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Chapter 4

Dangerous Dogs



Every North Carolina local government has probably faced the problem of a dog that is threatening or dangerous to persons or other animals. State law provides a ready framework for handling these situations;¹ it defines the term *dangerous dog* and imposes certain restrictions and obligations on the owners of such dogs. Many local governments as well have developed systems for addressing what can become a complex problem. This chapter reviews the state's framework for dealing with dangerous dogs and discusses some of the different approaches

adopted in local ordinances across the state. It also briefly discusses the authority of local governments to adopt breed-specific laws, such as ordinances banning private ownership of pit bulls and other breeds. The chapter does not address the law governing civil claims for money damages against owners whose dogs may have harmed a person or damaged property.

State Law

Definition

Before describing how the state law addresses dangerous dogs, it is important to understand how certain terms are defined and used in the law. The statutory definition of the term *dangerous dog* is rather confusing. A dangerous dog is one that

- is owned or harbored primarily or in part for the purpose of dogfighting,
- is trained for dogfighting,
- has, without provocation, killed or inflicted severe injury on a person, or
- is determined to be potentially dangerous by a person or board authorized by a local government to make such judgments.²

1. Article 1A of N.C. GEN. STAT. ch. 67 (hereinafter G.S.).

2. G.S. 67-4.1(a)(1).

The first two categories are relatively clear. If a dog is owned, harbored, or trained for dogfighting, it is automatically considered a dangerous dog under the law. In the absence of a criminal conviction for dogfighting, however, it may be difficult to prove that a dog falls within one of these categories. It also may be difficult to prove, at times, who owns, harbors, or trains a particular dog. The law defines the term *owner* as “any person or legal entity that has a possessory property right in a dog.”³ In *Lee v. Rice*, the Court of Appeals concluded that a person who simply owned property where a dangerous dog was housed could not be held civilly liable as an “owner or keeper” without more evidence that the property owner exercised some control over or management of the dog.⁴ The court would most likely apply the same analysis to the term as used throughout the dangerous dog law—requiring evidence of some level of responsibility for the dog’s care before recognizing a person as an owner.

The third category includes dogs that have killed or inflicted severe injury on a person. According to the statute, a *severe injury* is a physical injury that either (1) resulted in broken bones or disfiguring lacerations or (2) required cosmetic surgery or hospitalization. This third category also requires that the killing or injury be unprovoked. Inclusion of the word *unprovoked* is largely redundant, because most types of provoked attacks are already subject to an exception. The law specifically does not apply when the injury inflicted by the dog was sustained by someone who was “committing a willful trespass or other tort or crime [or] was tormenting, abusing, or assaulting the dog” at the time of the injury, or had done so in the past.⁵

The fourth category is perhaps the most confusing section of the state law. The first three categories described above provide that any dog that meets certain criteria is automatically considered a dangerous dog. The fourth category is different in that it requires a local government official or board to make an official determination that the dog meets the definition of “potentially dangerous dog” set out in the statute. If the dog meets the definition, it will be classified as a potentially dangerous dog, which is one type of dangerous dog. In other words, if a dog is found to be potentially dangerous, it will be treated as dangerous for the purposes of enforcing state law.

3. G.S. 67-4.1(a)(3).

4. 154 N.C. App. 471, 475–76, 572 S.E.2d 219, 222–23 (2002).

5. G.S. 67-4.1(b)(4). The drafting of the exception is awkward in that it is unclear whether the clause “at the time of the injury” modifies all of the provocative behaviors or only the trespass-related behavior. For the purposes of this summary, it seems reasonable to conclude that the clause does *not* modify the language referring to a person who “had tormented, abused, or assaulted” the dog because the language is clearly in the past tense.

Three types of behavior trigger an animal's designation as a potentially dangerous dog.

- Inflicting a bite on a *person* that results in broken bones or disfiguring lacerations or requires cosmetic surgery or hospitalization. Note that this language is almost identical to the definition of *severe injury* that is incorporated by reference in the definition of dangerous dog. Therefore, it appears that a dog that inflicts such a physical injury may automatically be considered a dangerous dog, *or* it may be declared a potentially dangerous dog.
- Killing or inflicting severe injury on a domestic animal when not on the owner's real property. The definition of severe injury discussed above applies in this context as well (i.e., broken bones, disfiguring lacerations, cosmetic surgery, or hospitalization). A key component of this type of behavior is that it occurs when the dog is not on the owner's property.
- Approaching a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.⁶ In *Caswell County v. Hanks*, the court of appeals upheld the constitutionality of this part of the definition of potentially dangerous dog. The court explained that the law was not unconstitutionally vague because it "provides sufficient notice for defendants and others to determine what conduct is proscribed."⁷

As mentioned above, a dog will be considered potentially dangerous if a person or board makes such a determination on behalf of a local government. The law neither prescribes a process for making such determinations nor identifies a particular type of person or board to be charged with this responsibility. In some jurisdictions, an individual animal control officer or supervisor may make the determination; in others, a board established for this purpose does so. If a dog is found to be potentially dangerous, the local government must notify the owner in writing of (1) the determination and (2) the reasons for the determination. While not specifically required in the statute, the notice should also explain the process for appealing the determination.

Local governments are required to designate a board to hear appeals from determinations that a dog is potentially dangerous. The law does not dictate the number of people that must serve on the appeals board or the type of person or professional that must be represented. The law does, however, exclude

6. Legislation introduced in 2007 proposed to eliminate this type of threatening behavior from the scope of the state's dangerous dog law. S 92. The bill passed the Senate and could be considered by the House in the 2008 short session.

7. *Hanks*, 120 N.C. App. 489, 493, 462 S.E.2d 841, 844 (1995).

individuals who were involved in the initial determination.⁸ All other decisions related to the size and composition of the appeals board are left to the local government.

To appeal a determination that a dog is potentially dangerous, the owner must file written objections with the appeals board “within three days.” Because this “three day” language is rather vague, it would be prudent for the local government to provide more specific guidance to the owner at the time of the determination. For example, the local government should decide whether

- the three-day period starts on the day of the determination or several days after the determination (particularly if the determination is mailed to the owner),
- the three days are calendar days or working days, and
- the written objections must be postmarked or delivered to the appeals board by the third day.

This level of specificity in the written notice should help the owner understand more clearly the appeals process.

Once the owner has filed an objection, the appeals process begins and the board must schedule a hearing within ten days. If the appeals board upholds the initial determination, the owner has ten days to file a notice of appeal and petition for review in superior court. A superior court judge will not review the evidence and information collected by the appeals board but will conduct a *de novo* review, hearing “the case on its merits from beginning to end as if no hearing had been held by the Board and without any presumption in favor of the Board’s decision.”⁹ Decisions made at the superior court level may be further appealed to the court of appeals and the supreme court.

The three critical definitions—*dangerous dog*, *potentially dangerous dog*, and *severe injury*—overlap in a way that sometimes makes it difficult to understand precisely how the law should be applied. In summary, the following types of dogs are considered dangerous dogs under the state’s statutory scheme:

- a dog owned or harbored primarily or in part for the purpose of dogfighting,

8. The statute directs the local government to designate “a separate Board to hear any appeal.” G.S. 67-4.1(c). It is clear from this language that the membership of an appeals board should be different from the designation board. As a result, it is possible to infer that independence of the appeals board is expected. Therefore, in jurisdictions that allow one individual (rather than a board) to make the initial determination that a dog is potentially dangerous, it seems appropriate to exclude that person from the appeals board.

9. *Hanks*, 120 N.C. App. at 491, 462 S.E.2d at 843.

- a dog trained for dogfighting,
- a dog that without provocation has killed or inflicted severe injury on a person,
- a dog a local government representative or board decides has inflicted severe injury on a person,
- a dog a local government representative or board decides has killed or inflicted severe injury upon a domestic animal when not on the owner's property, or
- a dog a local government representative or board decides approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

There are a few categories of dogs that will not be considered dangerous dogs even if they satisfy one of the criteria identified above.¹⁰ As discussed earlier, dogs that are provoked by certain behavior may not be classified as dangerous. Specifically, a dog will not be considered dangerous if it has injured a person who

- at the time of the injury, was committing a willful trespass or other tort,
- at the time of the injury, was tormenting, abusing, or assaulting the dog,
- had tormented, abused, or assaulted the dog in the past, or
- was committing or attempting to commit a crime.

The law will also not recognize a dog as dangerous when it is used by a law enforcement officer to carry out official duties or is used in a lawful hunt. Finally, the state law will not apply to a dog that acted when it (1) was on its owner's property or under its owner's control, (2) was working as a hunting, herding, or predator-control dog, and (3) damaged or injured a domestic animal that is of the species or type of domestic animal appropriate to the work of the dog (i.e., activities related to hunting, herding, and predator control).

Consequences for Owners of Dangerous Dogs

Under state law, an owner of a dangerous dog faces several important restrictions as well as potential civil and criminal consequences. First, the dog must not be left alone on the owner's property unless it is indoors or in a securely enclosed and locked pen or other structure. Second, the dog must not be allowed off the owner's property unless it is leashed (or otherwise restrained) and muzzled. Third, if the owner sells or gives the dog to someone else, he or she must notify the local government in writing about the change and notify the person who is taking possession of the dog, also in writing, about the dog's

10. G.S. 67-4.1(b).

dangerous behavior and, if applicable, the local government's determination that the dog is potentially dangerous. It is a Class 3 misdemeanor to fail to comply with these restrictions and notification requirements.¹¹

If a dog that has been determined to be dangerous under the law subsequently attacks someone and causes physical injuries that require medical care costing more than one hundred dollars, its owner may be charged with a Class 1 misdemeanor.

In addition to the potential criminal liability described above, an owner of a dangerous dog may be sued in civil court for money damages for harm to persons or property caused by the dog. In such cases, the owner is subject to "strict liability," which means that the person seeking damages from the owner is not required to show that the owner was negligent in some manner, such as allowing the dog to escape.¹² The court should award damages simply based on the fact that the dog is a dangerous dog under the state law and injured a person or property.

Before the state established the legal framework governing dangerous dogs, it relied in large part on authority granted to local public health directors to declare any animal "vicious and a menace to the public health." This authority is still available when an animal has made an unprovoked attack on a person and caused bodily harm.¹³ Once an animal has been declared vicious, it must be confined to its owner's property except when (1) accompanied by a responsible adult and (2) restrained on a leash. Though local health directors still have this authority, they rarely use it to address problems with dogs. It is important to note that neither the dangerous dog law nor the authority to declare an animal vicious authorizes a local government to euthanize a dangerous dog.

Local Ordinances

Many local governments have adopted dangerous dog ordinances over the years. Cities and counties may rely on two sources of statutory authority for these laws. First, they may exercise their police powers to adopt ordinances to "define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of [their] citizens and the peace and dignity" of the city or county and to "define and abate nuisances."¹⁴ Second, local govern-

11. G.S. 67-4.2.

12. G.S. 67-4.4.

13. G.S. 130A-200. The statute does not use the term *unprovoked* but rather provides that the animal must not have been "teased, molested, provoked, beaten, tortured, or otherwise harmed."

14. G.S. 153A-121 (counties); G.S. 160A-174 (cities).

ments have specific authority to “regulate, restrict, or prohibit the possession or harboring . . . of animals which are dangerous to persons or property.”¹⁵ A number of local governments have ordinances that were already in place when the state’s statutory framework was enacted in 1989, and some ordinances have been adopted or amended since that time. State law does not override the local ordinances in this field but, rather, provides that the state statutes must not be “construed to prevent a city or county from adopting or enforcing its own program for control of dangerous dogs.”¹⁶

Some cities and counties have adopted detailed ordinances that are quite different from the state statutory scheme. For example, Boiling Springs Lake requires owners of dangerous dogs to register their animals with city animal control officials, obtain a permit, and comply with several additional restrictions and limitations on the dog’s freedom.¹⁷ Some jurisdictions supplement or modify the state law by adopting different definitions, imposing additional restrictions, or outlining administrative procedures that apply to dangerous dog determinations. For example:

- Catawba County’s ordinance specifically states that “voice command” does not constitute adequate restraint when a dangerous dog is off the owner’s property.¹⁸
- Garner requires owners of dangerous dogs to notify animal control officials if the dog attacks a person or animal, causes property damage, or escapes from confinement or restraint.¹⁹
- Durham requires that “dogs declared dangerous or potentially dangerous pursuant to this article must be permanently identified by a microchip implanted under the dog’s skin within 30 days following the final determination of dangerousness.”²⁰
- Fayetteville’s ordinance outlines procedures and guidelines governing hearings conducted by the appeals board.²¹
- Guilford County’s ordinance includes the following design specifications for enclosures housing dangerous dogs:

The structure must be a minimum size of fifteen feet by six feet by six feet (15’ X 6’ X 6’) with a floor consisting of a concrete pad at least four inches thick. If more than one animal is to be kept in the enclosure,

15. G.S. 153A-131 (counties); G.S. 160A-187 (cities).

16. G.S. 67-4.5.

17. Boiling Springs Lake Code of Ordinances, §§ 3-101 to 3-107.

18. Catawba County Code of Ordinances, § 6-132(2).

19. Garner Code of Ordinances, § 3-20.

20. Durham Code of Ordinances, § 4-195.

21. Fayetteville Code of Ordinances, § 6-99.

the floor area must provide at least 45 square feet for each animal. The walls and roof of the structure must be constructed of welded chain link of a minimum thickness of 12 gauge, supported by galvanized steel poles at least 2 1/2 inches in diameter. The vertical support poles must be sunk in concrete-filled holes at least 18 inches deep and at least eight inches in diameter. The chainlink fencing must be anchored to the concrete pad with galvanized steel anchors placed at intervals of no more than 12 inches along the perimeter of the pad. The entire structure must be freestanding and not be attached or anchored to any existing fence, building, or structure. The structure must be secured by a child-resistant lock.²²

- Laurinburg requires owners of dangerous dogs to permit animal control officials to inspect the owner's premises as necessary to ensure compliance with the state law and local ordinance.²³

A few jurisdictions have adopted ordinances that simply reiterate the state's dangerous dog law. This approach is not recommended because the "elements of an offense defined by a city ordinance [may not be] identical to the elements of an offense defined by State or federal law."²⁴

Several local governments across the state have considered, but rejected, the idea of adopting ordinances restricting or prohibiting private citizens from owning specific breeds of dogs, such as pit bulls. The discussion typically begins after someone in the city or county is attacked by a particular breed of dog. A local government considering such ordinances must decide whether (1) breed-specific legislation is the best policy tool available for addressing the jurisdiction's concerns and (2) whether it has the authority to adopt an ordinance restricting that type of animal. With respect to the first issue, advocates of breed-specific legislation often cite dog-bite statistics related to particular breeds,²⁵ while those opposed argue that more comprehensive legislation addressing dangerous dogs, animal bites, and owner behavior will have a greater impact.²⁶

22. Guilford County Code of Ordinances, § 5-9.

23. Laurinburg Code of Ordinances, § 4-15(d)(4)

24. See G.S. 160-174(b) (identifying the preemption principles applicable to city ordinances); *State v. Tenore*, 280 N.C. 238, 247, 185 S.E.2d 644, 650 (1972) (extending those same preemption principles to county ordinances).

25. See, e.g., Jeffrey J. Sacks et al., "Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998," *Journal of the American Veterinary Medical Association* 217 (Sept. 15, 2000): 836-40.

26. See, e.g., Devin Burstein, "Breed Specific Legislation: Unfair Prejudice and Ineffective Policy," *Animal Law* 10 (2004): 313; Linda S. Weiss, "Breed-Specific Legislation in

With respect to second issue—the scope of the government’s authority—North Carolina local governments probably do have the authority to enact breed-specific ordinances.²⁷ As discussed above, cities and counties have broad authority to regulate dogs within their jurisdictions through both their general police powers and the authority to regulate dangerous animals. This authority would probably extend to regulation of particular breeds if the jurisdiction has a rational reason for believing that the breed is dangerous and that regulation is needed to protect the public. Before moving forward with such an ordinance, though, a local government should review breed-specific laws in other states and carefully craft the ordinance to avoid potential constitutional defects.²⁸

the United States,” Animal Legal and Historical Web Center (2001), www.animallaw.info/articles/aruslweiss2001.htm (last visited Oct. 12, 2007); Humane Society of the United States, Statement on Dangerous Dogs and Breed-Specific Legislation, www.hsus.org/pets/issues_affecting_our_pets/dangerous_dogs.html (last visited Oct. 12, 2007).

27. Jeanette Cox, “Ordinances Targeting Pit Bull Dogs Must Be Drafted Carefully,” *Local Government Law Bulletin* No. 106 (December 2004), www.sog.unc.edu/pubs/electronicversions/pdfs/lglb106.pdf (last visited Feb. 20, 2008). The author discusses constitutional challenges to breed-specific legislation in other jurisdictions, with a specific focus on challenges based on vagueness, equal protection, and due process. She recommends that North Carolina jurisdictions interested in adopting a breed-specific ordinance

- identify a rational basis for regulating the breed;
- list specific breeds regulated;
- provide a uniform standard for determining when the ordinance applies to a mixed-breed dog;
- create a procedure for dog owners to ask whether their dog falls within the ordinance;
- provide for civil, rather than criminal, sanctions; and
- provide a hearing to a dog’s owner if and when the government intends to destroy his or her dog.

The author also discusses alternatives to breed-specific legislation, such as rigorous enforcement of state and local dangerous dog laws.

28. *Id.*

Relevant Statutes

Article 1A of Chapter 67

Dangerous Dogs.

§ 67-4.1. Definitions and procedures.

(a) As used in this Article, unless the context clearly requires otherwise and except as modified in subsection (b) of this section, the term:

(1) "Dangerous dog" means

a. A dog that:

1. Without provocation has killed or inflicted severe injury on a person; or
2. Is determined by the person or Board designated by the county or municipal authority responsible for animal control to be potentially dangerous because the dog has engaged in one or more of the behaviors listed in subdivision (2) of this subsection.

b. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

(2) "Potentially dangerous dog" means a dog that the person or Board designated by the county or municipal authority responsible for animal control determines to have:

- a. Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or
- b. Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or
- c. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

(3) "Owner" means any person or legal entity that has a possessory property right in a dog.

(4) "Owner's real property" means any real property owned or leased by the owner of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

(5) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

(b) The provisions of this Article do not apply to:

- (1) A dog being used by a law enforcement officer to carry out the law enforcement officer's official duties;
- (2) A dog being used in a lawful hunt;
- (3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, 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; or
- (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.

(c) The county or municipal authority responsible for animal control shall designate a person or a Board to be responsible for determining when a dog is a "potentially dangerous dog" and shall designate a separate Board to hear any appeal. The person or Board making the determination that a dog is a "potentially dangerous dog" must notify the owner in writing, giving the reasons for the determination, before the dog may be considered potentially dangerous under this Article. The owner may appeal the determination by filing written objections with the appellate Board within three days. The appellate Board shall schedule a hearing within 10 days of the filing of the objections. Any appeal from the final decision of such appellate Board shall be taken to the superior court by filing notice of appeal and a petition for review within 10 days of the final decision of the appellate Board. Appeals from rulings of the appellate Board shall be heard in the superior court division. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate Board whose ruling is being appealed is located.

§ 67-4.2. Precautions against attacks by dangerous dogs.

(a) It is unlawful for an owner to:

- (1) Leave a dangerous dog 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 restrain the dog;
- (2) Permit a dangerous dog to go beyond the owner's real property unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled.

(b) If the owner of a dangerous dog transfers ownership or possession of the dog to another person (as defined in G.S. 12-3(6)), the owner shall provide written notice to:

- (1) The authority that made the determination under this Article, stating the name and address of the new owner or possessor of the dog; and
 - (2) The person taking ownership or possession of the dog, specifying the dog's dangerous behavior and the authority's determination.
- (c) Violation of this section is a Class 3 misdemeanor.

§ 67-4.3. Penalty for attacks by dangerous dogs.

The owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars (\$100.00) shall be guilty of a Class 1 misdemeanor.

§ 67-4.4. Strict liability.

The owner of a dangerous dog shall be strictly liable in civil damages for any injuries or property damage the dog inflicts upon a person, his property, or another animal.

§ 67-4.5. Local ordinances.

Nothing in this Article shall be construed to prevent a city or county from adopting or enforcing its own program for control of dangerous dogs.

§ 130A-200. Confinement or leashing of vicious animals.

A local health director may declare an animal 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. When an animal has been declared to be vicious and a menace to the public health, the local health director shall order the animal to be confined to its 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.