

Eff: ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK
ESTABLISHING ARTICLE 16, POTENTIALLY DANGEROUS AND
VICIOUS ANIMALS IN CHAPTER 1 ANIMALS, TITLE 5 OF THE
BURBANK MUNICIPAL CODE

City Attorney's Synopsis:

This Ordinance updates Title 5, Chapter 1 of the Burbank Municipal Code by adding Article 16 Potentially Dangerous and Vicious Animals. This will address the need the City has to expedite the designation of an animal as dangerous or vicious and avoid the delay that is currently in place through the Court process. This Ordinance will result in quicker resolutions and keep the public safe.

THE COUNCIL OF THE CITY OF BURBANK FINDS AS FOLLOWS:

A. Since 2020, the Burbank Animal Shelter (BAS) has dealt with 18 Potentially Dangerous Dog cases and 8 Vicious Dog cases that have resulting in significant injuries to human beings and other domesticated animals.

B. Attacks by potentially dangerous and vicious animals on human beings and domestic animals are attributable to the failure of animal owners or keepers to register, confine and properly control vicious and potentially dangerous animals.

B. The CAO currently follows the procedures and requirements set forth in the California Food and Agricultural Code 31601 *et seq.*, to regulate and control a potential dangerous or vicious animal. This process requires Court involvement, including the preparation of declarations, petitions, and attendance at court hearings by CAO and BAS staff. In addition, the Court has continuously set hearings on these issues out several weeks while animals are impounded at the BAS and all parties await resolution. This creates a chance of further harm by these animals to staff or the public.

C. The Ordinance would allow for the City to hold hearings through Data Ticket, the City's Administrative Citation processor, eliminating the need for CAO to petition the Court. These hearings would be able to be held no less than five working days and no more than 10 working days after notice is served to the offending animal's owner. This shortens the amount of time interested parties would need to wait for a resolution. Should the owner of the animal contest the ruling, they may petition the Superior Court.

D. Based upon the foregoing, it is necessary to amend Title 5, Chapter 1 of the Burbank Municipal Code to add Article 16 Potentially Dangerous and Vicious Animals.

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Burbank hereby finds that the above findings are true and correct and are hereby incorporated by reference.

Section 2. Title 5, Chapter 1, Article 16, of the Burbank Municipal Code is hereby amended to read as follows:

“ARTICLE 16. POTENTIALLY DANGEROUS AND VICIOUS ANIMALS

5-1-1601: EXCEPTIONS TO ARTICLE:

A. This article does not apply to licensed kennels, humane society shelters, field services facilities, or veterinary clinics.

B. This article shall not apply to any animal utilized by any fire department, fire district, police department or any fire or law enforcement officer in the performance of public safety work.

C. No animal may be declared potentially dangerous or vicious based on any injury or damage sustained by a person who, at the time the injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the animal, or was teasing, tormenting, abusing, or assaulting the animal, or was committing or attempting to commit a crime. No animal may be declared potentially dangerous or vicious if the animal was protecting or defending a person within the immediate vicinity of the animal from an unjustified attack or assault. No animal may be declared potentially dangerous or vicious if an injury or damage was sustained by a domestic animal which at the time the injury or damage was sustained was teasing, tormenting, abusing, or assaulting the animal.

D. No animal may be declared potentially dangerous or vicious based on an injury or damage to a domestic animal that was sustained while the animal was working, hunting, herding, or performing predator control on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the animal. This subsection does not limit the civil liability of the owner or keeper of an animal working, hunting, herding, or performing predator control that causes injury or damage to a domestic animal.

5-1-1602: DEFINITIONS:

A. As used in this article, the term “potentially dangerous animal” means any of the following:

1. Any animal which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off the property of the owner or keeper of the animal;

2. Any animal which, when unprovoked, bites a person causing a less severe injury than as defined in subsection C of this section;

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3. Any animal which, when unprovoked, on two separate occasions within the prior 36-month period, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the owner or keeper of the animal.

4. Any animal which, after its owner or keeper has been notified that the animal is not properly licensed, vaccinated, restrained, or maintained so as to be contained on the owner's property, as required by this chapter, and continues to be in violation of this chapter, and/or is not in compliance with any specific orders made by the hearing officer.

5. Any animal previously determined, by a presiding judicial or administrative officer, to be a potentially dangerous animal which, after its owner or keeper has been notified of this determination, continues behavior described in subsection A of this section or is maintained in violation of Food and Agriculture Code sections 31641, 31642, or 31643 or this article.

B. As used in this article, the term "vicious animal" means any of the following:

1. Any animal which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being;

2. Any animal previously determined, by a presiding judicial or administrative officer, to be a potentially dangerous or vicious animal which, after its owner or keeper has been notified of this determination, continues behavior described in subsections A or B of this section or is maintained in violation of Food and Agriculture Code sections 31641, 31642, or 31643 or this article.

3. Any animal seized under Penal Code section 599aa and upon the sustaining of a conviction of the owner or keeper under Penal Code sections 597.5(a) or 597b;

C. As used in this article, the term "severe injury" means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

D. As used in this article, the term "enclosure" means a fence or structure suitable to prevent the entry of young children, and which is suitable to confine a potentially dangerous or vicious animal in conjunction with other measures which may be taken by the owner or keeper of the animal. The enclosure shall be designed in order to prevent the animal from escaping. Any enclosure must conform with the requirements of Penal Code section 597t.

E. As used in this article, the term "impounded" means taken into the custody of the City's Animal Shelter.

5-1-1603: PROCEDURE FOR DECLARING ANIMAL POTENTIALLY DANGEROUS AND/OR VICIOUS:

A. If an animal control officer or a law enforcement officer, hereinafter referred to as the Investigating Officer, has investigated and determined that there exists probable

cause to believe that an animal is potentially dangerous or vicious, they shall petition the Superintendent of the City's Animal Shelter, or their designee, to determine whether the animal is potentially dangerous or vicious. The Superintendent, or their designee, shall thereafter set a hearing pursuant to Food and Agriculture Code section 31621 for the purpose of determining whether or not the animal in question should be declared potentially dangerous or vicious.

B. The Superintendent of the City's Animal Shelter, or their designee, shall notify the owner or keeper of the animal that an administrative hearing to determine whether the animal is potentially dangerous or vicious will be held by serving a notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings under this chapter. The notice shall include the date, time, and location of the administrative hearing, a statement that the purpose is to determine whether the animal (named and described) is a potentially dangerous or vicious animal, and that if the animal in question is found to be potentially dangerous or vicious, certain remedies, up to and including destruction, may be demanded by the City.

D. The hearing shall be held promptly within no less than five working days nor more than ten working days after service of notice upon the owner or keeper of the dog.

E. The Superintendent of the Animal Shelter, or their designee, hereinafter referred to as the Hearing Officer, shall preside over the administrative hearing. The hearing shall be open to the public. At the administrative hearing, the owner or keeper of the animal may present evidence as to why the animal in question should not be declared potentially dangerous or vicious. Failure by the owner or keeper to appear at the hearing results in forfeiture of the privilege to present evidence. The Hearing Officer shall hear and consider all relevant evidence, objections or protests and shall receive testimony under oath relative to the alleged potentially dangerous and/or vicious animal. The Hearing Officer may admit into evidence all relevant evidence, including incident reports and affidavits of witnesses. The Hearing Officer may find, upon a preponderance of evidence, that the animal in question is potentially dangerous or vicious and may make other orders authorized by this article. The hearing may be continued from time to time.

F. If the animal in question is found to be potentially dangerous and/or vicious as defined by Burbank Municipal Code section 5-1-1603 et seq., the Hearing Officer may issue any one or more of the following orders:

1. The animal shall be properly licensed by the Animal Shelter and vaccinated against rabies. The Animal Shelter shall include the potentially dangerous or vicious designation in the registration records of the animal. The Animal Shelter may charge a potentially dangerous or vicious dog fee in addition to the regular licensing fee to provide for the increased costs of maintaining the records of the animal.

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2. The animal shall be maintained on the owner or keeper's property, or property occupied by the owner or keeper, hereinafter referred to as the Premises, and shall, at all times, be kept indoors, or in a secure enclosure with a secondary perimeter fenced yard from which the animal cannot escape, and into which children cannot trespass. The animal may not be allowed off the Premises unless it is restrained by a substantial leash, of a fixed length of no more than six feet, humanely muzzled, and under the immediate control of a responsible adult capable of restraining the animal. In the event that the animal escapes from the Premises, the owner or keeper shall immediately notify the City's Animal Shelter.

3. If the animal in question dies or is sold, transferred, or permanently removed from the City, the owner or keeper shall notify the City of the changed condition and new location of the animal, in writing, within two business days of the changed condition.

4. An animal determined to be vicious may be destroyed by the Animal Shelter when it is found, after proceedings set forth in this article, that the release of the animal would create a significant threat to the public health, safety, and welfare.

5. The owner or keeper may be prohibited by the City from owning, possessing, controlling, or having custody of any animal for a period of up to three years, when it is found, after proceedings set forth in this article, that ownership or possession of an animal by that person would create a significant threat to the public health, safety, and welfare.

6. The owner or keeper shall pay any and all costs incurred by the City in the administration of the processes set forth in this article, including but not limited to, costs incurred by the City for housing, maintaining, feeding and providing care, including medical care for the animal during such time as the animal is in the custody of the City.

7. The owner or keeper may be mandated to spay or neuter the animal, as applicable.

8. The owner or keeper may be ordered to attend animal training/handling classes and submit proof of enrollment and attendance to the Superintendent of the Animal Shelter, or their designee.

9. The owner or keeper may be required to provide evidence to the Superintendent of the Animal Shelter, or their designee, of insurance coverage of no less than \$100,000.00 for combined claims of bodily injury to, or death of, any person, or for damage to property owned by any other person, which may result from the ownership, keeping, or maintenance of the animal, regardless of whether the animal is on the Premises or not.

10. The owner or keeper of the animal may be required to provide a permanent identification by means of an implanted microchip that shall be registered with the City's Animal Shelter. A photograph of the animal may also be required to be kept on record for identification, in addition to registration as a potentially dangerous animal.

G. If it is determined that an animal in question is found to be potentially dangerous, but shall not be destroyed, the Hearing Officer shall impose any other conditions upon the ownership of the animal that are reasonably necessary to protect the public health, safety, and welfare.

H. If the Hearing Officer finds by a preponderance of evidence that the animal which is the subject of the hearing is potentially dangerous and/or vicious, the Hearing Officer shall prepare findings and an order, which shall specify and make specific orders with respect to the animal as authorized by this article. A copy of the findings and order shall be served to the owner or keeper of the animal either personally or by first class postage prepaid no later than ten business days after the conclusion of the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail.

5-1-1604: COMPLIANCE WITH THE HEARING OFFICER'S ORDER:

A. If a determination is made that an animal is potentially dangerous or vicious, the owner or keeper of the animal shall comply with the requirements set forth in section 5-1-1604 subsection F in accordance with a time schedule established by the Hearing Officer, but in no case more than 30 days after the date of the determination or 35 days if notice of the determination is mailed to the owner or keeper of the animal.

B. As a condition of maintaining a potentially dangerous or vicious animal, its owner or keeper shall allow access to the City's Animal Shelter personnel to inspect the Premises to ensure compliance with the provisions of this chapter between the hours of 9:00 a.m. and 9:00 p.m. on any day of the week. Prior notification of the inspection to the owner or keeper of the potentially dangerous or vicious animal shall not be required.

5-1-1605: APPEAL PROCEDURE:

A. If the owner or keeper of the animal contests the determination, they may, within five days of the receipt of the notice of determination, appeal the decision of the Hearing Officer to the Superior Court pursuant to Food and Agriculture Code 31622(a). The fee for filing an appeal, payable to the clerk of the court, is as provided in subdivision (b) of Section 70626 of the Government Code. The owner or keeper of the animal shall serve personally or by first-class mail postage prepaid, notice of the appeal upon the City by notifying the Superintendent of the City's Animal Shelter.

B. The court hearing the appeal shall, pursuant to Food and Agriculture Code section 31622(b), conduct a hearing *de novo*, without a jury, and make its own determination as to potential danger and viciousness and make other orders authorized under Food and Agriculture sections 31601 *et seq.*, based upon the evidence presented. The hearing shall be conducted in the same manner and within the time periods set forth in Food and Agriculture Code section 31621. The court hearing the appeal may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The issue shall be decided upon the preponderance of the evidence. If the court hearing the appeal rules

the animal to be potentially dangerous or vicious, the court may establish a time schedule to ensure compliance with Food and Agriculture sections 31601 *et seq.* and this article, but in no case more than 30 days subsequent to the date of the court's determination or 35 days if the service of the judgment is by first-class mail.

C. The determination of the court hearing the appeal shall be final and conclusive upon all parties.

5-1-1606: APPEARANCE OF THE OWNER OR KEEPER NOT REQUIRED TO MAKE ORDERS:

The Hearing Office or the court hearing the appeal may decide all issues for or against the owner or keeper of the animal even if the owner or keeper fails to appear at a hearing.

5-1-1607: AUTHORITY TO SEIZE ANIMAL POSING IMMEDIATE THREAT TO PUBLIC SAFETY:

A. If, upon investigation, it is determined by an Investigating Officer that probable cause exists to believe that an animal poses an immediate threat to public safety, then the Investigating Officer may seize and impound the animal pending the hearings to be held pursuant to this article. The owner or keeper of the animal shall be liable to the City for the costs and expenses of keeping the animal if the animal is later adjudicated potentially dangerous or vicious.

B. When an animal has been impounded pursuant to subsection A above, and it is not contrary to public safety, the Superintendent of the Animal Shelter may permit the animal to be confined at the owner's expense in a City-approved kennel or veterinary facility.

5-1-1608: RELINQUISHING AN ANIMAL:

At any time prior to or after an administrative hearing to determine if an animal should be declared potentially dangerous or vicious, or at any time prior to or after an appeal hearing, the owner or keeper may request to relinquish ownership of the animal in question to the City. Upon relinquishment of an animal, the owner of that animal shall present sufficient identification to establish their ownership of the animal and shall sign a statement that they are the lawful owner of the animal. The owner or keeper shall be responsible for all applicable fees regarding the costs associated with the investigation and costs associated with boarding and caring for the animal during impoundment. At no time shall the animal be humanely euthanized until all mandated hold periods have been satisfied upon relinquishment of ownership of the animal in question.

5-1-1609: ANIMALS FOUND BY ANOTHER JURISDICTION TO BE POTENTIALLY DANGEROUS OR VICIOUS:

The owner or keeper of an animal which has previously been determined to be potentially dangerous after an administrative hearing or judicial hearing by another jurisdiction shall notify the City, in writing, within two business days, of any intention to keep, own, or harbor

the animal in the City, and shall provide any documentation requested by the City Animal Shelter, including, but not limited to copies of prior orders issued by an administrative hearing officer or a court. No animal which has previously been determined to be vicious after an administrative hearing or judicial hearing by another jurisdiction will be allowed to be kept, owned, or harbored in the City. Any notice by the City’s Animal Shelter to remove, abate or destroy any dog owned, harbored, or maintained in violation of this section may be appealed to the Superintendent of the City’s Animal Shelter, or their designee, by filing a written statement setting forth the factual basis for the appeal within ten business days from the date the notice was served on the owner or keeper of the animal. The date of service is the day the notice was personally served, or deposited in the mail by the Animal Shelter.

5-1-1610: FINES AND OTHER PENALTIES:

A. Any violation of this article, including a failure to permit inspection as set forth in section 5-1-1605 subsection B, involving a potentially dangerous dog, shall be punished by a fine not to exceed five hundred dollars (\$500). Any violation of this article, including a failure to permit inspection as set forth in section 5-1-1605 subsection B, involving a vicious dog, shall be punished by a fine not to exceed one thousand dollars (\$1,000). All fines paid pursuant to this article shall be paid to the City for the purpose of defraying the cost of the implementation of this article.

B. Nothing in this article shall prevent the City from initiating a civil, criminal, or other legal or equitable proceeding for a violation of this chapter.

5-1-1611: EFFECTIVE DATE:

This ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

PASSED AND ADOPTED this _____ day of _____, 2024

Nick Shultz
Mayor

Approved as to Form:
Office of the City Attorney

Attest:

Kimberley Clark, City Clerk

By: _____
Ray Johal
Senior Assistant City Attorney

ATTACHMENT 1

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Kimberley Clark, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the _____ day of February, 2024, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following of the ordinance's adoption on _____, 2024.

Kimberley Clark, City Clerk