



# **CITY COUNCIL STAFF REPORT**

**MEETING DATE:**

**Agenda Item #**

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**Prepared By:**

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**City Attorney**

**Submitted By:**

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**City Manager**

## **RECOMMENDED ACTION:**

Introduce Amendments To Potentially Dangerous Dog Ordinance

## **EXECUTIVE SUMMARY:**

The City of Morgan Hill has experienced an increase in the number of incidents of dogs attacking people and other domestic animals due to the expanding commercial and residential development within City limits. For the most part, the recommended amendments make technical non-substantive changes to numerous sections in the code to make it easier to understand and enforce. Other changes incorporate the current procedures of the Police Department. The proposed amendments also specifically regulate the possession of a potentially dangerous dog by a convicted felon and persons who previously had a potentially dangerous dog Level 2 or Level 3.

The technical non-substantive changes involve clarifying the permit for potentially dangerous dogs Level 1, 2, and 3, dangerous, and vicious animals. Currently, the code section permitting these animals cross references the procedures to obtain an animal establishment permit, which are not completely applicable to permitting dangerous animals. In order to explain the permitting process, the amendments add several new sections that outline the steps for obtaining and appealing permits for potentially dangerous dog Level 1, 2, and 3, dangerous, and vicious animals.

The definition of potentially dangerous dog Level 3 has been enhanced to include behavior the Police Department regularly finds to be Level 3. In addition, the exceptions to Level 3 classifications have been expanded to include those behaviors the administrator usually exempts from classification as potentially dangerous. The amendments also include the Police Department's current procedure of reclassifying potentially dangerous dogs after three years with no incidents and of requiring dog obedience classes for Level 1 and Level 2 potentially dangerous dogs. The amendments also reclassify violations of a dog biting a person or other domestic animal or a dog running loose as a misdemeanor.

The amendments include regulations for a convicted felon owning potentially dangerous dogs and prohibiting previous or current owners of potentially dangerous dogs from owning another potentially dangerous dog for three years. Dogs with the potential for criminal or negligent misuse by felons have become a serious and widespread threat to the safety and welfare of citizens statewide. In the last five years, potentially dangerous dogs owned by felons have assaulted without provocation and seriously injured numerous persons, particularly children and the elderly, and have killed numerous dogs and terrorized neighborhoods. Other cities have reported problems with people involved in the illegal drug trade keeping dangerous dogs to attack law enforcement officers.

**FISCAL IMPACT:** None. The Police Department is adequately staffed to implement the proposed ordinance changes relating to potentially dangerous, dangerous, and vicious animals.

**To: City Council**  
**From: Strombotne Law Firm at the request of the Morgan Hill Police Department**  
**Date: December 13, 2007**  
**Subject: Proposed Amendments to the Morgan Hill Municipal Code Regarding Potentially Dangerous Dogs**

In the last two years the City of Morgan Hill has been experiencing more serious incidents of violence involving dogs injuring people and other domestic animals. The potentially dangerous dogs have threatened the lives of not only other animals, but the owners of the animals. The amendments to the potentially dangerous dog ordinance require stricter regulations for dogs and owners of potentially dangerous dogs. These regulations include requiring convicted felons to obtain a permit in order to own a potentially dangerous dog and classifying a Level 3 dog as one who seriously injures or kills another animal.

The following incidents of dog attack all occurred in the City of Morgan Hill. In July, 2005, two dogs threatened a woman walking her dog with her two daughters, but an off duty police officer scared the dogs away before they attacked. In November, 2005, two dogs attacked an elderly man walking his dog, the man's son who forcibly removed the attacking dogs from his father, and the first police officer that arrived at the scene. As a result of the attack, the officer shot and killed one of the dogs.

In July, 2006, two dogs entered a neighbor's house chasing the pet cat. The dogs not only injured the cat so severely as to require the cat to be euthanized, but bit two of the residents of the house. Less than a month later, another two dogs entered a neighbor's house and attacked a small dog and the owner. The injured dog was rushed to the veterinarian and survived the attack.

Most of these attacks are due at least in part to the failure of the owners to register, confine, and properly control vicious and potentially dangerous dogs and in part to the tendency of criminals and convicted felons to use these dogs for criminal purposes. The Morgan Hill Police Department has observed people convicted of drug related felonies using potentially dangerous dogs to threaten police officers.

Regulating dog ownership by convicted felons has not been legally tested. Contra Costa County is the only local California agency that has enacted regulations of convicted felons to own potentially dangerous dogs. The State of Illinois has enacted a similar law that prohibits felons from owning intact dogs and dogs over thirty pounds and requires all dogs owned by felons to be microchipped. No court has ruled on a public entity's right to regulate and restrict dog ownership by convicted felons.

**ORDINANCE NO. \_\_\_\_\_ : NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, AMENDING CHAPTERS 6.12.180 THROUGH 6.12.200 AND CHAPTERS 6.28.010, 6.28.040, AND 6.32.080 OF TITLE 6 AND ADDING CHAPTERS 6.28.025, 6.28.035 AND 6.28.070 THROUGH 6.28.140 OF TITLE 6 OF THE MORGAN HILL MUNICIPAL CODE REGARDING POTENTIALLY DANGEROUS DOGS AND DANGEROUS AND VICIOUS ANIMALS TO BE EFFECTIVE \_\_\_\_\_, AS AN URGENT MEASURE**

WHEREAS, Title 1, Chapter 1.24 of the City of Morgan Hill Municipal Code regulates the general penalties of violating the City of Morgan Hill Municipal Code;

WHEREAS, Title 6, Chapter 6.08 of the City of Morgan Hill Municipal Code regulates the administration and enforcement of Title 6 within the City of Morgan Hill;

WHEREAS, Title 6, Chapter 6.12 of the City of Morgan Hill Municipal Code regulates dogs and cats within the City of Morgan Hill;

WHEREAS, Title 6, Chapter 6.24 of the City of Morgan Hill Municipal Code regulates the restrictions on animals within the City of Morgan Hill;

WHEREAS, Title 6, Chapter 6.28 of the City of Morgan Hill Municipal Code regulates dangerous animals within the City of Morgan Hill;

WHEREAS, Title 6, Chapter 6.32 of the City of Morgan Hill Municipal Code regulates the impoundment of animals within the City of Morgan Hill;

WHEREAS, amendments to Title 1, Chapter 1.24 and Title 6, Chapters 6.08, 6.12, 6.24, 6.28, and 6.32 are necessary to reflect statutory and administrative enforcement changes and enhance clarity of intent;

WHEREAS, additional sections to Title 6, Chapter 6.28 are necessary to reflect statutory and administrative enforcement changes and enhance clarity of intent;

WHEREAS, the public health, safety, and welfare require amendments and additions to the Code to address issues related to potentially dangerous, dangerous, and vicious animals within the City limits;

WHEREAS, the City of Morgan Hill has experienced an increase in the number of incidents of dogs attacking people and other domestic animals due to the expanding commercial and residential development within City limits;

WHEREAS, dogs with the potential for criminal or negligent misuse by felons have become a serious and widespread threat to the safety and welfare of citizens statewide;

WHEREAS, in the last five years, potentially dangerous dogs owned by felons have assaulted without provocation and seriously injured numerous persons, particularly children and the elderly, and have killed numerous dogs and terrorized neighborhoods;

WHEREAS, other cities have reported problems with people involved in the illegal drug trade keeping dangerous dogs to attack law enforcement officers;

WHEREAS, most of these attacks are due at least in part to the failure of the owners to register, confine, and properly control vicious and potentially dangerous dogs and in part to the tendency of criminals and convicted felons to use these dogs for criminal purposes;

WHEREAS, the Morgan Hill Police Department has observed people convicted of drug related felonies using potentially dangerous dogs to threaten police officers.

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1:** Section 1.24.010 of Chapter 1.24 of Title 1, sections 6.08.020 and 6.08.030 of Chapter 6.08, sections 6.12.180 through 6.12.200 of Chapter 6.12 and sections 6.28.010 and 6.28.040 of Chapter 6.28 and section 6.32.080 of Chapter 6.32 of Title 6 of the Morgan Hill Municipal Code are hereby amended as stated in the following italicized portions:

**1.24.010 Violations deemed a misdemeanor-Penalty.**

A. Except as provided in Chapter 10.08 pertaining to civil penalties for parking violations, whenever in this code, any act is prohibited or is made or is declared to be unlawful, or an offense, or the doing of any act is required, or the failure to do any act is declared to be unlawful or a misdemeanor, the violation of any such provision of this code shall not be considered a misdemeanor, but rather an infraction, punishable not by imprisonment, but by a fine not exceeding the maximum allowed under state law for such infraction. Each day such violation continues shall be regarded as a new and separate offense.

B. Each separate offense determined to be an infraction shall be punishable by: (1) A fine not exceeding one hundred dollars for a first violation; (2) A fine not exceeding two hundred dollars for a second violation by the same person of the same ordinance within one year of the date of the first violation; (3) A fine not exceeding five hundred dollars for a third and each additional violation by the same person of the same ordinance within one year of the date of the first violation.

C. Any offenses which are to continue to be treated as misdemeanors rather than infractions shall be specifically mentioned in amendments to this section.

D. Notwithstanding the provisions of subsection A of this section, violations of the following code sections and chapters are to be treated as misdemeanors punishable upon conviction by a fine not exceeding one thousand dollars or imprisonment in the county jail for a period not to exceed six months or by both such fine and imprisonment:

1. Section 2.44.130	Civil disaster and emergency organization- Violations- Penalties
2. Chapter 5.12	Bingo Games
3. Chapter 5.20	Community Antenna Television
4. Chapter 5.32	Massage Establishments
5. <i>Chapter 6.24</i>	<i>Animal Restrictions</i>
6. Chapter 6.28	Dangerous

	Animals
7. Section 6.32.070(B)	Impoundment-Hearing prior to animal deprivation
8. Chapter 6.36	Animals and Land Use
9. Chapter 8.04	Restaurants and Food Establishments
10. Chapter 9.04	Weapons
11. Chapter 13.20	Sewers and Industrial Waste
12. Chapters 15.04-15.24	Administrative, Building, Electrical, Mechanical, Plumbing and Housing Codes
13. Chapter 15.44	Fire Prevention Code
14. Chapter 15.56	Abatement of Dangerous Buildings
15. Chapter 18.42	Flood Damage Prevention

E. Notwithstanding any other provision of this code, whenever a violation of Section 9.04.010 or any section contained in Chapters 15.08, 15.12, 15.16, 15.20, 15.24 and 15.56 is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge. (Ord. 1528 N.S. § 5, 2001; Ord. 1442 N.S. § 18, 1999; Ord. 1320 N.S., §§ 1, 2, 1997; Ord. 1198 N.S. § 3, 1994; Ord. 1192 N.S. § 1, 1994; Ord. 1172 N.S. § 1, 1994; Ord. 1130 N.S. § 2, 1993; Ord. 1109 N.S. § 1, 1993; Ord. 918 N.S. § 1, 1989; Ord. 906 N.S. § 12, 1989; Ord. 820 N.S. § 4 (part), 1987; Ord. 778 N.S. § 1 (part), 1986; Ord. 496 N.S. § A, 1979; Ord. 225 N.S. § 6, 1968)

#### **6.08.020 Inspection-Authority-Procedure.**

A. The administrator, animal control officer or any peace officer shall have the power to enter upon and inspect any premises where any animal is kept or harbored when *the administrator, animal control officer or any peace officer has probable cause.*

B. Such entry and inspection shall be made only after the occupant of the premises has been given written and oral notice of the inspection by the administrator, animal control officer or peace officer. If the land is unoccupied, the administrator, animal control officer or peace officer shall make a reasonable effort to locate the owner or other person having control of the property before making entry.

C. Notwithstanding the foregoing, if the administrator, animal control officer or peace officer has reasonable cause to believe the keeping or maintaining of any animal is so hazardous as to require an immediate inspection to save the animal or protect public health or safety, he or she shall have the power to immediately enter and inspect the property without the use of unreasonable force. If the property is occupied, the administrator, animal control officer or peace officer shall first attempt to notify the occupant and demand entry. (Ord. 1209 N.S. (part), 1995: Ord. 822 N.S. § 3, 1987: Ord. 553 N.S. § A (part), 1981)

#### **6.08.030 Violation-Penalty.**

A. Violation of any of the provisions of Chapters 6.24, 6.28, 6.36 and Section 6.32.070 of this title constitutes a misdemeanor. Each day a violation continues shall be regarded as a new and separate offense. The punishment upon conviction shall be: a fine not exceeding one thousand dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

B. Violation of any of the other provisions of this title constitutes an infraction. The punishment upon conviction shall be:

1. A fine not exceeding one hundred dollars for a first violation;
2. A fine not exceeding two hundred dollars for a second violation of the same ordinance within one year; or
3. A fine not exceeding five hundred dollars for each additional violation of the same ordinance within one year.

C. For purposes of this section, a bail forfeiture shall be deemed to be a conviction of the offense charged.

D. Violation of Section 6.12.020 or Section 6.24.030 by the owner of an unsterilized dog shall be twice the fine for a sterilized dog. However, if an owner voluntarily sterilizes such dog within fifteen days of receiving a citation, and provides veterinary evidence to the animal control officer that such surgery was successfully performed, the enhanced fine shall be waived and the owner shall only remit the fine for a sterilized animal.

E. In addition to any other relief, any reasonable costs incurred by the city in seizing, impounding and for confining any dangerous animal shall be a charge against the owner. Such charge shall be in addition to any fine or penalty provided for violations of this chapter. (Ord. 1518 N.S. § 2, 2001: Ord. 1442 N.S. § 6, 1999: Ord. 1320 N.S. § 4, 1997: Ord. 1209 N.S. (part), 1995: Ord. 822 N.S. § 4, 1987: Ord. 553 N.S. § A (part), 1981)

#### **6.12.180 Potentially dangerous dogs-Classified.**

“Potentially dangerous dog” means a dog which has been classified as potentially dangerous at one of three levels based upon specific behavior exhibited or possession of certain characteristics as described in this section as follows:

A. Level 1 behavior is established if a dog at large is found to menace, chase, display threatening or aggressive behavior or otherwise threaten or endanger the safety of any domestic animal; is unlicensed pursuant to Chapter 6.12 of this title; has escaped its enclosure on one prior occasion; or is a member of a breed of dog which in the five years preceding its designation has been identified as responsible for at least two deaths of persons in the United States as documented by statistics compiled by the United States Humane Society.

B. Level 2 behavior is established if a dog is found to menace, chase, display threatening or aggressive behavior or otherwise threaten or endanger the safety of any person; if a dog, while under restraint or on a leash, aggressively bites any person; or while at large, aggressively bites or causes physical injury to any person or domestic animal; or while restrained or confined in accordance with this chapter, aggressively bites any person.

C. Level 3 behavior is established if at dog, whether or not confined, causes the serious injury or death of any person; any dog seized under Section 599a of the Penal Code, as may be amended, where the

owner or keeper has been convicted under subdivision (a) of Section 597.5 of the California Penal Code, as may be amended, or any dog used during or in the commission of a crime that constitutes a misdemeanor or a felony; while at large, kills *or causes a serious or life threatening injury to* any domestic animal; engages in or is found to have been trained to engage in exhibitions of fighting; or has been classified as a Level 2 potentially dangerous dog and repeats the behavior described in subsection B of this section after the owner receives notice of the Level 2 classification.

D. Notwithstanding subsections A through C of this section, the administrator shall have discretionary authority to refrain from classifying a dog as potentially dangerous, even if the dog has engaged in the behaviors specified in subsections A through C of this section, if the administrator determines that the behavior was the result of *one or more of the following circumstances*:

1. *The injury or damage was sustained by a person who at the time of the injury or damage was sustained was teasing, assaulting, abusing or tormenting the dog; committing a willful trespass or other tort upon the private property of the owner or person having a right to control the dog; or committing or attempting to commit a crime.*

2. *The injury or damage was sustained by a domestic animal that, at the time the injury or damage was sustained, was teasing, tormenting, abusing or assaulting the dog, or trespassing upon the private property of the owner or person having the right to control the dog.*

3. *The dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.*

4. *The injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, or predator control dog on the property of, or under the control of its owner or the person having a right to control the dog, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.*

E. Dogs used by public police agencies are exempted from the classifications under subsections A through C of this section for behaviors or characteristics exhibited in their capacity with the public police agency. (Ord. 1442 N.S. § 7, 1999)

### **6.12.190 Potentially dangerous dogs-Classification procedure.**

A. The administrator or his/her designate shall have authority to determine whether any dog has engaged in the behaviors or exhibits any of the characteristics specified in Section 6.12.180. This determination shall be based upon an investigation that includes the observations of and testimony about the dog's behavior or characteristics, including, but not limited to, the dog's upbringing and the owner's control of the dog. These observations and testimony can be provided by animal control officers or other witnesses who personally observed the animal's behavior or characteristics. The witnesses shall sign a written statement attesting to this behavior.

B. The administrator or animal control officer shall give the dog's owner written notice by certified mail or personal service of the dog's specified behavior or characteristics and the dog's classification as a potentially dangerous dog with the additional restrictions, as outlined in Section 6.12.200 of this title, applicable to that dog by reason of its classification. If the owner denies that the behavior in question occurred, the owner may request a hearing before the administrator which shall be conducted in accordance with the provisions of Section 6.32.080. The owner and any other persons having relevant evidence concerning the dog's behavior as specified in the written notice shall be allowed to present testimony. The administrator shall determine whether behavior or characteristics specified in Section 6.12.180 were exhibited or possessed by the dog in question. The administrator shall issue an order containing its determination, which shall be final.

C. Once the owner has received notice of the dog's classification as a Level 1, 2 or 3 potentially dangerous dog pursuant to subsection B of this section, the owner shall comply with restrictions specified in the notice until such time as the administrator's final decision is issued. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this chapter. Additionally, the administrator shall have authority to impound the dog pending completion of all appeals.

- D. If the administrator finds that a dog has engaged in Level 3 behavior, the dog may be impounded pending completion of all appeals. If the administrator's final decision is that the dog engaged in Level 3 behavior, the dog's owner shall be liable for the cost of the dog's impoundment.
- E. *If there are no additional instances of behavior described in 6.12.180 within a thirty-six month period from the date of final designation as a Level 2 potentially dangerous dog, the owner may petition the administrator to remove or reclassify the dog's designation as a potentially dangerous dog Level 2.*
- F. The imposition of regulations pursuant to this section shall not prevent the administrator from also issuing a citation pursuant to Section 6.08.030.
- G. Upon a conviction for a second violation of any provision of this title, the administrator or animal control officer may order impoundment of the dog. (Ord. 1442 N.S. § 8, 1999)

### **6.12.200 Potentially dangerous dogs-Regulations.**

In addition to the other requirements of this chapter, the owner of a potentially dangerous dog shall comply with the following regulations:

- A. If the dog has engaged in Level 1 behavior or has been designated a Level 1 potentially dangerous dog, the dog shall be restrained by a physical device or structure that prevents the dog from reaching any public sidewalk or adjoining property whenever that dog is outside the owner's home and not on a leash under the control of a person at least eighteen years of age and who is physically capable of restraining the animal. The administrator shall adopt administrative rules establishing specifications for the required device or structure. The administrator may require that the dog's owner prove financial responsibility, including posting a bond or certificate of insurance in the amount of fifty thousand dollars, *and may require the owner or person having a right to control the dog to attend dog obedience class with the dog.*
- B. If the dog has engaged in Level 2 behavior or has been designated a Level 2 potentially dangerous dog, the following regulations shall apply:
1. The owner shall confine the dog within a building or secure enclosure whenever the dog is not inside the home of the owner or on a leash as described below. Such kennel, pen or structure must have secure sides and a secure top attached thereto. Such enclosure must be constructed in a manner so that it cannot be broken down by any action of the confined dog. All structures used for confinement of such animals must be locked with a key or combination lock of sufficient strength to insure confinement of such animals. Such structures must be erected upon a secure bottom or floor constructed of concrete or other materials sufficient to prevent the animal from digging free. Sides of the structure shall be imbedded not less than two feet into the ground behind a solid fence not less than six feet in height. The secure enclosure must be located so as not to interfere with the public's legal access to the owner's property.
  2. A Level 2 dog may be permitted off the premises only when it is securely muzzled, and is leashed on a leash not to exceed three feet in length and under the control of a person eighteen years of age or older, and who is physically capable of restraining the animal. The leash must be capable of restraining four times the weight of the animal. The leash must be attached to an escape-proof commercial quality walking harness which fastens securely across the shoulders and mid-chest encompassing the rib area and upper abdomen of the dog. No collar of any type or material will be sufficient to satisfy the above requirements. Level 2 potentially dangerous dogs shall not be leashed or tethered at any time to inanimate objects such as trees, posts or buildings. The muzzling device must be constructed so that it is impossible for the dog to remove it without human assistance.
  3. Transportation of Level 2 potentially dangerous dogs shall only be in locked animal carriers equivalent in construction quality to those used by commercial air carriers.
  4. No Level 2 potentially dangerous dog shall be left unconfined nor unattended in or about any motor vehicle.

5. Level 2 potentially dangerous dogs enclosed in a house, apartment, building or similar structure shall be allowed only where the windows and doors of the structure are secured to prevent such dog from exiting without the assistance of the owner or person with the right to control such dog.

6. The administrator may require that the Level 2 potentially dangerous dog owner prove financial responsibility including posting a bond or certificate of insurance in the amount of one hundred thousand dollars, *and may require the owner or person having a right to control the dog to attend dog obedience class with the dog.*

7. A person owning or having charge of a dog classified as a Level 2 potentially dangerous dog shall post warning signs on the property where the dog is kept, in conformance with the provisions of Section 6.28.050.

8. To insure correct identification, all dogs that have been classified as Level 2 potentially dangerous shall be marked with a permanent identifying mark. The administrator shall adopt rules specifying the character, location and manner of this marking. The owner of the dog shall provide, at the owner's expense, at least two dated, colored photographs depicting a full frontal, facial view and one full side view clearly showing the color and approximate size of the dog.

C. Any dog that has been found to have engaged in Level 3 behavior as described in Section 6.12.180 shall be euthanized.

D. In addition to the normal licensing fees established by the city council, there may be an annual fee for dogs that have been classified as potentially dangerous. This additional fee set in resolution, shall be imposed at the time the license of the potentially dangerous dog expires and shall be payable at the time the license is renewed. (Ord. 1442 N.S. § 9, 1999)

#### **6.24.030 Animals running at large.**

It is unlawful for any person owning or having control of any animal, whether licensed or not, to cause, permit or allow such animal to stray or run at large upon any public street or other public place, or upon any private place or property or common area of any planned development, cluster, townhouse or condominium project without the consent of the owner or person in control thereof, except that nothing contained in this section shall apply to dogs on a leash, held by a person capable of controlling the dog, or to cats *or for dogs to be off-leash in a specially designated off leash dog park as authorized by the City.* (Ord. 1442 N.S. § 12, 1999; Ord. 1209 N.S. (part), 1995; Ord. 553 N.S. § A (part), 1981).

#### **6.24.035 Animal bites causing injury.**

It is unlawful for any person owning or having control of any animal, whether confined or not, to keep, maintain, cause, permit or allow such animal to bite another person *or domestic animal* which causes serious injury to that person *or domestic animal*. For the purpose of this section, serious injury means any injury which requires treatment other than basic first aid. (Ord. 1442 N.S. § 13, 1999)

#### **6.28.010 Permit required.**

No person shall keep, have, maintain, sell, trade or let for hire a dangerous and/or vicious animal, *including a potentially dangerous dog, Level 1, 2, or 3,* without first obtaining a permit from the administrator. *Compliance with the rules and regulations set by this title and the administrator shall be prerequisite to the issuance and continued validity of any permit provided pursuant to this title. This section shall not apply to any assistance dog, including guide dogs, signal dogs and service dogs, trained or in training to assist a qualified individual with a disability.* (Ord. 1209 N.S. (part), 1995; Ord. 553 N.S. § A (part), 1981)

#### **6.28.040 Permit-Denial or revocation.**

- A. Notwithstanding anything to the contrary, the administrator may deny or revoke any permit issued pursuant to this chapter in the following situations:
1. *Whenever the administrator determines by inspection or upon complaint from any person that the owner or person having a right to control the potentially dangerous, dangerous, or vicious animal has failed to meet any of the provisions of Title 6 or any conditions of the permit, or has failed to meet any other requirement for maintenance of the animal under this chapter or other applicable law;*
  2. *Whenever the administrator has reason to believe that the applicant or permit holder has willfully withheld or falsified any information required for a permit;*
  3. *If the applicant or permit holder has been convicted within the past five years, by a court of law, for any violation of this chapter, or any other law(s) relating to animals, public nuisance caused by animals, or cruelty to animals in this or any other state, and any citations issued for violations of this title which were upheld by a hearing officer or which were not contested by the applicant. For the purposes of this chapter, a bail forfeiture shall be deemed to be a conviction of the offense charged;*
  4. *Whenever the owner fails to pay in full all fines, and impound, boarding or other outstanding fees;*
  5. *Whenever the owner or person having a right to control the potentially dangerous, dangerous, or vicious animal fails to allow the administrator or animal services officer to conduct a lawful inspection of the potentially dangerous, dangerous, or vicious animal or the premises where the animal is located;*
  6. *Whenever the owner or person having a right to control the potentially dangerous, dangerous, or vicious animal fails to appear at a compliance hearing to appeal the revocation of the permit for a potentially dangerous, dangerous, or vicious animal;*
  7. *Whenever the keeping or maintenance of any such animal endangers the safety of any person or persons or property;*
  8. *Whenever the keeping of the animal would constitute a public nuisance; or*
  9. *Whenever the animal would be subject to suffering, neglect, cruelty or abuse.*
- B. The administrator, in his discretion, may require any such animal to be properly caged, tethered or restrained in zoo-type facilities that meet or are in addition to, or more restrictive than, state guidelines issued under the provisions of Section 671 of Title 14 of the California Administrative Code and federal standards issued under Chapter 1 of Title 9 of the Code of Federal Regulations. Nothing in this section shall be construed to permit the keeping of dangerous animals where zoning provisions or state law would prohibit such keeping. (Ord. 1209 N.S. (part), 1995: Ord. 553 N.S. § A (part), 1981)

#### **6.32.080 Appeal hearing.**

At the appeal hearing, petitioner and the animal control division may be represented by counsel, may present oral and written evidence, and may cross-examine witnesses. Strict rules of evidence need not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The petitioner shall be given written notice of the decision within fifteen days of the hearing. The administrator shall order the animal released without conditions, released with conditions, shall designate the animal vicious, dangerous and/or potentially dangerous Level 1, 2 or 3 and order release with conditions, or as for dogs designated Level 3 shall order the animal destroyed. The decision of the administrator shall be final and shall be supported by the weight of the evidence. Any release conditions imposed by the administrator shall be solely in the interest of protecting public health, safety and property and may include the obligation to inform, along with animal control, any city, county, postal, service utility company, employee, meter reader, and anyone else that comes on the property with implied consent or peaceably and lawfully of the animal's

dangerousness.[deleted language] (Ord. 1209 N.S. (part), 1995: Ord. 822 N.S. § 16, 1987: Ord. 553 N.S. § A (part), 1981)

**SECTION 2:** Subsection 6.24.085 Regulation of potentially dangerous dogs of Chapter 6.24 of Title 6 is hereby deleted from the Morgan Hill Municipal Code as duplicative of subsection 6.12.200 of Chapter 6.12 of Title 6.

**SECTION 3:** Chapters 6.28.025, 6.28.035 and 6.28.070 through 6.28.140 of Title 6 are hereby added to the Morgan Hill Municipal Code.

**6.28.025 Permit-Application-Conditions.**

*A. An application for a permit to maintain or keep a dangerous and/or vicious animal, including a potentially dangerous dog, Level 1, 2, or 3 shall be in writing on a form approved by the administrator. The application shall be made by the animal owner or person having a right to control the animal.*

*B. The application shall contain the following information:*

- 1. The name address and telephone number of the owner and other person having a right to control the animal;*
- 2. The animal's name and description;*
- 3. A statement specifying all convictions within the past five years of the owner or any persons having a right to control the animal, by any court of law, for any violation of this title, or of any other law(s) relating to animals, public nuisance caused by animals, or cruelty to animals in this or any other state, and any citations issued for violations of this title which were upheld by a hearing officer or which were not contested by the applicant. For purposes of this section, a forfeiture of bail shall be deemed to be conviction of the offense charged;*
- 4. The number of the license issued to the applicant pursuant to Chapter 6.12; and*
- 5. At least two dated, colored photographs depicting a full frontal, facial view and one full side view clearly showing the color and approximate size of the dog.*

**6.28.035 Permit-Inspection of premises.**

*By having applied and/or obtained a permit under this chapter, the owner or person having the right to control the animal thereby consents to the administrator or his authorized representative inspecting the premises where the animal is located at any reasonable time and in a reasonable manner. Inspections under this section are not subject the requirements of Section 6.08.020 of Chapter 6.08 of Title 6.*

**6.28.070 Permit-Denial or revocation-Appeal procedures.**

*A. Prior to denial or revocation of a permit issued pursuant to this chapter, the administrator shall notify the applicant in writing of the intent to deny or revoke the permit, the reasons for such denial or revocation, and that the applicant may make a written request for a hearing before the administrator within five days after receipt of such notice if he wishes to challenge the denial or revocation.*

*B. The administrator shall set the time and place for hearing and cause notice of such hearing to be mailed to the person requesting such hearing at least five days before the date of the hearing. The hearing shall be conducted according to Section 6.32.080 of this title.*

**6.28.080 Permit-Denial or revocation-Time restrictions for reapplication.**

*If a permit under this Chapter has been denied or revoked, the administrator shall not be required to accept a new permit application from the same applicant for two years from the date of such denial or revocation.*

**6.28.090 Prohibition of owning, possessing, controlling or having custody.**

*Any person having a right to control a potentially dangerous, dangerous, or vicious animal may be prohibited from owning, possessing, controlling or having custody of any dog for up to three years, if the hearing officer determines, after a hearing, that ownership or possession of a potentially dangerous, dangerous, or vicious animal by that person would create a significant threat to the public health, safety, and welfare. Thereafter, such persons must demonstrate to the administrator that he or she is capable of directly restraining the animal he or she seeks to own, possess, control, or have custody of.*

**6.28.100 Prohibited dog ownership by convicted felons.**

A. *Any person who has been convicted of a felony under the laws of the United States, of the state of California, or any other state, government, or country, who owns, purchases, receives, or has in his or her possession or under his or her custody or control a dog that poses a danger to the public's health, safety or welfare if misused by a convicted felon is guilty of a misdemeanor, unless the person possesses a current, valid prohibited dog permit for that dog as provided in this Chapter. A convicted felon under this Title shall not include felons whose convictions were set aside pursuant to Penal Code Section 1203.4. "Misuse" by a convicted felon means use of a dog in a threatening or aggressive manner, or in the commission of a crime.*

B. *Any dog whose owner or keeper is in violation of this section shall be impounded, or impounded subject to destruction, at the owner's expense.*

C. *A dog that poses a danger to the public's health, safety or welfare if misused by a convicted felon under this section means any of the following:*

1. *A dog weighing more than twenty pounds;*
2. *A dog who has been designated a potentially dangerous Level 1, 2, or 3 under Chapter 6.12 of this Title;*
3. *A dog designated by the administrator as posing a danger to the public's health, safety or welfare if misused by a convicted felon based upon the following factors:*
  - (i) *The nature of any complaints regarding the dog,*
  - (ii) *The strength of the dog, including jaw strength,*
  - (iii) *The dog's tolerance for pain,*
  - (iv) *The dog's tendency to refuse to terminate an attack,*
  - (v) *The dog's potential propensity to bite humans or other domestic animals,*
  - (vi) *The dog's potential for unpredictable behavior,*
  - (vii) *The dog's aggressiveness,*
  - (viii) *The likelihood that a bite by the dog will result in serious injury.*

**6.28.110 Prohibited dog permit.**

*Any convicted felon who wishes to own, purchase, receive or have in his or her possession or under his or her custody or control a dog weighing more than twenty pounds under Section 6.28.100(c)(1) of this chapter, or a dog that the animal services director designates as posing a danger to the public's health, safety or welfare if misused by a convicted felon under Section 6.28.100(c)(3) of this chapter, may apply for a prohibited dog permit to own, keep or maintain that dog. If there is probable cause to believe that*

*a dog poses a danger to the public's health, safety or welfare if misused by a convicted felon, the dog may be impounded pending a determination made under this article and until any required permit is obtained. If the administrator designates a dog as posing a danger to the public's health, safety or welfare if misused by a convicted felon, written notice of this designation shall be mailed to the owner or person having a right to control the dog. The owner or person having a right to control the potentially dangerous dog must pay an application fee and apply for the prohibited dog permit within fifteen calendar days after the mailing of the written notice of designation. The administrator s may deny a prohibited dog permit if he or she determines that the dog poses a danger to the public's health, safety or welfare, or may condition the issuance of the permit upon the permittee's written agreement to comply with conditions of ownership to be determined by the administrator. These conditions of ownership may include, but are not limited to, those found under Section 6.12.200 of this Title. A prohibited dog permit may subsequently be revoked by the administrator if there is probable cause to believe that the convicted felon's continued ownership of the dog poses a danger to the public's health, safety or welfare.*

#### **6.28.120 Permit-Expiration and renewal-Late penalty.**

*A. Any permit issued under this chapter shall expire twelve months from the date of issuance. The procedure for the renewal of a permit shall be the same as for an original permit.*

*B. Upon failure to make application for the renewal of permit within thirty days of the expiration of a permit, or prior thereto, the applicant shall pay in addition to the permit fee a ten-dollar penalty for late renewal.*

#### **6.28.130 Permit-Nontransferable.**

*Permits issued pursuant to the provisions of this chapter are not transferable.*

#### **6.28.140 Appeal hearing.**

*At the appeal hearing, petitioner and the animal control division may be represented by counsel, may present oral and written evidence, and may cross-examine witnesses. Strict rules of evidence need not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs. The petitioner shall be given written notice of the decision within fifteen days of the hearing. The administrator shall order the animal released without conditions, released with conditions, shall designate the animal vicious, dangerous and/or potentially dangerous Level 1, 2 or 3 and order release with conditions, or as for dogs designated Level 3 shall order the animal destroyed. The decision of the administrator shall be final and shall be supported by the weight of the evidence. Any release conditions imposed by the administrator shall be solely in the interest of protecting public health, safety and property and may include the obligation to inform, along with animal control, any city, county, postal, service utility company, employee, meter reader, and anyone else that comes on the property with implied consent or peaceably and lawfully of the animal's dangerousness.*