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Mayor Phil Hardberger  
P.O. Box 839966  
San Antonio, Texas 78283

Hon. City Council of San Antonio  
City Hall Office  
P.O. Box 839966  
San Antonio, Texas 78283

**RE: Proposed San Antonio Ordinance 5-147**

Dear Mayor Hardberger, Hon. Alice P. Cisneros, Hon. Sheila D. McNeil, Hon. Roland Gutierrez, Hon. Philip A. Cortez, Hon. Lourdes Galvan, Hon. Delicia Herrera, Hon. Justin A. Rodriguez, Hon. Diane G. Cibrian, Hon. Kevin Wolff and Hon. John G. Clamp:

I am writing regarding the proposed Ordinance 5-147. I practice in the area of dog law and represent dogs and their owners. I am a trial attorney and have been in good standing with the State Bar of Texas for the last twenty-five years. My passion for dogs led me into the practice of animal law as an adjunct to my other work.

I am the author of the Texas Dog Law Manual<sup>©</sup>, the only one of its kind, which is in its third edition and is being edited to reflect the new laws as of September 1, and the most current case law. I am the sponsor and key speaker for the Texas Dog Law Seminar 2008 which will be held at South Texas College of Law in February. This is the third such seminar, but the first all day event. The first was held in Houston in May of 2006. The second one was at the Austin Convention Center last December. My seminar in Austin followed the seminar of the Dog Whisperer, Cesar Milan. There was a break after Mr. Milan's seminar and then the legal seminar began. The Texas Dog Law Seminar is accredited for continuing education by the State Bar of Texas, Texas State Board of Veterinary Medical Examiners, and the Texas Animal Control Association.

The City of San Antonio is considering the proposed Ordinance which provides as follows:

## **Sec. 5-147 Keeping of vicious animals.**

Any animal owned or kept shall be determined to be vicious if:

- (a) Because of its physical nature and vicious propensity it is capable of inflicting serious physical harm or death to human beings and would constitute a danger to human life or property; or
- (b) Without reasonable provocation habitually has behaved within the enclosure in which it was being kept in such a manner that the owner thereof knows or should reasonably know that the animal is possessed of tendencies to attack or bite; or
- (c) It commits unprovoked acts while in the enclosure in which the animal was being kept and those acts cause a person to reasonable believe that the animal will attack and cause bodily injury to that person or
- (d) An animal which acts in a highly aggressive manner while in the enclosure in which the animal was being kept and appears to a reasonable person able to jump over or escape.

While this ordinance is not specifically directed to dogs, that is the animal most affected by this proposed law. My discussion will be directed to the Ordinance as it applies to dogs.

This Ordinance is highly problematic for the following reasons:

### **Sec. 5-147(a) Because of its physical nature and vicious propensity it is capable of inflicting serious physical harm or death to human beings and would constitute a danger to human life or property:**

■ **“Physical Nature” not defined.** There is no definition of “physical nature,” so what does this mean? Is it any animal of the canine species with fur, a tail and teeth? All dogs can bite, so this ordinance can deem any dog in San Antonio “vicious,” from the tiny to Chihuahua to the Old English Mastiff touted to be the largest dog in the world.

■ **“Vicious Propensity” not defined.** There is no definition of what constitutes a “vicious propensity.” The definition of “vicious animal” has been deleted from the proposed ordinances, but it provided that it was an animal that “habitually or repeatedly without provocation chases, snaps at, attacks or bites any person or domestic animal.” Importantly, Sec. 5-147 is primarily aimed at dogs that are in an “enclosure” which is someone’s yard or home and not running loose. Since “habitually” has been removed from the ordinance, this means that a dog can growl once and be declared “vicious.”

By the proposed law, a dog could be deemed vicious for one growl, or for anything animal control decides is vicious because there is no definition. Laws are supposed to be drafted so that they put people on notice of what is expected of them. This provides no notice because there is no definition of what constitutes vicious.

The accepted definition of “propensity” as provided in the American Heritage dictionary is “an inclination.” All dogs are inclined to growl and bark, so are all dogs going to be deemed vicious in San Antonio?

■ **“Serious physical harm” not defined.** There is no definition of “serious physical harm.” Is the ordinance referring to a civil law definition? A criminal law definition? Is this going to be a nip? A bite? A scratch? A mauling? As it stands now, it can be anything that animal control decides it is because there is no definition. Any dog can inflict serious physical harm particularly since there is no definition, so all dogs in the city can be deemed vicious. As a matter of fact, dogs of all sizes and breeds have been known to kill human beings albeit exceeding rare.

In my practice, I have seen the over zealous attorney argue that minor injuries could be life threatening, so it does not serve the city to assume that “serious physical harm” will be interpreted to address only the most egregious attacks. A person can go to a hospital to get a band-aid for a scratch, but that does not have anything to do with the actual injury.

■ **“Constitute a danger to human life or property” not defined.** Similarly, what will “constitute a danger to human life or property” is not defined. Any dog can constitute a danger to human beings, and all dogs can deface property. Even the tiny Chihuahua can gnaw a door. As the ordinance is written, all dogs in your city are subject to being declared ‘vicious’ under subpart (a) of Sec. 5-147.

Subpart (a) is overly broad and gives unbridled latitude to animal control to deem any dog “vicious” that they choose. There is no fairness in this law at all because it does not define the key words and phrases nor does it put people on notice of what is expected of them.

Further, this part of the law is not specific to location. That means that your dog could be kept in the owner’s house and still be deemed “vicious” by this ordinance. Does that make any sense?

**Sec. 5-147(b) Without reasonable provocation habitually has behaved within the enclosure in which it was being kept in such a manner that the owner thereof knows or should reasonably know that the animal is possessed of tendencies to attack or bite:**

■ **“Reasonable provocation” not defined.** There is no definition of what will constitute reasonable provocation. Is it being verbally taunted by people on the other side of the fence? Or does it take some physical touching of the dog to qualify?

■ **Subpart (b) is aimed at declaring dogs vicious that are in their own yard or owner’s house.** This subpart is aimed at dogs that are in their own yard, or even their own house. “Enclosure” is defined and it includes someone’s house and yard. *See* Definitions, Sec. 5-1.

Does this mean that dogs in San Antonio may not bark while in their own yard or house? Does it mean that dogs cannot jump on the fence or come to the door of the owner's house?

Through out the history of humankind, dogs have been the protectors of their owners and their owner's property. Are we now asking dogs to be devoid of their age old genetic predisposition to protect their owners? Are we now asking dogs to be catatonic beings that do not react to anything else wise they will be deemed vicious?

I thought that dogs were supposed to be a deterrent to trespassers and other criminals. This has historically been one of their roles in our lives, so are now dogs at the passing of this ordinance supposed to miraculously purge themselves of all of their genetics? Even Lassie barked at the bad guys and we applauded her.

All dogs are territorial. I used to own a bunch of Chihuahuas. We had a sign on our fence that read "Beware of Dogs" because they were the most territorial dogs I have ever owned. They used to bark and jump on the fence, and I can assure you that if anyone thought the sign was a joke, they would have been promptly bitten had they come into the yard. Were my Chihuahuas vicious dogs? Of course not. They were dogs doing what dogs do, i.e. protecting the property and making some noise to warn of intruders.

Keep in mind that all dogs will attack and bite no matter how small, and in fact, small dogs actually tend to bite more often than larger dogs. Small dogs are highly territorial and bite more quickly due in part to their size. A quick defense is part of their ability to survive. Even dogs that are usually thought to be gentle dogs like Labrador Retrievers and Golden Retrievers will bark, jump on the fence and bite if a trespasser enters their yard. They are all dogs and this is what dogs are supposed to do. To expect dogs to act otherwise does not make any sense and it is not even desirable.

**Sec. 5-147(c) It commits unprovoked acts while in the enclosure in which the animal was being kept and those acts cause a person to reasonable believe that the animal will attack and cause bodily injury to that person:**

■ **"Unprovoked acts" not defined.** It is not clear what will constitute "unprovoked acts" because it is not defined. Is the ordinance trying to hold a dog in its own yard or house to the same standard as dog that is loose?

A dog will act very different when it is in defense of its owner's property or person than it will if it is on neutral territory. I once owned a Dalmatian that was highly territorial. She became very upset if someone came to the door. However, if I encountered that same person down the street while I was walking her, the person could pet my dog and she would give him or her kisses. Same dog, different reaction based on where she was. Why? Dalmatians were bred as coach dogs to protect their owner's goods while the owner left the coach unattended. Being territorial was a part of my dog's genetics. She was doing the very job that historically she was bred to do. Does that mean she was vicious? Of course not.

■ **Subpart (c) is aimed at declaring dogs vicious that are in their own yard or owner’s house.** This subpart provides that a dog can be declared vicious for any “act” that he commits while in his own yard. This means that any dog in San Antonio that so much as growls a warning to people that he perceives to be intruders can be declared vicious, and this is just as true if the dog is even in the owner’s house. All a person has to say is that they believe that the dog will attack and cause injury. Of course, that presumes that the dog is out of the fenced yard or the owner’s house and not in it, but this obviously does not make a bit of difference to the writers of this ordinance.

If this ordinance passes, even dogs secured in their owner’s property, can be declared “vicious.” People who have their dogs in enclosures are now subject to punishment. Doesn’t it seem awfully odd that a city law is going to punish the very people who are trying to do the right thing, i.e., contain their dogs?

If a dog so much as thinks about protecting his owner or his owner’s property as can be evidenced by a warning growl, this dog can be declared vicious. This is tantamount to convicting someone for their thoughts, or the classic case of Jimmy Carter being guilty for lusting in his heart. If this is the standard as set forth in this ordinance, then heaven help the dogs of San Antonio.

This subpart is so broadly written that all a dog would have to do is look around the corner of the owner’s house and it can be declared vicious. And for what? Once again, for being a dog. Dogs are supposed to protect us, but if this law goes into effect, then a dog may not do anything that smacks of being a dog in terms of protecting his owner or his owner’s property or the dog will be deemed vicious.

**Sec. 5-147(d) An animal which acts in a highly aggressive manner while in the enclosure in which the animal was being kept and appears to a reasonable person able to jump over or escape:**

■ **“Highly aggressive” not defined.** There is no definition for what is going to constitute “highly aggressive,” which leaves it to animal control’s imagination as to what will suffice. I have owned all kinds of dogs, but the most aggressive dogs I have ever owned were my Chihuahuas.

■ **Subpart (d) is aimed at declaring dogs vicious that are in their own yard or owner’s house.** This subpart allows for dogs in their own yard or in their owner’s house to be declared vicious. So what is reasonable in terms of a dog’s capability of escaping from its yard? Does this mean that all large dogs are capable of escaping because they might be able to jump the fence? Or does it mean that all dogs are capable of escaping because they can dig under the fence or climb the fence?

So what is reasonable in terms of a dog’s capability of escaping from the owner’s house? Houses have doors, so is it reasonable to assume that at some point an exterior door will be opened and the dog might get out? Or is the ordinance really aiming at only those dogs that might jump through the window?

Quite frankly, any sort of dog is capable of escaping from a fenced yard. One of my Chihuahuas would climb to the top of our fence and when she was on the top, leap off to the ground. She would follow me to my backdoor neighbor's house (we had a gate so that we could easily visit each other). This tiny dog which was only several inches tall would climb a fence that was many times her height and then jump off. So was she vicious? Remember, this is one of those Chihuahuas that barked and jumped on the fence at passersby.

Subparts (a)-(d) are written in the disjunctive, so if any one of them is alleged to apply, then the dog can be deemed vicious. The possible purpose of this section is an effort to prevent all dog bites, but in doing so, it has put every dog in San Antonio at risk for being deemed vicious and for what? For simply being a dog. This section is overly broad and tramples on the rights of every dog owner in town. It empowers animal control with unfettered authority to declare vicious any dog by any definition, and ushers in a law fraught with the possibilities of a witch hunt.

■ **This law promotes chaining of dogs.** Since Sec. 5-147 is directed at dogs in enclosures, are you suggesting that people chain their dogs instead? This is a bad message because chained dogs cause many more problems than dogs in the house or in their owner's yard.

**Sec. 5-148. Investigation, seizure and confinement of alleged dangerous and vicious animal.**

■ **When the enforcement is worse than the law.** If animal control alleges that a dog is vicious, the dog can be seized. If the owner disagrees and does not want to give up his pet, then an administrative search warrant *shall* be issued "to enter onto private property to search for an animal which is allegedly vicious." Keep in mind that this ordinance provides that dogs even in the owner's house can be deemed vicious. Do you really want to issue search warrants to enter into people's homes to take their dogs? Do you really want the distinction as a city that your animal control officers are entering into homes of your citizens to take their dog which has allegedly growled while in its own house? The very thought of the enforcement is far scarier than the law itself.

**Sec. 5-148(c) An animal control official may impound an alleged vicious or dangerous animal if the official has cause to believe that an animal is vicious or dangerous as defined above.**

■ **Animal Control can deem your dog vicious without an affidavit of a complaining witness.** Subparts (a) and (b) of this section provide the procedure for an individual to file an affidavit regarding a dangerous or vicious dog. The allegations in the affidavit are investigated and the owner may file his or her own affidavit. After the investigation is complete, Animal Control can proceed with declaring a dog vicious if they so decide.

But did you know that Subpart (c) allows any animal control officer can impound someone's dog if they believe they are vicious without an affidavit and without any

investigation whatsoever? All the officer needs to have is “cause,” whatever that means, since it is not defined. That is not even probable cause, just “cause.”

**Sec. 5-149(a) The owner of an animal impounded by the Department must pay the costs of care of the animal while it is in the custody of the Department prior to the release of the animal to the owner.**

■ **This law unfairly targets lower income citizens.** This law provides that the fees for impoundment are borne by the owner. This is true whether or not the allegations that a dog is “vicious” are valid or not. There is no limitation put on these fees, so owners of dogs may have their dogs killed because they cannot afford to pay these fees even when they have been unfairly targeted by animal control or a neighbor who does not like them. People can lose their pets regardless of the outcome of their case in their favor because impoundment fees have racked up. This is an egregious way to unjustly strip people of their property.

■ **Economic Impact: Are There any Stray Dogs Left in San Antonio?**

Animal control across the state and nation is typically poorly funded and finds itself at the bottom of the heap when trying to get tax dollars. Most citizens would be really happy if there were no stray dogs in their city. There is not one animal control in the country that has achieved that and San Antonio is no exception. So now are the few tax dollars you have allotted to animal control going to be spent going after people whose dogs are in their house or fenced yard? Where is the money for this when animal control cannot even keep the stray dogs off the streets? Ask yourself, which dogs pose a greater threat--ones running in packs on the streets or ones in their owner’s homes or fenced yards?

**Summation: Off With Their Heads.** This law is so far reaching that it can be likened to the governments of old who proclaimed “off with their heads” at the least infraction. Only in this case, this law will ensure an increase in killing dogs whose owners cannot comply with the far reaching dictates of these ordinances.

I am on City Council where I live in Hilshire Village which is a municipality right in the middle of Houston. My experience is that one subject that energizes people is when cities start levying laws at pets. Why? Because so many of our constituents are pet owners and these animals enjoy a greater role in our families than ever before. This ordinance is one that can be highly polarizing since it affects the pet members of families.

This ordinance has insurmountable problems and will not likely withstand challenge, so why enact it and try to enforce it against people as a test which is extremely unfair and targets those who can least afford to defend themselves. I respectfully urge you to do the right thing and get rid of it in its entirety.

**A Solution: An Alternative to Off With Their Heads.**

■ **Your neighbors to the North have a good idea.** I think, though I am not sure, that the purpose for Sec. 5-147 is to prevent possible bites from fenced dogs. It

seems far better to work with people in a positive way particularly those who are trying to contain their dogs in fenced yards.

Your neighbors to your Northeast in Austin have started a project to aid those who cannot afford proper fencing. A program called the Austin Community Foundation's Dog Fence Fund was established for this purpose and tax exempt donations can be made on their website or directly to Townlake Animal Services (animal control).

Your neighbors to your Northwest in Real County have implemented a similar program in which the Real County Humane Society will donate fencing to people who would like to have a fenced yard for their dogs as an alternative to chaining. Interestingly, I just was informed this past weekend of this new project.

In both of these Texas programs, the private sector has donated funds for fencing which does not cost taxpayers one cent. While San Antonio's ordinance is not outlawing chaining, the real heart of the matter addresses dogs that are in a yard but may pose a problem due to a fence that is too low or in disrepair.

In cases of fence problems, why not put the dog owner on notice that there is a fence problem and give them a chance to fix it? In the case of someone who cannot afford fencing, then establishing a fund for donations from concerned citizens is a viable way to help people get appropriate fencing.

■ **Education is the only way attitudes change.** Another solution that can cut down on dogs getting out of fences is to educate people why it is imperative to contain their dogs. Since a dog owner can now become a felon by the acts of his dog (newly enacted HB 1355), people should be educated on this law and why in general it is important to provide fencing that will contain their pets.

■ **Summary of Key Points.**

Ordinance 5-147 and all the ordinances enforcing it should be removed for the following reasons:

- The key words and phrases are not defined, so dogs can be declared vicious at the whim of animal control or the totally subjective view of a neighbor who might have an agenda.
- These laws punish people who keep their dogs in an enclosure which includes a fenced yard and the owner's own home.
- The very sight of certain dogs causes some people to fear injury, so the law runs a great risk of being unfairly applied.
- The law is overly broad and can declare every dog in San Antonio "vicious."
- Because this law is so far sweeping, it tramples on the rights of all dog owners in the city.
- These ordinances unfairly discriminate against lower economic citizens who will lose their dogs because they cannot pay the fees.
- A dog can be declared vicious for no more than a growl.

■ A dog can be declared vicious for no more than a growl and it can be his first growl.

■ The ordinance is contrary to the genetic pre-disposition of dogs to protect their owner and owner's property.

■ The enforcement of this law by means of search warrants to enter a person's property to seize their dog is unreasonable and raises serious constitutional issues, not to mention safety concerns.

■ Animal control is given the power to declare a dog vicious for any "cause" whatsoever without any parameters without an affidavit of a citizen's complaint.

■ These ordinances violate the constitutional due process and equal protection.

■ Enacting such far reaching ordinances affecting dogs has a polarizing effect on constituents.

■ Impoundment fees are imposed regardless of the validity of a claim.

■ These ordinances can engender a huge sweep of impounding dogs which will most certainly increase the number of dogs that are killed by animal control.

■ There are reasonable alternatives to these laws.

■ These ordinances are unfair and fraught with the potential for abuse of power and unfairness.

By way of conclusion, I have spent my Sunday afternoon, Monday night, and part of Tuesday writing this analysis. Further, I have counseled with your city attorneys on several occasions regarding these very ordinances. I have done all of this pro bono. Why? I genuinely care about dogs and the laws that affect our rights as dog owners. I am also an alumnus of Trinity University and would hate to see a city I hold near and dear to my heart enact such draconian laws that are patently unfair to dogs and their owners, and which would ensure more killing of dogs by animal control.

I am happy to discuss these matters with any of you, so feel free to call me. Thank you for your consideration.

Sincerely,

ZANDRA ANDERSON