

AN ORDINANCE TO AMEND CHAPTER 6 “ANIMALS” OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect certain revisions to Chapter 6 “Animals” of the Code of Ordinances of the City of New Bern.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

SECTION 1. That Chapter 6 “Animals” of the Code of Ordinances of the City of New Bern be and the same is hereby amended by deleting Chapter 6 in its entirety and inserting in its stead the following:

“CHAPTER 6 – ANIMALS AND ANIMAL CONTROL¹”

Section 6-1. Purpose.

It shall be the purpose of this chapter to prohibit certain acts, omissions and conditions which interfere with the health, safety and general welfare of the inhabitants of the city; to protect the public from unvaccinated, diseased, stray, roaming, or dangerous animals; to make unlawful acts of animals that interfere with the enjoyment of property or the peace and safety of the community; to protect animals from abuse or conditions harmful to their well-being; and to provide for the peace and dignity of the city.

Section 6-2. Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this ordinance shall have the meaning indicated below:

(1) *Animal*: Any live vertebrate creature specifically including, but not limited to dogs, cats, farm animals, birds, fish and reptiles.

(2) *Adequate food*: The provision at suitable intervals, not to exceed twenty-four (24) hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition for the animal. Such foodstuff shall be served in a

¹ **State Law reference**— City authority to regulate domestic animals, G.S. § 160A-186; City authority to regulate or prohibit animals dangerous to person or property, G.S. § 160A-187; City power to levy license tax on keeping domestic animals, G.S. § 160A-212; City may define and prohibit animal abuse; G.S. § 160A-182 Cruelty to animals, G.S. § 14-360; Vaccination of dogs and cats, G.S. § 130-185; Rabies vaccination tags, G.S. § 130A-190; time of rabies vaccination, 10A N.C. Admin. Code 41G.0101; City authority to control dangerous dogs, G.S. § 67-4.5.

receptacle, dish or container that is physically clean and in which agents injurious to health have been removed or destroyed to a practical minimum.

(3) *Adequate water:* A constant access to a supply of clean, fresh water provided for in a sanitary manner.

(4) *Adequate shelter:* A clean, ventilated, shaded enclosed area of at least three (3) sides and a weatherproof roof, accessible by an animal and of sufficient size so as to provide the animal with free movement, a place to lie down comfortably, and reasonable protection from adverse weather conditions. The containment area for the animal shall be free of accumulated waste and debris so that the animal shall be free to walk or lie down without coming in contact with any such waste or debris. A suitable method of draining shall be provided to rapidly eliminate excess water or moisture. Aquatic and semi-aquatic animals shall have an adequate amount of clean water in which to move. Animals housed under the following conditions shall not constitute adequate shelter:

- (a) Underneath outside steps, decks, and stoops; or
- (b) Inside of vehicles; or
- (c) Underneath vehicles; or
- (d) Inside metal or plastic barrels or cardboard boxes; or
- (e) Rooms, sheds or other buildings without windows or proper ventilation.

(5) *Behavior:*

Three categories of behavior are defined as follows:

(a) *Vicious dog:* One which, without provocation, inflicts severe injury on a human being.

(b) *Dangerous dog:*

(i) One which, without provocation, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off the property of the owner or keeper; or

(ii) One which, without provocation, bites a person causing less severe injury than that defined as severe.

(c) *Potentially dangerous dog:*

(i) One which causes any person being chased or approached by the dog to reasonably believe that the animal will cause physical harm to the person when off the property of the owner or keeper; or

(ii) One which when off the property of its owner or keeper of the animal has killed, seriously bitten, inflicted injury or otherwise caused injury by attacking a domestic animal when the dog was unprovoked by the actions of the other animal.

(6) *Competent person*: A person of suitable age and discretion to keep an animal under sufficient control in order to prevent harm to the animal, to persons, to other animals or to property.

(7) *Cruel and cruel treatment*: Every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such acts or omissions shall include, but not be limited to: beating, choking, kicking, hanging, submerging under water, suffocating, poisoning, confining in a closed vehicle without functioning air conditioning or ventilation whenever the ambient temperature exceeds seventy (70) degrees Fahrenheit, confining in the closed trunk of a vehicle, setting on fire, and depriving of adequate food, water, shelter or medical treatment, or otherwise subjecting the animal to conditions detrimental to its health or general welfare.

(8) *Custodian*: The custodian shall be the person owning, keeping, having charge of, sheltering, feeding, harboring or taking care of any animal.

(9) *Dog*: Any member of the canidae family, or any hybrids of such canidae, thereof, including but not limited to wolf hybrids, which are a cross between a wolf or a wolf hybrid and a domestic dog (*canis familiaris*).

(10) *Exotic animals*: Exotic animals are animals other than domestic animals, farm animals, and wild animals which are not native to North Carolina.

(11) *Owner*: Any person or entity that has possessory rights of the dog. Owner means any person handling, keeping, possessing, harboring, maintaining or having the care, custody or control of the dog except licensed veterinary clinics, animal control shelters, or licensed boarding kennels. Minor children are not to be considered owners. The parent(s), legal guardian or person(s) acting in loco parentis will be considered owner, and as such will be considered the individual responsible for the dog.

(12) *Provocation*: Any act that would reasonably be expected to cause an animal to defend itself, its young, its custodian or the property of the custodian of said animal.

(13) *Restraint*: A dog is under restraint within the meaning of the chapter if:

- (a) It is on or within a vehicle being driven or parked;
- (b) It is within a secure enclosure;
- (c) It is controlled by means of a tether, provided such tether complies with the requirements established in Section 6-9; or
- (d) It is on the premises of the custodian and attended by and under the control of a competent person.

(14) *Severe injury*: Any physical injury to a human being that results in muscle tears, disfiguring lacerations, corrective surgery, cosmetic surgery, broken bones or hospitalization; either individually or in any combination thereof.

(15) *Stray*: Any animal within the city limits, off the premises of the custodian, and not under restraint.

(16) *Tethering* means tying out or fastening a dog outdoors on a rope, chain or other type of line for holding a dog. This shall not include tying out or fastening a dog outdoors on an attended leash.

(17) *Vicious animal*: Any animal other than a dog, on or off the premises of its custodian, that without provocation has killed, or caused severe injury to a person; or without provocation has injured, maimed or killed a pet or domestic livestock.

(18) *Wild and dangerous animals*: Wild animals which are dangerous to persons and property include, but are not limited to: all felines (other than the domestic house cat), nonhuman primates, bears, wolves, coyotes, reptiles (poisonous, crushing and giant), and any crossbreed of such animals which have similar characteristics of the animals specified herein.

(19) *Wolf*: Any canine classified as *canis lupus* or *canis rufus*.

(20) *Wolf hybrid*: Any canine which has a wolf ancestor within the previous four generations. This definition shall include a wolf or wolf hybrid as either a sire or dam, grandsire or dam, great-grandsire/dam or great-great grandsire/dam. An animal shall also be considered a wolf hybrid if it has been represented by its owner as having wolf ancestry.

Section 6-3. Office of animal control.

(a) The office of animal control is established by the City of New Bern. It shall be the duty of the animal control officer to perform all of the duties incident to the administration and enforcement of this chapter, and to perform such other duties as by general law or ordinance may be imposed.

(b) The animal control office shall be composed of the animal control officer assigned to the police department, and such employees as shall be determined by the city manager.

(c) The animal control officer shall be charged with the responsibility of:

(1) Enforcement of the city laws, ordinances and resolutions relating to animals or to the care, custody and control of animals;

(2) Cooperation with and assistance to the county health director in the enforcement of the laws of the State of North Carolina with regard to animals; vaccination of domestic animals against rabies; and to the confinement and leashing of animals;

(3) Investigations of reported and observed cruelty or animal abuse with regard to all animals pursuant to the pertinent provisions of Section 14-360 of the Statutes of North Carolina; and reported or observed violations of any section of this chapter.

(d) To carry out the responsibilities established in this Section 6-3, the animal control officer shall have the power to:

(1) Take up and deliver any stray animal in violation of this chapter to the animal shelter.

(2) Issue all appropriate permits, citations and notices required for the enforcement of this chapter.

(3) Organize and carry out canvasses of the city, including homes and any businesses utilizing security dogs; and, insuring that the provisions of this chapter and state law related to animal control are adhered to.

(4) Investigate complaints of city residents with regard to animals.

(5) Protect animals from neglect or abuse.

(6) Enforce state law with regard to an owner's failure to obtain proper vaccination of dogs and cats against rabies.

(7) Investigate all reported animal bites or other exposures to suspected rabid animals, and submit reports as required by law.

(e) Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the animal control officer has reasonable suspicion to believe that there exists in any household or upon any premises any violation of this chapter, the animal control officer is hereby empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon him/her by this chapter as follows:

(1) If such property is unoccupied, the animal control officer shall first make a reasonable effort to locate the owner or other persons having control of the property; and

(2) If such property is occupied, the animal control officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefore; and

(3) If such entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be located after due diligence, the animal control officer may seek an administrative inspection warrant as provided in N.C.G.S. § 15-27.2.

(f) It shall be unlawful to interfere with, hinder, resist, or obstruct the animal control officer or other authorized officers in the performance of any duty authorized by this chapter, or seek to release any animal in the custody of such person.

(g) Nothing in this chapter shall be construed to prevent law enforcement authority of any kind from enforcing any or all provisions of this chapter or from exercising their authority as law enforcement officers.

Section 6-4. Animals to be seized humanely; tranquilizing animals; putting animals to death in attempting to seize.

(a) Any animal control officer or law enforcement officer, in carrying out his or her duties under this chapter, shall make every effort to deal humanely with all animals.

(b) If in the considered judgment of any animal control officer or law enforcement officer, an attempt to seize an animal would be dangerous to the person attempting that seizure, the animal control officer or law enforcement officer may inject the animal with a chemical tranquilizer which will result in limiting the activity of the animal. Such use of a tranquilizer will be used only when every other reasonable method of seizure has been attempted.

(c) If in the considered judgment of any animal control officer or law enforcement officer, an attempt to seize an animal would be dangerous to the person attempting that seizure, then and only then shall an animal control officer or law enforcement officer be authorized to humanely put the animal to death. It is the intent of the subsection to note that killing an animal is to be done only after every reasonable effort has been made to seize an animal and only after all other procedures are judged impossible.

Section 6-5. Responsibility of custodian of animals.

(a) The custodian of every animal shall:

(1) Be responsible for the care, vaccination and behavior of such animal;

(2) Be responsible for providing adequate food, water, and shelter for such animal; and

(3) Take whatever action(s) is necessary to insure that the animal not pose a risk to health or safety of the public.

Section 6-6. Cruelty to animals.

(a) It shall be unlawful to commit any of the acts of cruel treatment as described in subsection 6-2(7).

(b) It shall be unlawful for any person willfully or through neglect to overdrive, overload, wound, injure, torment, torture, deprive of adequate food, adequate water or adequate

shelter, cruelly beat, choke, needlessly mutilate or kill any animal or cause any of the aforesaid things to be done.

(c) It shall be unlawful for a person who negligently or willfully fails to provide adequate medical attention for any sick, diseased or injured animal he or she owns, possesses, or harbors.

(d) It shall be unlawful to allow dogs to live in crowded conditions of less than one hundred (100) square feet of unobstructed area per each dog.

(e) It shall be unlawful to injure a cat, dog or other domestic animal by running over or into the same with a motor vehicle and fail to notify immediately the custodian, animal control officer or the police department.

Section 6-7. Penalty for cruelty to animals.

If any person shall willfully instigate, promote, engage in or do any act toward the furtherance of any act of cruelty to any animal as described in Section 6-6, he or she shall be guilty of a misdemeanor and be subject to a fine of five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days. This section is not intended to prevent any enforcement action regarding North Carolina General Statutes, specifically including Article 47 of Chapter 14.

Section 6-8. Abandonment of animals; reporting same.

(a) It shall be unlawful for any person to abandon, drop off or leave any animal to fend for itself or to become a nuisance or danger to the public or to other animals.

(b) Citizens should report to the animal control officer or to a law enforcement officer all abandonments as previously described.

Section 6-9. Continuous tethering prohibited.

(a) It shall be unlawful to tether a dog in any manner except specifically identified as follows:

- (1) Lawful animal event (such as a show or sporting event);
- (2) Lawful hunting activities, if reasonably necessary for the safety of the dog;
- (3) While a dog is actively engaged in shepherding or herding livestock;
- (4) Law enforcement activities;

(5) Camping or other recreation where tethering is required by the camping or recreational area where the dog is located;

(6) After taking possession of a dog that appears to be a stray dog and after having advised animal control authorities of the capture of dog, tether and restrain the dog in accordance with the provisions of this Chapter for a period not to exceed seven (7) days.

(b) During periods of lawful tethering, the length of the cable along which the tethering device can move must be at least ten feet, and the tethering device must be of such length that the dog is able to move ten feet away from the cable perpendicularly and attached in such a manner as to prevent strangulation or other injury to the dog and entanglement with objects such as trees or fences. Lawful tethers must be made of rope, twine, cord or similar material with a swivel on one end or must be made of a chain that is at least ten feet in length with swivels on both ends and which does not exceed ten percent of the dog's body weight. Pulley, running line, or trolley systems must be at least ten feet in length and less than seven feet above the ground. No person shall tether with a chain or wire or other device a dog in such a manner that does not allow the dog access to adequate food, water and shelter.

(c) Violations of this section shall subject the owner to a penalty as follows:

| | |
|-------------------------------|------------------------------------|
| First Offense | \$100.00 |
| Second Offense | \$250.00 |
| Third and Subsequent Offenses | \$500.00 and seizure of the animal |

The violator may pay the citation to the city within ten (10) days of receipt in full satisfaction of the assessed civil penalty. This penalty is in addition to any other fees authorized by this chapter.

(d) Each day a violation of this section continues shall constitute a separate offense. In addition to or in lieu of the foregoing remedies, violations of this section may be enforced by a member of the police department or other employee designated by the city manager through any one or more of the remedies authorized by the provisions of G.S. 14-4 G.S., 14-360 et seq., G.S. 19A-1 et seq., or G.S. 160A-175.

Section 6-10. Keeping certain animals in city.

(a) *Wild and dangerous animals.* It shall be unlawful to keep or cause to be kept wild and dangerous animals, as defined in this chapter, within the city limits. Wild animals within the city temporarily as part of a bona fide circus or an educational event shall be exempt. Any such animal shall be confined within a secure building or enclosure or under restraint.

(b) *Vicious animals.* It shall be unlawful to keep or cause to be kept any vicious animal, as defined in this chapter, unless confined as provided in Section 6-15.

(c) *Animals which may pose a risk to the health or safety of the public.* The custodian of an animal which may pose a threat to the public must:

(1) Provide signs, warnings and notifications; and provide restraints to restrict the access of said animal to the public.

(2) Provide safe access to those persons who have legal authority to be on the custodian's property.

(d) *Cows, swine, goats, horses, sheep, cattle.* It shall be unlawful for any person to keep or maintain any cow, swine, goat, horse, sheep or cattle within the corporate limits of the city, unless such animals are housed in a barn or shelter located at least two hundred (200) feet from the nearest dwelling. For purposes of this section, cows, swine, goats, horses, sheep and cattle include all of such animals in the same genus, but excluding pigs weighing no more than the largest dog species that are kept indoors as family pets.

(e) *Chickens.*

(1) No person shall allow his or her chickens to run at large within the corporate limits of the city.

(2) It shall be unlawful for any person to keep more than ten (10) chickens within the corporate limits of the city.

(3) Chickens must be kept a minimum of thirty (30) feet from the nearest residence other than that of the owner and may not be kept between the street and a line drawn parallel to the street facing walls of a residence.

(4) All chicken houses and lots must be maintained in a clean and sanitary condition at all times.

(5) It shall be unlawful to raise chickens for commercial purposes within the corporate limits of the city.

(f) *Noisy fowl.* It shall be unlawful for any person to keep or maintain on any premises or lot within the city any rooster, duck, goose or other such bird or fowl that by loud and habitual crowing, quacking or honking or in any other manner constitutes a public nuisance. Failure to abate such nuisance within two (2) days after written notice to do so from the city manager shall be unlawful.

(g) *Exotic animals.* It shall be unlawful for any person to keep or maintain on any premises or lot within the city any exotic animal, as described in section 6-2(10), that by loud and habitual noise or offensive odor causes a public nuisance. Failure to abate such nuisance within two (2) days after written notice to do so from the ~~city manager~~ animal control officer shall be unlawful. Any exotic animal kept in the city limits must be provided with adequate shelter, food and water for its species.

(h) *Number of dogs and cats.* It shall be unlawful to maintain in one household more than a total of seven (7) dogs and/or cats, in any combination, over the age of four (4) months.

(i) The restrictions in section 6-10(a) and (b) shall not apply to animals that are at the office of: (1) a licensed veterinarian for the purpose of obtaining medical treatment; or (2) in the care of wildlife rehabilitator properly licensed by the North Carolina Wildlife Resources Commission. Animals must be in secure enclosures or under restraint while being transported and while receiving treatment.

(j) *Fighting animals.* It shall unlawful to own, ~~or~~ harbor, or breed any animal for the purpose of fighting or training for fighting.

(k) *Animals for which there is no anti-rabies vaccine.* It shall be unlawful to keep animals which are susceptible to rabies and for which there is no effective anti-rabies vaccine reasonably available.

Section 6-11. Possession of dyed or painted chicks, ducklings and rabbits.

It shall be unlawful, within the city limits, to possess chicks, ducklings or rabbits which have been dyed, painted or in any way changed from their natural color.

Section 6-12. Animals prohibited at street fairs, festivals or parades.

(a) *Prohibited.* It shall be unlawful for any person that owns or possesses any animal, including dogs or cats, to possess, lead, keep, run or allow such animal to run at large within 150 feet of any street fair, festival or parade sanctioned or permitted by the city regardless of whether such animal is controlled by means of a chain, leash or other like device.

(b) *Exceptions.* The prohibition of subsection (a) shall not apply to:

(1) Service animals such as guide dogs or other guide animals for disabled persons under the control of such person;

(2) Licensed or permitted kennels or to animals legitimately a part of a parade, sanctioned street fair or festival; or

(3) Law enforcement animals.

(c) *Approval.* For the purposes of this section, a sanctioned or permitted street fair, festival or parade is an event approved or permitted by the board of aldermen by resolution. The geographical limitations of the street fair, festival or parade shall be delineated by the resolution.

(d) *Violations.* Violation of subsection (a) shall constitute a misdemeanor as provided by G.S. 14-4, and shall subject the offender to a civil penalty in the amount of \$25.00. The offender shall be issued a written citation which must be paid to the city within ten (10) days of receiving the written citation. If the offender fails to pay the penalty within ten days of receiving the written citation, the penalty may be recovered by the city in a civil action in the nature of a debt.

Section 6-13. Certain acts declared public nuisances.

(a) The following acts are defined as public nuisances. Animals may be impounded by the animal control officer for any of the following, subject to redemption in the manner provided in this chapter:

- (1) Any animal which habitually and repeatedly makes noises sufficient to interfere seriously with neighboring residents' reasonable use of their property;
- (2) Any animal which is offensive to others due to an odor caused by the animal;
- (3) Any animal which repeatedly turns over garbage cans, damages flower or vegetable gardens, or causes damage to property of others;
- (4) A female dog in heat not in a building or secure enclosure in such a manner that she will not be in contact with another dog;
- (5) Any stray animal which is away from the premises of the custodian, or in a public place or on any public property in the city, unless the animal is under restraint;
- (6) Any animal which unprovoked, chases or approaches a pedestrian, bicycle rider or vehicle in a menacing fashion or apparent attitude of attack.

(b) Penalties. An animal is declared a public nuisance by the animal control officer, who will issue a citation to the custodian for the violation. Citations may be delivered in person or sent by registered mail to the custodian, if that person cannot readily be found. Violations of this section shall subject the owner to a penalty as follows:

| | |
|--------------------------------------|-----------------|
| <u>First Offense</u> | <u>\$100.00</u> |
| <u>Second Offense</u> | <u>\$250.00</u> |
| <u>Third and Subsequent Offenses</u> | <u>\$500.00</u> |

The violator may pay the citation to the city within ten (10) days of receipt in full satisfaction of the assessed civil penalty. This penalty is in addition to any other fees authorized by this chapter.

(c) In the event that the custodian does not appear in response to the described citation or the civil penalty is not paid within the period prescribed, a criminal summons may be issued against the custodian for violation of this chapter and upon conviction, the custodian shall be punished as provided by state law and be subject to a fine of five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days.

Section 6-14. Dangerous or potentially dangerous dog.

(a) *Housing and control.* A dangerous or potentially dangerous dog will be housed in a “secure enclosure.”

(1) A secure enclosure is one which is:

(i) *Outdoors.* Outdoors, padlocked, with a concrete bottom, so constructed as to prevent the dog from escaping under the fence and with a secure wire top, so as to preclude the animal from escaping over the top of the fence. The fencing will be kept in good repair at all times to prevent the escape of the dog.

1. All outdoor pens will be at least six feet in height, and at least ten feet in width and ten feet in length. Any other structure so used to confine the animal will be of similar size to prevent inhumane containment. All pens, structures and confinement areas will be inspected as necessary by the animal control officer.

2. The property will be posted with clearly visible warning signs adequate to inform the public, including children, of the presence of a dangerous or potentially dangerous dog and placed on the property as designated by the animal control officer including, but not limited to, the pen and curtilage.

(ii) *Indoors.* If the dog is housed in a residence all or part of the time, the residence windows and doors will be secured so as to prevent the dog’s escape.

(iii) *Inside other building/structure.* If the dog is housed in an outbuilding, garage, storage shed, or other structure the building will be so secured as to prevent the dog’s escape. Ventilation will be provided by manner of windows or other openings to provide adequate air exchange to prevent the overheating of said outbuilding, said openings to be secured so as to prevent the dog’s escape.

(2) The dangerous or potentially dangerous dog is not permitted to be unconfined on the owner’s property without a muzzle, regardless of whether in the presence of its owner or others. The muzzle will be properly fitted so as not to restrict the breathing or vision of the dog and not to cause harm by abrading or cutting into the skin.

(3) When off the property, in the accompaniment of the owner or other responsible adult, the dog will be secured by a leash no longer than four feet. The leash will be attached to a collar or harness. Both leash and collar or harness must be manufactured specifically for the control of dogs. The dog will be muzzled at all times.

(b) *Permanent identification of declared dogs required.* Any dog declared dangerous or potentially dangerous will be permanently identified by means of a tattoo located on the inside thigh or by an electronic implant. The cost of said tattoo/implant will be paid by the owner of the dog. The owner is hereby required to allow and assist the animal control officer in viewing the tattoo or reading the electronic implant at such times as deemed reasonable or at such time the identification of the animal is in question, either by the animal control officer or by complaint filed by any third-party.

(c) *Obedience training/behavior modification may be required.* As a condition of registration and findings of the person responsible for declaration of dangerousness or potential dangerousness of said dog certain obedience classes/training may be required at the discretion of said person. If so required by the appellate board as a condition of release from the designation dangerous or potentially dangerous, obedience classes or training shall be obtained from a certified/licensed dog trainer specializing in behavior modification and standardized training procedures recognized by The American Kennel Club or other recognized dog club. Successful completion of the training by both the owner and the dog will be required as a condition of release from said designation. All costs of said training will be borne by the owner of the dog and will be paid in full to the satisfaction of the trainer.

(d) *Release from status of declaration of dangerous or potentially dangerous.*

(1) If after 36 months there are no additional instances of the declared behavior, the dog shall be removed from the list of dangerous or potentially dangerous dogs. The dog may, but is not required to be, removed from the list of dangerous or potentially dangerous dogs prior to the expiration of the 36-month period if the owner or keeper demonstrates to the animal control officer's satisfaction that changes in circumstances or measures taken by the owner or keeper, such as training of the dog, have mitigated the risk to public safety.

(2) If, however, within six months following removal from the list of dangerous or potentially dangerous, the dog exhibits any of the behaviors that resulted in the original declaration, or any other behavior that would result in the declaration of dangerous or potentially dangerous the dog automatically, with no right of appeal will be declared dangerous and will be subject to all the restrictions and constraints as defined for the remainder of the dog's life. Any applicable fees, permit registrations, surety bond or insurance would be reinstated for the continued inspections.

(e) *Exceptions to declaration.*

(1) No dog may be declared vicious, dangerous or potentially dangerous when being used by certified law enforcement officer(s) in carrying out the official duties of that office.

(2) No dog may be declared dangerous or potentially dangerous if any injury or damage is sustained by a person who, at the time of sustaining the injury or damage was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime.

(3) No dog may be declared dangerous or potentially dangerous if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.

(4) No dog may be declared potentially dangerous if an injury or damage was sustained by a domestic animal which at the time of the injury or damage was teasing, tormenting, baiting, abusing or assaulting the dog.

(5) No dog may be declared potentially dangerous if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of its owner or keeper, and the damage or injury was to a species or type of animal appropriate to the work of the dog.

(f) *Permit fees and registration of dogs declared potentially dangerous, dangerous or vicious.* Owners of dangerous or potentially dangerous dogs will be assessed a prorated annual fee of \$100.00 payable at the beginning of the fiscal year to be retained by animal control office. These fees are in addition to any surety bond or liability insurance so required for dangerous dogs.

(1) Fees are to be paid at the time the owner or keeper has agreed to the designation or the court or hearing entity has determined the designation applies to the dog.

(2) The fees are renewable each year thereafter at the onset of the fiscal year for the city.

(3) Owners of vicious dogs are required to pay a yearly permit fee of \$500.00 payable at the beginning of each fiscal year. The first year or any part thereof will be in the amount of \$500.00, renewable each year thereafter at the onset of the fiscal year for the city. This fee is in addition to any surety bond or liability insurance so required.

(4) Fees are in addition to any other licensing, registration, taxing or other costs assessed by any local government agency in regulating or permitting dogs.

(5) No dog declared vicious will be released from that designation. Only dogs declared dangerous or potentially dangerous may be released upon satisfactory evidence presented as stated in the release from status of declaration.

(6) No dog declared dangerous or potentially dangerous may be given away, sold, traded or placed for adoption. Owner of a dog so declared will retain possession of the dog until the dog dies, is destroyed or surrendered to the animal control officer for disposal.

(g) *Liability for dog bites.*

(1) The owner of a dog which bites a person when the person is in or on a public place is liable for damages suffered by the person bitten, regardless of the prior behavior of the dog or the owner's knowledge of its behavior.

(2) Nothing in this section shall permit the bringing of an action for damages against any governmental agency using a dog in military or police work if the bite occurred

while the dog was defending itself from a harassing or provoking act, or assisting an employee of the agency in any of the following:

(i) In the apprehension or holding of a suspect where the employee has a reasonable suspicion of the suspect's involvement in criminal activity;

(ii) In the investigation of a crime or a possible crime;

(iii) In the execution of a warrant; or

(iv) In the defense of a peace officer or another person.

(3) Subsection (2) of this section will not apply in any case where the victim of the bite was not a party to, nor a participant in, nor suspected to be a party to or a participant in the act that prompted the use of the dog in military or police work.

(4) Subsection (2) of this section will apply only where a governmental agency using a dog in military or police work has adopted a written policy on the necessary and appropriate use of a dog for the police or military work enumerated in subsection (2) of this section.

(h) *Certain dogs may be killed.*

(1) Subject to provisions of containment, a dog that has been declared vicious, dangerous or potentially dangerous that is chasing or approaching in a menacing fashion or in an apparent attitude of attack, that attempts to bite or otherwise endanger, or that kills or injures a person or an animal that is the property of another person can be killed at the time of that chasing, approaching, attempt, killing or injury.

(2) If, in attempting to kill such a dog, a person wounds it, that person shall not be liable to prosecution under the penal laws which govern cruelty to animals nor is that person civilly liable for the death or injury of that dog.

(3) The owner of said dog is liable in damages for any injury, death of another animal or loss to a person or property that is caused by the dog unless the injury, death or loss was caused to the person or property of an individual who, at the time, was committing or attempting to commit a criminal offense against any person or was teasing, tormenting or abusing the dog on the owner's property.

(i) *Disposition of dangerous or potentially dangerous dogs.*

(1) All potentially dangerous and dangerous dogs so declared shall be properly licensed if applicable and vaccinated. The animal control officer shall include the dangerous or potentially dangerous designation in the registration records of the dog, in areas where registration of dogs is required, either after the owner or keeper of the dog has agreed to the designation or the court or hearing entity has determined the designation applies to the dog.

Fees may be levied in addition to any applicable licensing fees to provide for the costs of maintaining the records of the dog and for inspections of the premises where the dog is housed, and for periodic inspection of the dog.

(2) A dangerous or potentially dangerous dog shall at all times be maintained, housed, kept or otherwise restrained as outlined in this chapter.

(3) The owner of a dog so designated shall notify the animal control officer, in writing, within two working days of any change in residence of the owner and dog, giving the correct new address and physical location of same. If the dog dies, or is humanely destroyed by persons authorized to do same, the owner will immediately notify the animal control officer of the death of the animal so that proper identification can be made by reading of the tattoo or the electronic implant.

(j) *Notification of determination.*

(1) Upon receiving a report of a vicious, dangerous or potentially dangerous dog, the officer assigned to that report shall make such investigations and inquiries with regard to such report as may be necessary to carry out the provisions of this chapter.

(2) When a dog is classified as vicious, dangerous or potentially dangerous the animal control officer shall notify the dog's owner in writing of that determination, by certified mail to the owner's last known address. Such notice shall be complete upon its mailing. In circumstances where mail is returned by the USPS as unclaimed or unable to deliver the sheriff or other process server may be used in an attempt to notify the owner.

(3) Such notice shall include the findings of the investigation, the reason for the determination, a description of the type of dog(s) involved and the procedures for filing an appeal if such an appeal is granted.

(4) Appellate filing fees will be \$50.00 per appeal/per dog, payable to the city.

(k) *Procedure for declaration.*

(1) The board of aldermen will designate a veterinarian licensed to practice in the state who maintains a veterinary clinic within Craven County to determine a dog's status. It also will designate a separate group of persons as provided in subsection (4) herein to hear any appeal.

(2) If the dog falls under the definition of vicious, dangerous or potentially dangerous, the owner has the right of appeal.

(3) Once such a decision has been made, the owner must follow all state laws and city ordinances dealing with vicious, dangerous, or potentially dangerous dogs until all appeals have been exhausted and a final decision rendered. If no appeal is requested or the owner fails to appeal, then the decision is final.

(4) The appellate board shall consist of three (3) members who shall be either: (a) a veterinarian licensed to practice in the state, (b) a professional dog obedience trainer with at least five years of teaching experience and/or membership in a nationally recognized dog trainers association such as, but not limited to the National Association of Pet Dog Trainers; or (c) a registered veterinary technician. Such persons will serve as an appointee on a yearly basis. No financial remuneration will be paid for their service.

(5) Notice of appeal shall be completed by filing a written objection with the appellate board within three business days after receiving written notice. The appellant's filing fees will be included with the notice of appeal. The appellate board shall schedule a hearing within ten business days of the filing of the appeal. Until the appeal is final, the dog must be controlled and confined pursuant to the code requirements for the specific designation of that dog. Any appeal from the final decision of such appellate board will be submitted to the superior court by filing notice of appeal and a petition for review within ten days of the final decision of the appellate board.

(6) Appeals from rulings of the appellate board will be heard in superior court. The appeal shall be heard de novo before a superior court judge sitting in the county in accordance with N.C.G.S. 67-4.1(c).

(7) In the case of a vicious dog, the animal must be housed at an animal shelter, veterinary clinic or licensed boarding kennel in the county until all decisions are final. Fees or charges for such boarding will be paid by the owner prior to the release of the dog. In cases when the determination of the board is that the animal will be humanely euthanized, the owner will still be charged the daily board fee for housing the animal in addition to euthanasia fees and disposal fees, if applicable.

(8) Within seven days after a vicious, dangerous or potentially dangerous dog determination becomes final, the owner must have the animal tattooed with an identification number and have that number registered with a nationally recognized registry body or have the animal implanted with an electronic identification micro-chip and have that micro-chip duly registered. All containment areas and the placement of mandated signs will be inspected by the animal control officer. Approval or disapproval is the animal control officer's responsibility.

(9) An owner who violates any part of this section 6-14 in a willful or grossly negligent manner shall forfeit all rights of ownership of the dog and upon a final determination of such violation the dog may be humanely euthanized by a licensed veterinarian or other person so trained. The person or board responsible for determining that the dog is vicious, dangerous or potentially dangerous shall determine whether the owner's violation was willful or grossly negligent. The person or board must notify the owner in writing, giving the reason for the determination, before they may euthanize the dog. The owner may appeal the determination by filing written objections and paying the appellate filing fee to the appellate board within three business days of receipt of the notice. The appellate board shall schedule a hearing within ten days of filing of objections. Any appeal from the final decision of such appellate board shall be

taken to the superior court by filing notice of appeal and a petition for review within ten days of the final decision of the appellate board.

(10) Appeals from rulings of the appellate board shall be heard in superior court. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate board whose ruling is being appealed is located in accordance with N.C.G.S. § 67-4.1(c).

(l) *Maximum penalty per day for violation.*

(1) A violation of any portion of Sections 6-14 or 6-15 subjects the offender to a maximum criminal penalty of \$500.00 as provided under N.C.G.S. § 14.4(a) for each day a violation exists.

(2) A violation of Sections 6-14 or 6-15 subjects the offender to a civil penalty of \$500.00 for each day a violation exists. Those sums may be recovered by the city in a civil action in the nature of debt if the offender does not pay within 10 days of notification of a violation. Following receipt of notification of a violation pursuant to Sections 6-14 or 6-15, an offender commits an additional and separate offence for each day the offender fails to remedy said violation.

(3) Sections 6-14 and 6-15 may also be enforced by application for appropriate injunction, order of abatement or such other equitable relief as may be appropriate under N.C.G.S. § 160A-175 or similar provision.

Section 6-15. Dogs declared vicious.

(a) No dog declared vicious pursuant to Section 6-14(k) may be offered for sale, given away, traded or placed for adoption. The owner of a dog so designated shall notify the animal control officer, in writing, within two working days of any change in residence of the owner and dog, giving the correct new address and physical location of same. The owner of a dog so declared will retain possession of the dog until the dog dies, is destroyed or surrendered to the animal control officer for disposal. When the dog dies or is destroyed, the owner will immediately notify the animal control officer of the death of the animal so that proper identification can be made by reading of the tattoo or electronic implant.

(b) The declaration of vicious will carry with it certain and specific conditions not necessarily the same as those restrictions of dogs declared dangerous or potentially dangerous.

(c) A dog determined to be a vicious dog may be destroyed when it is found, after proceedings conducted to determine same, that the release of the dog would create a significant threat to the public health, safety and welfare. If it is determined by the appellate board that a dog found to be vicious shall not be destroyed, the judicial authority shall impose conditions upon the ownership of the dog that protect the health, safety and welfare of the public.

(d) The owner of a dog declared vicious may be prohibited from owning, possessing, controlling, or having custody of any dog for a period of up to three years if found, after proceedings that ownership or possessing of a dog by that person would create a significant threat to the public health, safety and welfare.

(e) If it is determined that a dog so declared as vicious shall not be destroyed, the judicial authority may impose additional conditions to protect the public health, safety and welfare; such as, but not limited to:

(1) *Mandated housing in a secure enclosure.* A secure enclosure is:

(i) *Outdoors.*

a. The primary enclosure for said dog will be set inside a protective fence, at least four feet, but no more than six feet from the primary enclosure, the fence and gate will be constructed of nine-gauge chain link, at least six feet in height, with a padlocked gate. The gate must be securely closed, even when the owner is inside the primary enclosure to effect care/cleaning.

b. The primary enclosure will be constructed of nine-gauge chain link, at least six feet in height and a minimum of ten feet by ten feet square, with a concrete floor anchored to the fencing. Anchoring may be accomplished either by burying the fence or by installing anchors to the bottom rail of the fence so as to preclude the escape of the dog. The top area of the pen will be totally enclosed, including the protective fence, with chain link of a minimum gauge of 11.5, so anchored to the side walls of the pen/protective fence to preclude the escape of the animal by climbing. All support uprights, top and bottom rails and all hardware needed to erect the pen and perimeter fence to be of such grade as to properly support weight of said fencing. The gate to the primary enclosure will be padlocked and must be securely closed, even when the owner is inside the pen to effect cleaning of the pen and care of the dog.

c. A dog house, sufficiently sized to accommodate the dog will be available at all times to the dog to protect it from the elements of nature. Said shelter will be kept in good repair and kept in a clean manner.

(ii) *Indoors.* If the dog is housed in a residence all or part of the time, the residence windows and doors will be secured so as to prevent the dog's escape.

(iii) *Inside other building/structure.* If the dog is housed in an outbuilding, garage, storage shed, or other structure, the building will be so secured as to prevent the dog's escape. Ventilation will be provided by manner of windows or other openings to provide adequate air exchange to prevent the overheating of said outbuilding, said openings to be secured so as to prevent the dog's escape.

(f) The vicious dog is not permitted to be unconfined on the owner's property without a muzzle, regardless of whether in the presence of the owner or others. The muzzle will

be properly fitted so as not to restrict the breathing or vision of the dog and not to cause any harm to the dog.

(g) When off the property, in the accompaniment of the owner or other responsible adult, the dog will be secured by a leash no longer than four feet. The leash will be attached to a collar or harness. Both leash and collar or harness must be manufactured specifically for the control of dogs. Said dog will be muzzled at all times in such a manner as not to cause any harm to the dog.

(h) A surety bond or a policy of liability insurance issued by a surety company or insurance company authorized to conduct business in this state in a form acceptable to the city in the sum of \$500,000.00, payable to any persons injured by said dog, insuring the owner for any personal injuries inflicted by the dog will be carried by the owner of the dog and will remain in effect until cancellation of said bond or insurance is authorized by the animal control officer upon satisfactory proof being offered as to the death of the dog.

(i) Posting of the property and perimeter fencing will be in such a manner as to warn any and all persons, including children, of the presence of a vicious dog. Said signs will be placed in such a manner as to be visible from the common entrance(s) to the property, specifically the driveway, but not limited to that point. Said signs must be visible from all property lines on the property, and must be specifically placed on all sides of the perimeter fence.

(j) Surgical spaying or neutering will be required on any dog declared vicious. Such altering will be performed by any veterinarian licensed to practice in the state. Said surgery will be performed before the owner is permitted to reclaim the animal. All fees will be paid in full by the owner to the satisfaction of the veterinarian prior to release.

(k) Permanent identification of the dog will be by tattoo inside the thigh, or by electronic implant; cost of said tattoo/implant will be paid by the owner of the dog. The owner is required to allow and assist the animal control officer in viewing the tattoo or reading the implant at such times as deemed reasonable, or at such time the identification of the dog is in question, either by the animal control officer or by a complaint filed by any third-party and upon declaration by the owner of the death of said animal.

(l) Behavioral evaluation of said dog may be required by the appellate board to be performed by a person recognized in the field of animal behavior and the findings of said evaluation will be made a permanent record in the owner/dogs file. Cost of such evaluation will be borne by the owner of the dog and paid to the satisfaction of the individual performing the evaluation regardless of the outcome of any hearing or appeal.

(m) All restrictions regarding the containment, identification and behavioral evaluation of a dog declared as vicious must be completed to the satisfaction of the animal control officer before the dog will be released to the custody of the owner.

(n) Any fees incurred for boarding or maintaining said dog while in the custody of the animal shelter, veterinary clinic or other boarding facility will be paid by the owner prior to the dog's release regardless of the findings of the appellate board or appellate review.

(o) A prorated permit fee of \$500.00 will be paid yearly to the city by the owner of the dog so declared vicious. The fee will then be paid at the beginning of each fiscal year. Fees are for maintenance of records, inspections, and any other such duties as may be required to oversee the specific dog in question. This fee is in addition to any surety bond or insurance required to be carried by the owner.

Section 6-16. Defecation on streets, public and private property.

(a) Public property. It shall be unlawful for the custodian of any animal to fail, refuse or neglect to remove feces deposited by the animal on any street, sidewalk, cemetery, park or other publicly owned area.

(b) Private property. It shall be unlawful for the custodian of any animal to fail, refuse or neglect to remove feces deposited by the animal on any private property.

(c) For the purpose of this section, feces shall be immediately removed by placing such matter in a closed or sealed container and thereafter disposing of it by depositing the matter in a trash receptacle, sanitary disposal unit, or other sealed or closed container.

(d) Violation of this section shall constitute a misdemeanor as provided by N.C.G.S. § 14-4, and shall subject the offender to a civil penalty in the amount of \$50.00. The offender shall be issued a written citation which must be paid to the city within ten (10) days of receiving the written citation. If the offender fails to pay the penalty within ten days of receiving the written citation, the penalty may be recovered by the city in a civil action in the nature of a debt.

Section 6-17. Rabies control.

(a) Vaccination. Every dog or cat four (4) months of age or older housed in the city shall at all times be currently vaccinated against rabies. The custodian of all such animals shall provide proof of such vaccination upon demand of the animal control officer. Failure to provide such proof may result in such animal being impounded subject to redemption in the manner provided in this chapter.

(b) Confinement. Whenever any animal or person is bitten by a dog, cat or other animal within the city, the animal control officer shall have the right and authority to examine such animal to determine whether it has rabies. In such case, upon demand of the animal control officer, the custodian of such animal shall deliver it to the animal control officer who may impound such animal for a period as may be necessary to determine whether it has rabies. Such period will not be less than ten (10) days. The custodian is required to pay the cost of the confinement. If said custodian fails to pay for the confinement of said animal, the animal control officer is empowered to proceed as otherwise provided in this chapter. If the animal control

officer finds that such animal has rabies or any symptoms thereof, then said animal control officer shall cause such animal to be destroyed.

If the custodian can provide proof of vaccination and such animal is found at the time of examination not to have rabies or any symptoms thereof, said animal may be returned to the custodian following the examination.

Section 6-18. Impounding animals.

Any animal that, in the considered judgment of the animal control officer, has strayed or which is not properly vaccinated for rabies, or is deemed a public nuisance, may be impounded and confined in the animal pound in a humane manner, subject to redemption, adoption or destruction as provided in current pound regulations.

Section 6-19. Records.

It shall be the duty of the animal control officer to keep or cause to be kept accurate and detailed records of:

- (1) Impoundment and disposition of all animals picked up by the animal control officer;
- (2) Bite cases, violations, complaints and investigations of same.

Section 6-20. State and federal laws.

This chapter will apply except where superseded by state or federal law.”

SECTION 2. That this ordinance shall be effective from and after the date of its adoption.

ADOPTED THIS ^{8th} ~~25th~~ DAY OF ^{August} ~~JULY~~, 2017.


DANA E. OUTLAW, MAYOR


BRENDA E. BLANCO, CITY CLERK