

1. Agenda



Select Board Meeting Agenda

Date: August 9, 2022

Time: 6:00 PM

Location: Albert Harris Center, 37 Nashua Road, Pepperell, MA 01463

Pledge of Allegiance

Instructions for residents to participate remotely can be found on the home page of the Town website
<https://town.pepperell.ma.us/remote>

Chair's announcement that the meeting is being recorded for re-broadcast at Pepperell Community Media.

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/295034117>

You can also dial in using your phone.

United States: +1 (872) 240-3412

Access Code: 295-034-117

1. Agenda Packet

Documents related to agenda items below have been scanned for electronic review at the following link.

[SELECT BOARD MEETING PACKET](#)

2. Discussion / Action Items

2.1. Select Board Public Hearing - Determination Of Dog Dangerousness

3. Adjournment

The next scheduled Select Board meeting will be August 22, 2020. The deadline for agenda topics is August 12, 2022.

The Town of Pepperell strives to assure that no individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of the Town of Pepperell. Towards that end, persons with special needs are asked to contact the Select Board's Office in advance of any meeting to assure that prior arrangements are made to assure full participation in the meeting.

2. Discussion and Action Items

2.1 Select Board Public Hearing - Determination of Dog Dangerousness

Town Administrator Summary

Summary Report

Late afternoon on June 24th, a dog named Blu, owned by Tim Hubbard, of Wheeler Street, came onto Bantry Bay Farm, also on Wheeler Street, and approached the horse and dog of Laura Fitzpatrick. Laura was about to enter a paddock to ride the horse. Laura had been warned by Bantry Bay Farm owner, Candy Verhulst, that an unfriendly dog had been on the property previously and if a rider encounters an unfamiliar dog, they should dismount. Laura did this and began walking her horse toward an indoor paddock. About the same time, Tim Hubbard came along trying to retrieve his dog, which would not respond to his commands. At this point, the dog began aggressively barking and nipping at Laura's horse, Fia, and chased her around the farm. Laura was attempting to protect her horse and stop the dog. With the assistance of another neighbor, Roland Nutter, she ultimately was able to restrain Blu. Tim Hubbard took Blu and left the farm. Fia had scratches on her legs and open wounds on her face from the dog bites.

Police and EMS responded, the Inspector of Animals and Animal Control Officer also followed up with this incident.

The Animal Control Officer requested a determination of dog dangerousness hearing be held.

Procedure for Dog Dangerousness Hearing

PROCEDURE FOR CONDUCTING DOG DANGEROUSNESS HEARINGS

A written complaint must be filed with Select Board, which is the Hearing Authority for Pepperell. The complaint should describe and name of the dog and fully identify the owner. The complaint should further specify why and how the dog is considered to be dangerous.

Upon receipt of a request for a hearing, the Select Board shall schedule the meeting and notify all parties involved. This should include the dog owner, the complainant, alleged victims, and witnesses, among others deemed necessary by the Hearing Authority.

Hearings will be held in an open session. The procedure for conducting a hearing is as follows:

1. Read complaint - fully identify and describe dog, the complaint, and that the hearing is being conducted in accordance with GL 140A, section 157. Present and identify any documents to be included in the proceedings.
2. Swear in all parties who may be speaking on the complaint that all information provided is true.
3. Hear reports from the Animal Control Officer, the Inspector of Animals, Police Officers, and other town officials with knowledge of the complaint.
4. Hear testimony from complainants
5. Take testimony from owner and/or others speaking on his behalf.
6. Hear testimony from witnesses, if any.
7. At the conclusion of the hearing the Board may render its decision or take the matter under advisement, announcing the intended date of decision.
8. Unless requested by the Hearing Authority, the dog should not attend the hearing.

GL 140, Section 157

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

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.

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

From <<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXX/Chapter140/Section157>>

Pepperell Code, Chapter 81

Chapter 81: DOGS AND OTHER ANIMALS

§ 81-5. Chasing of livestock. No person shall allow a dog owned by him to leave his property and chase or harass livestock. First offenders will receive a warning issued by the Dog Officer. Second offenders will be directed to restrain the dog.

§ 81-6. Injuring or killing other domestic animals. No person shall allow a dog owned by him to leave his property and kill or maim any other dog, cat or other domestic animal. First offenders will be directed to restrain the dog.

§ 81-7. Keeping of dangerous dogs. No person shall allow a dog owned by him which, by its appearance, actions or reputation, causes people to fear for their own safety, to leave his property unrestrained. This applies to persons who permit their dogs to chase bicyclists, joggers and other pedestrians on public rights-of-way. First offenders will receive a warning from the Dog Officer. Second offenders will be directed to restrain the dog.

§ 81-7.1. Authority to temporarily restrain or muzzle. [Added 5-19-1986 ATM, Art. 45] The Dog Officer is authorized and empowered to temporarily muzzle, restrain or order the owner or keeper of a dog to muzzle or restrain a dog pending a hearing before the Board of Selectmen when the Dog Officer finds that a dog has bitten or threatened any person or domesticated or farm animal. The muzzling, restraining or the order to muzzle or restrain shall be in effect for forty-five (45) days or until the Board of Selectmen has issued a decision from a hearing held in accordance to this section of this chapter. The owner or keeper of any dog that has been ordered to be restrained or muzzled under the provisions of this section may request the Dog Officer, in writing, to vacate such order. If such order is not vacated, the owner or keeper of such dog may bring a petition in District Court praying that the order or restraint may be reviewed by the Court as provided in MGL C. 140, § 157, as amended.

§ 81-9. Complaint authority; enforcement. All complaints will be directed to the Dog Officer. All cases involving potential restraint of the dog must be directed to the Dog Officer in writing. Cases involving potential restraint will be investigated by and presented to the Board of Selectmen by the Dog Officer, with his recommendations. If such restraint is ordered, it shall be enforced as directed by Chapter 140 of the General Laws of the Commonwealth of Massachusetts.

§ 81-12. Nuisances. [Added 5-2-1994 ATM, Art. 13] A. No owner or keeper of any dog shall permit such dog, whether licensed or unlicensed, to become a public nuisance within the town at any time.

Definitions. **DOG** - All animals of the canine species, both male and female. **DOG OFFICER** - Animal Control Officer. **OWNER** - Any person or persons, firm, association or corporation owning, keeping or harboring a dog as herein defined. **PUBLIC NUISANCE** - Any dog shall be deemed a "public nuisance" when attacking persons or domestic animals when such dog is on property other than that of the dog owner; when destroying property; when on a public school grounds and not under restraint; when it persistently chases moving vehicles; when it persistently and continuously barks or howls; when it is permitted to run at large and unrestrained on property other than its owners.

7. Adjournment

I move to adjourn.