

ORDINANCE No. 4-34

To amend Chapter 4, Animals and Fowl, Article III, Vicious and Dangerous Dogs, as follows: Amend Sections 4-31, Definitions, [replace with new Section 4-31, Control of dangerous dogs; penalties]; 4-32, Control of dangerous dogs; penalties, [replace with Section 4-32, Obligations of officer and owner following dangerous dog finding]; and 4-33, Vicious dogs; penalties [replace with Section 4-33, Notice of dangerous dog finding; penalty]; and to add Sections 4-34, Violation of law by owner of dangerous dog; penalty; 4-35, Subsequent attack or bite by dangerous dog; penalty; and 4-36, Vicious dogs, penalties, are added.

PUBLIC HEARING: April 26, 2022

WHEREAS, staff has reviewed the code amendments and recommends approval as stated in the executive summary dated April 26, 2022; and

WHEREAS, the Spotsylvania Board of Supervisors held a public hearing, duly advertised in a local newspaper for a period of two weeks, on April 13, 2022 and April 20, 2022, and interested citizens were offered an opportunity to be heard; and

WHEREAS, the general welfare is served by approval of the code amendments.

NOW, THEREFORE, THE BOARD OF SUPERVISORS FOR THE COUNTY OF SPOTSYLVANIA HEREBY ORDAINS:

§ 1. That Chapter 4, Animals and Fowls, Article III, Vicious and Dangerous Dogs, Secs. 4-31, 4-32 and 4-33 be and are hereby **amended and re-ordained** as follows:

Sec, 4-31. Control of dangerous dogs; penalties.

A. As used in this section, “dog” includes a domestic canine or hybrid canine as defined in Virginia Code §3.2-6581.

B. Any law enforcement officer or animal control officer who (i) has reason to believe that an animal is a dangerous dog and (ii) the animal resides in, or act is committed in the County may apply to a magistrate for the issuance of a summons requiring the owner, if known, to appear before the general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue.

C. No law-enforcement officer or animal control officer shall apply for a summons pursuant to subsection B if, upon investigation, the officer finds (i) in the case of an injury to a companion animal that is a dog or cat, that no serious injury has occurred as a result of the attack or bite, that both animals are owned by the same person, or that the incident originated on the property of the attacking or biting dog’s owner or (ii) in the case of an injury to a person, that the injury caused by the dog upon the person consists solely of a single nip or bite resulting only in a

scratch, abrasion, or other minor injury. In determining whether serious injury to a companion animal that is a dog or cat has occurred, the officer may consult with a licensed veterinarian.

D. A law-enforcement officer or animal control officer who applies for a summons pursuant to subsection B shall provide the owner with written notice of such application. For 30 days following such provision of written notice, the owner shall not dispose of the animal other than by surrender to the animal control officer or by euthanasia by a licensed veterinarian. Following such provision of written notice, an owner who elects to euthanize a dog that is the subject of a dangerous dog investigation shall provide documentation of such euthanasia to the animal control officer.

E. If a law-enforcement officer successfully makes an application for the issuance of a summons pursuant to subsection B, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous.

F. Following the issuance of a summons following an application pursuant to subsection B, an animal control officer may confine the animal until the evidence is heard and a verdict rendered. If the animal control officer determines that the owner can confine the animal in a manner that protects the public safety, he may permit the owner to confine the animal until the evidence is heard and a verdict rendered. Upon being served with a summons for a dangerous dog, the owner shall not dispose of the animal, other than by euthanasia, until the case has been adjudicated. The court, through its contempt powers, may compel the owner of the animal to produce the animal and to provide documentation that it has been, or will be within three business days, implanted with electronic identification registered to the owner. The owner shall provide the registration information to the animal control officer.

G. Nothing in this section shall prohibit an animal control officer or law-enforcement officer from securing a summons for a hearing to determine whether a dog that is surrendered but not euthanized is a dangerous dog.

H. Unless good cause is determined by the court, the evidentiary hearing pursuant to the dangerous dog summons shall be held not more than 30 days from the issuance of the summons. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia. The County shall be required to prove its case beyond a reasonable doubt. The court shall determine that the animal is a dangerous dog if the evidence shows that it (i) killed a companion animal that is a dog or cat or inflicted serious injury on a companion animal that is a dog or cat, including a serious impairment of health or bodily function that requires significant medical attention, a serious disfigurement, any injury that has a reasonable potential to cause death, or any injury other than a sprain or strain or (ii) directly caused serious injury to a person, including laceration, broken bone, or substantial puncture of skin by teeth. Unless good cause is determined by the court, the appeal of a dangerous dog finding shall be heard within 30 days.

I. If after hearing the evidence the court finds that the animal is a dangerous dog, the court:

1. Shall order the animal's owner to comply with the provisions of this section and §§ 3.2-6540.01, 3.2-6542, and 3.2-6542.1 of the Code of Virginia;

2. May order the owner of the animal to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. Such order shall not preclude the injured person from pursuing civil remedies, including damages that accrue after the original finding that the animal is a dangerous dog; and

3. May order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time as the animal is disposed of or returned to the owner.

J. If after hearing the evidence the court decides to defer further proceedings without entering an adjudication that the animal is a dangerous dog, it may do so, notwithstanding any other provision of this section. A court that defers further proceedings shall place specific conditions upon the owner of the dog, including the requirement that the owner provide documentation that the dog has been, or will be within three business days, implanted with electronic identification registered to the owner. The registration information shall be provided to the animal control officer. If the owner violates any of the conditions, the court may enter an adjudication that the animal is a dangerous dog and proceed as otherwise provided in this section. Upon fulfillment of the conditions, the court shall dismiss the proceedings against the animal and the owner without an adjudication that the animal is a dangerous dog.

K. No animal shall be found by the court to be a dangerous dog:

1. Solely because it is a particular breed;

2. If the threat, injury, or damage was sustained by a person who was (i) committing at the time a crime upon the premises occupied by the animal's owner; (ii) committing at the time a willful trespass upon the premises occupied by the animal's owner; or (iii) provoking, tormenting, or physically abusing the animal or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times;

3. If the animal is a police dog that was engaged in the performance of its duties as such at the time of the act complained of;

4. If at the time of the acts complained of the animal was responding to pain or injury or was protecting itself, its kennel, its offspring, a person, or its owner's property;

5. As a result of killing or inflicting serious injury on a dog or cat while engaged with its owner as part of lawful hunting or participating in an organized, lawful dog handling event; or

6. If the court determines based on the totality of the evidence before it, or for other good cause, that the dog is not dangerous or a threat to the community.

L. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section and §§ 3.2-6540.01, 3.2-6540.02, 3.2-6540.03, 3.2-6540.04, 3.2-6542, and 3.2-6542.1 of the Code of Virginia.

(Ord. No. 4-2, 6-1-93; Ord. No. 4-3, 7-12-94; Ord. No. 4-21, 8-10-04; Ord. No. 4-24, 8-8-06; Ord. No. 4-29, 11-14-13; Ord. No. 4-31, § 1, 10-10-17, Ord. No. 4-34, 4-26-22)

State law reference(s)—Similar provisions, Code of Virginia, § 3.2-6540.

Editor’s note(s)—Ord. No. 4-34, adopted April 26, 2022, amended Sec. 4-31 from “Definitions” to “Control of dangerous dogs; penalties”. The historical notation has been preserved for reference purposes.

Sec. 4-32. Obligations of officer and owner following dangerous dog finding.

A. After an animal is found to be a dangerous dog pursuant to §4-31, the County animal control division shall provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal’s collar and ensure that the animal wears the collar and tag at all times.

B. Within 30 days of the finding that an animal is a dangerous dog pursuant to §4-31, the owner shall:

1. Provide documentation that the animal has been neutered or spayed;
2. Provide documentation that the animal has been implanted with electronic identification registered to the owner. The registration information shall be provided to the animal control officer;
3. Present satisfactory evidence to the animal control officer of liability insurance coverage, to the value of at least \$100,000, that covers animal bites. The owner may obtain and maintain a bond in surety to the value of at least \$100,000 in lieu of liability insurance;
4. Pay to the County a fee of \$150 and under the direction of the animal control officer complete a dangerous dog registration certificate issued by the Department of the State Veterinarian pursuant to Virginia Code § 3.2-6542. No dangerous dog registration

certificate required to be obtained under this section shall be issued to any person younger than 18 years of age; and

5. Post the residence where the animal is housed with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property. Such signs shall remain posted at all points of entry to the home and yard as long as the animal remains on the property.

C. Any dangerous dog not confined inside a locked enclosure constructed pursuant to subsection D shall be (i) confined inside the owner's residence or (ii) if outdoors, controlled by a physical leash employed by the responsible adult owner and securely muzzled in a manner that does not cause injury to the animal or interfere with the animal's vision or respiration but prevents it from biting a person or another animal.

D. Any owner of a dangerous dog who keeps the dog outdoors and not within the immediate physical presence of its owner shall, within 30 days of the finding that an animal is a dangerous dog, cause to be constructed a secure, locked enclosure of sufficient height and design to prevent escape by the animal or entry by or direct physical contact with any person or other animal. While so confined within the structure, the animal shall be provided for according to §4-19.

E. The owner of a dog found to be dangerous shall cause the County animal control officer to be promptly notified of (i) any change in the manner of locating the owner or the dog at any time; (ii) any transfer of ownership of the dog to a new owner, including the name and address of the new owner; (iii) any instance in which the animal is loose or unconfined; (iv) any complaint or incident of attack or bite by the dog upon any person or cat or dog; (v) any claim made or lawsuit brought as a result of any attack; and (vi) the escape, loss, or death of the dog.

F. Unless for good cause shown, the owner of a dangerous dog shall notify the animal control officer at least 10 days prior to moving or relocating the animal and the officer shall update the dangerous dog registry accordingly.

G. Any dangerous dog not reclaimed by the owner from the animal control officer within 10 days of notice to do so by such animal control officer shall be considered abandoned and may be disposed of according to the provisions of Virginia Code § 3.2-6546.

H. Any contract or agreement for the use of real property, including a recorded restrictive covenant, condominium instrument of a condominium created pursuant to the Virginia Condominium Act (§ 55.1-1900 et seq.), declaration of a common interest community as defined in § 54.1-2345, or cooperative instrument of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), may prohibit the keeping of a dangerous dog or otherwise impose conditions that are more restrictive than those provided in subsection B.

I. The owner of a dog found to be dangerous shall maintain the liability insurance coverage or bond in surety required by subdivision B (3) as long as he owns the dangerous dog

and shall submit a certificate of insurance or evidence of such bond to the animal control officer on an annual basis.

(Ord. No. 4-2, 6-1-93; Ord. No. 4-3, 7-12-94; Ord. No. 4-8, 7-8-97; Ord. No. 4-13, 8-11-98; Ord. No. 4-21, 8-10-04; Ord. No. 4-24, 8-8-06; Ord. No. 4-26, 10-13-09; Ord. No. 4-29, 11-14-13; Ord. No. 4-31, § 1, 10-10-17, Ord. No. 4-34, 4-26-22)

Editor’s note(s)—Ord. No. 4-29, adopted November 14, 2013, changed the title of section 4-32 from “Control of dangerous or vicious dogs; penalties” to “Control of dangerous dogs; penalties.” Ord. No. 4-34, adopted April 26, 2022, amended Sec. 4-32 from “Control of dangerous dogs; penalties” to “Obligations of officer and owner following dangerous dog finding”. The historical notation has been preserved for reference purposes.

State law reference(s)—Similar provisions, Code of Virginia, § 3.2-6540; authority or county to adopt above section, Code of Virginia, § 3.2-6540.

Sec. 4-33. Notice of dangerous dog finding; penalty.

A. Any releasing agency transferring or releasing for adoption within the Commonwealth an animal found to be a dangerous dog pursuant to § 4-31 shall notify in writing the receiving party of the requirements of this section and Virginia Code §§ 3.2-6540, 3.2-6540.01, 3.2-6540.03, and 3.2-6540.04.

B. Any releasing agency transferring or releasing for adoption outside the Commonwealth an animal found to be a dangerous dog pursuant to § 4-31 shall notify the appropriate animal control officer in the receiving jurisdiction that the animal has been so adjudicated.

C. Any owner of an animal found to be a dangerous dog in another state shall, upon bringing such animal to reside within the Commonwealth, notify the animal control officer of the jurisdiction in which the owner resides that the animal has been so adjudicated.

D. Any owner who disposes by surrender to a releasing agency, gift, sale, transfer, or trade of an animal found to be a dangerous dog pursuant to § 4-31 shall notify the receiver in writing that the animal has been so adjudicated. A violation of this subsection is a Class 3 misdemeanor.

(Ord. No. 4-29, 11-14-13, Ord. No. 4-34, 4-26-22)

Editor’s note(s)—Ord. No. 4-34, adopted April 26, 2022, amended Sec. 4-33 from “Vicious dogs; penalties” to “Notice of dangerous dog finding; penalty”. The historical notation has been preserved for reference purposes.

§ 2. That Chapter 4, Animals and Fowls, Article III, Vicious and Dangerous Dogs, Secs. 4-34, 4-35 and 4-36 are hereby **enacted** as follows:

Sec. 4-34. Violation of law by owner of dangerous dog; penalty.

A. If an owner of an animal previously found to be a dangerous dog pursuant to § 4-31 is charged with a violation of §§ 4-31, 4-32, 4-33, or 4-35, or any parallel violations of the Code of Virginia, the animal control officer shall confine the dangerous dog until such time as evidence shall be heard and a verdict rendered pursuant to § 4-31. Unless good cause is determined by the court, such evidentiary hearing shall be held within 30 days of the issuance of the summons. The court, through its contempt powers, may compel the owner of the animal to produce the animal.

B. Upon conviction, the court may (i) order the dangerous dog to be disposed of by a local governing body pursuant to Virginia Code § 3.2-6562 or (ii) grant the owner up to 30 days to comply with the requirements of § 4-32, during which time the dangerous dog shall remain in the custody of the animal control officer until compliance has been verified. If the owner fails to achieve compliance within the time specified by the court, the court shall order the dangerous dog to be disposed of by a local governing body pursuant to Virginia Code § 3.2-6562. The court may order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time that the animal is disposed of or returned to the owner.

C. Any owner of a dangerous dog who is charged with a violation pursuant to subsection A and is found to have willfully failed to comply with the requirements of §§ 4-31, 4-32, 4-33, or 4-35, or any parallel violations of the Code of Virginia, is guilty of a Class 1 misdemeanor. The court may determine that a person convicted under this subsection shall be prohibited from owning, possessing, or residing on the same property with a dog.

(Ord. No. 4-34, 4-26-22)

Sec. 4-35. Subsequent attack or bite by dangerous dog; penalty.

A. Any owner of an animal found to be a dangerous dog pursuant to § 4-32, when such finding arose out of a separate and distinct incident, is guilty of a:

1. Class 2 misdemeanor if such dog attacks and injures or kills a cat or dog that is a companion animal belonging to another person; or

2. Class 1 misdemeanor if such dog bites a human being or attacks a human being causing bodily injury.

B. The provisions of subsection A shall not apply to any animal that at the time of the act complained of was responding to pain or injury, was protecting itself, its kennel, its offspring, a person, or its owner's property, or was a police dog engaged in the performance of its duties at the time of the attack.

C. The court may determine that a person convicted under this section shall be prohibited from owning, possessing, or residing on the same property with a dog.

(Ord. No. 4-34, 4-26-22)

Sec. 4-36. Vicious dogs; penalties.

A. As used in this section:

“Serious injury” means an injury having a reasonable potential to cause death or any injury other than a sprain or strain, including serious disfigurement, serious impairment of health, or serious impairment of bodily function and requiring significant medical attention.

“Vicious dog” means a canine or canine crossbreed that has (i) killed a person, (ii) inflicted serious injury to a person, or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by ordinance that it is a dangerous dog, provided that its owner has been given notice of that finding.

B. Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a vicious dog shall apply to the magistrate for the issuance of a summons requiring the owner or custodian, if known, to appear before the general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of Virginia Code § 3.2-6562. The court, upon finding the animal to be a vicious dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or to the estate of any person killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such vicious dog from the time the animal is taken into custody until such time as the animal is disposed of. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia. The County shall be required to prove its case beyond a reasonable doubt.

C. No canine or canine crossbreed shall be found to be a vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a vicious dog if the threat, injury, or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied

by the animal's owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a vicious dog.

(Ord. No. 4-34, 4-26-22)

Secs. 4-37—4-39. - Reserved.

Editor's note— Prior to the reenactment of Sec. 4-33 by Ord. No. 4-29, adopted November 14, 2013, Ord. No. 4-3, adopted July 12, 1994, repealed former §§ 4-33—4-37, relative to dangerous or vicious dogs. The provisions of former §§ 4-33 - 4-37 derived from Ord. No. 4-2, adopted June 1, 1993. Ord. No. 4-34, adopted April 26, 2022, amended Sec. 4-31 from "Definitions" to "Control of dangerous dogs; penalties", Sec. 4-32 from "Control of dangerous dogs; penalties" to "Obligations of officer and owner following dangerous dog finding", and Sec. 4-33 from "Vicious dogs; penalties" to "Notice of dangerous dog finding; penalty", and enacted Secs. 4-34, 4-35 and 4-36. The historical notation has been preserved for reference purposes.

§ 3. This ordinance shall be in force and effect upon adoption.