

**SELECTBOARD MEETING AGENDA
UPSTAIRS MEETING ROOM
1 AVENUE A, TURNERS FALLS, MA
Wednesday, May 11, 2022
-Subject to Change-**

Meeting Being Taped

Votes May Be Taken

1. 5:00 PM Call to Order: Chair announces that the meeting is being recorded by MCTV (if applicable) and asks if anyone else is recording the meeting
2. 5:00 Dog Complaint Hearing, Kim Marie Caron
 - Investigation of Nuisance or Dangerous Dog as those terms are defined in said statute

The next regularly scheduled Selectmen's Meeting will be held on **MONDAY, May 16, 2022**



Selectboard
Town of Montague
1 Avenue A
Turners Falls, MA 01376

(413) 863-3200 xt. 108
FAX: (413) 863-3231

May 2, 2022

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7013 0600 0000 3989 5063
FIRST CLASS MAIL
HAND DELIVERY

NOTICE OF HEARING - NUISANCE OR DANGEROUS DOGS

Kim Marie Caron
20 N Street
Turners Falls, MA 01376

Dear Ms. Caron:

On **Wednesday, May 11, 2022 at 5:00 pm in the Montague Town Hall, located at 1 Avenue A, Turners Falls, MA 01376**, the Montague Selectboard will hold a public hearing in accordance with Massachusetts General Laws, Chapter 140, Section 157, to determine whether the dog owned and/or kept by you in the Town of Montague is a Nuisance Dog or Dangerous Dog as those terms are defined in said statute. This Notice is based on written complaints, including but not limited to a complaint that, on April 26, 2022, your unvaccinated and unlicensed dog attacked another dog and bit the dog's owner causing injuries.

In accordance with its statutory authority, the Selectboard will conduct a public hearing, which shall include an examination of the complainant under oath, and based on the credible evidence and testimony presented, it may make such findings and order concerning the restraint or disposal of your dog as may be deemed necessary, which may include an order that the dog be euthanized.

You are invited to attend the hearing and at that time you may produce any documentation and/or witnesses. You may be represented by counsel at your own expense if you so choose. You may make an appointment to examine the public records in the Town's file on this matter during regular business hours.

If you have questions related to the hearing, please call our Office at (413)-863-3200 ext. 108.

Sincerely,

Town of Montague



Wendy M. Bogusz
Executive Assistant

cc: Chris, Williams, Police Chief
Daniel Wasiuk, Director of Public Health
Calin Giurgiu, Animal Control Officer
Kathleen Burek, Animal Inspector
Alexander Subocz



**Board of Selectmen
Town of Montague**

1 Avenue A
Turners Falls, MA 01376

(413) 863-3200 xt. 108

FAX: (413) 863-3231

May 2, 2022

Ms. Kimberly Marie Caron
20 N Street
Turners Falls, MA 01376

I, the undersigned, state that I have delivered this notice to the above named tenant:

- ☐ by delivering it in hand to _____ at the premises
- ☒ by leaving a copy at the premises (indicate where) Wedge in front door by knot
- ☐ by mailing a copy of the same by first class mail, postage prepaid to the above named tenant at the premises
- ☒ I heard people talking inside but did not come to the door.
Day booking

Signed: _____

Town of Montague

Date: _____

5.2.2022

3:20 PM

Kimberly Marie Caron



MONTAGUE BOARD OF HEALTH

One Avenue A · Turners Falls, MA 01376

TELEPHONE 413-863-3200 EXT 205 · FAX 413-863-3225

DANIEL WASIUK
DIRECTOR OF PUBLIC HEALTH

APRIL 27, 2022

Honorable Select board:

We are requesting a vicious dog hearing on behalf of Animal Control Office Calin Giurgiu and Animal Inspector, Kathleen Burek for a Pitbull named Jax whose owner is Kimberly Marie Caron of 20 N Street in Turners Falls, MA 01376

MGL C. 140 Section 157. (a) Any person may file a complaint in writing to the hearing authority that a dog owned or kept in the city or town is a nuisance dog or a dangerous dog; provided, however, that no dog shall be deemed dangerous: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to any of the following circumstances:

- (1) the dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault;**
- (2) the person who was attacked or threatened by the dog was committing a crime upon the person or property of the owner or keeper of the dog;**
- (3) the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog; or**
- (4) at the time of the attack or threat, the person or animal that was attacked or threatened by the dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure including, but not limited to, a gated, fenced-in area if the gate was closed, whether locked or unlocked; provided, however, that if a person is under the age of 7, it shall be a rebuttable presumption that such person was not committing a crime, provoking the dog or trespassing.**

The hearing authority shall investigate or cause the investigation of the complaint, including an examination under oath of the complainant at a public hearing in the municipality to determine whether the dog is a nuisance dog or a dangerous dog. Based on credible evidence and testimony presented at the public hearing, the hearing authority shall: (i) if the dog is complained of as a nuisance dog, either dismiss the complaint or deem the dog a nuisance dog; or (ii) if the dog is complained of as a dangerous dog: (A) dismiss the complaint; (B) deem the dog a nuisance dog; or (C) deem the dog a dangerous dog.

(b) If the hearing authority deems a dog a nuisance dog, the hearing authority may further order that the owner or keeper of the dog take remedial action to ameliorate the cause of the nuisance behavior.

(c) If the hearing authority deems a dog a dangerous dog, the hearing authority shall order 1 or more of the following:

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(i) that the dog be humanely restrained; provided, however, that no order shall provide that a dog deemed dangerous be chained, tethered or otherwise tied to an inanimate object including, but not limited to, a tree, post or building;

(ii) that the dog be confined to the premises of the keeper of the dog; provided, however, that "confined" shall mean securely confined indoors or confined outdoors in a securely enclosed and locked pen or dog run area upon the premises of the owner or keeper; provided further, that such pen or dog run shall have a secure roof and, if such enclosure has no floor secured to the sides thereof, the sides shall be embedded into the ground for not less than 2 feet; and provided further, that within the confines of such pen or dog run, a dog house or proper shelter from the elements shall be provided to protect the dog;

(iii) that when removed from the premises of the owner or the premises of the person keeping the dog, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 3 feet in length;

(iv) that the owner or keeper of the dog provide proof of insurance in an amount not less than \$100,000 insuring the owner or keeper against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the dog or proof that reasonable efforts were made to obtain such insurance if a policy has not been issued; provided, however, that if a policy of insurance has been issued, the owner or keeper shall produce such policy upon request of the hearing authority or a justice of the district court; and provided further, that if a policy has not been issued the owner or keeper shall produce proof of efforts to obtain such insurance;

(v) that the owner or keeper of the dog provide to the licensing authority or animal control officer or other entity identified in the order, information by which a dog may be identified, throughout its lifetime including, but not limited to, photographs, videos, veterinary examination, tattooing or microchip implantations or a combination of any such methods of identification;

(vi) that unless an owner or keeper of the dog provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of a medical condition, the owner or keeper of the dog shall cause the dog to be altered so that the dog shall not be reproductively intact; or

(vii) that the dog be humanely euthanized.

No order shall be issued directing that a dog deemed dangerous shall be removed from the town or city in which the owner of the dog resides. No city or town shall regulate dogs in a manner that is specific to breed.

(d) Within 10 days after an order issued under subsections (a) to (c), inclusive, the owner or keeper of a dog may bring a petition in the district court within the judicial district in which the order relative to the dog was issued or where the dog is owned or kept, addressed to the justice of the court, praying that the order be reviewed by the court or a magistrate of the court. After notice to all parties, the magistrate shall, under section 62C of chapter 221, review the order of the hearing authority, hear the witnesses and affirm the order unless it shall appear that it was made without proper cause or in bad faith, in which case the order shall be reversed. A party shall have the right to request a de novo hearing on the complaint before a justice of the court.

(e)(1) Pending an appeal by an owner or keeper under subsection (d), a hearing authority may file a petition in the district court to request an order of impoundment at a facility the municipality uses to shelter animals for a dog complained of as being a dangerous dog. A municipality shall not incur liability for failure to request impoundment of a dog under this subsection.

(2) A justice of a district court, upon probable cause to believe that a dog is a dangerous dog or that a dog is being kept in violation of this section or in violation of an order issued under this section by a hearing authority or a court, may issue an order: (i) of restraint; (ii) of confinement of the dog as considered necessary for the safety of other

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animals and the public; provided, however, that if an order of confinement is issued, the person to whom the order is issued shall confine the dog in accordance with clause (ii) of subsection (c); or (iii) of impoundment in a humane place of detention that the municipality uses to shelter animals; or (iv) any other action as the court deems necessary to protect other animals and the public from the dog.

(f) A justice of the district court shall hear, de novo, an appeal filed under subsection (d). Based upon credible evidence and testimony presented at trial, the court shall, whether the dog was initially complained of as a nuisance dog or as a dangerous dog: (i) dismiss the complaint; (ii) deem the dog a nuisance dog; or (iii) deem the dog a dangerous dog. The decision of the court shall be final and conclusive upon the parties.

(g) If a court affirms an order of euthanasia, the owner or keeper of the dog shall reimburse the city or town for all reasonable costs incurred for the housing and care of such dog during its impoundment and throughout the appeals process, if any. Unpaid costs shall be recovered by the municipality in which the owner or keeper of the dog resides on behalf of the hearing authority by any of the following methods: (i) a lien on any property owned by the owner or keeper of the dog; (ii) an additional, earmarked charge to appear on the vehicle excise of the owner or keeper of the dog; or (iii) a direct bill sent to the owner or keeper of the dog.

All funds recovered by a municipality under this subsection shall be transferred to the organization or entity charged with the responsibility of handling dog complaints and impoundment. If the organization or entity falls under the management or direction of the municipality, costs recovered shall be distributed at the discretion of the municipality.

If the court overturns an order of euthanasia, the city or town shall pay all reasonable costs incurred for the housing and care of the dog during any period of impoundment.

(h) If an owner or keeper of a dog is found in violation of an order issued under this section, the dog shall be subject to seizure and impoundment by a law enforcement or animal control officer. If the keeper of the dog is in violation, all reasonable effort shall be made by the seizing authority to notify the owner of the dog of such seizure. Upon receipt of such notice, the owner may file a petition with the hearing authority, within 7 days, for the return of the dog to the owner. The owner or keeper shall be ordered to immediately surrender to the licensing authority the license and tags in the person's possession, if any, and the owner or keeper shall be prohibited from licensing a dog within the commonwealth for 5 years. A hearing authority that determines that a dog is dangerous or a nuisance or that a dog owner or keeper has violated an order issued under this section shall report such violations to the issuing licensing authority within 30 days.

(i) Orders issued by a hearing authority shall be valid throughout the commonwealth unless overturned under subsection (d) or (f).

DATE OF INCIDENT: April 26, 2022

INCIDENT NUMBER: Montague Police Responded 22-132-OF

OWNER: Kimberly Marie Caron

ADDRESS: 20 N Street

NAME OF DOG: Jax

BREED: Black & White Pitt Bull

SEX: Male

AGE: 2 ½ Years Old

LICENSED: Not Licensed in Town of Montague

RABIES: Not vaccinated for rabies

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Pitbull Vicious Dog Hearing 04-27-2022.doc