

April 9, 2007

Date PUBLIC HEARING ON DANGEROUS ANIMAL APPEAL OF JAMIE LARSON

WHEREAS, Jamie Larson, 3825 1st Street, filed an application for appeal before the City Council of the City Hearing Officer's decision upholding the Chief Humane Officer's declaration of her dog as a dangerous animal; and

WHEREAS, Ms. Larson requested an opportunity to address the City Council regarding her appeal; and

WHEREAS, Ms. Larson have been provided with the opportunity to address the City Council on the matter of her appeal; NOW, THEREFORE,

BE IT RESOLVED (Choose one of the two alternatives):

Alternative One: That the order of the hearing officer be upheld and Ms. Larson's dog be declared a dangerous animal and that it be humanely destroyed.

MOVED BY _____ TO UPHOLD DECLARATION AND TO HUMANELY DESTROY THE ANIMAL.

Alternative Two: That the order of the hearing officer be upheld and Ms. Larson's dog be declared a dangerous animal and order Ms. Larson remove the dog from the city or allow it to be humanely destroyed.

MOVED BY _____ TO UPHOLD DECLARATION AND ORDER OWNER TO REMOVE OR HAVE ANIMAL HUMANELY DESTROYED.

Alternative Three: That the order of the hearing officer be reversed and Ms. Larson's dog not be declared dangerous.

MOVED BY _____ TO REVERSE DECLARATION.

FORM APPROVED:

K. Massier
Katharine Massier
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

March 27, 2007

Ms. Jamie Larson
3825 1st Street
Des Moines, IA 50313-3543

Dear Ms. Larson:

The City of Des Moines, Iowa convened an Administrative Hearing at 2:00 p.m. on March 23, 2007 regarding the declaration of your white, brown and black colored Pit Bull dog named "Queen" to be a "Dangerous Animal". At that time, Sergeant Scott Raudabaugh, Chief Humane Officer for the City of Des Moines, Iowa, submitted the following documents into evidence. They are attached and labeled City Exhibit A:

City Exhibit A:

1. Photograph of dog declared "Dangerous Animal"
2. Dangerous Animal Notification Letter dated March 20, 2007 from Sergeant Scott Raudabaugh.
3. Document Service Form dated March 20, 2007 that was posted on the glass of the front door of your home.
4. Animal Incident Investigation Report, Case #07-9089, dated March 13, 2007.
5. Supplemental Report, Case # 07-9089, dated March 19, 2007.
6. Animal History Report #07-9089 dated March 13, 2007.
7. Animal Emergency and Referral Center Treatment documents.
8. Supplemental Report, Case #07-9089 dated March 13, 2007.
9. Supplemental Report, Case #07-9089 dated March 16, 2007.
10. Copy of facsimile of written Statement of Jamie Larson dated March 17, 2007.
11. Copy of Rabies Certificate for Jamie Larson's dog named "Queen"
12. Copy of Municipal Code Section 18-41. Definitions.
13. Copy of Municipal Code Section 18-56. Confinement of vicious dogs.
14. Copy of Municipal Code Section 18-203. Immediate seizure or destruction of animals.
15. Copy of Municipal Code Section 18-202. Seizure, impoundment and disposition of dangerous animals.

The following is a detailed summary of the proceedings of this Hearing as well as of my decision and the reasoning for it.



DIANE RAUH
CITY CLERK
CITY HALL-2ND FLOOR
400 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309-1891
(515) 283-4209
FAX (515) 237-1645
www.dmgov.org

PARKING TICKETS
PET LICENSES
BUSINESS LICENSES

ALL-AMERICAN CITY
1949, 1976, 1981,
2003

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Testimony of Sergeant Raudabaugh – Chief Humane Officer

Sergeant Raudabaugh testified that on March 12, 2007, your white, brown and black colored Pit Bull breed dog ran from your address at 3825 1st Street, Des Moines, Iowa and ran to the address of 3830 1st Street, Des Moines, Iowa. There, your dog bit and shook a Miniature Pinscher dog in its own yard which ended up causing a puncture wound to the Miniature Pinscher. The City's Animal Control Unit was contacted and an Animal Control Officer conducted an initial investigation. After conducting the investigation, your dog was impounded and brought to the Animal Shelter for quarantine. There, the City's veterinarian evaluated your dog and found that it possesses predominate characteristics of a "vicious dog" by breed as defined in Section 18-41 of the Municipal Code..

Sergeant Raudabaugh stated that Section 18-56 of the Municipal Code describes how a vicious dog is to be confined and that if a vicious dog is not so confined, it is consider to be "at-large". He stated that because your dog was not so confined at the time of the incident, your dog was a vicious dog at-large when it bit the Miniature Pinscher. He read Section 18-203 of the Municipal Code and stated that because your dog has been determined to be a vicious dog by breed, was not properly nor securely confined or leashed and was involved in an unprovoked bite, the provisions of Section 18-203 were implemented and your dog is being processed as a Dangerous Animal.

Testimony of Jamie Larson – owner of dog declared Dangerous

You testified that you were unaware that your dog met the definition of a vicious dog under the Municipal Code and that your dog has been seen by a veterinarian for the past five years and you were never told you needed to seek another form of confinement for your dog. You also testified that, as indicated in your typed written statement, your dog accidentally got out of your yard; your children, who had been out earlier, had forgotten to latch the gate to your yard and the dog that was bitten by your dog had been running at large earlier. You further testified that now that you are aware that your dog is considered vicious by breed according to the Municipal Code, you are taking steps to be able to confine it accordingly.

You testified that you were at the scene of the incident immediately and that there were no children in the yard at the time. You also stated that any reference to the children being in the yard and to your dog growling was not mentioned that night but later. You stated that only people in the dog owner and another person about her age were in the yard. You stated that your dog did not cross the street until the dog that was later injured began barking at your dog and that the owner was not in control of her dog because it was not on a leash, was not within six feet of her, nor was it given voice command control at the time. You concluded by stating that earlier you had your dogs outside and observed that the dog was out and at-large and because of this, you took your dogs into your house. You then referred me to your typed written statement for other details regarding the incident which I have since read.

Testimony of William Holmes – on behalf of Jamie Larson

William Holmes stated that dogs normally bark at one another and do not like one another. He asked why, if the injured dog was not leashed, that dog's owner did not receive discipline? Sergeant Raudabaugh answered stating that Section 18-55 of the Municipal Code defines a dog as "not" running at-large when the dog is on its own property, within close proximity to its owner and under immediate voice control of owner. He gave an example that a dog is running at large when a dog is off its own property, is not leashed and is running across or down the street.

Mr. Holmes stated he didn't think the injured dog's owner had control because her dog was not on a leash and because she didn't exercise immediate voice control when Jamie Larson's dog crossed the street and the two dogs began barking at each. Mr. Holmes further stated, as his opinion, that had she done so, the biting incident would not have happened. Mr. Holmes asked why the injured dog was not also considered to be vicious. Sergeant Raudabaugh stated it is not the responsibility of the owner of a dog that is on its own property to command his or her dog to retreat from a dog entering his or her property in order to prevent the dog entering the property from attacking his or her dog.

Mr. Holmes stated that he didn't believe that there were children in the yard at the time of the incident and that he thought both parties were at fault and that if the injured dog's owner would have had her dog on a leash or had used a voice command to have her dog retreat, this incident would not have occurred. Mr. Holmes stated that, in his opinion, all dogs can be vicious and that the requirements regarding when a dog is restrained should apply to all dogs, not just those of certain breeds.

Testimony of Ashley Andrews – Owner of dog that was bitten.

Ashley Andrews testified that as she, her mother and sisters were leaving the house to get into their car, she heard her mother yell and, when she turned, she saw Jamie Larson's dog running across the street. She said she ran to get between her sisters and Jamie Larson's dog and that her dog was in the car at that time but left to follow her as she ran to her sisters. She stated that her dog always wants to be with her. She stated that she told her dog to stop and it did and that her sisters then ran one jumping into and hiding in the back seat her mother's car and the other entering their home to get her father. She acknowledged that her dog was not on a leash, but that she takes her dog with her in public and her dog has not barked at anyone.

Ms. Andrews stated her dog has never been involved in an altercation with another dog or animal; that her dog was by her side the entire time, except when she left to run to her sisters, and that she does not recall her dog growling or barking at the time. She stated that when she reached down to pick-up her dog, Jamie Larson's dog grabbed her dog. Ms. Andrews admitted to expressing some bad and mean words to Jamie Larson when Ms. Larson crossed the street to retrieve her dog. She stated that her dog can only eat soft food for a month because of the neck injury her dog sustained. She also stated that she

did mention to the Animal Control Officer that night that her sisters were in the yard at the time.

The following items were submitted into evidence by Ashley Andrews. They are attached and labels as Exhibit B:

1. Written statement from Victoria Keeling, referred to in later testimony as a neighbor.
2. Photographs of the bite wound inflicted upon her dog.
3. Copy of Animal Emergency and Referral Center Invoice dated March 12, 2007 for treatment rendered to her dog.
4. Copy of Ankeny Animal and Avian Clinic, Inc. Invoice dated March 16, 2007 for services rendered to her dog.

Testimony of Jamie Larson – (Continued)

Following Ms. Andrews', you offered further testimony that your dog's veterinarian has indicated that your dog is not aggressive and referenced documentation to that effect. Then, upon reviewing the handwritten statement of the neighbor submitted by Ms. Andrews and reading the neighbor's reference about your dog trying to jump their fence as well as her being fearful to let her children play out in their yard, you stated that your dogs are rarely outside and when they are you are with them.

Testimony of Teresa Andrews – Ashley Andrews' mother

Teresa Andrews stated that Jamie Larson's dog did not attack her younger daughters, that Ashley Andrews had gotten in front of her sisters before Jamie Larson's dog had reached their yard, that after her two younger daughters ran away Ashley Andrews reached down to pick up her dog and Jamie Larson's dog grabbed and bit her dog. She stated that they beat on Jamie Larson's dog trying to force it to release Ashley's dog and that her two younger daughters are still afraid regarding the incident.

Hearing Officers Conclusions

Based on the testimony and evidence presented, it is my charge, as the Administrative Hearing Officer, to determine if your dog is a Dangerous Animal as declared by the City's Chief Humane Officer and as defined in Section 18-203 of the Municipal Code. Section 18-203. This section reads as follows:

Any animal found at large which displays dangerous tendencies, or which is an illegal animal, or which has been previously declared vicious or is vicious by breed according to article II, section 18-41 (6), (7), (8), or (9) of this chapter and has bitten without provocation a person or a domestic animal while such vicious dog was not properly confined or leashed may be processed as a dangerous animal under section 18-202 of this article....

As the Administrative Hearing Officer, I must confine my consideration to the law that governs in this situation and the evidence and testimony provided at the Hearing. When compared to the applicable law, the evidence and testimony have led to the following conclusions:

- (1) Your dog is a vicious dog by breed based on the evaluation of the City's veterinarian.
- (2) Your dog, as a vicious dog, was not properly confined or restrained at the time of the incident and was, therefore, running at large.
- (3) Your dog, while running at large, attacked a domestic animal, another dog, without provocation.
- (4) While testimony on the issue of provocation differs between the two dog owners, I conclude that there was no provocation for this attack because, while it may be argued that it is natural for dogs to bark at one another, the act of barking in and of itself does not automatically trigger an attack response in a dog unless the dog possesses a propensity to do so or feels threatened. It was your dog that ran across the street and bit the other dog.
- (5) Had your dog been properly licensed and confined as a vicious dog, as required by Municipal Code, this incident would not have occurred.

Hearing Officers Decision

Based on these conclusions, I uphold the Chief Humane Officer's declaration that your white, brown and black colored Pit Bull breed dog named "Queen" is a Dangerous Animal. Accordingly, I am required by law to order either that your dog be destroyed in a humane manner by the Chief humane Officer or that you remove your dog from the City or cause it do be destroyed in a humane manner. Having you remove your dog from the City would only transfer what has been declared a Dangerous Animal to another jurisdiction. Therefore, I hereby order that your dog, herein identified and declared to be a Dangerous Animal, be destroyed in a humane manner by the City of Des Moines, Iowa Chief Human Officer.

If you disagree with this decision, you have three (3) days from the receipt of this letter to appeal the decision to the City Council. The appeal must be made in writing to the City Clerk's Office stating the reason for the appeal. If you have any questions regarding the appeal or compliance procedure, please contact the Animal Control Unit at 248-6051.

Respectfully,



Mark Schultz
Hearing Officer

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Attachments: City Exhibit A
Exhibit B

Cc: Diane Rauh, City Clerk
Su Ann Donovan, Legal
Dale Patch, Acting Chief of Police
Sergeant Scott Raudabaugh

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April 2, 2007

2007 APR -3 AM 11:04
CITY CLERK
DES MOINES
FILED

Sirs:

I am asking that you reverse the decision of Mark Schultz, Hearing Officer, to have Queen, our family dog, destroyed. The office states that he is required by law (Des Moines law) to order either that the dog (Queen) (1) be destroyed...or (2) that Queen be removed from the City. I ask that you grant us permission to remove Queen from the city and re-home her elsewhere.

There are some embellishments and fabrications in the case records. I am not addressing those at this time. Instead I am asking that you reverse the ruling and allow Queen to live.

My grandson, being a normal 8 year old boy, wasn't paying attention and let Queen slip past him out the door. He had been told many times to be careful and not let her out when she wasn't on the leash, but being 8 also means that sometimes we forget. We realize that technically that is 'at large', but it isn't like we weren't actively trying to catch Queen. It all happened in a matter of a few minutes. She is not allowed to run loose.

Queen, being unexpectedly outside and not on the leash, started running around. She ended up heading across the street and ended up biting the neighbor dog. The neighbor dog is a min-pin. Queen could have easily killed or seriously injured the dog if that had been her intention. And she has never bitten or been in trouble before. We are all sorry that the min-pin was injured and are glad that it received only one wound. We care for all animals and don't want to see any animal hurt.

It is within your power to change the decision of the hearing officer and allow Queen to live. I ask this not only for Queen, but for a sad 8 year old boy who has never known life without Queen. She has been his friend, his buddy. She has laid with him when he cried and ran with him when he played. Now, he is living with the fact that he may have caused Queen's death. That is a terrible load to ask an 8 year old to carry. I ask this for my grand daughter who grew up with Queen as her friend. I ask for the entire family who has cared for, lived with and loved Queen. It is traumatic to lose a close family member. Please help make this less traumatic for my family and for me.

I ask for my family and myself. Queen has never been vicious. She has never bitten. She has been loving and loyal. We have trusted her with our children, and the children of relatives and friends. All she ever asked was a little attention. And I ask because -- how do I tell my grandchildren that because Queen resembles a breed of dog (possibly part of her heritage), people who don't know her want her killed? I ask because I don't feel that Queen is a threat and because letting her live is the right thing to do.

Having to re-home Queen to an area that allows her breed would be hard on all of us. But we would rather Queen be allowed to live away from us rather than to have her killed. Many many

places have refused to condemn domestic animals by breed. I ask that you allow us to move Queen to a place that does not condemn animals because of their breed. Just because an animal is considered 'Dangerous' in Des Moines does not mean that other jurisdictions apply their rules in the same manner.

Please consider the options that you do have under the law. It is legal in Des Moines that you order that Queen be removed from the City. I ask that you grant that Queen be removed from the city, which is written into the city law and is much more humane than the other choice of killing her.

Sincerely



Tim Larson
For the Larson Family
Jamie (my daughter)
Scott (my grandson)
Mikayla (my granddaughter)
Jodi (my daughter)
Alexis (my granddaughter)

ADMINISTRATIVE HEARING TRANSCRIPT

March 23, 2007

City v. Larson

Dangerous Animal

HEARING OFFICER MARK SCHULTZ: Today is March 23, 2007. My name is Mark Schultz. I'm the Administrative Hearing Officer today. It is 2:00 p.m. and we are convening an administrative hearing in response to an appeal that has been submitted by Jamie Larson whose dog has been declared a dangerous dog by the City of Des Moines Police Department Animal Control Unit. Uh, the way we'll proceed today is anyone who presents testimony needs to speak into the microphone that's placed right over here. Uh, everyone needs to state their time each time they speak just for the record because this is being recorded. If you have any photographs, documents, any exhibits, uh, that you want to share, you need to identify those in your testimony of what they are. Uh, and for my purposes if you'd just pull them up and show me what they are and then you can place them on that flat table next to the microphone in the event that if it's the Police Department presenting exhibits, or the appellant, either of you can go and look at that exhibit just to review it and see what it is. The way we'll proceed is I'm going to ask the Police Department to first, uh, present why the dog in this case was declared dangerous. Once the Police Department has completed providing their information then I will ask for the appellant, Jamie Larson, to then present why this is being appealed. Uhm, if I have any questions, uh, I'll ask during your testimony or preferably I'll try to hold until after. But if anything comes up that I need clarification I'll ask questions at that time. So, why don't we begin with the Police Department.

SERGEANT SCOTT RAUDABAUGH: My name is Scott Raudabaugh. I'm a Police Sergeant with the Des Moines Police Department and the Animal Control Unit Supervisor and by City ordinance I'm the Chief Humane Officer for the City of Des Moines.

HEARING OFFICER MARK SCHULTZ: Ok. This is my first administrative hearing so I'm learning as we go. Sergeant Raudabaugh, do you hereby declare that the testimony you are going to give today will be the truth and nothing but the truth?

SERGEANT SCOTT RAUDABAUGH: Yes. I first have a series of documents. I have a set of copies that I'll leave on the podium for anybody to look at. Uh, I have a set of copies I'll present to you. I also have a photograph of the dog that, uh, is the issue today. I've only got one photograph here. I'm gonna present it to you. Certainly if anybody else chooses to look at it I can retrieve it from you and provide it to whomever.

HEARING OFFICER MARK SCHULTZ: The photograph of the dog in question has just been presented.

SERGEANT SCOTT RAUDABAUGH: Ok, and I'll just kinda briefly go through the documents that I've presented. I think that way everybody kind of has an understanding of what they are. The, a, first document is a, a dangerous animal declaration letter that I completed that was presented, or served upon the property of Jamie Larson. The second document is a document

