

History of City Ordinance Provisions relating to Vicious Dogs

1908 City Code provision

In the City Code of 1908, Article 31 read in pertinent part:

It shall not be lawful for any person to keep any dangerous or vicious dog within the limits of this city at any time **unless same is kept at all times securely chained, . . .**

The gist of the ordinance as it existed in 1908 was that a vicious or dangerous dog (terms not defined in the ordinance) must be kept securely chained. At the time, non-vicious dogs were apparently allowed to run at large if they were registered and tagged.

1918 Ordinance

An ordinance passed on April 4, 1918 provided:

It shall be unlawful for any owner or person in control of any dangerous or vicious dog to keep or permit the **same in or about any public house, public place, street or alley** in the City of Austin.

The essential provisions of the ordinance of 1918 remained in effect until 2002. The 1918 ordinance required that a dangerous or vicious dog be kept away from any public place.

The 1918 ordinance survived for more than eight decades and several revisions and amendments to the city's ordinance relating to animals. On August 15, 1935, a new animal control ordinance was passed which kept the 1918 provision verbatim. On July 1, 1943, a new animal control ordinance was passed which kept the 1918 provision verbatim. The City Codes issued in 1954 and 1967 kept the 1918 provision verbatim.

Leash law

When the 1918 language relating to vicious dogs was enacted, there was no "leash law" as we know it today. Until 1955, dogs in the City of Austin, except for unspayed female dogs in heat, were allowed to run at large so long as they had a registration tag attached to their collar. However, it seems that a vicious dog could not be allowed to run at large as other dogs could, and a vicious dog had to be kept away from any "public house, public place, street or alley" in the city.

In 1955, the city enacted a new ordinance providing that a dog owner "shall keep his dog under restraint at all times and shall not permit such dog to run at large off the premises or property of the owner." By 1967, "At large" had been defined as "off the premises of the owner and not under the control of the owner or a member of his immediate family either by leash, cord, chain or otherwise."

From 1918 to 1955, the 1918 rule for vicious dogs seems to have meant that a vicious dog must always be kept on the owner's private property, since there was apparently no assumption that the dog would be on a leash. At a time when dogs regularly ran at large, any dog not kept restrained on the owner's property would end up sooner or later "in or about any public house, public place, street or alley in the City."

But with the enactment of the leash law in 1955, the effect on the 1918 rule for vicious dogs is unclear. With the leash law in effect, could a vicious dog be walked around on a leash in or about any public house, public place, street or alley? It is not clear that it could. After all, the rule provided that "an owner or person in control" of a vicious dog could not "permit the same in or about any public house, public place, street or alley." Having a dog on a leash is generally considered to be "in control" of the dog, yet it appears that this was not sufficient under the 1918 rule to create an exception to the rule that such a dog may not be permitted in a public house, public place, street or alley.

Thus it appears that, from 1918 to 2002, a vicious dog may be kept on the owner's property in a manner that kept the dog on the property and protected the public from the dog. But it is not clear that such a dog could be walked on a leash on a public street or other public place.

1976 Ordinance – Vicious Dog defined for the first time

The city ordinances had referred to vicious dogs since 1908 and 1918, but the first definition of a "vicious dog" appears to have come into effect in 1976. On December 2, 1976, ordinance number 761202-A was passed which modified the animal control provisions of the City Code. A definition of vicious dog was added to the Code, as follows:

Section 5-20. Definitions.

...

Vicious dog. Any dog which has bitten or scratched a person in the city on three (3) separate occasions which have been reported in affidavit form to the city health officer; or any dog which has bitten or scratched any person within the city to the extent that the attending physician has presented a signed affidavit to the city health officer that the person's life may have been in danger from such dog.

Ordinance number 761202-A also contained the following provision:

Sec. 5-26 Revocation of registrations.

(a) The city health officer or his designate may revoke any dog registration after a hearing for any one of the following reasons:

...

(3) Upon a determination that the dog is a vicious dog, as defined by this article.

What may be noted about section 5-26 in ordinance 761202-A is that a determination that a dog is vicious under the new definition did not result in an automatic revocation of the registration of the dog. It was left to the discretion of the health officer as to whether the dog's registration was revoked. Other sections of the 1976 ordinance provided that, without registration, a dog may not be kept in the city. Thus, from 1976 forward, the revocation of a vicious dog's registration effectively expelled the dog from the city.

1986 Ordinance – Vicious Dog definition expanded

On July 3, 1986, the definition of a vicious dog was further amended in ordinance number 860703-Q, to a version that is similar to the provisions of the current Section 3-4-7 (B). The 1986 ordinance provided, in pertinent part:

Section 3-3-1 of the Austin City Code of 1981, the definition of "vicious dog", be, and the same is hereby amended to read as follows:

Vicious Dog: A determination that a dog is a vicious dog may be found upon the filing of appropriate affidavits with the City Health Authority by affected or interested persons and the attending physician or veterinarian, where appropriate, attesting to the occurrence of the following acts:

- (a) That on at least three (3) separate occasions, a dog has bitten or scratched a person in the City; or
- (b) That on at least one (1) occasion, a dog has bitten or scratched a person to an extent that the attending physician has presented a signed affidavit to the City Health Authority stating that the person's life may have been endangered by such dog; or
- (c) That on at least one (1) occasion, a dog, while running at large, has killed another dog, cat, or other domestic pet, fowl or livestock or has seriously injured another such animal to an extent that the attending veterinarian has presented a signed affidavit to the City Health Authority stating that the injured animal's life was seriously endangered or taken by such dog, or that such dog caused a significant permanent impairment of the injured animal's basic bodily functions or mobility; provided, however, that when the incident occurred, the killed or injured animal was not in violation of any provision of Chapters 3-1, 3-2, or 3-3 of Code of the City of Austin concerning the confinement or physical control of dogs, fowl, livestock or other animals in the City.

Also in the 1986 ordinance is the following provision:

Sec. 3-3-5. Duty of owners of dogs.

(a) Private Property. Reasonable measures shall be taken by the owners, handlers, or keepers of any dog kept on private property to protect the public from accidental contact with any dog which, by its very nature or by training, has propensities to be a vicious dog, as defined in this Code.

(b) Public Places. It shall be unlawful for any owner or person in control of any vicious dog to keep or permit the same in and about any public house, public place, street or alley in the City.

(c) Revocation of Dog Registration. The City Health Authority shall have the authority to revoke the dog registration of an owner of a dog which is determined to be vicious after a hearing, as authorized by this Code.

Section 3-3-5 of the 1986 ordinance retained the 1918 rule (the owner cannot allow a vicious dog in a public place) and the 1976 rule (the registration of a vicious dog may be revoked). It added a new provision requiring that, when a dog with propensities to be vicious is on the owner's property, the owner must take measures to protect the public from contact with the dog.

2002 Ordinance – a “nonsubstantive” revision that changes the vicious dog provision

It has been the practice of the city, from time to time, to do a nonsubstantive recodification of the City Code. A nonsubstantive recodification is intended to update and improve the writing and organization of the City Code without making any substantive changes to the law.

But in an ordinance passed on October 3, 2002, ordinance number 021003-13 (“the 2002 ordinance”), an apparent problem crept into the provisions relating to vicious dogs. In the recommendation for council action relating to the 2002 ordinance, the following is stated:

The proposed ordinance amends that part of the City Code referred to as the Animal Control Ordinance to make numerous **nonsubstantive editorial changes**¹ to comply with the legislative format of the City as well as definition changes that clarify the ordinance. (*emphasis added*)

A nonsubstantive change is intended to improve the readability and clarity of the ordinance *without changing the meaning or effect* of the ordinance. However, it appears that errors in the drafting of the 2002 ordinance did result in substantive changes to the meaning and effect of the ordinance.

¹ The recommendation for council action does note one substantive change in the ordinance that is not relevant to the issue of vicious dogs -- a change relating to the conditions under which a dog may be chained.

The apparent errors are in Section 3-3-5 of the 2002 ordinance, much of which is now codified as Section 3-4-7 of the City Code.

The 2002 ordinance moved what had been a definition of “vicious dog” into section 3-3-5. The 2002 ordinance essentially put together and changed provisions that had been contained in the 1986 ordinance. In doing so, the 2002 ordinance seems to have mistakenly changed the meaning of some of those provisions. Here is the legislative drafting version of changes to section 3-3-5 contained in the 2002 ordinance. Words that are struck through represent existing language that is being deleted, words that are underlined represent new language that is being added or substituted for old language:

§ 3-3-5 VICIOUS DOGS.

(A) [~~Private Property.~~] An owner or handler shall take reasonable [~~Reasonable~~] measures [~~shall be taken by the owners, handlers or keepers of any dog kept on private property~~] to protect the public from accidental contact with a [~~any~~] dog that [~~which~~], by [~~its very~~] nature or by training, is dangerous to people or other animals [~~has propensities to be a vicious dog, as determined in this chapter~~].

(B) [~~Public places.~~] An owner or handler may not [~~It shall be unlawful for any owner or person in control of any vicious dog to~~] keep or permit a dog to be [~~the same in and about any public house, public place, street or alley~~] in the city if the dog has: [-]

(1) on at least three separate occasion bitten or scratched a person in the city;

(2) on at least one occasion bitten or scratched a person to an extent that the attending physician has presented an affidavit to the Health Authority stating that the person’s life may have been endangered by the dog; or

(3) on at least one occasion:

(a) killed another dog, cat, or other domestic pet, fowl, or livestock; or

(b) seriously injured another animal to an extent that an attending veterinarian has presented an affidavit to the Health Authority stating that the injured animal’s life was seriously endangered or taken by the dog, or that the dog caused a significant permanent impairment of the injured animal’s basic bodily functions or mobility; provided, however, that when the incident occurred the injured animal was not in violation of a provisions of this title relating to the confinement or physical control of animal is the City.

(C) [~~Revocation of dog registration.~~] The Health Authority may [~~shall have the authority to~~] revoke the dog registration issued under this chapter to [~~of~~] an owner of a dog that [~~which~~] is determined to be vicious. An owner whose dog's registration is revoked may request a hearing before the Health Authority. [~~after a hearing, as authorized by this Code of Ordinances~~].

There are several possible problems with this amendment to Section 3-3-5 in the 2002 ordinance.

- The amendment moves the definition of vicious dog out of the definition section and so leaves the concept of vicious dog undefined. It might have been better to leave the definition in the definition section.
- The amended section (C) changes the meaning from “the Health Authority may revoke the registration of a dog that is determined vicious after a hearing” to “an owner whose dog’s registration has been revoked may request a hearing” – essentially reversing the order of things as they were in the original ordinance. (However, because all of the city’s registration requirements were repealed in 2009, this apparent error in the 2002 ordinance is of uncertain importance now)
- Perhaps the most important error is in the change to subsection (B). As a nonsubstantive change, it should have carried forward the rule in existence since 1918: The owner of a dog that is dangerous or vicious may not, at any time, keep or permit such a dog to be in or about any *public* house, *public* place, street or alley in the City of Austin. In other words, a vicious dog must be kept away from any public place. The 1918 rule did *not* automatically state that a vicious dog may not be kept *in the city*. It said that a vicious dog must be securely restrained and kept away from the public at all times.

In effect, the 2002 "nonsubstantive recodification" instead changed the longstanding rule that a vicious dog may not be “in or about any public house, public place, street or alley in the City” to “a vicious dog may not be in the city, period.”

From 2002 to 2009, an apparent inconsistency resulted from the changes made in the 2002 ordinance. Though the 2002 ordinance changed Section 3-3-5 (B) to say that a vicious dog may not be kept in the city, in Section 3-3-5 (C) the 2002 ordinance also retained the provision that had been in the city’s ordinances since at least 1976 – i.e., that the registration of a vicious dog *may* be revoked. Also, in Section 3-3-5 (A), the ordinance retained the provision that an owner shall take reasonable measures to protect the public from accidental contact with a dog that is dangerous to people or other animals. Thus, while Section 3-3-5 (B) of the 2002 ordinance said that a vicious dog may not be kept in the city, Section 3-3-5 (A) and (C) of the same ordinance essentially said that a dangerous dog may be kept in the city if the public is protected from the dog, and if the dog’s registration is not revoked.

It appears the inconsistent provisions in the City Code remained between 2002 and 2009. That is, there was a provision saying a vicious dog may not be kept in the city, and there were provisions saying that, if the vicious dog's registration is not revoked, the dog may remain in the city if it is restrained at all times and kept in a manner to protect the public from contact with the dog.

2009 Ordinance – all registration provisions repealed

Ordinance 20090723-042, passed on July 23, 2009, repealed all of the city's regulations relating to registration of dogs, including the provision that had said (since at least 1976), that a vicious dog's registration may be revoked.

Remaining inconsistencies

There remains an inconsistency in Section 3-4-7. Section 3-4-7 (A) provides that an owner shall take reasonable measures to protect the public from accidental contact with a dog that is dangerous to people or other animals. Although the current language uses the word "dangerous," it is clear that the original language is from the 1986 ordinance, which used the phrase "propensities to be a vicious dog." This raises the question: If a vicious dog may not be kept in the city, what is the point of requiring an owner in the city to take steps to protect the public from the vicious dog?

It seems evident that errors were made in the 2002 recodification of the vicious dog provision. From 1918 to 1976, a vicious dog could be kept in the city, but must be kept away from public places. From 1976 to 2002, a vicious dog could have its registration revoked, and so be expelled from the city, but this was not an automatic outcome. The dog could be kept in the city so long as it was kept away from public places and measures were taken to protect the public when the dog was on private property.