

SPOKANE

Judge: Dog ordinance unconstitutional

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Spokane's "dangerous dog" ordinance is unconstitutional because it denies pet owners the right of due process, a Superior Court judge ruled Friday in a case that may have far-reaching effects.

As a matter of law, the administrative procedures used in the city of Spokane regarding "dangerous dog" determinations and appeals from those rulings violate citizens' due process rights, Judge Robert Austin said in his ruling.

It came in the case of Patty Schoendorf, a 57-year-old resident of the city's West Central neighborhood. Her dog, a 1½-year-old boxer and golden Lab mix named Kenny, and her daughter's 4-year-old border collie and black Lab mix, Tai, were impounded in mid-August by SpokAnimal officers working under a city animal control contract.

The ruling suggests the City Council now must correct the legal issues with its "dangerous dog" ordinance and provide more constitutional protections to citizens whose animals are picked up and destroyed, sometimes in a matter of days.

In the current system, dogs tagged as "dangerous" by the city and its contractor, SpokAnimal, are deemed to be that unless the owner can prove otherwise – flying in the face of the notion of presumed innocence.

City Attorney Jim Craven said he would have a comment after reading the judge's four-page ruling. It's the latest legal setback for the City Attorney's Office and the City Council, which recently granted a 26-month contract extension to SpokAnimal.

Shortly after the judge released his 4-page ruling, Schoendorf, her daughter, Emily Kaeding, and their attorneys, Cheryl Mitchell and Richard Lee, raced to SpokAnimal's facility at 710 N. Napa late Friday afternoon for a tail-wagging reunion with Kenny and Tai.

They are home this weekend after spending more than three months in solitary confinement while Schoendorf paid \$14 a day and hired a team of attorneys to keep them from being euthanized. She was only allowed two visits – sticking her fingers through the chain mesh – after the court intervened.

"I've been praying for this day for so long," Schoendorf said Friday afternoon, nervously fondling her dog's leash. SpokAnimal officials had her spend several minutes signing legal papers before the dogs could be released.

"I think I'm going to give him a steak bone, even though I can't afford one after all this," Schoendorf said when asked what she would do with her dog this evening. Tai, who spends days at Schoendorf's home, went to another home with Kaeding.

They were being held in the public-restricted "dangerous dog" area – sort of a doggy death row – where dogs labeled dangerous are euthanized within 14 days unless their owners pay \$98 in advance, demand a hearing and get a Superior Court restraining order preventing them from being destroyed.

"Most poor people can't afford to fight the city like this, so they just lose their dogs," Schoendorf said.

SpokAnimal officers alleged her dogs killed a neighborhood cat in late July, but Schoendorf says the contract dog catchers grabbed the wrong black and tan dogs. She said 13 other sets of black and brown dogs live within a two block radius of her West Central home, but she wasn't given an opportunity to make that case before a city hearing examiner.

The judge said the city violated Schoendorf's constitutional rights by taking her property – her dogs – and intending to destroy them after a hearing where she wasn't allowed to cross-examine or impeach witnesses involved in the dogs' impoundment.

She also wasn't given access to documents in the city's "dangerous dog" file and the opportunity to rebut those allegations – another denial of due process guaranteed by the Constitution.

The judge not only ordered SpokAnimal to immediately release the dogs, he ordered the city to pay as-yet undetermined legal bills for a team of attorneys.

"The attorney fees are going to be pretty healthy in this," said attorney Robert Caruso, who worked with Lee of his firm and Mitchell, who specializes in animal rights legal issues.



Mitchell said she has "been fighting" with the city and its contract that allows SpokAnimal to pick up dogs and label them dangerous on the spot, even if they have returned home, as Kenny and Tai had done after someone opened the gate at Schoendorf's home.

Her adult son was there Aug. 16 when SpokAnimal control officers said they had come to pick up two black and brown dogs, tentatively described by an 80-year-old man who witnessed a cat mauled by two dogs in late July. The cat later died.

"They told my son, 'If you don't give us those dogs, we're going to arrest you and put you in jail,'" so he went in the house and handed over the two dogs," Schoendorf said. Her third dog, a golden retriever named Hannah, escaped attention and remained in the home.

After getting off work that day, Schoendorf went to SpokAnimal and was told she would have to pay \$98 in advance – \$7 a day for each dog – to keep them from being euthanized while she filed an appeal with City Hearing Examiner Greg Smith.

At the informal hearing, witnesses were not given an oath, Schoendorf said, and she wasn't given a chance to challenge their version of events, accusing her dogs of killing the cat. There also were documents given to the hearing examiner by SpokAnimal that she wasn't allowed to see, she said.

The hearing examiner ruled her pets were "dangerous dogs" and said they could be returned to Schoendorf and her daughter only if they posted a \$100,000 bond per animal, had them wear muzzles any time they were outside, and built a special concrete-floor outdoor kennel posted with "dangerous dogs" signs.

After lining up Mitchell and Caruso's law firm, where she works as a paralegal, Schoendorf instructed the lawyers to get a restraining order to prevent SpokAnimal from euthanizing her dogs while she appealed the hearing examiner's dangerous dog ruling to Superior Court.

Mitchell drafted the legal papers, asking the judge to declare the city's dangerous dog ordinance – part of the Spokane Municipal Code – unconstitutional.

"I'm absolutely delighted," Mitchell said of the ruling. "Finally, a judge has told them – the city and SpokAnimal – they have to have rules and follow the Constitution."

The judge said dogs clearly are property, so a government agency must comply with due process provisions of the Constitution when seizing animals.

The judge said the city and SpokAnimal failed to identify a "standard of proof" – the legal criteria – in labeling dangerous dogs.

"Similarly, in this case, the appellant (Schoendorf) was at no time during the hearing allowed to cross-examine the witnesses testifying against them," Austin said. "In addition, the appellant was not given, prior to the hearing, certain documents used in the hearing."

Furthermore, the judge said, instead of a presumption of innocence that accompanies most legal proceedings, the burden of proof shifted to Schoendorf to prove her dogs weren't the dangerous dogs responsible for the cat's death.