



Roll Call Number

Agenda Item Number

43

.....August 9, 2010.....

PUBLIC HEARING ON DANGEROUS ANIMAL APPEAL OF JULIE COZAD

Date

WHEREAS, Julie Cozad, 1521 E. 9th 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. Cozad requested an opportunity to address the City Council regarding her appeal; and

WHEREAS, Ms. Cozad has 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. Cozad'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. Cozad's dog be declared a dangerous animal and order Ms. Cozad 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. Cozad'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
COWNE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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

EXHIBITS FOR DANGEROUS ANIMAL

“SPIKE”

EXHIBIT A **Hearing Officer’s Decision
(City Exhibits 1-4)**

**Animal Investigation Reports
Photos
Code Sections**

EXHIBIT B **Appeal from Ms. Cozad**

EXHIBIT C **Letter to Ms. Cozad
(Setting Date for appeal to Council)**

EXHIBIT D **Letter and Administrative Hearing Transcript
to Ms. Cozad**



July 14, 2010

Julie Cozad
1521 E. 9th Street
Des Moines, IA 50316

Subject: Dangerous Animal Declaration

Attached is the ruling from the City of Des Moines Hearing Officer, for the Administrative Hearing on July 12, 2010. Please read it carefully, so you are aware of the decision, any deadlines you might be required to comply with, as well as any other requirements you may be held to.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Rauh". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Diane Rauh
City Clerk

DR:kh
Attach

City of Des Moines, Iowa
July 12, 2010 Administrative Hearing

In re:)	
)	
)	
JULIE COZAD,)	DECISION AND ORDER
Respondent)	AND
)	NOTICE OF APPEAL RIGHTS
)	

Julie Cozad, the Respondent, appeared in her own behalf, as the owner of record of a tan and white colored male Pit Bull breed dog, named "Spike." Sergeant Scott Raudabaugh, the Chief Humane Officer, with the City of Des Moines Police Department ("DMPD"), appeared on behalf of the City of Des Moines, Iowa (the "City").

Procedural History

On March 14, 2010, the City Animal Control Unit responded to a complaint regarding a tan and white colored male Pit Bull breed dog, named "Spike," that was owned by Julie Cozad of 1521 E 9th Street, Des Moines, Polk County, Iowa. The Animal Control Unit investigation revealed that "Spike" had bitten a child, resulting in injuries to the head while the child was visiting inside Ms. Cozad's home; the dog was subsequently quarantined at the City Animal Shelter. On March 16, 2010, the City Veterinarian evaluated the dog and determined it exhibited predominate characteristics of a "vicious dog," as defined under Section 18-41(9) of the City of Des Moines Municipal Code (the "Municipal Code"). In particular, "Spike" was found to exhibit the appearance and characteristics of predominately a Staffordshire Terrier or an American Pit Bull Terrier or an American Staffordshire Terrier breed dog or a dog which has the appearance and characteristics of being predominately of those breeds. On March 16, 2010 the Chief Human Officer served Ms. Cozad with a vicious dog breed letter; delineating the conditions that must be maintained for maintaining a "vicious dog." On March 24, 2010, Ms. Cozad had Spike vaccinated for rabies, she licensed it as a "vicious dog" with the City Clerk's Office and reclaimed her dog from impound. On June 30, 2010, the City Animal Control Unit responded to a complaint of a tan and white colored male Pit Bull breed dog running at-large that had bit a person living at 1525 E. 9th Street, Des Moines, Polk County, Iowa. The dog was identified as "Spike" during the follow-up investigation and Ms. Cozad brought the dog to the City Animal Shelter for quarantine. On July 8, 2010, the Chief Humane Officer determined the dog was found to not be a securely confined "vicious dog," as required under Section 18-56 of the Municipal Code, and Ms. Cozad was served Notice, by posting at the front door at 1521 E. 9th Street, informing her: (1) the City is declaring "Spike" to be a "Dangerous animal," as provided under Sections 18-196 of the Municipal Code; (2) an administrative hearing to review the "dangerous animal" declaration has been scheduled for July 12, 2010; (3) if the "dangerous animal" declaration is upheld "Spike" may be destroyed in a humane manner; and (4) "Spike" will remain in impound pending the decision of the Administrative Hearing Officer. The administrative hearing was so conducted

Discussion

The issue is whether the dog in question, "Spike," should be declared a "Dangerous Animal." In pertinent part, Section 18-196 of the Municipal Code defines a "Dangerous Animal" as:

“any animal, including a dog . . . that has bitten or clawed a person while running at large and the attack was unprovoked, or any animal that has exhibited vicious propensities in present or past conduct, including such that the animal:

- (1) Has bitten or clawed a person on two separate occasions within a 12-month period;
- (2) Did bite or claw once causing injuries above the shoulders of a person;
- (3) Could not be controlled or restrained by the owner at the time of the attack to prevent the occurrence”

As noted above, there are two different tests under Section 18-196 of the Municipal Code that may be used to determine whether “Spike” is a “dangerous animal.” The first requires the existence of three elements at the time of the incident, which consists of: (1) whether the animal was running at large; (2) whether a person was bitten or clawed; and (3) whether the attack was unprovoked. Furthermore, Section 18-55(2) of the Municipal Code states that a properly licensed dog shall not be deemed at large if:

“The dog is off the premises of the owner and is [o]n a leash, cord, or chain or other similar restraint not more than six feet in length and under the control of a person competent to restrain and control the dog.”

However, on March 16, 2010, the Chief Humane Officer declared “Spike” to a “vicious dog,” requiring Ms. Cozad to comply with the requirements of Section 18-56(d) of the Municipal Code, which provides:

“No person shall permit a vicious dog to go outside its kennel or pen unless such dog is securely leashed with a leash no longer than six feet in length. No person shall permit a vicious dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless both the dog and the leash are under the actual physical control of a person 18 years of age or older.”

The Animal Incident Investigation Report (DMPD Case No. 10-20609) for the June 30, 2010 incident indicates that an adult woman sustained dog bites on both lower legs/calves and shin puncture wounds while she was working in the garden in her front yard at 1525 E. 9th Street, Des Moines, Iowa (Exhibits 14-19). The report reflects that the victim normally is able to tell the dog to go home but this time it lunged at her and started biting her and did not stop until she screamed very loud; at which time a man came out of the house at 1521 E. 9th, apologized and then took the dog into the house. Dan Henderson, Ms. Cozad’s housemate, testified that “Spike” had bit off the bottom of the wooden fence and had escaped. Therefore, “Spike” is found to have been running at large as he was outside his pen, not securely leashed and not under the actual physical control of a person 18 years of age or older. It also appears to be undisputed that “Spike” bit Ms. Cozad’s neighbor, as the Animal Incident Investigation Report also indicates that Ms. Cozad and Mr. Henderson stated they were aware that “Spike” had bitten the neighbor. Furthermore, the record is void of any evidence or testimony that the attacks were provoked. Therefore it is reasonable to find Ms. Cozad’s dog “Spike” a “dangerous animal” under the first test.

Furthermore, the record also supports a finding that “Spike” is a “dangerous animal” under the second Section 18-196 test as well because of exhibited vicious propensities both in the present June 30, 2010 incident as discussed above, as well as a past incident that occurred on March 14, 2010, when a small child sustained left ear punctures requiring stitches and huge cuts on his head also requiring stitches (Animal Incident Investigation Report DMPD Case No. 10-7735—City Exhibits 21-24). Therefore, “Spike” is found to have bitten or clawed a person on two separate occasions within a 4-month period, as delineated under Section 18-196(1). “Spike” is also found to have caused injuries above the

shoulders of a person On March 14, 2010, as delineated in Section 18-196(2). And, it is found that "Spike" could not be controlled or restrained by Ms. Cozad to prevent the attack on the neighbor on June 30, 2010.

Decision and Order

By a preponderance of all evidence in the record, the declaration by the Chief Humane Officer is upheld, as Ms. Cozad's tan and white colored male Pit Bull breed dog, named "Spike," is found to be a "Dangerous animal." Therefore, the Chief Humane Officer is ordered to destroy the dog in a humane manner as provided under section 18-202(b) of the Municipal Code. Furthermore, Ms. Cozad is ordered to pay all impoundment and quarantine costs as provided under Section 18-202 of the Municipal Code, as well as all citation fines issued in connection with DMPD Case No. 10-20609.

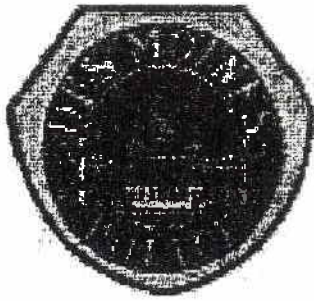
Appeal Rights

This order may be appealed to the City Council, as provided by Section 18-202(c) of the Municipal Code, provided a written notice of appeal is filed with the City Clerk's office within three days after receipt of this order.

This written ruling is hereby submitted on this 14th day of July, 2010 in Des Moines, Polk County, Iowa.



Camille A. Valley
Administrative Hearing Officer



Chief Humane Officer

DOCUMENT SERVICE

DMPD Case number: 2010 - 20609

ARL number (if known): A10023451

Animal owner's name: JULIE COZAD

Address: 1521 E 9TH ST.

Location of service: SAME

Date and time served: 08 JUL 10 1651

Official serving document (print name):
SGT. PAUL ABRAHAM

Official's identification number: 4770

Type of document served: Vicious dog letter Dangerous animal letter Illegal animal letter Hearing ruling letter City Council decision letter Other: _____

Name of person receiving document (they print their name):
PLACED BETWEEN FRONT

Their signature: X STORM NOOK + FRAME.
KIF ACU

EXHIBIT
1

July 8, 2010

Ms. Julie Cozad
1521 East 9th Street
Des Moines, Iowa

Dear Ms. Cozad,

On June 30, 2010 your tan and white colored male Pit Bull breed dog, named "Spike," was running at-large when it bit a neighbor, which resulted in an injury. In accordance with the follow-up investigation you brought your dog to the city animal shelter for quarantine. (2010-20609)

Previously on March 14, 2010 your dog, named "Spike," bit a friend's child when the child went near the dog's crate inside your house, which resulted in an injury. Your dog was impounded for quarantine at the city animal shelter. (2010-7735)

On March 16, 2010 the City Veterinarian evaluated your dog and determined that it exhibited predominate characteristics of a "Vicious Dog," defined by city ordinance 18-41 as a Staffordshire Terrier or an American Pit Bull Terrier or an American Staffordshire Terrier or a dog which has the appearance and characteristics of being predominately of those breeds. On March 16, 2010 you were served with a vicious dog breed letter.

On March 24, 2010 you had your dog receive a rabies vaccination, licensed your dog as a vicious dog with the City Clerk's Office and reclaimed your dog.

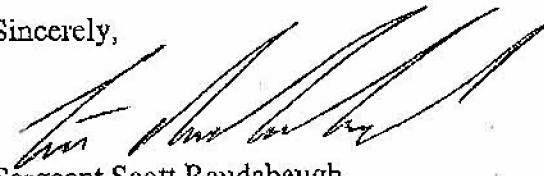
Because your dog was running at-large when it was involved in an unprovoked bite and the bite was the second bite within a 12 month period and the first bite caused injuries above the shoulders of a person your dog is being declared a "Dangerous Animal," as defined by city ordinance 18-196.

An **Administrative Hearing** to review the "Dangerous Animal" declaration has been scheduled for **11:15 A.M. on Monday, July 12, 2010** in the City Council Chambers in the Des Moines City Hall at 400 Robert D. Ray Drive. Your dog will remain in impound pending a decision by the Hearing Officer.

If the "Dangerous Animal" declaration is upheld your dog may be ordered destroyed in a humane manner or you may be given the option to cause it to be destroyed in a humane manner, in accordance with city ordinance 18-202.

If you have any questions please call me at (515) 248-6052 or the animal shelter at (515) 284-6905 or the City Clerk's Office at (515) 283-4209.

Sincerely,



Sergeant Scott Raudabaugh,
Chief Humane Officer

cc: City Clerk's Office



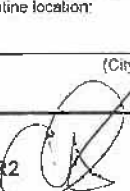
ANIMAL CONTROL
POLICE DEPARTMENT
1618 E.E. 14TH STREET
DES MOINES, IOWA 50320-1010
(515) 242-2720

ALL-AMERICA CITY 1949, 1976, 1981

Animal Incident Investigation Report

Des Moines, Iowa

EX-43
1

1. ARL case number:		2. DMPD case number (If applicable): 10-20609	
Impounded or bite animal		3. Victim's name (Last, First M.I.): SHEN, MARTHA <small>(Human victim or society)</small>	
32. Impounded or bite animal ARL number: Impounded: No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> ARL#:		4. Race: W	5. Sex: F
33. Animal type: Cat <input type="checkbox"/> Dog <input checked="" type="checkbox"/> Other <input type="checkbox"/>		6. Age: A	7. Date of birth:
34. Animal breed: largest male boxer type		8. Ethnicity: H <input type="checkbox"/> NH <input checked="" type="checkbox"/>	9. Sobriety: Sob. <input checked="" type="checkbox"/> H.B.D. <input type="checkbox"/>
35. Animal color: UNKNOWN		10. Residence address: 1525 E 9 <small>(City and/or state if not Des Moines or Iowa)</small>	
36. Animal fur length: Short <input type="checkbox"/> Medium <input type="checkbox"/> Long <input type="checkbox"/> Other <input type="checkbox"/>		11. Residence phone number: 450-0935	12. Business or cellular phone number:
37. Animal sex: Female <input type="checkbox"/> Spayed <input type="checkbox"/> Male <input type="checkbox"/> Neutered <input type="checkbox"/> Unknown <input checked="" type="checkbox"/>		13. Place of employment or school:	
38. Microchip: No <input type="checkbox"/> Yes <input type="checkbox"/> <small>(Records Personnel: Enter M/C# as a serial number)</small> M/C#: UNKNOWN		14. Type and location of injury: BOTH LOWER LEGS/CALF AND SHIN PUNCTURE WOUNDS	
39. Rabies tag: No <input type="checkbox"/> Yes <input type="checkbox"/> R/T#: UNKNOWN		15. Medical treatment: NONE SOUGHT AT TIME OF REPORT	
39A. Date of vaccination:		16. Reporting person's name (Last, First M.I.):	
39B. Date of vaccination expiration:		17. Race:	18. Sex:
39C. Veterinarian:		19. Age:	20. Date of birth:
40. License: No <input type="checkbox"/> Yes <input type="checkbox"/> Lic#: UNKNOWN		21. Ethnicity: H <input type="checkbox"/> NH <input type="checkbox"/>	22. Sobriety: Sob. <input type="checkbox"/> H.B.D. <input type="checkbox"/>
41. Other identifiers (Collar, tattoo, etc.):		23. Residence address: <small>(City and/or state if not Des Moines or Iowa)</small>	
42. Confinement/quarantine location: 1521 E 9		24. Residence phone number:	25. Business or cellular phone number:
43. Impounded or bite animal owner's name (Last, First M.I.): HENDERSON, DAN		26. Location of incident (address): 1525 E 9	
44. Residence address: 1521 E 9 <small>(City and/or state if not Des Moines or Iowa)</small>		27. Location type: RESIDENCE	
45. Residence phone number: 205-5218		28. Date and time incident occurred: 30JUN10 855	
46. Place of employment or school:		29. Date and time incident reported: 30JUN10 925	
47. Business or cellular phone number:		30. Crime/incident type: ANIMAL: BITE/DOG	
48. Animal owner notification: No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>		31. Classification:	
48A. Date and time of notification: 30JUN10 925		48B. Person making notification: CINDY ALLEY AR2	
48C. Means of notification: DOOR HANGER		49. Witness' name (Last, first):	
50. Residence address: <small>(City and/or state if not Des Moines or Iowa)</small>		51. Daytime or cellular phone number:	
52. Witness' name (Last, First):		53. Residence address: <small>(City and/or state if not Des Moines or Iowa)</small>	
54. Daytime or cellular phone number:		55. Investigative notifications and/or photographs taken: ARL Supervisor: No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Sergeant: No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Police Officer: No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Photographs taken by ARL or PO: No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>	
Victim animal		56. Victim animal ARL number: Impounded: No <input type="checkbox"/> Yes <input type="checkbox"/> ARL#:	
57. Animal type: Cat <input type="checkbox"/> Dog <input type="checkbox"/> Other <input type="checkbox"/>		58. Animal breed:	
59. Animal color:		60. Animal fur length: Short <input type="checkbox"/> Medium <input type="checkbox"/> Long <input type="checkbox"/> Other <input type="checkbox"/>	
61. Animal sex: Female <input type="checkbox"/> Spayed <input type="checkbox"/> Male <input type="checkbox"/> Neutered <input type="checkbox"/> Unknown <input type="checkbox"/>		62. Rabies tag: No <input type="checkbox"/> Yes <input type="checkbox"/> R/T#:	
63. Microchip: No <input type="checkbox"/> Yes <input type="checkbox"/> M/C#:		62A. Date of vaccination:	
64. License: No <input type="checkbox"/> Yes <input type="checkbox"/> Lic#:		62B. Date of vaccination expiration:	
65. Type and location of injury:		62C. Veterinarian:	
66. Medical treatment:		67. Confinement/quarantine location:	
68. Victim animal owner's name (Last, First M.I.):		69. Residence address: <small>(City and/or state if not Des Moines or Iowa)</small>	
70. Residence phone number:		71. Business or cellular phone number:	
72. Reporting official: CINDY ALLEY AR2 		73. Status: <input type="checkbox"/> Open <input type="checkbox"/> Closed <input type="checkbox"/> Excep. Closed <input type="checkbox"/> Case file <input type="checkbox"/> Suspended <input type="checkbox"/> Unfounded	
74. Copy/copies made by:		75. Referred to: <input checked="" type="checkbox"/> Animal Control <input type="checkbox"/> Detectives <input type="checkbox"/> PIO <input type="checkbox"/> Chief <input type="checkbox"/> OPS <input type="checkbox"/> Other: _____	
76. Second reporting official:		77. Supervisor approving report:	
78. Reviewed by:		LD. No.	

