



City of Cambridge

1.

IN CITY COUNCIL

December 18, 1995

MAYOR REEVES
COUNCILLOR BORN
COUNCILLOR MYERS
COUNCILLOR TRIANTAFILLOU

ORDERED: That all items pending before the City Council and not acted upon by the end of the 1995 legislative session be placed in the files of the City Clerk without prejudice, subject to recall by any member, provided that those proposed ordinances which have been passed to a second reading, advertised and listed under "Unfinished Business" shall remain on the Calendar as "Unfinished Business", and further provided that any items pending in committee may, at the discretion of the committee, be forwarded to the next City Council.

In City Council December 18, 1995

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

D. Margaret Drury

ATTEST:-

D. Margaret Drury
City Clerk



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,

Page 3
September 27, 1995

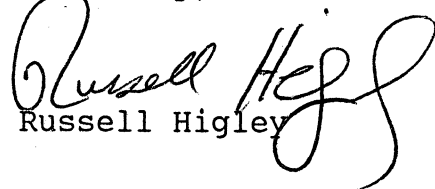
impoundment or destruction of the dog.¹

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.



EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

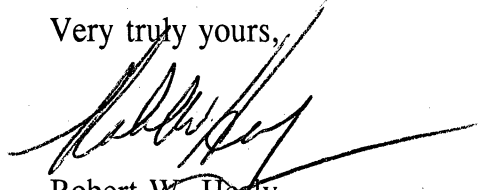
TEL. 349-4300
FAX. 349-4307

November 6, 1995

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 40, regarding muzzling and owner age restrictions on certain breeds of dogs, received from City Solicitor Russell B. Higley.

Very truly yours,



Robert W. Healy
City Manager

RWH/mec
attachment

Consent Agenda #6

Relative to Awaiting Report Item
Number Forty, regarding muzzling
and owner age restrictions on
certain breeds of dogs.

for original order
See 1995 City Manager
Requests # 363.
11/13/95

Tabled by Councillor
Toomey

12/18/95 - Placed on file
pursuant to Order #1

In City Council November 6, 1995

Charter Right
exercised by Councillor
Toomey.