

From: Frank Widmayer

Sent: Thursday, June 11, 2015 3:20 PM

To: Steve Ledoux

Subject: Chloe Dog Hearing Request

Steve,

As you know, a dog in Maynard was killed by an Acton dog named Chloe on 4/22/15. The dog owner lives on Duggan Road and at least one of the neighbors is concerned about the children in the area being in contact with this dog that may or may not be dangerous to children. Chloe is a female pit bull rescue dog supposedly. Tack Palmer asked the owner to muzzle the dog when it is outside the house and even if it was done for some time that is no longer the case. I have spoken to Tack and am recommending that the Board of Selectmen hold a dangerous dog hearing. I have recommended to the neighbor that he attend to discuss his views as well as invite neighbors who live nearby with children.

A report completed by the Maynard Police Department at the time of the incident is attached to this message.

Regards,
Frank
Frank J.



Maynard Police Department

Chief Mark W. Dubois

FAX

To: Chief Widmayer From: MPD
 Fax: 978-929-7340 Phone: 978-897-1011
 Phone: _____ Date: 06/11/15
 Re: Dog Attack Pages: 4 incl. cover page

Urgent

For Review

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Comments:

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197 Main St.
Maynard, MA 01754

Phone: 978-897-1040
Fax: 978-897-9315

Maynard Police Department
Incident Report

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06/11/2015

Incident #: 15-281-OF
Call #: 15-5982

#	VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
1	GODAC, SANDRA 52 MAIN ST Apt. #1 WILMINGTON MA 01887-1700 DOB: [REDACTED] ETHNICITY: Not of Hispanic Origin RESIDENT STATUS: Non Resident VICTIM CONNECTED TO OFFENSE NUMBER(S): 1 RELATION TO: HENRY HAROLD CONTACT INFORMATION: CallBack Number (Primary) [REDACTED]	F	W	42	[REDACTED]	[REDACTED]

Acquaintance

Maynard Police Department

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NARRATIVE FOR PATROL BRIAN P PETERSEN

Ref: 15-281-OF

Entered: 04/22/2015 @ 1502 Entry ID: BPETE
Modified: 04/22/2015 @ 1521 Modified ID: BPETE
Approved: 04/30/2015 @ 1723 Approval ID: BCUSH

On April 22nd 2015 while on routine patrol at approximately 2:10 PM I was dispatched to the area of 16 Nason St for a report of a dog attack. On my arrival I was met by Sandra Gudac, the owner of the deceased dog. Sandra informed me she is the owner of Video Signals and today she had her dog Maya a yorkshire terrier age 10 at work. Sandra told me the other dog came into the store and attacked her dog killing it.

Sandra informed me that the other dog she is familiar with and is names Chloe. Sandra told me she believes Chloe is a female pitbull who was a rescue. Sandra informed me that Chloe's owner is Harold Henry out of Acton MA. Sandra told me William Henry, Harold's son brought the dog into the store today. Sandra told me the dog has been in the store before, but not at the same time as her dog.

Sandra told me Chloe came into the store and William saw her dog and went to take Chloe out when he dropped the leash. Sandra told me Chloe went over to Maya and she thought Chloe grabbed Maya's ear. Sandra told me that Chloe dropped Maya and Sandra saw there was blood all over the floor and Maya was not moving. I asked Sandra if Maya was on a leash at the time of the attack and she told me no. Sandra said William took control of the dog and took the dog outside and must have left. While I was speaking to Sandra Harold Henry called video signals to speak to her. Sandra provided me with Harold's information which I later gave to the dog Officer. The Dog Officer responded to the scene to speak to the involved parties and photo's were taken of the deceased dog.

Officer Brian Petersen
Maynard Police Dept.

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

TOWN of ACTON

In accordance with the provisions of Sec. 137 of Chapter 140 of the General Laws, License is hereby issued to the person named below to keep the dog herein described for one year 2015. Said dog is numbered and registered, for which FIFTEEN dollars have been paid.



2015

Town Clerk

This license is for a Spayed Female

This license is granted subject to the conditions that the dog herein described shall be controlled and restrained from killing, chasing or harrasing livestock or fowls.

Date 2-10-15 ^{EB} ~~June 15, 2015~~ Tag No. 1118

Owner BARBARA NICHOLS

Address 24 DUGGAN RD

Name of Dog CHLOE

Telephone No. 790-3457

Breed STAFFORDSHIRE

Color BLUE / WHITE

Town Clerk EVA K. SZKARADEK

Rabies exp. 11/11/2016 Age 9 YEARS

SECTION E22 - E25. TOWN OF ACTON BYLAWS

E22. No person shall own or keep a dog, six months or older, within the Town unless a license for such dog is obtained from the Town Clerk. The license period is the timeframe between January 1st and the following December 31st, inclusive. The fee for such a license will be determined by the Board of Selectmen in a public meeting.

E23. Any person who is the owner or keeper of a dog in the Town of Acton and who fails to license said dog within the time required by Chapter 140, Section 137 and 137A of the General Laws shall be subject to a penalty of twenty-five dollars (\$25.00) to be collected as provided by law.

E24. No person owning or keeping any animal in the Town of Acton shall permit the animal to go at large to the injury or nuisance of others. In addition, a dog should not go outside the boundaries of the property of its owner or keeper unless under the complete and effective control of said owner or keeper by means of a leash or otherwise.

E25. Owners or keepers of animals in violation of the foregoing section shall be subject to fines which shall be determined by the Board of Selectmen."



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PART I ADMINISTRATION OF THE GOVERNMENT

TITLE XX PUBLIC SAFETY AND GOOD ORDER

CHAPTER 140 LICENSES

Section 136A Definitions applicable to Secs. 137 to 174E

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Section 136A. The following words as used in sections 137 to 174E, inclusive, shall have the following meanings unless the context requires otherwise:

"Adoption", the delivery of a cat or dog to a person 18 years of age or older for the purpose of taking care of the dog or cat as a pet.

"Animal control officer", an appointed officer authorized to enforce sections 136A to 174E, inclusive.

"Attack", aggressive physical contact initiated by an animal.

"Commercial boarding or training kennel", an establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment, at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal; provided, however, that "commercial boarding or training kennel" shall not include an animal shelter or animal control facility, a pet shop licensed under section 39A of chapter 129, a grooming facility operated solely for the purpose of grooming and not for overnight boarding or an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others.

"Commercial breeder kennel", an establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.

"Commissioner", the commissioner of agricultural resources.

"Dangerous dog", a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

"Department", the department of agricultural resources.

"Domestic animal", an animal designated as domestic by regulations promulgated by the department of fish and game.

"Domestic charitable corporation kennel", a facility operated, owned or maintained by a domestic charitable corporation registered with the department or an animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals, including a veterinary hospital or clinic operated by a licensed veterinarian, which operates consistent with such purposes while providing veterinary treatment and care.

"Euthanize", to take the life of an animal by the administration of barbiturates in a manner deemed acceptable by the American Veterinary Medical Association Guidelines on Euthanasia.

"Hearing authority", the selectmen of a town, mayor of a city, the officer in charge of the animal commission, the chief or commissioner of a police department, the chief or commissioner's designee or the person charged with the responsibility of handling dog complaints in a town or city.

"Keeper", a person, business, corporation, entity or society, other than the owner, having possession of a dog.

"Kennel", a pack or collection of dogs on a single premise, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel or veterinary kennel.

"License period", the period of time for which a municipal licensing authority prescribes the validity of a dog license, including the date of issuance of the license through the date on which the license expires, inclusive.

"Licensing authority", the police commissioner of the city of Boston and the clerk of any other municipality.

"Livestock or fowl", a fowl or other animal kept or propagated by the owner for food or as a means of livelihood, deer, elk, cottontail rabbit, northern hare, pheasant, quail, partridge and other birds and quadrupeds determined by the department of fisheries, wildlife and environmental law enforcement to be wild and kept by, or under a permit from, the department in proper houses or suitable enclosed yards; provided, however, that "livestock or fowl" shall not include a dog, cat or other pet.

"Nuisance dog", a dog that: (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (iii) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

"Personal kennel", a pack or collection of more than 4 dogs, 3 months old or older, owned or kept under single ownership, for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the

breed or for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops; provided further, that a personal kennel shall not sell, trade, barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the department, may be sold, traded, bartered or distributed if the transfer is not for profit.

"Research institution", an institution operated by the United States, the commonwealth or a political subdivision thereof, a school or college of medicine, public health, dentistry, pharmacy, veterinary medicine or agriculture, a medical diagnostic laboratory, a biomedical corporation, or biological laboratory or a hospital or other educational or scientific establishment within the commonwealth above the rank of secondary school which, in connection with any of the activities thereof, investigates or provides instruction relative to the structure or function of living organisms or to the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

"Shelter", a public animal control facility or other facility which is operated by an organization or individual for the purpose of protecting animals from cruelty, neglect or abuse.

"Veterinary kennel", a veterinary hospital or clinic that boards dogs for reasons in addition to medical treatment or care; provided, however, that "veterinary kennel" shall not include a hospital or clinic used solely to house dogs that have undergone veterinary treatment or observation or will do so only for the period of time necessary to accomplish that veterinary care.

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PART I ADMINISTRATION OF THE GOVERNMENT

TITLE XX PUBLIC SAFETY AND GOOD ORDER

CHAPTER 140 LICENSES

Section 157 Nuisance or dangerous dogs; orders for remedial action; appeal; violation of order

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Section 157. (a) Any person may file a complaint in writing to the hearing authority that a dog owned or kept in the city or town is a nuisance dog or a dangerous dog; provided, however, that no dog shall be deemed dangerous: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to any of the following circumstances:

- (1) the dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault;
- (2) the person who was attacked or threatened by the dog was committing a crime upon the person or property of the owner or keeper of the dog;
- (3) the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog; or
- (4) at the time of the attack or threat, the person or animal that was attacked or threatened by the dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure including, but not limited to, a gated, fenced-in area if the gate was closed, whether locked or unlocked; provided, however, that if a person is under the age of 7, it shall be a rebuttable presumption that such person was not committing a crime, provoking the dog or trespassing.

The hearing authority shall investigate or cause the investigation of the complaint, including an examination under oath of the complainant at a public hearing in the municipality to determine whether the dog is a nuisance dog or a dangerous dog. Based on credible evidence and testimony presented at the public hearing, the hearing authority shall: (i) if the dog is complained of as a nuisance dog, either dismiss the complaint or deem the dog a nuisance

dog; or (II) If the dog is complained of as a dangerous dog: (A) dismiss the complaint; (B) deem the dog a nuisance dog; or (C) deem the dog a dangerous dog.

(b) If the hearing authority deems a dog a nuisance dog, the hearing authority may further order that the owner or keeper of the dog take remedial action to ameliorate the cause of the nuisance behavior.

(c) If the hearing authority deems a dog a dangerous dog, the hearing authority shall order 1 or more of the following:

(i) that the dog be humanely restrained; provided, however, that no order shall provide that a dog deemed dangerous be chained, tethered or otherwise tied to an inanimate object including, but not limited to, a tree, post or building;

(ii) that the dog be confined to the premises of the keeper of the dog; provided, however, that "confined" shall mean securely confined indoors or confined outdoors in a securely enclosed and locked pen or dog run area upon the premises of the owner or keeper; provided further, that such pen or dog run shall have a secure roof and, if such enclosure has no floor secured to the sides thereof, the sides shall be embedded into the ground for not less than 2 feet; and provided further, that within the confines of such pen or dog run, a dog house or proper shelter from the elements shall be provided to protect the dog;

(iii) that when removed from the premises of the owner or the premises of the person keeping the dog, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 3 feet in length;

(iv) that the owner or keeper of the dog provide proof of insurance in an amount not less than \$100,000 insuring the owner or keeper against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the dog or proof that reasonable efforts were made to obtain such insurance if a policy has not been issued; provided, however, that if a policy of insurance has been issued, the owner or keeper shall produce such policy upon request of the hearing authority or a justice of the district court; and provided further, that if a policy has not been issued the owner or keeper shall produce proof of efforts to obtain such insurance;

(v) that the owner or keeper of the dog provide to the licensing authority or animal control officer or other entity identified in the order, information by which a dog may be identified, throughout its lifetime including, but not limited to, photographs, videos, veterinary examination, tattooing or microchip implantations or a combination of any such methods of identification;

(vi) that unless an owner or keeper of the dog provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of a medical condition, the owner or keeper of the dog shall cause the dog to be altered so that the dog shall not be reproductively intact; or

(vii) that the dog be humanely euthanized.

No order shall be issued directing that a dog deemed dangerous shall be removed from the town or city in which the owner of the dog resides. No city or town shall regulate dogs in a manner that is specific to breed.

(d) Within 10 days after an order issued under subsections (a) to (c), inclusive, the owner or keeper of a dog may bring a petition in the district court within the judicial district in which the order relative to the dog was issued or where the dog is owned or kept, addressed to the justice of the court, praying that the order be reviewed by the court or a magistrate of the court. After notice to all parties, the magistrate shall, under section 62C of chapter 221, review the order of the hearing authority, hear the witnesses and affirm the order unless it shall appear that it was made without proper cause or in bad faith, in which case the order shall be reversed. A party shall have the right to request a de novo hearing on the complaint before a justice of the court.

(e)(1) Pending an appeal by an owner or keeper under subsection (d), a hearing authority may file a petition in the district court to request an order of impoundment at a facility the municipality uses to shelter animals for a dog complained of as being a dangerous dog. A municipality shall not incur liability for failure to request impoundment of a dog under this subsection.

(2) A justice of a district court, upon probable cause to believe that a dog is a dangerous dog or that a dog is being kept in violation of this section or in violation of an order issued under this section by a hearing authority or a court, may issue an order: (i) of restraint; (ii) of confinement of the dog as considered necessary for the safety of other animals and the public; provided, however, that if an order of confinement is issued, the person to whom the order is issued shall confine the dog in accordance with clause (ii) of subsection (c); or (iii) of impoundment in a humane place of detention that the municipality uses to shelter animals; or (iv) any other action as the court deems necessary to protect other animals and the public from the dog.

(f) A justice of the district court shall hear, de novo, an appeal filed under subsection (d). Based upon credible evidence and testimony presented at trial, the court shall, whether the dog was initially complained of as a nuisance dog or as a dangerous dog: (i) dismiss the complaint; (ii) deem the dog a nuisance dog; or (iii) deem the dog a dangerous dog. The decision of the court shall be final and conclusive upon the parties.

(g) If a court affirms an order of euthanasia, the owner or keeper of the dog shall reimburse the city or town for all reasonable costs incurred for the housing and care of such dog during its impoundment and throughout the appeals process, if any. Unpaid costs shall be recovered by the municipality in which the owner or keeper of the dog resides on behalf of the hearing authority by any of the following methods: (i) a lien on any property owned by the owner or keeper of the dog; (ii) an additional, earmarked charge to appear on the vehicle excise of the owner or keeper of the dog; or (iii) a direct bill sent to the owner or keeper of the dog.

All funds recovered by a municipality under this subsection shall be transferred to the organization or entity charged with the responsibility of handling dog complaints and impoundment. If the organization or entity falls under the management or direction of the municipality, costs recovered shall be distributed at the discretion of the municipality.

If the court overturns an order of euthanasia, the city or town shall pay all reasonable costs incurred for the housing and care of the dog during any period of impoundment.

(h) If an owner or keeper of a dog is found in violation of an order issued under this section, the dog shall be subject to seizure and impoundment by a law enforcement or animal control

officer. If the keeper of the dog is in violation, all reasonable effort shall be made by the seizing authority to notify the owner of the dog of such seizure. Upon receipt of such notice, the owner may file a petition with the hearing authority, within 7 days, for the return of the dog to the owner. The owner or keeper shall be ordered to immediately surrender to the licensing authority the license and tags in the person's possession, if any, and the owner or keeper shall be prohibited from licensing a dog within the commonwealth for 5 years. A hearing authority that determines that a dog is dangerous or a nuisance or that a dog owner or keeper has violated an order issued under this section shall report such violations to the issuing licensing authority within 30 days.

(l) Orders issued by a hearing authority shall be valid throughout the commonwealth unless overturned under subsection (d) or (f).

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The Leader in Public Sector Law

NUISANCE AND DANGEROUS DOGS G.L. c. 140, § 157

Important Definitions:

"Attack" - an aggressive physical contact initiated by an animal.

"Dangerous dog" -- a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

"Nuisance dog" -- a "dog that: (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (iii) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under the circumstances.

Sample Motions for Hearing Authority:

Nuisance Complaint:

Not a Nuisance Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to [insert listing of facts], that [the hearing authority] find the dog complained of is not a nuisance dog and that the complaint be dismissed; or

Is a Nuisance Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to [insert listing of facts], that [the hearing authority] find the dog complained of is a nuisance dog by reason of [choose one or more of the three reasons listed above in the definition of "Nuisance dog"]

Dangerousness Complaint:

Not a Dangerous Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to [insert listing of facts], that [the hearing authority] find that the dog complained of is not a dangerous or nuisance dog and that the complaint be dismissed; or

Is a Dangerous or Nuisance Dog:

Nuisance Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to [insert listing of facts], that [the hearing authority] find that the dog complained of is a nuisance dog by reason of [choose one or more of the three reasons listed above in the definition of "Nuisance dog"]; or

Dangerous Dog: I move, based on the following facts adduced at this public hearing, including, but not limited to [insert listing of facts], that [the hearing authority] find that the dog complained of is a dangerous dog by reason of [choose one or both of the reasons listed above in the definition of "Dangerous dog"].

Remember that a determination that a dog is dangerous cannot be: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was

reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to any of the following circumstances:

- the dog was protecting itself, its offspring, another domestic animal or a person from attack;
- the person attacked or threatened was committing a crime upon the person or property of the owner or keeper of the dog;
- the person attacked or threatened was teasing or otherwise provoking the dog; or
- at the time of the attack or threat, the person or animal attacked or threatened had breached an enclosure or structure in which the dog was kept apart from the public.

Further, be aware that if the person attacked or threatened is under the age of 7, a rebuttable presumption exists that such person was not committing a crime, provoking the dog or trespassing.

Remedies:

Nuisance Complaint: If the hearing authority deems a dog a nuisance dog, the hearing authority may, in its discretion, order the owner or keeper of the dog to take action to ameliorate the nuisance behavior.

Dangerousness Complaint: If the hearing authority deems a dog a dangerous dog, it shall order one or more of the following remedies be imposed:

(i) that the dog be humanely restrained, but not chained, tethered or otherwise tied to an inanimate object including a tree, post or building;

(ii) that the dog be confined to the premises of its owner or keeper, either indoors or outdoors properly sheltered from the elements in a securely enclosed and locked pen or dog run area with a secure roof and, if the enclosure has no floor, with sides not less than 2 feet embedded into the ground;

(iii) that when removed from the premises of the owner or keeper, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 3 feet in length;

(iv) that the owner or keeper provide documented proof of no less than \$100,000 insurance for claims resulting from intentional or unintentional acts of the dog, or of reasonable efforts to obtain such insurance if a policy has not been issued;

(v) that the owner or keeper provide the licensing authority, animal control officer or other entity identified in the order, information by which a dog may be identified, including, for example, photographs, videos, veterinary examination, tattooing or microchip implantations or a combination of information;

(vi) that the dog be altered so it is unable to reproduce, unless its owner or keeper provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of a medical condition; or

(vii) that the dog be humanely euthanized.

No order shall be issued directing that a dog deemed dangerous be removed from the town or city in which the owner of the dog resides.

Be reminded that the sample votes and proposed remedies set forth herein may serve as the basis for actual votes or remedial orders, but any actual votes or remedial orders must be prepared on a case-by-case basis in light of the specific facts at issue and in conformance with applicable statutory language.

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