

HOUSE No. 5092

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 8, 2008.

The committee on Municipalities and Regional Government to whom was recommitted the petition (accompanied by bill, House, No. 1948) of Bradford Hill relative to potentially dangerous and vicious dogs reports recommending that the accompanying bill (House, No. 5092) ought to pass.

For the committee,

VINCENT A. PEDONE.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT RELATIVE TO ANIMALS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 136A of Chapter 140 of the General
2 Laws, as appearing in the 2006 Official Edition, is hereby
3 amended by inserting, after the definition “Adoption”, the
4 following 4 definitions:—

5 “Assistance and service dogs”, any canine specifically trained
6 to help people who have disabilities or any canine trained to help
7 a person with a disability in life. The term shall also include
8 canines trained for search and rescue and medical response dogs.

9 “Breed”, any dog displaying the majority of physical traits of a
10 specific group or any dog exhibiting those distinguishing charac-
11 teristics which substantially conform to the standards established
12 by the American Kennel Club or United Kennel Club when
13 defining breed of dog.

14 “Competition dog”, a pedigreed dog not used for breeding that
15 is a breed recognized by and registered with an approved dog
16 breed registry, such as the American Kennel Club, United Kennel
17 Club, the American Dog Breeders Association, or any other dog
18 breed registry approved by the city or town; and shows or com-
19 petes in a confirmation, obedience, agility, carting, herding, pro-
20 tection, rally, sporting, working or other event sponsored by an
21 approved dog breed registry.

22 “Currently vaccinated”, vaccinated against rabies by a licensed
23 veterinarian, with rabies vaccine licensed by the U.S. Department
24 of Agriculture; and:—

25 (A) not more than 12 months have elapsed since the animal’s
26 most recent vaccination with the one-year rabies vaccine or was
27 the animals initial vaccination; or

28 (B) not more than 36 months have elapsed since the animal’s
29 most recent vaccination date, if the most recent vaccination with a

30 three-year rabies vaccine and the dog has received at least 2 vacci-
31 nations.

1 SECTION 2. Said Section 136A of said Chapter 140, as so
2 appearing, is hereby further amended by inserting, after the defini-
3 tion “Commissioner”, the following 3 definitions:—

4 “Dangerous dog”, any dog regardless of breed, breeding, type
5 or appearance, which when unprovoked, has attacked, bitten,
6 inflicted serious injury upon, or killed a human being or other
7 domestic animal.

8 “Farm dog”, any canine that works on a farm to assist humans
9 or other animals.

10 “Health Certificate” a letter by a certified veterinarian stating
11 that the dog named in the application for breeding has been immu-
12 nized or vaccinated for the distemper virus, hepatitis, parvo virus,
13 para influenza virus, leptospira bacteria, and rabies.

1 SECTION 3. Said Section 136A of said Chapter 140, as so
2 appearing, is hereby further amended by inserting, after the defini-
3 tion “Live stock or fowls”, the following 3 definitions:—

4 “Nuisance”, any animal that runs at large without being con-
5 trolled by a leash, barks for sustained periods of time so as to dis-
6 turb the peace and quiet of a neighborhood or area, or digs,
7 scratches or defecates on any property other than its owner’s.

8 “Owner”, any person who owns, possesses, keeps, exercises
9 control over, maintains, harbors, transports or sells an animal.

10 “Permittee”, a person using an intact animal permit under
11 Section 174F of Chapter 140.

1 SECTION 4. Said Section 136A of said Chapter 140, as so
2 appearing, is hereby further amended by inserting, after the defini-
3 tion “Shelter”, the following definition:—

4 “Tether”, to fasten or restrain a dog or cause a dog to be fas-
5 tened, chained, tied, or restrained to a stationary object.

1 SECTION 5. Said Chapter 140 is hereby further amended by
2 striking out Section 157, and inserting in place thereof the
3 following sections:—

4 Section 157. Any person may make a complaint to the officer in
5 charge of the animals or to the person who is responsible for han-

6 dling dog complaints in a city or town that a dog, owned or har-
7 bored within its jurisdiction, is a nuisance for any of the following
8 reasons, including but not limited to:—

9 (a) allowing a dog to run at large without being controlled by a
10 leash;

11 (b) allowing a dog to bark for sustained periods of time of more
12 than one-half hour, or during the evening or night hours so as to
13 disturb the peace and quiet of a neighborhood or area; or

14 (c) allowing a dog to dig, scratch or defecate on any property
15 belonging to someone other than the owner.

16 If an animal is deemed a nuisance after an investigation by the
17 person charged with handling animal complaints, that person can
18 make a recommendation for or can give a warning, order a fine,
19 confinement, neutering, banishment or the destruction of the dog
20 as may be deemed necessary. Within 10 days after the issuance of
21 said order, the owner or keeper of such dog may bring a petition
22 in the district court within the judicial district in which the dog is
23 owned and kept, addressed to the justice of the court, that the
24 order may be reviewed by the court, or magistrate thereof, and
25 after such notice to the officer or officers involved as the magis-
26 trate deems necessary, the magistrate shall review with such
27 action, hear the witnesses and affirm such order unless it shall
28 appear that it was made without reasonable cause or in bad faith,
29 in which case such order shall be reversed. Any party shall have
30 the right to request a de novo hearing on the petition before a jus-
31 tice of the court. The decision of the court shall be final and con-
32 clusive upon the parties. Any person owning or harboring such a
33 dog who fails to comply with any order of the selectmen or officer
34 in charge of the animal complaints, as the case may be, shall be
35 punished by a fine of not more than \$25 for the first offence and
36 not more than \$100 for the second or subsequent offense, or by
37 imprisonment in a jail or house of correction for not more than 30
38 days for the first offense and not more than 60 days for second or
39 subsequent offense or both such fine and imprisonment.

40 Magistrates shall exercise their authority hereunder subject to
41 the limitations of Section 62C of Chapter 221.

42 Section 157A. Dangerous Dogs. A dog, regardless of breed,
43 breeding, or type of appearance, shall be declared dangerous after
44 an unprovoked attack in which it has attacked, bitten, inflicted

45 serious injury upon, or killed a human being or other domestic
46 animal. After a city or town has deemed a dog dangerous, the
47 owner or keeper must be notified that the dog may be an imme-
48 diate threat to the public.

49 The officer in charge of animals or the person charged with the
50 responsibility of handling dog complaints shall have the authority
51 of determining that a dog is dangerous. Once a dog is determined
52 to be an immediate threat, the officer in charge of the animal or
53 the person charged with handling dog complaints shall have the
54 authority to remove the dog from the owner or keeper, or give a
55 warning, order a fine, confinement, neutering, banishment or the
56 destruction of the dog. The owner of the dog can appeal any deci-
57 sion of warning, fine, confinement, banishment, neutering or
58 destruction.

59 The officer in charge of animals or the person charged with the
60 responsibility of handling dog complaints has the authority, if they
61 believe that a dog is dangerous, an immediate threat or that the
62 animal is in danger to seize or impound the animal.

63 If an owner does not follow the order, a fine of \$50 per day,
64 made payable to the municipality, not to exceed \$1,000, may be
65 assessed by the city or town for each day the owner is in violation
66 of the order. The animal control officer in each city or town shall
67 make available such notices of judgments upon request. Records
68 of such notices shall be maintained for a period of not less than 5
69 years.

70 Following the order of destruction of a dog by a municipality,
71 the officer in charge of animals shall immediately take custody of
72 the dog from the owner or keeper. If the owner or keeper appeals
73 the order of destruction, the organization or entity charged with
74 the responsibility of handling dog complaints and impoundment
75 shall continue to supervise the dog's care until the owner or
76 keeper exhausts all appeals or discontinues the appeals process.

77 If a court affirms the order of destruction, the owner or keeper
78 shall reimburse the city or town for all costs incurred for the
79 housing and care of the dog during its impoundment and
80 throughout the appeals process. Any unpaid costs shall be recov-
81 ered by the municipality in which the aforementioned owner or
82 keeper resides by one of the following methods:—

83 (a) a lien is placed on any property owned by the aforemen-
84 tioned owner or keeper;

85 (b) an additional itemized cost may appear on the owner's or
86 keeper's vehicle excise tax bill; or

87 (c) an itemized bill for reimbursement is mailed to the owner or
88 keeper.

89 Funds recovered by the municipality shall be transferred to the
90 organization or entity charged with the responsibility of handling
91 dog complaints and impoundment to cover the costs associated
92 with the care of the animal. If the organization or entity falls
93 under the management or direction of the municipality, any costs
94 recovered will be distributed at the discretion of the municipality.

95 If the court overturns the order of destruction, the city or town
96 shall pay all costs associated with the care of the dog for housing
97 and care during its impoundment and throughout the appeals
98 process.

99 No dog shall be declared dangerous if any injury or damage is
100 sustained by a person who, at the time of the injury or damage,
101 was committing a willful trespass or other tort upon the premises
102 occupied by the owner or keeper of the dog, or was teasing, tor-
103 menting, abusing, or assaulting the dog, or was committing or
104 attempting to commit a crime. No dog may be declared dangerous
105 if the dog was protecting or defending a person within the imme-
106 diate vicinity of the dog from an unjustified attack or assault. A
107 dog cannot be declared dangerous if an injury or damage was sus-
108 tained by a domestic animal, which at the time of the injury or
109 damage, was teasing, tormenting, abusing, or assaulting the dog.

110 No dog may be declared dangerous if the injury or damage to a
111 domestic animal was sustained while the dog was working as a
112 hunting dog, herding dog, or predator control dog on the property
113 of, or under the control of, its owner or keeper, and the damage or
114 injury was to a species or type of domestic animal appropriate to
115 the work of the dog.

1 SECTION 6. Chapter 140 is hereby amended by striking out
2 Section 174B and inserting in place thereof the following:—

3 Section 174B. Whoever is the owner or keeper of a dog must
4 restrain said dog by leash in public places at all times except for
5 assistance and service dogs, dogs engaged in legal hunting or

6 sport, farm dogs, or designated dog recreational areas. Whoever
7 violates the provisions in this section shall be punished pursuant
8 to Section 157 of Chapter 140.

1 SECTION 7. Said chapter 140 is hereby further amended by
2 inserting, after section 174D, the following sections:—

3 Section 174E. No person shall own or harbor, within the Com-
4 monwealth, any dog over the age of 12 months which has not
5 been spayed or neutered. A letter from a licensed veterinarian
6 must be given after the procedure as proof that the dog has been
7 spayed or neutered. Exempt from this section are owners and
8 keepers with a valid intact dog permit, competition dogs, assis-
9 tance and service dogs, or a letter from a licensed veterinarian cer-
10 tifying that the animal should be temporarily or permanently
11 deferred due to health or age. The city or town shall keep a copy
12 of the letter from the licensed veterinarian stating that the dog has
13 been neutered or spayed.

14 Section 174F. (a) the owner or keeper commits an offense if he
15 breeds a dog without a valid intact animal permit. A separate
16 permit is required for each dog that the person keeps unsterilized
17 for breeding purposes.

18 (b) An intact permit may only be issued for a dog;

19 (1) dog must have its health certificate and current vaccinations

20 (2) is currently in compliance with the license requirement

21 (3) whose owner or keeper:—

22 (A) is a member of a purebred dog club, approved by the city or
23 town, who will maintain and enforce a code of ethics for breeding
24 that includes restrictions on breeding of dog with genetic defects
25 and life threatening health problems that are common to a breed.

26 (B) At the owner's or keeper's expense, satisfactorily com-
27 pleted a course on responsible pet ownership offered by the city or
28 town.

29 (c) To obtain an intact animal permit, an owner or keeper must
30 submit an application to the city or town on a form provided by
31 the city or town. The owner or keeper must pay an annual intact
32 animal permit fee of up to \$500. The intact permit form must
33 include:—

34 1) the name, address and telephone number of the applicant;

35 2) the location where the dog is harbored;

- 36 3) a description of the dog;
- 37 4) proof that the animal is qualified for an intact animal permit
- 38 in subsection (b) of this section; and
- 39 5) any other information determined necessary by city or town.
- 40 (d) An intact dog permit expires 1 year after the date of issuance
- 41 and may be renewed by applying in accordance with subsection
- 42 (c) of this section. If the city or town does not receive an applica-
- 43 tion for a permit renewal within 45 days after the expiration of the
- 44 permit, a \$25 dollar fee will be added to the permit fee.
- 45 (e) An intact permit is not transferable.
- 46 (f) A permittee commits an offense if he allows a permitted
- 47 female dog to have more than 1 litter during the permit term.
- 48 (g) It is a defense to a prosecution under subsection (f) that the
- 49 permittee:—
- 50 (1) received written authorization from the city or town under
- 51 subsection (h) of this section to allow the female dog to have lit-
- 52 ters during the permit time; and
- 53 (2) did not allow the female dog to have more than the number
- 54 of litters authorized by the city or town for the permit time
- 55 (h) Upon the request of a permittee, the director may, in
- 56 writing, authorize the permittee to allow a permitted female dog to
- 57 have 2 litters during the permit term if the permittee established,
- 58 according to regulations adopted by the director, that:—
- 59 (1) having 2 litters during the permit term is required to:—
- 60 (a) protect the health of the female dog;
- 61 (b) avert a substantial economic loss to the permittee; or
- 62 (2) previously in the permit term, the female dog's litter was
- 63 euthanized or did not survive for the reasons.
- 64 (i) A permittee commits an offense if the permittee:—
- 65 (1) allows the offspring of a female dog for which he holds an
- 66 intact permit to be sold, adopted or otherwise transferred, regard-
- 67 less of compensation, before the offspring have reached at least 8
- 68 weeks of age and have been vaccinated and have a health certifi-
- 69 cate;
- 70 (2) fails to prominently display the intact animal permit number
- 71 on any advertisement by the permittee for the sale, adoption or
- 72 other transfer of any dog regardless of compensation; or
- 73 (3) sells, adopts, or otherwise transfers any dog, regardless of
- 74 compensation and fails to:—

75 (a) include a statement signed by the permittee attesting to
76 knowledge of the animal's health certificate information and
77 health and immunization history;

78 (b) prominently display the intact permit number on any sales
79 receipt or transfer document;

80 (c) provide the intact animal permit number to any person who
81 purchases, adopts, or receives any dog permittee;

82 (d) provide written information regarding the health care cer-
83 tificate, vaccination history, registration, and sterilization require-
84 ments of this chapter applicable to the dog;

85 (e) provide to the city or town, on a form provided by the city
86 or town for that purpose, the name, address and telephone number
87 of the dog's new owner within 5 business days after the date of
88 sale, adoption or other transfer of the dog.

89 (j) The city or town shall deny or revoke an intact animal
90 permit if the city or town determines that the applicant or per-
91 mittee:—

92 (1) failed to comply with any provision of this chapter, or

93 (2) intentionally made a false statement as to a material matter
94 on the intact animal permit application.

95 (k) If the city or town denies or revokes an intact animal
96 permit, the director shall notify the applicant or permittee in
97 writing of the action and a statement of right to an appeal. The
98 applicant or permittee may appeal the decisions of the city or
99 town to the permit and license appeal board in accordance with
100 promulgated rules, ordinances or bylaws set forth by the city or
101 town. The filing of an appeal stays an action of the city or town in
102 revoking the permit until the permit and license appeal board
103 makes a final decision.

104 Section 174G. Every person shall have their dog licensed with
105 the city or town in which they reside, 6 months after the date of
106 purchase and said license shall be renewed yearly on or before the
107 original licensing day. The keeper or owner must have a letter
108 from a licensed veterinarian that states that the dog has been
109 spayed or neutered in order to receive a dog license or an intact
110 animal permit.

111 Section 174H. No person shall tether, fasten, chain, tie or
112 restrain a dog, or cause a dog to be tethered, fastened, chained,

113 tied, or restrained, to a doghouse, tree, fence, or any other sta-
114 tionary object for more than 3 hours within a 24 hour period.

115 A person may:—

116 (a) attach a dog to a running line, pulley, or trolley system, but
117 not by means of a choke collar or a pinch collar; or

118 (b) tether, fasten, chain, tie, or otherwise restrain a dog pursuant
119 to the requirements of camping and recreational areas.

120 Any person who violates the provisions of Sections 174E,
121 174F, 174G and 174H shall be punished by a fine of no less than
122 \$250 not more than \$1,000 per dog.

123 Section 174I. (a) Nothing in this chapter shall prohibit a city or
124 town or district from banning or further regulating a particular
125 breed of dog.

126 (b) Any city or town may further regulate or ban a particular
127 breed of dog with a majority vote of the governing body.

128 (c) Upon the vote of a city or town to regulate or ban a partic-
129 ular breed of dog, said city or town shall establish a board con-
130 sisting of 3 members to identify and determine the breed of dogs
131 in said city or town, subject to the governing regulation. The 3
132 board members shall consist of: 2 members of the public that are
133 appointed by the city manager or mayor, one of which must be
134 considered an expert in field of animals; and the animal control
135 officer or a designee.

136 (d) If a particular breed of dog is further regulated or banned,
137 the regulation or ban shall not take effect until 180 days after the
138 vote by the city or town.