

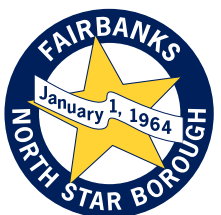
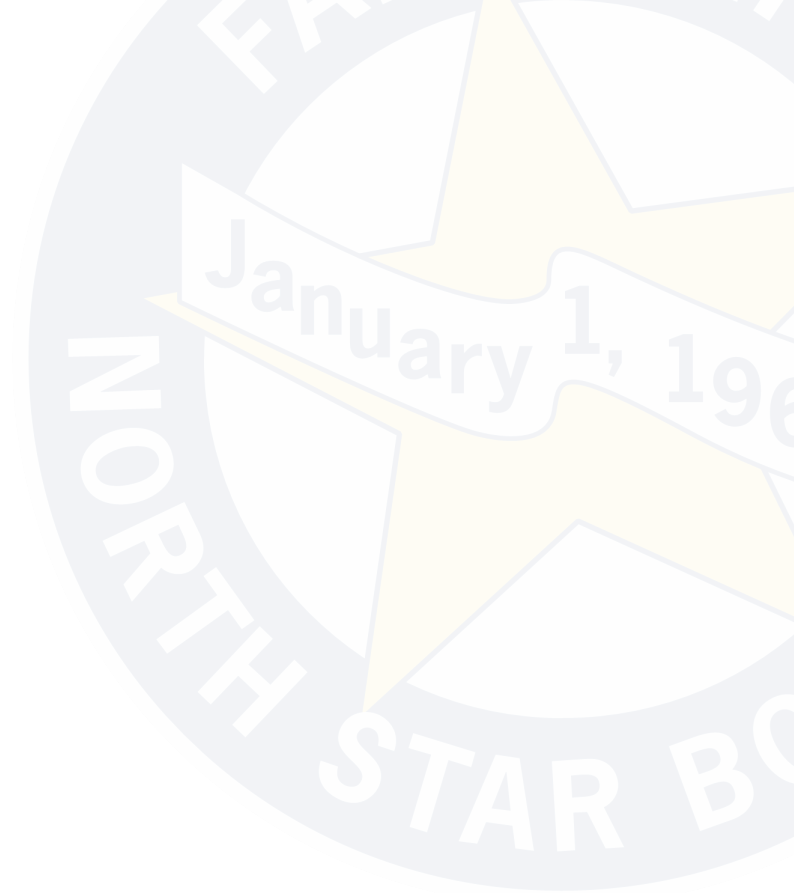
FAIRBANKS NORTH STAR BOROUGH

Animal Control Commission

Quasi-Judicial Role and Procedural Training

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Quasi-Judicial Role and Procedural Training

Our goals today

- What “Quasi-Judicial” and “Ex Parte” mean
- Why it matters
- Procedures for quasi-judicial matters



Quasi-Judicial Role and Procedural Training

WHAT: “Quasi-Judicial”

- Decisions that determine the rights of an individual or discrete group of persons
- Applies existing law to the specific facts (rather than makes new law)
- Requires finding that, from all the evidence presented, the required standards have been met



Quasi-Judicial Role and Procedural Training

WHY: Quasi-judicial hearings

- Constitutional guarantee of due process, observed by:
 - No ex-parte communications
 - Sworn testimony
 - Restrict evidence to that which is relevant
 - Restrict presentation of testimony by non-parties
 - Cross-examination
 - Rebuttal

NOTE: these rules do not apply to “legislative” matters, like when you are considering an ordinance



Quasi-Judicial Role and Procedural Training

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Quasi-Judicial Role and Procedural Training

WHAT: “Ex Parte”

- “One sided”
- Black’s Law Dictionary:
 - adv: on or from one party only, usu. without notice to or argument from the adverse party
 - adj: done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested



Quasi-Judicial Role and Procedural Training

WHAT: Ex Parte

- Can be oral or written communications
- Rule of thumb: If you didn't find out the information while you were "on the record" in a meeting, it is likely an ex-parte communication



Quasi-Judicial Role and Procedural Training

WHY? Ex Parte

- Procedural Due Process Rights
 - Right to an impartial decision-maker
 - Right to know what information the decision-maker is using to make a determination
 - Right to cross examine and/or rebut the information



Quasi-Judicial Role and Procedural Training

WHY: Ex Parte

- Level playing field
- Unfair to take evidence from only one side
- Unfair to permit any side to present evidence to the decision makers in private
- Do not want one side influencing a vote outside the public forum



Quasi-Judicial Role and Procedural Training

WHEN: Ex Parte

- An appeal has been filed to the ACC
- A matter appears on your agenda
- Beware:
 - Forthcoming matters
 - Ex.: you speak to someone and they file an appeal the following day
 - Pending appeals
 - Ex.: a court remands a decision to you for re-hearing but you have spoken to one of the parties about the matter



Quasi-Judicial Role and Procedural Training

Ex Parte - General Rules

- **AVOID** the contact
- If you accidentally have an ex-parte contact, **DISCLOSE** it on the record at the beginning of the meeting
 - Or as soon as you realize that you had an ex parte contact
- Disclose **WHAT** was relayed to you
- State whether you believe it has impacted your opinion or view of the matter and whether you can still be **UNBIASED**



Quasi-Judicial Role and Procedural Training

Ex Parte - What if ...

- You know the matter is coming to the ACC but...
 - You get a phone call or email about it?
 - You run into someone in the grocery store and they want to talk about it?
- You didn't know that it would be coming to the ACC and...
 - You talked about it and later the matter comes up for hearing?
 - You heard a discussion on a radio program or read about it in the newspaper?



What do you need to disclose?

- At a minimum, the substance of the contact and the identity of the person making the contact.
- If it is in written form, make the actual email, letter, photograph, etc. a part of the record.



Quasi-Judicial Role and Procedural Training

Pro tip – be prepared

- Contacts happen – have a response ready
 - Be ready to nicely but firmly cut someone off
 - Apologize and explain that you are not able to discuss the matter
 - Direct the person to Animal Control, who can tell the person if they are a party who can participate at the hearing and, if so, when the hearing is or, if not, that they can attend the hearing as an audience member



Quasi-Judicial Role and Procedural Training

Example #1

You are at dinner with friends, Jack and Diane (two Americans who grew up in the heartland). Diane tells you a story about their friend, John, getting bitten by a dog. The following week your agenda gives notice of an appeal of Animal Control's conditions of release for dog Spot owned by Owen Err. At the meeting, you see Jack and Diane in the audience and realize they must be there to testify as witnesses to John's dog bite.



Quasi-Judicial Role and Procedural Training

What do you do?

- A. Say nothing and pretend you do not know them so you look fair.
- B. Wave hello and nod vigorously in agreement when they testify.
- C. Disclose the contact and explain to the Commission that you can remain unbiased and that you will make your decision based only on the evidence presented.



Quasi-Judicial Role and Procedural Training

What do you do?

- A. Say nothing and pretend you do not know them so you look fair.
- B. Wave hello and nod vigorously in agreement when they testify.
- C. **Disclose the contact and explain to the Commission that you can remain unbiased and that you will make your decision based only on the evidence presented.**



Quasi-Judicial Role and Procedural Training

What should I say when I disclose this?

“Mr. Chair, before we hear this matter, I need to disclose an ex-parte contact. Last week, Jack and Diane told me about a dog bite incident. I understood that a dog ran out of a yard and bit their friend. I did not know about this appeal at the time. I believe that despite this information, I can listen to all the evidence and this information has not impacted my ability to be impartial here tonight.”



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Is your answer the same if:

Jack and Diane are not present at the meeting?



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YES.

You still have information the other decision-makers do not have, that the dog owner does not know and therefore cannot address or refute, and it could appear to influence your decision.



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Going further – other issues

- You are friends with Jack and Diane
 - This relationship needs to be disclosed and explored to determine if you have a conflict
- Despite knowing them, can you remain fair and impartial?



Quasi-Judicial Role and Procedural Training

Going further - what could you have done differently?

- When at dinner and someone mentions a dog bite, ask when it occurred. If it was recent, cut off the conversation since it could be a matter that comes to the ACC.



Quasi-Judicial Role and Procedural Training

Example #2

You are at home eating dinner before your Commission meeting. Your phone rings, and as soon as you answer Ms. Germanotta begins telling you why an animal control officer's decision about the dog Beyonce should be reversed. You realize immediately that this matter is on tonight's agenda.



Quasi-Judicial Role and Procedural Training

What should you do?

- A. Listen politely and inform Ms. Germanotta that you will keep the information in mind when you decide the matter tonight.
- B. Politely but firmly interrupt, explain that you cannot discuss this matter, then disconnect the call without offering an opinion.
- C. Tell Ms. Germanotta that the other Commissioners need to hear this and conference call them in to hear her story.



Quasi-Judicial Role and Procedural Training

What should you do?

- A. Listen politely and inform Ms. Germanotta that you will keep the information in mind when you decide the matter tonight.
- B. Politely but firmly interrupt, explain that you cannot discuss this matter, then disconnect the call without offering an opinion.
- C. Tell Ms. Germanotta that the other Commissioners need to hear this and conference call them in to hear her story.



Quasi-Judicial Role and Procedural Training

So you chose B – great! But was this an ex-parte contact?

YES. Even though you did not respond and terminated the call, Ms. Germanotta contacted you and likely provided some information to you before you could cut her off. Disclose the contact on the record.



Quasi-Judicial Role and Procedural Training

Going further – what about emails and voicemails?

Your answer should be the same even if you passively received a message. If you listened to a voicemail or read an email – even if you stopped listening/reading when you realized it was an ex-parte contact – you must disclose the contact and the information you received.



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Example #3

Mr. Pitman is appealing Animal Control's order to euthanize his dog Armando Christian Perez ("Mondo"). Animal Control explained that Mondo should be euthanized because he has bit once before this incident. Both incidents left nicks that bled, but no puncture wounds. Animal Control testifies that there are no conditions under which this dog can be rehabilitated. You are a retired professional dog trainer and believe the dog could be trained. What do you do?



Quasi-Judicial Role and Procedural Training

Example #3

- A. Wait until the Commission is deliberating and explain to the members that Mondo is an excellent candidate for training and rehabilitation and educate them on why.
- B. Declare a conflict. You have ex parte information about dog training. Animal Control is wrong and, as such, you simply cannot be neutral in this matter.
- C. Ask the Animal Control Officer questions about different training techniques, safety measures, and proven effectiveness to elicit testimony on the record that you can rely on to support your position in deliberations.



Quasi-Judicial Role and Procedural Training

Example #3

- A. Wait until the Commission is deliberating and explain to the members that Mondo is an excellent candidate for training and rehabilitation and educate them on why.
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Wrapping it up – Ex Parte

- Is it information obtained outside a public meeting?
 - Did you disclose it?
- Has it been determined that you can be fair and impartial despite this knowledge?
- Did you give the applicant a chance to object or address your observations?



Quasi-Judicial Role and Procedural Training

WHY: Quasi-judicial hearings

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 - Sworn testimony
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 - Cross-examination
 - Rebuttal
 - Neutral decision maker



Quasi-Judicial Role and Procedural Training

Conflicts

- Remember that you need to be neutral not only in fact but also in appearance
- Contact with a party sufficient to cause a reasonable person to believe you are biased may be a conflict
- Financial dealings, family or friendly relationships, personal knowledge may all form the basis of a conflict



Quasi-Judicial Role and Procedural Training

Questions?

If:

- You think you have been involved in an ex parte contact
- You are not sure if it is a quasi-judicial proceeding to which these rules apply
- You think you may have a conflict

You can ask your Chair and/or contact FNSB Legal and ask the assigned attorney



Quasi-Judicial Role and Procedural Training

WHAT: Dangerous Animal Appeals

- ACO has made a determination
- Owner appeals
- Commission holds an appeal hearing
 - FNSBC 4.16.060 and 4.04.150(B)
 - Hearing outcome options:
 - Affirm,
 - Reverse, OR
 - Modify the ACO's determination



Quasi-Judicial Role and Procedural Training

WHO: Code-specified participants

- Animal's owner
 - Owner may present “character” witnesses
- Victim
- Witnesses to the incident
- Staff (Animal Control Officer)
- Animal Control Commission



Appeal Hearing Basics

- All documents should be exchanged 5 working days before the hearing
 - Unless there is a “good faith reason” for delay and any prejudice is addressed
- Testimony must be under oath
- Time limits must be evenly applied
- After someone testifies, each party should be allowed to ask them questions (cross-examination)
- The animal owner should get rebuttal (“the last word”)



WHAT: Dangerous Animal Appeals

Burden of Proof/Standard:

- Animal Control Officer bears the burden of proof
- Your decision must be supported by a preponderance of evidence in the record
 - Preponderance of evidence is where the "weight" of the evidence presented at the hearing is on your side rather than "in the balance" (neutral or leans to the other side)
 - Fact findings must be supported by "substantial evidence" – such relevant evidence that a reasonable mind would accept as adequate to support a conclusion



WHAT: Dangerous Animal Appeals

Burden of Proof/Standard:

- Animal Control Officer bears the burden of proof
 - This means that if you are 50/50 about your decision, then Animal Control **has not** met its burden
- Is this a “dangerous animal”?
- Are the conditions or order of euthanasia appropriate?



Dangerous Animal Appeals - Standard

- “Dangerous animal” means any animal that:
 - Threatens or endangers the safety of a person or animal
 - Displays threatening or aggressive behavior
 - Intentionally inflicts or attempts to inflict a bite on a human (not including accidental or provoked bites)
 - While not under restraint on the owner’s property, kills an animal



Quasi-Judicial Role and Procedural Training

Example #4

After hearing an appeal and all evidence, it is determined that a decision cannot be reached without additional information.

What should the Commission do?



Quasi-Judicial Role and Procedural Training

Example #4

- A. Postpone the decision in order to allow the parties to give the Commission more information.
- B. Decide in favor of the appellant/owner.
- C. Either A or B.
- D. Neither A nor B.



Quasi-Judicial Role and Procedural Training

Example #4

- A. Postpone the decision in order to allow the parties to give the Commission more information.
- B. Decide in favor of the appellant/owner.
- C. **Either A or B.**
- D. Neither A nor B.



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Going further – so you chose A...

The Commission decided to postpone the decision in order to allow the parties to give more information. Animal Control distributes documents to the Commission members. At the next meeting, the Commission reads the matter into the record and immediately votes to affirm Animal Control's order.

Has there been a violation?



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Dangerous Animal Appeals - Standard

- Are the conditions or euthanasia appropriate?
 - Proportionate to the act/harm?
 - Ex. Euthanasia of a dog that attacked but did not cause physical injury may be disproportionate.
 - Do the conditions relate to or purport to address the harm?
 - Ex.: A muzzle condition for a bite dog might be related to the harm caused.
 - Are the conditions or euthanasia order consistent with how others have been treated in similar circumstances? If not, is there a legitimate reason for treating this matter differently?



HOW: Dangerous Animal Appeals

Making a record:

- Your decision can be appealed to the court
 - The owner needs to be able to understand your decision so they can decide if they want to appeal
- You must create a record and issue a decision that the court can review
 - The court must be able to understand your reasoning

This means: if you there is conflicting evidence, you must state what evidence you relied on and why



HOW: Dangerous Animal Appeals

Going further:

- Refusing to accept irrelevant evidence/testimony helps create a clean record
- Sometimes you may need to state that a witness was not credible to explain why you didn't rely on their testimony
- Deliberations help create the record
- Findings of Fact and Conclusions of Law must be developed and voted upon by the Commission



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HOW: Dangerous Animal Appeals

Findings and Conclusions:

- Be specific
- Resolve disputed testimony
- Point out what evidence supported your decision
- If the appellant/owner fails to bring forth evidence, state that



Example: Owen Err and Spot

After the hearing involving Owen Err, you have the following evidence:

- Staff report: John's lower leg was bitten by Spot on 3/10/22 when Spot escaped its yard through an ajar gate and John was walking by. This was Spot's second unprovoked bite in two years. Records from the first bite indicate that Mr. Err admitted to the bite and the circumstances. Euthanasia was ordered.
- Jack, Diane, and John all testified that they were walking by and that the gate was open, allowing Spot to attack John.
- Owen Err testified that the gate was securely closed and he alleges that John opened it to pet Spot. Owen Err claims that his dog is calm unless provoked. On questioning, Mr. Err eventually admits that Spot bit once before but contends it was provoked. Mr. Err also claims that John has been out to get him since Mr. Err moved in next door with his pasture-raised chickens. According to Mr. Err, John just doesn't like chickens. Mr. Err testified that he is a huge proponent of local agriculture and food security.



Quasi-Judicial Role and Procedural Training

Ex.: Deliberations

- You have conflicting information about the gate, who do you believe and why?
- Mr. Err claimed Spot is calm and only bites when provoked, do you believe that testimony?
 - Does it matter that Mr. Err only alleges that John opened the gate, not that he further provoked the dog?
- Does it matter that Mr. Err claims John is out to get him?
- Does it matter that Mr. Err raises chickens and advocates food security?



Ex.: Findings and Conclusions

APPEAL TO THE ANIMAL CONTROL COMMISSION

By Owen Err, Owner of Spot

An appeal hearing was conducted on April 4, 2022 in accordance with Chapter 4.16 FNSBC, at which time the Fairbanks North Star Borough Animal Control Commission heard the appeal referenced above. The Appellant/Owner was sent a notice that the hearing had been scheduled for that date. At that meeting, Owen Err appeared and testified. The victim and two witnesses to the dog bite also testified. After hearing and deliberations, the Fairbanks North Star Animal Control Commission found and concluded as follows:

FINDINGS OF FACT

1. The animal Spot had an unprovoked bite incident on June 20, 2021. Records indicate that Mr. Err admitted at the time that Spot had bitten and that it was not provoked.
2. The animal Spot bit John on March 10, 2022 when John and friends Jack and Diane were walking by Mr. Err's yard. There was conflicting evidence about whether the gate was standing ajar or whether John opened the gate.
3. At the hearing, Mr. Err testified that Spot bit once before but currently asserts the bite was unprovoked. This is in contrast to statements made in 2021.
4. Mr. Err claims that John is "out to get" Mr. Err and therefore initiated Spots attack.
5. The Commission finds the testimony of John, Jack, and Diane to be more credible than Mr. Err's. Mr. Err previously admitted to the prior attack being unprovoked and now states it was provoked, and the Commission finds this to be not credible. Further, even if John is out to get Mr. Err, it is unlikely that a person would provoke an attack on themselves. In addition, Jack and Diane appeared to be credible and were not proclaimed to be out to get Mr. Err. For these reasons, the Commission finds that the gate was ajar, allowing Spot to escape the yard, and that the bite was unprovoked.
6. Spot intentionally inflicted a bite on a human. The bite was not accidental.
7. Spot has a demonstrated propensity to aggress and bite people.

CONCLUSIONS OF LAW

Based on these facts, the Commission concludes:

1. Because Spot intentionally bit John, Spot is a dangerous animal.
2. Spot intentionally bit another human less than one year prior and that bite was not provoked or accidental.
3. Spot's propensity to bite makes Spot a danger, and euthanasia is warranted.

Therefore, The Commission AFFIRMS the determination of the Animal Control Officer.



Quasi-Judicial Role and Procedural Training

FINDINGS OF FACT

1. The animal Spot had an unprovoked bite incident on June 20, 2021. Records indicate that Mr. Err admitted at the time that Spot had bitten and that it was not provoked.

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Quasi-Judicial Role and Procedural Training

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Therefore, The Commission **AFFIRMS** the determination of the Animal Control Officer.



QUESTIONS?

