American Staffordshire Pit Bull Terrier, Bull Terrier or any mixture thereof;" or, (2) "pit bulls or dogs known as pit bulls...the term being employed to the full extent of its common understanding and usage." The court held that the definitions were too vague to be enforceable, stating: "There is no scientific means....to determine if a dog is a particular breed or mixture thereof." The court also found fault with the fact that the City's animal control officers used conflicting, subjective standards for ascertaining what animals qualified as pit bulls under the ordinance, due to the ordinance not providing them with ascertainable standards for enforcement. The court based its decision in part on the testimony of the city's animal control officers who indicated that they were forced to use very subjective standards to identify breeds. The officers indicated they would target dogs based on appearance, and owners who disputed the decision would have to procure certified letters from their veterinarian stating the breed of the dog in question. However, the City's veterinarian testified that when identifying breeds he relied solely on the owners' identification and "had no medical basis on which to dispute that identification." The court held that the ordinance depended on a dog officer's understanding of the ambiguous term "pit bull" unlike laws which prohibit ownership of vicious or dangerous dogs. The court said that this left owners to guess at what dog "look" was prohibited by the ordinance.

The case of American Dog Owners Association v. City of Yakima, 113 Wash. 2d. 213, 777 P.2d 1946 is illustrative of an ordinance that was upheld. In that case, faced with similar definitions, and utilizing the same analytical framework as the court in City of Lynn, the court upheld the ordinance. One difference however was that the Yakima animal control officers were provided with more detailed standards and illustrations to use, such that their discretion was not unbridled. It is clear from the decision however that the Yakima court relied at least in part on the general idea that since animals are already bound by so much regulation, any law affecting them which is rationally related to a public interest is valid. This line of thinking runs through most all of the cases I reviewed, the idea being that property interests in pets are strictly limited by public safety concerns.

Pit bulls seem to be the most regulated breed. Other breeds that have been banned in one or more municipalities include rottweilers and dobermans. Despite this trend, or perhaps in reaction to it, at least 12 states have passed legislation prohibiting breed ban ordinances, but have established dangerous and vicious dog rules instead. No state has passed state-wide breed bans, although some foreign countries have done so. North Carolina does not prohibit municipal breed ban regulations, but has passed a dangerous dog statute similar to the ones in states prohibiting breed bans. Carrboro's dangerous dog ordinance is based upon and authorized by the state statute. To our knowledge, no local government in North Carolina has enacted breed-ban legislation.

Even in states that prohibit breed bans, tighter restrictions on certain breeds are generally upheld. Examples include requiring a minimum amount of liability insurance (usually \$100,000.00), licensing requirements including higher license fees for certain breeds, and stricter leash and confinement laws for certain breeds.

Please let us know if you have any questions or if we can provide additional information.