

**SPECIAL MAGISTRATE**

**BOARD AGENDA**

Special Magistrate Hearing - Thursday, July 19, 2018 - 10:00 a.m.

City Hall - City Commission Chambers, 100 North U.S. #1, Fort Pierce, Florida

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ADMINISTRATIVE BUSINESS**

A. **ADMINISTRATION OF OATH TO DEPARTMENTAL WITNESSES**

B. **IDENTIFICATION OF CASES IN COMPLIANCE OR RESCHEDULED**

1.	17-2681 CE Rescheduled	101 North US Highway 1	Brackett Family Limited Prtnsp	Heather Debevec
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4. **PUBLIC HEARINGS - CITATIONS**

A.	18-1777 18-1820 18-1821	1007 S US Hwy 1, Unit 2	Santana, Rafael	ACO Gasparre
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5. **PUBLIC HEARINGS - VIOLATION CASES**

6. **PUBLIC HEARINGS - MASSEY HEARINGS (FINE REDUCTIONS)**

7. **PUBLIC HEARINGS - LIEN REDUCTION REQUESTS**

8. **OTHER CASES**

9. **NEW BUSINESS**

10. **OLD BUSINESS**

Any person seeking to appeal any decision by the Special Magistrate with respect to any matter considered at this meeting is advised that a record of proceedings is required in any such appeal and that such person may need to insure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based.

Persons who require special accommodations under the Americans with Disabilities Act (ADA) should contact the Code Enforcement Office at (772) 467-3149, at least five (5) days prior to the meeting. Persons who are hearing or speech impaired may use the Florida Relay System by dialing 711.

**Special Magistrate Hearing**

**4.A.**

**Meeting Date:** 07/19/2018

**Re:** Case 18-1823 - Santana - Dangerous Dog Classification

**Submitted For:** Peggy Arraiz, Code Compliance Manager, Code Enforcement

**Information**

**SUBJECT:**

18-1777 18-1820 18-1821	1007 S US Hwy 1, Unit 2	Santana, Rafael	ACO Gasparre
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**CASE INFORMATION:**

Case Initiated:   July 12, 2018	Type of Presentation:	Dangerous Dog
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**OWNER:**

DOG OWNER: Rafael Santana 1007 S US Hwy 1, Unit 2 Fort Pierce, FL 34950	DOGS: Lola Anderson Ellie
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**VIOLATIONS:**

1st Bite Case:

- 5/1982017
- Victim: Raul E. Moncada

2nd Bite Case

- 3/24/2018
- Victim: Vega Meyer (Dog)
- Injury: Ear lacerations / Multiple punctures to neck
- Was playing with 3 dogs (played together before), Lola grabbed Vega then the other two dogs joined in.
- Victim: Karen Meyer
- Injury: Right top forearm / left middle finger
- Attempted to break up dog fight and was bit.

3rd Bite Case

- 7/7/2018
- Victim: Karl Weimar
- Injury: Top of left had, punctures and tears
- As victim walked by the dogs, one dog jumped up on him, other dogs jumped in and victim

got bit.

**CORRECTIVE ACTIONS:**

Option 1 - All dogs are declared dangerous and owner is required to comply with all state laws and local ordinances pertaining to dangerous dogs.

Option 2 -

- Surrender female grey and white dog named Ellie.
- Agree to not take the two remaining dogs or any other dog to any city park or recreation area.
- Lola and Anderson must remain current with their rabies vaccinations and city registration.
- Monthly monitoring with unannounced inspections by an Animal Control Officer for at least 12 months. If not home, response within 24 hours of notice via door hanger being left at the premises.
- Any injury to the dogs must be reported to Animal Control immediately.
- ANY FURTHER INSTANCES OF DOGS ACTING AGGRESSIVELY TOWARDS PEOPLE OR OTHER DOGS WILL RESULT IN THE ANIMALS BEING SEIZED AND DECLARED DANGEROUS.

Additional recommendations:

- Brindle / white dog named Lola should be spayed.
- Dogs should only be walked one at a time to eliminate the "pack mentality".
- Behavioral or obedience training should be obtained to properly learn how to control dogs, especially with pre-existing issues.

**RECOMMENDATION:**

To be determined

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**Attachments**

City Ordinance - Dangerous Dogs  
State Statute - Dangerous Dogs

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**Form Review**

Form Started By: Peggy Arraiz  
Final Approval Date: 07/18/2018

Started On: 07/16/2018 07:17 PM

Sec. 4-31. - Classification of dangerous dogs; requirements.

- (a) The provisions of F.S. §§ 767.10 through 767.14, and all subsequent amendments regulating dangerous dogs, and defined in F.S. § 767.11(1), are adopted by reference and incorporated herein.
- (b) The owner of a dangerous dog shall present the city with proof that they have procured liability insurance or a surety bond in the amount of no less than one hundred thousand dollars (\$100,000.00) covering any damage or injury which may be caused by such dangerous dog. Said policy shall contain a provision requiring that the city be given notice immediately by the agent issuing the policy in the event the policy is canceled, terminates, or expires. Such liability insurance shall be obtained prior to issuing a certificate of registration for the dangerous dog as provided for in this chapter or prior to releasing the dog from impoundment, and shall be maintained so long as the dangerous dog resides within the city.
- (c) An owner transferring ownership of any dog found to be dangerous under this article shall provide written notice to the new owner regarding the dog's classification as dangerous. An owner either, transferring ownership of, or moving the location of, a dog classified as dangerous under this article shall notify the city in writing regarding the new address, or the name, address, phone number of the person receiving the dog. Any person receiving a dog classified as dangerous must comply with all requirements of this chapter.
- (d) A violation of this section shall constitute a class C civil infraction, punishable as provided within this chapter.

(Ord. No. L-80, § 2, 4-20-09; Ord. No. 16-015, § 1, 8-15-16.)

Sec. 4-52. - Registration process and fees.

- (a) The animal control division will administer the registration program and is authorized to adopt rules and procedures necessary to fulfill this responsibility.
- (b) Owners or custodians of dogs and cats requiring registration pursuant to this article, shall register and obtain tags as follows:
  - (1) Within thirty (30) days of acquiring the dog or cat; or
  - (2) Within thirty (30) days after the owner or custodian takes residence in the incorporated areas of Fort Pierce, whichever occurs later.
  - (3) Upon transfer of a previously registered animal to a new owner or custodian, the owner or custodian shall have a period of thirty (30) days within which to comply with the requirements of this article. Except that upon the transfer of a dangerous or vicious dog, as provided in this chapter, the owner or custodian shall have a period of seven (7) days to comply.
- (c) Registrations must be purchased from the animal control division, participating veterinarians, animal shelter, or other agents as approved by the city, except that only the animal control division shall process the registration of vicious or dangerous dogs.
  - (1) Applications for registration must include a proof of current and valid rabies vaccination as provided within this chapter, and applications for registration of sterilized dogs or cats must include a sterilization certificate issued by a licensed veterinarian. No registration will be issued without such certifications.
  - (2) Applications for the registration of vicious animals or dangerous dogs must include certificate of

liability insurance as required within this chapter. Any registration issued pursuant to the presentation of this certificate, shall immediately become invalid upon an owners failure to maintain such liability insurance. No registration will be issued without such certificate.

- (3) Fees, applications, and certification information will be forwarded to the city clerk by selling agents as required by administrative rule.
- (d) The registration certificate and tag shall be valid for one year from the date of issuance.
- (e) The registration provisions of this article shall not apply to:
  - (1) Any owner or custodian who is a nonresident or temporary resident, as defined herein, provided that the owner's animal has been vaccinated for rabies and this vaccination remains valid for the duration of the anticipated stay within the incorporated areas of the city and that a valid rabies tag is worn as required by this chapter. A "temporary resident" as used herein shall be defined to mean a person who intends to reside within the city for a total period of less than six (6) months during any twelve-month period.
  - (2) The ownership, care, custody or maintenance, in the ordinary course of business, of any animal by a research or veterinary medical facility, animal shelter, boarding facility, or commercial pet shop, provided that said shelter, facility, or shop is operating in accordance with all applicable occupational licensing, code, and zoning ordinances.
  - (3) Government-owned law enforcement service dogs.
- (f) Fees for registrations shall be charged as follows:
  - (1) Annual fee for each sterilized cat or dog: ..... \$ 10.00
  - (2) Annual fee for each nonsterilized cat or dog: ..... 75.00
  - (3) Replacement tags ..... 5.00
  - (4) Non-sterilized cats and dogs that are registered with a veterinarian's certification that the animal's age or health prevents sterilization shall pay the same fee for sterilized cats and dogs.
  - (5) Fees shall be waived for any service dog or cat that is specially trained and actively engaged in service to assist the handicapped; however, these animals must be registered and comply with requirements to wear tags.
- (g) Fees for the registration of dangerous dogs as required within this chapter shall be one hundred dollars (\$100.00), which is in addition to the applicable standard registration fee as provided herein.
- (h) Proceeds from the registration program shall first be used for program administration; and then, remaining proceeds may be used for education and to support free or reduced cost pet spay and neuter programs

(Ord. No. L-80, § 2, 4-20-09; Ord. No. 16-015, § 1, 8-15-16)

**PART II**  
**DANGEROUS DOGS**

767.10 Legislative findings.

767.11 Definitions.

767.12 Classification of dogs as dangerous; certification of registration; notice and hearing requirements; confinement of animal; exemption; appeals; unlawful acts.

767.13 Attack or bite by dangerous dog; penalties; confiscation; destruction.

767.135 Attack or bite by unclassified dog that causes death; confiscation; destruction.

767.136 Attack or bite by unclassified dog that causes severe injury or death; penalties.

767.14 Additional local restrictions authorized.

767.15 Other provisions of chapter 767 not superseded.

767.16 Police or service dog; exemption.

**767.10 Legislative findings.**—The Legislature finds that dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure of owners to confine and properly train and control their dogs; that existing laws inadequately address this growing problem; and that it is appropriate and necessary to impose uniform requirements for the owners of dangerous dogs.

History.—s. 1, ch. 90-180.

**767.11 Definitions.**—As used in this act, unless the context clearly requires otherwise:

(1) “Dangerous dog” means any dog that according to the records of the appropriate authority:

(a) Has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property;

(b) Has more than once severely injured or killed a domestic animal while off the owner’s property; or

(c) Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

(2) “Unprovoked” means that the victim who has been conducting himself or herself peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by a dog.

(3) “Severe injury” means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

(4) “Proper enclosure of a dangerous dog” means, while on the owner’s property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and shall also provide protection from the elements.

(5) “Animal control authority” means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. In those areas not served by an animal control authority, the sheriff shall carry out the duties of the animal control authority under this act.

(6) “Animal control officer” means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this act or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) “Owner” means any person, firm, corporation, or organization possessing, harboring, keeping, or having control or custody of an animal or, if the animal is owned by a person under the age of 18, that person’s parent or guardian.

History.—s. 2, ch. 90-180; s. 2, ch. 93-13; s. 1156, ch. 97-102; s. 1, ch. 2011-211.

**767.12 Classification of dogs as dangerous; certification of registration; notice and hearing requirements; confinement of animal; exemption; appeals; unlawful acts.—**

(1) An animal control authority shall investigate reported incidents involving any dog that may be dangerous and, if possible, shall interview the owner and require a sworn affidavit from any person, including any animal control officer or enforcement officer, desiring to have a dog classified as dangerous.

(a) An animal that is the subject of a dangerous dog investigation because of severe injury to a human being may be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time, or impounded and held. The animal may be held pending the outcome of the investigation and any hearings or appeals related to the dangerous dog classification or any penalty imposed under this section. If the dog is to be destroyed, the dog may not be destroyed while an appeal is pending. The owner is responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal pending any hearing or appeal.

(b) An animal that is the subject of a dangerous dog investigation which is not impounded with the animal control authority must be humanely and safely confined by the owner in a securely fenced or enclosed area. The animal shall be confined in such manner pending the outcome of the investigation and the resolution of any hearings or appeals related to the dangerous dog classification or any penalty imposed under this section. The address at which the animal resides shall be provided to the animal control authority. A dog that is the subject of a dangerous dog investigation may not be relocated or its ownership transferred pending the outcome of the investigation and any hearings or appeals related to the dangerous dog classification or any penalty imposed under this section. If a dog is to be destroyed, the dog may not be relocated or its ownership transferred.

(2) A dog may not be declared dangerous if:

(a) The threat, injury, or damage was sustained by a person who, at the time, was unlawfully on the property or who, while lawfully on the property, was tormenting, abusing, or assaulting the dog or its owner or a family member.

(b) The dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

(3) After the investigation, the animal control authority shall make an initial determination as to whether there is sufficient cause to classify the dog as dangerous and, if sufficient cause is found, as to the appropriate penalty under subsection (5). The animal control authority shall afford the owner an opportunity for a hearing prior to making a final determination regarding the classification or penalty. The animal control authority shall provide written notification of the sufficient cause finding and proposed penalty to the owner by registered mail, certified hand delivery, or service in conformance with the provisions of chapter 48 relating to service of process. The owner may file a written request for a hearing regarding the dangerous dog classification, penalty, or both, within 7 calendar days after receipt of the notification of the sufficient cause finding and proposed penalty. If the owner requests a hearing, the hearing shall be held as soon as possible, but not later than 21 calendar days and not sooner than 5 days after receipt of the request from the owner. If a hearing is not timely requested regarding the dangerous dog classification or proposed penalty, the determination of the animal control authority as to such matter shall become final. Each applicable local governing authority shall establish hearing procedures that conform to this subsection.

(4) Upon a dangerous dog classification and penalty becoming final after a hearing or by operation of law pursuant to subsection (3), the animal control authority shall provide a written final order to the owner by registered mail, certified hand delivery or service. The owner may appeal the classification, penalty, or both, to the circuit court in accordance with the Florida Rules of Appellate Procedure after receipt of the final order. If the dog is not held by the animal control authority, the owner must confine the dog in a securely fenced or enclosed area pending resolution of the appeal. Each applicable local governing authority must establish appeal procedures that conform to this subsection.

(5)(a) Except as otherwise provided in paragraph (b), the owner of a dog classified as a dangerous dog shall:

1. Within 14 days after issuance of the final order classifying the dog as dangerous or the conclusion of any appeal that affirms such final order, obtain a certificate of registration for the dog from the animal control authority serving the area in which he or she resides, and renew the certificate annually. Animal control authorities are authorized to issue such certificates of registration, and renewals thereof, only to persons who are at least 18 years of age and who present to the animal control authority sufficient evidence of:

a. A current certificate of rabies vaccination for the dog.

- b. A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign at all entry points which informs both children and adults of the presence of a dangerous dog on the property.
- c. Permanent identification of the dog, such as a tattoo on the inside thigh or electronic implantation.

The appropriate governmental unit may impose an annual fee for the issuance of certificates of registration required by this section.

2. Immediately notify the appropriate animal control authority when the dog:
  - a. Is loose or unconfined.
  - b. Has bitten a human being or attacked another animal.
  - c. Is sold, given away, or dies.
  - d. Is moved to another address.

Before a dangerous dog is sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the animal control authority. The new owner must comply with all of the requirements of this section and implementing local ordinances, even if the animal is moved from one local jurisdiction to another within the state. The animal control officer must be notified by the owner of a dog classified as dangerous that the dog is in his or her jurisdiction.

3. Not permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but will prevent it from biting a person or animal. The owner may exercise the dog in a securely fenced or enclosed area that does not have a top, without a muzzle or leash, if the dog remains within his or her sight and only members of the immediate household or persons 18 years of age or older are allowed in the enclosure when the dog is present. When being transported, such dogs must be safely and securely restrained within a vehicle.

(b) If a dog is classified as a dangerous dog due to an incident that causes severe injury to a human being, based upon the nature and circumstances of the injury and the likelihood of a future threat to the public safety, health, and welfare, the dog may be destroyed in an expeditious and humane manner.

(6) Hunting dogs are exempt from this section when engaged in any legal hunt or training procedure. Dogs engaged in training or exhibiting in legal sports such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials are exempt from this section when engaged in any legal procedures. However, such dogs at all other times in all other respects are subject to this and local laws. Dogs that have been classified as dangerous may not be used for hunting purposes.

(7) A person who violates any provision of this section commits a noncriminal infraction, punishable by a fine not to exceed \$500.

**History.**—s. 3, ch. 90-180; s. 3, ch. 93-13; s. 3, ch. 94-339; s. 1157, ch. 97-102; s. 2, ch. 2016-16.

### **767.13 Attack or bite by dangerous dog; penalties; confiscation; destruction.—**

(1) If a dog that has previously been declared dangerous attacks or bites a person or a domestic animal without provocation, the owner is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time, or impounded and held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to request a hearing under s. 767.12. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

(2) If a dog that has previously been declared dangerous attacks and causes severe injury to or death of any human, the owner is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to request a

hearing under s. 767.12. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

(3) If the owner files a written appeal under s. 767.12 or this section, the dog must be held and may not be destroyed while the appeal is pending.

(4) If a dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack, the owner is not guilty of any crime specified under this section.

**History.**—s. 4, ch. 90-180; s. 4, ch. 93-13; s. 4, ch. 94-339; s. 3, ch. 2016-16.

**767.135 Attack or bite by unclassified dog that causes death; confiscation; destruction.**—If a dog that has not been declared dangerous attacks and causes the death of a human, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to request a hearing under s. 767.12. If the owner files a written appeal under s. 767.12 or this section, the dog must be held and may not be destroyed while the appeal is pending. The owner is responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

**History.**—s. 4, ch. 90-180; s. 4, ch. 93-13; s. 4, ch. 94-339; s. 3, ch. 2016-16.

**Note.**—Former s. 767.13(2).

**767.136 Attack or bite by unclassified dog that causes severe injury or death; penalties.**—

(1) If a dog that has not been declared dangerous attacks and causes severe injury to, or the death of, a human, and the owner of the dog had knowledge of the dog's dangerous propensities, yet demonstrated a reckless disregard for such propensities under the circumstances, the owner of the dog commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) If the dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack, the owner of the dog is not guilty of any crime under this section.

**History.**—s. 4, ch. 2016-16.

**767.14 Additional local restrictions authorized.**—This act does not limit any local government from adopting an ordinance to address the safety and welfare concerns caused by attacks on persons or domestic animals, placing further restrictions or additional requirements on owners of dogs that have bitten or attacked persons or domestic animals, or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed and that the provisions of this act are not lessened by such additional regulations or requirements. This section does not apply to any local ordinance adopted prior to October 1, 1990.

**History.**—s. 5, ch. 90-180; s. 5, ch. 2016-16.

**767.15 Other provisions of chapter 767 not superseded.**—Nothing in this act shall supersede chapter 767, Florida Statutes 1989.

**History.**—s. 6, ch. 90-180.

**767.16 Police or service dog; exemption.**—

(1) Any dog that is owned, or the service of which is employed, by a law enforcement agency, is exempt from this part.

(2) Any dog used as a service dog for blind, hearing impaired, or disabled persons that bites another animal or a human is exempt from any quarantine requirement following such bite if the dog has a current rabies vaccination that was administered by a licensed veterinarian.

**History.**—s. 1, ch. 91-228; s. 6, ch. 2016-16.