

ANIMAL CONTROL IN WARTRACE, TENNESSEE

A REVIEW

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November 21, 2008

- I. **Introduction.** Animal control, especially in relation to dogs and cats, is commonly one of the most difficult problems for a city and its residents. There are state laws against allowing animals, of any kind, to roam at large, and there are city ordinances that generally prohibit animals from roaming within the city as well as ordinances specifically prohibiting owners from allowing their dogs to roam and become a nuisance or in some cases an even greater problem.

MTAS has been requested by the Town of Wartrace to review its ordinance and regulations relating to the control of dogs and make recommendations to the Board of Mayor and Aldermen to improve enforcement of the town's animal control program.

- II. **The Problem.** The writer of this review, while serving as a city manager, once had a council member who thought it was "cute" that a neighbor's dog came by every morning to pay him a visit. In the same city there was an elderly lady who could not check her own mailbox because of fear of the neighbor's dog. An elderly gentleman could not retrieve the morning newspaper without being growled down by the neighbor's dog. A telephone operator who got off work at midnight could not get out of her car and go into her house out of fear for the neighbor's pit bulls that were bred, trained to fight, and sold for a profit. It should be obvious to everyone that what may be considered "cute" by one individual may be considered far from cute for those who fear for their very lives.

Ignoring a problem with dogs can have serious consequences. A pit bull in Murfreesboro literally ripped the arm off of a Tullahoma child. A Decherd woman was brutally killed by a pack of mixed breed dogs. A grandchild of a Nashville woman, who owned a pet pit bull, was mauled and killed. In Denver, Colorado a black minister went for a walk in the alley behind his house. He was attacked by a pit bull and killed. Clearly not every city has such severe problems with dogs, but every city that does not seek to seriously control animals has the potential for serious bodily injury and/or loss of life.

When a city attempts to enact an ordinance regulating the keeping or prohibition of pit bulls, elected officials are often descended upon by pit bull owners decrying any such regulation as discriminatory against breed specific dogs. Please note that when a tragedy occurs, as noted above, such owners are almost always noticeably absent.

Wartrace is a very small town. Dog ownership is quite common, and few residents likely confine their dogs. MTAS has been advised by the town staff that residents are increasingly complaining about dogs that are allowed to roam freely in the town, thus becoming a nuisance if not a danger to small children and other residents of the town. Town leaders will need to determine the level of regulation that the town needs to enforce in consideration of the health and safety of its residents and potential liability for negligent enforcement.

- III. **Regulations.** It is not permissible in Tennessee for dog owners to allow their dogs to run at large. A very common practice for owners is to constrain or confine their dogs during the day and let them out at night “for a little freedom.” Tennessee Code Annotated 44-8-408 (b) provides as follows: “The owner of a dog commits an offense if that dog goes uncontrolled upon the premises of another without the consent of the owner of the premises or other person authorized to give consent, or goes uncontrolled by the owner upon a highway, public road, street or any other place open to the public generally.” There are exceptions in this law for dogs used for hunting, driving stock, or for police or military use. Violation of this statute includes (1) a Class “C” Misdemeanor punishable by fine only; (2) Class “B” Misdemeanor if the dog running at large causes damage to the property of another; (3) a Class “A” misdemeanor punishable by fine if the dog causes bodily injury; (4) a Class “E” Felony if the dog causes bodily injury; (5) a Class “D” Felony if the dog causes serious bodily injury to an individual; and (6) a Class “C” Felony if the dog causes death to an individual. Persons violating this statute may be prosecuted in the courts of the State of Tennessee.

The Town of Wartrace has an ordinance regulating the keeping of pit bulls. Such ordinances have been upheld by Federal courts. Denver, Colorado, where the black minister was mauled and killed by a pit bull, has one of the strongest pit bull ordinance in the nation. It has been upheld by Federal courts. In Middle Tennessee the cities of Springfield, Sparta, Morrison, Cowan, Decherd, and Estill Springs, among others, have a similar ordinance to the pit bull ordinance in Wartrace. Cities that enforce such an ordinance will not have problems with pit bulls.

Pit bulls may not be the only vicious dogs. In fact, absent training to fight, they may not have any more propensity to attack a person than some other breed of dog. If the city’s problem is with pit bulls, then it needs to deal with pit bulls. If the city desires to regulate all dogs that might be termed “vicious dogs”, then the city may need a more general type of ordinance. It might be well advised to adopt both a pit bull ordinance as well as a vicious dog ordinance that applies to all other breeds.

The Town of Wartrace has adopted a resolution (Resolution 00-009) that was apparently designed to improve enforcement of its ordinances relating to dogs. The resolution contains a rather complicated complaint procedure as follows:

1. Upon receipt of a written complaint about the behavior of a dog
2. The appropriate town official will issue an official verbal warning to city residents and written notice to persons residing outside the town limits.
3. A second complaint is allowed.
4. After this, the appropriate town official will issue a citation for violating the town's ordinance
5. The offending owner will be fined in city court.
6. For subsequent complaints, where an owner allows his dog(s) to continue uncontrolled, the appropriate town official will continue to issue citations.

The resolution provides that appropriate town officials may take any and all other appropriate action available for the resolution of the circumstance at issue, including seizure, impoundment and destruction of the dog if warranted by the circumstances involved. Violation of this ordinance subjects the violator to a \$50 fine per occurrence.

Title III, Chapter 2, of the town's Municipal Code regulates the keeping of dogs. This code provision is similar to what MTAS sees in most Tennessee cities.

The Town of Wartrace has adequate ordinances regulating dogs. The biggest problem appears to be with enforcement, the very problem that Resolution 00-009 attempted to solve. MTAS cautions the town about complete reliance upon this resolution. It is good that the resolution sets forth the procedures for the staff to follow in dealing with dog regulation. Parts of the resolution that would seem to authorize destroying a dog should be deleted. Stray dogs may be euthanized by a veterinarian. A vicious dog that cannot be restrained may be destroyed by a police officer. It would likely be a problem if a vicious dog is seized from an owner and destroyed. MTAS would not recommend destroying an animal that is taken from an owner without a court order. City courts probably do not have authority to grant such orders.

Wartrace has very limited staff, and yet it has the same ordinances regulating dogs as do larger cities that are adequately staffed. The resolution referenced above contains very complicated procedures that may consume much staff time. Handling one complaint is quite time consuming. Handling two or more for the same dog simply adds too much staff time for city personnel. The town will never have an adequate enforcement program as long as the Town Recorder serves, in essence, as an animal control officer. Complaint procedures should be simplified, and all complaints should be handled by the town police officer or a part time animal control officer other than office staff.

IV. **Recommendations.**

1. **Conduct an education or information program for town residents.** Such a session, or sessions, would explain the nature of the problem with dogs allowed to run free with respect to town residents, punishment for violators, and potential liability if a person is the recipient of bodily injury or death resulting from their dog. Also include information about registration and tags—where to obtain the tags, cost, etc.

2. **Assign the responsibility for enforcement of the town's ordinance relating to dogs to the police officer or a part time animal control officer.** Assigning this responsibility to "the appropriate staff" does not fix responsibility and may likely contribute to a lack of enforcement.
3. **Rescind Resolution 00-009 and its elaborate system of complaint handling and citations.** Most cities do not give two or three warnings for law violators. This makes animal control two or three times as big a problem for staff that has other municipal duties.
4. **Direct the police to charge violators of serious violations to State courts.**
5. **It would be better not to have any ordinances on animal control than to have such ordinances and not enforce them.**