



CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

September 27, 1995

Robert W. Healy, City Manager
City Hall - 795 Massachusetts Ave.
Cambridge, MA 02139

Re: City Council Order #32, dated 9/11/95
Muzzling and owner age restrictions on certain breeds of
dogs

Dear Mr. Healy:

This is a response to your September 13, 1995 correspondence requesting a report on a City Council Order to draft a proposed amendment to the code requiring the muzzling of certain breeds of dogs and on whether restrictions can be imposed on the age of ownership of such dogs. A copy is enclosed.

M.G.L. c. 140 § 167 permits an order to issue that all dogs shall be muzzled or restrained from running at large. Non-compliance can result in fines and/or killing of the dog. Id. and § 168. As you know, Cambridge currently has a "leash law," Cambridge Municipal Code 6.04.030; there is no specific "muzzling ordinance" at the present time. However, breed specific orders have been held to violate due process of law. American Dog Owners Assn., Inc v. City of Lynn, 404 Mass. 73 (1989).

In the American Dog Owners case, the City of Lynn passed four ordinances in an attempt to regulate American Staffordshire, Staffordshire Pit Bull Terrier, Bull Terrier or any mixture of such breeds of dogs. The Massachusetts Supreme Judicial Court held the ordinances were void for vagueness and did not meet due process requirements because dog owners do not receive fair notice from the ordinance of the conduct proscribed or the dog "types" covered by the law. Id. at 79. The Court found that,

...there is no scientific means, by blood, enzyme, or otherwise, to determine if a dog is a particular breed or any mixture thereof... Id.

Further, the Court stated,

Unlike an ordinance which generally prohibits the keeping of a "vicious dog," enforcement of which involves questions of fact whether the particular dog is vicious or known to be vicious, or a strict liability restraint or dog bite law, such as G.L. c. 140 § 155, the Lynn Pit Bull ban ordinance depends for enforcement on the subjective understanding of dog officers of the appearance of an ill-defined "breed," leaves dog owners to guess at what conduct of dog "look" is prohibited, and requires "proof" of a dog's "type" which, unless the dog is registered, may be impossible to furnish. Such a law gives unleashed discretion to the dog officers charged with its enforcement, and clearly relies on their subjective speculation whether a dog's physical characteristics make it what is "commonly understood" to be a "Pit Bull." Id. at 80.

M.G.L. c. 140 § 157 and Cambridge Municipal Code 6.08.010 deal with "vicious dogs." Any dog, regardless of breed, may be found to be vicious, after a hearing with the right to appeal. A dog found to be vicious may be ordered to be confined, enclosed, muzzled or restrained. Non-compliance with an order can result in fines,

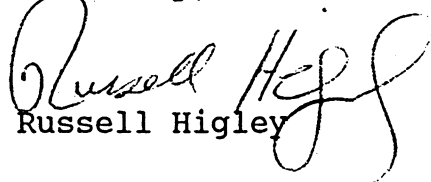
impoundment or destruction of the dog.¹

Regarding the age of dog owners, please note that M.G.L. c. 140 § 155 makes parents liable for damage to any person or property caused by a dog owned or kept by a minor. All dogs six months old or over must be licensed annually. M.G.L. c. 140 § 137. Further, the current Cambridge dog license application states that, "Licenses cannot be issued to persons under 18 years of age."

Therefore, in conclusion, an amendment to the Cambridge Municipal Code regarding breed specific restrictions is not advisable and an amendment regarding the age of ownership appears to be unnecessary.

Thank you.

Sincerely,


Russell Higley

Enc.

cc: Mark McCabe, Animal Control

¹The current Cambridge ordinance provides further protection and fines, beyond the state statute, i.e.: vicious dogs must be tattooed; owners must obtain \$100,000.00 in liability insurance and must post warning signs on the premises where a vicious dog is kept.

APPLICATION FOR DOG LICENSE(S)

**CITY OF CAMBRIDGE
ANIMAL CARE & CONTROL
57 INMAN STREET
CAMBRIDGE, MASSACHUSETTS 02139
349-4376**

Attached please find your dog license application. Applications may be made at the Animal Commission office, 57 Inman St., or you may license by mail.

- If you no longer own a dog, please notify the Animal Commission by calling 349-4376 or by returning the mailing label on the envelope so that we may update our files.

To license your dog the following items will be needed:

- ☐ A rabies vaccination certificate, with an expiration date must be shown for dogs over 6 months of age. (copies will be sufficient)
- ☐ Proof of spay or neuter must be shown, if not shown before. (copies will be sufficient)
- ☐ If you are licensing by mail also include a self addressed stamped envelope (mailing address at the top of the application)
- ☐ FEES: Spayed female dog \$3.00
Neutered male dog \$3.00
Female dog \$12.00
Male dog \$12.00

Make check or Money order payable to:
The City of Cambridge.

The law requires that all dogs six months old or over to be licensed annually. (M.G.L. Chapt. 140, Sec. 137) Licenses cannot be issued to persons under 18 years of age. The licensing period runs from April 1st to March 31st of the following year.

For Use of Animal Control Only

DATE: _____ TAG NO: _____
Rabies Exp. _____ Acct./Idn. NO. _____

Owner _____ Phone: Home _____
Address _____ Zip _____
Breed of Dog _____ Sex _____
Color _____ Age _____
Name of Dog _____

All information given above is under the pains and penalties of perjury.



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307



12.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

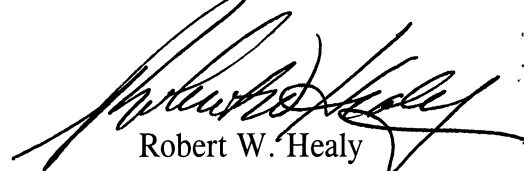
RICHARD C. ROSSI
Deputy City Manager

October 19, 1998

To The Honorable, The City Council:

In response to Council Order No. 30 of September 28, 1998, regarding drafting an ordinance requiring all pitbulls to be muzzled in public parks and ways, please find attached an opinion to a previous Council Order on this same issue submitted by City Solicitor Russell Higley.

Very truly yours,



Robert W. Healy
City Manager

RWH/mec
Attachment

Consent Agenda #12

6515

Relative to Council Order #30
of 9/28/98 regarding drafting
an order requiring all pitbulls
to be muzzled in public parks
and ways.

In City Council October 19, 1998

PLACED ON FILE