



RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE TOWN OF NAGS HEAD'S DANGEROUS ANIMAL APPEAL BOARD

I PURPOSE:

The purpose of a proceeding before the Dangerous Animal Appeal Board (the "Board") is to provide opportunity for appeal from a declaration by the Chief of Police that a dog is "dangerous" or "potentially dangerous" under N.C.G.S. 67-4.1. The purpose of this policy is to establish rules governing the appeal proceedings before a three-person panel ("The Panel") selected from the Town of Nags Head's Dangerous Animal Appeal Board under Town Ordinance Sec. 6-121.

II ISSUE ON APPEAL: The issue to be determined by the Panel is whether to uphold the Chief of Police's declaration that a dog is "dangerous" or "potentially dangerous" as defined by North Carolina State law. Under N.C.G.S. 67-4.1(a)(2), a "dangerous" or "potentially dangerous" dog is one that has:

- (1) Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or
- (2) Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or
- (3) Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

The Panel may also find that a dog is a "potentially dangerous dog" if that dog has without provocation killed or inflicted severe injury on a person, or has been previously determined to be a potentially dangerous dog by a county or municipal authority responsible for animal control based on any of the standards set forth in (1) through (3) above.

III THE BOARD AND PANEL: The Board and Panels are "public bodies" subject to the North Carolina Open Meetings law and must comply with all provisions of Article 33C of Chapter 143 of the North Carolina General Statutes [moved here from end of para]. The Panel is authorized to conduct the proceedings and render a decision on the appeal of a dangerous or potentially dangerous animal declaration under Nags Head Town Ordinance Sec. 6-121 and N.C.G.S. 67-4.1(c). The Board consists of four (4) members of the Community appointed by the Nags Head Board of Commissioners, in addition to the Town Manager. (Town of Nags Head Code of Ordinances Sec. 6-121).

IV PARTIES: The following are proper parties to an appeal hearing before the Panel:

- (1) The Complainant, if any person has complained to Town officials that a dog is a dangerous or potentially dangerous dog;

(2) The Official, who shall be the Chief of Police or his designee or some other representative of the Town charged with the responsibility of enforcing animal control laws within the Town's jurisdiction. The Official shall bear the burden of proof on whether a dog is dangerous or potentially dangerous; and/or

(3) The Owner of the dog declared to be dangerous or potentially dangerous.

V EVIDENCE:

(1) Generally. The parties may present evidence in the form of testimony given under oath by witnesses present at the proceeding, duly notarized affidavits made under oath, and documentary evidence. All evidence to be considered in the appeal must be presented during the course of the proceeding. No evidence presented outside the course of the proceeding shall be considered. All evidence presented must be relevant to the specific case being heard and the issue on appeal; evidence determined by the Panel to be irrelevant may be excluded by the Panel. The Panel may seek advice of counsel as to the relevancy or admissibility of evidence.

(2) Prehearing Disclosures. The parties shall exchange all documentary exhibits, affidavits, and lists of potential witnesses at least two (2) business days in advance of the hearing. These materials shall be furnished to the Panel as soon as possible.

VI ORDER OF PROCEEDING: The proceeding will be conducted in the following manner:

- (1) **Convening**-The Chairman of the Panel shall call the hearing to order and may give introductions of the Panel members and brief opening remarks.
- (2) **Statement of the Case**-The Chairman, or the Chairman's designee (such as the Town Attorney) shall give a brief statement of the case, including verification for the record that the parties are present.
- (3) **Statement of Rules**-The Chairman, or the Chairman's designee (such as the Town Attorney) shall give an explanation of the rules that govern the proceeding. Parties may pose questions as to procedural matters prior to the presentation of their cases.
- (4) **Swearing of Witnesses**-The parties shall identify all witnesses who plan to give sworn testimony during the course of the proceeding. The Town Clerk shall administer the oath to all witnesses.
- (5) **Order of Presentations**-The parties shall proceed with the presentation of their case after all witnesses are sworn. Unless changed by majority vote of the Panel, the order of presentation shall be as follows:

- (a) The Complainant shall proceed first when recognized by the Chairman or the Chairman's designee.
 - (b) The Official shall present evidence after the presentation, if any, by the Complainant.
 - (c) The Owner may present his/her case last.
- (6) **Rules Governing Presentations** - The presentation of cases by the parties shall be governed by the following rules:
- (a) Examination of Witnesses - Parties may offer sworn witness testimony as a part of their case and may conduct cross-examination of witnesses offered during the opposing party's case. Questioning on direct and cross-examination shall be relevant to and confined to the facts and issue of the specific case being presented. The opposing party may object to some or all of a witness's testimony on the basis of relevancy; the Panel shall determine, in its discretion, the weight to be given to any evidence. The Chairman, or the Panel by majority vote, may decide to exclude any evidence regardless of whether an objection is raised.
 - (b) Documentary Evidence - Parties may offer documents, photographs, reports, and other tangible evidence relating to their case. The opposing party may object to the introduction of documentary evidence on the basis of lack of relevancy, reliability or authentication. The Chairman, or the Panel by majority vote, may deny the documentary evidence based on relevancy, reliability, or authentication regardless of whether an objection is raised.
 - (c) Scope of Evidence - All evidence and witness testimony shall be confined to the facts and issues of the specific matter in question. The Chairman, or the Panel by majority vote, may deny facts, evidence, and testimony not relevant to the specific case on appeal.
- (7) **Concluding Remarks** - At the conclusion of the presentation of the parties' cases, each party may give brief concluding remarks to the Panel, beginning with the complainant and concluding with the owner. All remarks shall be confined to the facts and issue of the specific case on appeal before the Board and shall relate only to the evidence presented during the proceeding. Remarks may not rely on or make reference to evidence not presented during the hearing and shall not be considered as evidence.
- (8) **General Conduct** - The parties and any witness called by the parties shall, at all times, conduct themselves with proper decorum. The parties shall not engage in conduct that is hostile, argumentative, threatening, badgering or antagonistic toward the opposing party, witnesses, Board members, staff, or any other persons present at the proceeding. The Chairman may admonish any individual for conduct that is improper and may order the removal of any person for repeated improper conduct.

VII DETERMINATION BY PANEL – After all evidentiary presentations are completed and closing remarks made, the Panel shall deliberate and render a decision based on a preponderance of the evidence of whether the dog is a dangerous or potentially dangerous dog. All Panel deliberations, including the announcement of the Panel's decision, will be conducted in open session. Every reasonable effort shall be made for a final decision to be rendered by the conclusion of the meeting. The Panel's decision shall be communicated in writing (within two business days) to all parties by the Town Manager or his designee, and shall include a statement of the Panel's determination, the basis for the determination, and notice of appeal rights provided for under Nags Head Town Ordinance Sec. 6-121 and N.C.G.S. 67-4.1(c).