

2.1 AN ORDINANCE ESTABLISHING PROVISIONS AND REGULATIONS FOR THE ENFORCEMENT OF ANIMAL CONTROL WITHIN THE CITY OF HERNANDO, MISSISSIPPI

WHEREAS, present conditions exist which make it mandatory that the Board of Aldermen for the City of Hernando, Mississippi strictly regulate the keeping of stray, vicious and nuisance dogs; and

WHEREAS, the Board of Aldermen find that the following regulations, prohibitions and standards are in the best interest of the citizens of Hernando, Mississippi; and

WHEREAS, said regulations, prohibitions and standards will contribute to the public safety, health and welfare of the citizens of said Hernando, Mississippi; and

WHEREAS, the prior “Ordinance Prohibiting Dogs Running at Large within the City of Hernando and Repealing Chapter 2-1 of the Code of General Ordinances of the City of Hernando, Mississippi adopted on September 2, 1986” is hereby repealed by approval of this Ordinance establishing Guidelines and Regulations for the Enforcement of Animal Control and its actual effective date.

BE IT ORDAINED by the Mayor and Board of Aldermen of the City of Hernando, Mississippi as follows:

Section 1. Definitions

- A. Animal means any live, vertebrate creature, domestic or wild, except homo sapiens.
- B. Animal Control Division means the review and enforcement authority under the supervision of the Hernando Police Department and empowered to administer this chapter.
- C. Animal Control Officer means any person designated by the Hernando Police Department as a law enforcement and/or animal control officer who is authorized to perform such duties under the laws of this state. That additionally any reference herein to Animal Control Officer shall also include and the same as Police Officer.
- D. Animal Shelter means any facility operated by the City of Hernando and/or DeSoto County, Mississippi, or its authorized agents, for the purpose of impounding or caring for animals held under the authority of this chapter or state law.
- E. Feral dog means any dog that has escaped from domestication and become wild, dangerous or untamed.
- F. Owner means any person, partnership or corporation owning, keeping, or harboring one (1) or more animals. An animal shall be deemed to be “harbored” if it is fed and/or sheltered.
- G. Pet means any animal kept for pleasure rather than utility.
- H. Public Nuisance means any animal which:
 - 1. Molests passerby or passing vehicles;
 - 2. Attacks other animals

3. Trespasses on school grounds, county parks, or private property;
 4. Repeatedly runs at large;
 5. Damages private or public property;
 6. Barks, whines, or howls in an excessive, continuous, or untimely fashion;
 7. Defecates or frequently urinates on public property or private property of one other than its owner; or
 8. One that is allowed by its owner to become a nuisance to people or other animals.
- I. Restraint means the condition of securing any dog or other such animal by leash or lead of less than six (6) feet, confinement within the fenced property limits of its owner, by tethering such a way that the animal is confined or restrained within the real property limits of its owner or by confinement within a fenced area within a pen or fenced area within the boundaries of the real property held by the owner.
- J. Running at large describes any dog not under restraint.
- K. Veterinary hospital means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseased and injuries of animals.
- L. Vicious animal means:
1. Any animal which has shown a propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings and/or domestic animals including other dogs.
 2. Any animal which when unprovoked (a) bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, parks or on any public grounds in a menacing or terrorizing manner or apparent attitude of attack.
 3. Any animal which is owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.
 4. Any animal which, according to the records of the animal control officer, has inflicted severe injury on a human being without provocation on public property.
 5. Any animal which, according to the records of animal control officer, has killed a domestic animal without provocation while off the owner's property.

EXCEPTIONS: Notwithstanding the above, no animal may be considered a vicious dog if injury or damage is sustained by a person who, at the time of injury or damage was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime. No animal may be considered vicious if injury or damage was sustained by a domestic animal which at the time of such injury or damages was teasing, tormenting; abusing or assaulting the animal. No animal may be considered

vicious if the animal was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

- M. Enforcement of Ordinance: The civil and criminal provisions of this Ordinance shall be enforced by the division of animal control for the City of Hernando and/or the Hernando Police Department.

Section 2. Police Department, Animal Control Officer to enforce Ordinance: Interfering with Prohibited.

- A. It shall be a violation of this Ordinance to interfere with an animal control officer or police officer in the performance of his duties.
- B. Any police officer or animal control officer having probable cause that a person has violated a Section of this ordinance may, in lieu of obtaining a misdemeanor warrant for arrest of such suspect, issue to said person a written citation requiring said person to appear at a date and time in the Hernando City Court to answer the charge or charges specified in the citation.
- C. Any person violating any provision of this section shall be deemed guilty of a misdemeanor and shall be punished by fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00) or imprisonment in the county jail not to exceed ninety (90) days, or by both such fine and imprisonment, unless otherwise provided for herein. Each day's violation shall be deemed a separate offense.

Section 3. Exposing to Poisons

- A. No person shall expose any known poisonous substance, whether mixed with food or not, so that the same may be eaten by animal; provided that it shall not be unlawful for a person to expose on his own property common pest-control mixed with only vegetable substances.
- B. Any person violating any provision of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) or imprisonment in the county jail not to exceed ninety (90) days, or by both such fine and imprisonment, unless otherwise provided for herein. Each day's violation shall be deemed a separate offense.

Section 4. Keeping of Vicious Animals

- A. While on the owner's property, a vicious animal shall be securely enclosed and child-proofed 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 be upon the premises of the person owning or harboring the same. Such pen or structure must have secure sides and a secure top. If such pen or structure has not bottom

- secured to the sides, the sides must be embedded in the ground no less than two (2) feet.
- B. No person owning or possessing a vicious dog shall suffer or permit such dog to go beyond the premises of such person unless the dog is securely leashed.
 - C. No vicious dog may be kept on a porch or patio or any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such animal may be kept in a house or structure where the windows are open or when screen windows or doors are the only obstacle preventing the dog from exiting the structure.
 - D. All owners, keepers or harbors of vicious dogs within the City of Hernando shall within ten (10) days of the effective date of this ordinance display a prominent place on their premises a sign easily readable by the public using such words as "Beware of Dog". In addition, a similar sign shall be posted on the kennel or pen of such animal.
 - E. The owner or harbors of any dog, which according to the records of the Animal Control Officer and/or the Hernando Police Department or any such other law enforcement agency, has seriously injured a person without provocation or which has aggressively killed a domestic animal (including other dogs) shall be required to provide public liability insurance in a single incident amount of \$500,000.00 for bodily injury to or death of any person or persons for damage to property resulting from the continued ownership, keeping or maintenance of such dog. Such insurance shall contain a provision that the same may not be canceled until ten (10) days notice of cancellation has been given to Hernando Police Department. This section shall apply to dogs brought into the City of Hernando, Mississippi and shall not supersede any other provision of this ordinance. "Serious Injury", for the purposes of this section means any physical injury resulting in any suturing, clamping or gluing on any person and/or hospitalization including Emergency Room treatment whether at a hospital or private clinic.
 - F. Every vicious animal shall be confined by the owner within a building or secure enclosure and shall be securely restrained whenever off the premises of its owner.
 - G. The persons having the enforcement duty under this Ordinance may enter the premises where a vicious dog or animal is kept for an on-site inspection of the premises, and said inspection shall be made only after two (2) days notice to the occupant of the premises. This provision is for inspection of the premises only and does not prohibit any lawful officer from making an inspection for the purposes of investigating any incident and/or crime related to the possible keeping of any such dog(s) on such property.
 - H. This section shall not apply to dogs kept by law enforcement agencies.
 - I. The owner or keeper of vicious animal shall notify the animal control officer or Hernando Police Department within twelve (12) hours if a vicious animal is loose, unconfined, has attacked another animal or human, or is otherwise missing.

Section 5. Responsibility of Owner's of Animals Generally

- A. Animal pens or enclosures shall be large enough to provide reasonable freedom of movement to the animals contained therein.

- B. No owner of an animal shall abandon such animal or fail to maintain such animal in a healthy condition or to provide appropriate veterinary treatment immediately, if ill.
- C. No owner shall fail to provide his animals with sufficient food and wholesome food and water, proper shelter and protection from the weather and to generally provide humane care and treatment.
- D. If probable cause exists that any dog(s) are kept under such conditions as to constitute a violation of this section, a petition for abatement shall be filed by the Animal Control Officer or Police Officer in the City Court, specifically noting the offending conditions. A copy of which shall be served on the owner or harbinger of said animals, with a note to appear in said Court at a specific time and place to show cause if any why an Order of Abatement should not be entered against him, if evidence established that the offending conditions, or any combination of them are present, the Court shall order the same abated within ten (10) days and assess Court costs against the party responsible for said conditions. The Court may also levy a fine of not more than \$500.00 for each violation that in lieu of petition for abatement, the Animal Control Officer or Hernando Police Officer may issue a written warning of offending nuisance conditions but is not required to do so.
- E. If a previous abatement order has been entered against a person within twelve (12) months of a second charge of a violation of this section, and the same or similar offending nuisance conditions are found on the premises cited, then a mandatory fine shall be assessed against said person in the amount of \$500.00 and the condition again ordered to be abated. The Court may also order the offending party to the county jail, for up to thirty (3) days and no such portion of the mandatory fine may be suspended.
- F. Upon a third offense, within twelve months of second charge of such violation, the person responsible shall suffer a mandatory fine of \$750.00 if convicted of failing to meet the standards of responsibility established by this section. The Court may also order the offending party to the county jail for up to ninety (90) days in jail and no portion of the mandatory fine may be suspended.

Section 6. Vaccination of Dogs against Rabies

- A. Any person owning, keeping, harboring or having custody of any dog three (3) months of age or older within the City of Hernando shall have that animal vaccinated against rabies with the approved anti-rabic virus (vaccine) properly administered by one legally authorized to do so. It shall be unlawful for any person to own or have in his possession any dog not so vaccinated. Every dog must be vaccinated in accordance with the Compendium of Animal Rabies vaccines as prepared by the national Association of State Public Health Veterinarians, Inc.

- B. The owner of any dog shall see that the animal wears a securely branded metal tag with the serial number of the vaccination and the yard in which the animal was inoculated stamped thereon and shall see that the collar and the tag are worn by the dog at all times.
- C. The failure to comply with this section shall constitute a misdemeanor, and the offender shall, on conviction thereof, be fined fifty dollars (\$50.00) for the first offense, seventy five dollars (\$75.00) for the second offense and on hundred dollars (\$100.00) for the third offense. It shall be the duty of the division of animal control to enforce this section. Failure to comply may also result of impoundment of such animal for a period of up to five (5) days. That in the event the owner fails to claim such animal within the five (5) day period then such animal may be adopted out or humanely destroyed.

Section 7. Permitting to Run at Large

- A. It shall be unlawful for the owner of any dog to permit it to run at large within the City of Hernando unless it is under the direct supervision of the owner and properly leashed.
- B. Animals running at large shall be impounded at an animal shelter as provided by the City.
- C. The failure to comply with this section shall constitute a misdemeanor, and the offender shall on conviction thereof, be fined fifty dollars (\$50.00) for the first offense, seventy five dollars (\$75.00) for the second offense and one hundred dollars (\$100.00) for the third offense. It shall be the duty of the division of animal control and/or the Hernando Police Department to enforce this section.

Section 8. Elimination of Animals

- A. The animal control officer shall have the authority to seize and destroy or have destroyed an animal or a dog determined to be feral or vicious, as defined in Section 1 of this Ordinance. The destruction of said animal shall be conducted in an expeditious and humane manner. Additionally, the Animal Control Officer and/or Hernando Police Department shall have the authority to destroy any animal or dog determined to be within one of the three categories identified below:
 - 1. The animal or dog is determined by the Animal Control Officer or Hernando Police Department to be a wild or stray dog by determining that two (2) of the following are met as provided by section 41-53-11 of the Mississippi Code of 1972, as amended, to-wit:
 - a. The dog is running at large or not properly confined as described pursuant to this ordinance;
 - b. There is no vaccination tag around the dog's neck;
 - c. Attempts to peacefully capture the dog have been made and proven unsuccessful.

2. The dog or animal has aggressively attacked and caused serious injury or death of any human. For the purposes of this section, “serious injury” means any physical injury that results in broken bones or disfiguring or lacerations requiring sutures, clamping, gluing, or cosmetic surgery. Under such circumstances, the Animal Control Officer or Hernando Police Officer shall immediately confiscate said animal and place the same in quarantine for a period of ten (10) days, and thereafter destroy said animal as provided in this section. However, the Animal Control Officer or Hernando Police Officer shall be authorized to use deadly force upon said animal when the officer is confronted by a vicious dog or other animal and reasonably fears for his safety or the safety of others who are in near proximity to said animal.
 3. If the animal control officer determines that an animal is incurably injured or diseased then under such circumstances it shall be the duty of the Hernando Police Department or duly authorized Animal Control Officer to humanely euthanize or have the same humanely euthanize said animal with an injection, or if necessary discharge a firearm, so as to mercifully end the life of the animal suffering from an incurable injury or disease and it being first determined that the destruction of the animal is the sole effective means of controlling a public nuisance or health hazard. Reasonable efforts shall be conducted by the Hernando Police Department or Animal Control Officer, not exceeding five (5) days, or first locate the owner of any such injured animal unless the animal causes the officer to fear for his safety or the safety of others in near proximity or so as to prevent a public hazard.
- B. Except in those instance when the Animal Control Officer or Hernando Police Officer must immediately destroy a feral or vicious animal or dog, said officer shall take the animal into his custody for confinement in the appropriate county animal shelter. Upon the Animal control Officer’s determination that it shall be necessary to destroy the animal pursuant to this section, the Animal Control Officer shall take reasonable efforts to provide proper notice to the owner of the animal. The Animal Control Officer shall take the following steps to locate and/or notify the owner of the animal:
1. If the owner is not known or to be found, the Animal Control Officer shall post notice of the intention to destroy said animal in three (3) public places for a period of fourteen (14) days. If no person claims to be the owner of said

animal in such time, the Animal Control Officer shall be authorized to destroy the animal in an expeditious and humane manner.

2. If the owner is identified and known, the Animal Control Officer or Hernando Police Officer shall advise the owner either by written correspondence sent certified mail via U.S. Postal Service or hand delivery witnessed by another person advising the owner of the current detention of the animal and determination that said animal is feral or vicious and is to be destroyed. Said notice shall advise the owner that has ten (10) days to object in writing to City Court of Hernando to the intended destruction of the animal and show cause why the animal should not be destroyed. Said written objection must be received by the City Court Clerk within ten (10) days from the receipt of the notice.
 - a. If the owner does not respond in writing to City Court Clerk within ten (10) days to the Animal Control or Police Officer's written correspondence, said Animal Control or Police Officer shall proceed with destroying the animal in a humane manner.
 - b. If the owner does respond, in writing, and advises the Animal Control or Police Officer of his objection to the destruction of the animal then the Animal Control or Police Officer shall proceed as set forth in Paragraph C.
 - c. If the owner of an animal responds to the Animal Control or Police Officer's written notice of the custody of the animal and intention to destroy the same as described above, the animal control officer shall proceed as follows:
 1. The Animal Control or Police Officer shall seek a determination hearing to be held before the City Judge of the City of Hernando, Mississippi to determine if the animal is a feral or vicious animal as defined herein. If the animal is determined at the hearing to be feral or vicious by the City Court Judge, the Animal Control or Police Officer shall seek the authority of the City Court Judge to destroy the animal.
 2. The Animal Control or Police Officer shall advise the owner by written correspondence sent certified mail via U.S. postal Service, or hand delivered that he is seeking the authority of the City Court of Hernando, Mississippi to destroy the animal and that said matter shall be heard by the City Court Judge of Hernando, Mississippi on a date certain. Said notice shall be mailed and/or hand delivered to the owner or person in possession of such animal not less than five (5) days prior to the determination hearing date.
 3. Then Animal Control or Police Officer shall then present to the City Court its desire to destroy the animal. Said hearing shall be conducted in the City

Court of Hernando, Mississippi on the date for which the owner of the animal was notified or to a date continued there from. The owner of said animal shall have the right to object before the City Court Judge as to the destruction of his animal and show cause why the same should not be done.

- C. Upon the hearing of the facts as presented by the Animal Control Officer and the owner of the animal at issue, the City Court Judge of Hernando, Mississippi shall determine whether the animal is feral or vicious as defined herein and whether the animal shall be destroyed.
1. In the event the City Court Judge determines that the animal should not be destroyed, the Animal Control or Police Officer shall release the animal to the owner as soon as it has been confirmed that the animal is not rabid.
 2. In the event that the City Court Judge determines that the animal shall be destroyed, the Animal Control or Police Officer shall retain control of the animal for a period of thirty (30) following the entry of the written order of the City Court Judge. During this thirty (30) day period, the owner of said animal shall have the option of appealing the City Judge's decision to the County Court of Hernando, Mississippi.
 - a. The owner of an animal shall have the option to appeal the decision of the City Judge to destroy the animal in the same manner that any decision of the City Judge can be appealed to the County Court as provided by the laws of the State of Mississippi. This appeal shall be perfected within thirty (30) days following the decision of the City Judge to destroy the animal. If the appeal of the owner is not perfected within this thirty (30) day period, the animal control officer shall be authorized to immediately have the same humanely destroyed.
 - b. In the event that the owner does properly appeal the decision of the City Court to the County Court of Hernando, Mississippi, the Animal Control Officer shall continue to retain control of the animal at the appropriate county animal shelter until otherwise ordered by the County Court of Hernando, Mississippi.
- D. At any time during the process for the destruction of an animal or dog as set forth herein under Section 9, the owner of said animal may sign a waiver agreeing to the immediate euthanization of said animal and waiving any right to contest or appeal said euthanization.
- E. At any time during the process for the destruction of an animal or dog as set forth herein under Section 9, the owner may request said animal to be housed with a veterinarian instead of with the County Animal Shelter by signing a written request and with the agreement that the owner pay all expenses incurred with the veterinarian.
- F. Any person identified to be the owner of an animal which has been brought within the control of the Animal Control Officer shall be responsible for the following fees

for as long as the animal is impounded, including all periods of appeal allowed the owner.

1. Impounded at the City of Hernando or DeSoto County facility will be a fee of \$25.00 plus for each day of impoundment (per dog) \$5.00.
2. If the animal is determined to be injured or diseased, other than diseased with rabies, then said owner shall have the option to request proper veterinarian treatment and shall be responsible for all bills incurred for said treatment;
3. The costs incurred by the Animal Control Officer for the euthanization of said animal or having said animal euthanized;
4. All costs incurred with any veterinarian for treatment or services provided to said animal.

Section 9. Impoundment Generally

- A. An unrestrained dog constituting a public nuisance shall be taken by the Hernando Police Department or its duly appointed officer, or Animal Control Officer and impounded in an enclosure or animal shelter kept for that purpose, to be provided by the City and there confined in a humane manner. Such dog shall be kept for at least five (5) days unless sooner claimed by owner; impounded dogs, not suffering from an injury or infectious disease, shall be kept for not less than five (5) days.
- B. Any vicious dog shall be immediately seized by the Hernando Police Department or its Animal Control Officer if:
 1. The owner does not secure the liability insurance coverage required herein within 30 days of enactment of this Ordinance;
 2. Owner does not maintain the dog in a proper enclosure;
 3. The owner willfully or negligently permits the dog outside the dwelling of the owner or outside the proper enclosure and does not have the dog under personal physical restraint of the owner;
 4. The Animal Control Officer has the authority to seize the animal pursuant to the terms set forth in Section 8 (Elimination of Animals) of this Ordinance.
- C. Notice to Owner Redemption: If by a tag or other means, the owner of an impounded dog can be readily identified, the Animal Control Officer shall, upon impoundment, notify the owner by telephone or mail. Within five (5) days the rightful owner of any dog upon the payment of a pound fee as hereinafter provided, however, that if an unvaccinated dog is claimed by the owner, the owner must make arrangements for the vaccination of said dog satisfactory to the supervisor of Animal Control. An owner reclaiming an impounded dog shall pay a fee as follows:

Dogs (per day)	\$25.00
Plus for each day of impoundment (per dog)	\$ 5.00
- D. Disposition if not reclaimed by owner within five (5) days shall become the property of the City and may be placed for adoption in a suitable home for a fee of ten dollars (\$10.00), or humanely euthanized with an injection provided that, if an unclaimed dog is

adopted, the adoptive owner must make arrangements for the vaccination of said dog satisfactory to the supervisor of Animal Control. The five (5) day waiting period is waived for a vicious or feral dog, or for any dog suffering from an infectious disease. Pursuant to Section 97-41-3, Mississippi Code Annotated 1972, an injured or neglected animal may be humanely euthanized without any waiting period.

- E. The owner of an impounded dog may also be held responsible for any violation(s) of any other section of this Ordinance and subject to the appropriate penalties set forth therein.